

APPENDIX H

**Spring Creek North
Ecosystem Restoration Feasibility Study**

Appendix H:

Real Estate Plan



**New York District
U.S. Army Corps of Engineers**

**October 2016
Revised: 13 April 2017**

*Spring Creek North Ecosystem Restoration Feasibility Study
Real Estate Plan*

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Preamble

A. **Authorization**: Section 1135 (b) of the Water Resources Development Act (WRDA) of 1986, Public Law 99-662, as amended [33 U.S.C. 2309a], authorized the Spring Creek North Ecosystem Restoration Feasibility Study. The Water Resource Reform and Development Act of 2014 (f), further amended Section 1135(d) of WRDA 1986 (33 U.S.C. 2309a (d)) increasing the \$5,000,000 maximum federal expenditure to \$10,000,000.

B. **Designation** (Official Name): Spring Creek (North) Ecosystem Restoration Feasibility Study (Hereinafter, the “Study”)

C. **Location**: The study area is located along Spring and Ralph’s Creeks in the Boroughs of Brooklyn and Queens, New York.

D. **Non-Federal Sponsor**: The non-Federal sponsor for this Project is the City of New York Department of Parks and Recreation (NYC Parks). In accordance with the provisions of WRDA 86, the cost of the project will be **75% Federal and 25% non-Federal**.

REAL ESTATE PLAN

1. Statement of Purpose:

The purpose of this Real Estate Plan (the "Plan") is to present the overall plan describing the minimum real estate requirements for the construction, operation, maintenance, repair and rehabilitation of the proposed project.

2. Project Purpose and Features:

- A. The main problem to be addressed is the degradation of the health and habitat value of the marsh system located within the Spring Creek North area. Over an 80-year period (1920's to the present), the salt marsh community at Spring Creek was significantly altered by the dredging and filling activities associated with the construction and maintenance of the Jamaica Bay Federal Navigation Project.
- B. The Recommended Plan of Improvement calls for approximately 7.6 acres of low marsh, 5.4 acres of high marsh, 1.0 acre of scrub-shrub habitat, 2.1 acres of upland, and 22.1 acres of maritime upland, for a total of 35.1 acres of restored habitat. Restoration will include the reestablishment of predisturbance aquatic functions and related physical, chemical and biological characteristics. The proposed restoration will be accomplished through a combination of excavation, placement, re-contouring, and native species' plantings.
- C. Required Lands, Easements, Rights-of-Way, and Disposal Areas: The project area consists of undeveloped City of New York parkland that straddles the boundary between the Boroughs of Brooklyn and Queens in Kings and Queens Counties respectively, New York City, New York. The project area is bound to the north by Flatlands Avenue, to the south by Belt Parkway, to the West by Fountain Avenue, and to the east by residential development (77th Street and 157th Avenue). A portion of the 47-acre project area is being evaluated for opportunities to be restored to intertidal salt marsh and maritime upland. This area, referred to as the restoration area, is bound to the north by Flatlands Avenue, to the east by 77th Street, and to the west by the New York City Department of Environmental Protection (NYCDEP) 26th Ward Auxiliary Plant. To the south, the restoration area is bound by Spring and Ralph's Creeks. A Tax Map (Blocks and Lots) and Project Site Map are provided in Exhibit A.

The project shall be conducted on land owned by NYC Department of Parks and Recreation. In addition, there are four privately owned Lots in Block 4585 including: Lots 165 and 167 (EZER LCC) and Lots 205 and 225 (Julian Utevsy) which are wetlands and restricted from most development. The NYC Department of Parks and Recreation is seeking to acquire the parcels through donation as not part of

this project rather as parkland and anticipates ownership before the Project Partnership Agreement is signed.

