Chapter 5
Section 4(f) Evaluation

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Acronyms and Abbreviations

BRT ..... Bus Rapid Transit
CFR ..... Code of Federal Regulations
CRIS ..... Cultural Resource Information System
DEIS ..... Draft Environmental Impact Statement
DOI ..... US Department of the Interior
FHWA ..... Federal Highway Administration
FTA ..... Federal Transit Administration
LRT ..... Light Rail Transit
Metro ..... Niagara Frontier Transit Metro System, Inc.
Metro Rail ..... Metro Light Rail Transit System
NFTA ..... Niagara Frontier Transportation Authority
NRHP ..... National Register of Historic Places
SHPO ..... State Historic Preservation Office
SUNY ..... State University of New York
UB ..... University at Buffalo

5. Draft Section 4(f) Evaluation

This Draft Section 4(f) evaluation has been prepared in accordance with FTA Section 4(f) regulations set forth in 23 CFR Part 774. Additional guidance was obtained from FTA's Standard Operating Procedures No. 18 (FTA, 2016) and the Section 4(f) Policy Paper (FHWA, 2012). The evaluation identifies properties in the Project study area potentially protected by Section 4(f), evaluates the use of these properties by the Build Alternatives, and presents documentation required for FTA to approve the use of Section 4(f) properties. The full evaluation is provided in Appendix K, "Section 4(f) Evaluation Supplemental Information". This chapter provides a description of the Section 4(f) properties that were identified and the use assessment. FTA will make its Section 4(f) determination as part of its Record of Decision for the Project, after its consideration of public and agency comments. The public comment period for the Draft Section 4(f) Evaluation is 45 days, concurrent with the comment period for the Draft Environmental Impact Statement (Draft EIS).

5.1 UNIVERSITY AT BUFFALO SOUTH CAMPUS

5.1.1 Description and Significance of Property

The UB South Campus (USN 02940.027690), also known as the Main Street campus, is located on 154 acres of the former Erie County Almshouse grounds, acquired in 1909 to establish and construct the current campus. Four buildings remain from the sanatorium: Edmund B. Hayes Hall, Hayes Annex D, Wende Hall, Beck Hall, and Townsend Hall.

Architect E. B. Green designed the first campus buildings in 1910 to resemble Trinity College in Dublin. The campus expanded through the twentieth century, and in 1962 the former private institution was incorporated into the SUNY system and became known as SUNY Buffalo; then-governor of New York, Nelson Rockefeller, spearheaded the effort to absorb the university into the State system and to begin building a second campus in the nearby town of Amherst. UB South Campus includes 53 buildings, two residence halls, and is served by the Metro Rail system at its University Station.

UB South Campus occupies a triangular site bounded by Winspear Avenue to the south, Bailey Avenue (US 62) to the east and Main Street (NY 5) to the west. Its period of significance is 1865-1963. The campus contains one National Register of Historic Places (NRHP)-listed historic property, Edmund B. Hayes Hall (NRHP No. 160000394), which is within the Project APE. A portion of UB South Campus was previously determined to be a NRHP-eligible historic district in 2018 and significant under Criterion C in the area of architecture due to its axial plan by E.B. Green and Albert Hopkins and its Georgian Revival and Neoclassical style campus architecture.

5.1.2 Section 4(f) Use Assessment

The LRT Build Alternative would occur outside the UB South Campus historic property boundary and at depths that would not be discernible to those within the historic property boundary. The LRT Build Alternative would use the existing University Station's underground 16-foot double-track tunnels and existing tail track and tunnel segments to continue the line northeast before turning west. The LRT Build Alternative would occur outside the UB South Campus historic property boundary and at depths that would not be discernible to those within the historic property boundary. Temporary visual and noise effects during tunnel construction are anticipated, and when completed, existing conditions would be restored, and Project elements would not be visible.

UB South Campus is categorized as FTA Land Use Category 3 and is considered a noise-sensitive use under Section 4(f) regulations. The LRT Build Alternative would be underground at UB South Campus and not contribute to increased noise. The Projected total operational noise levels with implementation of the BRT Build Alternative would be 56 dBA at UB South Campus, which is equal to the No Build Alternative. The Project would not result in an exceedance of FTA noise impact criteria, and the change in operational noise levels would be 0 dBA. Furthermore, the construction activities associated with the Project would not exceed FTA's most conservative noise impact criteria (i.e., for residential uses) at UB South Campus.

