

## **G.3 Draft Section 106 Finding Documentation**



## SECTION 106 FINDING DOCUMENTATION

PIN 5757.91.121

SHPO Project No: 15PR04311

### NIAGARA GORGE CORRIDOR – ROBERT MOSES PARKWAY (RMP) REMOVAL PROJECT MAIN STREET TO FINDLAY DRIVE, NIAGARA FALLS, NEW YORK

MAY 3, 2016

#### 1. Project Description

The Federal Highway Administration (FHWA), in cooperation with the New York State Office of Parks, Recreation and Historic Preservation (“State Parks”), the New York State Department of Transportation (NYSDOT), the City of Niagara Falls, USA Niagara Development Corporation (USAN), and the New York Power Authority (NYPA), have partnered on the proposed construction of the Robert Moses Parkway (RMP) Removal Project: Main Street to Findlay Drive, Niagara Falls, NY (referenced throughout as “the RMP Removal Project” or “the Project”). The Project involves the removal of the existing RMP between Main Street and Findlay Drive, a distance of almost 2.0 miles, and the reconstruction of Third Street and Whirlpool Street which, in combination, parallel the RMP along this segment. **Figure 1 in Attachment A** shows the location of the Project and its study area.

The Project is an undertaking subject to review under Section 106 of the National Historic Preservation Act (“Section 106”), as amended, and its implementing regulation, 36 CFR Part 800. FHWA is responsible for Section 106 compliance, with assistance from State Parks and the NYSDOT to initiate consultation, prepare information, conduct analyses, and make recommendations for findings of eligibility and effects. The Section 106 process is being carried out in coordination with other environmental reviews being prepared in accordance with the National Environmental Policy Act (NEPA) of 1969 and FHWA/NYSDOT guidance documents, initially including a Federal/State-funded Public Scoping Process completed in 2013 and currently a NYPA-funded Design Report/Environmental Assessment (DR/EA) process. On March 22, 2016, Governor Andrew M. Cuomo announced funding for the Project’s final design and construction phases, subject to completion of the environmental and historic review processes, from a combination of NYPA and State Parks sources.

#### 2. Area of Potential Effect

The proposed Project (aka the “Build Alternative” in the DR/EA) involves removal of the RMP (i.e., all vehicular lanes, former vehicular lanes used for the Robert Moses Parkway Trail, the Whirlpool Bridge Plaza overpass, and all other RMP interchange/accessory facilities) from Main Street (NYS Rte 104) to Findlay Drive. The proposed Project also includes:

- Reconstruction of Whirlpool Street from Main Street to Walnut Avenue and from Cedar Avenue to Findlay Drive as an at-grade, two-lane, 30-MPH road to accommodate north-south vehicular and potential future bus access, and removal of Whirlpool Street from Cedar Avenue to Walnut Avenue;
- Reconstruction of Third Street from Main Street to Cedar Avenue in a manner consistent with that of Whirlpool Street;

- Restoration of the landscape / habitat on lands reclaimed along the Niagara Gorge rim from the removal of the RMP with native species;
- Construction of a pedestrian / bicycle trail network along the Gorge rim, connecting to other trail systems and adjoining neighborhoods; and
- Incorporation of amenities / betterments associated with the above improvements.

Background research and an architectural reconnaissance survey were conducted within a fairly broad Project Study Area centered on the areas of actual ground-disturbance associated with proposed construction activities. The boundaries of the Project Study Area considered for the Historic and Cultural Resources analysis for this Project, which are shown in **Figure 1 and Figures 2a and 2b in Attachment A**, are defined as:

- Findlay Drive to the north;
- Main Street and Third Street to the east;
- Niagara Street to the south; and
- the Niagara Gorge rim to the west.

Within the Project Study Area is the Project's Area of Potential Effect (APE), which is defined as "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist" (36 CFR 800.16(d)). This APE, in general terms, can be characterized as the geographical areas adjacent to the potential right-of-way for the Build Alternative, as well as an appropriate buffer defined by surrounding topographical features, adjacent neighborhoods and the road network. In the case of this Project, the buffer includes properties that are immediately adjacent to and abutting the eastern boundary of the APE, which is defined as Third and Whirlpool Street between Main Street to the south and Findlay Drive to the north. This APE is depicted in **Figures 2a and 2b in Attachment A**.

