



PLANNING FOR
A BETTER
ENVIRONMENT

September 7, 2005

RECEIVED
SEP 09 2005
Morehead City DCM

(Via Facsimile: 252-247-3330 & Mail)

N.C. Division of Coastal Management
Attn: Mr. Stephen Rynas
400 Commerce Avenue
Morehead City, NC 28557-3421

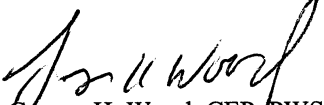
Dear Mr. Rynas,

The Dare County Board of Education has submitted an application for a U.S. Army Corps of Engineers' Individual Permit to fill wetlands to provide the building area and side slopes for the proposed school addition at the Cape Hatteras Secondary School in Buxton, North Carolina. The purpose of this letter is to request from the North Carolina Division of Coastal Management concurrence with the applicant's Consistency Certification that the proposed activity complies with the enforceable policies of North Carolina's approved management program and will be conducted in a manner consistent with such program. The Dare County Board of Education has retained Environmental Professionals, Inc. as their authorized agent for the purposes of the request of concurrence with the Consistency Determination.

This submittal will present supporting documentation in accordance with 15 CFR 930.58 to provide the Division of Coastal Management the data necessary to assess the assertion that the project is consistent with the Federal Coastal Zone Management Act of 1972 as amended and the enforceable policies of North Carolina's approved Coastal Management Program. These policies are principally found in Chapter 7 of Title 15A of the North Carolina Administrative Code.

We appreciate your attention to this report and will provide any additional information that will assist in your review of the project.

Sincerely,
Environmental Professionals, Inc.



George H. Wood, CEP, PWS

GHW:kac

cc: Mr. Jim Winebarger, Director of Maintenance & Construction (Via Facsimile: 475-1090)

RECEIVED
SEP 09 2005

**Consistency Determination
for the
Dare County Board of Education
Cape Hatteras Secondary School Addition
Buxton, North Carolina**

Morehead City DCM

1. **Background**

The Dare County Board of Education authorized the renovation and additional construction to the Cape Hatteras Secondary School to accommodate the increased school population that has resulted from the continued growth of the full-time population on Hatteras Island. The renovations will also modernize the facility. The need for renovations and expansion of facilities were noted in a survey conducted by the N.C. Division of School Planning under the Department of Public Instruction as early as 1977 and 1985. This resulted in athletic field construction that was authorized by Water Quality Certification No. 2826 issued April 28, 1993 and Section 404 of the Clean Water Act Permit issued August 6, 1993 (Action I.D. #199301273) for the placement of fill in 1.04 acres of 404 jurisdictional wetlands and the construction of an on-site, in-kind compensatory mitigation project. The work was completed in 1996, and the Corps' confirmed that completion by their letter of December 20, 1996. The mitigation was monitored as set forth in the Mitigation Plan and was certified as meeting the prescribed success criteria in 1998.

2. **Project**

In a continuing effort to meet the needs of the students on Hatteras Island and the recommendations by the N.C. Division of School Planning under the Department of Public Instruction, new facility development and renovations are proposed at the Cape Hatteras Secondary School Campus. Due to limited space on the Campus, some fill is required in wetlands in order to accommodate the construction of a new gymnasium. The fill area proposed provides the minimum amount of fill area (.0996 acres) to provide the building area and side slopes for the proposed school addition. No additional fill will be required for this project.

The fill area has been carefully designed to avoid encroachment into areas of environmental concern as defined by the Coastal Area Management Act. Wetlands subject to the Corps' jurisdiction pursuant to Section 404 of the Clean Water Act will be impacted. The wetlands at the site were delineated and confirmed by the U.S. Army Corps of Engineers on February 3, 2005. The engineers for the project (Albemarle & Associates) have undertaken efforts to avoid impacts to wetlands and because of site constraints have impacted only a minimal area. We have provided as an attachment the rationale for avoidance and minimization that has been sent to the U.S. Army Corps of Engineers for review of compliance with the MOA between with USEPA and USACE for sequencing.

3. **Areas of Environmental Concern**

The project is located adjacent to the Pamlico Sound in Dare County. In order to assess whether the project required a CAMA Major Development Permit it was necessary to determine if the project impacted areas of environmental concern as defined in the North Carolina Administrative Code 15A NCAC 07H. Although there are numerous areas of environmental concern, the ones that are most applicable for this area include coastal wetlands, estuarine waters, estuarine shorelines, public trust areas, and outstanding resource waters.

