

Appendix K

Section 4(f) Evaluation

Supplemental Information

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Acronyms and Abbreviations

| | |
|---------------|---|
| EIS..... | Environmental Impact Statement |
| FTA | Federal Transit Administration |
| GBNRTC | Greater Buffalo Niagara Regional Transportation Council |
| Metro | Niagara Frontier Transit Metro Systems, Inc. |
| NEPA | National Environmental Policy Act |
| NOI | Notice of Intent |
| Project | Buffalo-Amherst-Tonawanda Corridor Transit Expansion |
| SEQR | State Environmental Quality Review Act |
| TAC | Technical Advisory Committee |
| TOD | transit-oriented development |
| UB | University at Buffalo |

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 (referred to as Section 4(f) properties). With some limited exceptions, Section 4(f) specifies that FTA may only approve a project that requires the use of any land from a Section 4(f) property if: (1) 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 property resulting from such use; or (2) FTA determines that the use of the property, including any measure(s) to minimize harm, will have a de minimis impact on the Section 4(f) property (23 Code of Federal Regulations (CFR) § 774.3).

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 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. 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).

K.1 REGULATORY CONTEXT AND METHODOLOGY

In accordance with Section 4(f) requirements, FTA may not approve the use of Section 4(f) properties unless they have determined that the following conditions apply:

- There is no feasible and prudent alternative that would avoid the use of the Section 4(f) property; and
- The Project includes all possible planning to minimize harm to that property resulting from such use (23 CFR 774.3(a)); or
- The use of the Section 4(f) property, including any measures(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures) will have a de minimis impact, as defined in 23 CFR 774.17, on the property.

The following describes the types of use defined by 23 CFR 774, and the applicability of these regulations to the Proposed Project.

K.1.1 Types Of Section 4(f) Use

Pursuant to 23 CFR 774.17, and except as set forth in 23 CFR 774.11 and 23 CFR 774.13, a project uses a Section 4(f) property when:

- Land from the Section 4(f) property is permanently incorporated into a transportation facility.
- There is a temporary occupancy of land that is adverse in terms of the statute's preservation purpose, as determined by the criteria in 23 CFR 774.13(d) (e.g., when all or part of the Section 4(f) property is required for a project's construction-related activities); or
- There is a "constructive" use of a Section 4(f) property, as determined by the criteria defined in 23 CFR 774.15.

K.1.2 Section 4(f) "Use" Determinations

To determine whether Section 4(f) applies to the proposed project as defined in 23 CFR § 774.17, the protected Section 4(f) properties must be assessed to determine whether there would be a "use" of the property as defined in the statute. Per the regulation, use of a protected Section 4(f) property occurs when any of the following conditions are met:

1. **Permanent Incorporation/Direct Use** - A permanent incorporation or direct use of a Section 4(f) property occurs when land is permanently incorporated into a transportation facility. "Permanent incorporation" of a Section 4(f) property would include purchasing part or all of the property for use as right-of-way for transportation facilities or purchasing a permanent easement for construction or operations.
2. **Temporary Use** - A temporary use of a Section 4(f) property occurs when there is a short-term use of the property that is considered adverse in terms of the preservation purpose of the Section 4(f) statute. Under 23 CFR § 774.13, a temporary occupancy of a property does not constitute a "use" of a Section 4(f) property when all the following conditions are satisfied:
 - The duration is temporary (i.e., less than the time needed to construct the project), and there is no change in ownership of land.
 - The scope of work is minor (i.e., both the nature and magnitude of the changes to the property are minimal).
 - There are no anticipated permanent adverse physical impacts, nor is there interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis.
 - The land being used is fully restored to a condition that is at least as good as that which existed before the project.
 - There is documented agreement among appropriate federal, state, and local official(s) with jurisdiction over the property regarding the above conditions.

3. **Constructive Use** - A constructive use of a Section 4(f) property occurs when a transportation project would not incorporate land from the property, but the proximity of the project would result in impacts so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) would be substantially impaired (23 CFR § 774.15).