Actual ground-disturbing construction activities, which define the limits of the archaeological APE, are generally proposed to be limited to Third and Whirlpool Streets and areas west of Third and Whirlpool Streets to the Niagara Gorge rim. Therefore, the archaeological APE is also generally defined by the area depicted in **Figures 2a and 2b in Attachment A**, although the buffer area immediately adjacent to and abutting the east side of Third and Whirlpool Streets is unnecessary.

The removal of approximately 2.0 miles of the RMP between Main Street and Findlay Drive, the reconstruction of Third and Whirlpool Streets, the construction of multi-use trails in previously undisturbed areas and the construction of various amenities / betterments are the primary activities which have the potential to affect prehistoric/precontact and historic archaeological sites. Therefore, archaeological sensitivity was estimated for the direct APE only (i.e., APE without the eastern buffer) and was based on the presence of known sites, topography and environment, the extent and severity of previous disturbance, and the presence of map documented structures that no longer exist in the case of historic period sensitivity.

### **3. Steps Taken to Identify Historic Properties**

The following surveys have been performed for the proposed Project:

- *Previous Surveys* – A review of cultural resource investigations recorded in the files of the State Historic Preservation Officer (SHPO) revealed that at least seven reports have been submitted for areas within one mile of the Project Study Area (Scott and Scott 1983; Kieber and

Aldenderfer 1983; Wurst 1997; Hoeman and Hartner 2000; Hartner et al. 1998; Kastl 2005; Abel 2005; Longiaru et al. 2005; and Kowsky and Wachadlo 2007). Several of these reports note the existence of additional reports discussing areas in proximity to the project area, but these referenced reports that were not available in the files of the SHPO.

- ***Phase 1A Cultural Resources Survey (Completed August 2015)*** – The purpose of this Phase 1A investigation was to identify all previously recorded cultural resources within Project Study Area. The cultural resources investigation included archival and historical map research, a site file and literature search, preparation of the prehistoric/precontact and historic background of the Project Study Area, examination of properties listed in the New York State and National Registers of Historic Places (S/NRHP), assessments of cultural resource sensitivity and past disturbances within the Project Study Area, an intensive walkover reconnaissance and photographic documentation. The field reconnaissance work was performed for this Project in Summer of 2014 and Spring of 2015.
- ***Phase 1B Cultural Resources Survey (Completed April 2016)*** – The purpose of the Phase 1B investigation was to determine the presence of potential National Register-eligible archaeological deposits within the Project APE. Because much of the APE has been previously disturbed to varying degrees, Phase 1B shovel testing was restricted to areas of apparently low or ambiguous levels of disturbance, thereby also having the greatest likelihood of containing intact archaeological deposits (e.g., the presence of map-documented structures). No intact archaeological deposits were recorded as a result of the Phase 1B survey. The Phase 1B field work was performed in mid-March of 2016, and the full Phase 1B report will be submitted for review and approval in April 2016. SHPO and FHWA approval are anticipated by May 2016. All related documents and approvals will be incorporated in Attachment B when received.

#### **4. Evaluation of Project’s Impact on the Identified Prehistoric and Historic Properties**

No S/NRHP-eligible or previously unknown prehistoric or historic archaeological properties were identified during either the Phase 1A or the Phase 1B surveys. Therefore, the proposed Project will have no effect on archaeological properties listed or eligible for listing in the National Register.

With regard to historic / architectural properties, the table on the following three pages provides a summary of anticipated effects to the properties that were identified as being listed or eligible for listing on the S/NRHP. The table includes the locations, year built, key character-defining elements/aspects of each and proposed changes to each property as a result of the No-Build and Build Alternatives related to this Project. Only those properties within or immediately adjacent to and abutting the APE are listed in the table, as they are the only ones that have the potential for effects resulting from the Project. These properties are depicted in **Figures 2a and 2b** in **Attachment A**. Most of these properties are also shown in the figures included as part of the February 5, 2016 submittal to the SHPO in **Attachment B**.