3. Non-Federal Sponsor Owned Lands

The Non-Federal Sponsor is the New York City Parks Department which has or will have a fee interest in the land parcels needed for the construction of the project. The Non-Federal Sponsor will provide a fully executed *Certification of Lands and Authorization for Entry for Construction* (Exhibit C) for the construction of this project after the Non-Federal Sponsor obtains its interest in the land.

a. Work/Staging Areas- The storage areas associated with the construction of the project fall within the project area. Storage areas as delineated in the engineering and design for the project will be located along side of the construction as it progresses through the designated project areas.

b. Borrow Areas: The Project does not require additional acquisition of real property interests for borrow or disposal areas. Soil excavated as part of the restoration project will be beneficially used and placed on-site to restore upland habitat.

c. Ownerships:

NYC Parks.....approximately 45 Acres that are spread across 87.55 aces identified in the Block and Lot table below.

No.	Borough	Block	Lot	Owner	Acres
1	Brooklyn	4580	2	NYC Parks	37.18
2	Brooklyn	4584	1	NYC Parks	2.9
3	Brooklyn	4585	1	NYC Parks	2.26
4	Brooklyn	4585	35	NYC Parks	0.46
5	Brooklyn	4585	64	NYC Parks	1.83
6	Brooklyn	4585	69	NYC Parks	0.14
7	Brooklyn	4585	92	NYC Parks	0.13
8	Brooklyn	4585	93	NYC Parks	0.09
9	Brooklyn	4585	94	NYC Parks	0.1
10	Brooklyn	4585	96	NYC Parks	0.21
11	Brooklyn	4585	155	NYC Parks	0.01
12	Brooklyn	4585	156	NYC Parks	0.02
13	Brooklyn	4585	164	NYC Parks	0.04
14	Brooklyn	4585	165	EZER LLC	1.88

No.	Borough	Block	Lot	Owner	Acres
15	Brooklyn	4585	167	EZER LLC	0.15
16	Brooklyn	4585	169	NYC Parks	0.15
17	Brooklyn	4585	171	NYC Parks	0.49
18	Brooklyn	4585	173	NYC Parks	0.54
19	Brooklyn	4585	190	NYC Parks	0.26
20	Brooklyn	4585	193	NYC Parks	0.08
21	Brooklyn	4585	205	Julian Utevsky	0.04
22	Brooklyn	4585	206	NYC Parks	0.59
23	Brooklyn	4585	222	NYC Parks	0.4
24	Brooklyn	4585	224	NYC Parks	0.05
25	Brooklyn	4585	225	Julian Utevsky	0.06
26	Brooklyn	4585	228	NYC Parks	0.23
27	Brooklyn	4585	235	NYC Parks	0.05
28	Brooklyn	4585	236	NYC Parks	0.05
29	Brooklyn	4585	237	NYC Parks	0.07
30	Brooklyn	4585	239	NYC Parks	0.07
31	Brooklyn	4585	243	NYC Parks	0.12
32	Brooklyn	4585	247	NYC Parks	0.11
33	Brooklyn	4585	251	NYC Parks	0.16
34	Queens	13922	200	NYC Parks	14.42
35	Queens	13923	101	NYC Parks	0.17
36	Queens	13923	107	NYC Parks	0.01
37	Queens	13923	108	NYC Parks	0.03
38	Queens	13923	114	NYC Parks	0.67
39	Queens	13923	125	NYC Parks	2.58
40	Queens	13923	166	NYC Parks	0.04
41	Queens	13924	176	NYC Parks	0.04
42	Queens	13924	181	NYC Parks	2.91
43	Queens	13924	221	NYC Parks	0.04
44	Queens	13924	222	NYC Parks	0.43
45	Queens	13924	232	NYC Parks	0.05
46	Queens	13924	233	NYC Parks	0.27
47	Queens	13924	250	NYC Parks	0.03
48	Queens	13925	240	NYC Parks	0.14
49	Queens	13925	245	NYC Parks	0.04
50	Queens	13925	246	NYC Parks	0.41
51	Queens	13925	250	NYC Parks	0.07
52	Queens	13925	255	NYC Parks	3.29

