

## 12.1 REGULATORY FRAMEWORK

This section has been prepared pursuant to federal regulations contained in 23 C.F.R. § 774 that implements Section 4(f) of the United States Department of Transportation (USDOT) Act of 1966 (23 U.S.C. § 138 and 49 U.S.C. § 303). These statutes are commonly referred to as Section 4(f). The following applies to the Proposed Project and the Proposed Project *with Option E1* unless otherwise indicated.

Section 4(f) specifies that the Secretary [of Transportation] may approve a transportation program or project . . . requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance, or land of an historic site of national, state, or local significance (as determined by the federal, state, or local officials having jurisdiction over the park, area, refuge, or site) only if:

- there is no prudent and feasible alternative to using that land, and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use, or
- the use of the property, including any measure(s) to minimize harm (such as any avoidance, minimization, mitigation, or enhancement measures), will have a *de minimis* impact, as defined in 23 C.F.R. § 774.17, on the property.

On August 10, 2005, Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, amended the Section 4(f) legislation. Section 6009 simplified the process and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). The requirements to consider avoidance alternatives and document all possible planning to minimize harm prior to the approval of the use of Section 4(f) property do not apply if the use qualifies as a *de minimis* impact. *De minimis* impact findings are made on a resource-by-resource basis. The *de minimis* impact finding can include consideration of mitigation measures incorporated into the project.

For historic sites, *de minimis* impact means that FTA has determined, in accordance with the Section 106 process (36 C.F.R. § 800) that no historic property is affected by the project or that the project will have “no adverse effect” on the historic property in question. Prior to making a *de minimis* impact determination, FTA must receive written concurrence from the pertinent State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), and from the Advisory Council on Historic Preservation (ACHP) if participating in the consultation process, in a finding of “no adverse effect” or “no historic properties affected” in accordance with 36 C.F.R. § 800. FTA is required to inform these officials of its intent to make a *de minimis* impact determination based on their concurrence in the finding of “no adverse effect” or “no historic properties affected” (23 C.F.R. § 774.5(b)).

## 12.2 IDENTIFICATION AND DESCRIPTION OF SECTION 4(f) RESOURCES

There is one Section 4(f) parkland resource in the vicinity of the Proposed Project—a public plaza located in the area surrounding the entrance the subway station on the southwest corner of East 68th Street and Lexington Avenue (Figure 4-1). The plaza includes seating and a sculpture, and the stairwell includes one tree. Entrances to the Hunter College West Building open to this area. The plaza is owned by Hunter College.

Historic resources in the vicinity of the Proposed Project (Figure 4-1) include the Upper East Side Historic District, Thomas Hunter Hall (a contributing element to the historic district) and the Imperial House Apartments that is located outside the Upper East Side Historic District. The Upper East Side Historic District was originally listed in the National Register of Historic Places on September 7, 1984, and the boundaries of the district were expanded on September 12, 2006 (Upper East Side Historic District Extension). The Upper East Side Historic District is historically and architecturally significant for its extraordinary concentration of fine examples of New York's most characteristic late nineteenth- and early twentieth-century residential buildings, including brownstone rowhouses, grand mansions and elegant apartment houses. Thomas Hunter Hall was completed in 1913 as part of a new campus plan for Hunter College. The building was designed by C.B.J. Snyder, who was New York City Superintendent of School Buildings, and the building retains many of his standard treatments for schools within New York City.

Incorporated into the design of Thomas Hunter Hall is a sub-grade light well situated along the east side of the building. The light well extends along the length of the building from East 68th Street to East 69th Street except in the center of the block where it is interrupted for an entrance to the hall. The bottom of the well is approximately 6 feet lower than the surface of the sidewalk and the well is approximately 4 feet wide. The wall at the south end of the well is adjacent to the northwest corner of the subway station.

Also incorporated in the design is the use of the plaza under the northwest corner of the Hunter College East Building. The plaza is open on the north and west sides adjacent to East 68th Street and Lexington Avenue, respectively. The plaza contains a street stair for the 68th Street/Hunter College station and a kiosk that is licensed to a flower vendor. The Proposed Project would place the elevator head house within the plaza and would remove the flower kiosk. The existing seating in the plaza would remain.

The Imperial House Apartments building was evaluated for its potential eligibility for inclusion in the State/National Registers and determined to be eligible for inclusion in both. This resource is significant in the areas of urban development and architecture as a good and representative example of modern style, white brick residential towers built after World War II in New York City and in the same style as the New York City Landmarked Manhattan House at East 66th Street and Second Avenue. On August 29, 2012, NYSOPRHP concurred with the eligibility of the Imperial House Apartments as eligible for inclusion in the State/National Registers.

## **12.3 IMPACTS TO SECTION 4(f) RESOURCES**

The Proposed Project and the Proposed Project *with Option E1* would not result in any changes to the plaza at the southwest corner of East 68th Street and Lexington Avenue. There would be no temporary occupation of the plaza during construction. No use of this Section 4(f) resource would occur.

A new louver housing a ventilation fan will be constructed within the property line of Thomas Hunter Hall. It will penetrate the subway station wall into the south wall of the light well of Thomas Hunter Hall. The ventilation fan would be approximately the size of a household box fan or a bakery exhaust fan. The fan housing would not be visible from the street or sidewalks except for a limited view from an entrance to the hall, approximately 50 feet away and through the cast iron fence. Within Thomas Hunter Hall, the fan housing would only be visible from the southeast portion of the basement.