The vibration and ground-borne noise impact assessment for the Project included one receptor within the UB South Campus historic boundary: the Department of Oral Biology located in Foster Hall, which is contributing to the UB South Campus. No adverse vibration impacts were predicted at this receptor. See Section 4.12, "Vibration" and Appendix D7, "Noise and Vibration Supplemental Information".

The BRT Build Alternative would include a new BRT station platform on Hayes Road, opposite the Metro Rail station upper-level entrance within Main Circle and on the UB South Campus historic property boundary. Though just within the historic property boundary, Foster Hall and Crosby Hall are located more than 200 feet away from proposed improvements; Edmund B. Hayes Hall is located nearly 350 feet away. The BRT station platform and alignment would be located in an area currently used for transit, including rail and buses. The BRT Build Alternative would be consistent with existing conditions on campus at this location. Thus, the BRT Build Alternative's effects on UB South Campus' integrity of design and materials are not adverse, and the BRT Build Alternative would have no adverse effect on the UB South Campus' integrity of setting, since there is currently a bus shelter at Main Circle, the Metro Rail station upper-level entrance, and UB Stampede buses connecting the North and South campuses run along Hayes Road directly behind the proposed BRT platform. General vibration analysis for the BRT Build Alternative found no adverse vibration impacts at receptor locations. See Section 4.12, "Vibration" and Appendix D7, "Noise and Vibration Supplemental Information".

The LRT Build Alternative or BRT Build Alternative would not alter any of the characteristics that qualify the UB South Campus for listing in the NRHP in a manner that would diminish its

integrity of location, design, materials, workmanship, setting, feeling, and association. As a result, the LRT Build Alternative and BRT Build Alternative would have no adverse effect on the UB South Campus. SHPO concurred with the Project's no adverse effect finding for built historic properties. Therefore, no mitigation for built historic properties is required and a *de minimis* finding is proposed for this Section 4(f) use.

5.2 LINCOLN PARK VILLAGE

5.2.1 Description and Significance of Property

Lincoln Park Village (USN 02923.000220) is a residential subdivision in the Town of Tonawanda bound by Decatur Road to the south, Niagara Falls Boulevard on the east, Highland Avenue to the north, and Parkhurst Boulevard to the west, which also defines its historic property boundary. Only a section of the subdivision bound by Highland Avenue, Niagara Falls Boulevard, Decatur Road, and Kettering Drive is located within the Project APE. This section contains 62 residential buildings, all of which are single-family homes built in a relatively short period between 1945 and 1951; the entire Lincoln Park Village subdivision was complete by 1951. Residences facing Niagara Falls Boulevard appear with little or no ornamentation or have been altered using replacement materials and additions, while residences in the historic district's interior feature decorative door surrounds, broken pediments, half-timbering, and gambrel roofs. Lincoln Park Village is eligible for listing on the NRHP under Criterion A in the area of community development. The subdivision was developed during a period of rapid growth in suburban Buffalo following World War II and reflects nationwide housing trends during that time when lending programs made homeownership affordable and attainable for many Americans. It is also eligible under Criterion C in architecture as a post-World War II suburban development project.

5.2.2 Section 4(f) Use Assessment

The LRT Build Alternative and BRT Build Alternative would require minor right-of-way acquisition on parcels near the Decatur Road-Niagara Falls Boulevard intersection. This acquisition represents a small fraction of the overall historic district and occurs on parcels identified as having resources with diminished integrity due to unsympathetic alterations. Landscaping and sidewalks would be restored following Project implementation. This change to Lincoln Park Village's integrity of design and materials is not adverse. No other changes would occur to Lincoln Park Village's aspects of integrity as a result of Project implementation. The Project would not alter any of the characteristics that qualify Lincoln Park Village for inclusion in the NRHP in a manner that would diminish its integrity of location, design, materials, workmanship, setting, feeling, and association.

