

**Programmatic Agreement Regarding  
East River Waterfront Esplanade and Piers Project**

Agreement, dated as of August 3, 2007, of the New York State Historic Preservation Officer (“SHPO”), the Lower Manhattan Development Corporation (“LMDC”), and the Advisory Council on Historic Preservation (“ACHP”) (the “Agreement”).

WHEREAS, LMDC is responsible, pursuant to federal statute 42 USC § 5304(g) as the recipient of U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant program funds, for conducting environmental reviews of projects receiving HUD funds in accordance with 24 CFR Part 58, as well as other laws and regulations; and

WHEREAS, LMDC proposes to allocate a portion of these funds to the City of New York (“City”) for the East River Esplanade and Piers Project (“Esplanade Project”) pursuant to a grant subrecipient agreement dated as of March 9, 2006 through which the City will be subject to this Agreement and other applicable legal requirements relating to the Esplanade Project as a condition to receiving any funds for project construction; and

WHEREAS, LMDC, SHPO and the City are working together to conduct all necessary reviews for the Esplanade Project pursuant to Section 106 of the National Historic Preservation Act (“Section 106”) and other applicable laws; and

WHEREAS, LMDC is responsible for planning and conducting the environmental and historic reviews for the Esplanade Project, which will improve areas along the East River in Lower Manhattan as shown in the map of the project area attached to this Agreement as Exhibit A (“Project Site”), including portions of Manhattan’s East River

waterfront from the Battery Maritime Building to the south to East River Park to the north; and

WHEREAS, this Project Site includes portions of the New York City South Street Seaport Landmark District and the State and National Register-listed South Street Seaport Historic District (“Historic Districts”); and

WHEREAS, the Project Site, as shown on Exhibit A, includes the waterfront, the upland area adjacent to and under the elevated FDR highway and South Street extending from Whitehall Ferry Terminal and Peter Minuit Plaza on the south to East River Park on the north; and

WHEREAS, the Esplanade Project includes a Program Zone under the FDR Drive for pavilions and temporary outdoor activities; a Recreation Zone along the edge of the water that may include seating, play spaces, and plantings in some locations; a uniform bikeway/walkway along South Street; improvements to Piers 15, 35, 36, and 42, as well as the New Market Building pier; and

WHEREAS, the Esplanade Project also includes potential construction of a plaza in front of the Battery Maritime Building (“BMB”), a replacement for the New Market Building, and an urban beach on Pier 42 even though LMDC is not funding such construction and potential funding by other sources is being sought by the City; and

WHEREAS, the reviews and consultation for the Esplanade Project pursuant to the National Environmental Policy Act (“NEPA”) and Section 106 have been coordinated as addressed in Exhibit B to this Agreement and through the preparation of an environmental impact statement (“EIS”); and

WHEREAS, Chapter 2 of the EIS, "Methodology," explains LMDC's steps in coordinating environmental review pursuant to NEPA and other laws with historic preservation review pursuant to Section 106, including solicitation of public comments, interested persons and Native American tribes. This section of the EIS's Methodology chapter is attached to this Agreement as Exhibit B. The distribution list for the joint NEPA scoping and Section 106 review is attached to this Agreement as Exhibit C. The distribution list for the DEIS and draft programmatic agreement is attached to this Agreement as Exhibit D; and

WHEREAS, the effects of the Esplanade Project on historic properties cannot be fully determined prior to the conclusion of the coordinated NEPA and Section 106 review because preliminary concepts have been developed, but detailed design documents will not be prepared until following the completion of the coordinated review and funding is authorized; and

WHEREAS, historic properties within or near the Project Site have been identified in the EIS; and

WHEREAS, the Project Site includes areas where archaeological resources may be located, as identified in the EIS; and

WHEREAS, several additional improvements are being analyzed in the EIS for the Esplanade Project, although they are not being funded by LMDC, including the creation of a plaza in front of the BMB, a New York City Landmark listed on the State and National Registers, and replacement of the New Market Building at a site that is located within the State and National Register-listed South Street Seaport Historic District; and

WHEREAS, SHPO and the City serve as consulting parties in the Section 106 process and pursuant to this Agreement; and

WHEREAS, the Native American tribes identified in Exhibit B to this Agreement have been invited to participate in the Section 106 process but have not submitted comments to LMDC; and

WHEREAS, LMDC consulted with ACHP and ACHP participated in the development of the Agreement and whereas other agencies may also become signatories to this Agreement as provided in Section 13; and

NOW, THEREFORE, the signatories hereby agree that the Esplanade Project will be implemented in accordance with the following stipulations of this Agreement entered into pursuant to 36 CFR § 800.14(b) in order to take into account the effects of the Esplanade Project on historic properties.

**Stipulations**

LMDC, in consultation with the City, will ensure that the following measures are carried out:

**1. Definitions.**

(a) The term “historic properties” will have the meaning provided by 36 CFR § 800.16(l). Where relevant, historic properties that consist of archaeological resources are separately addressed by this Agreement. LMDC may also consider, where appropriate, City-designated landmarks, properties calendared for consideration by the Landmarks Preservation Commission (“LPC”) or properties defined by the LPC as eligible for New York City Landmark designation.

The EIS has identified an area of potential effects for those historic properties that are not archaeological resources (“Architectural Resources APE”). A map of the Architectural Resources APE is attached to this Agreement as Exhibits E-1, E-2 and E-3.

(b) Effect is defined by 36 CFR § 800.16(i) as “alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.”

(c) Adverse effects are evaluated pursuant to the “criteria of adverse effect” as described by 36 CFR § 800.5(a)(1).

## **2. Design Review and Consultation.**

(a) LMDC, the City and SHPO will consult regarding Esplanade Project components that are located within the Historic Districts or that will potentially affect the Historic Bulkhead in the manner set forth in this Agreement. Those components are (i) the rebuilt Pier 15; (ii) the design of the Program Zone and Recreation Zone within the Historic Districts, including any cladding for the FDR and any pavilions constructed within the Historic Districts; and (iii) the design of the Esplanade Project on or around the historic, granite portions of the East River Bulkhead.

(b) LMDC and the City will provide designs for the project components listed in paragraph 3(a) to SHPO when those designs are at preliminary (35%) and pre-final (75%) completion stages. SHPO may also elect, at the time that its written comments on the pre-final designs are submitted, to review substantially final designs for the Esplanade Project. LMDC, the City and SHPO will consult as appropriate regarding these designs. Consultation may be undertaken sequentially as designs for individual project components substantially progress. As set forth in Section 9 of this Agreement, the

public will have an opportunity to view final designs when they are completed by the City.

**3. Archaeological Resources.**

(a) The EIS has identified an area of potential effects for archaeological resources (“Archaeological APE”). A map of the Archaeological APE is attached to this Agreement as Exhibits F-1, F-2 and F-3. The process that will be followed in conducting further research to determine the potential for archaeological resources to be affected by the Esplanade Project is described below.

