



# Town of Lewiston

## Town Management of Joseph Davis State Park

### Report of Examination

Period Covered:

January 1, 2011 — April 8, 2014

2014M-162



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## **Division of Local Government and School Accountability**

February 2015

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Lewiston, entitled Town Management of Joseph Davis State Park. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller  
Division of Local Government  
and School Accountability*



## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

The Town of Lewiston (Town) is located in Niagara County and has a population of approximately 16,250 residents. The Town is governed by a five-member elected Town Board (Board) comprising a Town Supervisor (Supervisor) and four Council members. The Board is responsible for the general management and control of the Town's financial affairs and for safeguarding Town assets. The Supervisor is the Town's chief executive and chief fiscal officer and is responsible, along with other administrative staff, for the day-to-day management of the Town under the direction of the Board.

The Town provides various services to its residents, including police protection, street maintenance, parks and recreation, water, sewer and general government support. For the 2014 fiscal year, budgeted appropriations totaled approximately \$17.4 million. Expenditures are funded primarily by property taxes, sales tax, State aid and user fees. In 2011, the Town entered into a license agreement (agreement) with the New York State Office of Parks, Recreation and Historic Preservation (NYS Parks) to operate and maintain the Joseph Davis State Park (Park).

#### **Scope and Objective**

The objective of our audit was to evaluate the Town's management of the Park during the period January 1, 2011 through April 8, 2014. Our audit addressed the following related questions:

- Did the Board provide proper oversight of the operations of the Park?
- Did the Board ensure that there were adequate controls over Town fuel supplies at the Park?

#### **Audit Results**

The Board did not provide proper oversight of the management of the Park. The Board did not ensure that proposed improvements were properly evaluated and authorized prior to committing Town funds. Town officials never received written authorization from NYS Parks for any of the proposed projects, as required by the terms of the agreement. Instead, the Board relied on the judgment of the Supervisor and the oversight of a local development corporation that it formed to identify potential projects and manage the Park.

As a result, Town officials wasted money by contracting for services that ultimately provided little or no benefit to the Town. To date, the Town has spent more than \$1.1 million on the Park and, due to poor planning and inadequate Board oversight, this spending has not resulted in any significant improvements other than normal Park maintenance and the paving of two parking areas.

The Board did not properly monitor fuel purchases and usage at the Park, and the Town did not have adequate controls over Park fuel supplies. Because employees were not required to document their fuel usage or fuel deliveries, Town officials were unable to reconcile actual tank fuel levels to the records. Therefore, the Town has no records to identify legitimate use of Park fuel supplies. We identified approximately 2,000 gallons of diesel fuel with a value of approximately \$6,500 that is unaccounted for and may have been dispensed into an employee's personal vehicle.

### **Comments of Local Officials**

The results of our audit and recommendations have been discussed with Town officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and recommendations and indicated they have taken corrective action.

# Introduction

## Background

The Town of Lewiston (Town) is located in Niagara County and has a population of approximately 16,250 residents. The Town is governed by a five-member elected Town Board (Board) comprising a Town Supervisor (Supervisor)<sup>1</sup> and four Council members. The Board is responsible for the general management and control of the Town's financial affairs and for safeguarding Town assets. The Supervisor is the Town's chief executive and chief fiscal officer and is responsible, along with other administrative staff, for the day-to-day management of the Town under the direction of the Board.

The Town provides various services to its residents, including police protection, street maintenance, parks and recreation, water, sewer and general government support. For the 2014 fiscal year, budgeted appropriations totaled approximately \$17.4 million. Expenditures are funded primarily by property taxes, sales tax, State aid and user fees.

In 2011, the Town entered into a license agreement with the New York State Office of Parks, Recreation and Historic Preservation (NYS Parks) to operate and maintain the Joseph Davis State Park (Park). The Park, which is located in the western part of the Town bordering the Niagara River, is about 375 acres. The license agreement states that the "Town shall not alter, improve, enlarge, reduce or replace any of the lands, structures, or related facilities comprising the Park without the prior written approval of State Parks." The Park was on a NYS Parks list of recommended closures and was not being properly maintained. Town officials told us that they assumed responsibility of the Park to keep it open and ensure its continued enjoyment by Town residents.

Shortly after the Town entered into the license agreement, the Board formed the Joseph Davis State Park Local Development Corporation<sup>2</sup> (LDC) to assist the Town with the operation and management of the Park. The LDC consisted of seven volunteer community members appointed by the Supervisor.

## Objective

The objective of our audit was to evaluate the Town's management of the Park. Our audit addressed the following related questions:

<sup>1</sup> All references to the Supervisor in this report refer to the Town Supervisor who held office from January 1, 2010 through December 31, 2013.

<sup>2</sup> The LDC was incorporated on April 8, 2011, its first meeting was held on May 4, 2011 and the Board authorized its formation on June 14, 2011 – two months after it had been incorporated.

- Did the Board provide proper oversight of the operations of the Park?
- Did the Board ensure that there were adequate controls over Town fuel supplies at the Park?

**Scope and  
Methodology**

We examined the Town’s management of Park operations and fuel purchased for and used at the Park during the period January 1, 2011 through April 8, 2014.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

**Comments of  
Local Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and recommendations and indicated they have taken corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk’s office.

## Park Improvements and Maintenance

As stewards of public funds, the Board has a responsibility to make decisions that are in the best interests of the Town and the taxpayers it serves. This responsibility requires the Board to exercise due diligence when considering significant financial commitments, such as long-term license agreements and capital projects. Careful planning prior to committing funds for a proposed project is an essential step that includes identifying the requirements of the project, evaluating possible options and estimating the potential costs.

In February 2011, the Town entered into a ten-year Cooperative Operation and Maintenance Agreement (agreement)<sup>3</sup> with NYS Parks to license the Park. The agreement indicated that the Town would operate and maintain the Park and shifted all financial responsibilities related to upkeep and maintenance of the Park from the State to the Town. However, the agreement also indicated that, in most instances, the Town could not make changes or improvements to Park facilities without written authorization from NYS Parks. Town officials told us they entered into a license to operate and maintain the Park to keep it open and ensure its continued enjoyment by Town residents.

