

Section 4(f) and Section 6(f) Evaluation

15.1 INTRODUCTION

Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966 (49 USC § 303) 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 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 USDOT and the Federal Transit Administration (FTA) consider three possible ways in which a project could “use” a resource:

- When land is permanently incorporated into a transportation facility;
- When there is a temporary occupancy of land that is adverse in terms of the statute’s preservation purpose; or
- When there is a constructive use of land.

Constructive use occurs when the project does not directly incorporate land from a Section 4(f) resource, but the project’s impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished.

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) 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 (collectively, “Section 6(f) resources”).

The Final Environmental Impact Statement (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:

- Playground 96;
- St. Vartan Park;
- Sara D. Roosevelt Park;
- Kimlau Square;
- St. James Square;
- Pearl Street Playground;
- Fulton Street Plaza;

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- Vietnam Veterans Plaza;
- Coenties Slip;
- Metro-North Harlem-125th Street Station and Comfort Station;
- Possible Burials Associated with Former Methodist Episcopal Church Cemetery;
- Possible Burials Associated with Former First Baptist Church Site;
- Possible Burials Associated with Former St. Stephen's Episcopal Church Cemetery; and
- Possible Burials Associated with a Former Portion of Shearith Israel Cemetery.

St. Vartan Park was also identified in the FEIS as a Section 6(f) resource.

**15.2 APPLICABILITY OF SECTION 4(f) AND SECTION 6(f) TO THE
STATION ENTRANCE ALTERNATIVES**

The No Action Alternative and the station entrance alternatives for the 72nd Street and 86th Street Stations would not alter the conclusions of the FEIS with respect to the Section 4(f) and Section 6(f) properties identified in the Final Section 4(f) and Section 6(f) Evaluation. None of the Section 4(f) or Section 6(f) resources identified in the FEIS would be affected by any of the Build entrance alternatives for the 72nd Street and 86th Street Stations. Moreover, as described in the *Supplemental Environmental Assessment to the Second Avenue Subway FEIS: 72nd Street and 86th Street Station Entrance Alternatives*, the No Action Alternative and the station entrance alternatives for the 72nd Street and 86th Street Stations would not result in impacts on parklands or historic and archaeological resources. Therefore, the No Action Alternative and the station entrance alternatives for the 72nd Street and 86th Street Stations would not result in a use of Section 4(f) or Section 6(f) properties other than those previously identified in the FEIS. *