

CHAPTER 6 – SECTION 4(f) EVALUATION

6.1. Introduction

This document is the Draft Section 4(f) Evaluation for the Robert Moses Parkway (RMP) Removal Project (the Project). This evaluation was prepared to satisfy the requirements of Section 4(f) of the U.S. Department of Transportation (USDOT) Act of 1966 (in 1983, Section 4(f) of the USDOT Act was codified as 49 United States Code (USC) § 303(c), but this law is still commonly referred to as Section 4(f)). This evaluation was also prepared in accordance with the Federal Highway Administration (FHWA) implementing regulations for Section 4(f) at 23 CFR Part 774, as well as the FHWA's Section 4(f) Policy Paper, July 20, 2012. The Preferred Alternative (also referred to as the Project) would require the use of park features and historic elements of several properties that are protected under Section 4(f). This use cannot be avoided and, therefore, the FHWA has identified measures to minimize harm to this property.

This Section 4(f) analysis:

- Determines the applicability of Section 4(f) to parks and recreation areas within the Project Study Area for the Project;
- Determines the applicability of Section 4(f) to historic sites identified through the Section 106 process for the Project;
- Assesses use of identified Section 4(f) properties under the Build Alternative; and
- Presents supporting documentation for FHWA to make a Section 4(f) approval.

This analysis also summarizes coordination with the officials from key public agencies having jurisdiction for Section 4(f) resources in the Project Study Area (i.e., the area bounded by an imaginary line 1,000 feet north of and parallel to Findlay Drive to the north; Main Street and Third Street to the east; Niagara Street to the south; and the Niagara Gorge rim to the west). The New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP, referred to as "State Parks" throughout this document) owns and/or manages several state parks and also includes the New York State Historic Preservation Officer (NYSHPO), which has the responsibility for consulting with Federal agencies such as FHWA in carrying out their own Section 106 responsibilities under the National Historic Preservation Act of 1966. In addition, the City of Niagara Falls owns the property that formerly served as a city park. Although the New York Power Authority (NYPA) owns much of the land along the RMP as well as the land on which the RMP is located, it is a quasi-public agency and is not considered a key agency to the Section 4(f) process.

6.2. Purpose and Need

The Project Study Area, particularly in areas along the Niagara Gorge, exhibits several deficiencies / needs as listed and described below:

- ***The total number of travel lanes that parallel the Niagara Gorge far exceeds the traffic demand in the existing condition as well as in the future.*** Most transportation projects are undertaken due to a deficiency of adequate capacity to handle the existing and projected traffic volumes. The configuration of the RMP and adjacent roadways within the corridor, however, currently provides an over-abundance of travel lanes for vehicles that traverse the area. In some locations, there are eight travel lanes available (including the former southbound RMP lanes currently used as the Robert Moses Parkway Trail), which is more than what is needed. For instance, in either peak hour (i.e., AM or PM), it is projected that no more than 1,200 vehicles in both directions would use the three major north-south roadways combined within the Project Study Area (i.e., RMP, Third Street / Whirlpool Street and Main Street) in the 2040 No-Build condition. As a result, there is more roadway pavement in place than is necessary, thereby resulting in unnecessary additional cost to maintain, and land currently occupied by roadway that could be put to other, more efficient and beneficial uses. In turn, the impervious coverage created by this pavement serves to continue to impair the ecology of the Niagara Gorge and the Niagara River through contaminated stormwater runoff, fragmentation of habitat areas, and absorption of heat. Therefore, the purpose of the proposed Project in this regard would be to reduce the number of vehicular lanes in the Project limits to only that needed to support projected traffic by removing the RMP and shifting traffic to local roadways, thereby reducing overall maintenance costs, providing the ability to create additional land for more productive recreational use and lessening adverse environmental effects to the Gorge and River ecology.
- ***There are limited points of access between the adjacent neighborhoods and the Niagara Gorge rim, thereby restricting the amount of local usage of this great natural scenic resource.*** In the Project Study Area, there are only three locations where local, regional and nationwide populations can directly access the Gorge rim and areas to the west of the RMP (i.e., via the Robert Moses Parkway Trail at Main Street and Rainbow Boulevard, via a pedestrian bridge at the Aquarium of Niagara and via the converted RMP off-ramp below the RMP viaduct near the Whirlpool Bridge). An additional point of access, however, is located north of the Project Study Area at the at-grade pedestrian crosswalk between Whirlpool and DeVeaux Woods State Parks. As a result, despite the proximity of the Gorge rim, peoples' ability to actually enjoy the recreational and scenic opportunities of the Gorge and the Lower Niagara River is limited. The need to reconnect the City and the Region to its waterfront via the removal of the RMP is an important element of the *City of Niagara Falls Comprehensive Plan* and the *City of Niagara Falls Greenway Vision*. Therefore, the purpose of the Project in this regard would be to provide continuous access between the adjacent residential and commercial area and the Niagara Gorge rim by removing all physical barriers along the entire length of the Project Area.

- ***The Project Area lacks a continuous trail network that links together existing and proposed attractions, parks, trails, cultural/historic sites and adjacent neighborhoods in a more natural park-like setting.*** Although the Robert Moses Parkway Trail provides for the exclusive use of bicyclists and pedestrians and is separated from the vehicular portion of the RMP by a grassed median, it still has the appearance of half of an expressway. In addition, as noted above, there are only limited points of access between adjoining City neighborhoods and the Robert Moses Parkway Trail and the Niagara Gorge rim. The need for a continuous bicycle and pedestrian trail system along the Niagara Falls waterfront, including the Project Study Area, was also identified in the *City of Niagara Falls Greenway Vision*, the *Niagara River Greenway Plan* and the *Niagara Falls National Heritage Area Management Plan*. Therefore, the purpose of the Project in this regard would be to provide an attractive trail network for bicyclists and pedestrians along the entire length of the Niagara Gorge from Main Street to Findlay Drive, which would also connect to other existing trail networks into the Gorge and with all streets in adjoining City of Niagara Falls neighborhoods.
- ***Although not technically a transportation deficiency, there is a need to promote economic development and tourism within the corridor.*** The *Niagara Falls Comprehensive Plan*, the *Erie-Niagara Framework for Regional Growth*, the *One Region Forward Regional Plan for Sustainable Development*, and other policy documents promulgated by the State's Niagara Falls-based economic development agency (USA Niagara Development Corporation [USAN]) all identify this as an important need, especially in light of the City's ongoing economic struggles. The existing configuration of the RMP in the Project Area actually impedes addressing this need. This is because it minimizes opportunities to realize appropriately-scaled, sustainable development in the City that capitalizes on proximity to the Gorge and the Niagara River in a manner that could extend visitor stays and create associated economic benefits. Therefore, the purpose of the Project in this regard would restore the Niagara Gorge rim within the Project limits by removing the RMP to allow for further active-passive recreational enjoyment, and to help transform business districts in the Project Study Area to best complement and capitalize on the proximity to these natural/recreational assets.

The deficiencies and needs presented above are oriented toward improvement of the overall transportation system located within and in proximity to the corridor, as well as enhancement of the recreational, visual and economic opportunities of the corridor. The needs would be met with the construction of the proposed Project between Main Street and Findlay Drive. The Project Area extends north of Niagara Falls State Park (which attracts 9 million annual visitors) and downtown Niagara Falls (i.e., the primary location for lodging and dining facilities). In turn, the Project Area immediately runs along some of the City of Niagara Falls' most densely developed neighborhoods, and would open direct Gorge/waterfront recreational access to its entire ~50,000 residents.

Removal of pavement associated with the existing RMP would add 6.7 acres to the contiguous parkland / green space that currently exists along the Gorge rim within the Project Study Area.¹ This action would also allow 13.4 acres of isolated parcels east of the RMP to be annexed as part of the total contiguous parkland / green space within the Project Study Area. In combination, these enhancements would add a total of 20.1 acres to the contiguous parkland / green space that currently exists west of the RMP. As a result, the current total of 116.7 acres of contiguous parkland / green space within the Project Study Area would increase to 136.8 acres, comprising a wide, fully-accessible green ribbon connecting Niagara Falls State Park and Whirlpool State Park.

Based on the needs described above, a final list of five basic Project Objectives was prepared; each with its own set of sub-objectives. The ability of the Project to achieve the five basic objectives and to fulfill the Purpose and Need is addressed below.

- **Improve access and transportation** – Direct multi-modal access from City neighborhoods along the Niagara Gorge rim in the Project Study Area and associated open space lands would be improved by the removal of RMP pavement, safety appurtenances and other physical barriers between Main Street and Findlay Drive. As a result, continuous visual and physical access would be provided along this entire segment. Access within the open space lands would also be improved with construction of an attractive system of trails designed to accommodate pedestrians and bicycles, and connection to existing trails along the Gorge rim and within the Gorge itself. Localized multi-modal transportation conditions within the area would also be improved through new streetscape and landscape amenities included as part of the reconstruction of Whirlpool Street and Third Street in the Project Study Area. Enhancements, including road features to facilitate traffic calming and potential future public transit access, wider grass verge/snow storage areas, pedestrian amenities (e.g., wider sidewalks, designated crosswalks, and curb bulb-outs at major intersections), lighting, street trees and signage would be incorporated into the Project design to make it more desirable for both drivers and local residents. Therefore, this overall objective would be met.
- **Promote and conserve the ecology and environment of the Project Area** – Environmental conditions along the state parks and NYPA open space lands would be improved by elimination of pavement, bridges, and other impervious areas/structures of the RMP between Main Street and Findlay Drive. In this regard, all areas where pavement from the existing RMP and access roadways are proposed to be removed would be appropriately restored with a new multi-use trail and native vegetation that would further enhance water quality (by naturally filtering storm water runoff), habitat connectivity, and the aesthetics of the entire setting of the Gorge rim in this segment. The removal of pavement and restoration of such lands with a new multi-use trail network (likely constructed from porous pavement) and native vegetation would expand the areas that can be used for enjoying the region's natural and scenic beauty. In addition, the improved pedestrian and bicycle access to, from,

¹ Although total pavement removal would be 12.4 acres when the existing Robert Moses Parkway Trail on the former southbound lanes of the RMP is also taken into account, the pavement associated with this trail is already considered to be recreational land due to its purpose as a bicycle and pedestrian facility.

and along the Gorge rim, connecting to scenic overlooks and trailheads leading down into the Gorge, would further promote the opportunities to enjoy these natural features. Such improvements and integration of the RMP lands between Main Street and Findlay Drive into a well-configured chain of parks, open spaces and cultural/historic sites along the Niagara Gorge would also help to promote eco-tourism and heritage tourism in the area. Therefore, this overall objective would be met.