The Town planned to fund Park capital improvements using a portion of its \$510,000 annual allocation<sup>4</sup> of Greenway Recreation/Tourism money provided by the New York Power Authority (NYPA).<sup>5</sup> To receive this money, the Town must submit a project proposal to the Niagara River Greenway Commission<sup>6</sup> (Commission) for a consistency determination and then submit the proposal to the Host Community Standing Committee<sup>7</sup> (HCSC) for funding approval.

<sup>3</sup> This agreement will be automatically renewed for an additional 10 years by NYS Parks unless it gives the Town written notice that it will not renew the agreement.

<sup>4</sup> NYPA allocated \$510,000 per year to the Town for Greenway Recreation/Tourism-approved projects. Of this amount, the HCSC approved \$450,000 per year to be used for the Park project.

<sup>5</sup> The purpose of the Greenway Recreation/Tourism fund is “to support the construction and/or rehabilitation of parks, recreation and related facilities, for the purpose of redefining the Niagara riverfront, promoting tourism, enhancing the environment, and advancing the economic revitalization of the Niagara River Greenway within Niagara County.” Greenway money should be used for projects that are deemed consistent with the Greenway plan.

<sup>6</sup> The Niagara River Greenway Commission’s mission is to continue and advance the State’s commitment to the preservation, enhancement and development of the scenic, natural, historic, cultural and recreational resources of the Niagara River while continuing to emphasize economic development activities.

<sup>7</sup> The HCSC administers and oversees projects financed by the Greenway Recreation/Tourism fund.

The Board never received written permission from NYS Parks for Park projects as required by the terms of the agreement. As a result, Town officials spent money by contracting for services that may provide little or no benefit to the Town. To date, the Town has spent more than \$1.1 million on Park projects, and due to poor planning and inadequate Board oversight, this spending has not resulted in any significant improvements other than normal Park maintenance and the paving of two parking areas.

## Board Oversight

In accordance with the agreement, the Board is generally responsible for overseeing and managing decisions regarding Park operation and maintenance. Local development corporations are private, not-for-profit corporations often created by, or for the benefit of, local governments for economic development or other public purposes. Although created by, or for the benefit of, a local government, a local development corporation is a separate private corporation, distinct from the local government and having its own set of powers under the governing statutes.

The Board did not provide adequate oversight of Park activities. Instead, it formed the LDC and gave the responsibility of Park oversight to the LDC.<sup>8</sup> Board members told us they authorized the LDC's formation because they believed it would help the Town facilitate funding opportunities for proposed projects and provide the Town with more flexibility with bidding requirements. However, there was no written agreement between the Town and the LDC that indicated the responsibilities of each party. In addition, a Town may not undertake a Town project through an LDC and thereby avoid the procurement procedures that would have applied if the Town directly pursued the project.

The LDC did not have funds of its own and relied on the Town to finance all expenses it incurred. In certain instances, it was unclear whether the Town or the LDC initiated the agreement with contractors for goods and services related to Park improvements.<sup>9</sup> Because Town money was the LDC's only funding source, the Board was responsible for auditing all claims against the Town and ultimately was accountable for all LDC decisions that resulted in a Town expenditure.

One of the first actions taken by the LDC was to hire a consultant to provide day-to-day management services, instead of having LDC

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<sup>8</sup> The LDC's mission included "lessening the burdens of government by undertaking the operation and maintenance of Joseph Davis State Park operated by the Town of Lewiston and promoting and implementing development initiatives within the park."

<sup>9</sup> Refer to the Expenditures section for further information.

members perform those services themselves. The Town spent more than \$250,000 for these management services, which did not yield measurable results for the Town. The LDC met on a monthly basis for about a year and half before it eventually disbanded. To date, the Town has paid approximately \$20,000 for an LDC website and legal fees associated with the formation and dissolution process of the LDC. Had the Town instead formed a committee in place of the LDC and had the Board been more involved in the process, it is possible that the Town could have obtained similar or greater results with less cost.

In addition, the LDC's existence contributed to the Board's perception that it did not need to be closely involved with the Park's operations. Although the consultant occasionally updated the Board regarding the LDC's activities, the Board was mostly left out of the process. In reality, the LDC was largely ineffective as it did not have its own funds, and it was unable to develop any projects during its operation. Because the Board was generally uninvolved in Park activities, it was unaware of how much had been spent on the Park until it requested this information upon being notified of the Office of the State Comptroller's (OSC) impending audit.<sup>10</sup>

## Agreement

The Board should ensure that the Town complies with NYS Park requirements, as provided for in the agreement, before it initiates Park projects. According to the agreement, the Town could make improvements to the Park that were specifically included in the Park's "Final Master Plan and Final Environmental Impact Statement"<sup>11</sup> (master plan), provided the Town was in compliance with the requirements and restrictions of the master plan and after receiving written authorization from NYS Parks. If the Town wanted to make any improvements that were not included in the master plan, it would have to go through a specific process to amend the master plan before NYS Parks would approve the projects.

The agreement also requires the Town to obtain written approval from NYS Parks for capital improvement projects when selecting consultants, including those chosen to prepare any required environmental impact statements and supporting studies. In addition, the Town is required to submit annual financial reports to NYS Parks that, according to a letter received by the Town, should include information such as Park attendance statistics, a breakdown of personnel and non-personnel expenditures and any revenue from concessions, parking and building rentals. Because the agreement required the direct involvement and approval of NYS Parks for almost every action to modify or improve the Park property, it was

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<sup>10</sup> Ibid.

<sup>11</sup> Dated February 2004

critical that the Town work closely with NYS Park representatives before taking any action.

The Board did not ensure that it received written permission from NYS Parks for any of the projects at the Park. The Board did not ensure that proposed Park improvements were properly planned, evaluated and approved by NYS Parks before the projects were started. As a result, the Town contracted for services that may provide no benefit to the Town.