(b) Prior to the start of construction for the Esplanade Project, LMDC and the City will cooperate in the preparation of a “Phase 1A” study that will examine the potential for archaeological resources to be present in the Archaeological APE. The Phase 1A study will consider the entire Archaeological APE. The Phase 1A study will be submitted to SHPO for review and approval. SHPO will have 30 days to submit comments or recommendations to LMDC and the City with respect to the adequacy of the Phase 1A study. The completed Phase 1A study will include graphics illustrating the areas of potential archaeological sensitivity that exist within the Archaeological APE.

(c) Subsequent to the review of the Phase 1A by SHPO, LMDC and the City will cooperate in the preparation of a protocol (“Archaeology Monitoring and Testing Protocol”) to define which portions of the Archaeological APE would be monitored during construction or would undergo Phase 1B field testing prior to construction, depending on the nature of the potential resources identified in the Phase 1A and the extent of construction that would take place in specific locations. The protocol will include an assessment of the feasibility and utility of monitoring versus field testing for

all potentially sensitive archaeological areas that would be affected by the Esplanade Project. The protocol will also outline any areas to receive monitoring or field testing and will set forth the methodology. SHPO will have 30 days to submit comments or recommendations to LMDC and the City with respect to the adequacy of the Archaeological Monitoring and Testing Protocol. LMDC and the City will work to carry out any necessary archaeology work in advance of the start of construction of each project component that could potentially affect archaeological resources.

(d) To the extent that LMDC and SHPO agree that the construction of the Esplanade Project will result in adverse effects to archaeological resources, LMDC and the City will prepare a mitigation plan for such resources. SHPO will have 30 days to provide LMDC and the City written comments on the plan. To the extent that LMDC and SHPO disagree on adverse effects, the process set forth in Section 17 of this Agreement will be followed. The final mitigation plan for adverse effects on archeological resources will be memorialized in a signed “Archeology Mitigation Plan” that will be made available to the public as set forth in Section 9 of this Agreement.

(e) LMDC and the City will cooperate in the preparation of an “Unanticipated Discoveries Plan” for archaeological resources. SHPO will have 30 days to submit comments and recommendations to LMDC and the City with respect to the adequacy of the Unanticipated Discoveries Plan. In the event that unanticipated archaeological deposits or features are encountered during construction of the Esplanade Project and adverse effects on those resources will result, LMDC and the City will immediately implement the procedure of the Unanticipated Discoveries Plan. All parties recognize that stopping construction may have extraordinary costs. They will therefore make every

effort to implement the approved Unanticipated Discoveries Plan expeditiously in circumstances requiring its use. The final Unanticipated Discoveries Plan will be made available to the public as set forth in Section 9 of this Agreement.

**4. Findings on Effects by LMDC.**

(a) Findings on Effects. Following review and consultation regarding either designs as set forth in Section 2 of this Agreement or archaeological resources as set forth in Section 3 of this Agreement, LMDC, in consultation with SHPO and the City, will determine if there are any effects or adverse effects on historic properties listed or determined eligible for listing on the State and National Registers of Historic Places, on the Historic Districts, or—where appropriate—on City-designated landmarks, properties calendared for consideration by LPC, or properties defined by the LPC as eligible for New York City Landmark designation. These effects will be evaluated in light of those characteristics that make the historic properties significant. All final findings on effects will be accompanied by documentation consistent with 36 CFR § 800.11. As set forth in Section 9 of this Agreement, the public will have an opportunity to view final findings on effects.

(b) Finding of No Historic Properties Affected. If, after consultation with SHPO and the City, LMDC determines that there will be no effect on a historic property, this finding will be documented and copies will be provided to SHPO for review. Any objections by SHPO will be provided to LMDC in writing within 30 days.

(c) Finding of No Adverse Effect. If, after consultation with SHPO and the City, LMDC determines that there will be no adverse effect on a historic property, this finding will be documented and copies will be provided to SHPO for review. Should

SHPO object in writing within 30 days, LMDC can (i) accept a finding of adverse effect; (ii) consult with SHPO and the City to resolve the objection; or (iii) consult with SHPO and the City, and involve ACHP, pursuant to 36 CFR § 800.5(c) and (d).

(d) Finding of Adverse Effect. If, after consultation with SHPO and the City, LMDC determines that there will be an adverse effect on a historic property that cannot be avoided, SHPO and LMDC will develop a mitigation plan.

(i) Plan for the Mitigation of Adverse Effects. If adverse effects on historic properties cannot be avoided, SHPO, the City and LMDC will consider, depending on the nature of the effect and the significance of the historic property, mitigation measures including, but not limited to, the following: modifications to designs; use of noise attenuation; landscaping to minimize visual impact; monitoring of seismic impacts with modifications to construction techniques if seismic impacts are detected; traffic controls and improvements; use of construction materials and design features that will improve visual compatibility with historic properties; documentation of existing historic properties.

(ii) Documentation. The Mitigation of Adverse Effects will be documented consistent with 36 CFR § 800.11 and the final mitigation plan will be memorialized in a signed “Plan for Mitigation of Adverse Effects” that will be made available to the public as set forth in Section 9 of this Agreement.

(iii) Failure to Agree. If SHPO and LMDC are unable to agree on a mitigation plan to resolve adverse effects on historic properties, SHPO and LMDC will complete the steps provided in Section 17 of this Agreement.

**5. Battery Maritime Building Plaza.**

Although it will not be funded as part of the Esplanade Project, the construction of a new BMB pedestrian plaza is being analyzed in the EIS for the Esplanade Project. The City is seeking additional funding for it, and, if funding is obtained, the BMB Plaza would be built along with the Esplanade Project. The design for the plaza is not expected to have a significant effect on any historic properties or the BMB. When preliminary (35%) and pre-final (75%) designs are prepared, however, LMDC and the City will consult with SHPO and provide 30 days for SHPO to submit written comments. SHPO may elect to review the final design at the time it reviews the pre-final design and, if it does, will have 30 days to submit written comments.

**6. New Market Building and Pier.**

(a) The funding and development of a replacement for the New Market Building are not part of the Esplanade Project, although project funds may be used to demolish the existing structure and strengthen the existing pier structure. Replacement buildings or structures are expected to be developed at a later date. When preliminary (35%) and pre-final (75%) designs for the replacement buildings or structures are prepared, however, LMDC and the City will consult with SHPO and provide 30 days for SHPO to submit written comments. SHPO may elect to review the final design at the time it reviews the pre-final design and, if it does, will have 30 days to submit written comments.

(b) To the extent that federal or state funding or approvals are involved in the future improvements to the New Market Building and pier, compliance with the National

Historic Preservation Act or State Historic Preservation Act will be undertaken as appropriate.