PIN 5757.91.121 Robert Moses Parkway (RMP) Removal Project: Main Street to Findlay Drive, Niagara Falls, NY

Summary of Anticipated Effects of Alternatives to S/NRHP-Listed and S/NRHP-Eligible Properties within the APE

Property/ District Within the APE	S/NRHP No. (if listed) or "Eligible"	Address or General Location	Year or Period Built	Keys Character-Defining Elements/Aspects of Property/District	Anticipated Effects Under Each Alternative	
					No Build Alternative (Expressway Remains in Place)	Build Alternative (Removal of all expressway features; Restoration of Gorge rim and installation of trail network; reconstruction of Whirlpool Street & portion of Third Street)
Niagara Reservation	90NR01961 (also listed as National Historic Landmark)	Extends along Niagara Gorge, Niagara Falls and Niagara River in Niagara Falls, NY	1885	Designed by Frederick Law Olmsted; Nation's oldest state park; 16 contributing resources within the Reservation, none of which are located in or near the APE; Architectural resources in the APE portion of the Reservation (i.e., Niagara Gorge Discovery Center and Niagara Gorge Trail information and Public Restroom) are less than 50 years old and not included in CRIS. This area of the park was historically the main industrial locus in the City of Niagara Falls and was not part of the Olmsted design. It is part of the NHL because it is within the reservation boundaries which were used as the NHL boundary.	Expressway components of the RMP and Robert Moses Parkway Trail would continue to traverse the northern end of the Reservation, thereby physically restricting public access to and from neighborhoods to the east, as well as pedestrians and bicyclists to only two locations (i.e., Main Street / Rainbow Boulevard at the south end of the Project and at the pedestrian bridge between the Niagara Gorge Discovery Center and the adjacent Aquarium of Niagara). This portion of the Reservation was recently and significantly disturbed by the aborted construction of a State Parks police station at a previously-proposed site along the Gorge rim, as well as the new site for the State Parks police station between the RMP and Whirlpool Street (2 <sup>nd</sup> Street), now under construction.	Removal of all pavement and components of the RMP and Robert Moses Parkway Trail in the northern portion of the Reservation; removal of the pedestrian bridge between the Niagara Gorge Discovery Center and the adjacent Aquarium of Niagara property; currently paved areas would be restored with grass, trees and/or native vegetation. Removal of existing pavement and natural restoration of reclaimed land would result in an increase of 5.94 acres of contiguous green space within the property; construction of new connecting ramp between Niagara Falls Bridge Commission's existing access road below the Rainbow Bridge and Main Street would slightly offset this gain in contiguous green space with a transportation-related pavement increase of 0.04 acres; several 13-ft-wide multi-use paths to accommodate bicyclists and pedestrians, as well as several narrower connecting paths would be constructed and would provide unlimited public access to pedestrians and bicyclists.
Aquarium of Niagara	Eligible	701 Whirlpool Street, Niagara Falls, NY	1965	The Aquarium of Niagara is historically significant for its association with innovative aquarium technology that manufactured synthetic sea water for aquariums. The Aquarium of Niagara is also a good example of Mid-Century Modern design, which was popularized during a thirty-year period from post-WWII through the mid-1970s.	Aquarium property would continue to be physically separated from the Niagara Gorge rim and adjacent recreational properties by Whirlpool Street, the pump station access road and the RMP on the west and Third Street on the east.	Removal of the closed section of Whirlpool Street, the pump station access road and the RMP on the west side of the property; Reconstruction of Third Street adjacent to the east side of the property; Construction of a new access road to the NFWB sewage pumping station across an already disturbed portion of the property near existing parking and access drives; Aquarium property would be directly and seamlessly connected to nearby Niagara Gorge Discovery Center and Niagara Reservation. The net effect would be positive for access as well as the property's setting.

