

Appendix 15A Draft Section 4(f) Evaluation

15A.1 INTRODUCTION

Section 4(f) of the Department of Transportation Act of 1966 (now 49 United States Code [USC] Section 303 and 23 USC Section 138; U.S. Department of Transportation [USDOT] Act) applies to the use of publicly or privately owned historic sites determined eligible for or listed on the National Register of Historic Places (NRHP); and publicly owned parks,¹ recreation areas, and wildlife and waterfowl refuges (collectively, Section 4(f) properties). The requirements of Section 4(f) apply to the Federal Transit Administration (FTA) and other agencies of USDOT.

15A.2 METHODOLOGY

Section 4(f) of the USDOT Act stipulates that FTA and other USDOT operating administrations 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 Code of Federal Regulations [CFR] Section 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 Section 774.17, on the property.

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

¹ There are plazas adjacent to commercial and residential buildings in the Project Area that are privately owned but are designated as publicly accessible open space. These plazas are considered Section 4(f) properties for this analysis.

15A.2.1 Types Of Section 4(f) Use

Pursuant to 23 CFR Section 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 Section 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 Section 774.15(a).

The permanent incorporation of land in a transportation facility occurs when land from a Section 4(f) property is purchased outright as transportation right-of-way, when a project acquires a property interest that allows permanent access onto a property (e.g., a permanent easement for maintenance), or when a project would alter a historic transportation facility and the proposed activities do not meet the exceptions set forth in 23 CFR 774.13.

The Proposed Project would have an adverse effect on historic features of the Lincoln Tunnel (removal of Art Deco light towers and original brick retaining walls) but would not alter the function and continued transportation use of the Lincoln Tunnel, a historic transportation facility. The FTA prepared a Section 4(f) evaluation of its potential Section 4(f) use.

Temporary occupancy results when a Section 4(f) property is required for a project's construction activities and the land is not permanently incorporated into a transportation facility upon the completion of construction, but the activities are considered adverse in terms of the protected features of the property. As described below, the Proposed Project would not require temporary occupancy of Section 4(f) properties.

Constructive use occurs when there is no permanent incorporation or temporary occupancy of land, but the proximity impacts (e.g., visual and noise effects) of a project are so severe that the protected activities, features, or attributes that qualify the resource for protection under Section 4(f) are substantially impaired. In accordance with 23 CFR 774.15(d), FTA must consider the following when deciding if construction use will occur:

- (1) Identification of the current activities, features, or attributes of the property which qualify for protection under Section 4(f) and which may be sensitive to proximity impacts;
- (2) An analysis of the proximity impacts of the proposed project on the Section 4(f) property. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not

implemented, since such impacts should not be attributed to the proposed project; and

(3) Consultation, on the foregoing identification and analysis, with the official(s) with jurisdiction over the Section 4(f) property.²

FTA must consult 23 CFR 774.15(3) to determine and document whether the proximity impacts of a transportation project are severe enough to constitute a constructive use of a Section 4(f) property. As concluded by an adverse effect finding pursuant to Section 106 of the National Historic Preservation Act (NHPA), the Proposed Project would result in proximity impacts on four historic properties in the Project Area, and therefore, this Section 4(f) evaluation considers the potential for constructive use of those properties (refer to **Section 15A.4.1.2**).

15A.2.2 De Minimis Impacts

A de minimis impact involves the use of Section 4(f) property that is generally minor in nature. A de minimis impact is one that—after considering avoidance, minimization, mitigation, and enhancement measures that are committed to by the applicant—results in no adverse effect to a historic site and no adverse effect to the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f). As set forth in the Section 4(f) regulations (23 CFR Part 774), once FTA determines that a transportation use of Section 4(f) property results in a de minimis impact, an analysis of avoidance alternatives is not required, and the Section 4(f) evaluation process is complete.

15A.3 PROJECT OVERVIEW

The Port Authority Bus Terminal (PABT) is located between Eighth and Ninth Avenues and West 40th and West 42nd Streets in Midtown Manhattan (New York County, New York). Ramps connecting the PABT to the Lincoln Tunnel are located to the west and south, spanning Galvin Plaza and Dyer Plaza. These ramps extend above street level to provide direct access for buses using the Lincoln Tunnel and ancillary facilities on adjacent blocks.

The principal purposes of the Replacement Facility for the PABT are to: address the future of an aging and obsolescent facility; meet the forecasted year 2040 bus ridership for trans-Hudson commuters and intercity bus passengers for services projected to be operating within the PABT; improve bus storage and staging to reduce bus idling, relieve on-street congestion, and improve bus network reliability; and update the technology and equipment of the PABT and modernize services and amenities for bus passengers using the facility. The structural slabs for the existing PABT South Wing bus operating levels will be functionally obsolete unless significant investments are made in the 2027 to 2037 timeframe – whether or not a Replacement Facility is built.

² 23 CFR 774.15(c).

15A.3.1 Project Goals

The Proposed Project's associated goals are listed below:

- Goal 1: Improve Trans-Hudson bus operations
- Goal 2: Improve the passenger experience within the Terminal
- Goal 3: Provide seamless passenger accessibility
- Goal 4: Strive to achieve consistency with local and regional land use plans and initiatives
- Goal 5: Develop a project that optimizes life-cycle costs
- Goal 6: Reduce the impacts of bus services on the built and natural environment

15A.3.2 Project Alternatives

The design of the Proposed Project is the result of substantial planning and public outreach and engagement efforts that commenced in 2013. The January 21, 2021, Final Scoping Report prepared for the Project pursuant to NEPA describes the process and evaluations undertaken, including alternatives considered and rejected; the goals and objectives of the Proposed Project; and extensive public outreach undertaken. As described in the Final Scoping Report, as part of early scoping for the EIS being prepared pursuant to NEPA, the Port Authority of New York and New Jersey (PANYNJ) engaged stakeholders in the region – including New York City, New York State, and New Jersey elected officials, government agencies, community boards, bus carriers, civic associations, commuters, local residents and other interested members of the public – as well as hosting four public meetings (two each in New York City and New Jersey).