No.	Borough	Block	Lot	Owner	Acres
53	Queens	13925	290	NYC Parks	0.14
54	Queens	13925	293	NYC Parks	0.04
55	Queens	13925	294	NYC Parks	0.07
56	Queens	13925	296	NYC Parks	0.13
57	Queens	13925	299	NYC Parks	0.04
58	Queens	13926	1	NYC Parks	3.79
59	Queens	13926	11	NYC Parks	0.3
60	Queens	13926	25	NYC Parks	0.03
61	Queens	13926	75	NYC Parks	0.27
67	Queens	13929	16	Howard Levine	0.79
68	Queens	13931	20	NYC Parks	0.18
69	Queens	13931	24	NYC Parks	0.49
70	Queens	13931	34	NYC Parks	0.46
71	Queens	13931	43	NYC Parks	0.59
72	Queens	13932	60	NYC Parks	0.42
73	Queens	13932	70	NYC Parks	1.27
74	Queens	13932	83	NYC Parks	0.65
75	Queens	13932	89	NYC Parks	1.31
76	Queens	13933	60	NYC Parks	0.02

87.55

The parcels listed below as private are being acquired by NYC Parks and it is the intention of the NFS to make them available for the project. The Real Estate Plan will be updated if this is changed.

Private Owners of Lots within Blocks 4585 and 13929

- Block 4585, Lots 165 and 167- EZER LCC.....approx. 1.93 acres
- Block 4585, Lots 205 and 225- Julian Utevsky.....approx. 0.1 acres
- Block 13929, Lot 16- Howard Levine.....approx. 0.79 acres

D. Appraisal information – At the time of this report, New York City Parks intends to acquire for park land through donation so that all required lands for the project will be owned in Fee by New York City. The existing use of all these lands is undeveloped wetlands and therefore considered nominal located in the salt marsh.

E. An administrative credit for labor includes the Sponsor’s submission of Certification of the Real Estate for access to both allow for authorization for entry for construction, and the maintenance of the project area throughout the life of the project.

Administrative Costs:

Total Non-Federal Cost.....	\$7,595
Federal Admin. Costs.....	\$5,000

Contingency (20%)	\$2,519
Total Real Estate Costs	\$15,114

4. Estates:

The Non-Federal Sponsor will issue a Certification of Lands and Authorization for Entry for Construction. The NYC Parks has agreed to own all property in Fee prior to the PPA. The Notice to Proceed will only list parcels belonging in fee to NYC Parks.

5. Existing Federal Projects:

There are no existing Federal Projects being conducted at the Project area.

The original federal project that caused the Spring Creek North degradation was the construction of the Jamaica Bay Federal navigation project. This dredging project was a prelude to a planned port development within Jamaica Bay, and consisted of dredging of channels; straightening, widening and bulk-heading of tributaries; and filling in of large tracts of shallow water and wetland habitat to create upland facilities. Though the port was never developed as planned, the actions, and subsequent improvements and maintenance of the current navigation channels caused both direct (dredging and filling) and indirect (loss of wetland function) impacts throughout Jamaica Bay and its immediate tributaries, including the Spring Creek wetland system. Figures 1 and 2 (provided from the main report) show the current navigation channels location within the Study Area and proximity to the project site.

The original Congressional authorization for a Federal channel entering and extending through Jamaica Bay was given in 1910 and modified in 1945, 1950 and 1986. The current Federal channel consists of 19.5 miles of channel of various width and depth, providing for a central entrance channel through Rockaway Inlet and two main branches along the northern and southern portions of the bay. The construction, maintenance, and improvement of the network of channels within Jamaica Bay required the dredging of millions of cubic yards of material. The majority of this material was deposited in shallow waters, embayments and wetlands within the bay and its tributaries. The creation of channels and the widening/deepening of channels and basins were performed by the New York City Department of Docks and Ferries, acting as an agent for the USACE. These activities occurred from 1911 through 1945. Historic topographic maps show when the existing basins in Jamaica Bay, including Old Mill Basin into which Spring Creek empties, were excavated from large tidal creeks. During the excavation, the majority of the surrounding marshland was bulk-headed and filled with the resulting dredged material.