Property/ District Within the APE	S/NRHP No. (if listed) or "Eligible"	Address or General Location	Year or Period Built	Keys Character-Defining Elements/Aspects of Property/District	Anticipated Effects Under Each Alternative	
					No Build Alternative (Expressway Remains in Place)	Build Alternative (Removal of all expressway features; Restoration of Gorge rim and installation of trail network; reconstruction of Whirlpool Street & portion of Third Street)
Chilton Avenue- Orchard Parkway Historic District	10NR06119	Portions of Chilton Avenue and Orchard Parkway between Whirlpool and Main streets.	Late 19 <sup>th</sup> and early 20 <sup>th</sup> centuries	Late Victorian: Queen Anne, Tudor revival and Craftsman. The district consists of 103 contributing and 36 non-contributing buildings.	The district would not be affected by the No Build Alternative.	The reconstruction of Whirlpool Street would neither directly nor indirectly affect the district. None of the buildings in the district front Whirlpool Street.
Old Customs House	90NR01962	2245 Whirlpool Street, Niagara Falls, NY	1863	The Old Customs House is the oldest federal building in the City of Niagara Falls and the oldest extant resource associated with this historically important Whirlpool Land Port of Entry. It is architecturally and historically significant under NHRP criteria A and C.	The Customs House would continue to be adjacent to, and in the shadow of the RMP high-level viaduct that passes over the Whirlpool Bridge Plaza, a condition that already affects the visual environment and historic setting of this resource. The building has been renovated / restored and incorporated into the newly-built train station and is no longer a free-standing intact building.	No physical impact to the Customs House would occur as a result of the Project; Removal of the current RMP viaduct in this area would result in a positive visual effect on this resource, and would partially restore its historic setting.
Michigan Central Railroad Bridge (out of service; owned by the City of Niagara Falls, Ontario)	Eligible	Crosses Lower Niagara River/Niagara Gorge west of Whirlpool Street, between Bath and Ontario Avenues, Niagara Falls, NY	1924-1925	Currently known as Canadian Pacific Railway Bridge; a steel arch bridge spanning the Niagara Gorge between Niagara Falls, Ontario, and Niagara Falls, New York; designed by William Perry Taylor, Chief Engineer J.L. Delming, and Norwegian consulting engineer Olaf Hoff; bridge no longer in use and tracks have been removed.	The existing abandoned bridge is anticipated to continue to exist.	No direct or indirect impact associated with the proposed Project. Removal of the RMP overpass/viaduct would partially restore the historic setting of the bridge, resulting in a positive effect. Potential for future overlook feature, subject to agreements with current owner.

Property/ District Within the APE	S/NRHP No. (if listed) or "Eligible"	Address or General Location	Year or Period Built	Keys Character-Defining Elements/Aspects of Property/District	Anticipated Effects Under Each Alternative	
					No Build Alternative (Expressway Remains in Place)	Build Alternative (Removal of all expressway features; Restoration of Gorge rim and installation of trail network; reconstruction of Whirlpool Street & portion of Third Street)
Whirlpool Rapids Bridge	Eligible	Crosses Lower Niagara River/Niagara Gorge west of Whirlpool Street, between Bath and Ontario Avenues, Niagara Falls, NY	1897	A double-decked, two-hinged, riveted, spandrel-braced, arch-type bridge; 1,080 feet long with a 47.5-foot two-lane roadway; the main span is 547 feet with a rise of 115 feet; the structure consists of riveted girders and I-beams with limestone abutments; Vehicular traffic is carried on the lower deck, which is flanked by cantilevered sidewalk; Upper deck carries one set of railroad tracks currently used by Amtrak and Conrail; On the American side, the bridge rests on the stone abutment of the 1855 suspension bridge; Architecturally significant under NRHP Criterion C as an example of an early steel arch bridge which possesses good integrity and for its association with prominent bridge designer Leffert L. Buck.	The existing bridge is anticipated to continue to exist and to be used for vehicular and rail traffic.	No direct or indirect impact associated with the proposed Project. Removal of the RMP viaduct would partially restore the historic setting of the bridge, resulting in a positive effect.

## 5. Basis for Recommended Project Finding

The Criteria of Adverse Effect (36 CFR Part 800.5) was applied to the historic sites and properties within the APE. Andy Brayman, Cultural Resource Coordinator for the New York State Department of Transportation (NYSDOT, Region 5 office) completed the effect determination.