The Town submitted a Park project proposal to the Commission for a consistency determination and to the HCSC for funding approval before it received written authorization or project scope approval from NYS Parks. In the proposal, which was deemed consistent with the Greenway plan approved by the Commission in January 2012, the Town planned the following Phase I capital improvement projects for Greenway funding: a new boat launch, 10,000 square foot visitor center, new campground facility, Audubon nature center, water taxi and improvements to the parking areas and roads. However, the only proposed Phase I capital improvement projects that were also included in the master plan were the Audubon nature center and improvements to the parking areas and roads. Therefore, the other proposed projects could not proceed without first amending the master plan. In addition, Town officials did not obtain written authorization or a construction permit from NYS Parks for any of the proposed projects.

In February 2012, the HCSC approved funding in the amount of \$450,000 per year (up to a total of \$5.7 million) for Phase I capital improvements for the Park. Because Town officials failed to secure written authorization and project scope approval from NYS Parks before they submitted their proposal to the Greenway Commission and HCSC, the HCSC essentially agreed to fund projects that may never receive NYS Parks' approval. In addition, NYS Parks sent several letters to the Town, before and after Greenway funds were awarded, indicating that it had not agreed to the Town's project proposals and emphasizing that the Town cannot undertake projects that are inconsistent with the master plan.

Nevertheless, the Town proceeded with Park improvements that had not received NYS Parks' approval. In February 2012, the Town demolished several neglected structures on Park property without obtaining a required work permit from NYS Parks prior to starting the demolition work.<sup>12</sup> A NYS Parks representative told us that a work permit was required prior to starting the demolition work and

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<sup>12</sup> Town officials also determined that certain buildings contained asbestos. Consequently, the Town must now contract for asbestos abatement services to clean up the area, which a Town official estimated would cost about \$85,000.

his office sent the permit application to the Town, but Town officials never submitted the application. Town officials also did not follow proper bidding procedures or obtain written permission or a work permit from NYS Parks prior to paving two parking areas.<sup>13</sup> In addition, the Town did not obtain written approval from NYS Parks prior to selecting any of the engineering firms hired to work on the projects.

Finally, the Town did not submit annual financial reports as required by the agreement to NYS Parks for the 2011, 2012 and 2013 fiscal years. Although NYS Parks reminded the Town of the annual report submission requirement in a letter dated March 2012, the Town did not submit the requested 2011 report. A NYS Parks representative told us that the Town failed to submit any of the required reports for any of the years the Park was under the Town's control.

## Expenditures

The Board is responsible for monitoring the Town's fiscal operations, which would also include the Park's financial activities. These responsibilities include reviewing financial status reports and auditing claims to ensure they are necessary Town expenditures and comply with proper bidding procedures and the Town's procurement policy. In addition, the agreement between NYS Parks and the Town requires the Town – prior to undertaking construction work – to solicit and document competitive bids when selecting subcontractors and obtaining equipment and materials and to review and approve all advertisements, bids, bid certifications and related documentation before the Town can award related contracts. It is important for the Town to be cautious when making expenditures for Park improvements before those improvements are approved by NYS Parks.

During our audit period, the Town spent \$1,119,000 directly related to Park maintenance and proposed improvement projects. Of this amount, approximately \$338,000 was for operations and maintenance costs and \$781,000 was for proposed project-related costs, such as consultant fees and legal, engineering and other professional services. Figure 1 illustrates Park expenditures from 2011 through April 3, 2014.

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<sup>13</sup> The Town paid \$189,000 to a paving contractor to pave 192,000 square feet of parking area without soliciting competitive bids for these services.

**Figure 1: Expenditures at Joseph Davis State Park**

| Category  | Fiscal Year      |                  |                            | Total              |
|---|------------------|------------------|----------------------------|--------------------|
|   | 2011             | 2012             | 2013 and 2014 <sup>b</sup> |                    |
| Engineering contractors <sup>a</sup>                        | \$34,151         | \$75,301         | \$157,303                  | <b>\$266,755</b>   |
| Consultant  | \$89,475         | \$158,550        | \$10,500                   | <b>\$258,525</b>   |
| Parking area paving and road repairs                        | \$0              | \$198,750        | \$4,800                    | <b>\$203,550</b>   |
| Labor (including benefits)                                  | \$16,824         | \$120,166        | \$33,238                   | <b>\$170,228</b>   |
| Equipment: Purchase and rental                              | \$55,467         | \$8,000          | \$3,750                    | <b>\$67,217</b>    |
| Other miscellaneous costs                                   | \$6,119          | \$25,837         | \$8,331                    | <b>\$40,287</b>    |
| Fuel: Park tanks and fuel purchased from highway department | \$0              | \$19,048         | \$11,716                   | <b>\$30,764</b>    |
| Park utilities  | \$4,923          | \$8,709          | \$11,004                   | <b>\$24,636</b>    |
| Attorney fees   | \$11,365         | \$3,600          | \$6,687                    | <b>\$21,652</b>    |
| Landscaping contractors                                     | \$9,100          | \$9,395          | \$0                        | <b>\$18,495</b>    |
| Miscellaneous professional services                         | \$12,900         | \$0              | \$4,275                    | <b>\$17,175</b>    |
| <b>Total Expenditures</b>                                   | <b>\$240,324</b> | <b>\$627,356</b> | <b>\$251,604</b>           | <b>\$1,119,284</b> |

<sup>a</sup> The Town hired two separate engineering firms to perform services related to Park development.

<sup>b</sup> 2014 expenditures totaled \$6,258 (through March 24, 2014).