K.1.3 “De Minimis” Impact

The requirements of Section 4(f) are satisfied if FTA determines that a transportation project would have a “de minimis” impact on the Section 4(f) property.

A de minimis impact is defined in 23 CFR § 774.17 as follows:

- For parks, recreation areas, and wildlife/waterfowl refuges, a de minimis impact would not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f), and the official with jurisdiction has concurred with this determination after the public review and comment period.
- For historic sites, a de minimis impact means that FTA has determined, in accordance with 36 CFR § 800, that either no historic property would be affected by the project, or the project would have “no adverse effect” on the property. The official with jurisdiction must be notified that FTA intends to make a de minimis finding based on their concurrence with the “no adverse effect” determination under 36 CFR § 800. This notification is usually included in the effect determination letter.

If a transportation project is found to use Section 4(f) properties, a de minimis finding can be made for direct uses or temporary uses that do not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection. The provision allows avoidance, minimization, mitigation, and enhancement measures to be considered in making the de minimis determination.

Projects determined to have de minimis impacts on Section 4(f) properties may proceed without needing to determine that no feasible and prudent avoidance alternatives exist. The officials with jurisdiction must concur, in writing, with a de minimis finding. For parks, recreational areas or wildlife or waterfowl refuge properties, concurrence from the officials having jurisdiction over the properties is required. For historic sites, concurrence from the State Historic Preservation Office (SHPO) on FTA’s “No Adverse Effect” determination is required.

K.2 PROJECT DESCRIPTION AND SUPPORTING INFORMATION

Metro proposes to extend high-capacity transit service 7 miles north from the existing University Station to the towns of Amherst and Tonawanda, connecting the University at Buffalo (UB) South Campus and UB North Campus. The project would address the following needs (as described in Chapter 1, “Purpose and Need”):

- Serve existing and future travel demand generated by recent and future regional development
- Provide high-quality regional transit service
- Improve service for transit-dependent populations

Two Build Alternatives are being analyzed: a Light Rail Transit (LRT) Alternative and a Bus Rapid Transit (BRT) Alternative. Chapter 2, “Alternatives Considered,” provides further details on the two Build Alternatives and the Alternatives Analysis process leading to the development and selection of the Locally Preferred Alternative (LPA), the two Build Alternatives, and the No Build Alternative.

K.3 IDENTIFICATION OF SECTION 4(F) PROPERTIES

Identifying Section 4(f) properties and analyzing their use is based on the findings of the historic and cultural resources analysis (Section 4.6), and the parks and recreational resources analysis (Section 4.7). Refer to these sections for more details on these properties.