The south wall of the Hunter Hall light well is a common wall shared by the subway structure and Thomas Hunter Hall. The louver will be used to ventilate the Elevator Machine Room within the station and this room will be closed to the public. The louver will be approximately 2 feet by 2 feet and flush-mounted with the wall. The alteration to the common wall of the Thomas Hunter Hall

light well to install the louver is considered a permanent encroachment on the Section 4(f) resource.

The light well where the fan louver would be located is pictured in Figures 12-1 and 12-2. The photograph in Figure 12-1 was taken from the northwest corner of East 68th Street and Lexington Avenue, looking north along Lexington Avenue. This photograph shows the existing ventilation associated with Thomas Hunter Hall. The photograph in Figure 12-2 was taken facing south from inside the iron fence. The position of the louver is superimposed on the image.

The stairway adjacent to Thomas Hunter Hall would be rehabilitated but the dimensions of the stair would remain unchanged. Although this stair is within the boundaries of the Upper East Side Historic District, there would be no impact to the historic district or the integrity or appearance of Thomas Hunter Hall.

The stairway adjacent to the southwest corner of the Imperial House Apartments would be relocated. In order to reduce congestion and thus improve circulation at the corner (Figures 1-2 and 1-3), the stair would be located approximately 30 feet east of its current position. Relocation of the stair would not impact the integrity or appearance of the building.

The Proposed Project would include a new street stair in a commercial space in a row of such spaces in the Imperial House Apartments approximately mid-block between East 68th Street and East 69th Street. At street level, the new entrance would occupy approximately 12 feet of building frontage, replacing what is currently storefront windows with an opening leading to a subway stair. At the basement level, the new mezzanine and platform stair would occupy approximately 1,690 square feet, replacing what is currently storage space for commercial activity. Approximately eight to 10 feet of the west-facing basement wall would be opened to provide access to the northbound subway tunnel. A small green and white sphere (approximately 18 inches in diameter) on a pedestal would be located on the sidewalk in front to indicate the location of the subway entrance. A rendering of the proposed entrance is provided in Figure 12-3. The appearance of the entrance would be consistent with the overall commercial character of the ground floor uses of the building and would not impact the architectural features of the building that are considered historic.

The Proposed Project does not involve any potential temporary occupancy of Section 4(f) resources beyond those already identified as direct permanent uses above. The project does not involve permanent increases in noise, vibration, air quality or other proximity effects that would warrant a detailed assessment of constructive use impacts. The louver in the light well of Thomas Hunter Hall would generate noise, but this noise would not significantly impair the protected features and attributes of the Thomas Hunter Hall and thus would not constitute a constructive use. The louver noise would be imperceptible in comparison to the many other sources of urban noise surrounding Thomas Hunter Hall, including street traffic and window unit air conditioners in the building itself.

The new mid-block entrance in the commercial space in the Imperial House Apartments would not significantly impair the protected features and attributes of the resource and thus would not constitute a constructive use.

The Proposed Project *with Option E1* would not include a new street stair in a commercial space in a row of such spaces in the Imperial House Apartments but instead would place a street stair in the sidewalk adjacent to the northwest corner of the Imperial House Apartments. This street stair would not involve temporary or permanent occupancy of Section 4(f) resources, and would not affect the protected features and attributes of the resource.

Figure 12-1:  
Thomas Hunter Hall Light Well Looking North



Figure 12-2:  
Position of Louver on South Wall of Light Well



**Figure 12-3:  
Rendering of New Mid-Block Entrance in the Imperial House Apartments Building**



## **12.4 SECTION 4(f) *DE MINIMIS* FINDING**

As part of the Section 106 process, FTA and MTA NYCT informed SHPO about the Proposed Project and the proposed uses of the Section 4(f) resources in a series of letters dated June 2, 2011, July 19, 2012, October 19, 2012, and March 5, 2015. The SHPO responses are included in Appendix B.

As stated in its letter to MTA NYCT dated August 29, 2012, regarding the louver in the light well of Thomas Hunter Hall, SHPO concurred that there would be “no adverse effect” on historic resources, provided the following condition is met: A construction protection plan be developed and implemented for all historic buildings within 90 feet of the proposed construction activities.

As stated in its letter to MTA NYCT dated April 2, 2015, regarding the subway entrance in the commercial space of the Imperial House Apartments, SHPO concurred that the Proposed Project would have “no adverse effect” on historic resources, provided the following condition is met: A

construction protection plan be put in place for all historic buildings within 90 feet of the proposed construction activities.

For construction of the Proposed Project and the Proposed Project *with Option E1*, a construction protection plan will be put in place for all historic buildings within 90 feet of the proposed construction activities. This plan will be created in accordance with the requirements stipulated in the New York City Department of Buildings, “Technical Policy Procedure Notice #10/88” and the New York City Landmarks Preservation Commission guidelines described in “Protection Programs for Landmarked Buildings.”

In a letter dated October 27, 2015, FTA informed OPRHP that it will use the August 29, 2012, and April 2, 2015, no-effect findings to make a *de minimis* use finding under Section 4(f) for the Thomas Hunter Hall, the Imperial House Apartments and the Upper East Side Historic District (see Appendix B). For each of these resources, the Proposed Project would not adversely affect the features, attributes, or activities qualifying the resources for protection under Section 4(f). For the Proposed Project *with Option E1* the Section 4(f) *de minimis* impact finding would apply to Thomas Hunter Hall and the Upper East Side Historic District. The public and other agencies (including SHPO) will be afforded an opportunity to review and comment on the proposed *de minimis* impact finding during the NEPA public comment period on this EA.