The Board did not monitor spending, request financial status reports or thoroughly audit Park-related claims prior to payment. One Board member told us that it was not until OSC informed the Board that it would be auditing the Town that the Board requested information on how much had been spent on the Park. Of the total amount spent on the Park, we identified expenditures totaling more than \$643,000 that were not competitively bid, did not comply with the Town's procurement policy or appeared unnecessary or questionable, as they have resulted in little benefit to the Town. Furthermore, the Town made these expenditures without obtaining prior written approval from NYS Parks, as required by the agreement. Examples are as follows:

- From June 2011 through May 2013, the Town paid a consultant \$258,525 to advise and provide project management services. However, it is unclear if the consultant was to provide services for the Town or LDC. Town officials were unable to provide us with a formal written agreement between the Town or LDC and the consultant to establish which entity was to receive the consultant's services, the contract period, services to be provided or basis of compensation.<sup>14</sup> The consultant was paid

<sup>14</sup> The Town paid the consultant an hourly rate of \$150 per hour for his services, which was based on a proposal submitted by the consultant.

an average of \$11,000 per month and told us that his duties included attending meetings, preparing correspondence and meeting minutes, negotiating with NYS Parks, preparing requests for proposals (RFPs), reviewing RFP responses and advising the Supervisor. At least half of the claims that the consultant submitted to the Town for payment provided only the total number of hours billed,<sup>15</sup> but did not include any detail to identify the services he provided. The Board failed to adequately audit these claims because it did not question the lack of detail on the invoices while approving the claims for payment. Although it is likely the consultant provided guidance and management services, we question the consultant's direction as it took almost two years before Town officials recognized that the way to proceed with the project objectives was to follow the prescribed process as required by NYS Parks and the agreement. Once the current engineering firm began the required process to amend the master plan, the Town determined that it no longer needed the consultant's services.

- In September 2012, the Town paid a contractor \$189,000 to pave two parking areas. Town officials told us that the former Supervisor directed Town staff to issue the payment for these services before the Board audited and approved the payment. In addition, Town officials were unable to provide us with documentation to verify that the Board audited this claim after the check was disbursed. Also, the Town did not follow proper bidding procedures, which require competitive bids for these services. Town officials did not ensure that NYS Parks had reviewed and approved advertisements, bids, bid certifications and bid documentation related to the paving project before the Town awarded this contract. Moreover, the Town did not ensure that the paving job was done properly, as a top coat was never applied to the parking lot.<sup>16</sup>
- From October 2012 through March 2013, the Town paid an engineering firm \$107,915 to develop engineering designs for a campground and exhibition area. Because this project was not included in the master plan and had not received NYS Parks' approval, we question why the Town paid for detailed engineering designs that may never be used. Furthermore, the Town's current engineering firm indicated that it would not

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<sup>15</sup> Multiplied by a rate of \$150 per hour

<sup>16</sup> A NYS Parks representative told us that only one of the areas should have been paved, and the paving job was not properly completed as the paved areas still needed a top coat application. As of the end of our fieldwork, the additional top coat work had not yet been contracted for or completed. Several Town officials told us that the parking areas will quickly deteriorate unless a top coat is applied.

have recommended developing detailed design plans until after the master plan was amended.

- From September 2011 through September 2012, the Town paid an engineering firm \$20,000 to prepare a document titled “master plan.”<sup>17</sup> This document consisted primarily of photographs with descriptions of Park facilities as they were in 2011 and descriptions of proposed improvements.<sup>18</sup> It does not appear that this document was widely used as Town officials did not seem to be aware of its existence.<sup>19</sup>
- In June 2011, the Town paid a consultant \$12,900 to perform a water study as a preliminary step toward constructing a fish hatchery. The fish hatchery was briefly discussed by Town officials but was rejected early in the process and was not included in the proposal submitted for Greenway funding. Because the project was not included in the Town’s Greenway funding proposal or included in the master plan, we question the value of procuring for this study prior to any authorization or endorsement.
- In May 2011, the Town paid an engineering firm \$11,985 for aerial photography services. It is unclear if this service was needed or ever used.
- In October 2012, November 2012 and March 2013, the Board approved three payments totaling \$8,750 to rent a bulldozer from the Town’s storm water manager. According to the related claims paid by the Town, it rented the bulldozer for 35 days to grade a portion of the Park and remove invasive plant species. However, the claims did not indicate the exact dates that the Town used the bulldozer. Also, Town officials could not provide us with any documentation to indicate that they had obtained the required number of written quotes when acquiring this rental equipment, as mandated by the Town’s procurement policy.
- In December 2012 and January 2013, the Board approved payments totaling \$450 to an engineering firm for services related to developing engineering designs for a campground

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<sup>17</sup> This document is not related to the NYS Parks’ master plan dated February 2004.

<sup>18</sup> Proposed improvements from 2012 to 2020 include a boat launch, fishing dock, fish cleaning station, nature center, road and parking lot improvements, trail improvements, interpretive kiosks, landscaping, gazebo/band stand, pond improvements, new shelters, bird watching blinds and canoe and boat rental building.

<sup>19</sup> The Town did not have a copy of this document and had to obtain one from the engineering firm when we requested to review it.

and exhibition area.<sup>20</sup> Based on the invoice descriptions of the services, they appear to be inappropriate Town expenditures. The description of these charges included “dancing the tango,”<sup>21</sup> “learned to moonwalk,” and “doing calcs with an abacus.”<sup>22</sup> The Board approved these invoices for payment with these comments as descriptions of services provided. Had the Board performed an adequate audit of these claims, it may have noticed these descriptions and rejected the claims for payment.

To date, the Town has received a total of \$900,000 in Greenway funding but has spent approximately an additional \$219,000 on Park projects that may not be covered by Greenway money.<sup>23</sup> Board members told us that they thought they would not have to use Town funds to pay for Park projects, as it was their understanding that all costs related to the Park would be paid for using Greenway funds. However, believing that Greenway funds would cover all costs does not release the Board from its responsibility to manage these funds appropriately. Use of this money should be held to the same standards as any other revenue received by the Town.

Town officials have displayed a pattern of incurring expenditures for proposed Greenway projects, including Park development and other projects, before the Town has been officially awarded Greenway money. For example, Town officials spent more than \$152,000 on professional services and engineering fees before any of the Park projects were approved for Greenway funding.