**7. Unanticipated Discoveries.**

(a) If, during project implementation, LMDC or the City or any of their contractors discovers or identifies additional historic resources within the Project Site that may be adversely affected, or should there be any unanticipated adverse effects to historic resources on the Project Site or historic properties immediately adjacent to the Project Site beyond those referred to in the FEIS or this Agreement, (other than those effects already addressed by the Unanticipated Discoveries Plan prepared pursuant to Section 3(e)) LMDC or the City will promptly notify the SHPO and the ACHP. LMDC and the City will, in consultation with the SHPO, develop a treatment or mitigation plan for such resource or property or adverse effect condition and submit it to the ACHP and SHPO for comment within 15 days. The failure of the ACHP to comment within that time period will constitute its concurrence with the proposed plan. LMDC shall consider comments before finalizing its treatment or mitigation plans. Under emergency conditions, the 15-day period may be shortened, with ACHP's concurrence.

(b) LMDC and the City may proceed with all project activities not related to the discovery while the treatment or mitigation plan is being developed and reviewed, but will not take or permit actions that would adversely affect such resource or property during such period.

**8. Construction Protection Plans.**

(a) Brooklyn Bridge and Manhattan Bridge.

The EIS for the Esplanade Project concluded that there are no locations where construction will occur within 90 feet of the Brooklyn Bridge and Manhattan Bridge anchorages. As design plans evolve, however, if any project elements will require construction within these 90-foot areas, LMDC and the City will develop a construction protection plan for such work occurring within that distance. SHPO will have 15 days to provide written comments or to concur; non-response by SHPO within that time period will constitute its concurrence with the construction protection plan.

(b) Other Historic Properties.

The Project Site includes portions of the Historic Districts and is also located within 90 feet of other architectural resources including the former First Precinct Police Station and the American Sugar Refining Company building. Where construction would occur within 90 feet of a known architectural resource, a construction protection plan will be developed in consultation with SHPO and the City, through LPC, to avoid physical damage to this/these architectural resource(s). SHPO will have 15 days to provide written comments or to concur; non-response by SHPO within that time period will constitute its concurrence with the construction protection plan.

**9. Public Participation.**

(a) NEPA/Section 106 Review and Development of Agreement. The draft, final and executed copies of this Agreement will be made available for public comment or review as appropriate during the environmental review process. This Agreement may be made available in the draft EIS, final EIS or NEPA record of decision as appropriate.

Notice of the execution of this Agreement following the completion of the FEIS will be published in a newspaper of general circulation and/or the Environmental Notice Bulletin and a copy of the final executed Agreement will be made available online at LMDC's website, [www.renewnyc.com](http://www.renewnyc.com), and upon request.

(b) Designs. When final designs for the project components described in Sections 2(a), 5 and 6 of this Agreement are completed they will be made available on LMDC's website and upon request.

(c) Findings. LMDC will make final findings of no historic properties affected, no adverse effect and adverse effect made pursuant to Section 4 of this Agreement, with supporting documentation, available to the public on its website and upon request at the time that final findings are provided to SHPO. If a finding of adverse effect is made, any final documentation of the "Plan for Mitigation of Adverse Effects" prepared pursuant to Section 4 will be made available on LMDC's website and upon request.

(d) Archaeology. The final Archeology Mitigation Plan for adverse effects on archaeological resources, if any, and the final Unanticipated Discoveries Plan, both described in Section 3 above, will be made available on LMDC's website and upon request.

(e) If LMDC, in consultation with the City and SHPO, determines that any of the information subject to this Section of the Agreement raises confidentiality concerns, LMDC will notify ACHP of the concerns that would preclude making such information public. ACHP will advise LMDC of its concurrence within 15 days following notification.

(f) Public Participation. If LMDC receives a timely and substantive written public objection or comment regarding treatment of historic properties or compliance with the terms of this Agreement, LMDC will forward the objection to SHPO and make a good faith effort to resolve the objection with the commenter. As appropriate, LMDC and SHPO may consult further to develop a resolution to the comment. If SHPO and LMDC agree that they should consult regarding the objection, such consultation will be undertaken with the City. Within 30 days of the completion of consultation or decision not to consult, LMDC will provide a written response to the person making the objection and signatories to the Agreement.

**10. Termination of Agreement.**

Any party to this Agreement may terminate its participation by providing 30 days written notice to the other parties provided that the parties consult during the period prior to termination to seek agreement or amendments or other actions that would avoid termination and to clarify the procedure for future review of any outstanding activities subject to this Agreement.

In the event that any signatory other than LMDC, SHPO or ACHP, namely a party who has signed on to this Agreement pursuant to Section 13, decides to terminate its participation, LMDC, SHPO and ACHP may elect to continue their roles under this Agreement without the participation of the terminating party. In the event that LMDC, SHPO or ACHP terminate their participation under this agreement, LMDC will either prepare and execute a new programmatic agreement for the Esplanade Project pursuant to 36 CFR § 800.14(b) or request and consider comments from the ACHP consistent with 36 CFR § 800.7.

**11. Duration of the Agreement.**

This Agreement will remain in force for ten years following its execution unless the parties to it agree otherwise. Alternatively, this Agreement will expire when the actions that are the subject of it have been performed in accordance with the terms of this Agreement.

**12. Amendments to the Agreement.**

Amendments to this Agreement as negotiated by the parties will be effective only when in writing, upon the written approval of all parties to this Agreement and after a signed copy of the amendment is filed with ACHP (via first class mail). The amended Agreement will be made available to the public on LMDC's website and upon request.

**13. Coordination with Other State or Federal Reviews.**

In the event that the City, LMDC or other agency applies for additional state or federal funding or approvals for the Esplanade Project, such funding or approving agency may comply with the State Historic Preservation Act or Section 106 by agreeing in writing to the terms of this Agreement, with any necessary modifications thereto, and so notifying and consulting with SHPO and ACHP. Coordination pursuant to this section, however, will be subject to Section 12 of this Agreement, governing amendments.

**14. Notices.**

All notices, including for the initiation of comment periods, required by this Agreement will be provided by first class mail as follows.

SHPO:

Ruth Pierpont, Director  
Office of Parks Recreation and Historic Preservation  
Peebles Island, 219 Delaware Avenue  
Waterford, NY 12188

LMDC:

Lower Manhattan Development Corporation  
1 Liberty Plaza, 20th Floor  
New York, NY 10006  
Attention: General Counsel

with copies to:

William Kelley, AVP, Special Projects  
New York City Economic Development Corporation  
110 William Street, 3rd Floor  
New York, NY 10038

Gina Santucci, Environmental Review Coordinator  
New York City Landmarks Preservation Commission  
1 Centre Street, 9th Floor  
New York, NY 10007

Don Klima, Director of Federal Agency Programs  
Advisory Council on Historic Preservation  
1100 Pennsylvania Avenue NW, Suite 809  
Washington D.C. 20004

**15. Successors.**

This Agreement will be binding on and inure to the benefit of the parties' respective successors and assigns.

**16. Enforcement.**

Only parties to this Agreement will have the authority to enforce its terms.