15A.3.2.1 NEPA Identification and Screening of Potential Alternatives

Prior to undertaking studies on potential Build alternatives, PANYNJ evaluated the potential of renovating the existing PABT; however, the renovation alone would not meet the projected 2040 travel demand. Potential alternatives for the Proposed Project were identified as part of PANYNJ's planning initiatives and public outreach between 2013 and 2018. This process culminated in the identification of 13 potential alternatives (the "Long List of Alternatives") and the formulation of a screening process based on the Proposed Project's purpose and need and associated goals and objectives. The Long List of Alternatives identified varying locations for siting of the replacement bus terminal – in the current PABT footprint, between Ninth and Tenth Avenues, Tenth Avenue, Eleventh Avenue, and New Jersey.

To evaluate whether any of the Long List of Alternatives (or other alternatives that might be identified during the planning-level scoping process) would meet the purpose and need, PANYNJ developed two sets of screening criteria. These criteria considered input from stakeholder outreach that had been conducted by PANYNJ with elected officials, community boards, and civic groups before issuing the Draft Scoping Document. These criteria were the subject of public comment to further inform PANYNJ with respect to their importance and applicability. The criteria were applied in a "fatal flaw" analysis: alternatives were screened against criteria, and alternatives that did not pass were eliminated from further consideration.

The first two-part screening process was applied to the Long List of Alternatives. First, the initial fatal flaw screen identified and excluded any of the alternatives that could not meet the peak-hour bus demand from the 2015 forecast in 2040 defined as approximately 1,000 bus arrivals and departures during the PM peak hour. The second “fatal flaw” screening was avoidance of the substantial use of private property (i.e., acquisition that would change the utility of a property through demolition or restrictions on access). Based on prior outreach conducted by PANYNJ, it was made evident that such a use of private property would be inconsistent with community character and neighborhood cohesion. In addition, the act of private property taking via the use of eminent domain by PANYNJ was opposed at the outset of public outreach by the local community and continues to be the community’s position.

Of the 13 Long List of Alternatives, three potential alternatives passed the first two-part fatal flaw screening:

- The Build-in-Place Alternative would replace the current bus terminal at its same location.
- The Perkins Eastman Design and Delivery (D&D) Alternative would place all operations at the lower levels of the Jacob K. Javits Convention Center (Javits Center).
- The Regional Plan Association (RPA) Alternative would locate commuter operations at a rehabilitated terminal at the present location and intercity bus operations and storage and staging in a portion of the lower level of the Javits Center.

The second part of the preliminary screening process addressed the alternatives remaining after the initial fatal flaw screen and developed a third fatal flaw criterion to screen those remaining alternatives

The third fatal flaw criterion was developed as a result of the planning-level scoping process and extensive public comment. It focused on whether the remaining alternatives could maintain the current direct connections to the Eighth Avenue mass transit options and maintain easy pedestrian accessibility to Midtown destinations.

The third fatal flaw criterion eliminated The Perkins Eastman D&D and RPA Alternatives because they do not maintain direct connectivity to the New York City Transit (NYCT) north-south subway (at Eighth Avenue) and would require longer walking distances to reach Midtown destinations.

The Build-in-Place Alternative met the criterion of providing a seamless connection to transit and thus was advanced.

15A.3.2.2 *The Proposed Project (Enhanced Build-In-Place Alternative)*

Multiple stakeholders sought the inclusion of bus storage and staging and the accommodation of curbside intercity buses in the Replacement Facility. These comments, along with two elements of the RPA Alternative (creating dedicated space for intercity bus operations to provide additional redundancy and resiliency to the transit network and using that site for

temporary operations during construction), were applied to modify the Build-in-Place Alternative. Thus, the Build-in-Place Alternative has been substantially enhanced in response to public comment to accommodate: 1) additional bus storage and staging, and 2) pickups and drop-offs by curbside intercity buses that operate in the vicinity of the existing PABT within the Replacement Facility. Commenters emphasized that incorporating these surface lot and curbside operations into a Replacement Facility would reduce bus traffic and resultant congestion and bus idling on local streets, which would reduce vehicular emissions.

Therefore, informed by these comments, PANYNJ proposes to replace the existing PABT in Manhattan, New York, with a new Main Terminal, Storage and Staging Facility (SSF, also referred to as the West Adjunct in the Final NEPA Scoping Information Packet), and associated ramp infrastructure (collectively, the 'Replacement Facility'), accompanied by private development to assist in funding the project. The location of the new Main Terminal would maintain the present passenger connectivity to the Eighth Avenue mass transit options and pedestrian accessibility to Midtown. To accommodate the new Main Terminal, a portion of West 41st Street would be permanently closed between Eighth and Ninth Avenues. Two decks over below-grade portions of Dyer Avenue and the Lincoln Tunnel Expressway would be constructed to facilitate construction-period bus operations. These "Dyer Deck-Overs" would be converted to publicly accessible open space following completion of the Replacement Facility. The Replacement Facility, private development, and conversion of the Dyer Deck-Overs to publicly accessible open space are collectively referred to as the "Proposed Project".

The SSF would initially be used as a "temporary" terminal for commuter bus operations during construction of the new Main Terminal. Once the new Main Terminal is constructed, the SSF would be repurposed for bus storage and staging. Two decks over below-grade portions of Dyer Avenue and the Lincoln Tunnel Expressway, bounded by Ninth Avenue and Tenth Avenue and West 37th and West 39th Streets, would be utilized to facilitate construction-period bus operations and would later be converted to publicly accessible open space as part of the Proposed Project. The provision of open space stems from the pre-scoping public engagement process, where community stakeholders and commentators expressed the need for new publicly accessible open space. As described above and in the Final Scoping Report, one of the goals and objectives of the Proposed Project is to "strive to achieve consistency with local and regional land use plans and initiatives and to integrate the Project with community character and the urban fabric. The provision of publicly accessible open space meets this Project goal and objective and is responsive to stakeholder input.