In addition, three other unrelated projects were approved for Greenway funding in March 2014. The HCSC approved \$125,500 in Greenway money<sup>24</sup> for the construction of a basketball court, concession stand and purchase of new playground equipment. Nonetheless, by December 2013, three months prior to HCSC’s approval of the Greenway money, the Town paid invoices totaling \$124,696 for materials and services directly related to these three projects. Town officials admitted that these projects were essentially completed before they were awarded Greenway funding. An HCSC representative told us that, in the past, any expenditures made prior to project approval would not be eligible for Greenway funding. Therefore, the Town may have taken an

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<sup>20</sup> These payments for services refer to the third example regarding the \$107,915 in payments made by the Town to an engineering firm to develop engineering designs for a campground and exhibition area.

<sup>21</sup> Refer to the first invoice in Appendix B for further information.

<sup>22</sup> Refer to the second invoice in Appendix B for further information.

<sup>23</sup> Refer to the Current Status section for further information on this additional Greenway money.

<sup>24</sup> As of January 2015, the Town did not receive any Greenway funds for these projects.

unnecessary risk by using Town money to complete projects before it received approval for Greenway funding.

Although the Town would need to expend some money to adequately present proposed projects to NYS Parks, the Greenway Commission and HCSC, Town officials should have taken a more conservative approach by limiting professional service expenditures until they identified the projects that NYS Parks would support and received funding approval from the HCSC. There is always a risk that funding would be denied, and the Town would be obligated to pay for expenditures for which the Board did not budget.

## **Current Status**

The Board has presently stopped all project-related work. Town officials told us they intend to continue with the Park's operations and maintenance as required by the agreement until the Board identifies a plan of action. Despite this delay in project-related work, Town officials have several issues that they will need to consider.

A representative from NYPA who advises the HCSC told us that the HCSC has never had a situation where a project had received Greenway funding approval but was subsequently canceled and the project was not completed. There is currently no process in place to address this situation. Therefore, it is unclear if the Town will be reimbursed with Greenway funds for the \$219,000 that it spent beyond what it had already received in Greenway funds. The representative stated that the HCSC has created a subcommittee to address these issues and review its funding process.

The NYPA representative also stated that, although it is allowable to use Greenway funds for operation and maintenance costs if it is part of a larger improvement project, he doubts that Greenway funding would be approved to exclusively fund annual park operation and maintenance. Consequently, if the improvement projects are canceled, the Town may be faced with incorporating Park operation and maintenance costs into its general fund budget with no expectation of receiving Greenway funding or revenue from Park fees.<sup>25</sup> Town officials also will need to address the costs associated with the asbestos issue<sup>26</sup> and the additional work required to apply a top coat on the parking areas. Based on an estimate provided by a NYS Parks representative, regular annual operational costs could be more than \$100,000 per year.

In addition, the project scope has changed since the Town received approval for Greenway funds in February 2012. The Town engaged

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<sup>25</sup> The Town has not charged or received any revenue from user fees for the Park since it took over operations in 2011.

<sup>26</sup> See supra, note 12.

a different engineering firm to manage the project and is pursuing a slightly different project scope. This new firm has discussed potential improvements with NYS Parks to complete the process of amending the master plan. The current projects now include a boat launch, fishing pier, new campground, additional roads and a seven-acre pond. The Audubon nature center, visitor center and water taxi are no longer under consideration. The current engineering firm told us it is in the early stages of this process and any of the proposed projects could still be removed or modified for various reasons. Also, the engineering firm informed the Town that it will charge an additional \$150,000 to complete the process to amend the master plan. Therefore, the Town will be faced with additional planning costs if it decides to continue with the Park project.

The Board did not provide adequate oversight and did not ensure that proposed improvements were properly planned, evaluated and approved by NYS Parks. As a result, Town officials spent money that may provide little or no benefit to the Town and might have been used for other Town projects.

## Recommendations

The Board should:

1. Ensure that future capital projects are thoroughly evaluated, planned and managed in accordance with the agreement.
2. Submit annual financial reports to NYS Parks as required by the agreement.
3. Consult with legal counsel, as appropriate, as to the Town's obligations with the Park regarding asbestos abatement and completion of the paving project.
4. Ensure that only projects approved by NYS Parks are presented to the Greenway Commission and HCSC for funding consideration.
5. Ensure that future Greenway projects are started after the HCSC approves the funding.
6. Properly audit claims and ensure that proposed payments adhere to the Town's procurement policy, are reasonable and proper Town expenditures and include appropriate supporting documentation.
7. Decide whether to continue with improvement projects at the Park and, if necessary, determine whether remaining project costs will be reimbursed with Greenway funds.

## Controls Over Park Fuel Supplies

The Board is responsible for ensuring that Town officials establish procedures to safeguard and account for the Town's fuel inventory and provide reasonable assurance that fuel supplies are protected from waste and abuse. A good system of internal controls over fuel usage includes maintaining perpetual inventory records that identify quantities delivered, consumed and on hand. Town officials should periodically reconcile fuel inventory records to physical fuel inventories to help identify fuel loss due to leaks or unauthorized use. It is also important for Town officials to review fuel usage reports to ensure that fuel is used only for Town purposes.

The Park property includes two aboveground fuel tanks: a 1,000 gallon diesel tank and a 1,000 gallon unleaded fuel tank. From January 2012 through December 2013, 4,109 gallons of unleaded fuel costing \$12,409 and 5,205 gallons of diesel fuel costing \$16,497 were delivered to the tanks to be used for Park vehicles and equipment. While the Town's highway garage also has fuel tanks, Town officials determined that it was more practical to use the Park's tanks for Park equipment fueling needs due to the distance from the Park to the highway garage.