6. Federally-owned Lands:

There are no known Federally-owned lands in the Project area.

7. Navigational Servitude:

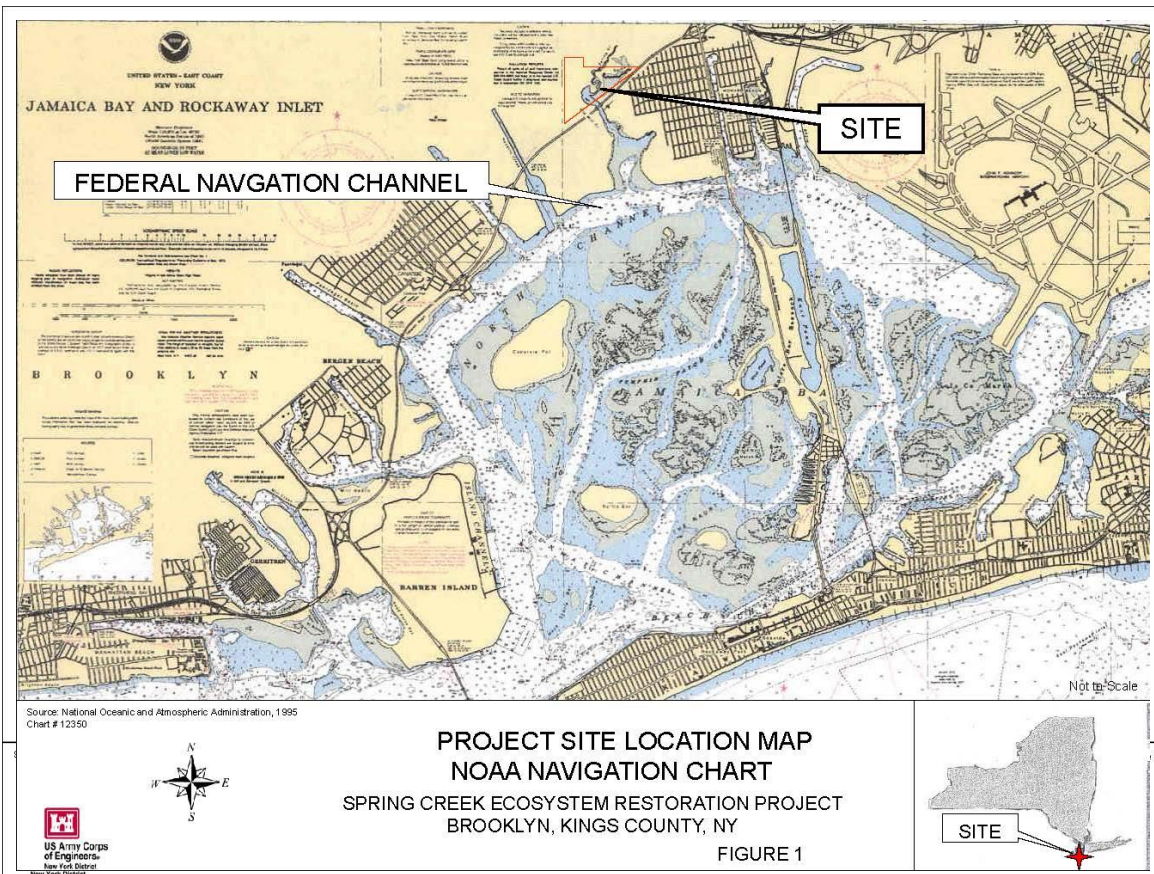
The original High Water Line is shown on the Real Estate Map. This ecosystem restoration study is not a navigational project and the NFS is very supportive and owns all lands in fee. The Government will **not** exercise its rights under the doctrine of Navigational Servitude.

