

**NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION**

In the Matter of the  
Development and Implementation  
of Remedial Programs for  
Former Manufactured Gas Plants and  
Gas Holder Locations under  
Article 27, Title 13 of the  
Environmental Conservation Law  
by

Brooklyn Union Gas Company d/b/a  
KeySpan Energy Delivery New York  
&  
KeySpan Gas East Corporation d/b/a  
KeySpan Energy Delivery Long Island,

Respondents.

**MODIFICATION  
TO  
ORDER ON CONSENT  
and  
ADMINISTRATIVE  
SETTLEMENT**

Index # A2-0552-0606

Twelve  
Sites

**WHEREAS:**

1. The New York State Department of Environmental Conservation ("Department") is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the Environmental Conservation Law ("ECL") and Part 375 of Title 6 of the Official Compilation of Codes Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.
2. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 3, Title 3 of the ECL.
3. Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island ("Respondents" or KeySpan") are subject to an Order on Consent and Administrative Settlement that was effective March 4, 2007, DEC Index No. A2-0552-0606 (the "March 4, 2007 Order") pertaining to former manufactured gas plant ("MGP") sites and holder sites (collectively, the "Sites") at which coal tar and associated hazardous substances ("MGP wastes") were, or may have been, disposed at various times in the past by Respondent or its predecessors or affiliates.

4. The Department and the Respondents now desire a modification pursuant to Whereas Paragraph 5 and Paragraph XIV.G of the March 4, 2007 Order . The purposes of this modification to the March 4, 2007 Order ("Modification") are:

A. to add to the March 4, 2007 Order the following twelve (12) additional former MGP Sites and former Holder Sites to Whereas Paragraphs 4.A and 4.B, respectively, to Exhibit "A" - Table 1 which Sites Respondents either own or formerly owned and/or operated at the following locations at which, *inter alia*, MGP Wastes were or may have been disposed at various times in the past. Former MGP Sites: Fulton Works MGP, Metropolitan Works MGP, Williamsburg MGP, Brooklyn Gas Light Works and Kings County Works; Former Holder Sites: Flatbush A&B Holder Station, Scholes Street Holder Station, Wythe Street Holder Station, Belmont Holder Station, Plymouth Street Holder Station, Union Street Holder Station and Inwood Holder Station. These Sites are more particularly described in Article II below. Of these sites, only Metropolitan Works MGP is listed on the *Registry of Inactive Hazardous Waste Sites in New York* ("Registry") as a Class 2 site; and

B. to delete nine (9) alternative gas plants and Hortonsphere sites that were included in Exhibit "A" - Table 3 of the March 4, 2007 Order. Alternative gas plants, such as acetylene plants, are not characterized or equated to typical coal gasification MGP sites and did not produce the same environmental impacts that would ordinarily be associated with coal gasification MGP sites. Hortonspheres are essentially an elevated steel ball gas holder. Therefore, these sites are not considered MGP sites and should be listed separately from them. These sites are intended to be included in a separate Order on Consent and Administrative Settlement which will include two additional sites previously excluded from the list in error: Port Jefferson and Riverhead former Hortonsphere sites in Suffolk County; and

C. to remove the Brooklyn MGP Site from Exhibit "A" - Table 3 of the March 4, 2007 Order as it appears that no MGP or gas holder operations were actually located at the 61<sup>st</sup> Street and New Utrecht Avenue location; and

D. to reflect changes in the interpretation of the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, by the United States Supreme Court in its decisions in *Cooper Industries v. Aviall Services, Inc.*, 543 U.S. 157 (2004) and *United States v. Atlantic Research Corp.* No. 06-562, 2007 WL 1661465 (U.S. June 11, 2007); and

E. to make such other changes to the March 4, 2007 Order as are necessary and appropriate.

5. The Department and Respondents recognize that the MGP and Holder Sites listed in Paragraph 4.A above have the potential to release MGP Wastes. The Department and Respondents recognize that implementation of this Modification will expedite the investigation and, if necessary, remediation, of the Sites. The Department and Respondents further agree that addition of these sites to the March 4, 2007 Order will avoid potentially prolonged and

complicated litigation, and that this modification is mutually acceptable, fair, reasonable, and in the public interest.

6. Respondents hereby waive any right to a hearing as may be provided by law, consent to the issuance and entry of this Modification, and agree to be bound by its terms. Respondents consent to and agree not to contest the authority or jurisdiction of the Department to issue or enforce this Modification, and agree not to contest the validity of this Modification or its terms or the validity of data submitted to the Department by Respondents pursuant to this Modification and the March 4, 2007 Order.

**NOW, THEREFORE,** having considered this matter and being duly advised,

**IT IS ORDERED THAT:**

**ARTICLE I.** WHEREAS Clause 1.C. of the March 4, 2007 Order is hereby deleted in its entirety and replaced with the following:

This Order on Consent and Administrative Settlement ("Order & Settlement Agreement") is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL § 3-0301, and resolves Respondent's liability to the State under the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980", as amended ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, and State law to the extent set forth herein. It is the intent of the Department and KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (together and individually "KeySpan" or the "Respondent") that Respondent may seek cost recovery, under CERCLA §107 (a), 42 U.S.C. § 9607,(a), or contribution under CERCLA § 113 (f)(3)(B) , 42 U.S.C. § 9613(f)(3)(B), to the maximum extent available under applicable law, from persons not parties to this Order & Settlement Agreement to the extent set forth in Subparagraph XIV.I. Such efforts by Respondent will be supported by the Department in such manner as the Department reasonably deems appropriate.

**ARTICLE II.** Exhibit "A" -Table 1 of the March 4, 2007 Order is hereby and henceforth revised to add the following twelve (12) Sites and to remove them from Exhibit "A" - Table 3. Location maps for these Sites are attached hereto as Exhibit "A":

#	KeySpan Sites	Work Plan Type	Site No.	Location	County
15	Fulton Works MGP	SC	224051	Brooklyn, NY 11217 (near Gowanus Canal)	Kings
16	Metropolitan Works MGP	RI	224046	124-136 Second Avenue Brooklyn, NY 11215 (near Gowanus Canal)	Kings

#	KeySpan Sites	Work Plan Type	Site No.	Location	County
17	Flatbush Station A&B	SC	224061	Winthrop St., & Clarkson Ave. Brooklyn, NY 11226	Kings
18	Scholes Street Station	SC	224067	338 & 350 Scholes St. & 154 Bogart Street Brooklyn, NY 11206	Kings
19	Williamsburg Works MGP	RI	224055	Kent Avenue Bet. N.11 & N.12 Street Brooklyn, NY 11211	Kings
20	Inwood Holder Station	SC	130121	Inwood, NY 11096	Nassau
21	Wythe Ave Station	SC	224069	No. 12 & 13 Berry St. Brooklyn, NY 11211	Kings
22	Brooklyn Gas Light Works	SC	224048	1 Hudson Avenue Brooklyn, NY 11201	Kings
23	Kings County Works	SC	224056	5400-5600 1st Avenue Brooklyn, NY 11220	Kings
24	Belmont Holder	SC	224060	290 Belmont Avenue Brooklyn, NY 11207	Kings
25	Plymouth Street Holder	SC	224065	49 Gold Street Brooklyn, NY 11211	Kings
26	Union Street	SC	224054	2940 Atlantic Avenue Brooklyn, NY 11207	Kings

**ARTICLE III.** Respondents shall submit to the Department a Records Search Report for each of the Sites listed in Article I above in accordance with Exhibit "F" of the March 4, 2007 Order as follows:

1. Within thirty (30) Days after the effective date of this Modification for Sites 15 -20; and
2. Within sixty (60) Days after the effective date of this Modification for Sites 21-26.

The Records Search Report can be limited if the Department notifies Respondents that prior submissions satisfy specific items required for the Records Search Report. Such Records Search Reports shall be submitted in a format acceptable to the Department.

**ARTICLE IV.** The first Work Plan for each of the Sites listed in Article I above, as well as those previously listed for Sites in Exhibit "A" -Table 1 of the March 4, 2007 Order, shall be submitted to the Department in accordance with a revised schedule to be determined by the Department within thirty (30) days of the effective date of this Modification based upon a prioritization of all KeySpan Sites.

