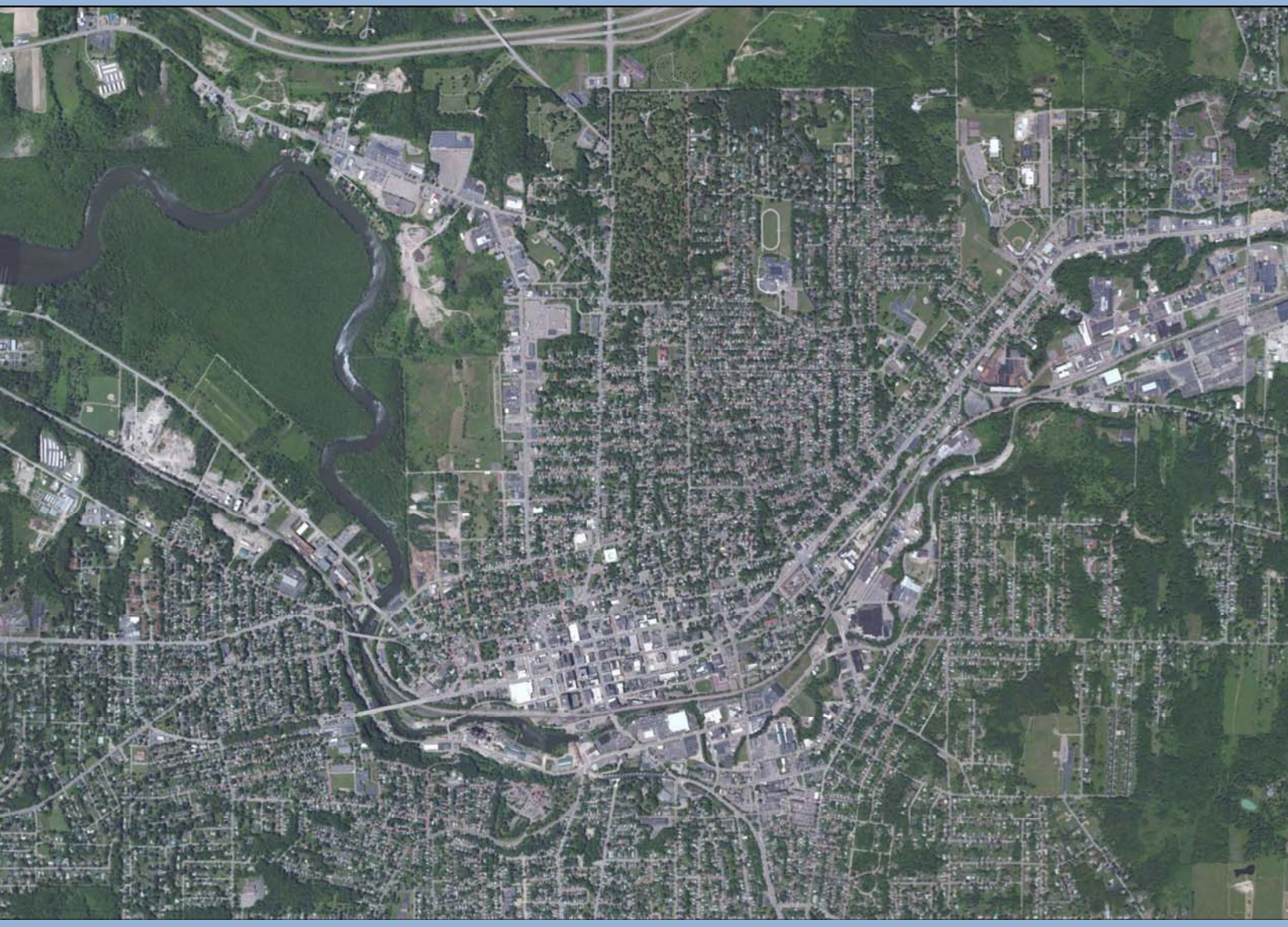


City of Jamestown

Local Waterfront Revitalization Program

Appendices

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DRAFT

LABELLA Associates, P.C. | Engineering Architecture Environmental Planning

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Biohabitats | W-ZHA, LLC | Goody Clancy | GPI | Harris Beach PLLC Attorneys at Law

APPENDICES

Appendix A: Consistency Law and Review Form

Appendix B: Guidelines for Notification and Review

Appendix C: Determination of Significance and Compliance with SEQR

APPENDIX A:
CONSISTENCY LAW AND REVIEW FORM

Appendix A

Chapter XXX. WATERFRONT REVITALIZATION

[HISTORY: Adopted by the City Council of the City of Jamestown as indicated in article histories. Amendments noted where applicable.]

Attachments: XXXa Waterfront Assessment Form

GENERAL REFERENCES

Chapter 57 – Parks, Recreation and Conservation Commission
Chapter 61 – Planning Commission
Chapter 68 – Public Works
Chapter 80 – Strategic Planning and Partnerships Commission
Chapter 135 – Environmental Quality Review
Chapter 145 – Flood Damage Prevention
Chapter 149 – Freshwater Wetlands
Chapter 193 – Parks and Public Lands
Chapter 215 – Property Rehabilitation and Conservation
Chapter 240 – Sewers
Chapter 252 – Streets and Sidewalks
Chapter 260 – Subdivision of Land
Chapter 280 – Trees and Shrubs
Chapter 300 - Zoning

Article I. Local Waterfront Revitalization Program
[Adopted DATE by Law Number]

§ XXX-1. Title.
This article will be known as the "City of Jamestown Local Waterfront Revitalization Program (LWRP) Consistency Review Law."

§ XXX-2. Authority and purpose.
A. This article is adopted under the authority of the Municipal Home Rule Law and the Waterfront Revitalization of Coastal Areas and Inland Waterways Act of the State of New York (Article 42 of the Executive Law).

B. The purpose of this article is to provide a framework for the agencies of the City of Jamestown (City) to incorporate the policies and purposes contained in the City of Jamestown Local Waterfront Revitalization Program (LWRP) when reviewing applications for actions or direct agency actions located within the waterfront area; and to ensure that such actions and direct actions undertaken by City agencies are consistent with the LWRP policies and purposes.

C. It is the intention of the City that the preservation, enhancement and utilization of the natural and manmade resources of the waterfront area of the City occur in a coordinated and comprehensive

manner to ensure a proper balance between protection of natural resources and the need to accommodate growth and economic development. Accordingly, this article is intended to achieve such a balance, permitting the beneficial use of waterfront resources while preventing: loss and degradation of living waterfront resources and wildlife; adverse impacts to historic structures; diminution of open space areas or public access to the waterfront; disruption of natural waterfront processes; impairment of scenic, cultural or historical resources; losses due to flooding, erosion and sedimentation; impairment of water quality; or permanent adverse changes to ecological systems.

D. The substantive provisions of this article shall only apply while there is in existence a City of Jamestown Local Waterfront Revitalization Program that has been adopted in accordance with Article 42 of the Executive Law of the State of New York.

§ XXX-3. Definitions.
As used in this article, the following terms shall have the meanings indicated:

ACTION
Includes all the following, except minor actions:

A. Projects or physical activities, such as construction or any other activities that may affect natural, manmade or other resources in the waterfront area or the environment by changing the use, appearance or condition of any resource or structure, that:

(1) Are directly undertaken by an agency; or
(2) Involve funding by an agency; or
(3) Require one or more new or modified approvals, permits, or review from an agency or agencies.

B. Agency planning and policymaking activities that may affect the environment and commit the agency to a definite course of future decisions;

C. Adoption of agency rules, regulations and procedures, including local laws, codes, ordinances, executive orders and resolutions that may affect waterfront resources or the environment; and

D. Any combination of the above.

AGENCY
Any Council, agency, department, office, other body, or officer of the City of Jamestown.

CODE ENFORCEMENT OFFICER
The Building Inspector and/or Code Enforcement Officer of the City of Jamestown.