As described in the Final Scoping Report, the Proposed Project would include private development on PANYNJ property. The private development would meet the goal and objective to "develop a project that optimizes life-cycle costs" with private developments intended to generate revenues that would help fund the Replacement Facility. With the incorporation of additional bus storage and staging, additional terminal space for intercity buses as well as inclusion of public amenities into the Proposed Project (street-level retail, widened

sidewalks, new open space), the Proposed Project is substantially more expensive than the initial Build-in-Place concept. To help offset these increased costs and make the Proposed Project fiscally practicable, PANYNJ would need additional sources of financing or funding, in addition to its capital funds, including revenue generated by the new private development (two commercial towers to be built on top of the new Main Terminal fronting on Eighth Avenue).

Based on the alternatives screening described above, FTA and PANYNJ identified the Enhanced Build-in-Place as the only reasonable alternative for the Proposed Project, and it was the only alternative (besides the No Action Alternative) analyzed in the Draft Environmental Impact Statement.

15A.4 POTENTIAL USE OF SECTION 4(F) PROPERTIES

15A.4.1 Historic Sites

15A.4.1.1 Archaeological Properties

One archaeologically sensitive site has been identified in the Project Area. This is the location of the former 19th-century Presbyterian church cemetery on Block 1050, Lot 13 (441 West 40th Street), which has the potential to contain human remains. If such remains are present, and where construction activities for the Proposed Project would occur in the same location and depth as the identified sensitivity, this could result in potential adverse effects to archaeological resources. While the likelihood of encountering archaeological resources is low due to previous disturbances, further analysis in the form of archaeological testing or monitoring would be implemented (prior to and during construction) to determine the presence or absence of human remains.

Section 4(f) applies to archeological sites that are on or eligible for listing on the NRHP, including those discovered during construction, except when the resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This applies both to situations where data recovery is undertaken and where FTA decides, with agreement from the officials with jurisdiction, not to carry out data recovery at the site.

Block 1050, Lot 13 has the potential to contain human remains. If further study concludes the presence of human remains at this location and determines the site as eligible for listing on the National Register of Historic Places, and if construction of the Proposed Project may disturb this site, FTA must prepare an amended Section 4(f) evaluation to assess alternatives to avoid construction at this location. In the event that an archeological site is present at this location and is discovered during construction, the Section 4(f) process may be expedited, and the evaluation of feasible and prudent avoidance alternatives can consider the level of investment already made.

Other areas that would be disturbed by the Proposed Project have previously been determined to have no archaeological sensitivity or to have been previously disturbed as a result of the excavation completed to construct existing tunnels.

15A.4.1.2 Architectural Properties

There are 12 historic properties in the Project Area that are listed or eligible for listing on the NRHP.³ **Table 15A-1** lists these resources, identifies the potential effect on these resources pursuant to a review under Section 106 of the National Historic Preservation Act (NHPA), and identifies the potential use of these resources as defined by Section 4(f) regulations. The resources are mapped in **Figure 15A-1**.

The Proposed Project would result in no adverse effect on seven properties in the Project Area, and therefore, the Proposed Project would not result in a use of these Section 4(f) properties. The Proposed Project would result in adverse effects on five historic properties in the Project Area—Lincoln Tunnel, McGraw-Hill Building, Holy Cross Roman Catholic Church Complex, the St. Raphael Roman Catholic Church and Rectory, and Paddy's Market Historic District, and therefore, the potential uses of these properties pursuant to Section 4(f) regulations are described below.

Lincoln Tunnel

Determined eligible for NRHP listing in 1989, the Lincoln Tunnel is significant under Criterion A in the areas of automobile transportation and regional planning and under Criterion C in the area of engineering. Within the Project Area, contributing features of the Lincoln Tunnel include the three tubes and portals (see **Table 15A-1**, Resources 1a and 1b) and the Land Ventilator Building at 491 Eleventh Avenue, at the southwest corner of Eleventh Avenue and West 39th Street (see **Table 15A-1**, Resource 1c).

The north tube entry portal (Resource 1a) is lined by Art Deco-styled brick walls patterned with vertical, recessed brick bands with concave ridges and capped with concrete coping. Stylized brick piers and abutments punctuate the length of the walls, including those capped by Art Deco lighting towers. The center and south tube entry portals (Resource 1b) have a simpler treatment and are lined with banded brick walls. The Land Ventilator Building was constructed as part of the original center tube of the Lincoln Tunnel, completed in 1937. Set on a one-story base, it is a brick tower articulated with Art Deco detailing that takes the form of recessed, vertical brick bands and a parapet band set in an undulating, textile-like pattern.

³ The Project Area for this Section 4(f) Evaluation is synonymous with the Area of Potential Effects (APE) defined for the Proposed Project's review under Section 106 of the National Historic Preservation Act. The State Bank and Trust Company Building is within the APE. Although it is an eligible New York City Landmark, it is not listed on or eligible for listing on the NRHP; consequently, it is not identified as a Section 4(f) property.

Construction of the supports for the ramp structure on the block between Tenth Avenue, Eleventh Avenue, West 40th Street and West 39th Street, would require the removal of the lighting towers that are located at the Lincoln Tunnel North Tube Portal, and also would impact the brick walls at the north portal. There would be a perforated façade at the ramp structure at the north portal anticipated to have 50 percent permeability above the ground floor, but it would not be fully enclosed. In addition, some alterations would be required to the brick walls along the Dyer Avenue portion of the roadways that lead to and from the Lincoln Tunnel central and south tubes to deck over below-grade roadways, including Dyer Avenue, on the blocks bounded by Ninth and Tenth Avenues and West 37th Street and West 39th Street. Therefore, the Proposed Project would alter components of the Lincoln Tunnel historic property—the North Tube portal and the brick walls along the Dyer Avenue portion of the roadways that lead to and from the Lincoln Tunnel central and south tubes. These alterations would diminish the Lincoln Tunnel's integrity of design, materials, workmanship, feeling, and association under Criterion C due to the removal of contributing features and substantially alter the setting of the north tube portal. Through consultation under Section 106 of the NHPA, FTA found that the Proposed Project would have an adverse effect on contributing features to the Lincoln Tunnel historic property under Section 106 of the NHPA. The Proposed Project would not result in any direct effects to the Tunnel features west of the portals or the Lincoln Tunnel Land Ventilation Building, which is located at the southwest corner of Eleventh Avenue and West 39th Street.

