Appendix C:
Agency Correspondence

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, Albany, New York 12233-4757
Phone: (518) 402-8935 • **FAX:** (518) 402-8925

Alexander B. Grannis
Commissioner

April 23, 2008

Jacqueline Fusco
Langan Engineering
River Drive Center 1
Elmwood Park, NJ 07407

Dear Ms. Fusco:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to an Environmental Assessment for the proposed Remediation of Environmentally Impaired Site, Project 5723, site as indicated on the map you provided, located at 1752 Shore Parkway, Brooklyn, Kings County.

We have no records of known occurrences of rare or state-listed animals or plants, significant natural communities, or other significant habitats, on or in the immediate vicinity of your site.

The absence of data does not necessarily mean that rare or state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain any information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. For these reasons, we cannot provide a definitive statement on the presence or absence of rare or state-listed species, or of significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental assessment.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

This response applies only to known occurrences of rare or state-listed animals and plants, significant natural communities and other significant habitats maintained in the Natural Heritage Data bases. Your project may require additional review or permits; for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, at the enclosed address.

Sincerely,
Tara Seoane jp
Tara Seoane, Information Services
NY Natural Heritage Program

Enc.
cc: Reg. 2, Wildlife Mgr.
Reg. 2, Fisheries Mgr.

National Marine Fisheries Service
Habitat Conservation Division
Milford Field Office, 212 Rogers Avenue
Milford, Connecticut 06460

TO: Jacqueline Fusco
Environmental Scientist
Langan Engineering and Environmental Services, Inc.
River Drive Center 1
Elmwood Park, NJ 07407

DATE: 29 April 2008

SUBJECT: **1753 Shore Parkway Redevelopment Project, City of Brooklyn, Kings County, New York**

Susan Tuxbury
(Reviewing Biologist)

We have completed our review of the subject information request and offer the following preliminary comments pursuant to the Endangered Species Act, the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act:

Endangered and Threatened Species

_____ No endangered or threatened species under the jurisdiction of NOAA Fisheries Service in the immediate project area.

__XX__ Endangered or threatened species under the jurisdiction of NOAA Fisheries Service's jurisdiction may be present in the project area. For details, please contact:

Ms. Mary Colligan
ARA for Protected Resources
One Blackburn Drive
Gloucester, MA 01930

Fish and Wildlife Coordination Act Species

__XX__ The following may be present in the general project area: Anadromous and resident fish, forage and benthic species in nearby aquatic habitats

Please contact the appropriate Regional Office of the New York State Department of Environmental Conservation to confirm the presence of specific anadromous or resident aquatic populations.
Habitat use by some species or life stages may be seasonal (e.g. over-wintering.)

Essential Fish Habitat

__XX__ Aquatic habitats in the project vicinity have been designated as Essential Fish Habitat (EFH) for one or more species. When details of the project are made available and permit applications have been made, conservation recommendations may be given. For a listing of EFH and further information, please go to our website at: http://www.nero.nmfs.gov/ro/doc/webintro.html . Based on the information provided to date, it is not possible to determine whether or not an EFH assessment will be necessary.

_____ No EFH presently designated in the immediate project area.

Kings County

Kings County

Federally Listed Endangered and Threatened Species and Candidate Species

This list represents the best available information regarding known or likely County occurrences of Federally-listed and candidate species and is subject to change as new information becomes available.

Common Name	Scientific Name	Status
Shortnose sturgeon[1]	*Acipenser brevirostrum*	E

Status Codes: E=Endangered T=Threatened P=Proposed C=Candidate D=Delisted

[1]Primarily occurs in Hudson River. Principal responsibility for this species is vested with the National Oceanic and Atmospheric Administration/Fisheries.

Please visit the following website for more information http://www.nmfs.noaa.gov/pr/species/esa.htm.

Information current as of: 5/27/2008

Print Species List

United States Department of the Interior

FISH AND WILDLIFE SERVICE

New York Field Office
3817 Luker Road, Cortland, NY 13045
Phone: (607) 753-9334
Fax: (607) 753-9699

Long Island Field Office
3 Old Barto Rd., Brookhaven, NY 11719
Phone: (631) 776-1401
Fax: (631) 776-1405

Endangered Species Act List Request Response Cover Sheet

This cover sheet is provided in response to a search of our website* for information regarding the potential presence of species under jurisdiction of the U.S. Fish and Wildlife Service (Service) within a proposed project area.

Attached is a copy of the New York State County List of Threatened, Endangered, and Candidate Species for the appropriate county(ies). The database that we use to respond to list requests was developed primarily to assist Federal agencies that are consulting with us under Section 7(a)(2) of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). Our lists include all Federally-listed, proposed, and candidate species known to occur, as well as those likely to occur, in specific counties.