- **Support economic vitality** – The Project would fully redefine business districts near the Niagara Gorge, yet would still maintain existing access to communities north of the Project Area. This would ultimately promote a transformation of the area that would contribute to neighborhood economic stability through increased visitation by recreational users of the Gorge and Gorge rim. The improved accessibility, sustainability, and visual conditions resulting from the Project, a corridor which is very close to the center of the tourist activity in the immediate region, could potentially contribute to the overall attractiveness of the City of Niagara Falls and Western New York as a tourist destination. The removal of the RMP (and its associated grade separation, barriers, and fences) would facilitate intuitive way-finding along the Gorge from Main Street to Findlay Drive, with Whirlpool Street essentially operating as a “Gorge-front” boulevard and promenade. Therefore, this overall objective would be met.
- **Minimize impacts to adjacent neighborhoods** -- Whirlpool Street would largely serve as the boundary between the State Parks / NYPA open space lands along the Gorge and adjacent residential neighborhoods, and would accommodate north-south vehicular access between Main Street and Findlay Drive. This at-grade road would be designed as a “Complete Street” to proactively accommodate pedestrian, bicycle, and transit access in proper balance with vehicular access, and done so in a manner that would be visually pleasing to properly complement the world-class natural setting along the Gorge. Whirlpool Street would be completely reconstructed to provide traffic calming features (e.g., avoiding excessively wide travel lanes, providing curb bulb-outs at certain intersections, etc.), on-street parking where appropriate, a wide verge area where possible, and a complete new streetscape, including new sidewalks, street lighting, and landscaping. These improvements would enhance the visual appearance, perception of safety, and functionality of the overall neighborhood setting along Whirlpool Street. Therefore, this overall objective would be met.
- **Support Niagara River Greenway Plan and Other Local/Regional Policy Documents** – The proposed improvements between Main Street and Findlay Drive would help to facilitate access along and to the Niagara River region’s many resources. Facilitating the establishment of a single, well-designed, and properly-scaled at-grade road and associated trail/open space connections among parks, destinations, and sites on the Gorge rim between Main Street and Findlay Drive would represent the largest individual step in the region to date toward the realization of a planned Niagara River Greenway. The proposed improvements would also contribute toward the celebration and interpretation of the Niagara Gorge’s unique natural, cultural, recreational, scenic and heritage resources, all of which are addressed in the Niagara River Greenway Plan, as well as other local and regional policy documents including but not limited to the *Niagara Falls National Heritage Area*

Management Plan, NYPA's Land Management Plan and Recreation Plan for the Niagara Power Project and the *Niagara Falls Comprehensive Plan*. Therefore, this overall objective would be met.

As discussed above, construction of the RMP Removal Project from Main Street to Findlay Drive meets all of the Project objectives and fully satisfies the Purpose and Need for the Project as it fully and successfully addresses the several deficiencies that currently exist within the corridor.

6.3. Proposed Action

Chapter 3 of this Design Report / Environmental Assessment (DR/EA) provides details on the scoping process, the identification and development of potential alternatives for consideration, and the assessment of the Build Alternative carried forward into the DR/EA process.

6.3.1. Development of Alternatives

During the scoping process conducted for the Niagara Gorge Corridor from Niagara Falls to Lewiston that was completed in 2013, six potential alternative concepts were developed and studied. Three of those potential alternatives were ultimately identified and retained as Project alternatives: Alternative 3 – Partial Re-Use of the RMP; Alternative 4 – Meandering Partial Park Road; and Alternative 6 – Full Removal of the RMP. These three alternatives and the process conducted for identifying and selecting them were detailed in the *Niagara Gorge Corridor Project: Final Scoping Report* (October 2013). Concept plans for these alternatives, however, are provided in **Appendix B – Alternatives / Concepts Considered and Rejected** in this DR/EA.

All three alternatives identified in the scoping report included a similar approach between Main Street and Findlay Drive in the Niagara Falls portion of that project (i.e., demolition and removal of the RMP and Reconstruction of Third Street and Whirlpool Street). As the Project was advanced to the current DR/EA phase subsequent to project scoping, the entire focus became the Main Street-to-Findlay Drive area with the proposed demolition and removal of the RMP being retained for further development and study. See **Appendix D – White Paper - Appropriateness of Applying NEPA Requirements to the First Phase Project**.

Three options for the southern terminus of the RMP Removal Project between Main Street and Findlay Drive were developed and studied in terms of accessing the Niagara Gorge Discovery Center and flow of traffic. Also developed and studied were several options for the design and traffic flow through the intersection of Whirlpool Street and Findlay Drive at the northern terminus of the Project. All of these options were presented at a February 19, 2015 public meeting, at which, public comments were received. Further discussion of the northern terminus design options, especially related to the location of a stop sign at the intersection of Whirlpool Street and Findlay Drive occurred at a subsequent neighborhood meeting on July 15, 2015. Further presentation of all options considered for the Project occurred at a follow-up general public meeting held on September 15, 2015.

Based on the alternative design studies conducted and the feedback received at the various public meetings, a preferred design alternative was selected as the Build Alternative, or the proposed Project. The following

section describes the Build Alternative, as well as the No-Build Alternative against which the Build Alternative is compared.

6.3.2. Project Alternatives

This Project includes two alternatives that have been carried forward for detailed assessment in this DR/EA document and Section 4(f) Evaluation: a No-Build Alternative and a Build Alternative. A brief description of the two alternatives is found below. A more detailed description of the two alternatives is provided in **Chapter 3** of this document.

No-Build Alternative

The No-Build Alternative is established as a baseline against which the “Build Alternative” is compared. Under the No-Build Alternative, all built features of the RMP would remain in place between Main Street and Findlay Drive. This would involve continuation of the current use/alignment established under the 2000 “Pilot Project”, including use of the former southbound expressway lanes as the “Robert Moses Parkway Trail”; use of the former northbound expressway lanes as a single, two-way, 40-mile-per-hour (MPH) highway; and continuation of all other existing expressway features, such as the Whirlpool Bridge overpass, pedestrian bridges, and access prevention from adjoining neighborhoods (e.g., fencing, guiderails, grade separation, etc.). In turn, the existing four-lane alignments of Whirlpool Street and Third Street would remain directly adjacent to the RMP between Main Street and Findlay Drive.

Build Alternative

The Build Alternative would involve removal of the RMP (i.e., all vehicular lanes, lanes used for the Robert Moses Parkway Trail, the Whirlpool Bridge Plaza overpass, and all other RMP interchange/accessory facilities) from Main Street (NYS Rte 104) to Findlay Drive. The Build Alternative would also include:

- Reconstruction of Whirlpool Street from Main Street to Walnut Avenue and from Cedar Avenue to Findlay Drive as an at-grade, two-lane, 30-MPH road to accommodate north-south vehicular and potential future bus access, and removal of Whirlpool Street from Cedar Avenue to Walnut Avenue;
- Reconstruction of Third Street from Main Street to Cedar Avenue in a manner consistent with that of Whirlpool Street;
- Restoration of the landscape / habitat on lands reclaimed along the Niagara Gorge rim from the removal of the RMP with native species;
- Construction of a pedestrian / bicycle trail network along the Gorge rim, connecting to other trail systems and adjoining neighborhoods; and
- Incorporation of amenities / betterments associated with the above improvements.

Detailed plans, profiles, typical sections and select cross-sections for the Build Alternative are presented in **Appendix A**.

6.4. Applicability of Section 4(f) to the Project

Section 4(f) of the U.S. Department of Transportation Act of 1966 applies to publicly owned parks, recreation areas, and wildlife and waterfowl refuges and publicly or privately owned significant historic properties. The requirements of Section 4(f) apply only to FHWA and other agencies within USDOT. Section 4(f) requires that special effort should be made to preserve the natural beauty of the countryside and public parks and recreation lands, wildlife and waterfowl refuges, and significant archaeological and historic sites (sites listed on or determined to be eligible for listing on the National Register of Historic Places [NRHP, or National Register]), and that measures should be undertaken to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities. Section 4(f) prohibits FHWA from approving the use of any Section 4(f) resource for a transportation project, except under the following conditions:

- There is no feasible and prudent alternative that would avoid the use of the Section 4(f) resource, and
- The project includes all possible planning to minimize harm to that property (23 CFR 774.3(a)).

Section 6009 of the *Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), enacted in 2005, amended Section 4(f) legislation at Title 49 U.S.C Section 303 to simplify the process and approval of FHWA projects that have only *de minimis* impacts on Section 4(f) properties. Under these provisions, once FHWA 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.

In response to SAFETEA-LU, FHWA proposed comprehensive changes to their Section 4(f) regulations. The new regulations are codified at 23 Code of Federal Regulations (CFR) 774. The new regulations incorporate the *de minimis* use requirements and include a new definition of “all possible planning to minimize harm” as well as a list of factors to consider in determining which alternatives minimize overall harm. This chapter has been developed in accordance with 23 CFR Part 774 – *Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))*.

6.5. Identification of Section 4(f) Resources

FHWA is responsible for determining which properties qualify as Section 4(f) resource(s). This discussion is presented below for publicly owned parks, recreation areas and refuges, followed by historic sites.

6.5.1. Publicly Owned Parks, Recreation Areas and Refuges

Public lands that may qualify for protection under Section 4(f) as parks, recreation areas, and wildlife and waterfowl refuges are identified early in the planning and project development process, to give full consideration to avoidance of protected resources. Section 4(f) requires the consideration of parks and recreational areas of national, state, or local significance that are both publicly owned and open to the public. Within the context of Section 4(f), the land must be officially designated as a park or recreation area by a Federal, State or local agency, and the *official with jurisdiction* over the land has determined that its primary purpose is a park or recreation area. For public parks and recreation areas, the official with jurisdiction is the agency that owns or administers the property. A publicly owned park or recreation area must also be a significant resource for Section 4(f) to apply, though it is presumed to be significant unless the official with jurisdiction concludes the entire property is not significant.²

Of the publicly owned properties dedicated as official parkland and/or accommodating recreation uses, the primary owner is State Parks, with one small park property owned by the City of Niagara Falls. In addition, some properties currently used as official parkland or accommodating recreation uses are owned by NYPA, which is a quasi-public agency. These parks and recreation areas include the following:

- *Niagara Falls State Park* at the south end of the Project Study Area, which includes the Niagara Gorge Discovery Center, is owned by NYPA but managed by State Parks³;
- *Whirlpool State Park* located west of the RMP and north of the Whirlpool Bridge, which is primarily owned and managed by State Parks;
- *Robert Moses Parkway Trail* extends through the Project Study Area from Niagara Falls State Park to Whirlpool State Park on land primarily owned by NYPA but managed by State Parks.⁴

² As used in this context, “The term significant means that in comparing the availability and function of the park, recreation area or wildlife and waterfowl refuge, with the park, recreation or refuge objectives of the agency, community or authority, the property in question plays an important role in meeting those objectives” (Section 4(f) Policy Paper, FHWA: July 20, 2012).