A. **Coastal Wetlands**

The Administrative Code 15A NCAC 07H .0205 describes coastal wetlands as those salt marshes or other marshes subject to regular or occasional flooding by tides, including wind tides and includes some if not all of 10 species. Environmental Professionals, Inc. delineated the wetlands at the site and have determined that the area that is proposed to be filled is subject to the U.S. Army Corps of Engineers' jurisdiction as defined in the 1987 Wetland Delineation Manual. However, we do not feel that the area is subject to coastal wetlands as described in the Administrative Code because the area to be impacted contained Myrica cerifera, Borrichia frutescens, Iva frutescens, and Acer rubrum. These species are not identified in 15A NCAC 07H .0205 as coastal wetlands and further the area that is proposed to be impacted is not subject to regular or occasional flooding by tides, including wind tides, except in those cases that would include hurricanes or tropical storm tides. This area was reviewed by Mr. John CeCe, Field Representative for the North Carolina Division of Coastal Management on September 1, 2005 and determined that the fill area will not impact coastal wetlands. Therefore, we assert that this area is not subject to coastal wetland areas of environmental concern.

B. **Estuarine Waters**

Estuarine waters are defined in 15A NCAC 07H .0206 to include all of the waters of the Atlantic Ocean within the boundary of North Carolina and all of the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. Although the waters that are adjacent to this project are estuarine waters, the proposed project will not directly impact estuarine waters. All fill will be placed outside of areas that would be defined as estuarine waters; therefore, we assert that the project will not result in impacts to estuarine waters.

C. **Estuarine Shorelines**

Coastal shorelines are defined in 15A NCAC 07H .0209 as estuarine shorelines and public trust shorelines. Estuarine shoreline areas of environmental concern are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuary sounds, bays, fresh and brackish waters, and public trust areas for a distance 75 feet landward. We have prepared the attached plat which shows that the proposed project will not impact areas within 75 feet of the normal high water level as defined in 15A NCAC 07H .0106(1) or within 75 feet of normal water level as defined in 15A NCAC 07H .0106(2). During Mr. CeCe's review of the site on September 1, 2005, he determined that the project was outside of the estuarine shoreline AEC. Therefore, we assert that the proposed project is outside of the estuarine shoreline area of environmental concern.

D. Public Trust Areas

Public trust areas are defined in 15A NCAC 07H .0207 as waters of the Atlantic Ocean and lands thereunder from the mean high water mark to the seaward limit of the State jurisdiction, including all natural bodies of water subject to measurable lunar tides and lands thereunder to the mean high water mark. These public trust areas include all navigable water bodies and lands thereunder to the mean high water level or mean water level as the case may be. We have determined that the proposed project will not directly impact waters of the State of North Carolina and therefore not impact public trust areas.

E. Outstanding Resource Waters

Outstanding Resource Waters (ORW) are those waters classified by the N.C. Environmental Management Commission pursuant to T15A NCAC .021B upon finding that these waters are of exceptional State or National recreational or ecological significance. Attached is the DEM list of ORWs, and the waters adjacent to this project are not defined as an ORW. Therefore, although the project is within 575 feet of the adjacent waters, the adjacent waters are not an ORW, and this project will not affect an ORW.

F. Conclusion

The proposed project is outside of any area of environmental concern. As defined in General Statute 113A-103(5)a, the project does not require authorization pursuant to the Coastal Area Management Act in that it will not occur in a duly designated area of environmental concern.