The attached information is designed to assist project sponsors or applicants through the process of determining whether a Federally-listed, proposed, or candidate species and/or "critical habitat" may occur within their proposed project area and when it is appropriate to contact our offices for additional coordination or consultation. You may be aware that our offices have provided much of this information in the past in project-specific letters. However, due to increasing project review workloads and decreasing staff, we are now providing as much information as possible through our website. We encourage anyone requesting species list information to print out all materials used in any analyses of effects on listed, proposed, or candidate species.

The Service routinely updates this database as species are proposed, listed, and delisted, or as we obtain new biological information or specific presence/absence information for listed species. If project proponents coordinate with the Service to address proposed and candidate species in early stages of planning, this should not be a problem if these species are eventually listed. However, we recommend that both project proponents and reviewing agencies retrieve from our online database an *updated* list every 90 days to append to this document to ensure that listed species presence/absence information for the proposed project is *current*.

Reminder: Section 9 of the ESA prohibits unauthorized taking** of listed species and applies to Federal and non-Federal activities. For projects not authorized, funded, or carried out by a Federal agency, consultation with the Service pursuant to Section 7(a)(2) of the ESA is not required. However, no person is authorized to "take**" any listed species without appropriate authorizations from the Service. Therefore, we provide technical assistance to individuals and agencies to assist with project planning to avoid the potential for "take**," or when appropriate, to provide assistance with their application for an incidental take permit pursuant to Section 10(a)(1)(B) of the ESA.

Additionally, endangered species and their habitats are protected by Section 7(a)(2) of the ESA, which requires Federal agencies, in consultation with the Service, to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. An assessment of the potential direct, indirect, and cumulative impacts is required for all Federal actions that may affect listed species.

For instance, work in certain waters of the United States, including wetlands and streams, may require a permit from the U.S. Army Corps of Engineers (Corps). If a permit is required, in reviewing the application pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), the Service may concur, with or without recommending additional permit conditions, or recommend denial of the permit depending upon potential adverse impacts on fish and wildlife resources associated with project construction or implementation. The need for a Corps permit may be determined by contacting the appropriate Corps office(s).*

For additional information on fish and wildlife resources or State-listed species, we suggest contacting the appropriate New York State Department of Environmental Conservation regional office(s) and the New York Natural Heritage Program Information Services.*

Since wetlands, ponds, streams, or open or sheltered coastal waters may be present in the project area, it may be helpful to utilize the National Wetlands Inventory (NWI) maps as an initial screening tool. However, they may or may not be available for the project area. Please note that while the NWI maps are reasonably accurate, they should not be used in lieu of field surveys for determining the presence of wetlands or delineating wetland boundaries for Federal regulatory purposes. Online information on the NWI program and digital data can be downloaded from Wetlands Mapper, http://wetlands.fws.gov/mapper_tool.htm.

Project construction or implementation should not commence until all requirements of the ESA have been fulfilled. After reviewing our website and following the steps outlined, we encourage both project proponents and reviewing agencies to contact our office to determine whether an accurate determination of species impacts has been made. If there are any questions about our county lists or agency or project proponent responsibilities under the ESA, please contact the New York or Long Island Field Office Endangered Species Program at the numbers listed above.

Attachment (county list of species)

*Additional information referred to above may be found on our website at: http://www.fws.gov/northeast/nyfo/es/section7.htm

** Under the Act and regulations, it is illegal for any person subject to the jurisdiction of the United States to *take* (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species and most threatened fish and wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. "Harm" includes any act which actually kills or injures fish or wildlife, and case law has clarified that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

David A. Paterson
Governor

Carol Ash
Commissioner

New York State Office of Parks,
Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

April 14, 2008

Michael Audin
Langan Engineering & Environmental Services
River Drive Center 1
Elmwood Park, New Jersey 07407

Re: CORPS PERMITS, DEC
1752 Shore Parkway, Proposed retail building, parking garage & public walkway
1752 Shore Parkway
BROOKLYN, Kings County
08PR01891

Dear Mr. Audin:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966.

Based upon this review, it is the SHPO's opinion that your project will have No Effect upon cultural resources in or eligible for inclusion in the National Registers of Historic Places.

If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont
Director

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF:
Regulatory Branch-Eastern Permits Section

MAY 07 2009

SUBJECT: Permit Application Number NAN-2008-00943
by Thor Equities LLC

Thor Equities LLC
25 West 39th Street
New York, NY 10018

To Whom It May Concern::

On July 14, 2008, the New York District Corps of Engineers received a request for Department of the Army authorization for the installation of 1400-linear feet of bank stabilization with rip-rap at a slope of 1.5 to 1 around the entire shoreline of the 1752 Shore Parkway development. The site is located in Gravesend Bay, in the Borough of Brooklyn, Kings County, New York.