In applying the criteria of effect in accordance with Section 800.5(b) of 36 CFR Part 800, the NYSDOT finds this undertaking will result in the following effect findings regarding the historic properties listed in the preceding table:

- ***Niagara Reservation*** – No contributing resources within the Reservation are within or near the APE and no impacts to such resources will occur. Overall, the Reservation will benefit from an increase in contiguous open green space and enhanced access to recreational facilities for pedestrians and bicyclists as a result of the Project. *Finding: No Adverse Effect.*
- ***Aquarium of Niagara*** – Although a new access road to the Niagara Falls Water Board (NFWB) pumping station will be constructed across a disturbed portion of Aquarium property, the overall property will benefit by directly and seamlessly being connected to the nearby Niagara Gorge Discovery Center and Niagara Reservation via the removal of the existing RMP, removal of Whirlpool Street between Cedar Avenue and Walnut Avenue and removal of a portion of the existing access road to the NFWB pumping station, all located west of the property. *Finding: No Adverse Effect.*
- ***Chilton Avenue-Orchard Parkway Historic District*** – The reconstruction of Whirlpool Street would neither directly nor indirectly affect the district. None of the buildings in the district directly front Whirlpool Street. *Finding: No Effect.*
- ***Old Customs House*** – No physical impact to the Customs House would occur as a result of the Project. Existing setting was not a contributing factor regarding this property's eligibility, but removal of the current RMP viaduct would result in a positive visual effect on this resource and would partially restore its historic setting. *Finding: No Effect.*
- ***Michigan Central Railroad Bridge*** – No direct or indirect impact associated with the proposed Project. Existing setting is not a contributing factor regarding this property's recommendation for eligibility, but removal of the RMP viaduct would partially restore the historic setting of the bridge, thereby resulting in a positive effect. *Finding: No Effect.*
- ***Whirlpool Rapids Bridge*** – No direct or indirect impact associated with the proposed Project. Existing setting is not a contributing factor regarding this property's recommendation for eligibility, but removal of the RMP viaduct would partially restore the historic setting of the bridge, thereby resulting in a positive effect. *Finding: No Effect.*

On an overall project-level basis, the proposed Project is considered to have a "***No Adverse Effect***" finding on the historic resources within its APE. When looking at each individual property, only two of the six historic properties identified have *No Adverse Effect* findings, while four properties have *No Effect* findings. This will result in a "***No Adverse Effect***" for the overall Project. It should be noted that in response to specific requests from NY SHPO in letters dated March 9, 2016 and April 25, 2016, construction protection plans will be put in place to protect all of the historic resources within 90 feet of the proposed construction activity.

## 6. Preferred Alternative

Of the two feasible and prudent alternatives being considered in detail for this Project (i.e., No-Build and Build), the alternative selected as the Preferred Alternative is the Build Alternative, since this is the only alternative that fully meets the goals and objectives and achieves the need for the Project.

## 7. Section 4(f) Involvement

Two of the six historic properties identified in the preceding table will result in a Section 106 “use” as defined by Section 4(f).<sup>1</sup> Both of these properties (i.e., Niagara Reservation / Niagara Falls State Park and Aquarium of Niagara) meet the criteria for a *de minimis* Section 4(f) finding. *Therefore, NYSDOT Region 5 will be requesting that FHWA, acting on behalf of the U.S. Department of Transportation, determine that the effect on these two properties will result in a Section 106, 4(f) de minimis use.* No other historic properties are considered to result in a Section 4(f) use.

This request is based on the fact that there will be no overall loss of green *space (in the case of Niagara Reservation) or any permanent, temporary or constructive use to either of the properties involved.* In addition, generally positive impacts to these properties will occur as a result of the Project in terms of improved accessibility, visual improvement and direct / seamless physical connections to each other. A summary of the proposed use at each property is provided below.