CONSISTENT
The action will fully comply with the LWRP policy standards, conditions and objectives and, whenever practicable, will advance one or more of them.

DIRECT ACTIONS
Actions planned and proposed for implementation by an applicant or agency, such as, but not limited to, a capital project, rule making, procedure making and policy making.

ENVIRONMENT
The physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP)
The Local Waterfront Revitalization Program of the City of Jamestown, approved by the Secretary of State pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law Article 42), a copy of which is on file in the Office of the City Clerk of the City of Jamestown.

MINOR ACTION
Includes the following actions, which are not subject to review under this chapter:

A. Repaving or widening of existing paved highways not involving the addition of new travel lanes;
B. Street openings and right-of-way openings for the purpose of repair or maintenance of existing utility facilities;
C. Maintenance of existing landscaping or natural growth, except where threatened or endangered species of plants or animals are affected, or within Significant Coastal Fish and Wildlife Habitat areas;
D. Granting of individual setback and lot line variances, except in relation to a regulated natural feature or a bulkhead or other shoreline erosion protection structure;
E. Minor temporary uses of land having negligible or no permanent impact on waterfront resources or the environment;
F. Installation of traffic control devices on existing streets, roads and highways;
G. Mapping of existing roads, streets, highways, natural resources, land uses and ownership patterns;
H. Information collection including basic data collection and research, water quality and pollution studies, traffic counts, engineering studies, surveys, subsurface investigations and soils studies that do not commit the agency to undertake, fund or approve any action;
I. Official acts of a ministerial nature involving no exercise of discretion, including building permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building code;
J. Routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment;
K. Conducting concurrent environmental, engineering, economic, feasibility and other studies and preliminary planning and budgetary processes necessary to the formulation of a proposal for action, provided those activities do not commit the agency to commence, engage in or approve such action;
L. Collective bargaining activities;
M. Investments by or on behalf of agencies or pension or retirement systems, or refinancing existing debt;
N. Inspections and licensing activities relating to the qualifications of individuals or businesses to engage in their business or profession;
O. Purchase or sale of furnishings, equipment or supplies, including surplus government property, other than the following: land, radioactive material, pesticides, herbicides, storage of road de-icing substances, or other hazardous materials;

P. Adoption of regulations, policies, procedures and local legislative decisions in furtherance of any action on this list;
Q. Engaging in review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all requirements of this article have been fulfilled;
R. Civil or criminal enforcement proceedings, whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgment or order, or the exercise of prosecutorial discretion;
S. Adoption of a moratorium on land development or construction;
T. Interpreting an existing code, rule or regulation;
U. Designation of local landmarks or their inclusion within historic districts;
V. Emergency actions that are immediately necessary on a limited and temporary basis for the protection or preservation of life, health, property or natural resources, provided that such actions are directly related to the emergency and are performed to cause the least change or disturbance practicable, under the circumstances, to waterfront resources or the environment. Any decision to fund, approve or directly undertake other activities after the emergency has expired is fully subject to the review procedures of this article;
W. Local legislative decisions such as rezoning where the City of Jamestown determines the action will not be approved.

WATERFRONT ADVISORY COMMITTEE
The permanent committee within the City of Jamestown that is dedicated to review waterfront issues and advise the City Council on the same. The Shoreline Revitalization Committee is authorized to coordinate and make recommendations to City agencies regarding consistency reviews required under this article.

WATERFRONT AREA
That portion of Coastal Area as defined in Article 42 of the Executive Law that is located within the boundaries of the City of Jamestown, as shown on the coastal area map on file in the office of the Secretary of State, and as delineated in the City of Jamestown Local Waterfront Revitalization Program (LWRP).

WATERFRONT ASSESSMENT FORM (WAF)
The form used by an agency to assist in determining the consistency of an action with the Local Waterfront Revitalization Program.

§ XXX-4. Management and coordination of LWRP.

A. The City of Jamestown Shoreline Revitalization Committee (the "Committee") shall be responsible for coordinating review of actions in the City's waterfront area for consistency with the LWRP, and will advise, assist and make consistency recommendations to other City agencies in the implementation of the LWRP and its policies and projects, including physical, legislative, regulatory, administrative and other actions included in the program.

B. The Committee shall coordinate with the New York State Department of State regarding consistency review of actions by federal agencies and with state agencies regarding consistency review of their actions.

C. The Committee shall assist the City Council in making applications for funding from state, federal, or other sources to finance projects under the LWRP.

D. The Committee shall perform other functions regarding the waterfront area and direct such actions or projects as the City Council may deem appropriate, to implement the LWRP.

§ XXX-5. Review of actions.

A. Whenever a proposed action is located within the City's waterfront area, each City agency shall, prior to approving, funding or undertaking the action, make a determination that it is consistent with the LWRP policy standards summarized in Subsection I of this section. No action in the waterfront area shall be approved, funded or undertaken by that agency without such a determination of consistency.

B. Whenever a City agency receives an application for approval or funding of an action, or as early as possible in the agency's formulation of a direct action to be located in the waterfront area, the agency shall refer a copy of the completed WAF to the Committee within 10 days of its receipt. Prior to making its consistency determination, the agency shall consider the recommendation of the Committee with reference to the consistency of the proposed action.

C. After referral from an agency, the Committee shall consider whether the proposed action is consistent with the LWRP policy standards set forth in Subsection I of this section. The Committee shall require the applicant to submit all completed applications, WAFs, environmental assessment form (EAFs), and any other information deemed necessary to its consistency recommendation.

(1) The Committee shall render its written recommendation to the agency within 30 days following referral of the WAF from the agency, unless extended by mutual agreement of the Committee, the agency, and the applicant or, in the case of a direct action, the agency. The Committee's recommendation shall indicate whether the proposed action is consistent with or inconsistent with one or more of the LWRP policy standards and shall elaborate in writing the basis for its opinion. The Committee shall, along with a consistency recommendation, make any suggestions to the agency concerning modification of the proposed action, including the imposition of conditions, to make it consistent with LWRP policy standards or to greater advance them. In the event that the Committee's recommendation is not forthcoming within the specified time, the agency shall make its consistency decision without the benefit of the Committee's recommendation.

(2) The City shall maintain a file for each action made the subject of a consistency determination, including any recommendations received from the Committee. Such file shall be kept in the office of the Planning Division and made available for public inspection upon request.

D. If an action requires approval of more than one City agency, decision-making will be coordinated between the agencies to determine which agency will conduct the consistency review, and that agency will thereafter act as designated consistency review agency. Only one WAF per action will be prepared. If the agencies cannot agree, the City Council shall designate the consistency review agency.

E. Upon receipt of the Committee's recommendation, the agency shall consider whether the proposed action is consistent with the LWRP policy standards summarized in Subsection I of this section. The agency shall consider the Committee's consistency recommendation, the WAF, and other relevant information in making its written determination of consistency. No approval or

decision shall be issued for an action in the waterfront area without a written determination of consistency having first been rendered by a City agency.

F. The Zoning Board of Appeals is the designated agency for the determination of consistency for variance applications subject to this law. The Zoning Board of Appeals shall consider the written consistency recommendation of the Committee in the event and at the time it makes a decision to grant such a variance and shall impose appropriate conditions on the variance to make the activity consistent with the objectives of this law.

G. Where an Environmental Impact Statement (EIS) is being prepared or required, the draft EIS must identify applicable LWRP policies standards in Subsection I of this section, and include a discussion of the effects of the proposed action on such policy standards.

H. In the event the Committee's recommendation is that the action is inconsistent with the LWRP, and the agency makes a contrary determination of consistency, the agency shall elaborate in writing the basis for its disagreement with the recommendation and state the manner and extent to which the action is consistent with the LWRP policy standards.