The Board did not ensure that the Town had adequate controls over Park fuel supplies. Town employees who dispensed fuel from the tanks at the Park were not required to document their fuel usage to ensure that fuel was used for appropriate Town purposes. Although the Park fuel pump had a lock, the key could be easily copied, and the fuel tanks are located in a secluded area where suspicious activity could go undetected.

The Town's storm water manager<sup>27</sup> told us that the former Supervisor gave him permission to pump diesel fuel into his personal vehicle,<sup>28</sup> because the former Supervisor wanted to compensate him for fuel usage related to his Town duties. The storm water manager told us that he generally pumped about 30 gallons of diesel fuel from the Park tanks into his vehicle on a weekly basis.<sup>29</sup> Beginning in January 2012, he also was responsible for ordering all fuel deliveries to the

<sup>27</sup> The storm water manager is the same employee who rented a bulldozer to the Town. This information was discussed previously in the Expenditures section of the report.

<sup>28</sup> The storm water manager owns a diesel truck that has a 100-gallon diesel fuel tank in the truck bed, in addition to the truck's fuel tank.

<sup>29</sup> This employee also had access to highway department fuel pumps.

Park tanks and had the only key<sup>30</sup> to the lock on the Park's fuel pump. Because Town officials did not require employees to log their fuel usage, the Town does not have any record of how much fuel the storm water manager pumped into his personal vehicle.

The former Supervisor told us that he did not recall giving this employee permission to dispense Town fuel into his personal vehicle. Board members and other Town officials did not know that an employee was dispensing Town fuel into his personal vehicle, and the Board did not authorize this activity.

We identified all equipment that used diesel fuel from the Park tank and calculated the approximate amount of diesel fuel used from January 2012 through March 2014. Based on the hours of usage recorded for the diesel lawn mower<sup>31</sup> and Town employees' estimates of diesel fuel used for other miscellaneous Park equipment,<sup>32</sup> we estimated that Town employees used approximately 3,100 gallons of diesel fuel for legitimate Town purposes. During that time period, 5,205 gallons of diesel fuel were delivered to the Park, and Town employees estimated that approximately 100 gallons remained in the diesel tank as of April 2014. Therefore, approximately 2,000 gallons of Park diesel fuel is unaccounted for. We estimate the total value of the unaccounted-for Park diesel fuel to be approximately \$6,500.<sup>33</sup>

Because the Town did not have any controls over fuel usage at the Park, there is also an increased risk that its unleaded fuel supplies could have been used in an unauthorized manner.<sup>34</sup> The current Supervisor replaced the lock on the pumps and stated that the Town will no longer allow fuel deliveries to the Park tanks.

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<sup>30</sup> One other Park employee was given a key to the pump lock in 2012, but he returned it by the end the year.

<sup>31</sup> The large diesel lawn mower was the main user of diesel fuel. The recorded hours of usage for the mower were 630.2 hours on March 13, 2014. This reading was taken from the lawn mower's usage meter. The manufacturer's specifications for the mower showed that, on average, this mower uses 3.33 gallons of diesel fuel per hour of use.

<sup>32</sup> The miscellaneous equipment included two tractors, the rented bulldozer, a bobcat and a skid steer.

<sup>33</sup> Gallons of unaccounted-for Park diesel fuel (2,041) multiplied by the average cost per gallon paid by the Town from January 1, 2012 through December 31, 2013 (\$3.17/gallon) equals approximately \$6,470.

<sup>34</sup> We were unable to readily estimate legitimate Town usage of the unleaded fuel supplies due to the range and breadth of Town equipment and vehicles using this fuel supply.

## Recommendations

The Board should:

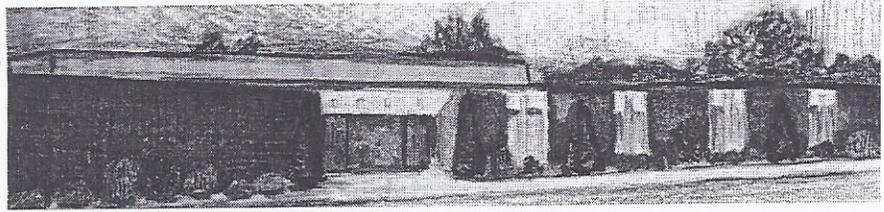
8. Ensure that all fuel supplies are properly accounted for by maintaining perpetual inventory records that identify quantities delivered, consumed and on hand and periodically reconciling fuel inventory records to physical fuel inventories.
9. Require all employees to record their fuel use and the piece of equipment or vehicle into which the fuel was dispensed on fuel usage reports.
10. Not allow employees to dispense fuel into their personal vehicles.
11. Consult with its legal counsel to determine if the Town should recoup the cost of the diesel fuel used by the employee who dispensed the fuel into his personal vehicle.

**APPENDIX A**  
**RESPONSE FROM LOCAL OFFICIALS**

The local officials' response to this audit can be found on the following pages.

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Dennis J. Brochey

## **DEPUTY SUPERVISOR**

Sean Edwards

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Beth A. Ceretto  
William C. Conrad  
Ronald R. Winkley

## **TOWN CLERK**

Donna R. Garfinkel

## **RECEIVER OF TAXES**

Deputy Darlene Norwich

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Model City, NY 14107  
754-8213

## **HIGHWAY**

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Model City, NY  
754-8218

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Hugh C. Gee

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mdavis@lippes.com

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## **PLANNING - ZONING**

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754-8477

## **LWPCC**

## **CHIEF OPERATOR**

Jeffrey Ritter  
501 Pletcher Road  
Lewiston, NY 1409  
754-8291

February 19, 2015

Jeffrey D. Mazula, Chief Examiner  
Office of the State Comptroller  
295 Main Street, Suite 1032  
Buffalo, New York 14203-2510

Dear Mr. Mazula:

The Town of Lewiston has received a draft copy of the audit performed by your office concerning the Town's management of Joseph Davis State Park ("JDSP") and fuel purchased for and used at JDSP during the period January 1, 2011 through April 8, 2014. More specifically, the audit focused on Town Board oversight and the use of a local development corporation regarding JDSP. Please accept the following as the Town's written response to the audit.