As described in the draft Programmatic Agreement (see **Appendix 6D**), PANYNJ would prepare a Historic American Engineering Record (HAER)-Level II recordation for the affected portions of the Lincoln Tunnel entrance portals, including the north tube entrance portal and the brick walls along the Dyer Avenue portion of the roadways that lead to the Lincoln Tunnel center tube and south tube that may be altered by the Project. PANYNJ would follow HAER guidelines provided by the National Park Service. The recordation would include large format black and white photography, and a narrative that describes the physical characteristics and history of the Lincoln Tunnel entrance portals. As part of the recordation, and in consultation with SHPO, PANYNJ would make an effort to obtain from its own and other accessible archival sources printed, graphic, and photographic information regarding the Lincoln Tunnel entrance portals. PANYNJ will evaluate the compiled information and (as deemed appropriate during consultation) incorporate such archival sources as part of the recordation document.

FTA considered whether the adverse effect on contributing features of the Lincoln Tunnel would constitute a Section 4(f) use of this historic transportation facility. The proposed removal and alteration of contributing features of the tunnel would not affect its intended purpose or operation as a vehicular tunnel. Therefore, FTA concludes that the Proposed Project would not result in a Section 4(f) use of this historic transportation property, and further Section 4(f) evaluation of the Lincoln Tunnel is not necessary for the Proposed Project.

McGraw-Hill Building

The 1980 National Register of Historic Places Inventory – Nomination Form (the “Nomination Form”) for the McGraw-Hill Building (330 West 42nd Street) states that the building is significant in the history of skyscraper construction and is considered the first expression of the curtain wall in a high-rise building. The Nomination Form further states that the groupings of the ribbon windows on the facades of the McGraw-Hill Building were placed as close to the ceiling of each floor as allowed by New York City building regulations to provide the maximum amount of natural light and ventilation, with floors, especially above the 15th floor setback, having windows on all four facades so that “the interior spaces are flooded with daylight.”⁴

With a height of approximately 177 feet to the top of its mechanical penthouse roof, the proposed Main Terminal of the Proposed Project could have an adverse effect on the McGraw-Hill Building. The Main Terminal would block windows on the east façade of the McGraw-Hill Building, constituting the northern portions of three floors (floors 11-13) out of the five floors of the east façade of the building between the first and second setbacks. This is in addition to three- to four-rows of windows that would be blocked on the east façade below the first setback, which includes part of a windowless façade at the seventh floor and where the existing PABT and rooftop equipment on the roof of the PABT partially obstruct what are already limited views of the east façade of the McGraw-Hill Building below the first setback. The Main Terminal would exceed the height of the first setback of the McGraw-Hill Building (which is at approximately 145 feet in height) by over 30 feet (equivalent to the height of three floors), which could also potentially limit the visibility of the second setback (commencing at the 11th floor) in views, and would not be consistent with the base height of the McGraw-Hill Building. The profile of the McGraw-Hill setbacks (the massing of the building) is visible in views east and west on West 42nd Street but is less distinguishable in views north and south. Therefore, it is anticipated that the blockage of portions of the three floors with windows on the east façade of the McGraw-Hill Building above the first setback, which would occur at a portion of the building that does not appear to have been altered and appears to be largely visible above the existing PABT, combined with the height of the proposed Main Terminal at over 30 feet above the first setback of the McGraw-Hill Building, could visually impact the McGraw-Hill Building and constitute an adverse effect to the historic resource.

The McGraw-Hill Building exists in an evolving urban landscape with a setting composed of the existing PABT and surrounding varied urban development, including numerous recently constructed high-rise buildings. The replacement of the existing PABT with the new, taller Main Terminal as well as construction of the private development Tower 1 would obscure views of the McGraw Hill Building's east façade from West 42nd Street, West 41st Street, and Eighth Avenue. Views of the building's stepped façade and its Art Deco lettering at the rooftop would still be available on Ninth Avenue between West 39th Street and West 40th Street, and from locations

⁴ NRHP Inventory – Nomination Form, McGraw-Hill Building. January 9, 1980, Item 8, p. 2.

to the southwest, such as from Tenth Avenue near West 38th Street. The Proposed Project would also substantially increase shadows on sunlight sensitive features of the McGraw-Hill Building. Refer to the shadows assessment provided in **Appendix 6B**.

The Proposed Project would not incorporate land from the McGraw-Hill Building into the transportation facility either permanently or temporarily during construction. However, the Section 106 process concluded that the reduced visibility of the building from certain streets and the increased shadows from the Proposed Project would diminish the features of the building that qualify it for listing on the NRHP, and therefore, FTA found that the Proposed Project would result in adverse effects on this historic property. Accordingly, FTA has considered whether the Proposed Project would result in a constructive use of the McGraw-Hill Building.

23 CFR 774.15(e) identifies specific situations that may be considered constructive use of a Section 4(f) property. Therein, it states that a constructive use may occur when:

The proximity of the proposed project substantially impairs esthetic features or attributes of a property protected by Section 4(f), where such features or attributes are considered important contributing elements to the value of the property. Examples of substantial impairment to visual or esthetic qualities would be the location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a Section 4(f) property which derives its value in substantial part due to its setting⁵

The Proposed Project would not make physical alterations to the aesthetic features of the McGraw-Hill Building, but would limit views of the east façade from West 42nd Street, West 41st Street, and Eighth Avenue. However, some of the views of the McGraw-Hill Building from Eighth Avenue would already be obscured in the No Action condition by the hotels expected to be developed on the block south of the PABT, and views of the building's stepped façade and its Art Deco lettering at the rooftop would still be available on Ninth Avenue between West 39th Street and West 40th Street, and from locations to the southwest, such as from Tenth Avenue near West 38th Street. Through consultation under Section 106 of the NHPA, FTA found that these obstructed views and increased shadows created by the Proposed Project would constitute an adverse effect on the McGraw-Hill Building, but the visual resources analysis (see **Appendix 6C, 'Urban Design and Visual Resources'**) prepared for the DEIS did not conclude that these changes would result in a significant adverse impact on the visual character of the study area. Furthermore, in coordination SHPO and through the Section 106 Process, PANYNJ would work towards minimizing adverse effects to the McGraw-Hill Building as designs advance. FTA finds

⁵ 23 CFR 774.15(e).

that the proximity effects⁶ of Proposed Project on the aesthetic features of McGraw-Hill Building would not result in constructive use of these Section 4(f) properties.