8. Project Maps:

Maps 1 and 2 are maps of Spring Creek North and its environs displaying site boundary and tax map.

9. Induced Flooding:

No induced flooding is as a result of this Project.



10. Baseline Cost Estimate:

A baseline cost estimate, in MCACES format, is attached hereto as **Exhibit "D"**.

11. Compliance with Public Law 91-646:

No persons, farms, or businesses will be relocated for this project.

12. Minerals and Timber:

There are no present or anticipated mineral extraction or timber harvesting activities in the Project area and/or vicinity.

13. Assessment of the Non-Federal Sponsor's Land Acquisition Experience and Ability:

The NYC Parks is the non-Federal Sponsor and has the legal and professional capability and experience to acquire and provide the Land, Easements, Rights-Of-Way, Relocation, and Disposal Areas (LERRDs) for the construction, operation, and maintenance of the project. . The five (5) privately owned parcels (Block 4585, Lots 165, 167, 205 and 225 and Block 13929, Lot 16) identified are within the parkland area with no development and are being acquired prior to the PPA. No private parcels will be made part of the Project.

14. Zoning:

Application or enactment of zoning ordinances is not anticipated for the Project.

15. Acquisition Schedule:

The required Access Agreement, Certification of Lands and Authorization for Entry for Construction will be provided approximately sixty (60) days prior to construction.

16. Facility and/or Utility Relocations:

There are no anticipated facilities or utility relocations.

17. Hazardous, Toxic, and Radioactive Waste (HTRW):

There are no known potential HTRW problems associated with this project.

18. Project Support:

Local officials, the landowner, and other residents adjacent to the Project Area are supportive of the Project.

19. Notification to Non-Federal Sponsor:

Based on its past sponsorship of other Corps water resource (Civil Works) projects and ongoing discussions during the Project's Feasibility phase, the non-Federal Sponsor is aware of the risks of acquiring LERRD required for the Project prior to construction. Formal written notification of the risks of such acquisition, in accordance with paragraph 12-31 of Chapter 5 of the Corps of Engineers Real Estate Handbook, ER 405-1-12, will be forwarded to the non-Federal Sponsor during the Project's Preconstruction Engineering and Design ("PED") phase.