While noise is not anticipated to exceed current levels, the Project would introduce new sounds related to the LRT functionality and movement. In a highly trafficked area, these new sounds are unlikely to be differentiated by nearby residences. The vibration and ground-borne noise impact assessment of the LRT Build Alternative included one receptor in the vicinity of Lincoln Park Village: The Trinity United Methodist Church. No adverse vibration or ground-borne noise

impacts were predicted at this location. See Section 4.12, "Vibration" and Appendix D7, "Noise and Vibration Technical Memorandum".

As a result, the LRT Build Alternative and BRT Build Alternative would have no adverse effect on Lincoln Park Village. SHPO concurred with the Project's no adverse effect finding for built historic properties. Therefore, no mitigation for built historic properties is required and a *de minimis* finding is proposed for this Section 4(f) use.

5.3 MARVIN GARDENS

5.3.1 Description and Significance of Property

Marvin Gardens (USN 02923.000222) is a residential subdivision in the Town of Tonawanda with historic property boundaries including Niagara Falls Boulevard on the east, Brighton Road to the north (which becomes Maple Road when crossing Niagara Falls Boulevard), Fries Road to the west, and Eggert Road to the southwest. Only a small section of the subdivision comprising the east sides of Wrexham Court North, Rochelle Park, Briarhurst Drive, and Treadwell Road, as well as small portions of parcels near the Brighton Road-Niagara Falls Boulevard Intersection, are located within the APE. Research indicates the entire subdivision was completed between 1950 and 1957. Constructed in response to pent-up housing demand following World War II, residences are modest, uniform, and lack ornamentation, reflecting post-war, mass-produced housing. Although Marvin Gardens remains Undetermined by the SHPO as indicated in the NYS Cultural Resource Information System (CRIS), it is being conservatively treated as a historic property for the purposes of this Project.

5.3.2 Section 4(f) Use Assessment

While the LRT Build Alternative and BRT Build Alternative would be located outside the Marvin Gardens historic property boundary, minor changes to Marvin Gardens' integrity of materials would occur through the acquisition of less than 0.01 acres along Brighton Road to facilitate right turns onto Niagara Falls Boulevard. No resources within Marvin Gardens would face Project Build Alternative elements. Near Marvin Gardens, Niagara Falls Boulevard is lined with large commercial buildings and parking lots, creating a buffer between the neighborhood and roadway where buses currently travel. As a result, no changes would occur to Marvin Gardens' integrity of setting as a result of Project implementation. These changes are consistent with existing roadway infrastructure in this area. The Project would not alter any of the characteristics that may qualify Marvin Gardens for inclusion in the NRHP in a manner that would diminish its integrity of location, design, materials, workmanship, setting, feeling, and association. As a result, the LRT Build Alternative and BRT Build Alternative would have no adverse effect on Marvin Gardens. SHPO concurred with the Project's no adverse effect finding for built historic properties. Therefore, no mitigation for built historic properties is required and a *de minimis* finding is proposed for this Section 4(f) use.

5.4 UNIVERSITY AT BUFFALO NORTH CAMPUS

5.4.1 Description and Significance of Property

The collection of buildings that comprise the UB North Campus date primarily from the last 35 years of the twentieth century. The earliest buildings date to circa 1972, with construction continuing through the present day. Residential buildings are generally on the outlying areas of the campus' perimeter and academic buildings are in the central core with supporting services and dining opportunities interspersed throughout. The campus is contained within an amoebic oval oriented on an east-west axis generally within Millersport Highway, John James Audubon Parkway, and North Forest Road. Sidewalks are present throughout the campus connecting buildings to facilitate pedestrian circulation and minimize walking distance. A review of campus planning documents from the 1970s indicates that the UB North Campus master plan anticipated construction of an "NFTA Line" that extended through campus in the approximate location of the proposed Project alignment.