**17. Dispute Resolution.**

In the event that SHPO concludes that LMDC has failed to carry out its obligations under any other section of this Agreement, SHPO will so advise LMDC and request it to consider taking appropriate measures to remedy such failure. If, after considering SHPO's views, LMDC determines that no such measures are warranted or appropriate, LMDC will advise the ACHP, which will have 15 days to consider that

matter and submit its recommendations, if any, to LMDC and SHPO for further consideration. LMDC will consider any comments from the ACHP, document its final decision on the specific matter in question and make the documentation available to the public on its website and upon request. The failure of the ACHP to comment within that time period will constitute concurrence with LMDC's views on the disputed matter.

**18. Monitoring and Reporting.**

During the Esplanade Project, LMDC, or the City at LMDC's request, will submit semi-annual status reports to SHPO to summarize measures it has taken, if any, to comply with the terms of this Agreement. Reports will be submitted until the project is complete.

**19. Execution.**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which will together constitute one instrument. Facsimile signatures will be treated as originals.

**EXECUTION AND IMPLEMENTATION of this Agreement evidence LMDC's compliance with Section 106 of the National Historic Preservation Act with respect to the project improvements addressed herein.**

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: Ruth Pierpont DSHPO  
Name: Ruth Pierpont  
Title: Executive Director

Date: 6/25/07

LOWER MANHATTAN DEVELOPMENT CORPORATION

By: D. Emil  
Name: David Emil  
Title: President

Date: July 26, '07

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: John M. Fowler  
Name: John Fowler  
Title: Executive Director

Date: 8/3/07

## Exhibits to Esplanade Project Programmatic Agreement

Exhibit A, Project Site

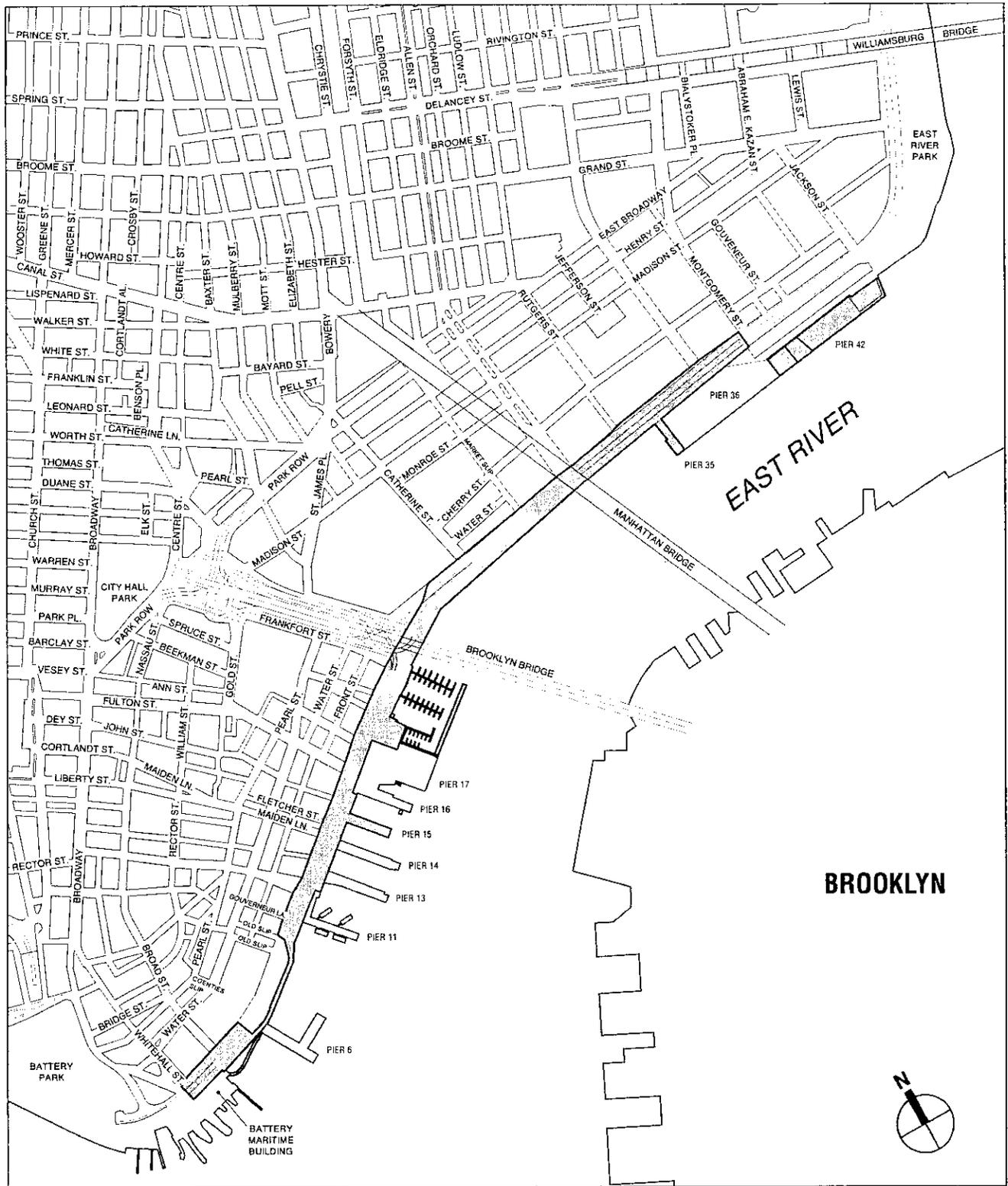
Exhibits B-1, B-2 and B-3, Architectural APE