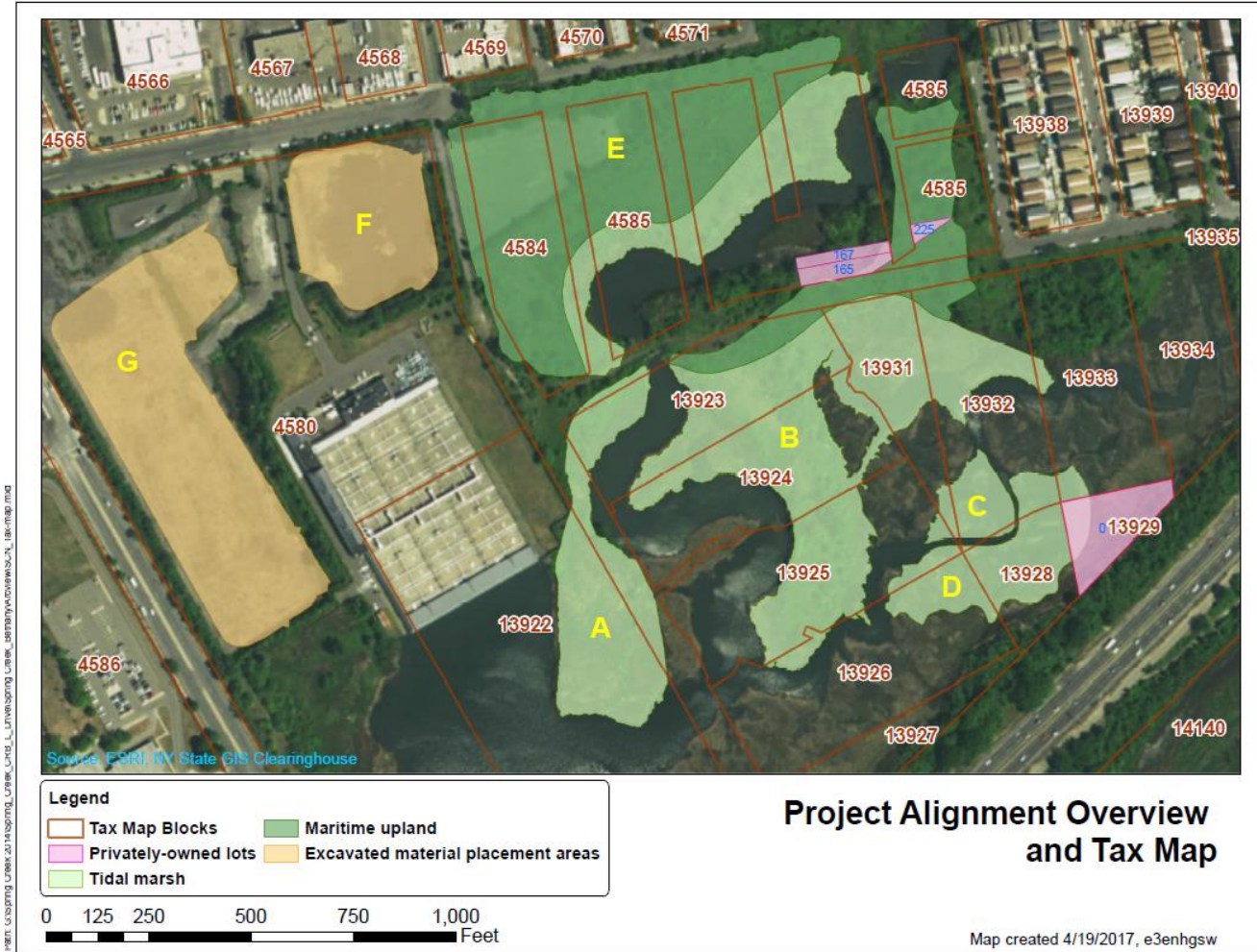
20. Other Issues:

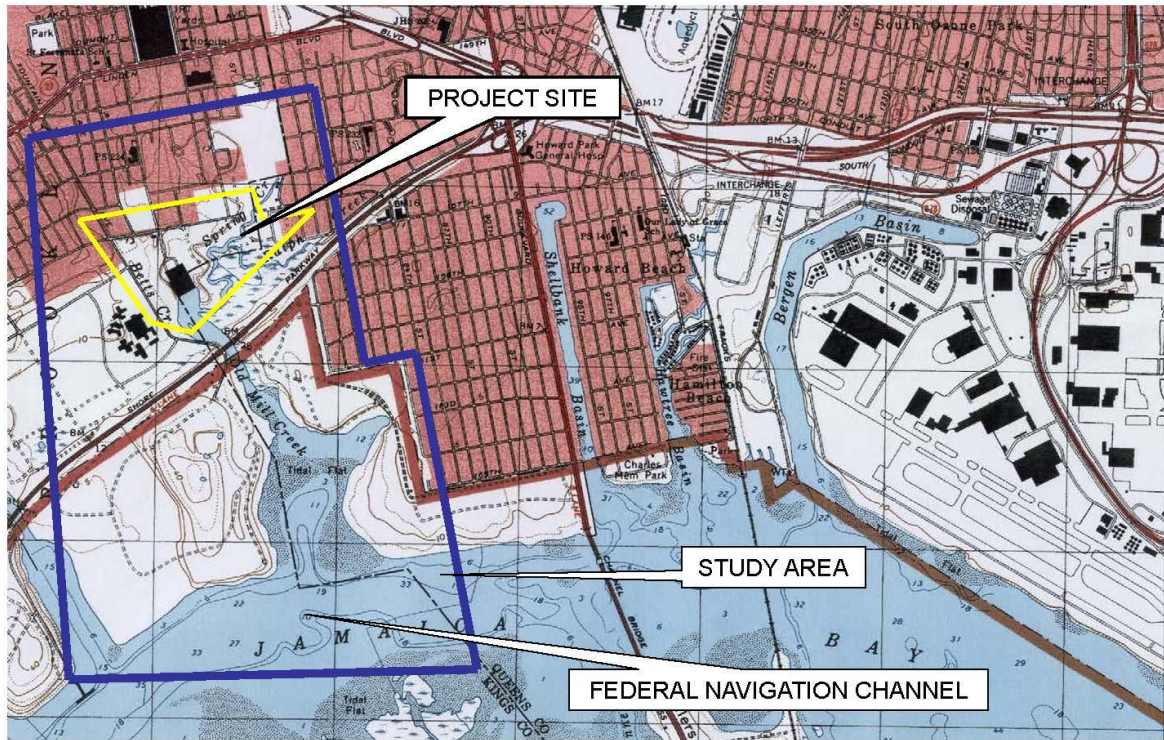
- a. There are no known mitigation requirements.
- b. There are no known historical and/or historical artifacts in the project area
- c. According to the non-federal sponsor, there are no known existing encumbrances (i.e.: easements, rights-of-way, etc).
- d. The non-Federal sponsor will assume responsibility to maintain the project after construction.