Based on the information submitted to this office, and accomplishment of notification in accordance with the applicable federal requirements, our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Number 13. The nationwide permits are prescribed as an Issuance of Nationwide Permits in the Federal Register dated March 12, 2007 (FR Vol. 72, No. 47). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No. 13, Section C, any applicable New York District regional conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

Special Conditions

1) **The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.**

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

ORM

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

Attached to this verification that your project is authorized by a NWP is an approved jurisdictional determination. If you are not in agreement with that approved JD, you can make an administrative appeal under 33 CFR 331.

This verification is valid for a period of two years from the date of this letter, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid for two years from the date of this letter if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity. All of the existing NWPs are scheduled to be modified, reissued, or revoked March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued.

This authorization is conditional on the applicant's receipt of the required water quality certificate or waiver from the New York State Department of Environmental Conservation (NYSDEC). No work may be accomplished until the required approval from NYSDEC has been obtained.

This authorization is conditional on the applicant's receipt of the required coastal zone management concurrence or waiver from the New York State Department of State (NYSDOS). No work may be accomplished until the required approval from NYSDOS has been obtained.

Within 30 days of the completion of the activity authorized by this permit, and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

If any questions should arise concerning this matter, please contact Ahmed Soliman, of my staff, at (917) 790-8518.

Sincerely,

Stacey M. Jensen
Acting Chief,
Eastern Permits Section

cc: Thomas Devaney
Langan Engineering and Environmental Services
21 Penn Plaza, 8th Floor
New York, NY 10001

DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF:
CENAN-OP-RH

NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM

Permittee: Thor Equities Permit No. NAN-2008-00943-ESO

Date Permit Issued: MAY 07 2009

Location: Borough of Brooklyn, Kings County, New York

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the address at the bottom of this form.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

_____ _____
Signature of Permittee Date

Fold this form into thirds, with the bottom third facing outward. Tape it together and mail to the address below **or FAX to (212) 264-4260.**

Place Stamp
Here

Department of the Army
New York District Corps of Engineers
Jacob K. Javits Federal Building
ATTN: CENAN-OP-RH
New York, New York 10278-0090

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Thor Equities LLC	File Number: NAN-2008-00943	Date: MAY 0 7 2009

Attached is:		See Section Below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

•ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.

•OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the New York District Engineer. Your objections must be received by the New York District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the New York District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the New York District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

•ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

•APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

•ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.

•APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the North

Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New York District Engineer.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Richard L. Tomer
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
New York, NY 10278-0090
(917) 790-8510

If you only have questions regarding the appeal process you may also contact:
Michael G. Vissichelli, Administrative Appeals Review Officer
North Atlantic Division, U.S. Army Engineer Division
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700
(718) 765-7163
E-mail: Michael.G.Vissichelli@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
Signature of appellant or agent.		

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

MAY 0 7 2009

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 05-May-2009

SQ

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2008-00943-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State :	NY - New York
County/parish/borough:	Kings
City:	Brooklyn
Lat:	40.592931
Long:	-73.996089
Universal Transverse Mercator	Folder UTM List *UTM list determined by folder location* • NAD83 / UTM zone 37S Waters UTM List *UTM list determined by waters location* • NAD83 / UTM zone 37S

Name of nearest waterbody:
Name of nearest Traditional Navigable Water (TNW): Atlantic Ocean
Name of watershed or Hydrologic Unit Code (HUC):

☐ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc¿) are associated with the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☐ Office Determination Date:

☐ Field Determination Date(s): ☐

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There appear to be "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☑ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There ☒ "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area:[1]

Water Name	Water Type(s) Present
Gravesend Bay NAN-2008-00943 (Thor Equities LLC)	TNWs, including territorial seas

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
Linear: 426.72 (m)

c. Limits (boundaries) of jurisdiction:

based on: Established by mean(average) high waters.
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:[3]

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1.TNW

TNW Name	Summarize rationale supporting determination:
Gravesend Bay NAN-2008-00943 (Thor Equities LLC)	-

2. Wetland Adjacent to TNW
Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: [ ]
Drainage area: [ ]
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics
(a) Relationship with TNW:

[ ] Tributary flows directly into TNW.
[ ] Tributary flows through [ ] tributaries before entering TNW.
:Number of tributaries

Project waters are [ ] river miles from TNW.
Project waters are [ ] river miles from RPW.
Project Waters are [ ] aerial (straight) miles from TNW.
Project waters are [ ] aerial(straight) miles from RPW.

[ ] Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:[5]

Tributary Stream Order, if known:
Not Applicable.

(b) General Tributary Characteristics:

Tributary is:
Not Applicable.

Tributary properties with respect to top of bank (estimate):
Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):

Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality;general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m²)
Gravesend Bay NAN-2008-00943 (Thor Equities LLC)	TNWs, including territorial seas	426.72	-
Total:		**426.72**	**0**

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:[8]
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:[9]
Not Applicable.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:[10]
Not Applicable.

Identify water body and summarize rationale supporting determination:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:

☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:

☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based soley on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	Project Plans	Submitted by agent on April 23,2009
--Photographs	-	-
---Aerial	Site photos	submitted by applicant on April 23, 2009
---Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

---

[1]-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

[2]-For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

[3]-Supporting documentation is presented in Section III.F.

[4]-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

[5]-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

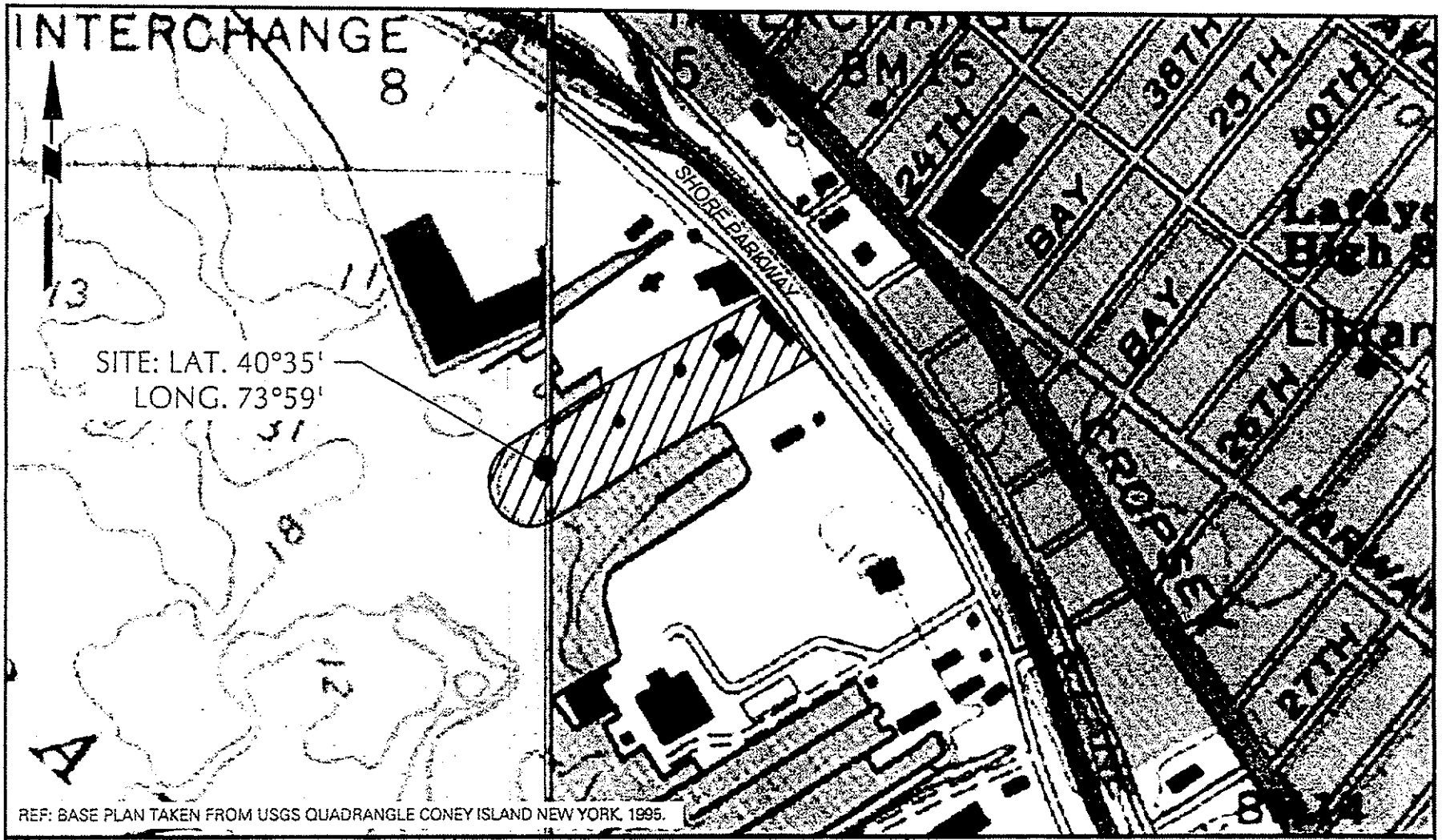
[6]-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

[7]-Ibid.

