A. INTRODUCTION

This chapter describes the environmental review process followed in preparation of this Tier I Draft Environmental Impact Statement (DEIS) for the Cross Harbor Freight Program (CHFP). It discusses the regulatory context for evaluation of the project's impacts, other regulatory requirements that must be met for the project, and the potential permits or approvals that may be needed to implement the project, depending on the alternative(s) selected.

B. ENVIRONMENTAL REVIEW PROCESS

This Draft Environmental Impact Statement (DEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) (42 USC 4321 *et seq.*) and its implementing regulations (40 CFR Parts 1500-1508; 64 FR 28545; and 23 CFR Part 771), using "tiering," as described below.

The Federal Highway Administration (FHWA) and the Port Authority of New York and New Jersey (PANYNJ) are serving as co-lead agencies for this Tier I DEIS. The following agencies are cooperating agencies for the environmental review: the Federal Railroad Administration (FRA), New York State Department of Transportation (NYSDOT), New Jersey State Department of Transportation (NJDOT), New York City Department of Transportation (NYCDOT), New York City Department of City Planning (NYCDCP), United States Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (USEPA).

This DEIS also documents compliance with applicable federal environmental laws, rules, and regulations, including Section 106 of the National Historic Preservation Act (NHPA) of 1966, Section 4(f) of the U.S. Department of Transportation Act of 1966, and Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," among others.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

NEPA requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment. In 1978 the Council of Environmental Quality (CEQ) promulgated regulations (40 CFR Parts 1500-1508) implementing NEPA, which are binding on all federal agencies. The NEPA process consists of an evaluation of the environmental effects of a federal undertaking including its alternatives and measures to mitigate adverse impacts. In addition, the CEQ regulations state that agencies shall (1) make diligent efforts to involve the public in the NEPA process and (2) provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected by the proposed project.

Complex projects can be evaluated in accordance with NEPA using a "tiered" approach. As defined in CEQ's NEPA regulations (40 CFR 1508.28), tiering "refers to the coverage of general matters in broader environmental impact statements . . . with subsequent narrower statements or environmental analyses . . . incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared." FHWA's NEPA regulations note that also provide for tiering: "For major transportation actions, the tiering of EISs as discussed in the CEQ regulation . . . may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures."

Using tiering, a Tier I EIS provides broad information related to transportation modes and general location or alignments for the alternatives under consideration. Consistent with FHWA's NEPA regulations (23 CFR 771.111(f)), the alternatives being evaluated must (1) connect logical termini and be of sufficient length to address environmental matters of a broad scope; (2) have independent utility (i.e., represent a reasonable standalone project); and (3) not restrict consideration of other reasonably foreseeable transportation improvements. The Tier I EIS results in a Record of Decision (ROD) that identifies a preferred transportation mode or a combination of modes and alignments, with the appropriate level of detail for corridor-level decisions. The ROD will also outline measures that are intended to avoid, minimize, or mitigate adverse impacts from the selected Preferred Alternatives.

Following completion of Tier I, subsequent environmental review provided in Tier II then focuses on more project-specific information, based on additional design not available during Tier I. Tier II documentation explores in greater detail those proposed actions that fulfill the project purpose within the mode(s) and alignment(s) selected in Tier I. Subsequent environmental review will include analyses based on engineering designs and site-specific environmental impacts, development of site-specific mitigation measures, and cost estimates, as appropriate. Input from the public and from reviewing agencies is solicited during all stages of the environmental review.

SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT (NHPA)

Section 106 of the NHPA requires that any federal agency having direct or indirect jurisdiction over a proposed federal or federally assisted undertaking take into account the effect of the undertaking on any district, site, building, structure, or other object that is included in or eligible for inclusion in the National Register of Historic Places. Under this provision, the NEPA lead agency, the State Historic Preservation Officer (SHPO), affected Native American tribes, and other "consulting" parties participate in a consultation process regarding the potential effects of the undertaking on historic resources. In certain limited cases, the Advisory Council on Historic Preservation (ACHP) participates in the consultation as well. The project's compliance with Section 106 of the NHPA is documented in Chapter 6.3, "Cultural Resources."