The majority of all actions, and inactions, reviewed by the audit occurred prior to me taking office as Town Supervisor on January 1, 2014. Additionally, two new board members were elected in November 2014. The Town has also parted ways with its previous engineering firm and the attorneys responsible for working on matters concerning JDSP. Although the Joseph Davis State Park Local Development Corporation (JDSPLDC) was created pursuant to advice received from legal counsel, the Town has since determined to dissolve the JDSPLDC. It is my understanding that all necessary paperwork to dissolve the JDSPLDC has been executed and the Town is only waiting for formal Court and/or State approval of dissolution. To my knowledge no Town funds have been used or directed toward the JDSPLDC since well before this audit was commenced. Finally, the Town employee suspected of misusing Town fuel supplies was investigated by the New York State Police and eventually terminated.

February 19, 2015

Page 2

After reviewing the recommendations contained in the draft audit, it is the Town's intention to accept those recommendations.

Please contact me with any questions.

Best regards,

Dennis J. Brochey  
Town Supervisor

cc: Town Board  
Town Clerk  
Brian Seaman, Esq.  
Mark Davis, Esq.

## **APPENDIX B**

### **INVOICES**

Invoice 1 is on page 24. Invoice 2 is on page 25.

|   |            |      |        |          |  |
|---|------------|------|--------|----------|--|
| Senior Engineer                                       |            |      |        |          |  |
| [REDACTED]  | 11/15/2012 | 7.25 | 70.00  | 507.50   |  |
| Site visit  |            |      |        |          |  |
| Engineer  |            |      |        |          |  |
| [REDACTED]  | 10/29/2012 | 2.50 | 75.00  | 187.50   |  |
| gather information n data                             |            |      |        |          |  |
| [REDACTED]  | 10/30/2012 | 2.50 | 75.00  | 187.50   |  |
| gather information                                    |            |      |        |          |  |
| [REDACTED]  | 11/1/2012  | 4.00 | 75.00  | 300.00   |  |
| gather information, mtg                               |            |      |        |          |  |
| [REDACTED]  | 11/2/2012  | 3.50 | 75.00  | 262.50   |  |
| mtg minutes   |            |      |        |          |  |
| [REDACTED]  | 11/8/2012  | 1.00 | 75.00  | 75.00    |  |
| mtg   |            |      |        |          |  |
| Electrical Engineer                                   |            |      |        |          |  |
| [REDACTED]  | 11/8/2012  | 1.50 | 81.00  | 121.50   |  |
| team meeting  |            |      |        |          |  |
| [REDACTED]  | 11/12/2012 | 1.50 | 81.00  | 121.50   |  |
| coord site visit info                                 |            |      |        |          |  |
| [REDACTED]  | 11/13/2012 | 1.50 | 81.00  | 121.50   |  |
| budget  |            |      |        |          |  |
| Cadd Drafter I  |            |      |        |          |  |
| [REDACTED]  | 11/1/2012  | .25  | 76.00  | 19.00    |  |
| Revisions   |            |      |        |          |  |
| [REDACTED]  | 11/9/2012  | .25  | 76.00  | 19.00    |  |
| Blowup Map for Bruce                                  |            |      |        |          |  |
| [REDACTED]  | 11/21/2012 | .50  | 76.00  | 38.00    |  |
| Revisions   |            |      |        |          |  |
| Planner   |            |      |        |          |  |
| [REDACTED]  | 11/8/2012  | 1.25 | 85.00  | 106.25   |  |
| Meeting.  |            |      |        |          |  |
| [REDACTED]  | 11/9/2012  | .50  | 85.00  | 42.50    |  |
| Cost estimates.                                       |            |      |        |          |  |
| [REDACTED]  | 11/14/2012 | .50  | 85.00  | 42.50    |  |
| Review & response to SHPO letters.                    |            |      |        |          |  |
| [REDACTED]  | 11/21/2012 | 2.00 | 85.00  | 170.00   |  |
| SEQR  |            |      |        |          |  |
| [REDACTED]  | 11/23/2012 | 2.00 | 85.00  | 170.00   |  |
| SEQR  |            |      |        |          |  |
| Licensed Surveyor                                     |            |      |        |          |  |
| [REDACTED]  | 11/8/2012  | 1.25 | 90.00  | 112.50   |  |
| meeting with everyone and meeting with Jay afterwards |            |      |        |          |  |
| [REDACTED]  | 11/13/2012 | 1.00 | 90.00  | 90.00    |  |
| prep for field  |            |      |        |          |  |
| [REDACTED]  | 11/15/2012 | 1.00 | 90.00  | 90.00    |  |
| still doing survey work                               |            |      |        |          |  |
| [REDACTED]  | 11/21/2012 | 1.00 | 90.00  | 90.00    |  |
| Dancing the Tango                                     |            |      |        |          |  |
| 2 - Man Crew @ Prev. Wage                             |            |      |        |          |  |
| [REDACTED]  | 11/15/2012 | 6.50 | 197.00 | 1,280.50 |  |
| set cntrl topo maint compound (PW - 2 man crew)       |            |      |        |          |  |
| [REDACTED]  | 11/16/2012 | 8.00 | 197.00 | 1,576.00 |  |
| topo (PW - 2 man crew)                                |            |      |        |          |  |
| [REDACTED]  | 11/21/2012 | 8.00 | 197.00 | 1,576.00 |  |
| topo (PW - 2 man crew)                                |            |      |        |          |  |