Within this collection of buildings, 1970s and 1980s brick towers of varying heights prevail; some building exteriors incorporated concrete while others feature varying shades of red or brown brick. Several buildings on the campus are designed by recognized Modern master architects. The Governors' Residence Complex, comprising Clinton, Dewey, Lehman, and Roosevelt Halls and outside of the APE, was designed by I.M. Pei and built in 1972. Similarly, Ketter Hall (1981), also not in the APE, and Bell Hall (1977), which is within the APE, were designed by Marcel Breuer & Associates in 1981 (the year of Breuer's death). Each display some of the master architect's signature Brutalist designs with Expressionist features, such as canted concrete panels and concrete screens that rely on negative space for design impact, which Breuer used in multiple designs throughout his career. For the purposes of this Project, the UB North Campus is treated as eligible for listing on the NRHP.

5.4.2 Section 4(f) Use Assessment

The LRT Build Alternative would occur within the historic property boundary of the UB North Campus and would introduce new visual elements including Metro Rail vehicles and trackway, stations and related support elements, and an overhead catenary system and substations. These changes to the setting would introduce new transit-related infrastructure in an area currently served by a university bus system. However, original plans for the campus from the 1970s included an anticipated NFTA transit corridor, and Project elements that would be installed, including an overhead catenary system, would reflect Metro Rail design aesthetics that date from the 1980s. While noise is not anticipated to exceed current levels, the Project would introduce new sounds related to the LRT functionality and movement that would have been anticipated by NFTA expansion through the campus as part of early campus plans. As a result, changes to the UB North Campus' integrity of setting are not adverse. UB North Campus' integrity of design and materials would similarly change as a result of Project implementation; however, these changes were anticipated in the original campus plan. The introduction of transit-related infrastructure would not adversely affect the UB North Campus' integrity of design or materials

for a campus-built beginning in the 1970s that anticipated an integrated transit system. UB North Campus's integrity of location, workmanship, feeling, and association would be unchanged following Project implementation.

The vibration and ground-borne noise impact assessment for the Project included ten receptors in the UB North Campus. No adverse vibration impacts were predicted. The predicted temporary ground-borne noise levels at the Baird Hall receptor during construction would constitute the potential for a noise impact, due to Baird Hall's multiuse rehearsal halls and music performance hall that are especially sensitive to ground-borne noise. However, this potential for noise impacts is temporary and would not diminish the individual property's aspects of integrity.

Metro incorporated trackwork and vehicle construction and preventative maintenance measures into the vibration analysis assumptions about the location and magnitude of potential impacts during Project construction and operations. Newly installed track associated with the LRT Build Alternative would use resilient fasteners and resiliently supported rail ties to help dissipate vibration energy from the rail system before it enters the ground. This would minimize vibration and eliminate discontinuities in main rail sections (e.g., rail sections without crossovers, changes, etc.). In addition, the LRT Build Alternative would utilize all-new vehicles with wheels that are as close to perfectly round as is practical. A program of preventative maintenance, including rail grinding, rail head grinding, and wheel truing, would be implemented on the rail vehicles and tracks.

In addition, Metro identified UB North Campus buildings containing specialized vibration-sensitive research or equipment (Bonner Hall, Davis Hall, and Bonner Hal). Further study of potential vibration effects would be undertaken during the final design to determine which environmental mitigation measures would be necessary to avoid impacts at especially vibration-sensitive uses at UB North Campus. Project construction or operations would not diminish the aspects of integrity for individual buildings within the UB North Campus.

The BRT Build Alternative would also occur within the historic property boundary of the UB North Campus and would introduce new visual elements including new transit-related infrastructure in an area currently served by a university bus system. Original plans for the campus from the 1970s included an anticipated NFTA transit corridor, and Project elements that would be installed would consist of additional bus-related infrastructure. While noise is not anticipated to exceed current levels, the Project would introduce new sounds related to the BRT functionality and movement that would have been anticipated by NFTA expansion through the campus as part of early campus plans. General vibration analysis for the BRT Build Alternative found no adverse vibration impacts at receptor sites. As a result, changes to the UB North Campus' integrity of setting are not adverse.

The Project would not alter any of the characteristics that may qualify UB North Campus for inclusion in the NRHP in a manner that would diminish its integrity of location, design, materials, workmanship, setting, feeling, and association. As a result, the LRT Build Alternative

and BRT Build Alternative would have no adverse effect on UB North Campus. SHPO concurred with the Project's no adverse effect finding for built historic properties. Therefore, no mitigation for built historic properties is required and a *de minimis* finding is proposed for this Section 4(f) use.