I. Actions to be undertaken within the waterfront area shall be evaluated for consistency in accordance with the following summary of LWRP policy standards, which are derived from and further explained and described in Section 3 of the City of Jamestown LWRP, a copy of which is on file in the City Clerk's office and available for inspection during normal business hours. Agencies which undertake direct actions must also consult with Section IV in making their consistency determination. The action must be consistent with the policies to:

(1) Foster a pattern of development within the City of Jamestown’s Waterfront Revitalization Area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a waterfront location, and minimizes adverse effects of development. (LWRP Policy 1).

(2) Preserve historic resources within the City of Jamestown’s Waterfront Revitalization Area (LWRP Policy 2).

(3) Enhance visual quality and protect scenic resources throughout the City of Jamestown’s Waterfront Revitalization Area (LWRP Policy 3).

(4) Minimize loss of life, structures, and natural resources from flooding and erosion (LWRP Policy 4).

(5) Protect and improve water resources within the City of Jamestown’s Waterfront Revitalization Area (LWRP Policy 5).

(6) Protect and restore ecosystem quality and function within the City of Jamestown’s Waterfront Revitalization Area (LWRP Policy 6).

(7) Protect and improve air quality in the City of Jamestown’s Waterfront Revitalization Area (LWRP Policy 7).

(8) Minimize environmental degradation in the City of Jamestown’s Waterfront Revitalization Area from solid waste and hazardous substances and wastes (LWRP Policy 8).

(9) Provide for public access to, and recreational use of, the Chadakoin River, public lands, and public resources within the City of Jamestown’s Waterfront Revitalization Area (LWRP Policy 9).

(10) Protect the City of Jamestown's water-dependent uses and promote siting of new water-dependent uses in suitable locations (LWRP Policy 10).

(11) Promote sustainable use of living freshwater resources within the City of Jamestown's Waterfront Revitalization Area (LWRP Policy 11).

(12) Protect agricultural lands within the City of Jamestown's Waterfront Revitalization Area (LWRP Policy 12).

(13) Promote appropriate use and development of energy and mineral resources within the City of Jamestown's Waterfront Revitalization Area (LWRP Policy 13).

§ XXX-6. Enforcement.

No action within the City's waterfront area which is subject to review under this article shall proceed until a written determination has been issued from a City agency that the action is consistent with the City's LWRP policy standards. In the event that an activity is being performed in violation of this article or any conditions imposed thereby, the City Code Enforcement Officer shall issue a stop-work order and all work must immediately cease. No further work or activity shall be undertaken on the project so long as a stop-work order is in effect. The City Attorney, Code Enforcement Officer and Police Department shall be responsible for enforcing this article.

§ XXX-7. Penalties for offenses.

A. A person who violates any of the provisions of, or who fails to comply with any condition imposed by, this article shall have committed a violation punishable by a fine not exceeding $350 for a conviction of a first offense and punishable by a fine of $2,000 for a conviction of a second or subsequent offense. For the purpose of conferring jurisdiction upon courts and judicial officers, each week of continuing violation shall constitute a separate additional violation.

B. The City Attorney is authorized and directed to institute any and all actions and proceedings necessary to enforce this article. Any civil penalty shall be in addition to and not in lieu of any criminal prosecution and penalty. The City may also enforce this article by injunction or other civil proceeding.

§ XXX-8. Applicability.

This article shall supersede and repeal any previous local regulations regarding consistency with LWRP. This article shall take effect immediately upon its filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

§ XXX-9. Severability.

The provisions of this article are severable. If any provision of this article is found invalid, such finding shall not affect the validity of this article as a whole or any part or provision hereof other than the provision so found to be invalid.

XXX Attachment 1
City of Jamestown
Waterfront Assessment Form

A. INSTRUCTIONS (Please print or type all answers)

1. Applicants, or in the case of direct actions, City of Jamestown agencies, shall complete this WAF for proposed actions which are subject to the consistency review law. This assessment is intended to supplement other information used by the designated City agency in making a determination of consistency with the City of Jamestown Local Waterfront Revitalization Program.

2. Before answering the questions in Section C, the preparer of this form should review the policies and explanations of policy contained in the Local Waterfront Revitalization Program (LWRP), a copy of which is on file in the City Department of Development office. A proposed action should be evaluated as to its significant beneficial and adverse effects upon the waterfront area.

3. If any questions in Section C on this form are answered "yes", then the proposed action may affect the achievement of the LWRP policy standards contained in the consistency review law. Thus, the action should be analyzed in more detail and, if necessary, modified prior to making a determination regarding its consistency with the LWRP policy standards. If an action cannot be certified as consistent with the LWRP policy standards, it shall not be undertaken.

4 This form should be filled out by the applicant and submitted to the City of Jamestown Department of Development.

B. DESCRIPTION OF SITE AND PROPOSED ACTION

1. Type of City of Jamestown agency action (check appropriate response):
   (a) Directly undertaken (e.g. capital construction, planning activity, agency regulation, land transaction) _____
   (b) Financial assistance (e.g. grant, loan, subsidy) _____
   (c) Permit, approval, license, certification _____
   (d) Agency undertaking action _____
2. Describe nature and extent of action: _____
_____
_____
_____
3. Location of action (Street or Site Description. Please include the parcel(s) tax map number(s)):_____
_____
4. Size of site: _____
5. Present land use: _____
6. Present zoning classification: _____
7. Describe any unique or unusual landforms on the project site (i.e. bluffs, wetlands, ground depressions, other geological formations): _____
_____
_____
_____
_____
8. Percentage of site which contains slopes of 15% or greater: _____

9. Streams, lakes, ponds or wetlands existing within or continuous to the project area?

(a) Name _____

(b) Size (in acres) _____

10. Is the property serviced by public water? Yes _____ No _____

11. Is the property serviced by public sewer? Yes _____ No _____

12. If an application for the proposed action has been filed with the City of Jamestown agency, the following information shall be provided:

(a) Name of applicant: _____

(b) Mailing address: _____

(c) Telephone number: Area Code ( ) _____

(d) Application number, if any: _____

(e) Property tax number: _____

(Please attach copy of tax map with parcel highlighted)

13. Will the action be directly undertaken, require funding, or approval by a State or federal agency? Yes _____ No _____

If yes, which State or federal agency? _____

_____

C WATERFRONT ASSESSMENT (Check either "Yes" or "No" for each of the following questions)

1. Will the proposed action be located in, or contiguous to, or have a potentially adverse effect upon any of the resource areas identified on the waterfront area map? ___ ___

(a) Significant fish or wildlife habitats? ___ ___

(b) Scenic resources of local or statewide significance? ___ ___

(c) Important agricultural lands? ___ ___

(d) Natural protective features in an erosion hazard area ___ ___

If the answer to any question above is yes, please explain in Section D any measures which will be undertaken to mitigate any adverse effects.

2. Will the proposed action have a significant effect upon: YES NO

(a) Commercial or recreational use of fish and wildlife resources? ___ ___

(b) Scenic quality of the waterfront environment? ___ ___

(c) Development of future, or existing water dependent uses? ___ ___

(d) Stability of the shoreline? ___ ___

(e) Surface or groundwater quality? ___ ___

(f) Existing or potential public recreation opportunities? ____ ___

(g) Structures, sites or districts of historic, archeological or cultural significance to the City of Jamestown State or nation? ___ ___

3. Will the proposed action involve or result in any of the following: YES NO

(a) Physical alteration of land along the shoreline, land under water or coastal waters? ___ ___

(b) Physical alteration of two (2) acres or more of land located elsewhere in the waterfront area? ___ ___

(c) Expansion of existing public services or infrastructure in undeveloped or low density areas of the coastal area? ___ ___

(d) Energy facility not subject to Article VII or VIII of the Public Service Law? ___ ___

(e) Mining, excavation, filling or dredging in waterfront waters? ___ ___

(f) Reduction of existing or potential public access to or along the shore? ___ ___

(g) Sale or change in use of publicly-owned lands located on the shoreline or underwater? ___ ___

(h) Development within a designated floor or erosion hazard area? ___ ___

(i) Development on a beach, dune, barrier island or other natural feature that provides protection against flooding or erosion? ___ ___