In addition, the new publicly accessible open space to be created by the Proposed Project on the Dyer Deck-Overs would provide a new, less transient location in a park-like setting to experience expansive views of notable sections of the building. In addition, views of the building's front façade, including its notable polychromatic, streamlined ground floor on West 42nd Street, would not be obscured, and would remain available along 42nd Street between Eighth and Ninth Avenues. Other distinctive features of the building—its massing and crown with rooftop lettering—are currently visible and would continue to be visible from multiple vantage points in the surrounding area. Furthermore, as discussed above, the building is not prominent in longer (more distant) views in existing conditions, but rather is one element within the dense, ever-evolving landscape of tower developments in Midtown Manhattan.

As outlined in the draft Programmatic Agreement prepared pursuant to Section 106 of the National Historic Preservation Act (see **Appendix 6D**), PANYNJ would commit to prepare an Historic American Buildings Survey (HABS) photographic recordation of the exterior of the McGraw-Hill Building per National Park Service guidelines. For these reasons, and with consideration of proposed mitigation commitments, FTA finds that the proximity effects of Proposed Project on the aesthetic features of McGraw-Hill Building would not result in constructive use of this Section 4(f) property.

Constructive use may also occur when: (1) a project would substantially increase noise in a manner that diminishes the enjoyment of a resource; (2) a project results in a restriction of access to a Section 4(f) property; (3) project-generated vibrations substantially impair the use of a Section 4(f) property; or (4) a project substantially impairs the ecological value of a wildlife - habitat or wildlife or waterfowl refuge. However, these situations are not applicable to the Proposed Project.

Since the Proposed Project, would not substantially diminish the activities, features, or attributes of the McGraw-Hill Building that qualify it for Section 4(f) protection, FTA finds that the Proposed Project would not result in constructive use of this Section 4(f) property. As the Proposed Project would not result in the permanent incorporation, temporary occupancy, or constructive use of the McGraw-Hill Building, Section 4(f) regulations do not require further evaluation of this resource.

⁶ "Proximity effects" – effects or impacts resulting from the Proposed Project, which effect the 4(f) property due to its proximity to the Proposed Project.

Holy Cross Roman Catholic Church Complex and the St. Raphael Roman Catholic Church and Rectory

The results of the detailed shadow assessment included in **Appendix 6B** indicate the Proposed Project would result in a substantial reduction in sunlight available for the enjoyment or appreciation of the sunlight-sensitive features of the Holy Cross Roman Catholic Church Complex and the St. Raphael Roman Catholic Church and Rectory. FTA, in consultation with SHPO through the Section 106 process, found that the Proposed Project would result in adverse effects on these resources.

The Proposed Project would not incorporate land from Holy Cross Roman Catholic Church Complex and the St. Raphael Roman Catholic Church and Rectory into the transportation facility either permanently or temporarily during construction. However, the Section 106 process concluded that increased shadows from the Proposed Project would diminish the enjoyment of stained-glass features of these churches, and therefore, FTA found that the Proposed Project would result in adverse effects on these historic properties. Therefore, FTA has considered whether the shadow effects of the Proposed Project constitute a constructive use of these Section 4(f) properties.

23 CFR 774.15(e) identifies specific situations that may be considered constructive use of a Section 4(f) property, including proximity impacts that diminish the aesthetic features of a historic property. The Proposed Project would not make physical changes to the aesthetic features of these Section 4(f) properties, and the prominent features of their facades would remain visible from adjacent streets. While the Proposed Project would increase shadow on sunlight-sensitive features of the structures, the features themselves would remain. Furthermore, the visual resources analysis prepared for the DEIS did not conclude that these changes in shadow duration would result in significant adverse impacts on visual character of the study area, and in coordination SHPO and through the Section 106 Process, PANYNJ would work towards mitigating adverse effects to the identified sunlight-sensitive historic resources generated by the Proposed Project. Means of mitigating shadows generated by the Proposed Project would be coordinated further as those designs advance. Accordingly, FTA finds that the proximity effects of Proposed Project on the aesthetic features of the Holy Cross Roman Catholic Church Complex and the St. Raphael Roman Catholic Church and Rectory would not result in constructive use of these Section 4(f) properties.

Since the Proposed Project, including mitigation measures, would not substantially diminish the activities, features, or attributes of the Holy Cross Roman Catholic Church Complex and the St. Raphael Roman Catholic Church and Rectory that qualify them for Section 4(f) protection, FTA finds that the Proposed Project would not result in constructive use of these Section 4(f) properties. As the Proposed Project would not result in the permanent incorporation, temporary occupancy, or constructive use of Holy Cross Roman Catholic Church Complex and the St. Raphael Roman Catholic Church and Rectory, Section 4(f) regulations do not require further evaluation of these resources.

Paddy's Market Historic District

Project-generated incremental shadow would be cast on the Metro Baptist Church, a contributing property located at 410 West 40th Street in the Paddy's Market Historic District. FTA, in consultation with SHPO through the Section 106 process, found that the increased shadow from the Proposed Project would result in adverse effects on Paddy's Market Historic District.

The Proposed Project would not incorporate land from Paddy's Market Historic District into the transportation facility either permanently or temporarily during construction. However, the Section 106 process concluded that increased shadows on Metro Baptist Church, a contributing resource to the Paddy's Market Historic District, from the Proposed Project would diminish the enjoyment of stained-glass features of these churches, and therefore, FTA found that the Proposed Project would result in adverse effects on Paddy's Market Historic District. Therefore, FTA has considered whether the shadow effects of the Proposed Project constitute a constructive use of the Paddy's Market Historic District.