³ Although ownership of this property by NYPA as a quasi-public agency would not typically qualify the site as a Section 4(f) resource, it has been included in this assessment due to its official designation as a state park and its management by State Parks. It is also a significant historic site since its boundaries generally coincide with the Niagara Reservation National Historic Landmark (see **Section 6.5.2**).

⁴ Although ownership of this property by NYPA as a quasi-public agency would not typically qualify the site as a Section 4(f) resource, it has been included in this assessment due to the facility’s official use as a bicycle/pedestrian trail and its management by State Parks.

- *DeVeaux Woods State Park* located east of the RMP at the north end of the Project Study Area, which is owned and managed by State Parks; and
- *DiFranco Park*, a City-owned parcel that has been closed to use for several years, is located immediately east of an existing entrance ramp onto the RMP at Main Street and southwest of the site for the new State Parks Police Station that is currently under construction.

Of the above-listed parks and recreation areas, only DeVeaux Woods State Park was recognized from the outset that there would be no Section 4(f) “use” of the property resulting from the proposed Project due to its location beyond the limits of any construction or associated impact. Since there are no direct or indirect impacts anticipated at this property and no obvious Section 4(f) “use”, DeVeaux Woods is not discussed or assessed further in this evaluation,

The other four recreational properties, however, were considered to be potentially eligible resources requiring further Section 4(f) evaluation to determine Section 4(f) “use”. Only one of these other properties (i.e., Whirlpool State Park) is actually publicly owned and currently operated as a park. Two properties (i.e., the portion of Niagara Falls State Park within the Project Study Area and the Robert Moses Parkway Trail) are situated on property either entirely or primarily owned by a quasi-public agency (NYPA), but managed by a public agency (State Parks). The fourth property (i.e., DiFranco Park) is publicly owned (City of Niagara Falls), but is not currently operated as a park or open for public use, and its facilities have been either previously removed or are not maintained). Justification for further assessing these four properties in terms of Section 4(f) “use” is provided in **Section 6.6**.

In addition to the parklands listed above, the properties adjacent to either side of the RMP located between Niagara Falls and Whirlpool State Parks are owned and managed by NYPA and are used by the general public for recreational purposes. However, because NYPA is a quasi-public agency not typically subject to Section 4(f) review, and because these lands are not officially designated as parkland, these properties are considered to be exempt from Section 4(f) review and are not considered further in this evaluation.

Further details about the four parks and recreational properties discussed above as having potential to experience a Section 4(f) “use” related to the Project are provided in the subsequent sections of this chapter. However, the locations and ownerships of all parks and recreational properties within the Project Study Area, including those not eligible for further Section 4(f) evaluation, are shown on **Figures 6-1a through 6-1c**, All of the parks and recreational properties depicted on **Figures 6-1a through 6-1c** are also discussed in further detail in **Section 4.4.12** of this DR/EA.

It should be noted that there are no wildlife or waterfowl refuges within the Project Study Area and, therefore, there is no discussion of such resources in this document.

Figure 6-1a – Potential Section 4(f) Resources (Parks and Recreation Areas) - South

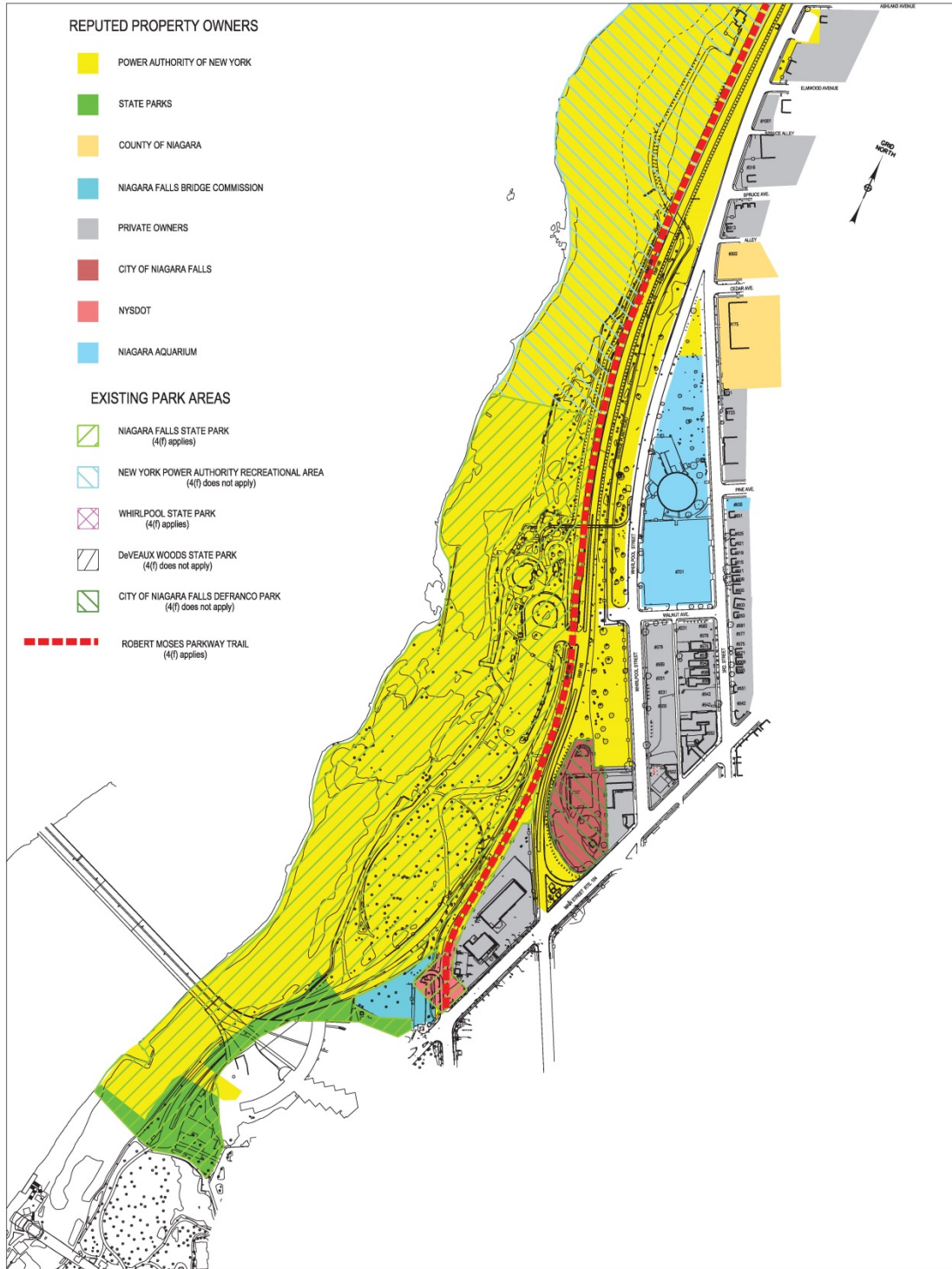


Figure 6-1b – Potential Section 4(f) Resources (Parks and Recreation Areas) - Central