- *Niagara Reservation / Niagara Falls State Park* – All pavement and other expressway components of the RMP and Robert Moses Parkway Trail, as well as the pedestrian bridge between the Niagara Gorge Discovery Center and the adjacent Aquarium of Niagara property will be removed. Currently paved areas will be restored with grass, trees and/or native vegetation and a net increase of 5.94 acres of contiguous green space within the Reservation will result. A multi-use trail system will be constructed and linked to other existing trails and adjoining neighborhoods, thereby improving public access to pedestrians and bicyclists.
- *Aquarium of Niagara* – Existing pavement adjacent to the west side of the property will be removed and Third Street adjacent to the east side will be reconstructed. A new access road to the NFWB sewage pumping station will be constructed across an already-disturbed and historically-non-significant portion of the Aquarium property. The Aquarium property will be directly and seamlessly connected to the adjacent Niagara Reservation, resulting in improved access between the two properties.

SHPO has indicated that no historic properties, including the above two properties, are of particular concern as related to the proposed Project (see SHPO letter dated March 9, 2016 in **Attachment B**). Other letters received from, as well as submitted to SHPO to date are also provided in **Attachment B**, including a SHPO letter dated April 25, 2016 indicating that there are no archaeological concerns related to the proposed Project.

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<sup>1</sup> The remaining four historic properties listed in the preceding table (i.e., Chilton Avenue-Orchard Parkway Historic District, Old Customs House, Michigan Central Railroad Bridge and Whirlpool Rapids Bridge) would have “No Effect” pursuant to Section 106 and, therefore, would not experience any “use” pursuant to Section 4(f). In this regard, they would also not result in any permanent, temporary or constructive use.

## 8. Public Involvement

Details of the proposed Project have been presented at several public information and neighborhood meetings, including the following:

- *February 19, 2015 public information meeting* held at the Conference and Events Center Niagara Falls at 101 Old Falls Street, Niagara Falls, NY.
- *Wednesday, July 15, 2015 special meeting with residents of the Whirlpool Street / Findlay Drive neighborhood* held at the DeVeaux Auditorium in DeVeaux Woods State Park.
- *September 15, 2015 public information meeting* held at the Conference and Events Center Niagara Falls at 101 Old Falls Street, Niagara Falls, NY.

In addition, details of the proposed Project and the cultural resource studies that have been prepared and completed to date were presented at meetings held specifically in accordance with Section 106 Consultation requirements:

- *March 16, 2016 Section 106 Consultation Meeting (Tribal Nations Meeting)* held at the DeVeaux Auditorium in DeVeaux Woods State Park. Invitations were sent to the Seneca Cayuga Tribe of Oklahoma, the Tuscarora Nation, the Tonawanda Seneca Nation and the Seneca Nation of Indians. Three individuals representing two of the invited Tribes attended the meeting.
- *March 16, 2016 Section 106 Consultation Meeting (Consulting Parties Meeting)* held at the DeVeaux Auditorium in DeVeaux Woods State Park. Invitations were sent to seven individuals having specific interest and/or representing organizations having specific interest in cultural resource matters. All seven invited consulting party members attended the meeting.

## 9. Attachments

### *Attachment A – Figures*

- *Figure 1* – Location of the Project Study Area in the City of Niagara Falls, Niagara County, NY
- *Figure 2a* – Project Study Area and Area of Potential Effect (Southern Section)
- *Figure 2b* – Project Study Area and Area of Potential Effect (Northern Section)

### *Attachment B – SHPO Correspondence*

- *April 25, 2016 Letter* from SHPO to State Parks
- *March 9, 2016 Letter* from SHPO to State Parks
- *February 5, 2016 Cover Submittal* to SHPO as uploaded on CRIS database
- *January 22, 2016 Letter* from SHPO to State Parks
- *October 19, 2015 Letter* from SHPO to Parsons