(j) Construction or reconstruction of erosion protective structures? ___ ___

(k) Diminished surface or groundwater quality? ___ ___

(l) Removal of ground cover from the site? ___ ___

4. PROJECT

(a) If a project is to be located adjacent to shore: YES NO

(1) Will water-related recreation be provided? ___ ___

(2) Will public access to the foreshore be provided? ___ ___

(3) Does the project require a waterfront site? ___ ___

(4) Will it supplant a recreational or maritime use? ___ ___

(5) Do essential public services and facilities presently exist at or near the site? ___ ___

(6) Is it located in a flood prone area? ___ ___

(7) Is it located in an area of high erosion? ___ ___

(b) If the project site is publicly owned: YES NO

(1) Will the project protect, maintain and/or increase the level and types of public access to water-related recreation resources and facilities? ___ ___

(2) If located in the foreshore, will access to those and adjacent lands be provided? ___ ___

(3) Will it involve the siting and construction of major energy facilities? ___ ___

(4) Will it involve the discharge of effluents from major steam electric generating and industrial facilities into waterfront facilities? ___ ___

(c) Is the project site presently used by the community YES NO neighborhood as an open space or recreation area? ___ ___

(d) Does the present site offer or include scenic views or vistas known to be important to the community? ___ ___

(e) Is the project site presently used for commercial fishing or fish processing? ___ ___

(f) Will the surface area of any waterways or wetland areas be increased or decreased by the proposal? ___ ___

(g) Does any mature forest (over 100 years old) or other locally important vegetation exist on this site which will be removed by the project? ___ ___

(h) Will the project involve any waste discharges into coastal waters? ___ ___

(i) Does the project involve surface or subsurface liquid waste disposal? ___ ___

(j) Does the project involve transport, storage, treatment or disposal of solid waste or hazardous materials? ___ ___

(k) Does the project involve shipment or storage of petroleum products? ___ ___

(l) Does the project involve discharge of toxics, hazardous substances or other pollutants into coastal waters? ___ ___

(m) Does the project involve or change existing ice management practices? ___ ___

(n) Will the project affect any area designated as a tidal or freshwater wetland? ___ ___

(o) Will the project alter drainage flow, patterns or surface water runoff on or from the site? ___ ___

(p) Will best management practices be utilized to control storm water runoff into coastal waters? ___ ___

(q) Will the project utilize or affect the quality or quantity of sole source or surface water supplies? ___ ___

(r) Will the project cause emissions which exceed federal or state air quality standards or generate significant amounts of nitrates or sulfates? ___ ___

D. REMARKS OR ADDITIONAL INFORMATION (Add any additional sheets necessary to complete this form)

_____
_____
_____
_____

Preparer's Name (Please print) :_____
Title: _____
Agency: _____
Telephone Number: (_____)_____
Date: _____

If assistance or further information is needed to complete this form, please contact the Jamestown Department of Development at (716) 483-7541.

APPENDIX B:
GUIDELINES FOR NOTIFICATION AND REVIEW

Appendix B - Guidelines for Notification and Review

New York State Coastal Management Program - Guidelines for Notification and Review of State Agency Actions Where Local Waterfront Revitalization Programs are in Effect

I. PURPOSES OF GUIDELINES

A. The Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Article 42 of the Executive Law) and the Department of State's regulations (19 NYCRR Part 600) require certain state agency actions identified by the Secretary of State to be consistent to the maximum extent practicable with the policies and purposes of approved Local Waterfront Revitalization Programs (LWRPs). These guidelines are intended to assist state agencies in meeting that statutory consistency obligation.

B. The Act also requires that state agencies provide timely notice to the situs local government whenever an identified action will occur within an area covered by an approved LWRP. These guidelines describe a process for complying with this notification requirement. They also provide procedures to assist local governments in carrying out their review responsibilities in a timely manner.

C. The Secretary of State is required by the Act to confer with state agencies and local governments when notified by a local government that a proposed state agency action may conflict with the policies and purposes of its approved LWRP. These guidelines establish a procedure for resolving such conflicts.

II. DEFINITIONS

A. Action means:
   1. A "Type 1" or "Unlisted" action as defined by the State Environmental Quality Review Act (SEQRA);
   2. Occurring within the boundaries of an approved LWRP; and
   3. Being taken pursuant to a state agency program or activity which has been identified by the Secretary of State as likely to affect the policies and purposes of the LWRP.

B. Consistent to the maximum extent practicable means that an action will not substantially hinder the achievement of any of the policies and purposes of an approved LWRP and, whenever practicable, will advance one or more of such policies. If an action will substantially hinder any of the policies or purposes of an approved LWRP, then the action must be one:
   1. For which no reasonable alternatives exist that would avoid or overcome any substantial hindrance;
   2. That will minimize all adverse effects on the policies or purposes of the LWRP to the maximum extent practicable; and

3. That will result in an overriding regional or statewide public benefit.

C. Local Waterfront Revitalization Program or LWRP means a program prepared and adopted by a local government and approved by the Secretary of State pursuant to Executive Law, Article 42; which program contains policies on the management of land, water and man-made resources, proposed land uses and specific projects that are essential to program implementation.

III. NOTIFICATION PROCEDURE

A. When a state agency is considering an action as described in II above, the state agency shall notify the affected local government.

B. Notification of a proposed action by a state agency:
   1. Shall fully describe the nature and location of the action;
   2. Shall be accomplished by use of either the State Clearinghouse, other existing state agency notification procedures, or through an alternative procedure agreed upon by the state agency and local government;
   3. Should be provided to the local official identified in the LWRP of the situs local government as early in the planning stages of the action as possible, but in any event at least 30 days prior to the agency's decision on the action. (The timely filing of a copy of a completed Coastal Assessment Form with the local LWRP official should be considered adequate notification of a proposed action.)

C. If the proposed action will require the preparation of a draft environmental impact statement, the filing of this draft document with the chief executive officer can serve as the state agency's notification to the situs local government.

IV. LOCAL GOVERNMENT REVIEW PROCEDURE

A. Upon receipt of notification from a state agency, the situs local government will be responsible for evaluating a proposed action against the policies and purposes of its approved LWRP. Upon request of the local official identified in the LWRP, the state agency should promptly provide the situs local government with whatever additional information is available which will assist the situs local government to evaluate the proposed action.

B. If the situs local government cannot identify any conflicts between the proposed action and the applicable policies and purposes of its approved LWRP, it should inform the state agency in writing of its finding. Upon receipt of the local government's finding, the state agency may proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.

C. If the situs local government does not notify the state agency in writing of its finding within the established review period, the state agency may then presume that the proposed action does not conflict with the policies and purposes of the municipality's approved LWRP.

D. If the situs local government notifies the state agency in writing that the proposed action does conflict with the policies and/or purposes of its approved LWRP, the state agency shall not

proceed with its consideration of, or decision on, the proposed action as long as the Resolution of Conflicts procedure established in V below shall apply. The local government shall forward a copy of the identified conflicts to the Secretary of State at the time when the state agency is notified. In notifying the state agency, the local government shall identify the specific policies and purposes of the LWRP with which the proposed action conflicts.

V. RESOLUTION OF CONFLICTS

A. The following procedure applies whenever a local government has notified the Secretary of State and state agency that a proposed action conflicts with the policies and purposes of its approved LWRP:
    1. Upon receipt of notification from a local government that a proposed action conflicts with its approved LWRP, the state agency should contact the local LWRP official to discuss the content of the identified conflicts and the means for resolving them. A meeting of state agency and local government representatives may be necessary to discuss and resolve the identified conflicts. This discussion should take place within 30 days of the receipt of a conflict notification from the local government.
    2. If the discussion between the situs local government and the state agency results in the resolution of the identified conflicts, then, within seven days of the discussion, the situs local government shall notify the state agency in writing, with a copy forwarded to the Secretary of State, that all of the identified conflicts have been resolved. The state agency can then proceed with its consideration of the proposed action in accordance with 19 NYCRR Part 600.
    3. If the consultation between the situs local government and the state agency does not lead to the resolution of the identified conflicts, either party may request, in writing, the assistance of the Secretary of State to resolve any or all of the identified conflicts. This request must be received by the Secretary within 15 days following the discussion between the situs local government and the state agency. The party requesting the assistance of the Secretary of State shall forward a copy of their request to the other party.
    4. Within 30 days following the receipt of a request for assistance, the Secretary or a Department of State official or employee designated by the Secretary, will discuss the identified conflicts and circumstances preventing their resolution with appropriate representatives from the state agency and situs local government.
    5. If agreement among all parties cannot be reached during this discussion, the Secretary shall, within 15 days, notify both parties of his/her findings and recommendations.
    6. The state agency shall not proceed with its consideration of, or decision on, the proposed action as long as the foregoing Resolution of Conflicts procedures shall apply.