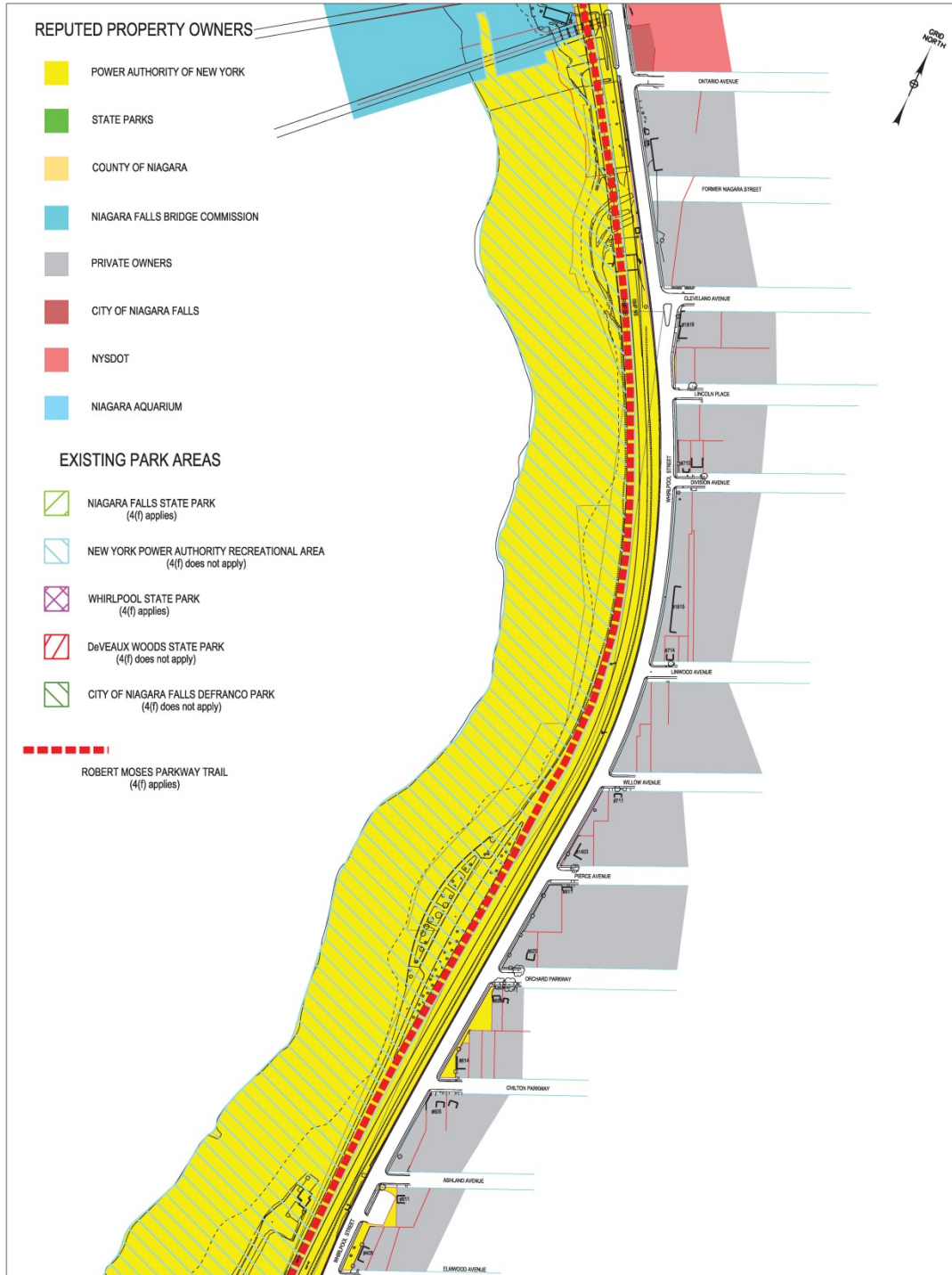
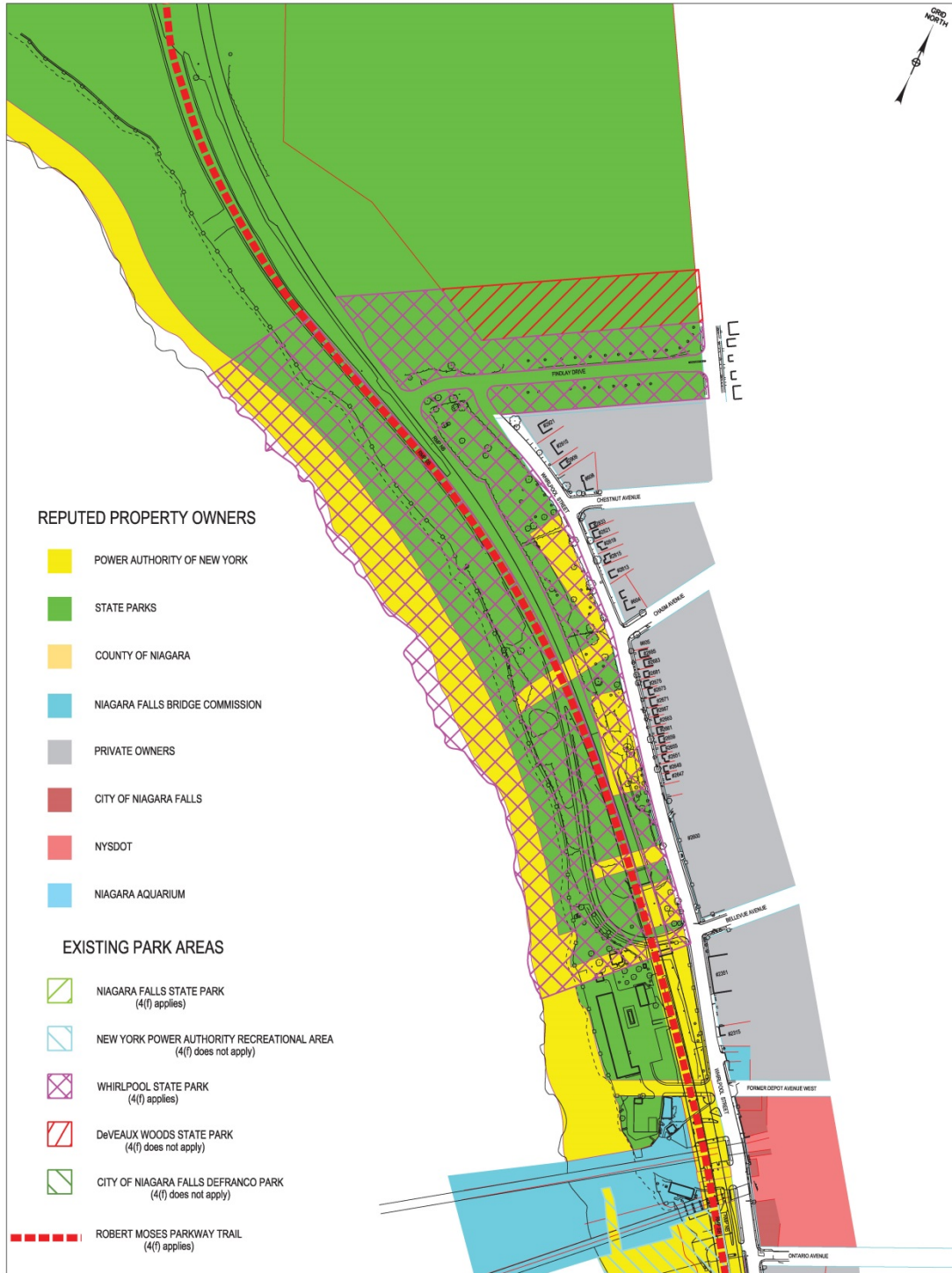


Figure 6-1c – Potential Section 4(f) Resources (Parks and Recreation Areas) - North



6.5.2. Historic Properties

Section 4(f) historic properties are identified through the consultation process established under Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulation, 36 CFR Part 800: *Protection of Historic Properties*. Buildings, structures, objects and architectural districts listed in, or determined eligible for listing in the State/National Register of Historic Places (“State/National Register”) are considered Section 4(f) properties. The results of the Section 106 Process are documented in **Section 4.4.11** of this DR/EA. For historic properties, New York’s State Historic Preservation Officer (NY SHPO) is the *official with jurisdiction* as the term is defined in 23 CFR 774.17.

There are six historic resources that are being assessed further in terms of potential Section 4(f) involvement and “use” related to the proposed Project. All of these resources are located within or immediately adjacent to the Area of Potential Effect (APE) described in **Section 4.4.11** of this DR/EA. These six resources include the following:

- The northernmost end of *Niagara Reservation National Historic Landmark*, the boundaries of which are generally contiguous with Niagara Falls State Park, is located at the southern end of the Project Study Area and is also listed on the State/National Register. There are 16 contributing resources in the Niagara Reservation, based on the NY SHPO Cultural Resource Information System (CRIS), none of which are located in the Project Study Area (i.e., they are all located well south of the Rainbow Bridge). The two Niagara Falls State Park structures located within the Project Study Area, (i.e., the Niagara Gorge Discovery Center [1970-1971] and the Niagara Gorge Trail Information and Public Restroom), are not listed in the CRIS database as contributing resources or as being individually listed on or eligible for inclusion on the State/National Register.
- The *Aquarium of Niagara* at 701 Whirlpool Street, which has been recommended as being eligible for the State/National Register and included on the CRIS database in this regard, is adjacent to the proposed Project between Whirlpool and Third Streets. The Aquarium is eligible primarily because of its association with innovative technology for producing and managing synthetic seawater. The building itself is also significant architecturally as a “good example of Mid-Century Modern design”. Associated landscape features on the Aquarium’s tax parcel include a landscaped lawn, a grassy strip, mature trees, parking lot, and concrete sidewalk, although the setting of the Aquarium is not considered part of its significance.
- The *Chilton Avenue-Orchard Parkway Historic District* is a State/National Register-listed historic district located immediately east of Whirlpool Street. The district contains homes dating to the late 19th and early 20th centuries, including 103 contributing and 36 non-contributing buildings. Although four of the building properties abut Whirlpool Street, none of the buildings actually front Whirlpool Street).
- The *Old Customs House* is a State/National Register-listed property located at 2245 Whirlpool Street. Constructed in 1863, it is the oldest federal building in the city and the oldest extant resource associated with the historically important Whirlpool Land Port of Entry. The building has recently been

renovated / restored and incorporated into the newly-built Niagara Falls International Railway Station and is no longer a free-standing intact building.

- The *Michigan Central Railroad Bridge*, which is currently known as the Canadian Pacific Railway Bridge, crosses the Niagara Gorge into Canada. The steel arch bridge is owned by the City of Niagara Falls, Ontario. Constructed between 1924 and 1925, it is currently out of service, with the tracks having been removed. The bridge has been identified as being eligible for the State/National Register.
- The *Whirlpool Rapids Bridge* also crosses the Niagara Gorge into Canada and is located immediately downstream of the Michigan Central Railroad Bridge. Constructed in 1897, it is a double-decked, two-hinged, riveted, spandrel-braced, arch-type bridge. Vehicular traffic is carried on the lower deck, which is flanked by a cantilevered sidewalk, while the upper deck carries one set of railroad tracks currently used by Amtrak and Conrail. The bridge has been identified as being eligible for the State/National Register, and is considered architecturally significant as an example of an early steel arch bridge possessing good integrity.

It should be noted that one other State/National Register-listed historic resource located within the Project Study Area is situated relatively close to, but not immediately adjacent to the APE for this Project. This resource is the Park Place Historic District, a State/National Register-listed historic district that is located east of, but does not abut Third Street. None of the individual properties comprising the historic district is expected to experience any sort of direct or indirect impact resulting from construction of the Project.. In addition, no other historic properties within the Project Study Area that are listed or eligible for listing on the State/National Register are considered to be potential Section 4(f) resources.

Further details about the six historic resources that are being assessed further in terms of potential Section 4(f) involvement and “use” related to the proposed Project are provided in the remaining sections of this chapter. In addition, the locations of these historic properties, as well as other historic properties within the Project Study Area that are not considered to be potential Section 4(f) resources because no Section 4(f) “use” is anticipated, are shown on **Figures 6-2a and 6-2b**. All of the historic properties depicted on **Figures 6-2a and 6-2b** are also discussed in further detail in **Section 4.4.11** of this DR/EA.

Archaeological sites listed on or eligible for inclusion on the National Register, including those discovered during construction, are protected by Section 4(f), with certain exceptions (23 CFR 774.11(f)). Section 4(f) does not apply if FHWA, after consultation with the official with jurisdiction, determines that “the archaeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place” (23 CFR 774.13(b)(1)).

As a result of the Section 106 process, there are no identified archaeological sites that would be affected by the Project. A Phase 1B survey of sensitive areas along Whirlpool Street, as well as other areas between Whirlpool Street / Third Street and the Niagara Gorge rim, was conducted in mid-March 2016. Based on this survey, it was determined that there are no archaeological resources that are potentially eligible for listing in the State/National Register and no further archaeological investigations are recommended within the APE. It should also be noted that FHWA received a letter dated April 25, 2016 from NY SHPO stating that “SHPO understands that no archaeological sites were identified, and we have no further archaeology concerns with

this undertaking.” Therefore, archaeological resources are not considered to be an issue in terms of Section 4(f). In the event that archaeological resources are encountered during construction, the applicability of Section 4(f) will be determined by FHWA, in coordination with NYSDOT, and in consultation with the NY SHPO.

6.5.3. Summary of Section 4(f) Resources

A list of all potential Section 4(f) resources that were identified for this Project, including publicly owned parks and recreation areas and significant historic sites, is provided in **Table 6-1**. Their locations have been depicted in **Figures 6-1a through 6-1c (Parks and Recreation Areas)** and **Figures 6-2a and 6-2b (Significant Historic Sites)**. In addition to potential Section 4(f) resources, these two sets of figures together also depict the locations of other publicly owned parks and recreation areas and significant historic sites within the Project Study Area.