23 CFR 774.15(e) identifies specific situations that may be constructive use of a Section 4(f) property, including proximity impacts that diminish the aesthetic features of a historic property. The Proposed Project would not make physical changes to the aesthetic features of Metro Baptist Church or other contributing resources to the Paddy's Market Historic District, and the prominent features of their facades would remain visible from adjacent streets. While the Proposed Project would increase shadow on sunlight-sensitive features of the church structure, the sunlight-sensitive features themselves would remain. Furthermore, the visual resources analysis prepared for the DEIS did not conclude that these changes in shadow duration would result in significant adverse impacts on visual character of the study area, and in coordination SHPO and through the Section 106 Process, PANYNJ would work towards mitigating adverse effects to the identified sunlight-sensitive historic resources generated by the Proposed Project. Means of mitigating shadows generated by the Proposed Project would be coordinated further as those designs advance. Accordingly, FTA finds that the proximity effects of the Proposed Project on the Paddy's Market Historic District would not constitute a constructive use of the Paddy's Market Historic District.

Since the Proposed Project, including mitigation measures, would not substantially diminish the activities, features, or attributes of the Paddy's Market Historic District that qualify it for Section 4(f) protection, FTA finds that the Proposed Project would not result in constructive use of this Section 4(f) property. As the Proposed Project would not result in the permanent incorporation, temporary occupancy, or constructive use of the Paddy's Market Historic District, Section 4(f) regulations do not require further evaluation of these resources.