4. General Policy Guidelines

- a. Environmental Professionals, Inc. has reviewed 15A NCAC 07M General Policy Guidelines for the coastal area and has determined that the proposed project is consistent with those guidelines. More specifically, Section 7M.0200 Shoreline Erosion Policies are not germane to the topic because there is no proposed shoreline erosion control device proposed. Section 7M.0300 Shorefront Access Policies are not contravened because the proposed fill will not impact current access to estuarine shoreline neighborhood access sites, regional access sites, multi-regional access sites, or other areas in which the public generally accesses the estuarine waters in this area. Section 7M.0306 Local Government and State Involvement have not identified this site with a plan to provide local access. Section 7M.0400 Coastal Energy Policies are not contravened because the proposed project does not involve the development of energy facilities or energy resources within the State. Section 7M.0500 Post-Disaster Policies are not applicable to the proposed development activity. Section 7M.0600 Floating Structure Policies are not applicable to the proposed development. Section 7M.0700 Mitigation Policies are addressed by the mitigation proposal presented to the U.S. Army Corps of Engineers as payment into the NC Ecosystem Enhancement Program to compensate for the impacts associated with fill in Section 404 wetlands. Therefore, the mitigation policies in .07M are consistent with the proposed plan for development. Section 7M.0800 Coastal Water Quality Policies have been addressed and found consistent by the State's issuance of a State Stormwater Permit. Section 7M.0900 Policies and Use of Coastal Air Space are not applicable to the project. Section 7M.1000 Policies on Water and Wetland Based Target Areas for

Military Training Activities are not applicable to the project. Section 7M.1100 Policies on the Beneficial Use and Availability of Materials Resulting from the Excavation or Maintenance of Navigational Channels are not applicable to the project. Section 7M.1200 Policies on Ocean Mining are not applicable to the project.

b. **Conclusion**

Based on the review of the General Policy Guidelines for Coastal Areas, we assert that the proposed project is consistent with T15A NCAC Subchapter 07M.

5. **Land Use Plan Review**

- a. The project plans and application have been forwarded to the Dare County Planning Department for review for consistency with the Dare County Land Use Plan. Our initial review of the plan does not reveal any inconsistency with the proposed land use nor activity to fill wetlands. Please find attached the Dare County Planning Department's response that the project is consistent with the Dare County Land Use Plan.

The existing land use is limited transition. The purpose of limited transition class is to provide for development in areas that have some services that are suitable for lower density than those associated with the urban transition class and are geographically remote from existing towns and municipalities. Buxton is designated as a limited transition area along NC 12 and the Buxton back road. This overlay extends 500 feet out from the right-of-way of NC 12 and Buxton back road as illustrated on the Land Classification Map in the Land Use Plan. Existing development patterns reflect Buxton status as the location of the educational facilities on Hatteras Island and is a mix of businesses serving both the year-round population and the tourist population. Therefore, it is our assertion that the limited transition land classification supports the Improvement Plan for the Cape Hatteras Secondary School campus.

The Dare County Land Use Plan notes the 2003 policy that supports the use of mitigation for public purpose projects as a noteworthy change in policy from the 1994 policy statements. The overview of the policy reiterates that Dare County relies on Federal and State regulatory programs for protection of wetlands. Wetland mitigation is acceptable for public purpose projects.

Dare County policies support efforts by Local, State, and Federal agencies to preserve, protect, and improve water quality (Policy #12). The State Division of Water Quality Certification #050221 supports consistency with this policy.

- b. **Conclusion:** It is our determination that the proposed project is consistent with the Dare County Land Use Plan.

6. **Project Consistency Conclusion**

These supporting documents, in accordance with 15 CFR 930.58 put forth the data necessary to assess our assertion of the project is consistent with the Federal Coastal Zone Management Act of 1972, as amended and the enforceable policies of the North Carolina approved Coastal Management Program. We request that the North Carolina Division of Coastal Management concur with our Consistency Certification that the proposed activity complies with the enforceable policies of the North Carolina Approved Management Program and will be conducted in a manner consistent with such Program.



COUNTY OF DARE

Planning Department

P.O. Box 1000, Manteo, North Carolina 27954

Manteo: (252) 475-5870
KDH Satellite: (252) 475-5871
Buxton: (252) 475-5878

September 8, 2005

George Wood
Environmental Professionals, Inc.
P.O. Box 3368
Kill Devil Hills, NC 27948

Dear George:

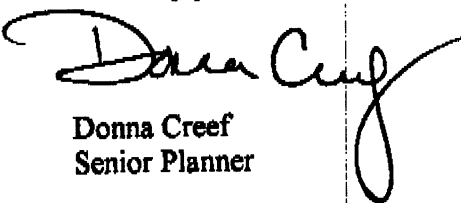
I have reviewed the 2003 Dare County Land Use Plan for information concerning the construction plans at the Cape Hatteras Secondary School. There are two policies in the 2003 LUP that are applicable to this project as detailed below:

1. Policy #2 – Wetland mitigation –this policy supports the use of mitigation for public purpose projects. I am not aware if mitigation will be necessary with the Cape Hatteras school project, but if so, then this policy provides clear direction on the County's position on wetland mitigation.
2. Policy #3 – this policy supports of the Corps of Engineers nationwide permit program.