[8]-See Footnote #3.

[9]-To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

[10]-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.



REF: BASE PLAN TAKEN FROM USGS QUADRANGLE CONEY ISLAND NEW YORK, 1995.

BODY OF WATER: GRAVESEND BAY

APPLICANT: THOR EQUITIES, LLC.

LANGAN
ENGINEERING & ENVIRONMENTAL SERVICES
21 Penn Plaza, 8th Floor New York, NY 10001
P: 212.479.5400 F: 212.479.5444
www.langan.com
NEW JERSEY PENNSYLVANIA NEW YORK CONNECTICUT FLORIDA NEVADA

1752 SHORE PARKWAY

USACE: VICINITY MAP

BROOKLYN NEW YORK

Project No.	Date	Scale	Sheet
5723001	7/23/08	NTS	SHEET 1 OF 3

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MAY 07 2009

Filename: U:\Data0\5723003\Cadd Data - 5723003\Dwg\Sheet Files\USACE\Site Location Map.dwg Date: 12/9/2008 Time: 15:48 User: sevanthal Style Table: Langan.stb Layout: A Size Sheet (Sdc)

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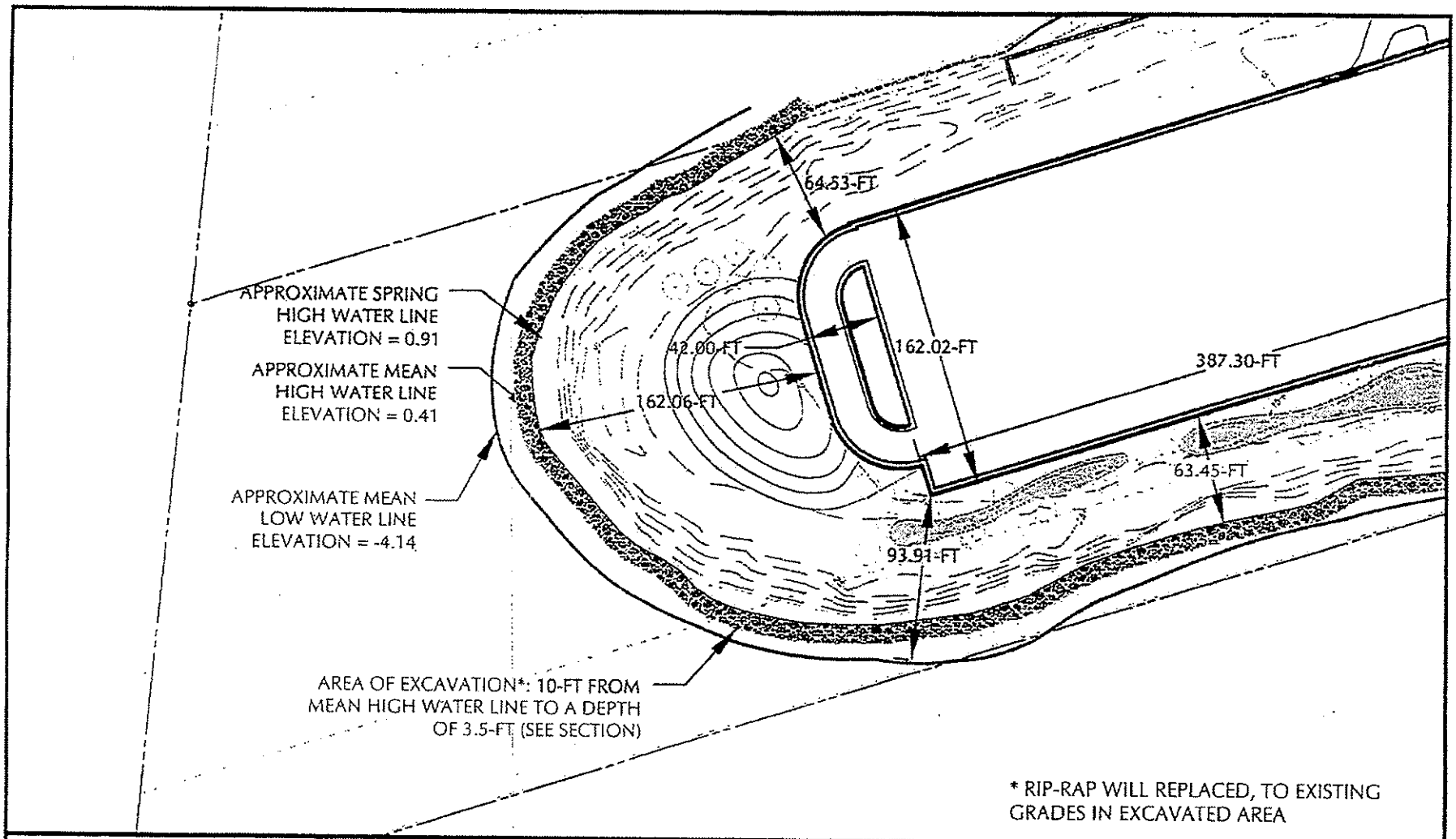