**ARTICLE V.** The final paragraph of Article II Section G "Release and Covenant Not to Sue" of the March 4, 2007 Order is deleted in its entirety and replaced with the following:

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action, or demands whatsoever that (i) Respondent may have against anyone other than the Department, including its rights to cost recovery under CERCLA § 107 (a), 42 U.S.C. § 9607(a), or contribution under CERCLA § 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B) to the maximum extent available under applicable law, and (ii) the Department may have against anyone other than Respondent, its directors, officers, employees, agents, and servants, and those successors and assigns of Respondent who were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order & Settlement Agreement, and their respective secured creditors.

**ARTICLE VI.** Respondents shall provide public notice similar to the Notice of Order & Settlement Agreement attached to the March 4, 2007 Order as Exhibit "D," with regard to each of the above Sites, modified to the extent necessary to comport with the requirements of 6 NYCRR 375-1.5(a), in accordance with the schedule below:

1. Within thirty (30) Days after the effective date of this Modification for Sites 15 -20; and
2. Within sixty (60) Days after the effective date of this Modification for Sites 21-26.

**ARTICLE VII.** Exhibit "A" -Table 3 of the March 4, 2007 Order is hereby revised to remove the following nine (9) alternative gas plants and Hortonsphere sites:

#	KeySpan Sites	Site #	Location	County
16	Saltire, acetylene gas production		Believed W/S Beacon Walk S/O Lighthouse Promenade Saltire 11706	Suffolk
17	Southold, acetylene gas production		Believed W/S Hobart St & N/O Korn Rd	Suffolk
18	East Hampton, gasoline cracking		Buells Lane East Hampton, NY	Suffolk

#	KeySpan Sites	Site #	Location	County
19	Bellmore		Newbridge Rd/Grand Ave N/O LIRR, S of Substation	Nassau
20	East Hampton (active)		S/S Railroad Ave btwn Race Lane & Fresno Pl East Hampton, NY 11937	Suffolk
21	Lynbrook		Ocean Ave & Merrick Rd	Nassau
22	Manhasset		High Street	Nassau
23	Oyster Bay		End of Willow Street	Nassau
24	Pinelawn/Farmingdale		E/S Broadhollow Rd, N/O Conklin St & S/O LIRR ROW East Farmingdale, NY 11735	Suffolk

**ARTICLE VIII.** Exhibit "A" - Table 3 of the March 4, 2007 Order is hereby revised to remove the Brooklyn MGP Site (#15 in the Table). The remaining two (2) sites on Exhibit "A" - Table 3 of the March 4, 2007 Order, Greenpoint MGP Site (Site # 224052) and Equity Works MGP (Site # 224050), both Class 2 Sites on the *Registry*, are anticipated to be the subject of a future Consent Decree.

**ARTICLE IX.** Paragraph XI.A.1 of the March 4, 2007 Order is hereby revised to include the following addressee:

Regional Director  
Region 1  
NYS Dept of Environmental Conservation  
SUNY at Stony Brook  
50 Circle Road  
Stony Brook, Long Island NY 11790-3409  
(Correspondence only)

**ARTICLE X.** Paragraph B in Article VII, "Reservation of Rights" of the March 4, 2007 Order is deleted in its entirety and replaced with the following:

B. Except as otherwise provided in this Order & Settlement Agreement, Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental

assertion of remedial liability and/or natural resource damages against Respondent, and further reserves all rights respecting the enforcement of this Order & Settlement Agreement, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order & Settlement Agreement or Respondent's compliance with it shall not be construed as an admission of liability, fault, wrongdoing, or breach of standard of care by Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party. Further, Respondent reserves such rights as it may have to seek and obtain cost recovery, contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights to cost recovery under CERCLA § 107 (a), 42 U.S.C. § 9607(a) or of contribution under CERCLA §113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B) to the maximum extent available under applicable law.

**ARTICLE XI.** Respondents agree to comply with and be bound by all of the provisions of 6 NYCRR Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Modification to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Modification or the March 4, 2007 Order.

**ARTICLE XII.** Subparagraphs I and K of Article XIV, "Miscellaneous", of the March 4, 2007 Order are deleted in their entirety and replaced as follows:

I. To the extent authorized under CERCLA § 113, 42 U.S.C. § 9613, New York General Obligations Law § 15-108, and any other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2) for "matters addressed" pursuant to and in accordance with this Order & Settlement Agreement. "Matters addressed" in this Order & Settlement Agreement shall mean all response actions taken by Respondent to implement this Order & Settlement Agreement for the Sites and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Order & Settlement Agreement, which costs have been paid by Respondent, including reimbursement of State Costs pursuant to this Order & Settlement Agreement. Furthermore, by entering into Order & Settlement Agreement, Respondent is entitled to seek cost recovery under CERCLA § 107 (a), 42 U.S.C. § 9607(a) or contribution under CERCLA §113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B) to the maximum extent available under applicable law.

K. Respondent's obligations under this Order & Settlement Agreement represent performance of work or payment of response costs, and shall not be deemed to constitute any type of fine or penalty.

**ARTICLE XIII.** Except for the Modification set forth herein, the March 4, 2007 Order shall remain in full force and effect and the terms thereof and the obligations therein are incorporated herein and shall apply with the same force and effect to the applicable provisions of this Modification. The terms of the March 4, 2007 Order, including all appendices and modifications, are not otherwise modified or expanded in any way.

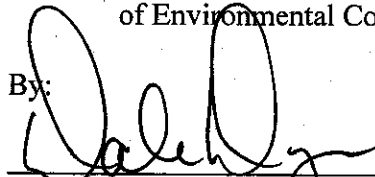
**ARTICLE XIV.** The terms hereof shall constitute this complete and entire Modification of the March 4, 2007 Order. No other term, condition, understanding or agreement purporting to modify the terms of the March 4, 2007 Order shall be binding unless subscribed to by both parties in accordance with the terms of the March 4, 2007 Order.

**ARTICLE XV.** The effective date of this Modification to the March 4, 2007 Order shall be the date signed by the Commissioner or his designee.

DATED: AUG 10 2007

ALEXANDER B. GRANNIS,  
COMMISSIONER  
New York State Department  
of Environmental Conservation

By:

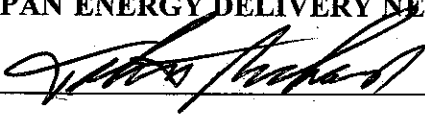
  
\_\_\_\_\_  
Dale A. Desnoyers, Director  
Division of Environmental Remediation



**CONSENT BY RESPONDENTS**

Respondents, Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, hereby consent to the issuing and entering of this Order on Consent and Administrative Settlement, waive their right to a hearing herein as provided by law, and agree to be bound by this Modification.

**BROOKLYN UNION GAS COMPANY d/b/a  
KEYSPAN ENERGY DELIVERY NEW YORK**

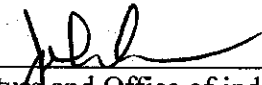
By: 

Title: Executive Vice President & Secretary

Date: 8/6/07

STATE OF NEW YORK            )  
  ) s.s.:  
COUNTY OF KINGS            )

On the 6th day of August, in the year 2007, before me, the undersigned, personally appeared John Bishar, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