K.3.1 Historic and Archeological Resources

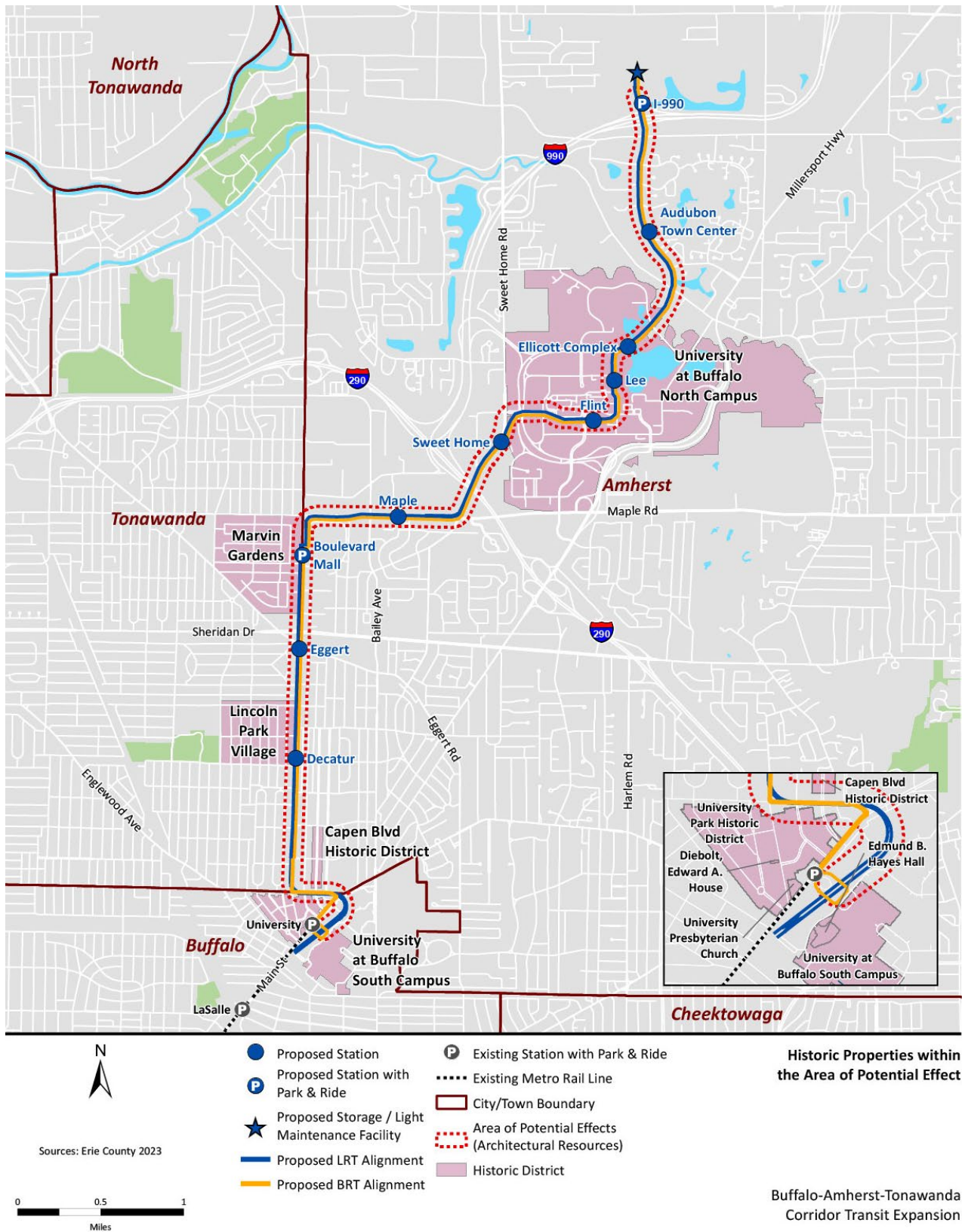
As a result of the field investigations, ten built resources were identified within the Project area of potential effect (APE) and four portions of the Project alignment appear to retain archaeological sensitivity. Table K-1 lists the historic properties identified within the Project APE and summarizes determinations of Section 4(f) use for each alignment option. Figure K-1 shows the locations of these historic properties.

Table K-1. Historic Properties Evaluated for Section 4(f) Use

| Property Name | NRHP Status | Period of Significance | LRT Build Alternative | BRT Build Alternative |
|---|-------------|------------------------|-----------------------|-----------------------|
| University at Buffalo South Campus | Eligible | 1865 to 1963 | <i>De minimis</i> | <i>De minimis</i> |
| Edmund B. Hayes Hall | Listed | 1925 to 1962 | No use | No use |
| University Park Historic District | Listed | 1913 to 1941 | No use | No use |
| University Presbyterian Church | Listed | 1928 to 1956 | No use | No use |
| Charles and Rose Waldow House (3404 Main St.) | Eligible | — | No use | No use |
| University Court Apartments (3442 Main St.) | Eligible | — | No use | No use |
| Capen Boulevard Historic District | Eligible | — | No use | No use |
| Lincoln Park Village | Eligible | — | <i>De minimis</i> | <i>De minimis</i> |
| Marvin Gardens | Eligible* | — | <i>De minimis</i> | <i>De minimis</i> |
| University at Buffalo North Campus | Eligible* | — | <i>De minimis</i> | <i>De minimis</i> |

Sources: NFTA-Metro, Metro Rail Expansion Project: Historic Resources Report (2020); Cultural Resource Information System, New York State, <https://cris.parks.ny.gov>; Jennifer Walkowski, Historic Preservation Program Analyst, Survey and National Register Unit – Western NY Region to Rachel Maloney Joyner, “Re: FTA Metro Rail Expansion Construction Project Amherst, Tonawanda and Buffalo, Erie County, NY, 19PR01900,” April 29, 2020. Information included in the table reflects known available information.