The land classification map for Buxton village designates the school site as Limited Transition and the narrative description of Buxton village included in the 2003 LUP mentions the educational facilities in the village. The proposed school construction plans are consistent with this land classification designation.

I hope this information is helpful. The residents and students of Hatteras Island are looking forward to the completion of the school expansion project. If I may be of further assistance with this project, please give me a call at 475-5873.

Sincerely yours,



Donna Creef
Senior Planner

Cc: Ray Sturza

by the Corps and the nationwide permit program. However, concern was noted about the rigid interpretations and delineations of wetlands pockets that sometimes preclude otherwise acceptable development projects.

Another aspect of wetlands management is the concept of mitigation. Mitigation involves the creation of, or dedication of wetlands sites, to compensate for the loss of wetlands as a result of development activities. In simple terms, mitigation can be thought of as a trade-off of wetlands at one site for the alteration or loss of wetlands in another area. Generally, the topic of mitigation is categorized as public purpose projects (those projects undertaken by the public sector) and mitigation in conjunction with private development projects. The Planning Board discussed this issue extensively during the update process. There was a consensus of support for wetland mitigation for public sector projects among the Planning Board and among respondents to the land use plan questionnaire. For private sector projects that may propose wetland mitigation, the Planning Board felt that private projects should be reviewed on an individual basis and judgments based on any benefits the project may provide to the community.

Development within any coastal wetland AEC should be constructed according to any applicable local, State or Federal regulations.

Policy #1

Dare County advocates the use of existing (2002) State and Federal regulatory programs for protecting and preserving coastal wetland areas of environmental concern. Dare County reserves the right to review, comment, advocate, or oppose any proposed regulations or programs that may affect the regulation of coastal wetland areas of environmental concern.

Policy #2

Dare County supports the use of mitigation for the loss of wetland areas for public purpose projects. Private development projects that proposed wetland mitigation may be supported by Dare County if such projects will serve an identified public need and/or policy of the land use plan. For both public and private mitigation projects, up to 25% of the mitigation should take place on site or in Dare County.

Policy #3

Dare County supports the U.S. Army Corps of Engineers nationwide permit program as administered in 2002. This support is based on the current scope of permitting limits on the nationwide program and not on any changes that may result in a different policy.

Implementation Strategies:

1. Implementation and enforcement of CAMA use standards for coastal wetland AECs as identified under 15NCAC7H, Sections .0205 and .0208.
2. The County will continue to administer the CAMA local permit enforcement program and maintain the staff necessary for this work.
3. As may be necessary to facilitate implementation of permit programs for wetland management.

OCEAN SHORELINE

The immediate oceanfront area on any barrier island quickly identifies itself for special management guidelines. Management alternatives include setback standards to address erosion, minimum

Single-family residential uses are the preferred pattern of development in each of these areas, with a minimum lots size of 15,000 square feet for new platted lots. Multifamily uses are permitted at densities ranging from 3 units per acre to 10 units per acre in certain zoning districts, however soil suitability general serves as a natural constraint for high density development at more than 3 units per acre. Limited transition areas have been colored yellow on the land classification map.

There are several areas of unincorporated Dare County that qualify as Limited Transition. The areas are moving from undeveloped land to a developed state. The level of development varies from village to village. In each case, certain urban-style services are available but the full range of those services that might be found in an urban setting are not present or planned. This is particularly true concerning central wastewater treatment that is available from privately owned and operated plants, but in a limited capacity. A more detailed discussion of each area follows:

Martins Point -- In October 2000, the Martins Point Subdivision reverted back to the planning jurisdiction of Dare County. Previously, the area had been designated as an extraterritorial zoning area by the Town of Southern Shores. However, this ETJ designation was dissolved and the residential portions of Martins Point are now under the zoning and planning jurisdiction of Dare County. The area is comprised of large residential structures, mostly for year-round residents. Access to the area is limited by a manned guardhouse. Central water is supplied by Dare County and individual on-site septic systems are used for wastewater.