BODY OF WATER: GRAVESEND BAY

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1752 SHORE PARKWAY

USACE: PLAN VIEW

BROOKLYN NEW YORK

Project No.	Date	Scale	
5723001	7/23/08	1"=100'	SHEET 2 OF 3

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Filename: U:\Data0\5723003\Cadd Data - 5723003\Dwg\Sheet Files\USACE\Plan View.dwg Date: 12/9/2008 Time: 15:48 User: stevenlinal Style Table: Langan.stb Layout: A Size Sheet (Side)

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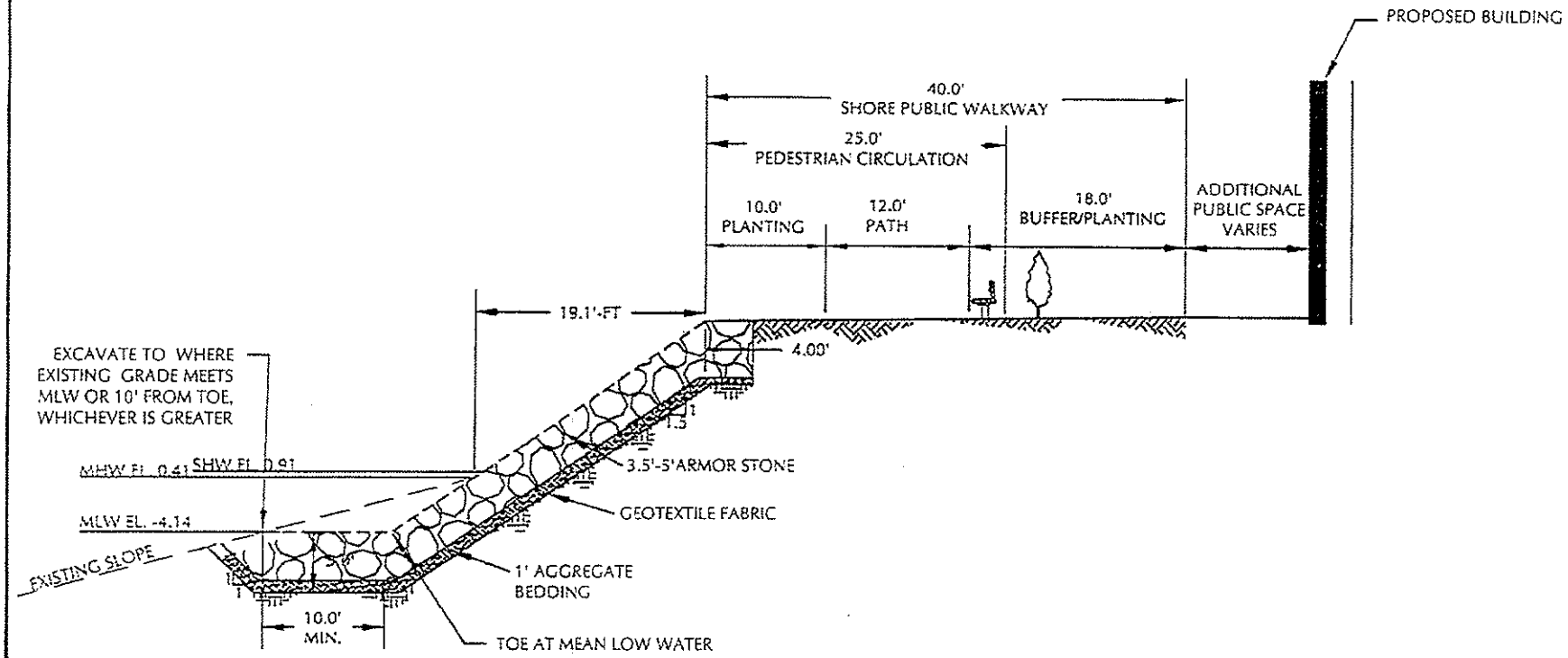

BODY OF WATER: GRAVESEND BAY
APPLICANT: THOR EQUITIES, LLC.