21. Recommendations:

This report has been prepared in accordance with Chapter 12 of Corps of Engineers Regulation ER 405-1-12. It is recommended that this report be approved.

Exhibit "A"
Map - Project Alignment Overview/Tax Map and Project Area





Source: USGS Topographic Map, Jamaica Quad, 1984

USGS SITE LOCATION AND STUDY AREA MAP
 SPRING CREEK ECOSYSTEM RESTORATION PROJECT
 BROOKLYN, KINGS COUNTY, NY

Not to Scale



FIGURE 2

Exhibit "B"
Baseline Cost Estimates

	TOTAL PROJECT REAL ESTATE COSTS	Non-Federal	Federal	Project Cost
	Cost Summary:			
	Incidental Costs (01A)	\$7,595	\$5,000	
	Real Estate Acquisition Costs (01B)	0	0	
	Subtotal:			\$12,595
	:			
	20% Contingency, Less Land Payments (01B1)			\$2,519
01	LANDS AND DAMAGES			\$15,114
01A	INCIDENTAL COSTS	\$7,595	\$5,000	
01A1	Acquisition (Admin Costs)	\$7,595	\$5,000	
01A1A	By Government (Gov't)			
01A1B	By Non-Federal Sponsor (NFS)			
01A1C	By Gov't on behalf of NFS			
01A2	Survey	N/A		
01A2A	By Gov't (In-house)			
01A2B	By Gov't (Contract)			
01A2C	By NFS			
01A2D	By Gov't on behalf of NFS			
01A2E	Review of NFS			
01A3	Appraisal	N/A		
01A3A	By Gov't (In-house)			
01A3B	By Gov't (Contract)			
01A3C	By NFS			
01A3D	By Gov't on behalf of NFS			
01A3E	Review of NFS			
01A4	Title Services	N/A		
01A4A	By Gov't (Contract)			
01A4B	By NFS			
01A4C	By Gov't on behalf of NFS			
01A4D	Review of NFS			
01A5	Other Professional Services	N/A		
01A5A	By the Gov't			
01A5B	By the NFS			
01A5C	By Gov't on behalf of NFS			