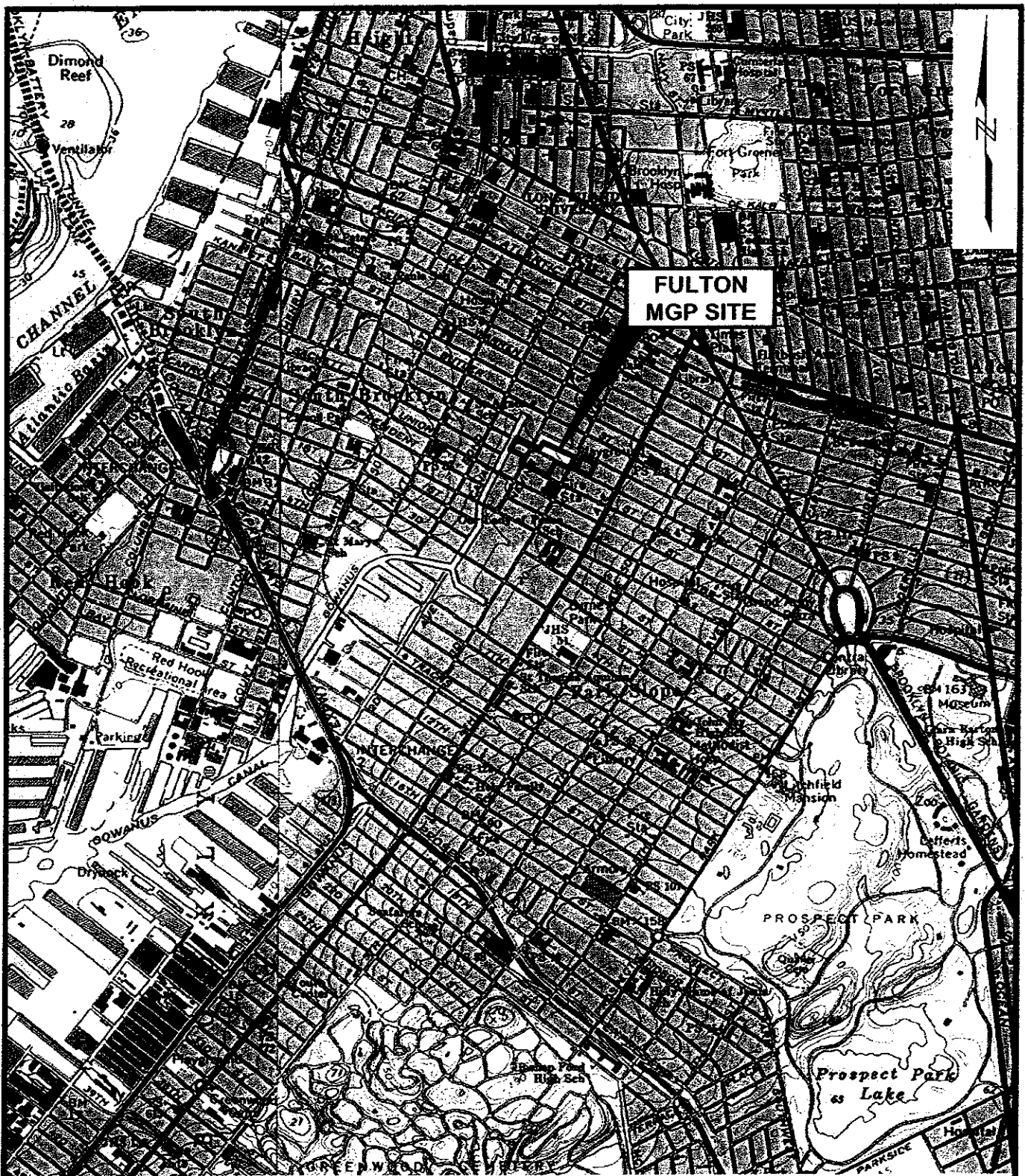
  
Signature and Office of individual  
taking acknowledgment

**JOHN ALLOCCA**  
NOTARY PUBLIC, State of New York  
No. 02AL4948263  
Qualified in Kings County  
Commission Expires March 13, 2011

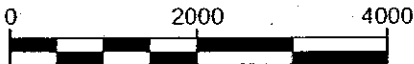


**EXHIBIT "A"**

**Maps of Sites included in Paragraphs 4.A and 4.B and Article II**



**FULTON  
MGP SITE**



SCALE, FEET

SOURCE: Map created with TOPO!® ©2001 National Geographic  
(www.nationalgeographic.com/topo)

NYSDEC BCP APPLICATION  
FULTON MUNICIPAL WORKS MGP  
BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
BROOKLYN, NEW YORK

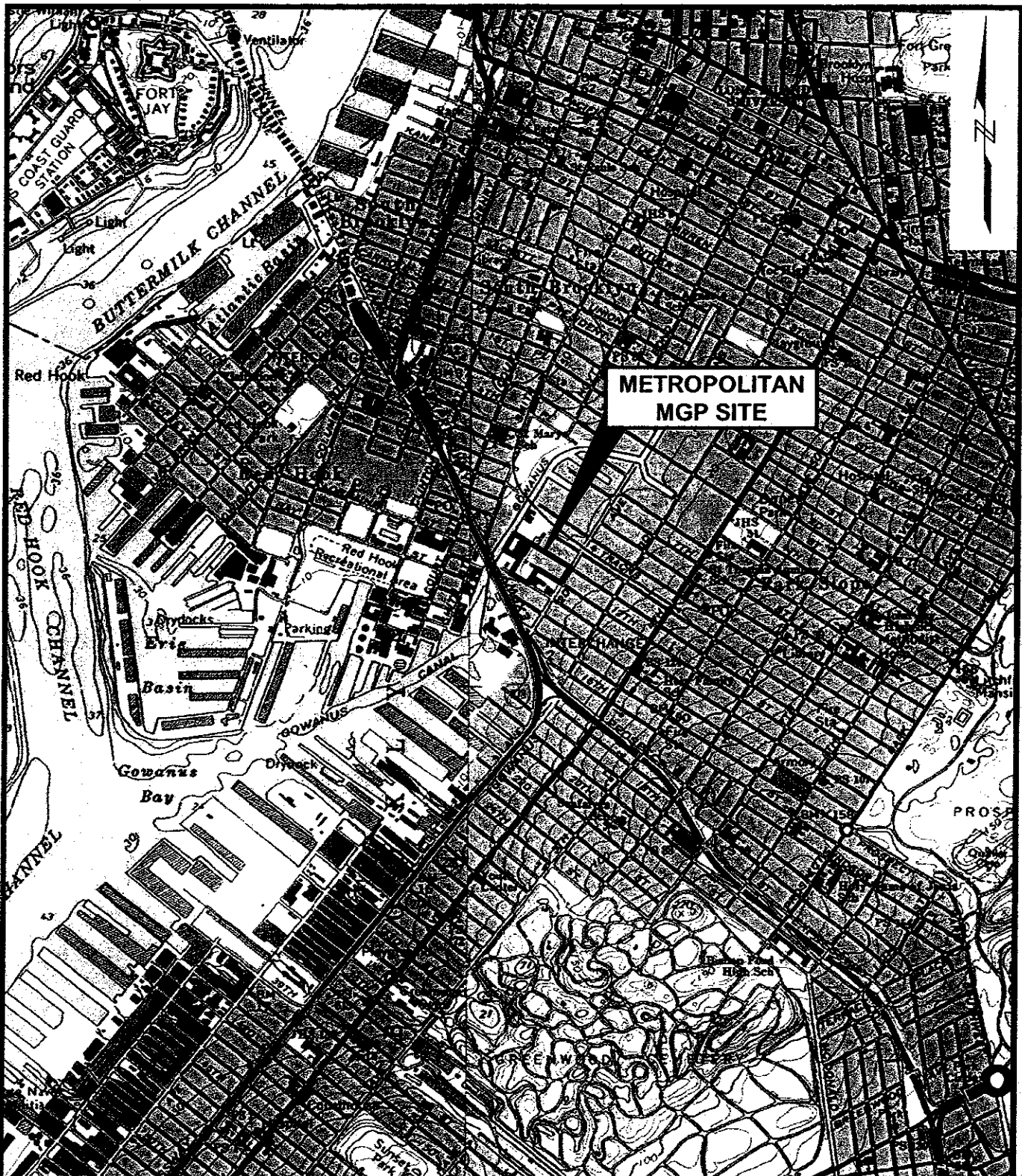


PROJECT 982482

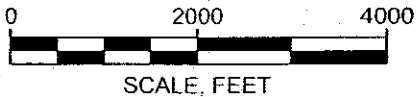
**SITE LOCATION MAP**

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic  
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION  
 METROPOLITAN MGP  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK

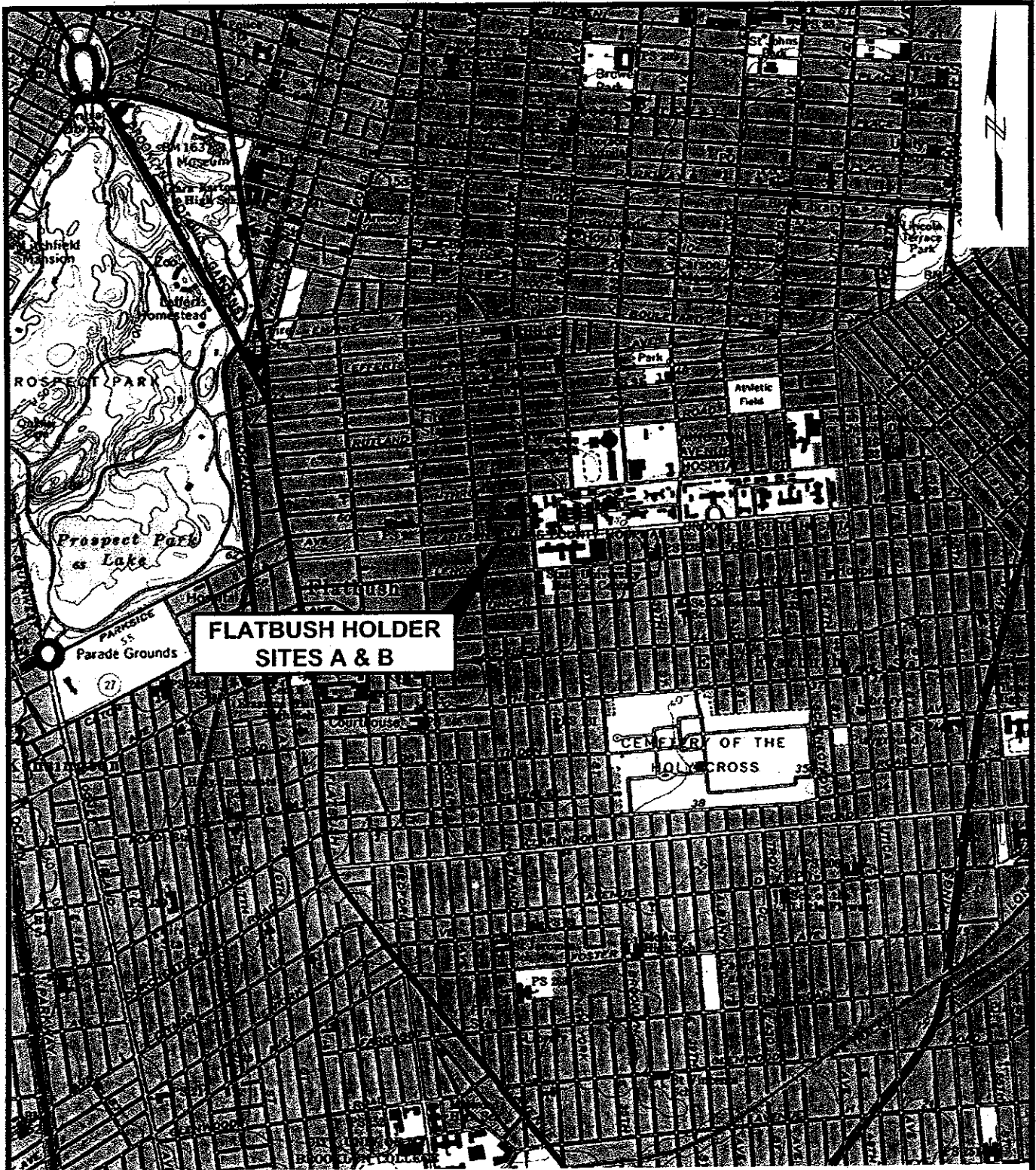
**GEI** Consultants

PROJECT 982482

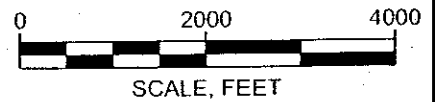
**SITE LOCATION MAP**

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic  
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION  
 FLATBUSH HOLDER STATIONS A & B  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK

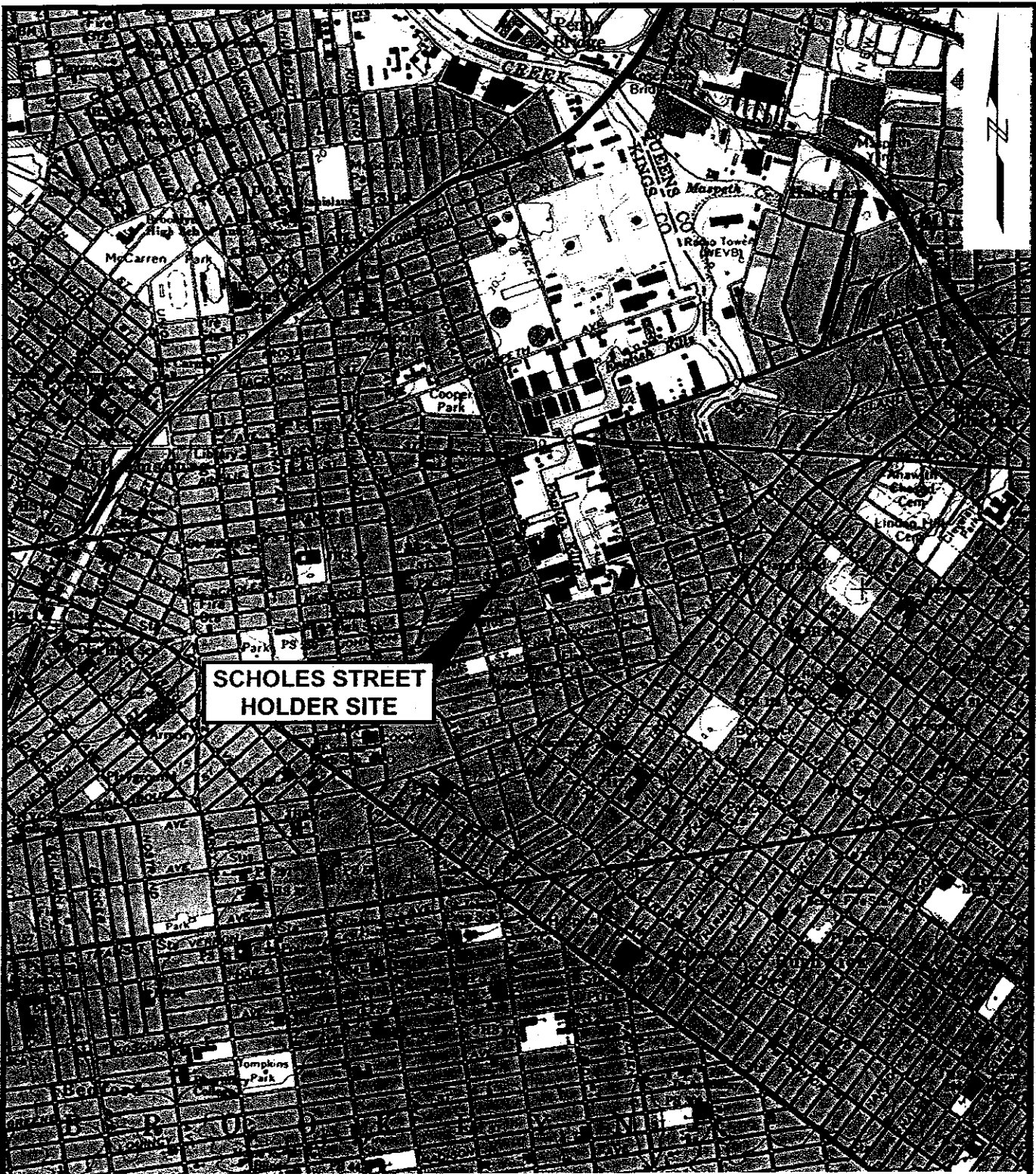


PROJECT 982482

SITE LOCATION MAP

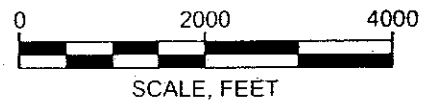
AUGUST 2004

FIGURE 1



**SCHOLLES STREET  
HOLDER SITE**

SOURCE: Map created with TOPO! © 2001 National Geographic  
(www.nationalgeographic.com/topo)