Procedural Guidelines for Coordinating NYS Department of State (DOS) & LWRP Consistency Review of Federal Agency Actions

I. DIRECT ACTIONS

A. After acknowledging the receipt of a consistency determination and supporting documentation from a federal agency, DOS will forward copies of the determination and other descriptive information on the proposed direct action to the program coordinator (of an approved LWRP) and other interested parties.

B. This notification will indicate the date by which all comments and recommendations must be submitted to DOS and will identify the Department's principal reviewer for the proposed action.

C. The review period will be about twenty-five (25) days. If comments and recommendations are not received by the date indicated in the notification, DOS will presume that the municipality has "no opinion" on the consistency of the proposed direct federal agency action with local coastal policies.

D. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the municipality to discuss any differences of opinion or questions prior to agreeing or disagreeing with the federal agency's consistency determination on the proposed direct action.

E. A copy of DOS' "agreement" or "disagreement" letter to the federal agency will be forwarded to the local program coordinator.

II. PERMIT AND LICENSE ACTIONS

A. DOS will acknowledge the receipt of an applicant's consistency certification and application materials. At that time, DOS will forward a copy of the submitted documentation to the program coordinator than will identify the Department's principal reviewer for the proposed action.

B. Within thirty (30) days of receiving such information, the program coordinator will contact the principal reviewer for DOS to discuss: (a) the need to request additional information for review purposes; and (b) any possible problems pertaining to the consistency of a proposed action with local coastal policies.

C. When DOS and the program coordinator agree that additional information is necessary, DOS will request the applicant to provide the information. A copy of this information will be provided to the program coordinator upon receipt.

D. Within thirty (30) days of receiving the requested additional information or discussing possible problems of a proposed action with the principal reviewer for DOS, whichever is later, the program coordinator will notify DOS of the reasons why a proposed action may be inconsistent or consistent with local coastal policies.

E. After the notification, the program coordinator will submit the municipality's written comments and recommendations on a proposed permit action to DOS before or at the conclusion of the official public comment period. If such comments and recommendations are not forwarded to DOS by the end of the public comment period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed action with local coastal policies.

F. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality on a proposed permit action, DOS will contact the program coordinator to discuss any differences of opinion prior to issuing a letter of "concurrence" or "objection" letter to the applicant.

G. A copy of DOS' "concurrence" or "objective" letter to the applicant will be forwarded to the program coordinator.

III. FINANCIAL ASSISTANCE ACTIONS

A. Upon receiving notification of a proposed federal financial assistance action, DOS will request information on the action from the applicant for consistency review purposes. As appropriate, DOS will also request the applicant to provide a copy of the application documentation to the program coordinator. A copy of this letter will be forwarded to the coordinator and will serve as notification that the proposed action may be subject to review.

B. DOS will acknowledge the receipt of the requested information and provide a copy of this acknowledgement to the program coordinator. DOS may, at this time, request the applicant to submit additional information for review purposes.

C. The review period will conclude thirty (30) days after the date on DOS' letter of acknowledgement or the receipt of requested additional information, whichever is later. The review period may be extended for major financial assistance actions.

D. The program coordinator must submit the municipality's comments and recommendations on the proposed action to DOS within twenty days (or other time agreed to by DOS and the program coordinator) from the start of the review period. If comments and recommendations are not received within this period, DOS will presume that the municipality has "no opinion" on the consistency of the proposed financial assistance action with local coastal policies.

E. If DOS does not fully concur with and/or has any questions on the comments and recommendations submitted by the municipality, DOS will contact the program coordinator to discuss any differences of opinion or questions prior to notifying the applicant of DOS' consistency decision.

F. A copy of DOS' consistency decision letter to the applicant will be forwarded to the program coordinator.

APPENDIX C:
DETERMINATION OF SIGNIFICANCE AND COMPLIANCE WITH SEQR

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Division of Fish, Wildlife & Marine Resources
625 Broadway, 5th Floor, Albany, New York 12233-4757
Phone: (518) 402-8935 • **Fax:** (518) 402-8925
Website: www.dec.ny.gov

Joe Martens
Commissioner

June 7, 2012

Kevin Grieser
Biohabitats
Great Lakes Bioregion
2026 Murray Hill Rd, Rm 102
Cleveland, Ohio 44106

Dear Mr. Grieser:

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 Two Study Areas, as indicated on the maps you provided, located in the Town of Jamestown, Chautauqua County, New York State. Jefferson County.

Enclosed is a report of rare or state-listed animals and plants, significant natural communities, and other significant habitats, which our databases indicate occur, or may occur, on your site or in the immediate vicinity of your site. For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment.

The enclosed report may be included in documents that will be available to the public. However, any enclosed maps displaying locations of rare species are considered sensitive information, and are intended only for the internal use of the recipient; they should not be included in any document that will be made available to the public, without permission from the New York Natural Heritage Program.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and 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, as listed at www.dec.ny.gov/about/39381.ht ml.

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.

Sincerely,

Jean Pietrusiak, Information Services
NYS Department Environmental Conservation

Enc.
Cc: Reg 9, Wildlife Mgr.

513

— Both Study Areas

Natural Heritage Report on Rare Species and Ecological Communities

NY Natural Heritage Program, NYS DEC, 625 Broadway, 5th Floor,
Albany, NY 12233-4757
(518) 402-8935

~The Information in this report includes only records entered into the NY Natural Heritage databases as of the date of the report. This report is not a definitive statement on the presence or absence of all rare species or significant natural communities at or in the vicinity of this site.
~Refer to the User's Guide for explanations of codes, ranks and fields.
~Location maps for certain species and communities may not be provided 1) if the species is vulnerable to disturbance, 2) if the location and/or extent is not precisely known, 3) if the location and/or extent is too large to display, and/or 4) if the animal is listed as Endangered or Threatened by New York State.

Natural Heritage Report on Rare Species and Ecological Communities

REPTILES

Apalone spinifera

Office Use 11131

Spiny Softshell

NY Legal Status:	Special Concern	**NYS Rank:**	S2S3 - Imperiled
Federal Listing:		**Global Rank:**	G5 - Secure
Last Report:	2003-06-15?	**EO Rank:**	Excellent, Good or Fair
County:	Chautauqua		
Town:	Ellicott, Jamestown - City		
Location:	At, or in the vicinity of, the project site.		
General Quality and Habitat:	**For information on the population at this location and management considerations, please contact the NYS DEC Regional Wildlife Manager for the Region where the project is located.		

1 Records Processed

More detailed information about many of the rare and listed animals and plants in New York, including biology, identification, habitat, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org, from NatureServe Explorer at http://www.natureserve.org/explorer, from NYSDEC at http://www.dec.ny.gov/animals/7494.html (for animals), and from USDA's Plants Database at http://plants.usda.gov/index.html (for plants).

More detailed information about many of the natural community types in New York, including identification, dominant and characteristic vegetation, distribution, conservation, and management, is available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org. For descriptions of all community types, go to http://www.dec.ny.gov/animals/29384.html and click on Draft Ecological Communities of New York State.