Figure K-1. Historic Properties within the Area of Potential Effect



As described in Section 4.6, “Historic and Cultural Resources”, no adverse effects on historic resources would occur because of the Project; no mitigation measures would be required. In correspondence with the SHPO dated January 25, 2024, FTA made the determination that the Project (LRT Build Alternative and BRT Build Alternative) would result in no adverse effects to Built Historic Properties. The Project would permanently incorporate land from four historic properties and result in a *de minimis* use of Section 4(f) properties. Chapter 5, “Section 4(f)” of this Draft EIS provides details on the determination of Section 4(f) uses of these properties and preliminary findings.

In a response letter dated January 25, 2024, SHPO requested a Phase IB archaeological testing plan. A Phase IB archaeological investigation and its findings will be included within the Final EIS. As documented in Appendix F5, “Archaeological Testing Work Plan,” A Phase IB testing plan was submitted to SHPO for review and comment on February 16, 2024. The findings of the Phase 1B Field Investigation will determine the presence or absence of archaeological resources in this area.

If archaeological resources are present, and if they meet the eligibility requirements of the NRHP, then Metro will coordinate with SHPO regarding the completion of a Phase II Site Evaluation and Phase III Data Recovery—or another form of mitigation developed in consultation with the New York State Office of Parks, Recreation and Historic Preservation and other consulting parties—that mitigates the unavoidable effects of a project by recovering the data value of the resource.

On May 17, 2024, an unanticipated discoveries plan was submitted to SHPO for review and comment (Appendix F5, “Archaeological Testing Work Plan”). The unanticipated discoveries plan describes coordination and protective actions that would occur in the event of the discovery of an archaeological resource during construction and the roles of construction personnel, the timing of notifications and consultation with the SHPO and other consulting parties, and protective actions that would be taken until the significance of the discovery can be assessed. If required, FTA will enter into a Project-specific Memorandum of Agreement to provide stipulations for future investigations and ways to avoid, minimize, or resolve any adverse effects to archaeological resources as a result of the construction of the Project. As needed, the FTA will continue to consult with the SHPO and other consulting parties to develop the Memorandum of Agreement and identify additional measures and responsibilities to avoid, minimize, and mitigate potential adverse effects to archaeological resources protected under Section 4(f).

K.3.2 Parks, Recreational, and Wildlife/Waterfowl Refuge Resources

No wildlife or waterfowl refuges were identified within the study area. There would be no permanent incorporation, temporary use, or a constructive use of any wildlife/waterfowl resources under either the LRT Build Alternative or BRT Build Alternative; therefore, neither