Exhibits C-1, C-2 and C-3, Archeological APE

Exhibit D, Description of Coordinated NEPA and Section 106 Review

Exhibit E, Scoping Notice Distribution List

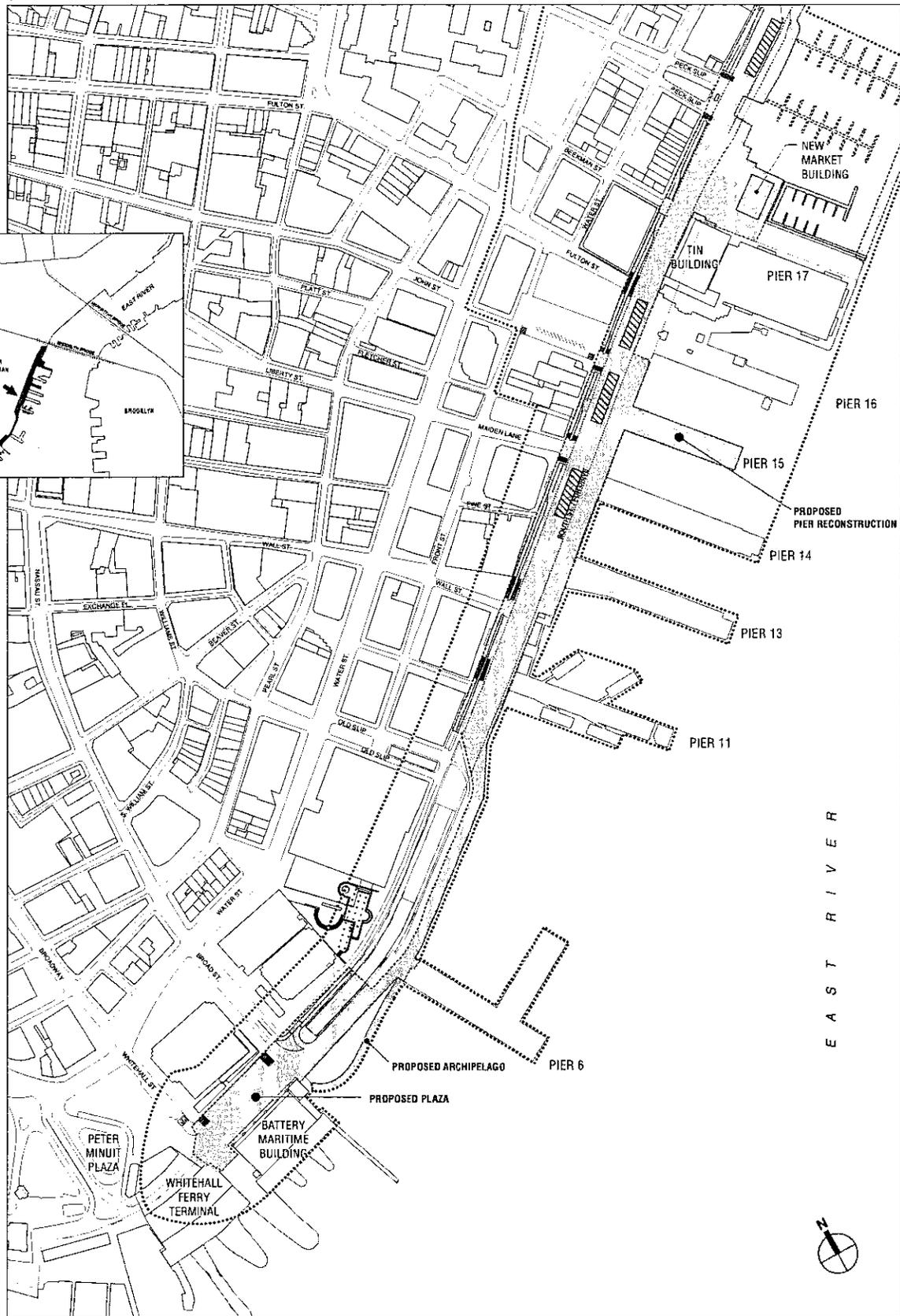
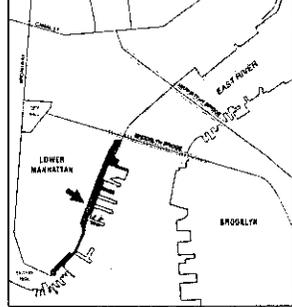
Exhibit F, DEIS and Draft PA Distribution List



 Project Site

0 2000 FEET  
SCALE

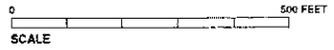
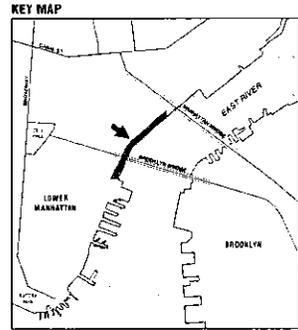
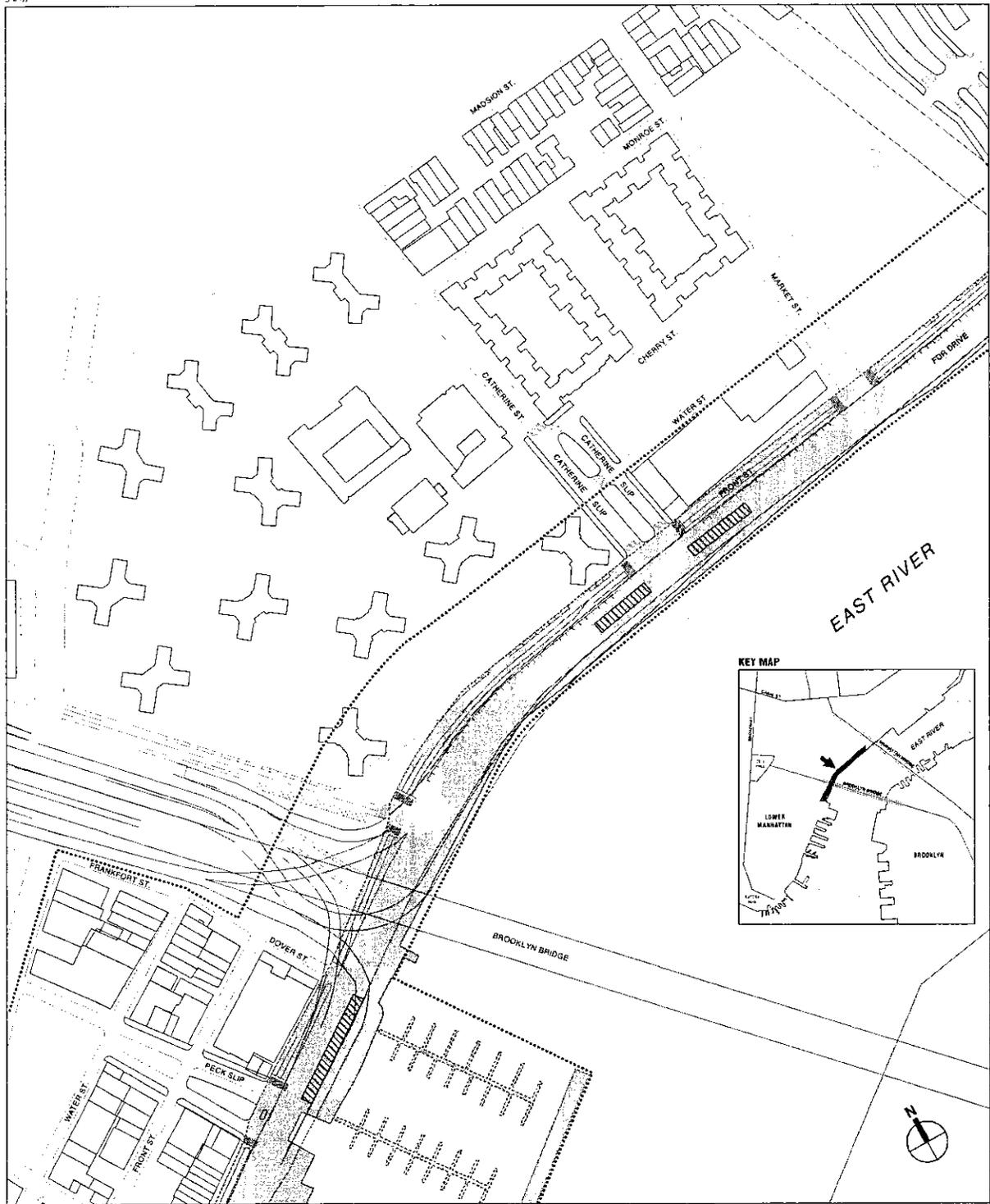
KEY MAP