Figure 15A-1. Historic Sites in the Project Area

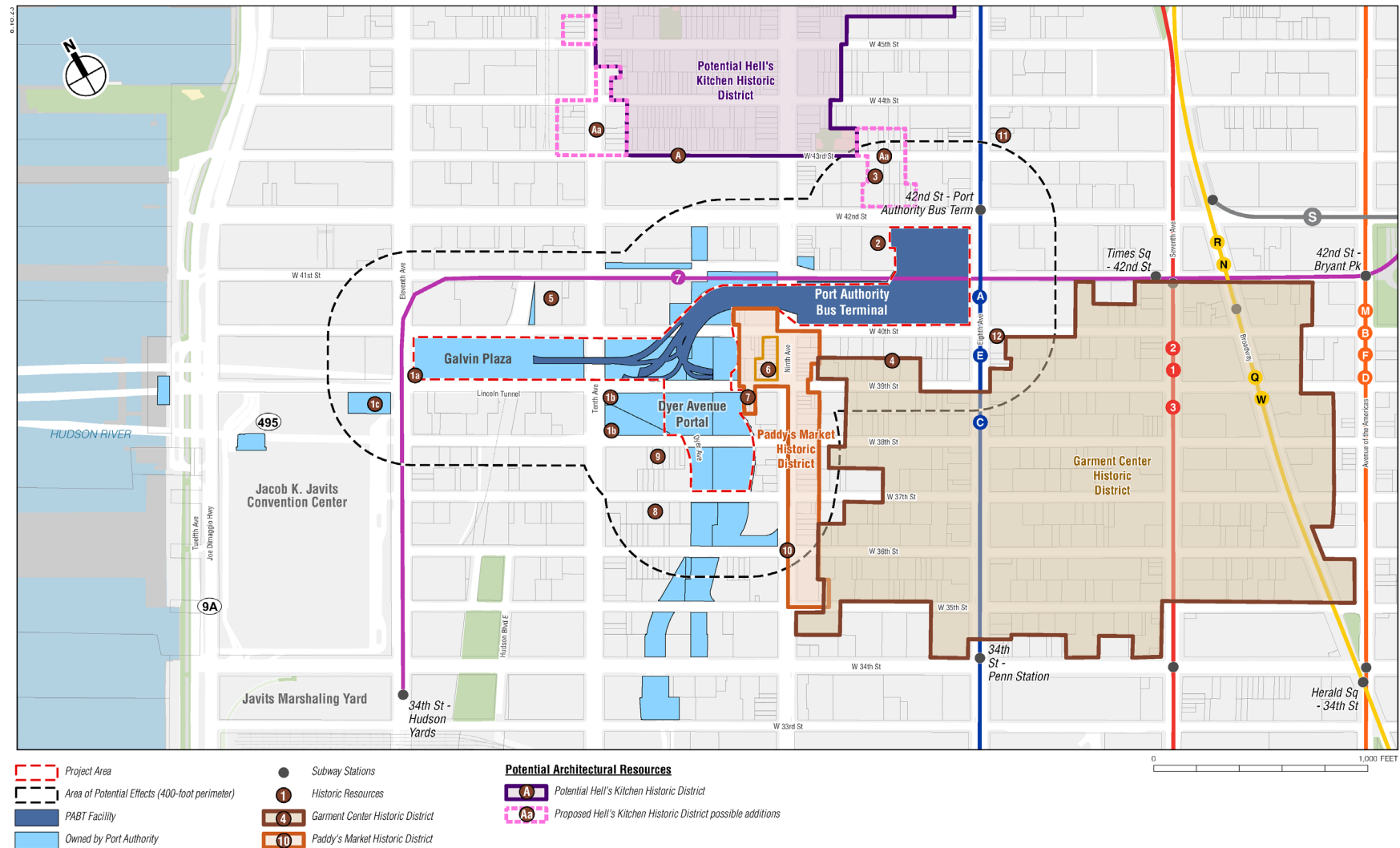


Table 15A-1. Historic Sites in the Project Area

Map No. ⁽¹⁾	Name	Address	Status & Significance Criteria ^(2,3)	Proposed Project Effects	Potential Section 4(f) Use
1a	Lincoln Tunnel North Tube and Portal	Under the Hudson River and extending to portal at Eleventh Avenue and West 39th Street	NRHP-Eligible: A, C	Adverse Effect under Criterion C	No Use
1b	Lincoln Tunnel Center and South Tubes and Portals	Under the Hudson River and extending to portals at Tenth Avenue between West 38th and West 39th Streets	NRHP-Eligible: A, C	Adverse Effect under Criterion C	No Use
1c	Lincoln Tunnel Land Ventilation Building	Southwest corner of Eleventh Avenue and West 39th Street	NRHP-Eligible: A, C	No Adverse Effect	No Use
2	McGraw-Hill Building	330 West 42nd Street	NHL NRHP-Listed: C	Adverse Effect under Criterion C	No Use
3	Holy Cross RC Church Complex	333 West 42nd Street and 334 West 43rd Street	NRHP-Eligible: C	Adverse Effect under Criterion C	No Use
4	Garment Center Historic District	Roughly bounded by West 41st Street, Sixth Avenue, West 34th Street, and Ninth Avenue	NRHP-Listed: A, C	No Adverse Effect	No Use
5	St. Raphael Roman Catholic Church and Rectory	502-504 West 41st Street	NRHP-Eligible: C	Adverse Effect under Criterion C	No Use
6	Tenements ⁽⁴⁾	523-539 Ninth Avenue	NRHP-Listed	No Adverse Effect	No Use
7	Tenement ⁽⁴⁾	408 West 39th Street	NRHP-Listed	No Adverse Effect	No Use
8	Underhill Building	438-448 West 37th Street	NRHP-Eligible	No Adverse Effect	No Use
9	Engine Co. 34 Firehouse	440-442 West 38th Street	NRHP-Eligible: A, C	No Adverse Effect	No Use
10	Paddy's Market Historic District ⁽⁵⁾	Roughly bounded by West 41st and West 35th Streets along Ninth Avenue	NRHP-Listed: A, C	Adverse Effect under Criterion C	No Use
11	Times Square Hotel	255 West 43rd Street	NRHP-Listed: A, C	No Adverse Effect	No Use
12	Tenement	274 West 40th Street	NRHP-Eligible	No Adverse Effect	No Use

⁽¹⁾ Corresponds to **Figure 15A-1**.

⁽²⁾ NRHP significance criterion: NRHP Significance Criteria A-D are described in **Chapter 6, "Historic and Cultural Resources"**.

⁽³⁾ For certain properties SHPO's CRIS does not provide information regarding the NRHP criteria under which the properties were determined significant, and, therefore, information is not provided in this table for those properties.

⁽⁴⁾ Property also included within the boundaries of the NRHP-Listed Paddy's Market Historic District.

⁽⁵⁾ The Paddy's Market Historic District, which had been previously determined NRHP-Eligible by SHPO in 2021, was listed on the NRHP in April 2022.

NRHP: National Register of Historic Places.

NRHP-Eligible: Eligible for listing on the New York State and National Registers of Historic Places.

NHL: National Historic Landmark.

15A.4.2 Publicly Owned Parks, Recreation Areas, and Wildlife and Waterfowl Refuges

15A.4.2.1 Recreation Areas and Wildlife and Waterfowl Refuges

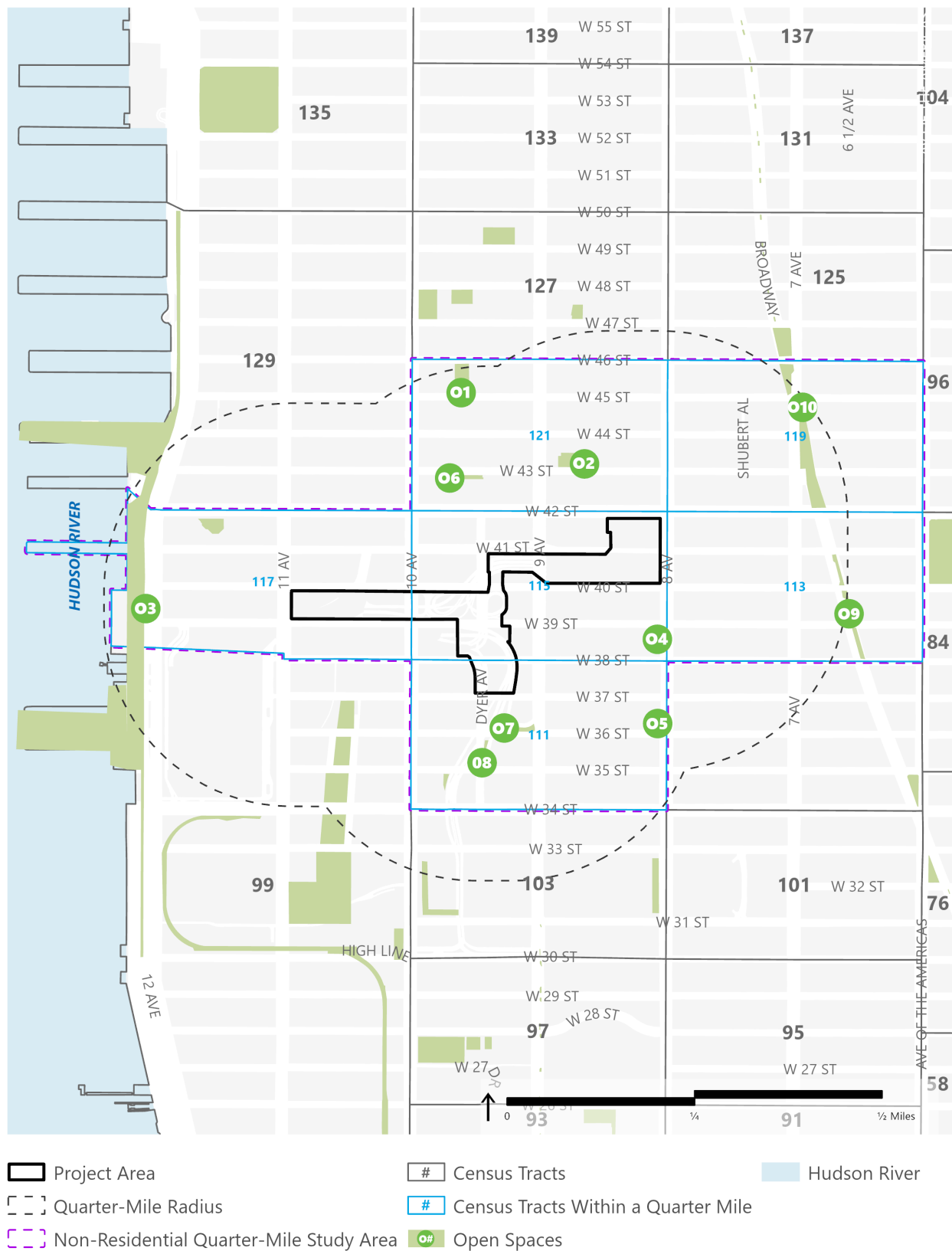
No designated recreation areas or wildlife and waterfowl refuges are within the Project Area. Therefore, Proposed Project would not result in the use of any such resources.