SECTION 4(f) OF THE U.S. DEPARTMENT OF TRANSPORTATION ACT

Section 4(f) of the Department of Transportation Act mandates the protection of "the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites." Any transportation project that uses such Section 4(f) resources must conduct a Section 4(f) evaluation; FHWA may only approve a project requiring the use of such Section 4(f) resources if there is no prudent and feasible alternative that would avoid this use and if the

program or project includes all possible planning to minimize harm to the affected land or resource. Chapter 6.3, "Cultural Resources," addresses the Section 4(f) evaluation.

EXECUTIVE ORDER 12898, ENVIRONMENTAL JUSTICE

Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects that their activities may have on minority and low-income populations. Following the direction of Executive Order 12898, federal agencies developed their own guidelines to implement environmental justice—including the United States Department of Transportation's Environmental Justice Order 5610.2(a) "Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" and FHWA's Order 6640.23a "FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"). These orders call for project sponsors to provide public involvement opportunities for affected minority and low-income populations in considering project alternatives. The environmental justice analysis is discussed in Chapter 6.12, "Environmental Justice."

SAFETEA-LU

Section 6002 of Public Law 104-59, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) enacted August 10, 2005, increased opportunities for the public and federal, state, and local agencies to have active and early involvement in the NEPA process. To provide more efficient environmental reviews for project decision-making, Section 6002 requires the development of a coordination plan for all highway and transit projects for which an EIS is being prepared under NEPA. In accordance with the requirements of SAFETEA-LU (and MAP-21, as discussed below), FHWA and PANYNJ have prepared and implemented a coordination plan that was distributed to federal, state, and local agencies with potential jurisdiction over aspects of the project (see **Appendix B**). The coordination plan sets forth the process and communication methods that will be followed to disseminate information about the project, as well as to solicit and consider input from the agencies. The coordination plan will be in effect throughout the EIS process.

Agencies can be involved as lead, cooperating, or participating agencies, depending on their anticipated role. As noted above, FHWA and PANYNJ are serving as co-lead agencies for the project and therefore have primary responsibility for the project's environmental review. Cooperating agencies have funding, approval, and/or permitting authority for the project, while participating agencies may have an interest in the project and/or possess information that would be relevant to the project. Cooperating and participating agencies are responsible for identifying, as early as practicable, any issues of concern regarding a project's potential environmental or socioeconomic impacts that could substantially delay or prevent an agency from granting a permit or other approval. FHWA and PANYNJ have identified and invited appropriate federal and state agencies to become cooperating or participating agencies for the project.

MAP-21

Public Law 112-141, the *Moving Ahead for Progress in the 21st Century Act* (MAP-21), enacted July 6, 2012, includes a number of measures to streamline completion of transportation projects, including the environmental review process for transportation projects. The requirements for an

agency coordination plan established in SAFETEA-LU are continued, with some refinements intended to result in more efficient review procedures.

MAP-21 also makes the nation's freight system a priority, stating (at 23 USC § 167(a)), "It is the policy of the United States to improve the condition and performance of the national freight network to ensure that the national freight network provides the foundation for the United States to compete in the global economy and achieve each goal described in subsection (b). As defined in subsection (b), the goals of the national freight policy are:

"(1) to invest in infrastructure improvements and to implement operational improvements that
  - (A) strengthen the contribution of the national freight network to the economic competitiveness of the United States;
  - (B) reduce congestion; and
  - (C) increase productivity, particularly for domestic industries and businesses that create high-value jobs;

(2) to improve the safety, security, and resilience of freight transportation;

(3) to improve the state of good repair of the national freight network;

(4) to use advanced technology to improve the safety and efficiency of the national freight network;

(5) to incorporate concepts of performance, innovation, competition, and accountability into the operation and maintenance of the national freight network;

(6) to improve the economic efficiency of the national freight network; and

(7) to reduce the environmental impacts of freight movement on the national freight network."

Subsequent subsections (23 USC § 167(c)-(e)) call for establishment of a designated national freight network, and subsection (f) establishes a national freight strategic plan. The legislation calls for the Secretary of Transportation, in consultation with state departments of transportation and other appropriate public and private transportation stakeholders, to develop a national freight strategic plan that assess the condition of the national freight network, identifies highway bottlenecks on the network, identifies improvements that could be implemented as well as best practices for improving the performance of the national freight network, best practices to mitigate the impacts of freight movement on communities, a process for addressing multistate projects, and strategies to improve freight intermodal connectivity.