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
http://www.fws.gov/northeast/nyfo

Project Number: 80571

To: Kevin Grieser Date: Jun 13, 2012

Regarding: Brownfield Opportunity Area and Local Waterfront Revitalization Program

Town/County: City of Jamestown / Chautauqua County

The U.S. Fish and Wildlife Service (Service) New York Field Office has received your request for information regarding occurrences of Federally-listed or proposed threatened and endangered species within the vicinity of the above-referenced project/property. In an effort to streamline project reviews, we have shifted our species list request responses to our website at http://www.fws.gov/northeast/nyfo/es/section7.htm. Please go to our website and print the appropriate portions of our county list of endangered, threatened, proposed, and candidate species, and the official list request response for your files. Step-by-step instructions are also found on our website.

As a reminder, Section 9 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) prohibits unauthorized taking* of listed species and applies to Federal and non-Federal activities. Additionally, Section 7(a)(2) of the ESA 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 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.

Project construction or implementation should not commence until all requirements of the ESA have been fulfilled. If you have any questions or require further assistance regarding threatened or endangered species, please contact the Endangered Species Program at (607) 753-9334. Please refer to the above project number in any future correspondence.

Endangered Species Biologist: Sandie Doran Sandie Doran

*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.

Chautauqua 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
Bald eagle[1]	*Haliaeetus leucocephalus*	D
Clubshell	*Pleurobema clava*	E
Rayed bean	*Villosa fabalis*	E

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

[1] The bald eagle was delisted on August 8, 2007. While there are no ESA requirements for bald eagles after this date, the eagles continue to receive protection under the Bald and Golden Eagle Protection Act (BGEPA). Please follow the Service's May 2007 Bald Eagle Management Guidelines to determine whether you can avoid impacts under the BGEPA for your projects. If you have any questions, please contact the endangered species branch in our office.

Information current as of: 6/25/2012

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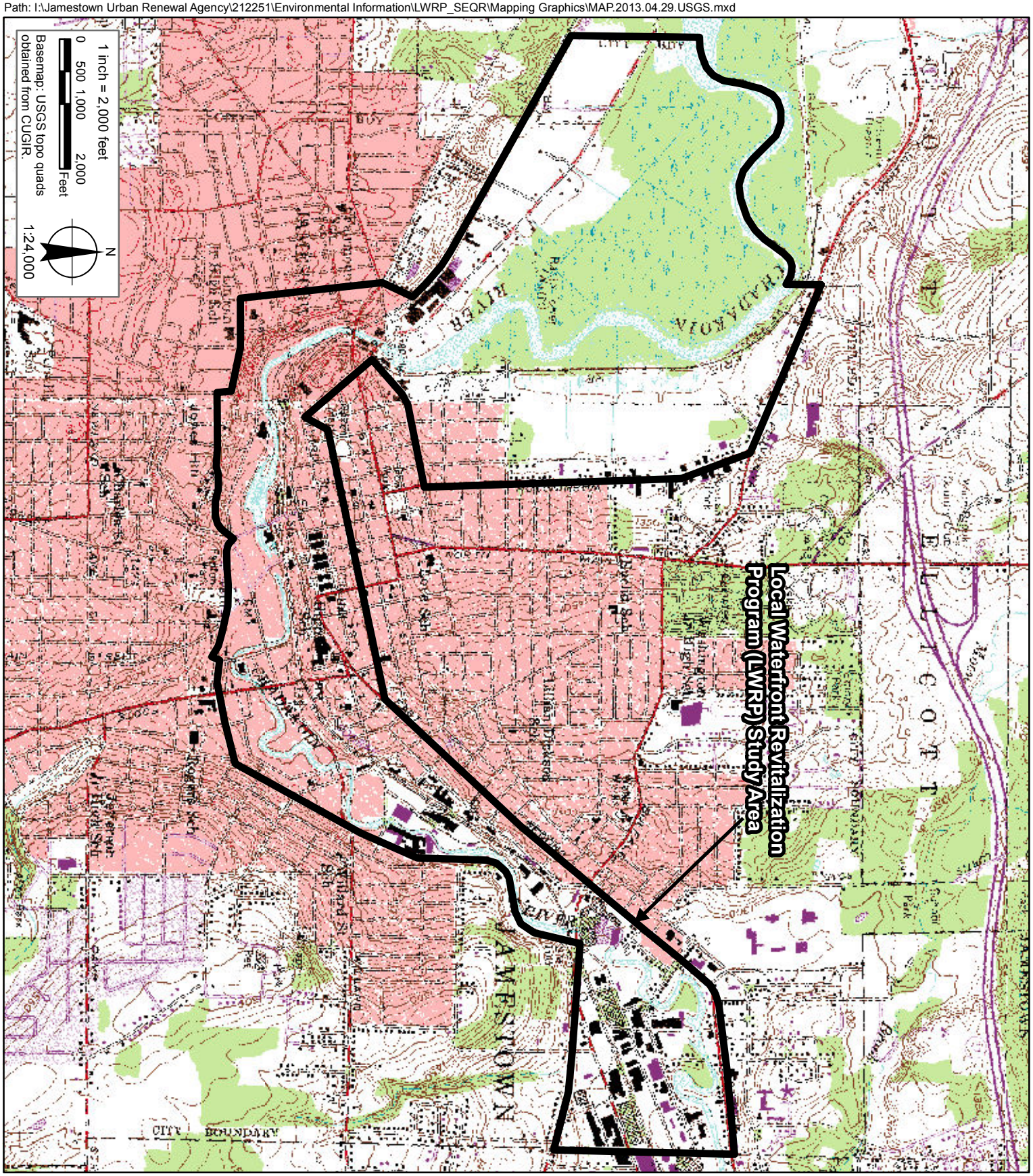