Colington -- Limited transition has been applied to a 500-foot area from the right-of-way of SR 1217 or Colington Road from the beginning of the area recognized as Kill Devil Hills outside to the beginning of the Colington Harbour entrance. The application along the road frontage of SR 1217 recognizes the changing patterns of land use along this transportation route. The Kill Devil Hills outside/Colington area is mostly year-round residents with several businesses located along Colington Road including storage warehouses, a convenience store, two restaurants. The zoning in the area is consistent with the land classification with areas of commercial zoning designated along the length of Colington Road.

Rodanthe-Waves Salvo -- Limited Transition has been applied to the entire area of these three Hatteras Island villages to reflect the S-1 zoning that applies in these villages. S-1 permits all uses including multifamily uses. Development along NC 12 continues to support the tourist-oriented economy of Dare County. Central water from Dare County water system is available in this area. It is anticipated that this portion of Hatteras Island will remain in a state of transition until more detailed zoning maps for the villages are established that delineate specific residential and commercial zones.

Avon -- Similar to the Colington area, a 500-foot wide designation of limited Transition has been applied to NC 12 throughout Avon. Most of the property along NC 12 is zoned commercially and supports existing commercial development marketed to the tourist-economy of Dare County.

Buxton -- An overlay of limited transition has been applied to Buxton village along NC 12 and the Buxton Back Road. This overlay extends 500 feet out from the right-of-way of NC 12 and Buxton Back Road as illustrated on the land classification map. The zoning maps for Buxton establishes commercial and industrial areas in this limited transition classification. Existing development patterns reflects Buxton's status as the location of the educational facilities on Hatteras Island and is

a mix of businesses serving both the year-round population and the tourist population. Central water is available throughout Buxton village from the Dare County central water supply.

Community – The purpose of the community class is to provide for clustered, mixed land uses at low densities to help meet the housing, shopping, employment and other needs in rural areas. Minimum lot size, according to the Dare County Subdivision Ordinance is set at 20,000 square feet for those areas served by private wells and 15,000 for those areas served by central water from the Dare County water systems. Central wastewater treatment services are not available except as noted in the individual village discussions and then only to serve specific platted subdivisions where soils conditions precluded the use of traditional on-site septic tank drainfield systems. The areas designated as Community appear in pink. This classification has been applied to numerous areas of unincorporated Dare County as detailed below:

This classification has been applied to numerous areas of unincorporated Dare County as detailed below:

The Community land classification is used for the Mainland villages of Stumpy Point, Manns Harbor, Mashoes, and East Lake. The villages are largely in character but do feature some commercial development that focuses on the needs of the immediate area. Although the village of Manns Harbor does not feature any urban style services, it can be expected that the village will be impacted by the construction of the new Midway Bridge and the intersection near the bridge landing will become a focus for more intensive commercial development. The vast federally owned Alligator River Wildlife Refuge and the Navy bombing range limit the growth potential of the Mainland. All three of the villages rely on private wells and on-site septic tank systems.

Kill Devil Hills Outside/Colington – The remaining areas of Colington not included in the Limited Transition applied along Colington Road have been classified as Community. This includes Baum Bay Harbour Subdivision, WatersEdge Subdivision, Colington Harbour Subdivision, Colingwood Subdivision, Cliffs of Colington Subdivision and Swan View Shores Subdivision. Traditionally, this area has been a village-oriented community with a history of commercial fishing. The residential development is primarily year-round residents with a mixture of long-term rentals. The area is served by the Dare County regional water system but is dependant on septic tanks for wastewater treatment. However, the existing Baycliff development approved in the late 1980s is served by a small privately owned package treatment plant. The zoning maps for Colington is consistent with this Community classification with mostly residential districts applied to the platted subdivisions listed above. There are currently no areas zoned for multifamily development in the areas assigned the Community classification in Kill Devil Hills Outside/Colington.

Avon/Buxton – The areas outside of the Limited Transition overlay in Avon and Buxton villages have also been classified as Community. This recognizes the mostly residential nature of the remaining portions of these villages. There are a handful of existing commercial businesses in the "village proper" area of Avon that reflects its history as a commercial fishing village. The areas in Avon and Buxton that have been designated Community are zoned with a residential classification that is consistent with the Community classification. Central water is available in all of the seven villages from the Dare County regional water system. Except for the soundside portion of the Kinnakeet Shores Subdivision in Avon that is served by a private package treatment plant, on-site septic systems are used for wastewater treatment. Multi-family development is limited by the zoning maps designations.



