



Memorandum

U.S. Department
of Transportation
**Federal Transit
Administration**

Subject: Second Avenue Subway Phase 2 Project, Contract 1
Poor Richard's Playground
New York, NY
Section 4(f) De Minimis Impact Determination

Date: August 11, 2022

From: Jennifer Terry
Community Planner

Reply to: Jennifer Terry
Attn. of: Community Planner

To: Stephen Goodman, P.E.
Regional Administrator

Through: Michael Culotta, Deputy Regional Administrator
Donald Burns, Director of Planning and Program Development
John Sautter, Regional Counsel

Issue

The New York Metropolitan Transportation Authority (MTA) requested a Section 4(f) de minimis impact determination regarding the installation of a gas line under the sidewalk adjacent to Poor Richard's Playground, located at Second Avenue between 108th and 109th Streets, as part of construction of the Second Avenue Subway Phase 2 (SAS2) Project. The gas line will be used during construction and abandoned in place upon later installation of a different, permanent gas line under Second Avenue.

Background

In 2004, the Federal Transit Administration (FTA) issued a Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the full length Second Avenue Subway Project, in accordance with the National Environmental Policy Act (NEPA). Following the opening of Phase 1, FTA and MTA prepared a Supplemental Environmental Assessment (SEA) for Phase 2 in July 2018, and FTA issued a Finding of No Significant Impact (FONSI) in November 2018.

After the publication of the SEA, and as design has advanced, MTA identified a need to conduct utility relocation work related to the subway construction in a small section of paved area adjacent to the sidewalk near the Second Avenue entrance to Poor Richard's Playground, which is within the jurisdictional boundaries of the park. The proposed utility relocation work is within the boundaries of Poor Richard's Playground and was not previously identified in the FEIS or SEA. A new gas main is needed to temporarily re-route the gas line during construction, and it

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would be deactivated when the permanent gas main is constructed in the Second Avenue roadway as part of the subway construction several years later. The temporary gas main would be abandoned in place to avoid future disturbance, as it would not result in conflicts with other utilities.

Regulatory Framework

In accordance with 23 CFR 774, in order to establish a Section 4(f) de minimis use finding, FTA must find the following:

1. The transportation use of the Section 4(f) resource, together with any impact avoidance, minimization, and mitigation or enhancement measures incorporated into the project, does not adversely affect the activities, features, and attributes that qualify the resource for protection under Section 4(f);
2. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes of the Section 4(f) resource; and
3. The official(s) with jurisdiction over the property are informed of U.S. DOT's intent to make the *de minimis* impact determination based on their written concurrence that the project will not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f).

De Minimis Section 4f Analysis

Section 4(f) Resource Determination:

Pursuant to 23 CFR 774.17, Section 4(f) property is “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.”

The playground is public parkland owned by the New York City Department of Parks and Recreation (NYC Parks) and the New York City Department of Education. Consequently, pursuant to 23 CFR 774.17 the playground is subject to Section 4(f) of the U.S. Department of Transportation Act of 1966.

Section 4(f) Use Determination:

Pursuant to 23 CFR 774.17, a “use” of Section 4(f) property occurs when land associated with the 4(f) property is permanently incorporated into a transportation facility.

The proposed work constitutes a “use” of Section 4(f) property since it would encroach onto a small, paved area of park property. The proposed utility relocation work for the Second Avenue Subway would include reconstruction of an existing sewer manhole in the sidewalk close to the entrance to the park from Second Avenue and installation of a 20-inch gas main to cross under

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the existing sewer pipe. This construction work would involve trench excavation, temporary sheeting, drilling piles to support the manhole, installing a cast-in-place concrete manhole, laying a 20-inch steel gas main pipe, backfilling, and paving to restore the surface. This work would take approximately five months to complete. The sidewalk and park entrance from Second Avenue would remain open during construction, other than short-term intermittent closures, as needed. Park access would remain open from Third Avenue and East 109th Street.

De Minimis Use Determination:

Pursuant to 23 CFR 774.17, a de minimis impact for a park is one that will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f). The proposed construction activities and the permanent location of the gas main beneath the paved area would have a de minimis impact on Poor Richard's Playground because it would not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f), for the following reasons:

- Construction impacts would be temporary and short-term (approximately five months in duration);
- Access to the playground from Second Avenue would be maintained at all times, other than short-term interim disruptions ranging from several hours up to a week;
- Access to the playground would be available at all times from Third Avenue and from East 109th Street;
- All active playground areas would remain in use during construction and would not be adversely affected by the construction;
- Most of the playground is more than 200 feet away from Second Avenue and separated from Second Avenue by the school building of the Tito Puente Educational Complex, which would minimize any disruption within the playground from construction noise; and
- When construction is complete, the paved area and sidewalk would be restored to its original condition and the permanent presence of a manhole and gas main beneath the paved area would have no effect on the use of the paved area or playground.

Public Review/Comment:

In accordance with 23 CFR 774.5, MTA established a 30-day public review period to allow the public to submit comments. As the project sponsor, MTA posted a public notice with instructions for submitting comments on April 21, 2022, stating that it would accept comments until May 23, 2022, in the following local newspapers:

- Harlem Community News;
- The New York Amsterdam News;
- amNYmetro;
- El Especialito; and
- Chinese Daily News.

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MTA provided FTA with photographs of the notices published in the printed newspapers.

MTA also posted English, Spanish, and Mandarin instructions for submitting comments at the park based on languages identified for populations with limited English proficiency (LEP) in proximity to the proposed work. MTA provided FTA with electronic versions of the English, Spanish, and Mandarin notices and with photos of the three notices posted on permanent signage at the playground entrance. Therefore, MTA met the 30-day review period requirement.

MTA received no comments from the public.

Concurrence of Officials with Jurisdiction over Property:

In accordance with 23 CFR 774.5, MTA informed officials with jurisdiction over the project site of its intent to seek a de minimis impact finding from FTA. Because the playground is jointly operated by NYC Parks and the New York City Department of Education, both agencies have jurisdiction over it.

In a letter dated December 16, 2021, NYC Parks concurred with MTA's intent to seek a de minimis use determination from FTA. In a letter dated, May 10, 2022, NYC Dept of Education also concurred with MTA's intent to seek a de minimis use determination from FTA.

Recommendation

Based upon the supporting documentation, "Poor Richards Playground 4(f) final memo – June 9, 2022" and attachments, we recommend FTA make a de minimis use finding concerning the proposed project since the proposed construction activities and the permanent location of the gas main under the park entrance would not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f). Ultimately, the park will remain accessible and available for public use during the construction period and after.

Section 4(f) De Minimis Impact Determination
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U.S. Department of Transportation
Federal Transit Administration

Section 4(f) De Minimis Impact Finding
Second Avenue Subway Phase 2, Contract 1
Gas Line Installation Adjacent to Poor Richard's Playground
New York, NY
New York Metropolitan Transportation Authority

FTA completed a review of the proposed undertaking pursuant to Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303) and its implementing regulations at 23 CFR 774. Based upon a review of the supporting documentation provided by the New York Metropolitan Transportation Authority entitled "Poor Richards Playground 4(f) final memo" of June 9, 2022 and associated attachments, FTA finds that the proposed gas line installation project will have a de minimis impact on Poor Richard's Playground Park pursuant to 23 CFR 774.3(b).

FTA has determined that the proposed construction activities and the permanent location of the gas main under the park entrance would not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f); that the MTA has offered the public a sufficient opportunity to comment on the project; and that officials with jurisdiction over the project have concurred in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection.

Approved:

Stephen Goodman, P.E.

(for)

August 11, 2022

Date