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ENGINEERING & ENVIRONMENTAL SERVICES
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P: 212.479.5400 F: 212.479.5444
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1752 SHORE PARKWAY

USACE: TYPICAL SECTION

BROOKLYN NEW YORK

Project No.	Date	Scale	
5723001	7/23/08	NTS	SHEET 3 OF 3

Filename: U:\Data0\5723003\Cadd Data - 5723003\Dwg\Sheet Files\USACE\Plan View.dwg Date: 12/9/2008 Time: 15:47 User: sleventhal Style Table: Langan.stb Layout: A Size Sheet (Side) (2)

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NAN-2008-009/13-550

New York State Department of Environmental Conservation

Notice of Incomplete Application - This is NOT a Permit

Application ID: 2-6106-00025/00003 *Batch Number*: 602662

Facility: THOR EQUITIES LLC-1752 SHORE PKWY
1752 SHORE PKWY
BROOKLYN, NY 11214

Applicant: THOR EQUITIES LLC *Owner ID*: 1542411
25 W 39TH ST
NEW YORK, NY 10018

Permit(s) Applied for: 1 - Article 15 Title 5 Excavation & Fill in Navigable Waters
1 - Section 401 - Clean Water Act Water Quality Certification
1 - Article 25 Tidal Wetlands

Project Location: in BROOKLYN in KINGS COUNTY

Your application for Permit is incomplete. The following items are required:

Your project is being reviewed pursuant to the State Environmental Quality Review Act (SEQR). A determination of significance for the purposes of SEQR is necessary before your application can be considered complete.

At this time NYSDEC has no further technical issues.

If the NYC Dept. of City Planning determines that a draft environmental impact statement is required your application will be deemed complete upon acceptance of the draft environmental impact statement by the lead agency.

If the NYC Dept. of City Planning determines that the project does not require a draft environmental impact statement your application will be deemed complete upon issuance of a negative declaration from the lead agency.

Once the application is deemed complete the NYSDEC public notice process will commence in accordance with 6NYCRR Part 621.7.

Please submit requested information by _____
No further action can be taken until all of these materials are received.

Contact Person:
HAROLD J DICKEY
NYSDEC
47-40 21ST ST
LONG ISLAND CITY, NY 11101

Telephone Number: (718) 482-4997

Signature:

Date: July 29, 2009

N.Y.S. DEPARTMENT OF ENVIRONMENTAL CONSERVATION
NYSDEC REGION 2 HEADQUARTERS
47-40 21ST ST
LONG ISLAND CITY NY 11101
(718) 482-4997

SAVE THE TOP HALF OF THIS FORM FOR YOUR RECORDS AND RETURN THE BOTTOM HALF WHEN PROVIDING THE INFORMATION REQUESTED ON THE ACCOMPANYING **NOTICE OF INCOMPLETE APPLICATION.**

YOUR DOING SO WILL HELP US EXPEDITE YOUR PERMIT PROCESSING. THANK YOU.

DEC Contact:	HAROLD J DICKEY
Batch ID:	602662
Application ID:	2-6106-00025/00003
Owner ID:	1542411
Date Received:	04/23/2008
Date Incomplete:	07/29/2009
Application Type:	NEW
Applicant Name:	THOR EQUITIES LLC
Facility Name:	THOR EQUITIES LLC-1752 SHORE PKW
Project Desc:	Construct retail building, parking garage, stablize shoreline

PLEASE PROVIDE REQUESTED INFORMATION ON OR BEFORE:

SAVE THIS PART !

DETACH

N.Y.S. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NYSDEC REGION 2 HEADQUARTERS

DEC Contact:	HAROLD J DICKEY
Batch Id:	602662
Application Id:	2-6106-00025/00003
Owner Id:	1542411
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Applicant Name:	THOR EQUITIES LLC
Facility name:	THOR EQUITIES LLC-1752 SHORE PKWY
Project Desc:	Construct retail building, parking garage, stablize shoreline
Information Due On Or Before:	

PLEASE ATTACH THIS HALF SO IT IS DISPLAYED PROMINENTLY ON YOUR RESUBMISSION

RETURN THIS PART !

RETURN THIS HALF OF THIS FORM WHEN PROVIDING THE INFORMATION REQUESTED ON THE ACCOMPANYING

NOTICE OF INCOMPLETE APPLICATION.