Figure 6-2a – Potential Section 4(f) Properties (Historic Sites) - North

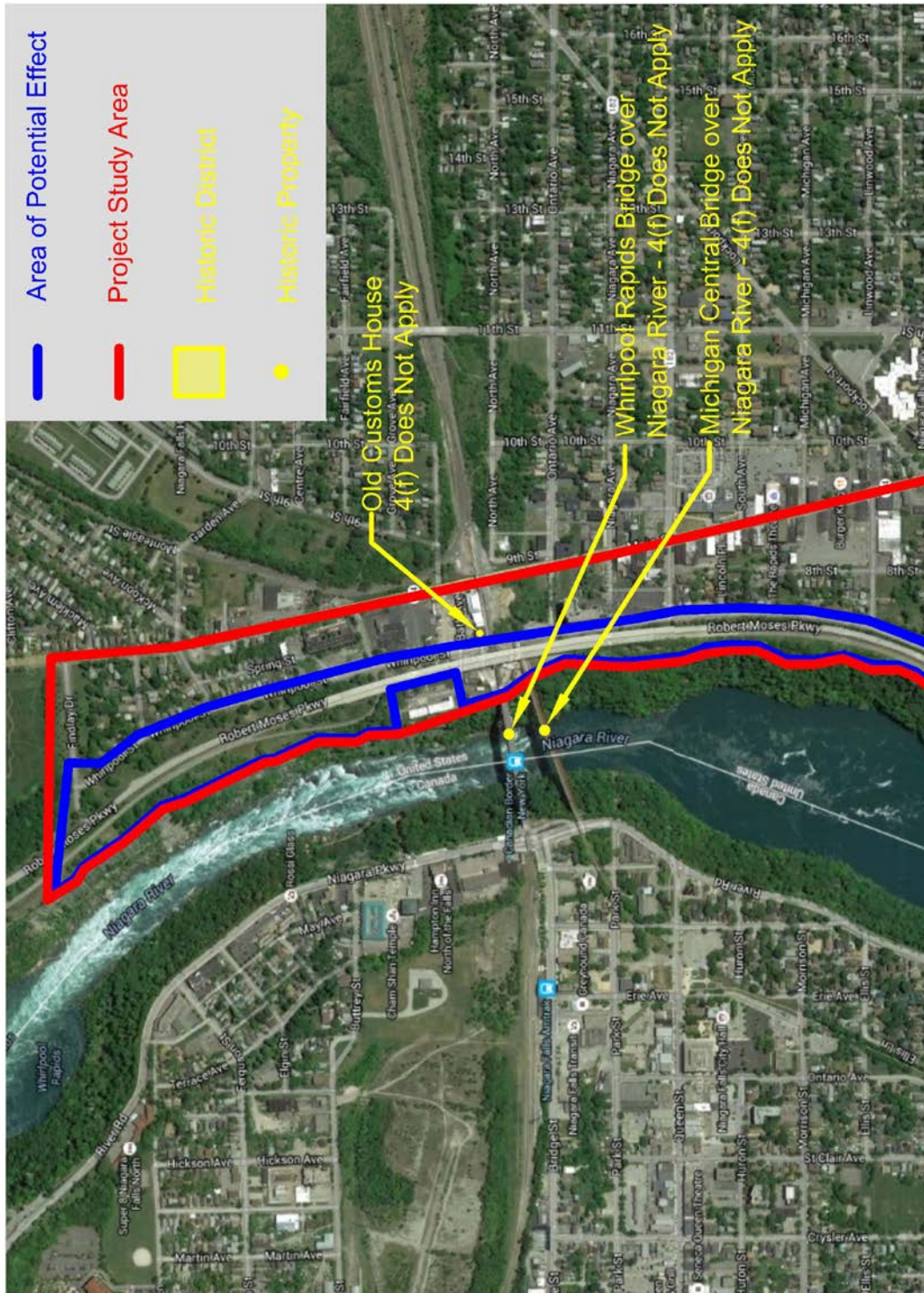


Figure 6-2b – Potential Section 4(f) Properties (Historic Sites) – South

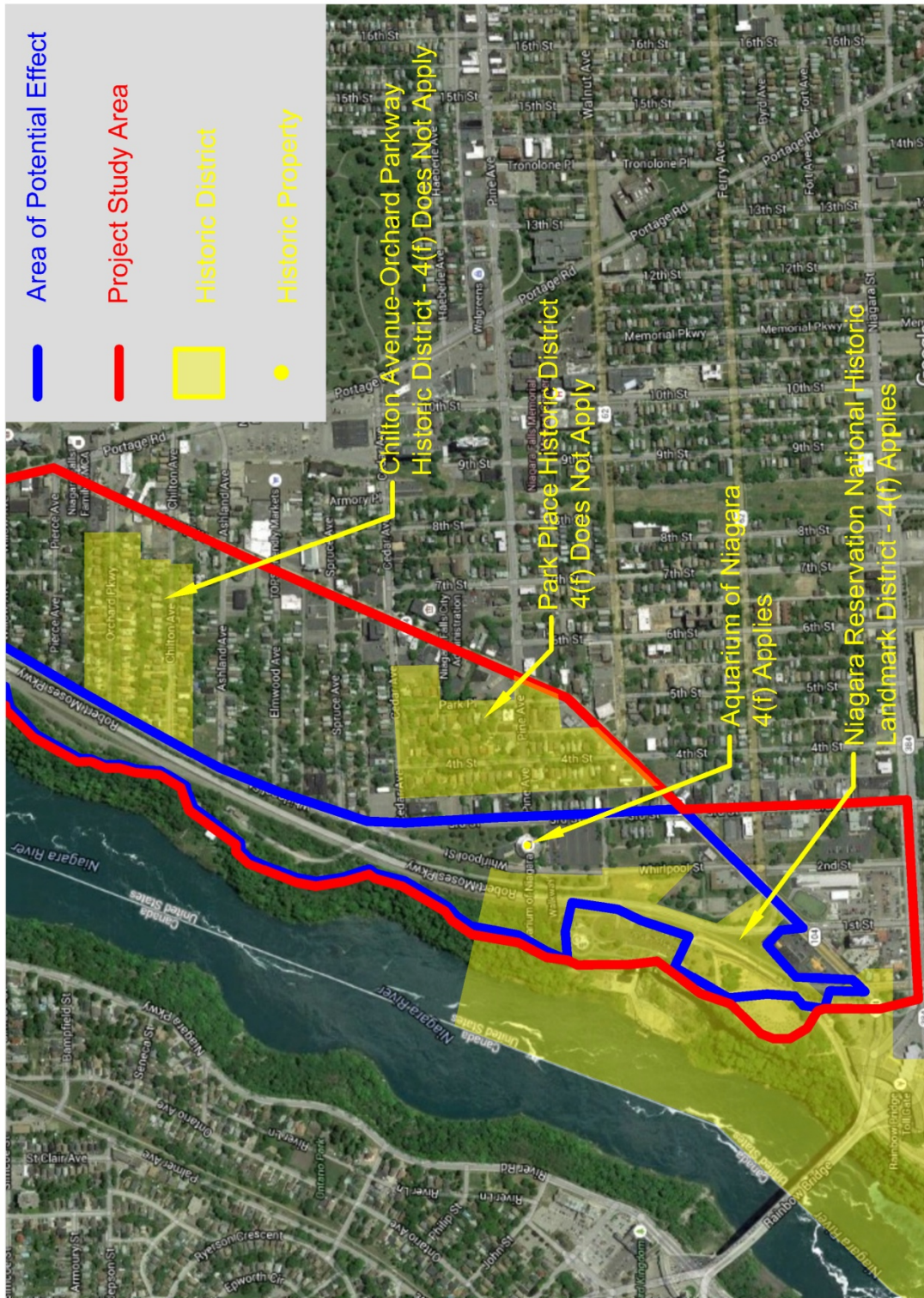


Table 6-1 – Summary of Potential Section 4(f) Resources

Resource Identification	Description of Resource
Niagara Falls State Park / Niagara Reservation National Historic Landmark ⁽¹⁾	This property is a National Historic Landmark and a State/National Register-Listed New York State Park that is partially located in the Project Study Area. Designed by Frederick Law Olmsted, the <i>Niagara Reservation</i> opened in 1885, and is the nation’s oldest state park. This state park focuses on the natural wonder of Niagara Falls, and includes the American Falls, Bridal Veil Falls and part of the Canadian Falls within its jurisdiction. The State Park provides points of access to the Falls, several viewpoints to observe the Falls and the Gorge, and a variety of related attractions. The majority of this state park is outside and south of the Project Study Area, although it does extend into the Project Study Area along the western side of the RMP for the entire distance from Niagara Street to approximately Pine Avenue. The Niagara Gorge Discovery Center, which is adjacent to the west side of the RMP, is part of the State Park. The Discovery Center, originally known as the Schoellkopf Geological Museum, is a showcase of the natural and local history of Niagara Falls and the surrounding area, providing hands-on interactive displays, a 180° multi-screen theater experience and a 26-foot high artificial rock climbing wall. The trailhead and parking for the Great Gorge Railroad Trail is also located at this site. Neither the Discovery Center nor the Niagara Gorge Trail information center and public restroom have any historic significance. Although 16 architectural resources within the Reservation contribute to the property’s overall historic significance, none of them are located in or near the Project Study Area. This portion of the park is owned by NYPA but is managed by State Parks.
Whirlpool State Park ⁽²⁾	<i>Whirlpool State Park</i> occupies most of the land between the Niagara River on the west and Whirlpool Street and DeVeaux Woods State Park on the east from Bellevue Drive on the south to a point well past Findlay Drive on the north. The RMP splits the park into an east side and a west side along its length. It has two levels (i.e., an upper and a lower level). The upper or street level has many overlooks with spectacular views of the swirling waters of the Niagara River’s Whirlpool and Rapids in the Gorge below, as well as the Niagara River Escarpment. Picnic areas and a playground are provided at this level. The lower or river level contains several nature trails and access for fishing, and is accessible by walking the 300 feet of trails and steps that descend into the Gorge. The upper level of the park is primarily owned and maintained by State Parks while the lower level is owned by NYPA but managed by State Parks.
Robert Moses Parkway Trail ⁽²⁾	The <i>Robert Moses Parkway Trail</i> runs northward through the Project Study Area from the southern Project limit at Main Street to Whirlpool State Park, then continuing northward beyond Findlay Drive and the Project Study Area to Devil’s Hole State Park. The trail comprises the original two southbound lanes of the RMP, which were converted to accommodate bicyclists and pedestrians following a Pilot Project in 2000, although the paved surface lacks the character most users desire along a multi-modal trail. At 24 feet in width, the trail is excessively wide and appears very straight as it follows the RMP alignment. Much of the trail is located on NYPA property, although State Parks actually owns and maintains the facility.
DiFranco Park ⁽²⁾	<i>DiFranco Park</i> was officially designated as a city park in 1965 on city-owned property. It was named after Thomas J. DiFranco, a former city parks director. The land for the park was originally donated to the city by NYPA, and it contained a playground, wading pool and basketball courts serving the surrounding local neighborhood. The park is not currently open for public use and most of its facilities have been either previously-removed or are not actively maintained for use. The property is adjacent to the entrance ramp onto the RMP at Main Street and close to the new State Parks Police Station that is currently under construction, and vehicular access is via Main Street. The parcel has