15A.4.2.2 Publicly Owned Parks and Privately Owned but Publicly Accessible Plazas

There are 10 publicly owned parks (defined here as including NYC-owned parks and privately owned but publicly accessible plazas) in the Project Area. **Figure 15A-2** provides a map of these parks and plazas, and **Table 15A-2** provides information on each park or plaza, the potential change resulting from implementation of the Proposed Project, and the proposed conclusion regarding the Section 4(f) use of the property. **Table 15A-2** parks and plazas owned by NYC Parks, the New York City Economic Development Corporation, New York City Department of Education, Hudson River Park Trust, and private property owners. All these parks and plazas are publicly accessible, and therefore, they are considered Section 4(f) properties.

The Proposed Project would not place transportation infrastructure within parks and plazas in or near the Project Area. The construction of a new bus terminal and related development would be similar in nature and character to existing developments throughout Midtown Manhattan and would not substantially impair access to these resources, ownership of the resources, or the protected activities, features, or attributes that qualify these resources for protection under Section 4(f) (i.e., constructive use) permanently or during construction. As the Proposed Project would not result in permanent use, temporary occupancy, or constructive use of publicly accessible open space, further analysis of these resources pursuant to Section 4(f) regulations is not necessary.

Figure 15A-2. Publicly Owned Parks in the Project Area



Source: NYC Department of City Planning – PLUTO (2023)

Table 15A-2. Publicly Owned Parks in the Project Area

Map No.	Name	Owner/ Agency	Features and Amenities	Proposed Project Effect	Section 4(f) Use
O1	Matthews Palmer Playground	NYC Parks	Basketball courts, handball courts, playgrounds, spray showers	No Adverse Effect	No Use
O2	McCaffrey Playground	NYC Parks	Basketball courts, handball courts, playgrounds, spray showers	No Adverse Effect	No Use
O3	Hudson River Park Greenway ⁽¹⁾	Hudson River Park Trust/ NYC Parks	Grass lawns, seating areas, plazas, walkways	No Adverse Effect	No Use
O4	585 Eighth Avenue POPS	IMDN Holding LLC	Plaza, seating	No Adverse Effect	No Use
O5	525 Eighth Avenue POPS	RONBET Eighth Avenue LLC	Plaza, seating, plantings, trees	No Adverse Effect	No Use
O6	Gregory JM Portley Plaza	Manhattan Plaza Apartments	Benches, landscaping	No Adverse Effect	No Use
O7	The Canoe	PANYNJ/ NYCDOT (managed by HYHK Alliance)	Tables, chairs, shade umbrellas	No Adverse Effect	No Use
O8	Dyer Avenue Plaza ("The Triangle")	PANYNJ (managed by HYHK Alliance)	Plantings	No Adverse Effect	No Use
O9	Golda Meir Square	1411 IC-SIC Property, LLC.	Landscaping and seating	No Adverse Effect	No Use
O10	Times Square and Broadway Boulevard Plazas	Times Square Alliance; NYC Department of Transportation	Landscaping and seating	No Adverse Effect	No Use

Source: NYC Department of Parks and Recreation, NYC Capital Planning Platform, NYS Department of Parks and Recreation, DOT Plaza Program (as of January 2023)

⁽¹⁾ Only the area of the Hudson River Park Greenway that falls within the non-residential study area was included in the analysis.

Note: There are plazas adjacent to commercial and residential buildings in the Project Area that are privately owned but are designated as publicly accessible open space. These plazas are considered Section 4(f) properties for this analysis. Refer to **Figure 15A-2** for Map Nos.

alternatives under consideration, FTA need not prepare a least harm analysis for the Proposed Project.

15A.5 AGENCY COORDINATION AND PUBLIC ENGAGEMENT

15A.5.1 Coordination with Officials with Jurisdiction

As required by the Section 4(f) regulations (23 CFR § 774.5), the Draft Section 4(f) Evaluation for the Proposed 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 Proposed Project. For historic sites, the officials with jurisdiction are SHPO and the Advisory Council on Historic Preservation (ACHP) if they are participating in the Section 106 consultation process for the

project. FTA has made Section 106 effects findings for the Proposed Project, and SHPO has provided concurrence with the findings as shown through correspondence provided in **Appendix 6A**. In a letter dated November 18, 2022 (provided in **Appendix 6A**), ACHP declined to participate in the Section 106 consultation for the Proposed Project, and therefore, they are not an agency with jurisdiction for this Section 4(f) evaluation.

FTA afforded an opportunity for Section 106 Consulting Parties to review this Draft Section 4(f) Evaluation prior to public release of the DEIS. FTA will continue consultation with these stakeholders through public review of the DEIS and conclusion of the Section 106 review process.

FTA will provide the 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, if any, will be addressed in a Final Section 4(f) Evaluation.

15A.5.2 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, email, and written) 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 Proposed Project's website (www.PABReplacement.com) and at any of the Proposed Project's publicly accessible repositories. In addition, FTA and PANYNJ will hold several public hearings following publication of the DEIS.

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. The Final Section 4(f) Evaluation, which will be included in the FEIS, will incorporate any relevant changes necessitated by public comments.