5.5 GATEWAY PARK

5.5.1 Description and Significance of Property

Gateway Park (Figure 5-1) is defined as a neighborhood park by the Town of Amherst located on the corner of Niagara Falls Boulevard and Kenmore Avenue. The Town of Amherst created the park using grant funds received from the Dormitory Authority of the State of New York (DASNY). The site was a former gas station and commercial property. In 2019, the Town demolished the commercial building on 143 Kenmore Avenue and obtained ownership of 159 Niagara Falls Boulevard.

Figure 5-1. Gateway Park

With the DASNY grant funding, the Town created a focal point, serving as a gateway into the Town of Amherst from the surrounding neighborhoods of Buffalo, Tonawanda, and nearby Kenmore. The park provides eight parking spaces, a large lawn area with a shade structure, various benches and landscaping throughout the site, and an area of open space/grass pavers on the eastern section for stormwater filtration. The park is designed as a passive greenspace but could be used for smaller town events. There are additional features to enhance the nearby Metro bus stop such as a seating wall, trash receptacle, and bike rack. The closest Project station would be the proposed Decatur Station.

5.5.1.1 Significance of Gateway Park as a Section 4(f) Property

As stated in Appendix K, "Section 4(f) Evaluation Supplemental Information," Section 4(f) protects significant publicly owned parks, recreation areas, wildlife or waterfowl refuges, and publicly or privately owned historic sites (per 23 Code of Federal Regulations (CFR) § 774.3). As stated in CFR § 774.3, Section 4(f) properties:

- They are publicly owned; Gateway Park is owned by the Town of Amherst
- They must be open to the public; Gateway Park is open to the public
- They must be used for recreational purposes; Gateway Park has limited recreational functionality; it is a passive use greenspace serving as a gateway to the community and serves as an enhanced Metro Bus stop
- They must be significant in terms of function or design; Gateway Park's significance has not been determined at the time of this Draft EIS

At the time of this Draft EIS, the determination of Gateway Park's significance has not been made. The process of deciding the significance requires coordination with the owner of Gateway Park, which is the Town of Amherst. Coordination with the Town of Amherst will occur prior to the final EIS, and the results will be included therein. This coordination will include comparing the availability and function of Gateway Park to the Town of Amherst's objectives and definition of the function of Gateway Park. The final decision of Section 4(f) applicability of a property belongs to the federal agency, but the federal agency relies upon the Town of Amherst to identify if the property is significant.

Consideration under Section 4(f) is not required when the official(s) with jurisdiction over a park determines that the property, considered in its entirety, is not significant. FTA will review a determination that a park, recreation area, or wildlife and waterfowl refuge is not significant to assure its reasonableness.[1] In the absence of such a determination, Gateway Park will be presumed to be significant for this Draft EIS as described below.

5.5.2 Section 4(f) Use Assessment During Construction

During construction of the LRT Build Alternative, there would be a Temporary Use of Gateway Park, if determined significant. As described in Section 4.17, "Construction Effects," Gateway Park would be closed to construct the LRT Build Alternative cut-and-cover tunnel construction and has been identified as a potential staging area for tunnel construction. The staging area would also be used for storage and preparation of precast type segments, ventilation lines, shaft support (air, water, electricity), workshops, mixing and processing slurry for excavation, and post-excavation slurry treatment. It is anticipated that LRT Build Alternative tunnel construction would last more than a year, during this time the Gateway Park would not be open to the public.

[1] CFR :: 23 CFR 774.11 -- Applicability.

