

**17.1 INTRODUCTION**

This chapter addresses the requirements of Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966 (49 USC § 303; 23 CFR § 774). This Section 4(f) Evaluation is being circulated along with the project’s Supplemental Environmental Assessment (EA) prepared in accordance with the National Environmental Policy Act (NEPA).

The 2004 FEIS included a Section 4(f) Evaluation, which identified a use of one Section 4(f) resource along the Phase 2 alignment—the Metro-North Harlem-125th Street Station and Comfort Station. This use would no longer occur with the Phase 2 Modified Design. In addition, the Phase 2 Modified Design would not result in any other uses of Section 4(f) resources.

**17.2 REGULATORY CONTEXT**

Section 4(f) prohibits the Secretary of Transportation from approving any program or project that requires the “use” of 1) any publicly owned land in a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or 2) any land from a historic site of national, state, or local significance (collectively “Section 4(f) resources”), unless (a) the agency determines that the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), will have a *de minimis* impact; or (b) there is no feasible and prudent alternative to the use of such land and the project includes all possible planning to minimize harm to the resource. The requirements of Section 4(f) apply to the operating administrations of USDOT, including the Federal Transit Administration (FTA).

As set forth in the Section 4(f) regulations, archaeological resources are protected under Section 4(f) only when their importance is derived from their preservation in place.

The Section 4(f) regulations define three types of “use” of Section 4(f) property (23 CFR Part 774.17):

- 1) When land is permanently incorporated into a transportation facility;
- 2) When there is a temporary occupancy of land that is adverse to the preservation purpose of Section 4(f) as determined by the criteria in 23 CFR 774.13(d); and
- 3) When there is a constructive use of a Section 4(f) property, which occurs “when the transportation project does not incorporate land from a Section 4(f) resource, but the proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired” (23 CFR Part 774.15(a)). Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished.

Parks and recreational spaces are also protected by additional legislation. In addition to Section 4(f), the Land & Water Conservation Fund Act (LWCFA), 16 U.S.C. §§ 4601-4 to 4601-11 (commonly referred to as Section 6(f), as the provision was originally contained in Section 6(f)(3)

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of the LWCFA, Public Law 88-578 of 1962, before codification); and the Urban Park and Recreation Recovery Act (UPARRA), 16 U.S.C. §§ 2501 to 2514 restrict the future use of parklands or open spaces that have been improved with funds received through the LWCFA and UPARRA.

The 2004 FEIS included a Section 4(f) Evaluation for the potential use of the following Section 4(f) resources located along the 8.5-mile alignment of the Second Avenue Subway:

### ***Parks and Recreational Facilities***

- Coenties Slip (Lower Manhattan);
- Vietnam Veterans Plaza (Lower Manhattan);
- Fulton Street Plaza (Lower Manhattan);
- Pearl Street Playground (Lower Manhattan);
- St. James Square (Lower Manhattan);
- Kimlau Square (Lower Manhattan);
- Sara D. Roosevelt Park (Lower East Side/Chinatown/East Village);
- St. Vartan Park (at 35th Street); and
- Playground 96 (at 96th Street).

### ***Historic Sites***

- Possible burials associated with a former portion of Shearith Israel Cemetery (Lower Manhattan);
- Possible burials associated with former St. Stephen's Episcopal Church Cemetery (Lower East Side);
- Possible burials associated with former Methodist Episcopal Church Cemetery (Lower East Side/Chinatown/East Village);
- Possible burials associated with former First Baptist Church site (Lower East Side/Chinatown/East Village); and
- Metro-North Harlem-125th Street Station and Comfort Station (East Harlem)

St. Vartan Park was also identified in the 2004 FEIS as having received Section 6(f) funding. No parks along the alignment were identified as having received UPARRA funding.