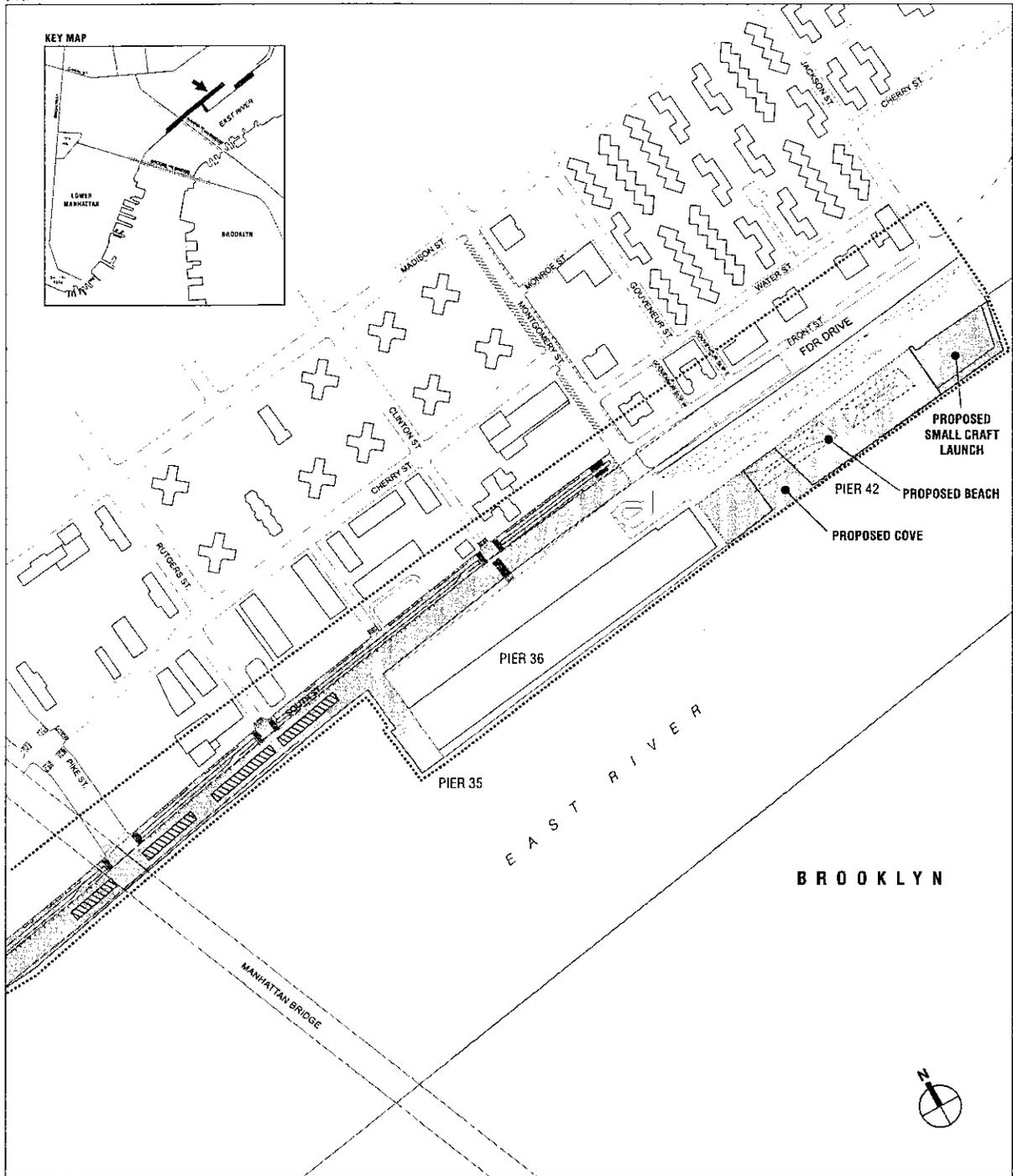
EAST RIVER

-  Project Site
-  Potential Locations of Pavilions
-  Architectural Resources APE

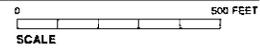




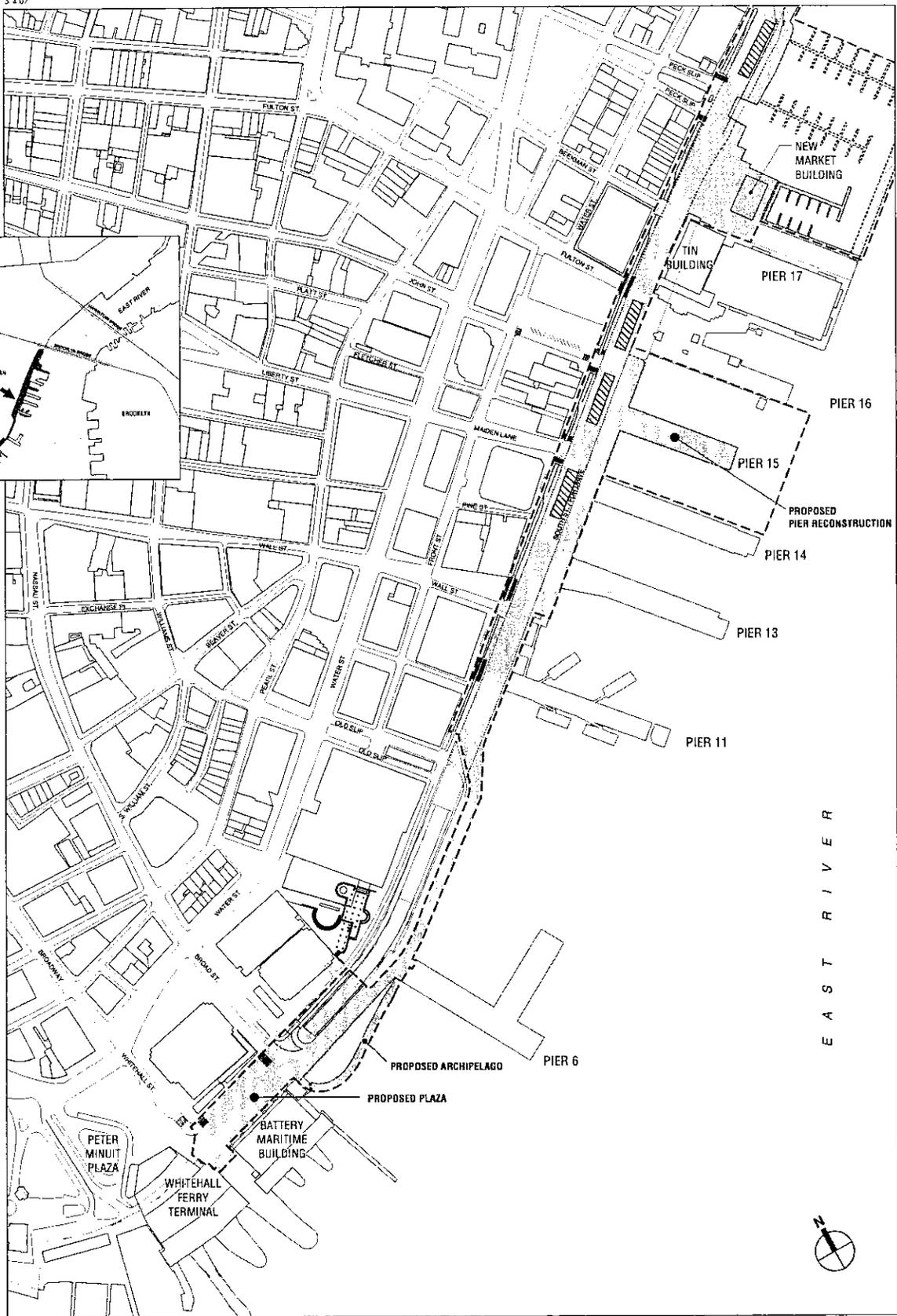
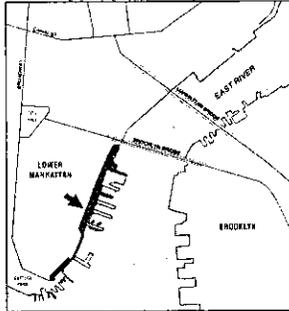
- Project Site
- Potential Locations of Pavilions
- Architectural Resources APE