**NYSDEC BCP APPLICATION  
SCHOLLES STREET HOLDER STATION  
BROOKLYN, NEW YORK**

**KEYSPAN CORPORATION  
BROOKLYN, NEW YORK**

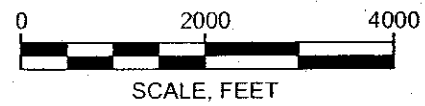
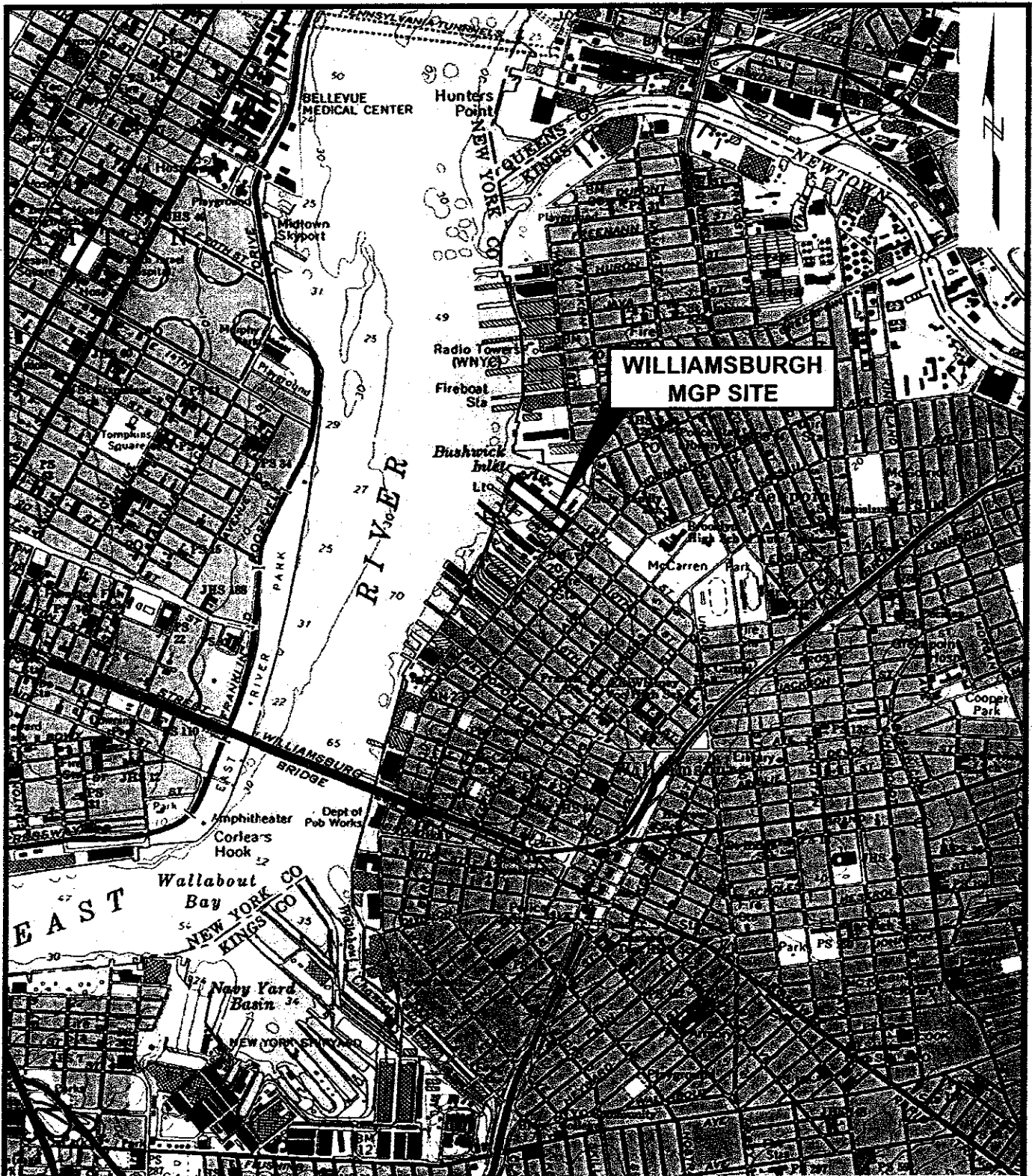


**SITE LOCATION MAP**

PROJECT 982482

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic  
 (www.nationalgeographic.com/topo)

NYSDEC BCP APPLICATION  
 WILLIAMSBURGH WORKS MGP  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK



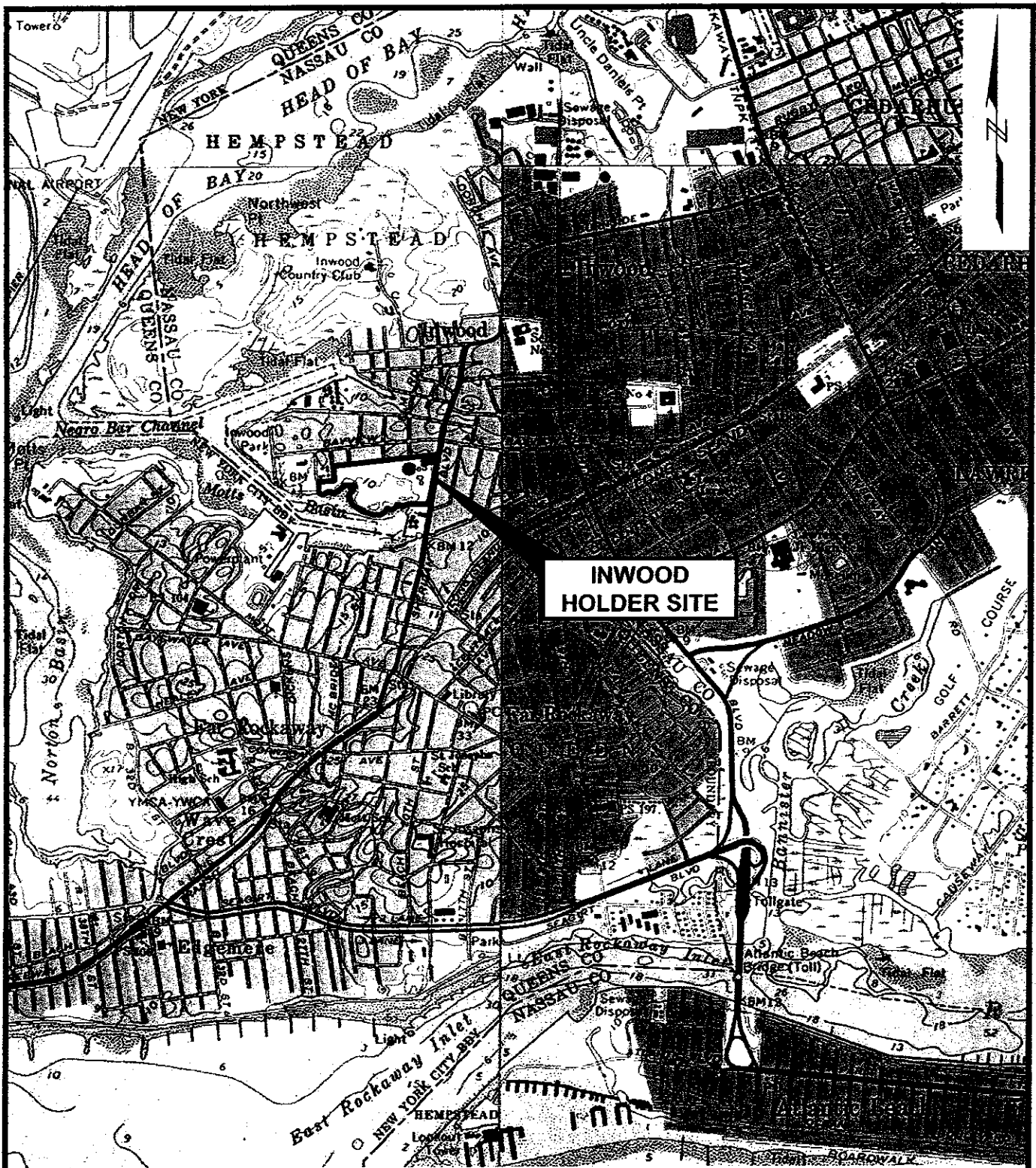
PROJECT 982482

SITE LOCATION MAP

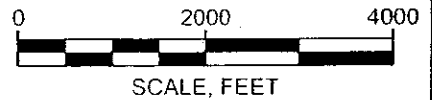
AUGUST 2004

FIGURE 1





SOURCE: Map created with TOPO! R © 2001 National Geographic  
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NYSDEC BCP APPLICATION  
 INWOOD HOLDER STATION  
 INWOOD, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK

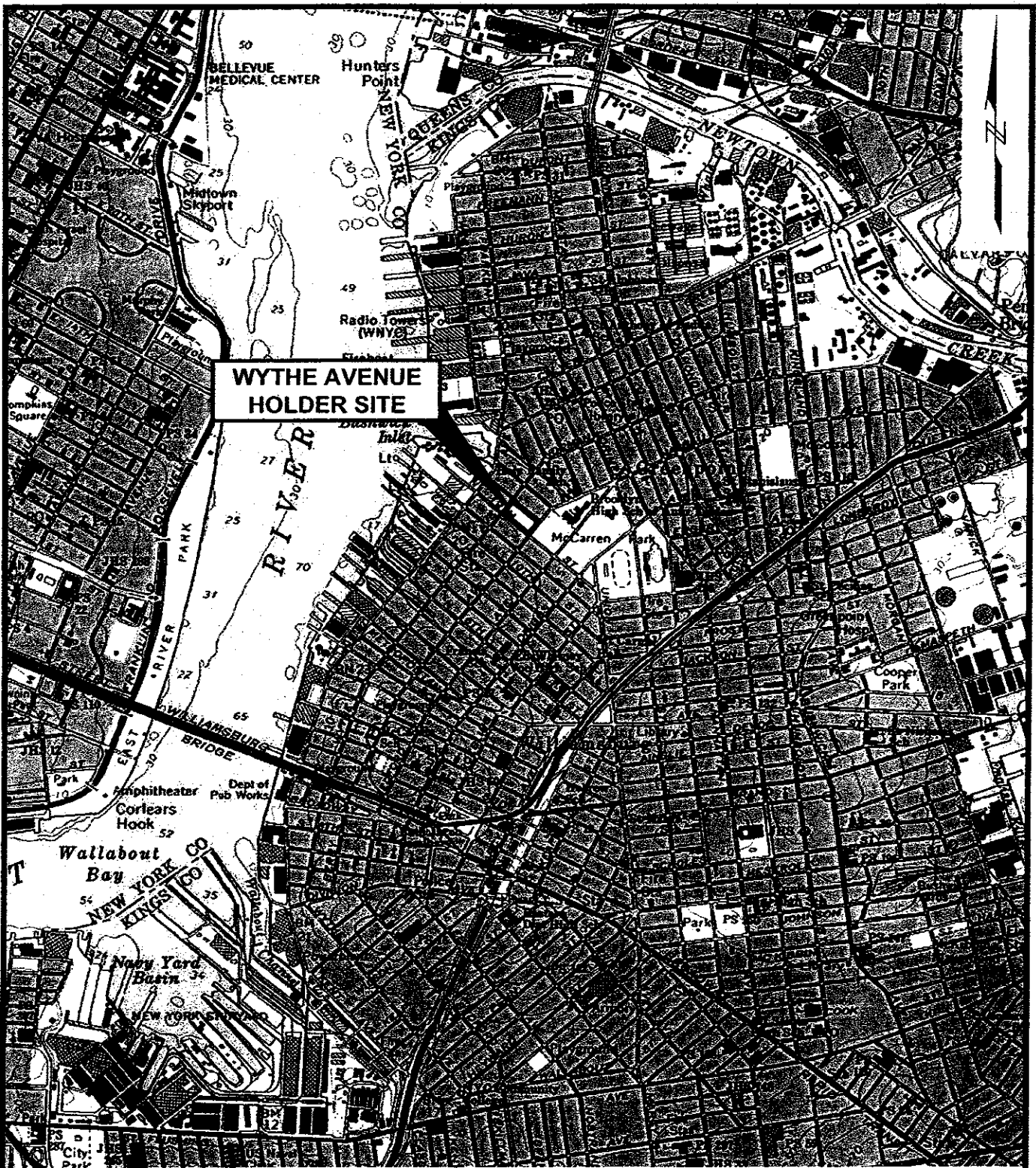


PROJECT 982482

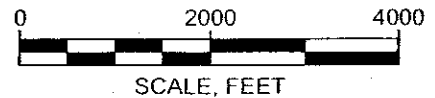
SITE LOCATION MAP

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic  
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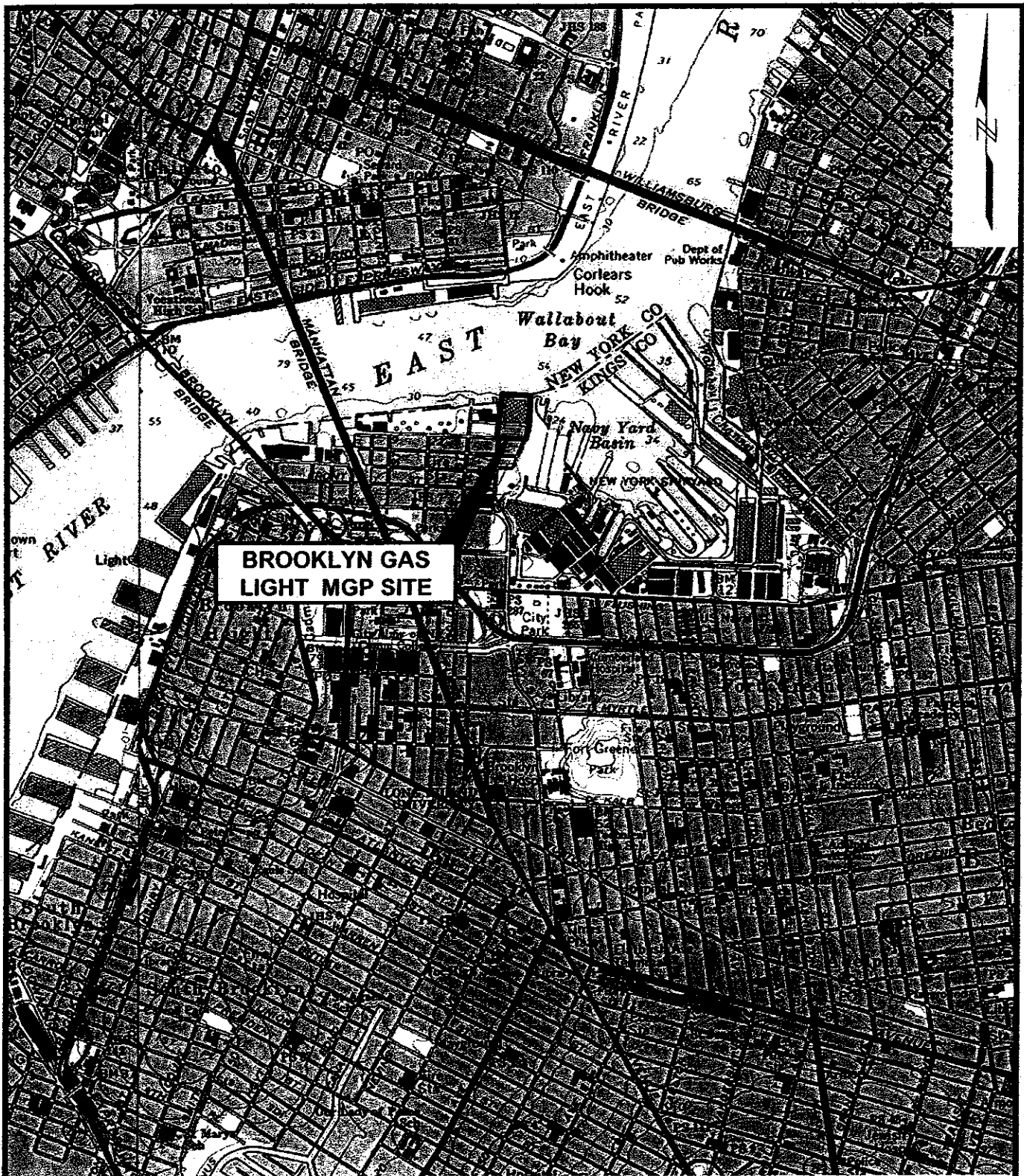
NYSDEC BCP APPLICATION  
 WYTHE AVENUE (BERRY STREET) HOLDER STATION  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK

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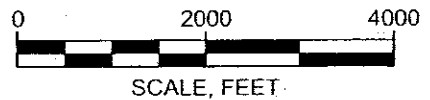
**SITE LOCATION MAP**

AUGUST 2004      FIGURE 1



**BROOKLYN GAS  
LIGHT MGP SITE**

SOURCE: Map created with TOPO!® ©2001 National Geographic  
(www.nationalgeographic.com/topo)