## **17.3 APPLICABILITY OF SECTION 4(f) TO PHASE 2 MODIFIED DESIGN**

Neither the 2004 FEIS Design nor the Modified Design would require the use of any parks or recreational facilities for construction activities or permanent features of Phase 2 of the subway. The Modified Design would result in adverse impacts associated with construction noise during construction to fewer parks near the alignment than would have occurred with the 2004 FEIS Design (see Chapter 5, "Public Open Spaces," for more information).

For historic sites, the 2004 FEIS Design required the use of one Section 4(f) resource, the Metro-North Harlem-125th Street Station and Comfort Station, which is a historic property that has been identified as eligible for the State and National Registers of Historic Places (S/NR). The Modified Design's revised construction means and methods have removed much of the cut-and-cover construction along 125th Street and have eliminated the originally proposed direct connection to the subterranean portion of the Metro-North Harlem-125th Street Station, thereby avoiding direct effects to this historic property. Consistent with the 2004 FEIS, an entrance (Entrance 3) is planned

under the Park Avenue viaduct, which is also a historic property that is eligible for the S/NR, but this entrance would be expanded in the Modified Design to include the southeast corner of 125th Street and Park Avenue (as detailed in Chapter 2, “Description of Phase 2 Modified Design”). The Modified Design would not directly affect the Metro-North Harlem-125th Street Station; the Comfort Station, a contributing component of the S/NR-eligible Metro-North Harlem-125th Street Station; or the Park Avenue viaduct, and therefore no use of this Section 4(f) resources is required with the Modified Design.

A Programmatic Agreement (PA) for the Second Avenue Subway Project was prepared pursuant to Section 106 of the NHPA among the FTA, Metropolitan Transportation Authority (MTA) New York City Transit,<sup>1</sup> and the New York State Historic Preservation Officer (SHPO) and executed on April 8, 2004, to set forth the procedures that would be followed to document and protect cultural resources that could be adversely affected by the construction of the subway. Consistent with the PA and with the conclusions of the 2004 FEIS, MTA, along with FTA, will consult with the SHPO to ensure that the 125th Street Station elements that would occur in proximity to the Metro-North Harlem-125th Street Station, associated Comfort Station, and Park Avenue viaduct are compatible with the historic and architectural qualities of these historic structures so as to avoid or minimize adverse contextual effects to architectural resources. In addition, as stated in the 2004 FEIS and the PA, architectural resources that could be affected by construction activities will be included in a Construction Protection Plan (CPP) prepared prior to construction, demolition, or excavation work. The CPP will set forth the specific measures to be used, and specifications that will be applied, to protect each of the historic resources that could be affected during the construction period.

None of the other station entrances or ancillary facilities with the Modified Design would be located on historic properties. The southern entrance (Entrance 1) and ancillary facility (Ancillary 1) of the 116th Street Station would be located within the boundaries of the S/NR-eligible East Harlem Historic District, but would not affect any properties that have been identified as contributing resources to the district. Continued consultation with SHPO will be undertaken as the designs of the entrance and ancillary facility advance, as set forth in the PA, to avoid or minimize any contextual effects to the historic district as a result of the new station buildings. In addition, as stated in the 2004 FEIS and the PA, architectural resources that could be affected by construction activities will be included in a CPP prepared prior to construction, demolition, or excavation work to avoid accidental damage to the historic properties during construction.

## **17.4 CONCLUSIONS**

With the Modified Design, no use of any Section 4(f) resources would occur for the Second Avenue Subway Phase 2. The 2004 FEIS Design required the use of a Section 4(f) resource along the Phase 2 alignment, the Metro-North Harlem-125th Street Station. This use is no longer required for the Phase 2 Modified Design. \*

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<sup>1</sup> New York City Transit (NYCT) was the official signatory of the Programmatic Agreement. The MTA Capital Construction Company (MTACC) is responsible for planning, design, and construction of the Project and related public outreach, and New York City Transit (NYCT) will operate and maintain the service, but for purposes of this document, they are collectively referred to herein as MTA.