|  |   | 12/7/2012  | 1.00 | 76.00  | 76.00  |
|--|---|------------|------|--------|--------|
|  | Setting up Sheets                             |            |      |        |        |
|  |   | 12/10/2012 | 1.00 | 76.00  | 76.00  |
|  | Revision                                      |            |      |        |        |
|  | Planner                                       |            |      |        |        |
|  |   | 11/26/2012 | 4.00 | 85.00  | 340.00 |
|  | SEQR  |            |      |        |        |
|  |   | 11/27/2012 | 1.00 | 85.00  | 85.00  |
|  | SEQR  |            |      |        |        |
|  |   | 11/28/2012 | 1.00 | 85.00  | 85.00  |
|  | SEQR  |            |      |        |        |
|  |   | 11/29/2012 | 2.00 | 85.00  | 170.00 |
|  | SEQR  |            |      |        |        |
|  |   | 11/30/2012 | 1.00 | 85.00  | 85.00  |
|  | SEQR  |            |      |        |        |
|  |   | 12/3/2012  | 2.00 | 85.00  | 170.00 |
|  | SEQR  |            |      |        |        |
|  |   | 12/4/2012  | .50  | 85.00  | 42.50  |
|  | SEQR  |            |      |        |        |
|  |   | 12/5/2012  | .50  | 85.00  | 42.50  |
|  | SEQR  |            |      |        |        |
|  |   | 12/6/2012  | 1.00 | 85.00  | 85.00  |
|  | SEQR  |            |      |        |        |
|  |   | 12/7/2012  | .50  | 85.00  | 42.50  |
|  | SEQR  |            |      |        |        |
|  | Licensed Surveyor                             |            |      |        |        |
|  |   | 11/28/2012 | 2.00 | 90.00  | 180.00 |
|  | Learned to moonwalk                           |            |      |        |        |
|  |   | 11/30/2012 | 2.00 | 90.00  | 180.00 |
|  | Doing cales with an abacus                    |            |      |        |        |
|  | Survey Technician I                           |            |      |        |        |
|  |   | 11/26/2012 | 1.00 | 81.00  | 81.00  |
|  | topo office                                   |            |      |        |        |
|  |   | 11/27/2012 | 3.50 | 81.00  | 283.50 |
|  | topo office                                   |            |      |        |        |
|  |   | 11/28/2012 | 5.50 | 81.00  | 445.50 |
|  | topo office                                   |            |      |        |        |
|  |   | 12/19/2012 | 2.00 | 81.00  | 162.00 |
|  | drop inlet check.                             |            |      |        |        |
|  | 1 Person Survey Crew                          |            |      |        |        |
|  |   | 12/19/2012 | 2.00 | 123.00 | 246.00 |
|  | field check - 1 man crew                      |            |      |        |        |
|  | Designer                                      |            |      |        |        |
|  |   | 11/29/2012 | 2.00 | 77.00  | 154.00 |
|  | pull in mapping and design data for pre-devel |            |      |        |        |
|  |   | 12/3/2012  | 1.00 | 77.00  | 77.00  |
|  | project meeting                               |            |      |        |        |
|  |   | 12/5/2012  | 6.00 | 77.00  | 462.00 |
|  | pull in mapping and design data for pre-devel |            |      |        |        |
|  |   | 12/6/2012  | 1.00 | 77.00  | 77.00  |
|  | project meeting                               |            |      |        |        |
|  |   | 12/13/2012 | 6.50 | 77.00  | 500.50 |
|  | layout grading                                |            |      |        |        |
|  |   | 12/14/2012 | 4.00 | 77.00  | 308.00 |
|  | layout grading                                |            |      |        |        |
|  |   | 12/18/2012 | 4.00 | 77.00  | 308.00 |
|  | layout piping                                 |            |      |        |        |

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to determine if the Board provided adequate oversight of Park operations. To accomplish the objective of the audit and obtain valid audit evidence, we interviewed Town officials and other individuals involved with the Park, reviewed contracts and policies, tested expenditures for compliance with the Town's procurement policy and examined other pertinent documents for the period January 1, 2011 through April 8, 2014.

Our procedures included the following steps:

- We interviewed appropriate officials and other involved individuals to gain an understanding of procedures in place and their knowledge and involvement with the activities at the Park.
- We reviewed the Niagara Power Project Agreement, specifically section seven – Greenway Recreation/Tourism Fund in the Host Communities.
- We reviewed the license agreement between NYS Parks and the Town.
- We reviewed other pertinent documents, such as Standing Committee Protocols, 2004 Final Master Plan and Final Environmental Impact Statement for Joseph Davis State Park, Niagara Greenway Plan, Greenway Commission annual reports, HCSC annual reports, the Town's Park proposal submitted to the Greenway commission, consultant's report, consultant's proposal, State Environmental Quality Review Act Final Scoping Document and engineering proposals.
- We reviewed Town Board minutes, the Town's procurement policy, LDC minutes, HCSC minutes and Greenway Commission minutes for the period January 2011 through March 2014.
- We reviewed correspondence from NYS Parks to the Town and LDC to determine NYS Parks' level of communication and attitudes toward the Park improvement projects.
- We requested vendor history reports and payroll reports for all expenditures and labor costs totaling \$1,119,284 attributed to the Park for the period January 1, 2011 through April 3, 2014. From these reports, we selected all payments greater than \$1,000 to determine if the transactions were reasonable and necessary, adhered to the Town's procurement policy and General Municipal Law and included proper substantiation. In certain instances, we reviewed payments that were less than \$1,000 to better identify the purpose of the purchases.
- We documented and categorized all purchases related to Park operations and maintenance costs and project-related costs.
- We requested vendor history reports for three other Greenway projects to determine the total amount spent by the Town for each project and the dates of the payments.

- We reviewed and documented invoices for all Park fuel deliveries. We identified all equipment that used fuel from the Park’s diesel tank and estimated the amount of diesel fuel that would be attributed to legitimate Town use.
- We reviewed and documented fuel usage records from the highway department for any fuel billed to the Park.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## APPENDIX D

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**APPENDIX E**  
**OFFICE OF THE STATE COMPTROLLER**  
**DIVISION OF LOCAL GOVERNMENT**  
**AND SCHOOL ACCOUNTABILITY**

Andrew A. SanFilippo, Executive Deputy Comptroller  
Gabriel F. Deyo, Deputy Comptroller  
Nathalie N. Carey, Assistant Comptroller

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