-  Project Site
-  Potential Locations of Pavilions
-  Architectural Resources APE

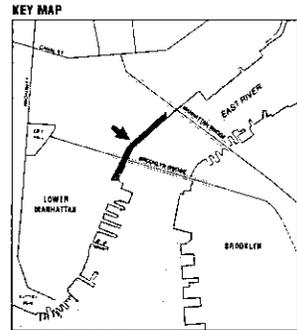
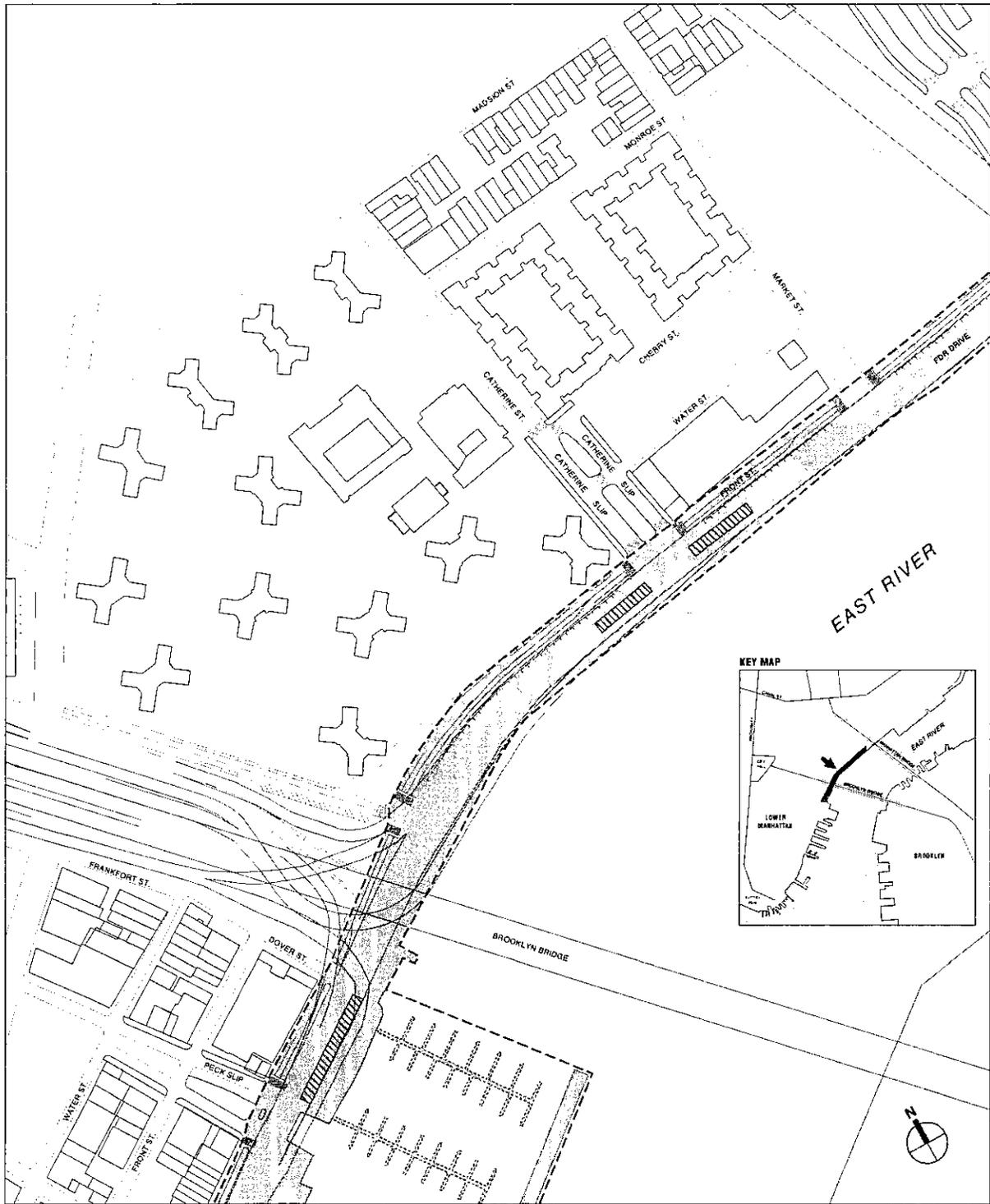