Resource Identification	Description of Resource
	been used over the last decade to help stage construction materials/equipment for a series of downtown infrastructure projects.
Aquarium of Niagara ⁽³⁾	Constructed in 1965, the <i>Aquarium of Niagara</i> at 701 Whirlpool Street is considered to be historically significant and is recommended as being eligible for the State/National Register because of its association with innovative technology for producing and managing synthetic seawater. The Aquarium building is also a good example of Mid-Century Modern design, which was popularized during a thirty-year period from post-WWII through the mid-1970s. The Aquarium property is located between Whirlpool and Third streets. Associated landscape features on the parcel include a landscaped lawn, grassy strip, mature trees, parking lot, and concrete sidewalk.
Chilton Avenue-Orchard Parkway Historic District ⁽³⁾	The <i>Chilton Avenue-Orchard Parkway Historic District</i> is a State/National Register-listed historic district located immediately east of Whirlpool Street. The district contains homes dating to the late 19 th and early 20 th centuries, including Queen Anne Victorian, Tudor Revival and Craftsman homes. The district also contains 103 contributing and 36 non-contributing buildings. Although four of the building properties abut Whirlpool Street, none of the buildings actually front Whirlpool Street).
Old Customs House ⁽³⁾	The <i>Old Customs House</i> is a State/National Register-listed property located at 2245 Whirlpool Street. Constructed in 1863, it is the oldest federal building in the city and the oldest extant resource associated with the historically important Whirlpool Land Port of Entry. The building has recently been renovated / restored and incorporated into the newly-built Niagara Falls International Railway Station and is no longer a free-standing intact building.
Michigan Central Railroad Bridge ⁽³⁾	The <i>Michigan Central Railroad Bridge</i> , which is currently known as the Canadian Pacific Railway Bridge, crosses the Niagara Gorge into Canada. The steel arch bridge is owned by the City of Niagara Falls, Ontario. Constructed between 1924 and 1925, it was designed by William Perry Taylor, Chief Engineer J.L. Delming and Norwegian consulting engineer Olaf Hoff. The bridge is currently out of service, with the tracks having been removed. The bridge has been identified as being eligible for the State/National Register.
Whirlpool Rapids Bridge ⁽³⁾	The <i>Whirlpool Rapids Bridge</i> crosses the Niagara Gorge into Canada and is located immediately downstream of the Michigan Central Railroad Bridge. Constructed in 1897, it is a double-decked, two-hinged, riveted, spandrel-braced, arch-type bridge. The bridge is 1,080 feet long with a 47.5-foot wide two-lane roadway. The main span is 547 feet long with a rise of 115 feet. The structure consists of riveted girders and I-beams with limestone abutments. Vehicular traffic is carried on the lower deck, which is flanked by a cantilevered sidewalk, while the upper deck carries one set of railroad tracks currently used by Amtrak and Conrail. On the American side, the bridge rests on a stone abutment from an 1855 suspension bridge. The bridge has been identified as being eligible for the State/National Register, and is considered architecturally significant as an example of an early steel arch bridge possessing good integrity, as well as for its association with prominent bridge designer, Leffert L. Buck.

(1) See Figures 6-1 and 6-2

(2) See Figure 6-1

(3) See Figure 6-2

6.6. Impacts on Section 4(f) Resources

For each Section 4(f) property, this section evaluates the potential for a “use” under the Build Alternative. In 23 CFR 774.17, the FHWA regulations define three types of “uses” of Section 4(f) resources:

- When the resource is permanently incorporated into a transportation facility, except as set forth in Sections 774.11 and 774.13;
- When there is a temporary occupancy of the land that is adverse in terms of the statute’s preservation purpose as determined by criteria in Section 774.13(d); or
- When there is a constructive use of Section 4(f) property as determined by the criteria in Section 774.15.

A *temporary occupancy* results when a Section 4(f) property is not permanently incorporated in a transportation facility, but is needed for construction-related activities that are considered to be adverse. Under the provisions of 23 CFR 774.13(d), temporary occupancies of land may be “so minimal as to not constitute a use within the meaning of Section 4(f).” Temporary occupancy is not a Section 4(f) use if all of the following conditions are met:

- The duration must be temporary;
- The scope of work must be minor;
- There must be neither anticipated permanent adverse physical impacts nor interference with the activities or purpose of the resource;
- The resource must be fully restored; and
- There must be documented agreement between the appropriate federal, state, or local agencies having jurisdiction over the resource.

A *constructive use* occurs when a transportation project does not incorporate land from a Section 4(f) property, “but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired.” The regulations state that a substantial impairment occurs “only when the protected activities, features, or attributes of the resource are substantially diminished” (23 CFR 774.15(a)). The FHWA regulations provide specific instructions and examples for determining whether a constructive use has occurred.

FHWA is responsible for determining whether a project would result in the “Use” of a Section 4(f) resource. This determination is made based on information developed during the NEPA process and considers input received from officials with jurisdiction over the Section 4(f) resource.

Under certain circumstances, FHWA may grant Section 4(f) approval by making a *de minimis* impact determination. “For parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact is one that will not adversely affect the activities, features or attributes qualifying the property for protection under Section 4(f)” (23 CFR 774.17). In making this determination, FHWA must consider any avoidance,

minimization, mitigation, or enhancement measures that have been incorporated into the project. An analysis of “feasible and prudent avoidance alternatives” is not required for *de minimis*. When a finding of *de minimis* use is made for a Section 4(f) resource, the requirements of Section 4(f) are satisfied.

For parks, recreation areas, and refuges, FHWA’s finding of *de minimis* use requires the written concurrence of the authority with jurisdiction over the resource, and an opportunity for public review and comment. The public involvement requirements associated with the NEPA process satisfy the public notice and comment requirements for a Section 4(f) *de minimis* impact finding.

For historic sites, FHWA’s finding of *de minimis* use requires:

- The written concurrence of the SHPO with a Section 106 determination of “no adverse effect,” and the concurrence of the Advisory Council on Historic Preservation (ACHP) if participating in Section 106 consultation; and
- The SHPO, and ACHP if participating, are informed of FHWA’s intent to make a *de minimis* use finding based on their written concurrence with the “no adverse effect” determination.

A finding of “No Use” is made when an alternative avoids any direct physical impact on a Section 4(f) property and there would be no constructive or temporary use. For historic properties, this Section 4(f) finding of “No Use” generally corresponds to a finding of “no effect” or “no historic properties affected” for the Section 106 process. As mentioned previously in **Section 6.5.2**, the Park Place Historic District is actually outside of the APE and is not directly adjacent to it. As a result, it receives a “no effect” determination from FHWA and NY SHPO as part of the Section 106 process, and a “No Use” determination in terms of Section 4(f). Therefore, this historic district is not assessed further in this Section 4(f) Evaluation. In addition, as mentioned in **Section 6.5.1**, DeVeaux Woods State Park will not be impacted in any manner by this Project, so a “No Use” determination also applies to this property and is not assessed further. Finally, because the NYPA Recreational Lands located between Niagara Falls and Whirlpool State Parks are not considered to fall under Section 4(f) purview for reasons as discussed in **Section 6.5.1**, (i.e., NYPA is a quasi-public agency and these lands are not officially designated as parkland), these properties are not assessed further.

The discussion of use of Section 4(f) resources as it relates to the No-Build Alternative and the Build Alternative is provided below.

No-Build Alternative

The No-Build Alternative would not result in the use, temporary occupancy, or constructive use of any Section 4(f) resources. This alternative would not meet the Project’s purpose and need and objectives, but it is evaluated in this Section 4(f) Evaluation as the baseline for comparison to the Build Alternative.

Build Alternative

All Section 4(f) resources included in **Table 6-1**, including publicly owned parks and recreation areas and significant historic sites, are discussed in detail below. Following the discussions of the various types of “use” of each Section 4(f) resource related to the proposed Project, **Table 6-2** provides a summary of these “uses”.

It should be noted that these several Section 4(f) resources are presented below in terms of the type of “use” (i.e., Permanent Use of Parkland; Permanent Use of Historic Properties; Temporary Occupancy; Constructive Use; Evaluation of Constructive Use During Construction; and Evaluation of Constructive Use at Project Completion).

Permanent Use of Parkland

- ***Niagara Falls State Park / Niagara Reservation National Historic Landmark*** – The Project proposes the removal of portions of the RMP and the Robert Moses Parkway Trail through the northern portion of this State Park and National Historic Landmark. Also, the existing pedestrian overpass currently connecting the Niagara Gorge Discovery Center within the park to the Aquarium of Niagara Falls across the RMP would be removed. These areas where pavement would be removed would generally be restored with grass, trees and/or native vegetation, thereby increasing the area available for recreation activities or simple enjoyment of open space. In addition, isolated NYPA lands east of the RMP would be annexed as part of the park once the RMP has been removed, thereby further increasing the area of contiguous parkland / green space. In terms of the removal of existing pavement and the annexation of additional land parcels, contiguous green space would increase by 5.94 acres within the Project Study Area portion of the state park.

A minor redesign of an access road immediately north of the Rainbow Bridge is proposed within the parkland limits in order to provide a new ramp across Niagara Falls Bridge Commission (NFBC) and NYSDOT property to connect to Main Street. As a result, a minor amount of existing pavement would be removed and replaced with green space. That gain in green space is included as part of the 5.94-acre total gain within the park as a whole. The new connecting ramp will require either a temporary or permanent easement between State Parks and NFBC to allow for construction of this ramp. In contrast, the proposed new park access road from Main Street to the Discovery Center would be constructed entirely within the existing RMP roadbed, and would not result in any further use of the park.

Also proposed to be constructed within the area considered to be part of Niagara Falls State Park are several 13-ft-wide multi-use paths to accommodate bicyclists and pedestrians, parts of which would be constructed on areas currently occupied by RMP or Robert Moses Parkway Trail pavement. In addition, several narrower paths intended to connect the multi-use paths to other features within the park are proposed to be constructed, as are improvements to the overlook near the Discovery Center. These are all considered to be recreational improvements rather than transportation improvements, and therefore, no Section 4(f) “use” of recreational lands for transportation purposes would occur as part of these particular improvements.