NYC Environmental Protection

Caswell F. Holloway
Commissioner

Angela Licata
Deputy Commissioner
Bureau of Environmental
Planning and Analysis
alicata@dep.nyc.gov

59-17 Junction Boulevard
Flushing, NY 11373
T: (718) 595-4398
F: (718) 595-4479

December 23, 2010

Robert Dobruskin
New York City Department of City Planning
22 Reade Street, Room 4E
New York, NY 10007

Re: **1752 Shore Parkway-Brooklyn Bay Center**
Block 6491, Lots 207 and 292
10DCP002K/ 09DEPTECH013K

Dear Mr. Dobruskin:

New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the August 2010 Preliminary Draft Environmental Impact Statement (DEIS) on behalf of Thor Shore Parkway Developers, LLC (applicant) for the above referenced project. It is our understanding that the applicant is proposing a zoning map amendment from M3-1 to M1-1 and other zoning actions in order to facilitate the development of an approximately 214,000 square-foot (sf), 60-foot-tall commercial building, currently anticipated to be a BJ's Wholesale Club, along with up to three other retail stores on the second level; a three-level parking garage with approximately 690 public parking spaces; and approximately 2.4 acres of publicly accessible waterfront open space on the project site. The project site is located in Brooklyn at 1752 Shore Parkway in Brooklyn Community District 11.

Based upon our review of the submitted documentation, we have the following comments and recommendations:

The site history includes solid waste disposal, coal storage, an asphalt plant, auto use, and numerous above ground storage tanks (ASTs) and underground storage tanks (USTs). An "open status" petroleum spill (No. 0510989) is listed in the New York State Department of Environmental Conservation (NYSDEC) database and is reported to be in the process of being resolved. An August 2007 Phase I Environmental Site Assessment performed by Langan Engineering identified recognized environmental conditions associate with the site's former uses and the use of adjacent properties (include a fuel oil depot on the east side of the property). Soil investigation reports from 2007 and 2008 identified metals and semi-volatile organic compounds above Recommended Soil Cleanup Objectives. Soil and groundwater samples near the underground storage tanks in the eastern portion of the site showed evidence of petroleum impacts. In July 2009, Langan Engineering submitted a Remedial Action Work Plan to NYSDEC in regard to removal of the USTs and petroleum impacted soil, which was approved in October 2009.

The Preliminary DEIS states that the project sponsor has obtained approval from NYSDEC of a Solid Waste Mitigation and Soil Management Plan and a Beneficial use Determination to reuse certain materials excavated from the western portion of the project site to raise the grade on the eastern portion of the site in connection with the site redevelopment. The project would involve remedial measures including the following: demolition of existing structures and foundations in compliance with application requirements; installing and maintaining erosion and sedimentation control measures in accordance with a Stormwater Pollution Prevention Plan and an Erosion and Sediment Control Plan; registering and removing (or closing-in-place) any known or found USTs and ASTs; importing soils in areas that will not be capped either by impervious structures or pavement with clean fill meeting 6 NYCRR Part 375 Unrestricted Use Site Cleanup Objectives (SCO) and other soils to meet Restricted Commercial Use SCOs; a Health and Safety Plan including site and community air monitoring; a vapor barrier to be placed in the new retail building with interior monitoring system for methane and hydrogen sulfide; groundwater monitoring; and a Restrictive Declaration to ensure continued implementation of engineering and institutional controls.

DEP finds that, with the implementation of the measures identified in the DEIS, the proposed project would not result in significant adverse hazardous materials impacts. A Restrictive Declaration should be recorded committing the applicant to obtaining approvals from the City prior to construction at the site. Please note that the Mayor's Office of Environmental Remediation is the office for the approval of study, cleanup plans, closure reports and associated notice letters; as such there may be additional requirements for their review.

Please include DEP tracking number 09DEPTECH013K on all future correspondence and submittals. If you have any questions please contact me at (718) 595-4473.

Sincerely,

Terrell Estesen
Director, Wastewater Review and Special Projects

c: G. Heath
M. Winter
M. Eckels
O. Abinader – DCP
D. Cole – MOER

THE CITY OF NEW YORK LANDMARKS PRESERVATION COMMISSION
1 Centre Street, 9N, New York, NY 10007 (212) 669-7700 www.nyc.gov/landmarks

ENVIRONMENTAL REVIEW

US ARMY CORPS OF ENGINEERS/106-K 4/8/2008

Project number **Date received**

Project: 1752 SHORE PARKWAY BBL 3064910207

[ ] No architectural significance

[X] No archaeological significance

[ ] Designated New York City Landmark or Within Designated Historic District

[ ] Listed on National Register of Historic Places

[X] Appears to be eligible for National Register Listing

[ ] May be archaeologically significant; requesting additional materials

Comments: The site is not significant. In the radius: Belt Parkway, which appears S/NR eligible.

4/23/2008

SIGNATURE DATE

Gina Santucci

24555_FSO_GS_04232008.doc