**ATTACHMENT A**

**FIGURES**



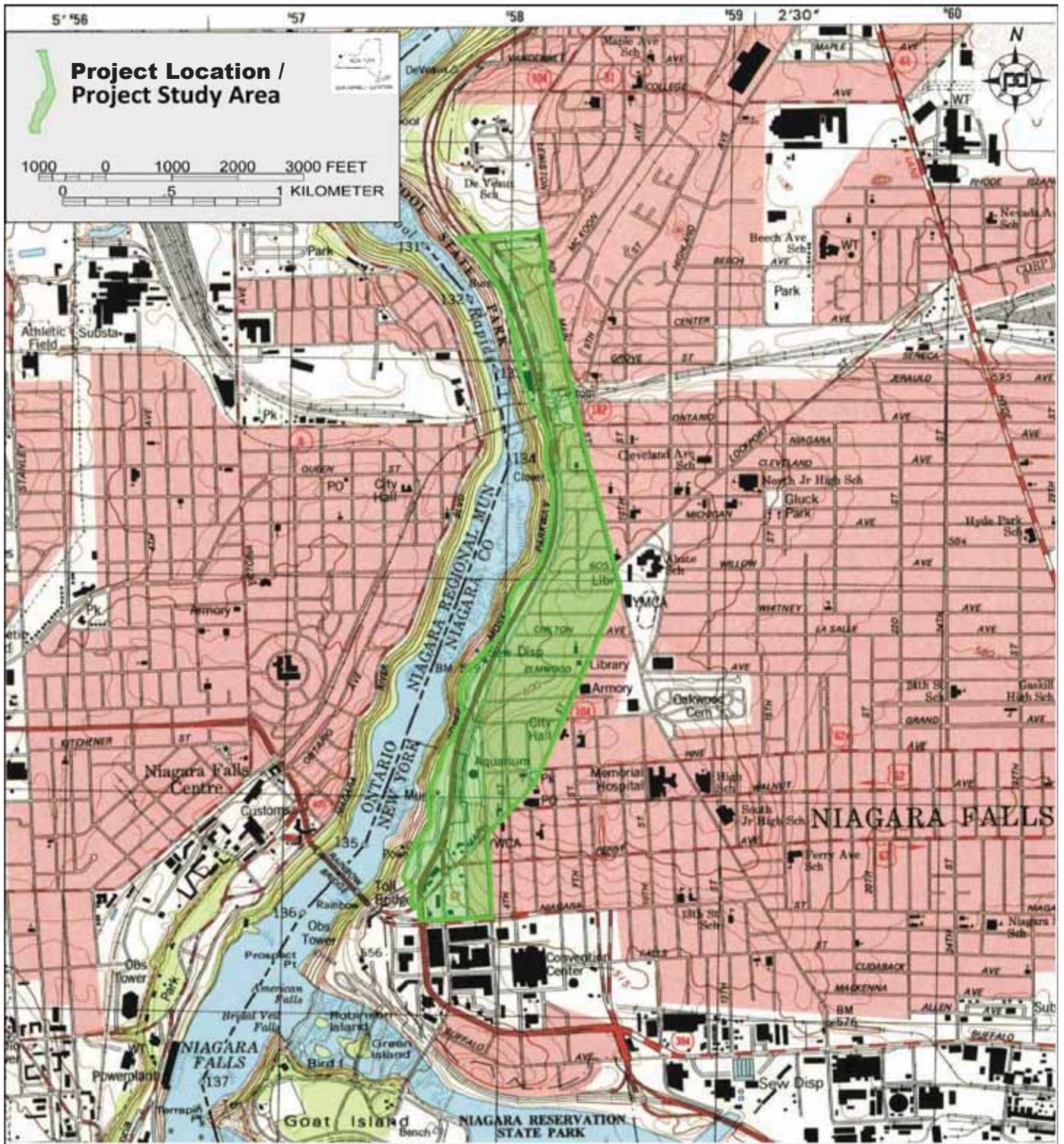


Figure 1 - Location of the Project Study Area in the City of Niagara Falls, Niagara County, New York (USGS 7.5' quadrangle, Niagara Falls, NY-Ont. 1995).





Figure 2-a - Southern portion of the Project Study Area / Project's Area of Potential Effect depicted on a recent aerial photograph (after Google 2014).



Figure 2-b - Northern portion of the Project Study Area / Project's Area of Potential Effect depicted on a recent aerial photograph (after Google 2014).