FIGURE 1

212251

PROJECT/DRAWING NUMBER

DRAWING TITLE

USGS LOCATION MAP LAKEWOOD AND JAMESTOWN QUADS

ISSUED FOR: REVIEW

DATE: APRIL 2013

DESIGNED BY: RCN

DRAWN BY: KMN

REVIEWED BY: DR

PROJECT/CLIENT

CITY OF JAMESTOWN

LOCAL WATERFRONT REVITALIZATION PROGRAM PROJECT

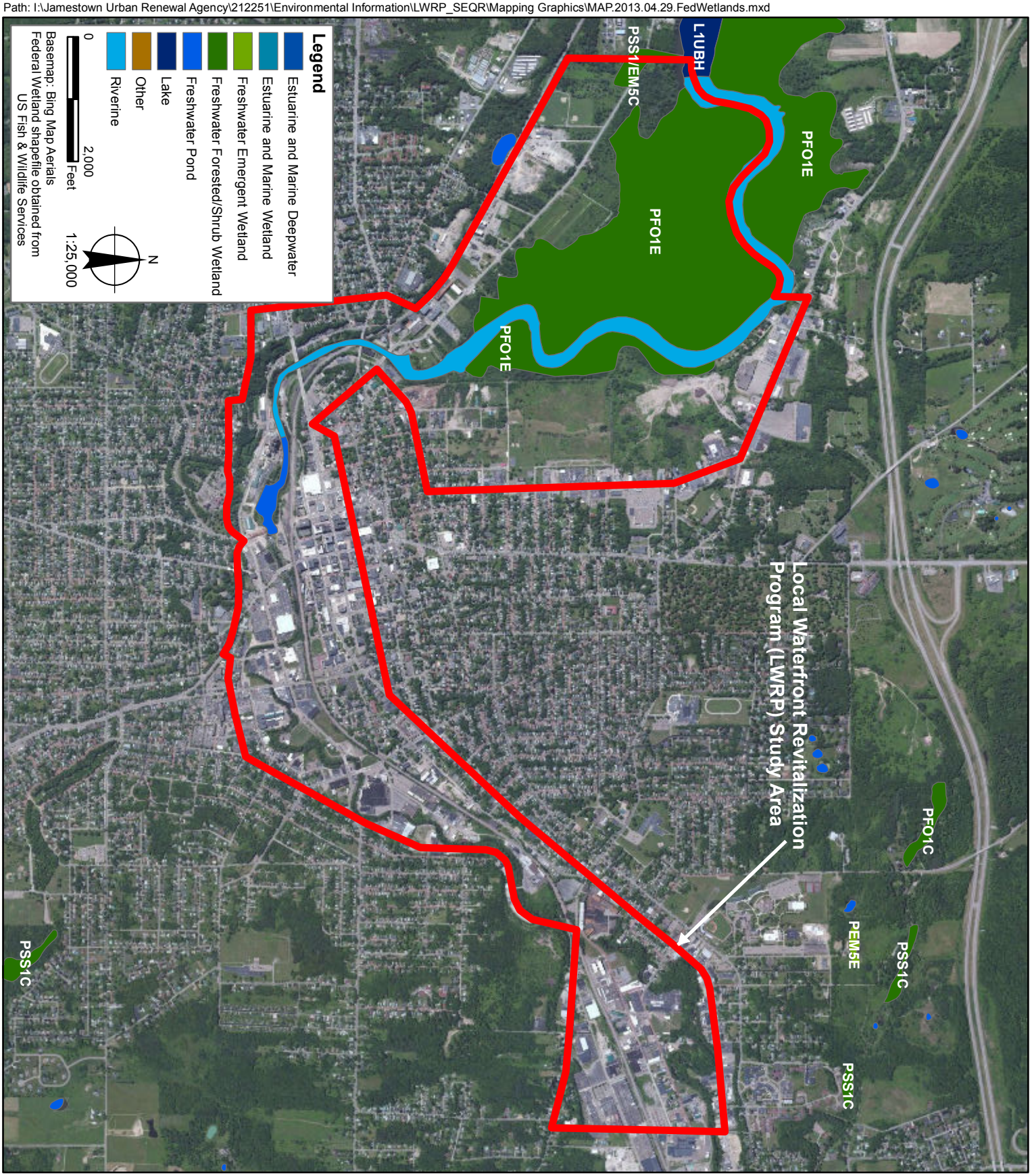
LABELLA Associates, P.C.

300 PEARL STREET
BUFFALO, NY 14202
P: (716) 551-6281
F: (716) 551-6282

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PROJECT/DRAWING NUMBER

212251

FIGURE 2

DRAWING TITLE

FEDERAL WETLAND MAP

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DATE: APRIL 2013

DESIGNED BY: RCN

DRAWN BY: KMN

REVIEWED BY: DR

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BUFFALO, NY 14202
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F: (716) 551-6282

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FIGURE 3

212251

PROJECT/DRAWING NUMBER

DRAWING TITLE

STATE WETLAND MAP

ISSUED FOR: REVIEW

DATE: APRIL 2013

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BUFFALO, NY 14202
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FIGURE 4

212251

PROJECT/DRAWING NUMBER

DRAWING TITLE

FEMA FLOOD ZONE MAP

ISSUED FOR: REVIEW

DATE: MAY 2013

DESIGNED BY: RCN

DRAWN BY: KMN

REVIEWED BY: DR

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300 PEARL STREET
BUFFALO, NY 14202
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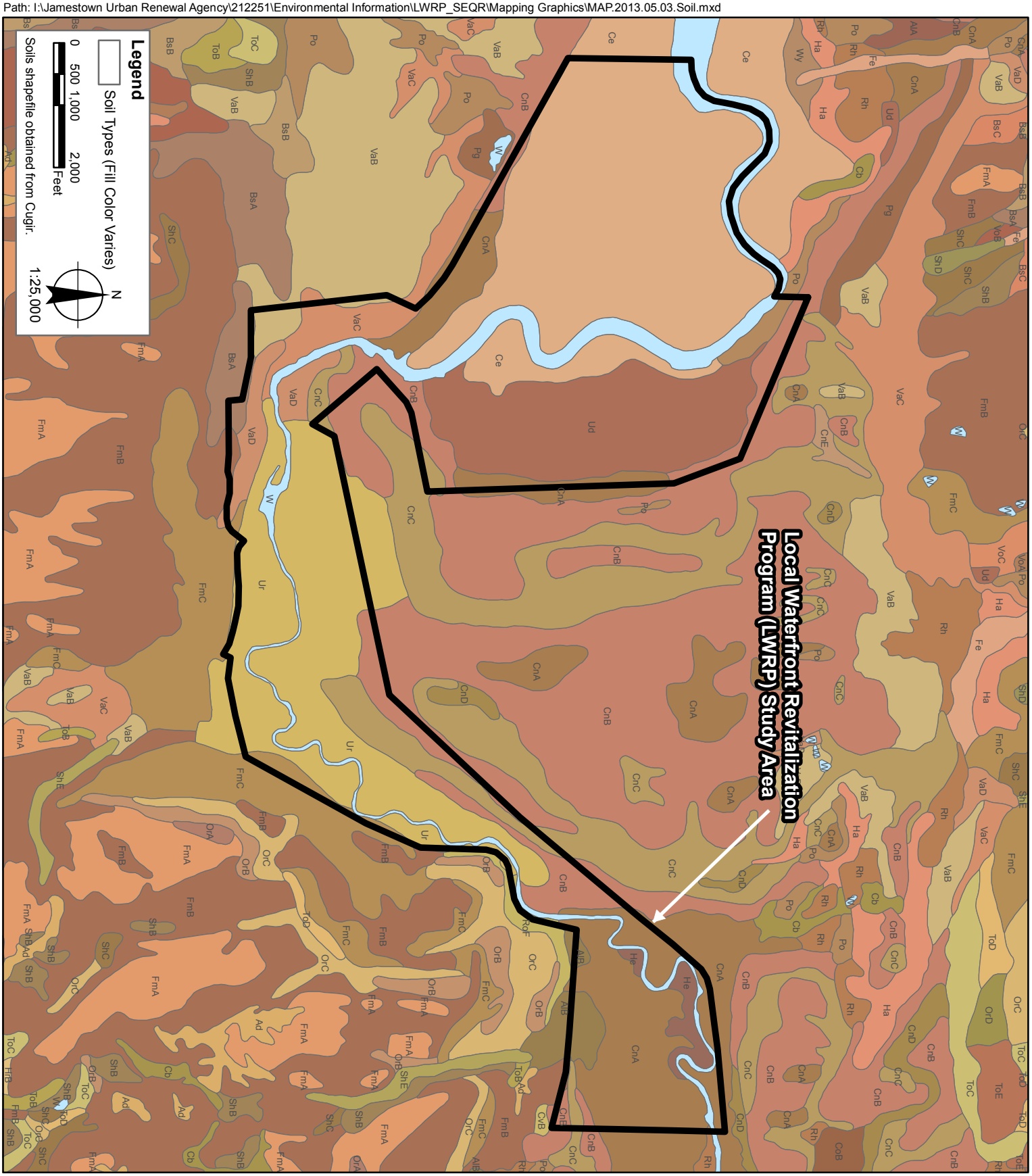


FIGURE 5

212251

PROJECT/DRAWING NUMBER

DRAWING TITLE

SOILS MAP

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DATE: MAY 2013

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300 PEARL STREET
BUFFALO, NY 14202
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FIGURE 6