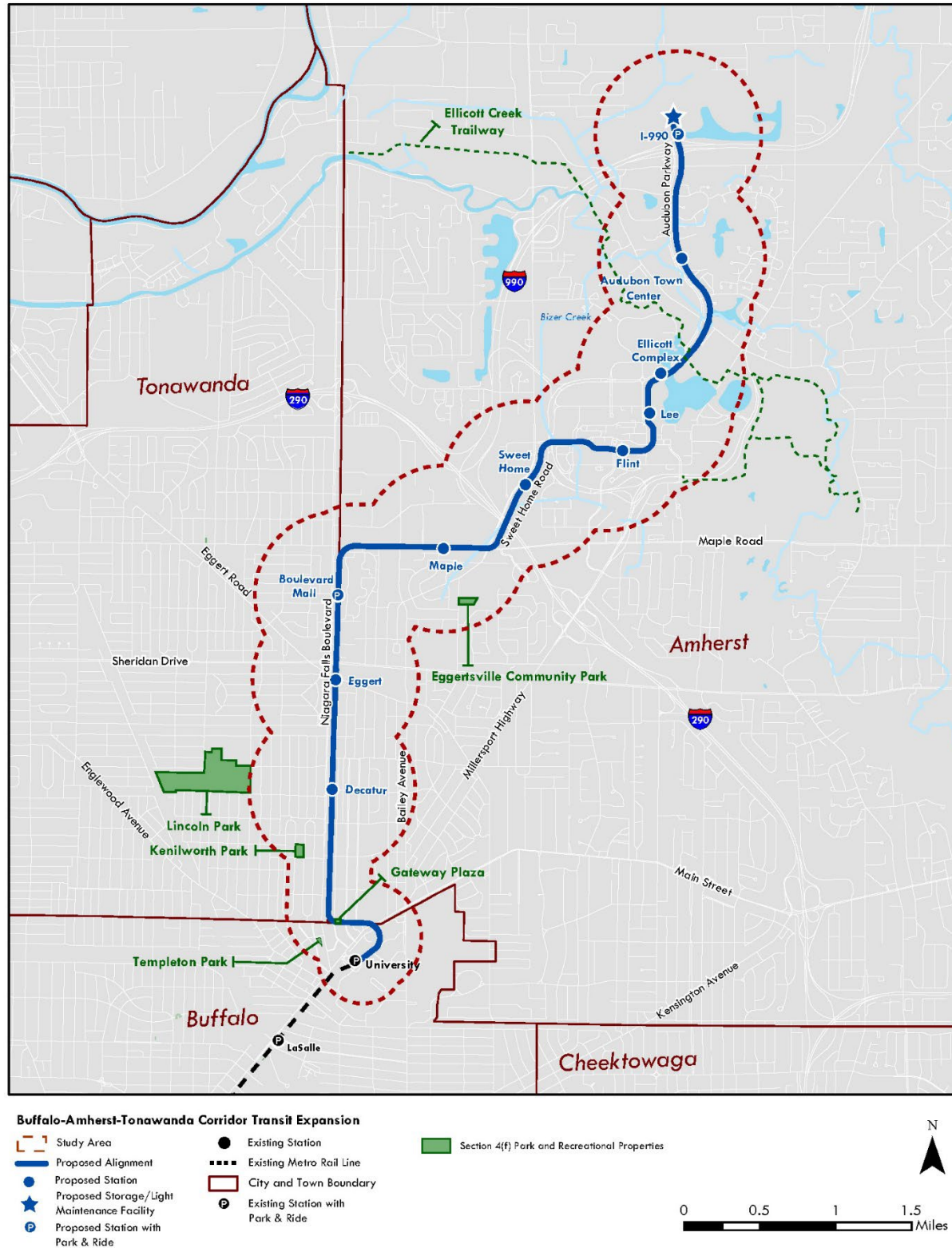
Build Alternative would result in the use of any wildlife/waterfowl refuges protected under Section 4(f).

All public parks and recreational properties within 0.25-miles on either side of the alignment of the LRT Build Alternative and the BRT Build Alternative and a 0.5-mile radius around the proposed station locations were analyzed for further evaluation of potential Section 4(f) use. Table K-2 lists the parks adjacent to the Project alignment and determinations of Section 4(f) use for each alignment option. Figure K-2 shows the locations of these parks. Parks subject to further evaluation under Section 4(f) include Gateway Park and Ellicott Creek Trailway. The Project would result in a temporary occupancy of these two Section 4(f) properties. Chapter 5, “Section 4(f)” of this Draft EIS provides details on the determination of Section 4(f) uses of these properties and preliminary findings.