As the Lead State Agency for this Project and the agency having jurisdiction over this recreational property, State Parks has concluded that the proposed Project would not result in any permanent use, and would result in an overall enhancement to the park, both in terms of increased green space and enhanced bicycle-pedestrian facilities. State Parks also concurs with FHWA's intent to make a "no use" determination for the recreational component of this property. The Section 4(f) use associated with the historic component of this property is discussed below.

- **Whirlpool State Park** – The Project proposes the removal of portions of the RMP and the Robert Moses Parkway Trail through Whirlpool State Park. These areas where pavement would be removed would generally be restored with grass, trees and/or native vegetation, thereby increasing the area available for recreation activities or simple enjoyment of open space. In addition, isolated NYPA and State Park lands east of the RMP would be annexed as part of the park once the RMP has been removed, thereby further increasing the parkland / green space.

Although removal of existing pavement along the RMP would increase green space within the park by approximately 3.18 acres, approximately 0.29 acres of new pavement would be constructed to accommodate a redesigned intersection at Whirlpool Street and Findlay Drive and a connector road from that intersection to the existing RMP north of Findlay Drive, for a total gain of 2.89 acres of green space. It should be noted however that these improvements will take place entirely on State Parks property and that the revised intersection and new connector road will continue to be owned by State Parks. Therefore, there is no proposed change in ownership associated with these transportation improvements, and no Section 4(f) permanent use associated with them.

Also proposed to be constructed within Whirlpool State Park are several 13-ft-wide multi-use trails to accommodate bicyclists and pedestrians, parts of which would be constructed on areas currently occupied by RMP pavement. In addition, several narrower paths intended to connect the multi-use trails to other features within the park are proposed to be constructed, as are improvements to two overlooks offering views across the Niagara Gorge. These are all considered to be recreational improvements rather than transportation improvements, and therefore, no permanent Section 4(f) "use" of recreational lands for transportation purposes would occur as part of these particular improvements.

As the Lead State Agency for this Project and the agency having jurisdiction over this recreational property, State Parks has concluded that the proposed Project would not result in any permanent use, and would result in an overall enhancement to the park, both in terms of increased green space and enhanced bicycle-pedestrian facilities. State Parks also concurs with FHWA's intent to make a "no use" determination for this property.

- **Robert Moses Parkway Trail** – Although a temporary use of the Robert Moses Parkway Trail is anticipated (see discussion below), no permanent use of the entirety of this recreational resource from the Niagara Falls State Park in the south to Whirlpool State Park in the north would occur. Whereas the existing trail on the former southbound lanes of the RMP accommodates usage by bicyclists and pedestrians on an albeit functionally undesirable and unaesthetic design with limited

areas of accessibility, the proposed Project would provide a functionally desirable, visually attractive and very accessible trail system to replace it. Given that the ultimate trail system that would replace the existing Robert Moses Parkway Trail would result in a substantially improved facility in the long term, it is anticipated that there would be no permanent Section 4(f) use of this resource.

- **DiFranco Park** – As previously mentioned, this City-owned property is not currently open for public use and most of its facilities have been either previously-removed or are not actively maintained for use. Although there are a few remains of former recreational facilities that still physically exist on the property, the City has no specific plans to rehabilitate, reconstruct or maintain these facilities. It is possible that the property could serve as a construction staging area that would be in effect for longer than six months, just as it has for other downtown projects in past years. As part of the proposed Project, it is likely that a permanent betterment involving removal of remaining underutilized structures and paved areas would be undertaken, followed by grading and replanting of grass mixes used in the overall Project.

As the entity having jurisdiction for this property, the City of Niagara Falls sent a letter to State Parks on March 30, 2016 indicating its determination that DiFranco Park would not be adversely impacted by the Project, either directly or indirectly, and that the Project will not adversely affect the activities, features or attributes that qualify the park for protection under Section 4(f). The letter also acknowledges FHWA's intent to make a *de minimis* impact determination for this property. State Parks responded to the City's letter with its own letter dated May 25, 2016, which concurred with the City's determination and acknowledging FHWA's intent to make a *de minimis* impact determination. A copy of both letters is included in **Appendix O.1 – Recreational Section 4(f)**.

Permanent Use of Historic Properties

- **Niagara Falls State Park / Niagara Reservation National Historic Landmark** – The “no use” determination for the recreational / parkland component of this property in regard to Section 4(f) was presented in the preceding discussion of “Permanent Use of Parkland”. However, due to the significant historic status of the park and FHWA's and NY SHPO's Section 106 finding of “no adverse effect,” the property qualifies as a *de minimis* Section 4(f) use in that regard. This finding was initially identified in NYSDOT's Section 106 Finding Documentation dated May 3, 2016 requesting FHWA's determination that there will be a *de minimis* Section 4(f) use associated with this property. In response to this document, NY SHPO provided its concurrence in a letter dated May 26, 2016 that there would be No Adverse Effect. Both the Section 106 Finding Documentation and NY SHPO's concurrence letter are provided in **Appendix G.3 – Section 106 Finding Documentation**. Also included in **Appendix G.3** is NYSDOT's July 12, 2016 letter to FHWA requesting its concurrence of No Adverse Effect as well as FHWA's letter of the same date indicating its concurrence in this regard.
- **Aquarium of Niagara** – A new Niagara Falls Sewage Plant access road is proposed to be constructed across a portion of the Aquarium property from Third Street. A new access driveway to the Aquarium's northern-most parking lot is also proposed to be constructed off of this new access road. This new road and the new driveway are proposed to be located in a grassed area of the

property, and will not impact on any activities, features or attributes of this National Register-eligible historic site. The removal of an existing pedestrian overpass crossing the RMP lanes to connect the Aquarium to the Niagara Gorge Discovery Center is also proposed as part of the Project, but that overpass is not considered to be National Register-eligible.

- Due to the significant historic status of the Aquarium and FHWA's and NY SHPO's Section 106 finding of "no adverse effect," the impact of the Project on this property qualifies as a *de minimis* Section 4(f) use. This finding was initially identified in NYSDOT's Section 106 Finding Documentation dated May 3, 2016 requesting FHWA's determination that there will be a *de minimis* Section 4(f) use associated with this property. In response to this document, NY SHPO provided its concurrence in a letter dated May 26, 2016 that there would be No Adverse Effect. Both the Section 106 Finding Documentation and NY SHPO's concurrence letter are provided in **Appendix G.3 – Section 106 Finding Documentation**. Also included in **Appendix G.3** is NYSDOT's July 12, 2016 letter to FHWA requesting its concurrence of No Adverse Effect as well as FHWA's letter of the same date indicating its concurrence in this regard.

Temporary Occupancy

There would be no temporary Section 4(f) use related to any proposed construction, demolition or other improvements within any of the above-listed parks and recreational areas, except for the Robert Moses Parkway Trail, which is described below:

- **Robert Moses Parkway Trail** – There would be a temporary closure of the Robert Moses Parkway Trail within the Project Study Area, given that the new multi-use trail system could not be fully constructed until the existing pavement is removed. This temporary closure is estimated to extend over an estimated 9-month period during the 24- to 30-month Project construction period, and would not occur until reconstruction of Third Street and Whirlpool Street is accomplished. Alternative paths and/or detours for bicycles and pedestrians (e.g., within the reconstructed pavement of Third Street and Whirlpool Street) will be developed during final design in order to maintain such recreational use to the greatest extent possible. It is also anticipated that the removal of existing pavement and the construction of new trails could be phased such that the temporary re-routing of bicycles and pedestrians would not be required along the entire Project length at the same time.

Given the temporary closure of the Robert Moses Parkway Trail within the Project Study Area during a portion of the construction period, a temporary use under Section 4(f) would result. However, a phased detour route is likely to be implemented during that period(s) of facility closure, thereby allowing bicycle and pedestrian activity to continue in some fashion at all times. As a result, it is anticipated that the temporary use of this resource would be *de minimis*. It should also be noted that once the new trail system has been fully constructed, conditions for bicycles and pedestrians through the park would be greatly improved in comparison to the existing conditions.

On May 27, 2016, State Parks sent a letter to NYSDOT to advise of their determination that the Project will not adversely affect the activities, features or attributes that qualify the Robert Moses

Parkway Trail for protection under Section 4(f), and acknowledging FHWA's intent to make a *de minimis* impact determination for the property. A copy of this letter is provided in **Appendix O.1**.

Constructive Use

No constructive use, either during construction or at Project completion, is anticipated for any of the Section 4(f) resources discussed above in the Project Study Area.

Section 4(f) Use for Remaining Four Historic Properties

Four additional historic properties within or directly adjacent to the APE that were previously presented and discussed in **Sections 6.5.2 and 6.5.3** have not been addressed in the preceding paragraphs since their potential Section 4(f) use cannot be categorized as either permanent, temporary or constructive.. These historic properties include:

- Chilton Avenue-Orchard Parkway Historic District
- Old Customs House
- Michigan Central Railroad Bridge
- Whirlpool Rapids Bridge

For each of these four properties, there is considered to be “no use” of any of those properties pursuant to Section 4(f).

Summary

Of the potential Section 4(f) properties discussed in the preceding paragraphs, it is anticipated that FHWA will determine that the proposed Project will result in the following:

- a *de minimis* use at two recreational / parkland properties (including one that is only temporary);
- a *de minimis* use at two historic properties (including one that is also a recreational / parkland property that will result in no Section 4(f) use for that component);
- no Section 4(f) use at two recreational / parkland properties (including one that is also a historic property that will result in a *de minimis* use for that component); and
- no Section 4(f) use at four historic properties.

Final determination by FHWA will be made after the public hearing held on August 25, 2016 and completion of the associated public comment period.

As previously mentioned, **Table 6-2**, which immediately follows on the next page, provides a summary of Section 4(f) “uses” for each of the recreational / parkland and historic properties considered.