212251

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DRAWING TITLE

AGRICULTURAL DISTRICTS MAP

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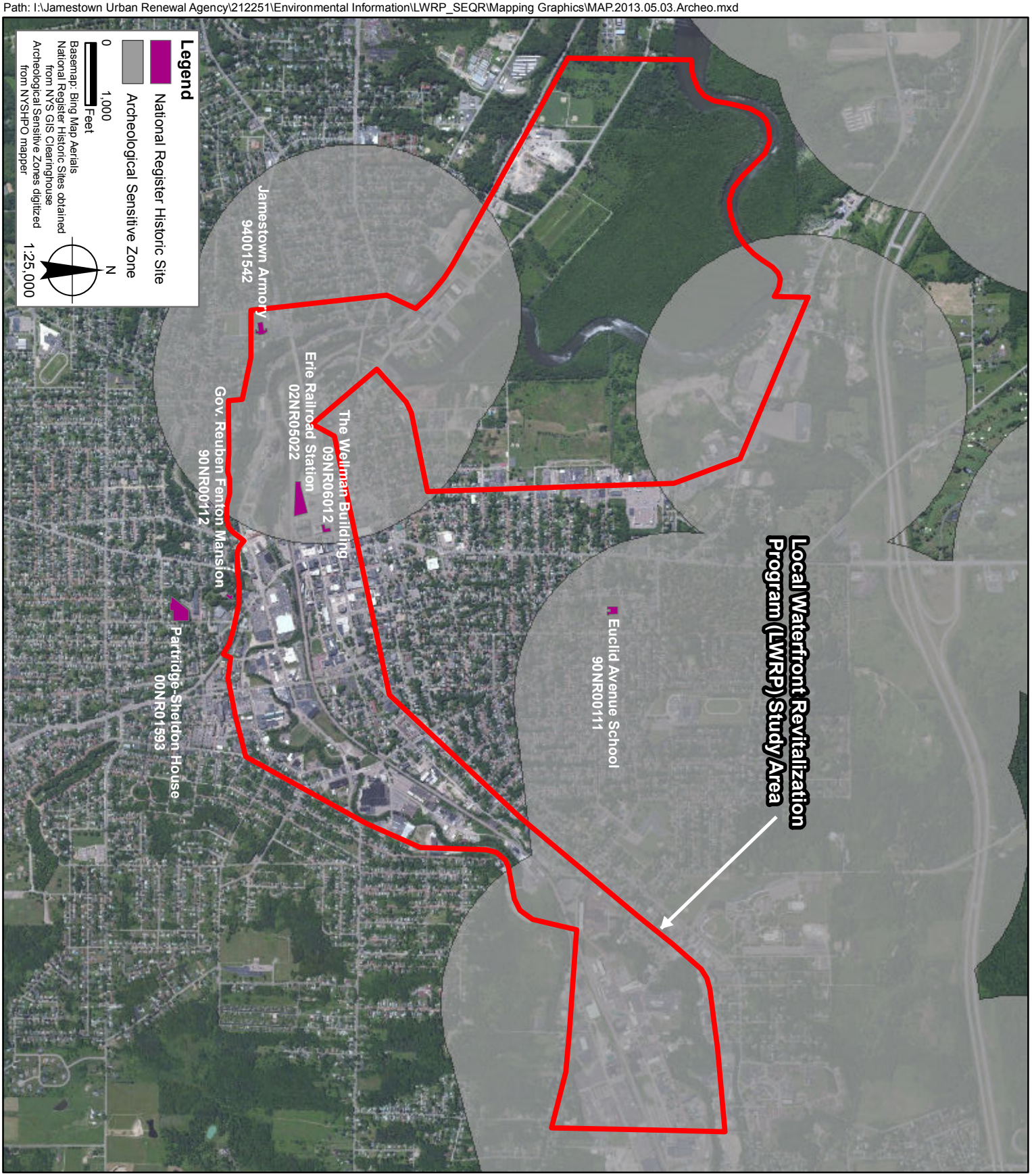


FIGURE 7

212251

PROJECT/DRAWING NUMBER

DRAWING TITLE

ARCHEOLOGICAL SENSITIVITY MAP

ISSUED FOR: REVIEW

DATE: MAY 2013

DESIGNED BY: RCN

DRAWN BY: KMN

REVIEWED BY: DR

PROJECT/CLIENT

CITY OF JAMESTOWN

LOCAL WATERFRONT REVITALIZATION PROGRAM PROJECT

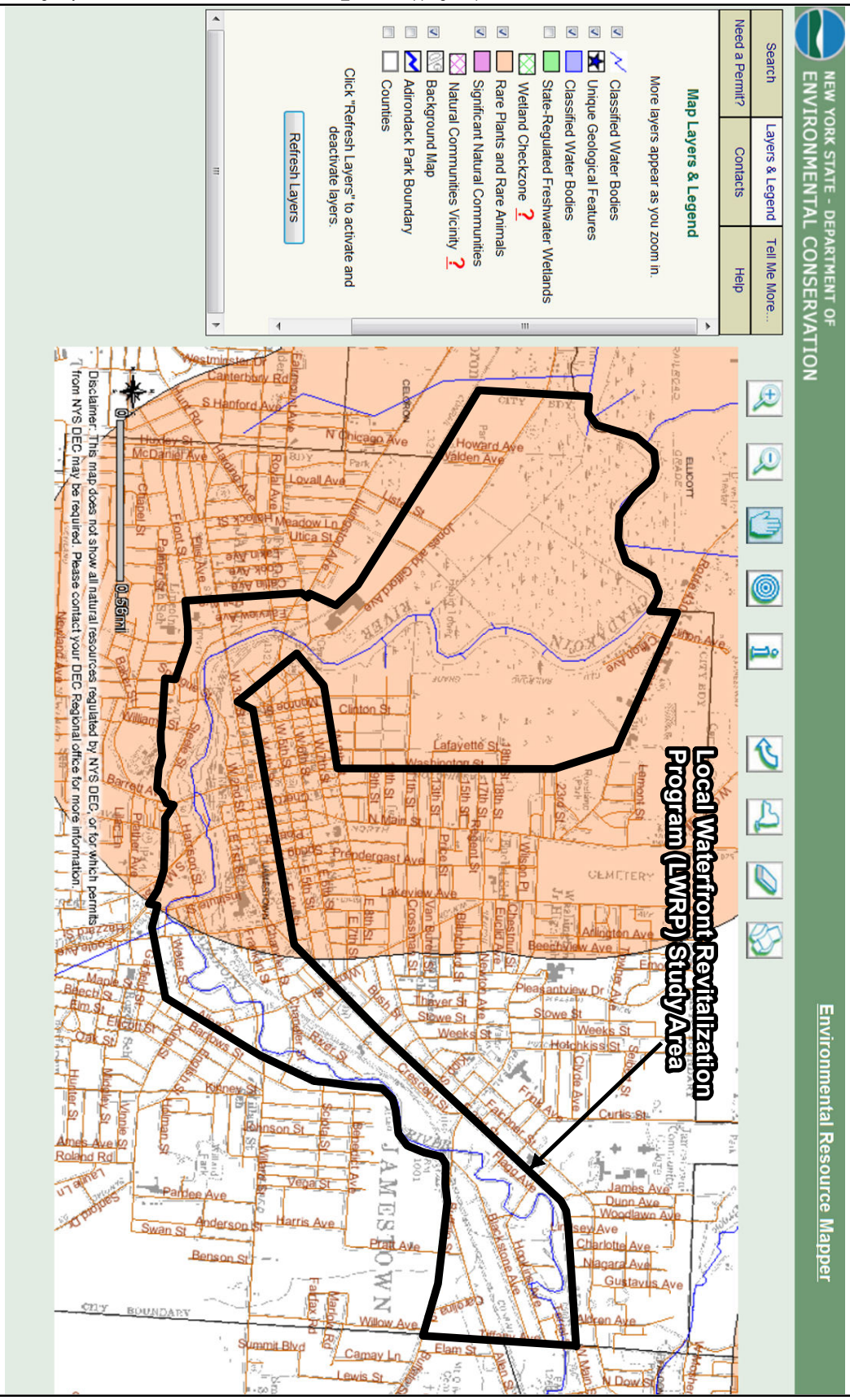
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PROJECT/DRAWING NUMBER

212251

FIGURE 8

DRAWING TITLE

R/T/E PLANTS AND ANIMALS MAP

ISSUED FOR: REVIEW

DATE: MAY 2013

DESIGNED BY: RCN

DRAWN BY: KMN

REVIEWED BY: DR

PROJECT/CLIENT

CITY OF JAMESTOWN

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BUFFALO, NY 14202
P: (716) 551-6281
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