September 7, 2005
SEP 09 2005

**ENVIRONMENTAL
PROFESSIONALS
INC.**

U.S. Army Corps of Engineers

Attn: Mr. William Wescott

PLANNING FOR
A BETTER
ENVIRONMENT

P.O. Box 1000

Washington, NC 27889

Re: Cape Hatteras Secondary School – Buxton, North Carolina
Discussion of Avoidance and Minimization

Dear Mr. Wescott,

The Dare County Board of Education authorized the renovation and additional construction to the Cape Hatteras Secondary School to accommodate the increased school population that has resulted from the continued growth of the full-time population on Hatteras Island. The renovations will also modernize the facility. The need for renovations and expansion of facilities was noted in a survey conducted by the North Carolina Division of School Planning under the Department of Public Instruction as early as 1977 and 1985. This resulted in athletic field construction that was authorized by Water Quality Certification No. 2826 issued April 28, 1993 and Section 404 of the Clean Water Act Permit issued August 6, 1993 (Action I.D. No. 199301273) for the placement of fill in 1.04 acres of 404 jurisdictional wetlands and the construction of an on-site inkind compensatory mitigation project. The work was completed in 1996, and the Corps confirmed that completion by their letter of December 20, 1996. The mitigation was monitored and set forth in the Mitigation Plan and was certified as meeting the prescribed success criteria in 1998.

In a continued effort to meet the needs of the students on Hatteras Island and the recommendations of the North Carolina Division of School Planning under the Department of Public Instruction, new facility development and renovations are now proposed at the Cape Hatteras School campus. The planning process was undertaken by the Dare County Board of Education and their project engineers and architects. Attached you will find an email from the project architect discussing the process that they use for citing the improvements in order to avoid wetland impacts yet allow for the citing to accommodate the appropriate location and types of structures that meet the North Carolina Educational Facility Guidelines. It was determined during that process that the wetland area to the north of the facility could not be avoided.

In order to provide for adequate area around the new facility that would provide access to all sides of the new facility for maintenance and foundation support, the original design indicated the need for 8,081 square feet of wetland fill. This alignment would have allowed for a slope which could be easily maintained and provide adequate safe foundation support for the building and slopes that would be consistent with the slopes in the adjacent area. During the planning process, it was determined that the fill area could be minimized to 4,339 square feet if the slopes were increased resulting in more effort for maintenance of the surrounding property but still allowing for adequate foundation support. The submittal that has been provided for your consideration at this time calls for the fill of 4,311 square feet which will further increase the slope on the surrounding building, however, will keep the fill outside of the Coastal Area Management Act Estuarine Shoreline Area of Environmental Concern. It has been determined that the proposed slope will be adequate to allow for foundation support.

With regards to your request for an 8 ½ x 11 plat to depict the proposed fill, you will find that attached to this letter.

As demonstrated in our application, we trust that this information will support our claim that the proposed plan has been formulated in such a way to consider avoidance of wetlands and to minimize the encroachment into wetlands satisfying the Memorandum of Agreement between the U.S. EPA and the U.S. Army Corps of Engineers. Therefore, we have submitted our plan for mitigation in accordance with this guideline.

I hope that this information is sufficient for you to continue processing of the permit for wetland impacts.

Sincerely,
Environmental Professionals, Inc.

A handwritten signature in black ink, appearing to read "G. H. Wood".

George H. Wood, CEP, PWS

GHW:kac

Attachment: a/s

cc: Mr. Jim Winebarger

George H. Wood

From: "John Thomas" <JThomas@mbaj.com>
To: <georgehwood@earthlink.net>
Cc: "Jim Winebarger (E-mail)" <dareboeproject@yahoo.com>
Sent: Friday, September 02, 2005 9:52 AM
Subject: Cape Hatteras Secondary

Over the course of the project, several design alternatives were developed in an attempt to eliminate wetland encroachment. The PE support facilities ultimately could not be installed without some wetland encroachment. The available siting options for this addition were severely limited by required adjacencies to existing facilities and infrastructure. The locker room and auxiliary gym facilities must be directly accessible from the existing gym space to allow for proper function and educational use. The existing mechanical and electrical infrastructure provided few effective points of connection and limited the available addition locations. After careful consideration of the available options, we chose the solution that best met the education requirements and minimized the wetland impact.