If determined to be significant, the Gateway Park's Temporary Use would not be de minimis given that the Park would be closed to the public during construction and could be considered an adverse impact. The Section 4(f) mitigation process when an adverse impact is determined to be unavoidable is as follows:

- Determine that no feasible and prudent avoidance alternative exists. If avoidance is possible, it must be selected. If not, the process moves to minimization and mitigation.
- Select the alternative with the least overall harm.
- Develop and implement mitigation measures. Mitigation must be developed in consultation with the Town of Amherst for the Gateway Park. For Parks and Recreation Areas mitigation strategies may include replacing lost land with equivalent recreational value, relocating facilities (e.g., trails, playgrounds), improving access or amenities elsewhere in the park, and timing construction to avoid peak use periods.
- Document all possible planning to minimize harm.
- Coordinate with Officials with Jurisdiction
- Include Mitigation in the Final Section 4(f) Evaluation
- Monitor and Enforce Mitigation Commitments

As stated, at the time of this Draft EIS, the determination of Gateway Park's significance has not been made. The process of deciding the significance requires coordination with the owner of Gateway Park, which is the Town of Amherst. Coordination with the Town of Amherst will occur prior to the Final EIS, and the results will be included therein. If determined a significant Section 4(f) property, the process for mitigating an adverse Project impact will be followed and the results of this process will be included within the Final EIS.

5.5.3 Section 4(f) Use Assessment After Construction

Following the construction of the LRT Build Alternative, an underground permanent easement will be required to operate the LRT Build Alternative which constitutes a Direct Project Use of Gateway Park, if determined to be a significant Section 4(f) property. Following construction, there will be no surface infrastructure present at Gateway Park that is required to operate the LRT Build Alternative. Following construction, the park will be restored to the condition in which it was originally found, and ownership will remain with the Town of Amherst. As a result, it is anticipated that this Direct Use of Gateway Park is *de minimis* because the Project would not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f). Coordination with the Town of Amherst will occur prior to the Final EIS and the Town's concurrence with this determination, after the public review and comment period, will be documented within the Final EIS.

5.6 ELLICOTT CREEK TRAILWAY

5.6.1 Description and Significance of Property

Ellicott Creek Trailway is a multiuse path that travels along Ellicott Creek for 7.2 miles from Niagara Falls Boulevard and Irwin Place to North Forest Road and Maple Road. The Town of Amherst's Comprehensive Plan notes the Ellicott Creek Trailway as an active recreational facility that is regularly maintained and patrolled by public safety officials. The asphalt path is used for biking, walking, running, and rollerblading. The trailway intersects the Project study area at John James Audubon Parkway and Frontier Road. The trailway currently crosses Frontier Road and Lee Road just south of their intersections with John James Audubon Parkway. The trailway parallels the southbound side of John James Audubon Parkway between Frontier Road and Lee Road and crosses Ellicott Creek using the existing piers remaining from a former section of the John James Audubon Parkway northbound vehicular lanes (Figure 5-2). A portion of the trailway also passes under the John James Audubon Parkway bridge over Ellicott Creek.

Figure 5-2. Ellicott Creek Trailway Bridge Piers

5.6.2 Section 4(f) Use Assessment

During construction of the LRT Build Alternative and BRT Build Alternative, there would be a Temporary Use of the Ellicott Creek Trailway. The existing pedestrian bridge, that crosses Ellicott Creek, would be relocated slightly southeast to accommodate a new bridge deck for the LRT Build Alternative and BRT Build Alternative. The Project will reposition the pedestrian bridge deck using the existing piers remaining from a former section of the John James Audubon Parkway northbound lanes. The Project will also reconstruct the trailway connection under the bridge.

The relocation of the Ellicott Creek Trailway pedestrian bridge would constitute a Temporary Use, and construction activities associated with moving the pedestrian bridge deck are anticipated to take approximately one to two weeks. As a result, the Temporary Use of the Ellicott Creek Trailway is considered *de minimis*, because the short duration of the closure will not meaningfully or substantially deprive the public of access to the bridge.

Since the use will result in a *de minimis* impact, there is no requirement to conduct an avoidance alternative analysis under 23 CFR § 774.3(b). Following these construction activities, the trailway will be restored to its original condition. During this short repositioning of the trailway bridge, the Project will coordinate with the Town of Amherst to notify the community and define reasonable detour routes.

There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis. All of the conditions under 23 CFR § 774.13(d) for a Temporary Use that does not constitute a "use" under Section 4(f) requires coordination and concurrence with the official(s) with jurisdiction — in this case, the Town of Amherst. Coordination with the Town of Amherst will occur prior to the Final EIS and the Town's concurrence with this determination will be documented within the Final EIS.