01A5D	Review of NFS			
01A6	Closing Cost (4% of Land Payments-01C1)	N/A		
01A6A	By Gov't			
01A6B	By NFS			
01A6C	By Gov't on behalf of NFS			
01A7	PL 91-646 Assistance	N/A		
01A7A	By Government			
01A7B	By NFS			
01A7C	By Gov't on behalf of NFS			
01A7D	Review of NFS			
01A8	Audit	N/A		
01A8A	By Gov't			
01A9B	By NFS			
01B	REAL ESTATE ACQUISITION COSTS			
01B1	Land Payments			
01B1A	By Government			
01B1B	By NFS			
01B1C	By Gov't on behalf of NFS			
01B2	Damage Payments			
01B2A	By Government			
01C2B	By NFS			
01C2C	By Gov't on behalf of NFS			
01B3	PL 91-646 Payment			
01B3A	By Government			
01B3B	By NFS			
01B3C	By Gov't on behalf of NFS			
01B4	Condemnation			
01B4A	By NFS			
01B5	Facility / Utility Relocations			
01B5A	By NFS			
01B6	Disposals			
01B6A	By Government			
01B6B	By NFS			
01B6C	By Gov't on behalf of NFS			
01C	LERRD CREDITING	\$7,595		

Exhibit "C"
Assessment of Real Estate Acquisition Capability

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? YES. The Non-Federal Sponsor will be acquiring an interest(s) in land and the NY City Parks and Recreation will hold title to all land.
- b. Does the sponsor have the power of eminent domain for this project?
Yes
- c. Does the sponsor have "quick-take" authority for this project? Ask Counsel
- d. Are any of the lands/interests in the land required for the project located outside the sponsor's political boundary? NO.
- e. Are any of the lands/interests in the land required for the project owned by an entity whose property the sponsor cannot condemn? Not applicable.

II. Human Resources Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? NO
- b. If the answer to II(a) is YES, has a reasonable plan been developed to provide such training? N/A
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? YES
- d. Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule? YES
- e. Can the sponsor obtain contractor support, if required, in a timely fashion? YES
- f. Will the sponsor likely request USACE (New York District office) assistance in acquiring real estate? NO

III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? YES
- b. Has the sponsor approved the project/real estate schedule/milestones?
YES

IV. Overall Assessment:

a. Has the sponsor performed satisfactorily on other USACE projects?
YES

b. With regard to this project, the sponsor is anticipated to be: highly capable/ fully capable/ moderately capable/ marginally capable/insufficiently capable. YES

V. Coordination:

a. Has this assessment been coordinated with the sponsor? YES

b. Does the sponsor concur with this assessment? YES

Exhibit "D"

**Spring Creek North Ecosystem Restoration Project,
Brooklyn and Queens, New York**

Access, Certification of Lands, and Authorization for Entry for Construction and Maintenance

I, _____, do hereby certify that the New York City Department of Parks & Recreation (NCDP&R) has acquired access to the real property interests required by the Department of the Army, and NYC Parks is vested with sufficient fee title and interest in lands, to support construction and the fifty years maintenance of the **Spring Creek North Ecosystem Restoration Project**, Queens and Brooklyn, NY. Further, I hereby authorize the NYC Parks, Department of the Army, its agents, employees and contractors, to enter upon said lands to construct the **Spring Creek North Ecosystem Restoration Project** with combined excavation, placement, re-contouring, and native species' plantings and vegetation as set forth in the plans and specifications held in the U.S. Army Corps of Engineers' New York District Office, New York, New York. Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

WITNESS my signature as _____, of New York City Department of Parks & Recreation on this ____ day of _____, 2016.

By: _____

Title: Commissioner

ATTORNEY'S CERTIFICATE OF AUTHORITY

I, _____, Attorney for the NYC Parks, certify that the Commissioner has authority to grant the above Certification of Lands and Authorization for Access and Entry; that said Certification of Lands and Authorization for Entry is executed by the proper duly authorized officer; and that the Authorization for Entry is in sufficient form to grant the authorization therein stated.

WITNESS my signature as Attorney for NYC Parks this ____ day of _____, 2016.

By: _____