**NYSDEC BCP APPLICATION  
BROOKLYN GAS LIGHT WORKS MGP  
BROOKLYN, NEW YORK**

**KEYSPAN CORPORATION  
BROOKLYN, NEW YORK**

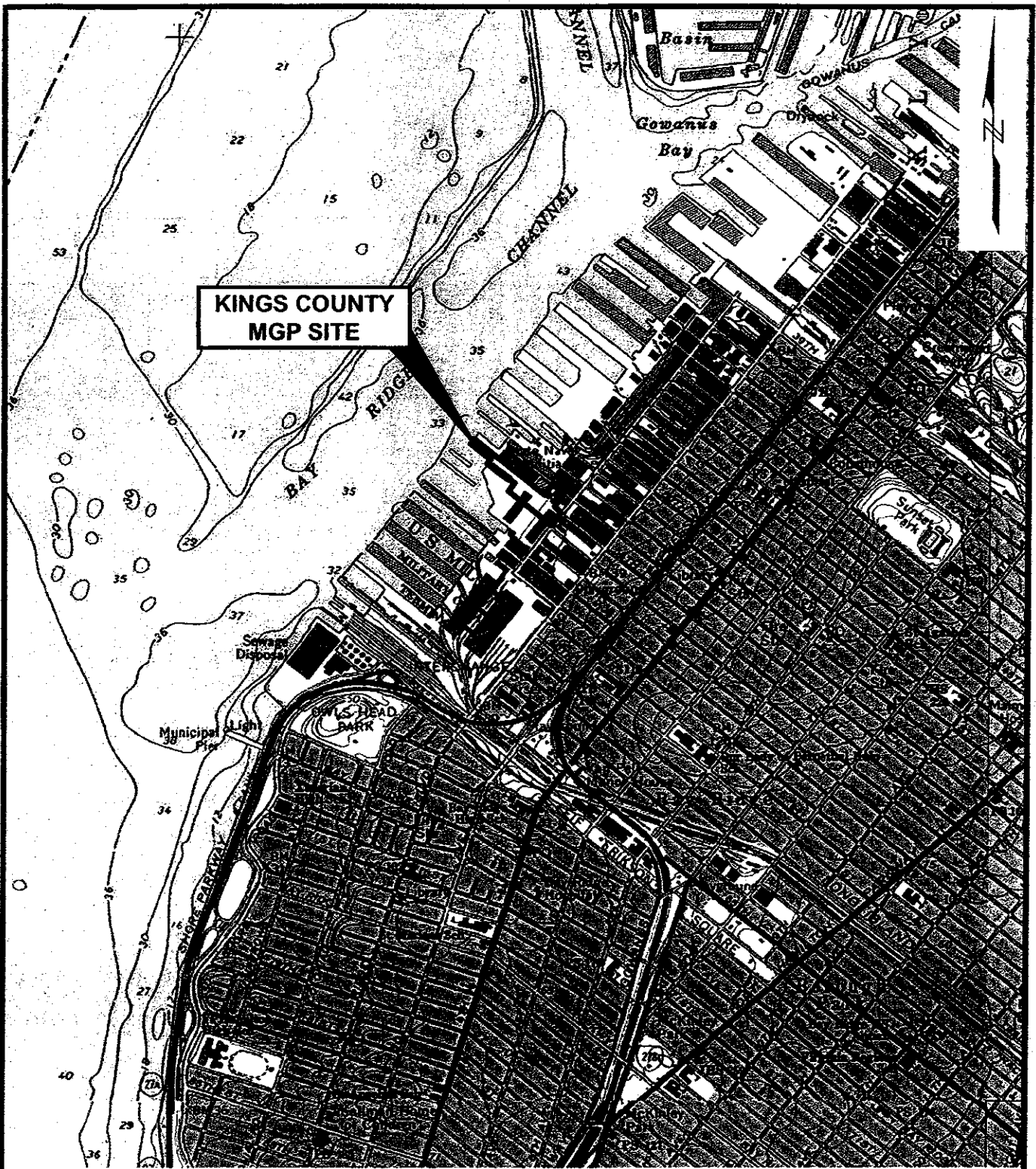


**SITE LOCATION MAP**

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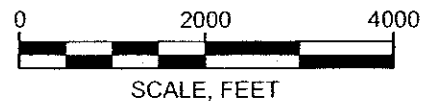
AUGUST 2004

FIGURE 1



**KINGS COUNTY  
MGP SITE**

SOURCE: Map created with TOPO!® ©2001 National Geographic  
(www.nationalgeographic.com/topo)



**NYSDEC BCP APPLICATION  
KINGS COUNTY WORKS MGP  
BROOKLYN, NEW YORK**

**KEYSPAN CORPORATION  
BROOKLYN, NEW YORK**

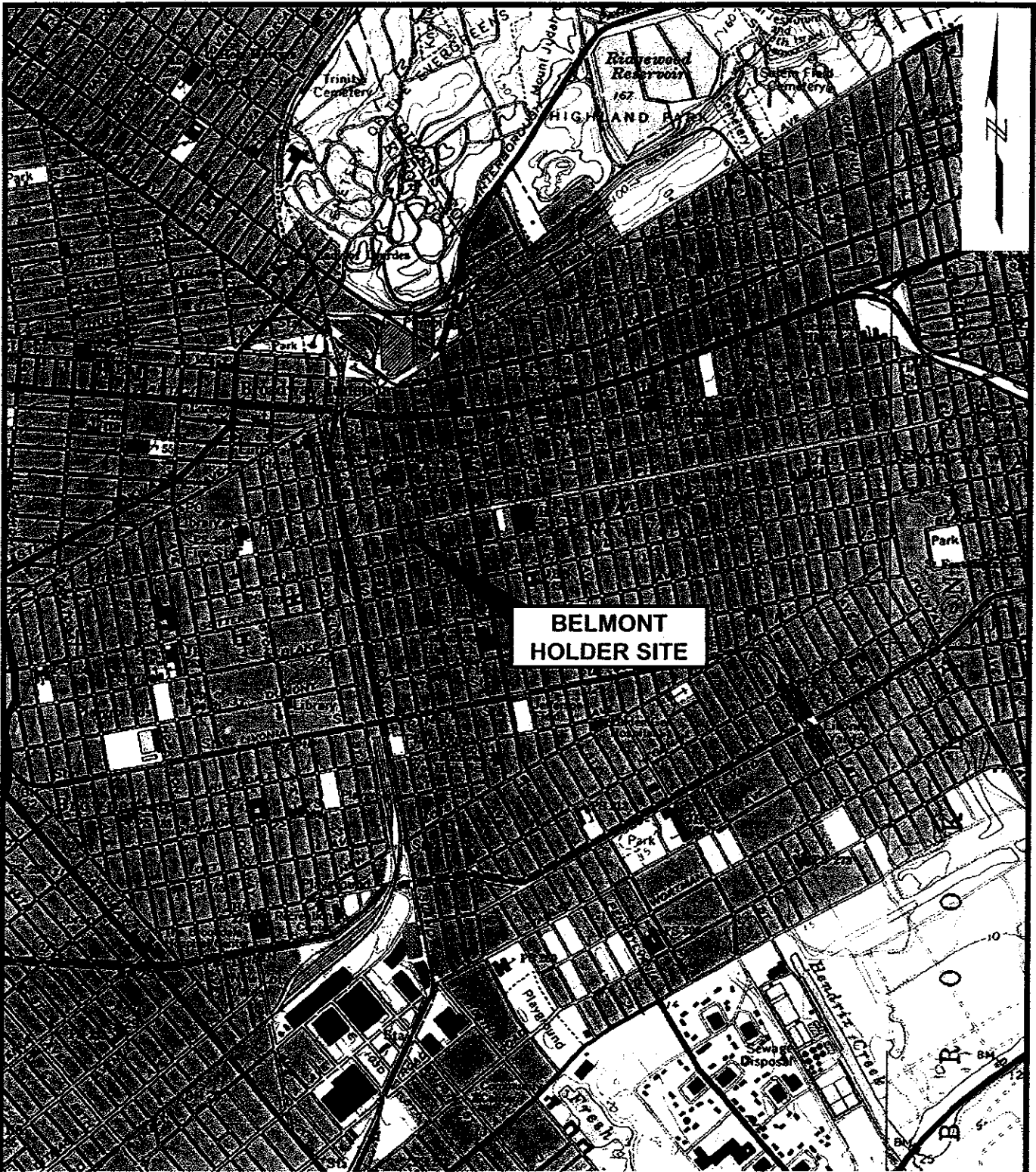


PROJECT 982482

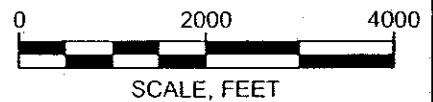
**SITE LOCATION MAP**

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO!® ©2001 National Geographic  
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION  
 BELMONT HOLDER STATION  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK

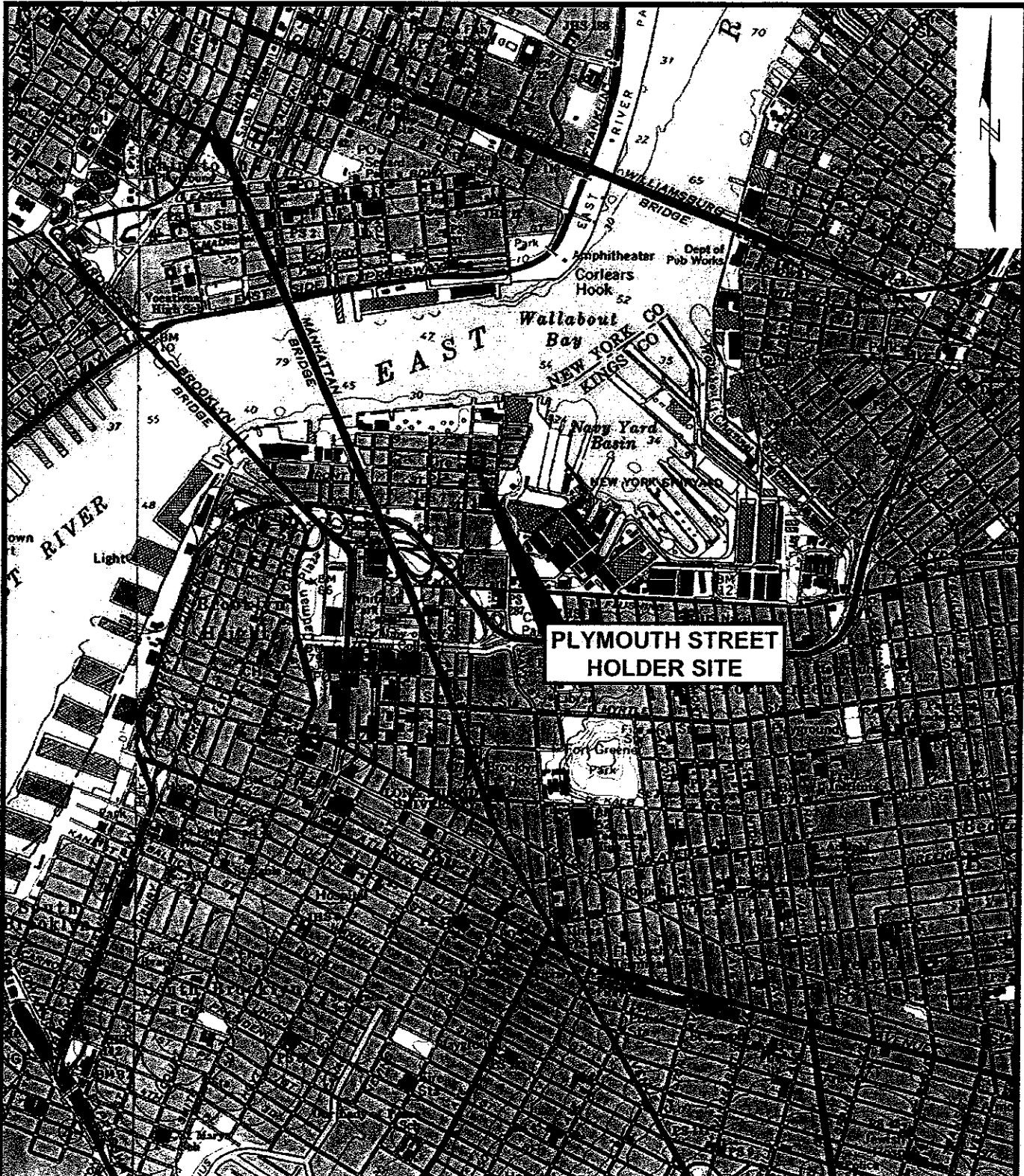


PROJECT 982482

SITE LOCATION MAP

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO! © 2001 National Geographic  
 (www.nationalgeographic.com/topo)



NYSDEC BCP APPLICATION  
 PLYMOUTH STREET HOLDER STATION  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK

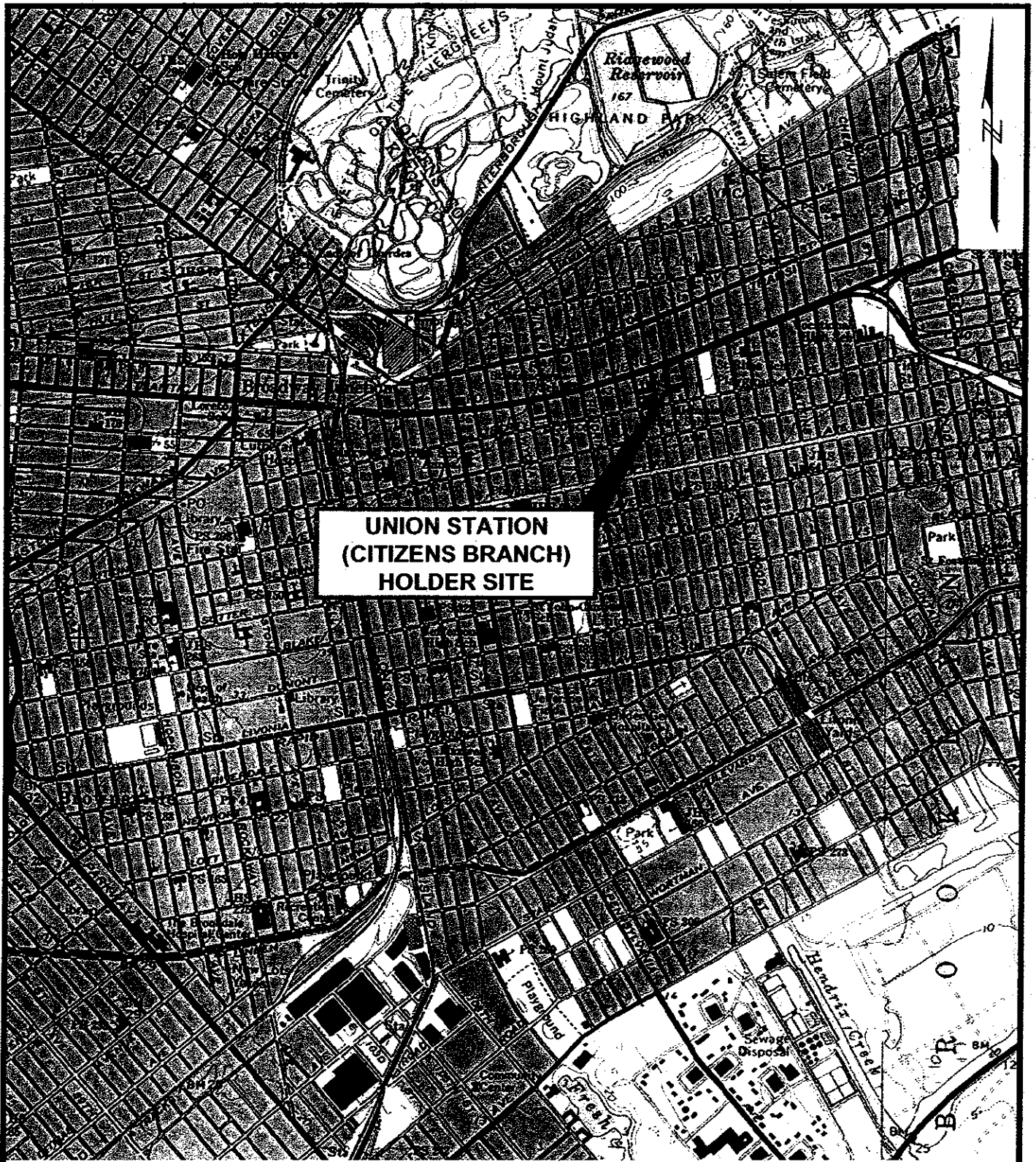


SITE LOCATION MAP

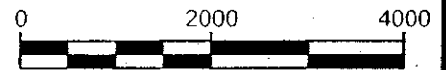
PROJECT 982482

AUGUST 2004

FIGURE 1



SOURCE: Map created with TOPO! © 2001 National Geographic  
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SCALE, FEET

NYSDEC BCP APPLICATION  
 UNION STATION (CITIZENS BRANCH) HOLDER STATION  
 BROOKLYN, NEW YORK

KEYSPAN CORPORATION  
 BROOKLYN, NEW YORK



SITE LOCATION MAP

PROJECT 982482

AUGUST 2004

FIGURE 1