Table 6-2 – Summary of Analysis of Section 4(f) Use under the Build Alternative

Section 4(f) Resource	Section 106 Effect	Section 4(f) Use	Description of Impact
Niagara Falls State Park / Niagara Reservation National Historic Landmark ⁽¹⁾	No Adverse Effect	No Use (Recreational / Parkland Component) De Minimis Use (Historic Component)	Existing pavement and appurtenances associated with the RMP (including currently-used lanes and formerly-used lanes now used as a bicycle-pedestrian facility [i.e., Robert Moses Parkway Trail]) will be removed and restored to open space for recreational use, thereby expanding the area for recreational use. Additional isolated parcels owned by NYPA located between the RMP and Whirlpool Street will also be annexed as part of the overall contiguous park, resulting in an increase in green space of 5.94 acres. A new connecting ramp between NFBC's existing access road and Main Street would likely require a permanent easement between State Parks and NFBC. Existing activities, features and attributes of the park will not be affected and the historic landmark is expected to have no adverse effect in terms of Section 106. Therefore, the overall use of this property is expected to be considered <i>de minimis</i> , although there would be no permanent use from a recreational / parkland perspective. No temporary or constructive use is anticipated.
Whirlpool State Park ⁽¹⁾	Not Applicable	No Use	Existing pavement and appurtenances associated with the RMP (including currently-used lanes and formerly-used lanes now used as a bicycle-pedestrian facility [i.e., Robert Moses Parkway Trail]) will be removed and restored to open space for recreational use, thereby expanding the area for recreational use. Additional isolated parcels within the park located east of the RMP will also be annexed as part of the overall contiguous park. A redesigned intersection at Whirlpool Street and Findlay Drive and a connector road from that intersection to the existing RMP north of Findlay Drive will take place entirely on State Parks property that will continue to be owned by State Parks in the future. The net gain of green space within the park would be approximately 2.89 acres. No Section 4(f) permanent use is anticipated within the park, nor is any temporary or constructive use anticipated.
Robert Moses Parkway Trail ⁽¹⁾	Not Applicable	De Minimis Temporary Use	There will be a temporary closure (estimated at 9 months) of the Robert Moses Parkway Trail within the Project Study Area until the new multi-use trail system can be constructed, although detouring of bicycle and pedestrian traffic is anticipated to be accommodated within the reconstructed pavement of Third Street / Whirlpool Street during that period. It is also anticipated that the removal of existing pavement and the construction of new trails could be phased such that the temporary re-routing of bicycles and pedestrians would not be required along the entire Project length at the same time. Because the phased detour route would allow bicycle and pedestrian activity to continue in some fashion at all times, it is anticipated that the temporary use

Section 4(f) Resource	Section 106 Effect	Section 4(f) Use	Description of Impact
			of this resource would be <i>de minimis</i> . Also, once the new trail system has been fully constructed, conditions for bicycles and pedestrians through the park would be greatly improved in comparison to the existing conditions. No permanent or constructive use is anticipated.
DiFranco Park ⁽¹⁾	No Adverse Effect	<i>De Minimis Use</i>	It is likely that a Project betterment involving removal of remaining underutilized structures and paved areas on this property would be undertaken, followed by grading and replanting of grass mixes. Since the park is not currently open for public use and most of its facilities have been either previously-removed or are not actively maintained for use, no adverse impact to existing activities, features and attributes would occur in the long term, and permanent use of the property would be <i>de minimis</i> .
Aquarium of Niagara	No Adverse Effect	<i>De Minimis Use</i>	A new Niagara Falls Sewage Plant access road, including a new access driveway to the aquarium’s northern-most parking lot will be constructed across a portion of the aquarium property from Third Street. This action is anticipated to have “no adverse effect” on the historic resource. Furthermore, the construction of the new access road and driveway is expected to be <i>de minimis</i> since there will be no impact on activities, features and attributes of the resource, and no temporary occupancy or constructive use.
Chilton Avenue- Orchard Parkway Historic District	No Effect	<i>No Use</i>	The reconstruction of Whirlpool Street would neither directly nor indirectly affect the district in a substantial manner. None of the buildings in the district front Whirlpool Street. Therefore, no Section 4(f) use of any type would result.
Old Customs House	No Effect	<i>No Use</i>	No physical impact to the Old Customs House would occur as a result of the Project. Removal of the current RMP viaduct in this area would result in a positive visual effect on this resource, and would partially restore its historic setting. Therefore, no Section 4(f) use of any type would result.
Michigan Central Railroad Bridge	No Effect	<i>No Use</i>	No direct or indirect impact associated with the proposed Project. Removal of the RMP overpass/viaduct would partially restore the historic setting of the bridge, resulting in a positive effect. Potential for a future overlook feature is subject to agreements with current owner. Therefore, no Section 4(f) use of any type would result.
Whirlpool Rapids Bridge	No Effect	<i>No Use</i>	No direct or indirect impact associated with the proposed Project. Removal of the RMP overpass/viaduct would partially restore the historic setting of the bridge, resulting in a positive effect. Therefore, no Section 4(f) use of any type would result.

(1) Also see Figure 6-3a – 6-3c

6.7. Avoidance Alternatives

As described in the preceding section, several of the properties assessed in this Section 4(f) Evaluation (i.e., Whirlpool State Park, Chilton Avenue-Orchard Parkway Historic District, Old Customs House, Michigan Central Railroad Bridge and Whirlpool Rapids Bridge) have been determined to experience no Section 4(f) use of any type as a result of the Project. In the case of the other properties assessed, use of Section 4(f) properties is limited to *de minimis* use. A *de minimis* impact finding does not require the development and evaluation of alternatives that would avoid the Section 4(f) properties. Based upon a determination of *de minimis* impact on Niagara Falls State Park / Niagara Reservation Historic Landmark (historic component only), Robert Moses Parkway Trail, DiFranco Park and Aquarium of Niagara), FHWA has concluded that the requirements of 23 CFR 774 have been satisfied (FHWA 2015).

6.8. Measures to Minimize Harm

The *de minimis* impact findings for Niagara Falls State Park / Niagara Reservation Historic Landmark (historic component only), Robert Moses Parkway Trail, DiFranco Park and Aquarium of Niagara result from measures to minimize harm, including avoidance, minimization, and enhancement measures incorporated in the Project.

The following paragraphs summarize the efforts taken to avoid and minimize impacts to the Section 4(f) resources for this Project. **Chapter 3** of this DR/EA document details the development of the Build Alternative. **Section 6.9** of this chapter describes and documents coordination efforts associated with Section 4(f) approvals for the Project. **Appendix G.3 – Section 106 Finding Documentation** documents consultation efforts to avoid or minimize effects on historic properties while **Appendix O – Recreational Section 4(f) and Section 6(f)** documents consultation efforts to avoid or minimize effects on publicly-owned parks and recreation areas.

Based on input from the public, involved agencies, and Section 106 Consulting Parties for this Project, the following design modifications have been incorporated into the Build Alternative to avoid and minimize harm to Section 4(f) properties (as well as other potential Section 4(f) properties), while still meeting the purpose and need of the Project.

- A major enhancement to the parks and recreational properties along the Niagara Gorge rim is related to the proposed removal of the existing RMP and Robert Moses Parkway Trail in their entirety through the Project Study Area, as well as the removal of the existing pedestrian overpass currently connecting the Niagara Gorge Discovery Center to the Aquarium of Niagara Falls across the RMP. These areas where pavement would be removed would generally be restored with grass, trees and/or native vegetation, thereby increasing the total area available for recreation activities or simple enjoyment of open space. In addition, isolated NYPA and State Park land parcels east of the RMP would be annexed once the RMP has been removed, thereby further increasing the contiguous parkland / green space along the rim. In combination, these enhancements would add 20.1 acres to the contiguous parkland / green space that currently exists west of the RMP. As a result, the 116.7 acres of combined parkland / green space that currently exists between the RMP and the Niagara Gorge rim (including both Niagara Falls State Park and Whirlpool State Park, in addition to the NYPA

Recreation Lands which connect them) would be increased to 136.8 contiguous acres within the Project Study Area.

- Improvements to one overlook in Niagara Falls State Park and two overlooks in Whirlpool State Park, each of which would provide enhanced views across the Niagara Gorge.
- Construction of 13-ft-wide multi-use trails within Niagara Falls State Park and Whirlpool State Park to accommodate bicyclists and pedestrians, parts of which would be constructed on areas currently occupied by RMP / Robert Moses Parkway pavement. In addition, several narrower paths intended to connect the multi-use trails to the local street system and other features within the park are proposed to be constructed.
- Similar improvements as listed above are also proposed within the NYPA Recreation Lands, which although are not considered to be Section 4(f) properties, would provide continuous and contiguous benefit to the two state parks at either end of these properties as well.
- The proposed connector roadway from the intersection of Whirlpool Street and Findlay Drive to the existing RMP north of Findlay Drive was specifically designed to avoid any use of DeVeaux Woods State Park. Similarly, the actual intersection of Whirlpool Street and Findlay Drive within Whirlpool State Park property has been redesigned to avoid any need to transfer any State Parks property to the City of Niagara Falls. As a result, neither DeVeaux Woods State Park nor Whirlpool State Park will experience any Section 4(f) use related to this Project.

It should also be noted that in response to specific requests from NY SHPO in letters dated March 9, 2016 and April 25, 2016, construction protection plans will be put in place to protect historic resources within 90 feet of the proposed construction activity.

Refinements to the Build Alternative, as presented in this DR/EA, reflect the consideration of input from Federal and State agencies, Section 4(f) officials with jurisdiction, Section 106 Consulting Parties, and the general public. The consultation process has contributed to efforts to minimize harm as reflected in no negative impacts and no Section 4(f) use of Niagara Falls State Park / Niagara Reservation Historic Landmark (recreational / parkland component only), Whirlpool State Park, Chilton Avenue-Orchard Parkway Historic District, Old Customs House, Michigan Central Railroad Bridge and Whirlpool Rapids Bridge. Similarly, the consultation process has contributed to efforts to minimize harm to additional properties as reflected in *de minimis* impact findings for Niagara Falls State Park / Niagara Reservation Historic Landmark (historic component only), Robert Moses Parkway Trail (temporary use), DiFranco Park and Aquarium of Niagara.

6.9. Coordination

Section 4(f) findings of *de minimis* impact require coordination with and written approval from the officials with jurisdiction (i.e., SHPO for Section 4(f) historic sites and State Parks for the parks and recreation areas). In addition, *de minimis* impact findings require coordination for public notice and comment on the Section 4(f) determinations.

The public involvement requirements for the Project's *de minimis* impact findings have been satisfied by providing opportunities for comment at the following venues during public scoping meetings held on: November 30, 2010; May 26, 2011; June 6, 2011; and February 20, 2013. In addition, more recent opportunities for providing comments were available at: a public informational meeting held on February 19, 2015; a Whirlpool Street/Findlay Drive neighborhood meeting held on July 15, 2015; a public informational meeting held on September 15, 2015; and two separate Section 106 Consultation Meetings (one with Tribal Nations and one with Consulting Parties) held on March 16, 2016. Upcoming opportunities for providing comments include: the public review period for the Draft DR/EA and the public hearing scheduled for August 25, 2016.

Documentation of the Section 106 Consultation Meetings is provided in **Appendix G.4 – Consulting Parties Consultation & Correspondence**. Copies of all correspondence related to the recreational component of the Section 4(f) process are included in **Appendix O.1**.