Table K-2. Park and Recreational Properties Evaluated for Section 4(f) Use

| Name | Address | Section 4(f) Use | |
|-----------------------------|--|-------------------------------------|-------------------------------------|
| | | LRT Build Alternative | BRT Build Alternative |
| Templeton Park | Bellevue Avenue, Buffalo, NY | No Use | No Use |
| Gateway Park | 159 Niagara Falls Boulevard, Amherst, NY | Temporary Occupancy Non-4(f) Use | No Use |
| Kenilworth Park | Tonawanda, NY | No Use | No Use |
| Lincoln Park | 299 Decatur Road, Amherst, NY | No Use | No Use |
| Eggertsville Community Park | 845 Sweet Home Road, Amherst, NY | No Use | No Use |
| Ellicott Creek Trailway | Amherst, NY | Temporary Occupancy Non-4(f) Use | Temporary Occupancy Non-4(f) Use |

Figure K-2. Park and Recreational Properties Evaluated for Section 4(f) Use



Source: Erie County, 2019, Town of Amherst Bike & Exercise Paths, 2001

K.4 UNIVERSITY AT BUFFALO SOUTH CAMPUS

K.4.1 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 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.

K.4.2 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.

K.5 LINCOLN PARK VILLAGE

K.5.1 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.

K.5.2 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 Supplemental Information".

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.

K.6 MARVIN GARDENS

K.6.1 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.

K.6.2 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.

K.7 UNIVERSITY AT BUFFALO NORTH CAMPUS

K.7.1 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 cantilevered 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, though only three buildings within the APE were completed by 1977. Campus buildings within the APE include Cooke Hall (1977); Lockwood Library (1978); Furnas Hall (1977); Bell Hall (1974); Slee Hall (1981); Jacobs Management Center (1985); Park Hall (1986); and Hadley Village (1999).

K.7.2 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.

K.8 GATEWAY PARK

K.8.1 Description and Significance of Property

Gateway Park (Figure K-3) 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 K-3. 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.

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.

K.8.2 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.

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

¹ CFR :: 23 CFR 774.11 -- Applicability.

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.

K.8.3 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.

K.9 ELLICOTT CREEK TRAILWAY

K.9.1 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 K-4). A portion of the trailway also passes under the John James Audubon Parkway bridge over Ellicott Creek.

Figure K-4. Ellicott Creek Trailway Bridge Piers



K.9.2 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 railway 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.

K.10 AGENCY COORDINATION

As required by the Section 4(f) regulations (23 CFR § 774.5), the Draft Section 4(f) Evaluation for the Project is being provided for coordination and comment to the officials with jurisdiction over the Section 4(f) resources that would be used by the Project. For historic sites, the officials with jurisdiction are SHPO. For Gateway Park and Ellicott Creek Trailway, Metro will continue to coordinate with the Town of Amherst during Project development for these Section 4(f) properties. FTA will provide a Draft Section 4(f) Evaluation to the U.S. Department of Interior (DOI) and officials with jurisdiction for coordination and comment for a period of 45 days. Comments will be addressed in a Final Section 4(f) Evaluation.

K.11 PUBLIC INVOLVEMENT

The Draft Section 4(f) Evaluation will be made available for public review and comment during the public review period for the DEIS. Written comments (mail, and email) and oral submissions at the public hearing will be accepted through that date. During the public comment period, copies of the DEIS and Draft Section 4(f) Evaluation will be made available for review on the Project’s website (www.metrotransitexpansion.com) and at a number of publicly accessible repositories. In addition, a public hearing will be held by FTA and Metro.

After the public comment period is complete, FTA will make a final Section 4(f) determination based on information in this section, coordination with the Town of Amherst, and public comments received. FTA's Section 4(f) determination will either (1) confirm the preliminary findings within this Draft EIS for inclusion in the Final EIS and Record of Decision (ROD) for the Project, or (2) require additional Section 4(f) analysis, which will be prepared as part of the Final EIS. In the Final EIS and ROD, FTA and Metro will confirm and finalize the findings by reference to the documentation included in this Draft EIS. The Final EIS will provide a summary of substantive comments received on the DEIS and Draft Section 4(f) Evaluation during the public review period. Concurrence from SHPO, the University at Buffalo, and the Town of Amherst is required to confirm these preliminary findings. The Final Section 4(f) Evaluation will incorporate any relevant changes necessitated by public comments.