KEY MAP



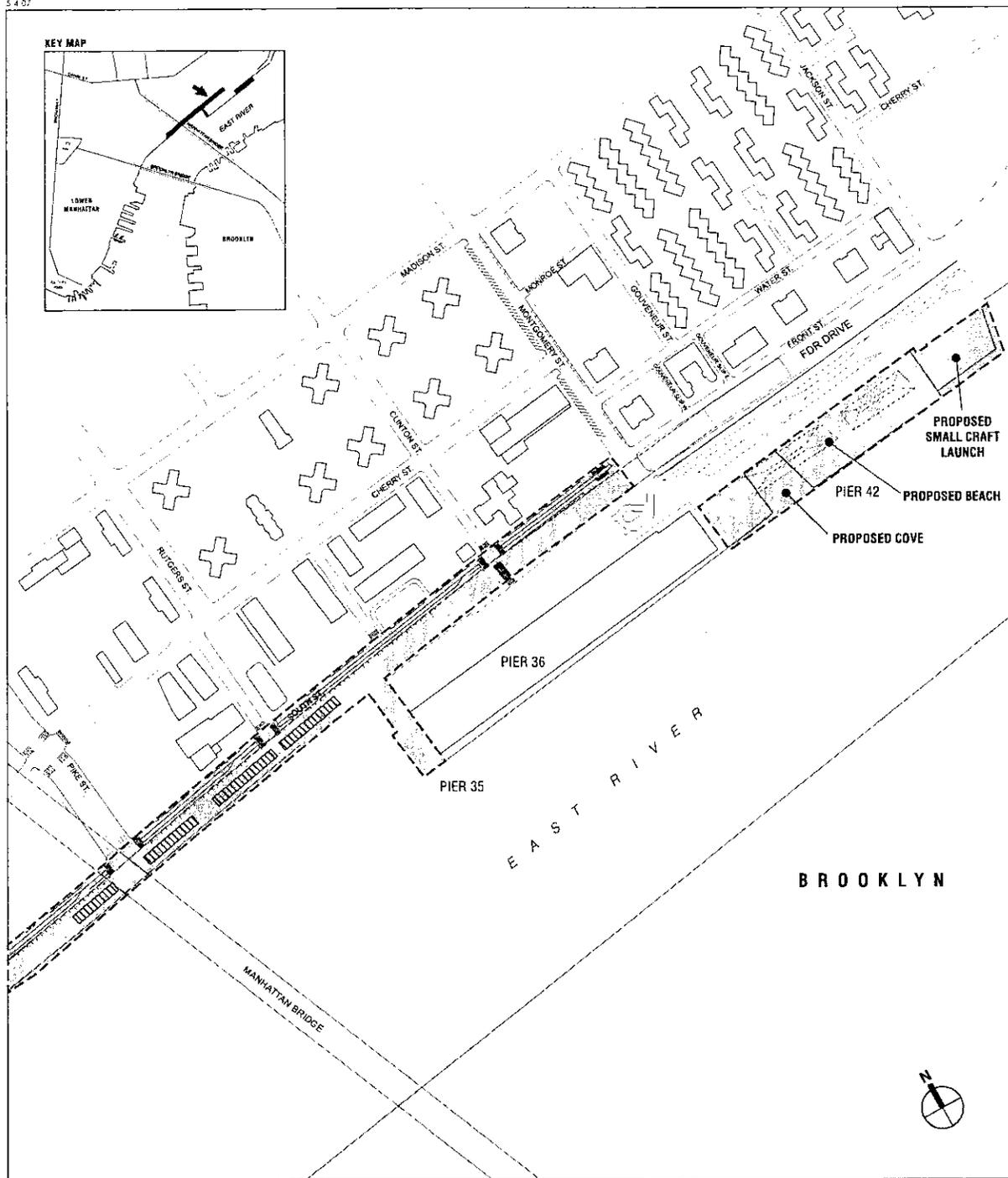
- Project Site
- Potential Locations of Pavilions
- Archaeological Resources APE





- Project Site
- Potential Locations of Pavilions
- Archaeological Resources APE





-  Project Site
-  Potential Locations of Pavilions
-  Archaeological Resources APE

0 500 FEET  
SCALE

## **Exhibit D to Esplanade Project Programmatic Agreement**

### **Excerpt from Esplanade Project EIS, Chapter 2, Methodology**

#### **LMDC's Coordination of the NEPA and Section 106 Review of the Esplanade Project**

As envisioned by Section 106, LMDC is carrying out a coordinated NEPA and Section 106 review of the Proposed Action. LMDC began this process in March 2006 by publishing and distributing notice of this coordinated review and the start of the NEPA scoping process. The notice<sup>1</sup> invited the “public and interested persons to comment on historic resources and Section 106 review under the National Historic Preservation Act.” LMDC sent the notice to a distribution list that was developed in consultation with SHPO and that included approximately 120 potentially interested government agencies, nonprofit organizations and persons. (The scoping distribution list is Exhibit C to the Programmatic Agreement). LMDC published the notice in newspapers on March 22 and 23, 2006 and in the DEC’s Environmental Notice Bulletin on March 22, 2006. The public scoping meeting took place on April 11, 2006 and served as an opportunity to submit comments regarding historic resources and Section 106 review. LMDC used the comments received at the public scoping meeting and during the scoping comment period to prepare a final scope and, thereafter, the DEIS, which was adopted by LMDC on October 12, 2006. These comments generally related to the selection of appropriate project designs, the role of SHPO and LPC and the identification of historic resources.<sup>2</sup>

In January 2007, LMDC distributed the DEIS and draft PA to approximately ninety potentially interested government agencies, nonprofit organizations and other parties. (The DEIS and draft PA distribution list is Exhibit D to the PA.) LMDC also invited a number of Native American groups to review the DEIS, the draft PA and consult. These groups included the Delaware Nation, Oneida Nation, Onondaga Indian Nation, St. Regis Band of Mohawk Indians, Shinnecock National Cultural Center and Museum, Stockbridge-Munsee Band of Mohicans, Tonawanda Band of Seneca, Tuscarora Nation, and Cayuga Nation.<sup>3</sup> LMDC published the notice of the DEIS and draft PA<sup>4</sup> in newspapers and the DEC’s Environmental Notice Bulletin on January 24, 2007. HUD published the notice of the DEIS and draft PA in the Federal Register on February 9, 2007.<sup>5</sup>

---

<sup>1</sup> The scoping notice was entitled “Notice of Intent to Prepare Draft Environmental Impact Statement; Notice of Public Scoping Meeting and Public Comment Period; Notice of National Historic Preservation Act Review; Notice for Early Public Review of a Proposal in the 100-Year Floodplain.”

<sup>2</sup> LMDC received comments regarding historic resources from a number of organizations include the Civic Alliance to Rebuild Downtown New York, Seaport Speaks and the Metropolitan Waterfront Alliance.

<sup>3</sup> The Native American groups have not submitted any comments to LMDC.

<sup>4</sup> The DEIS and draft PA notice was entitled “Notice of Availability of a Draft Environmental Impact Statement for the East River Waterfront Esplanade and Piers Project in the Borough of Manhattan, City of New York, New York; Notice of Intent to Prepare Draft Environmental Impact Statement; Notice of Public Hearing; and Notice of Availability of National Historic Preservation Act Draft Programmatic Agreement.”

<sup>5</sup> The EPA also published the notice of the DEIS in the Federal Register on January 26, 2007.

LMDC and the City held a public hearing on the DEIS and draft PA on March 5, 2007. LMDC used the comments received at that hearing and during the public comment period to prepare the FEIS and final PA, which were adopted by LMDC on May 18, 2007. These comments generally related to historic ships, selection of project designs and details of the draft PA. The Response to Comments chapter of this EIS fully describes the comments and responses.

In addition to reflecting comments from the public and interested persons, the FEIS and final PA reflect LMDC's consultation with SHPO and the City, conducted through LPC. During consultation the parties identified several project elements that should be subject to further review and consultation, which the PA addresses. These include project designs within the South Street Seaport Historic District, construction involving the historic bulkhead, archeological concerns, design of the BMB Plaza and design of the replacement NMB. The PA thus provides a framework for consultation among LMDC, the City and SHPO as designs for the Proposed Action are developed and construction takes place. The PA also provides for continued public participation through review of designs and submission of public comments. The final PA reflects comments received from the ACHP, which has elected to become a signatory to the PA.