C. AGENCY COORDINATION AND PUBLIC PARTICIPATION

A Notice of Intent (NOI) for the CHFP was published in the Federal Register on June 7, 2001, indicating that a DEIS would be prepared for the project in accordance with NEPA for FHWA and FRA as federal lead agencies, in cooperation with the New York City Economic Development Corporation. The development of this Tier I DEIS began with the publication of a Revised Notice of Intent (NOI) in the Federal Register on May 13, 2010. The revision indicated the change in project sponsorship to the PANYNJ and the intent of FHWA and PANYNJ to use a tiered NEPA process to facilitate project decision-making.

The NOI initiated the environmental review process and publicized the availability of the Scoping Document, which described the project alternatives and environmental analysis

methodologies. To solicit comments on the Scoping Document, five public scoping information sessions were held in October 2010 in the Bronx, Queens, and Brooklyn, New York as well as Jersey City and Newark, New Jersey. The comment period for scoping closed on November 15, 2010.

Subsequent chapters in this Tier I DEIS describe the alternatives considered and evaluated, the effects on transportation, economic conditions, environment, the direct and indirect environmental consequences of the alternatives, and the public outreach process. Public hearings on this Tier I DEIS will be held. The date and location of the hearings will be advertised and posted on http://www.crossharborstudy.com. Comments on this Tier I DEIS will also be accepted via mail, e-mail, and the project website until the close of the public comment period.

Please see Chapter 3, "Agency Coordination and Public Involvement," for a full description of the project's agency coordination and public involvement program.

D. POTENTIAL PERMITS AND OTHER APPROVALS REQUIRED

The CHFP would require federal, state, and local permits and approvals. **Table 2-1** lists potential discretionary permits, approvals, and reviews required for the major construction and operational activities associated with the Build Alternatives. Many of these permits, their regulatory context, and their applicability to the CHFP are further described in subsequent chapters.

Table 2-1
Potential Approvals Needed

Permits/Approvals	Agency	Regulatory Trigger
Section 10 of the Rivers and Harbors Act of 1899 (33 USC § 403)	USACE	Construction of any structure in or over navigable U.S. waters; excavation or deposition of material in these waters; or obstruction or alteration in these waters.
Section 404 of the Clean Water Act (33 USC §§ 1251-1387)	USACE	Discharge of dredged or fill material into U.S. waters.
Section 401 of the Clean Water Act (33 USC §§ 1251-1387)	NYSDEC[1] NJDEP[2]	Water quality certification for discharge to navigable waters.
Protection of Waters Program (ECL Article 15; 6 NYCRR Part 608)	NYSDEC	Discharges to surface waters and dredging or placement of fill in navigable waters.
Grant or License of Land Underwater (New York State Public Lands Law § 6-75.7b)	NYSOGS[3]	Use of state-owned land under water.
State Pollutant Discharge Elimination System Permit (Section 402 of Clean Water Act, 6 NYCRR Part 750)	NYSDEC	Discharge to the waters of New York, construction involving more than one acre of land.
NJPDES Permit (Section 402 of Clean Water Act, NJAC 7:14; NJSA 58:10A)	NJDEP	Discharge to the waters of New Jersey; construction activity stormwater permit.
Wetlands (Executive Order 11990 of 1977; USDOT Order 5660.1A, "Preservation of the Nation's Wetlands," August 24, 1978)	FHWA	Destruction or modification of wetlands.
Tidal Wetlands Act (ECL Article 25; 6 NYCRR Part 661)	NYSDEC	Activities in tidal wetlands and their adjacent areas.
Tidelands Act (NJSA 12:3-1 Rules at NJAC 7:7E)	NJDEP	Use of lands where tidal inundation occurs on a daily, monthly, or intermittent basis, or areas formerly flowed by tidal waters.
Freshwater Wetlands Law (ECL Article 24; 6 NYCRR Parts 663-664).	NYSDEC	Any disturbance to state-regulated freshwater wetlands or their associated 100-foot buffer areas.
Freshwater Wetlands Protection Act (NJSA 13:9B, rules at NJAC 7:A)	NJDEP	Development in and around freshwater wetlands.
Floodplains (Executive Order 11988 of 1977; USDOT Order 5650-2, "Floodplain Management and Protection," April 23, 1979)	FHWA	Location of a project in a floodplain.
Flood Hazard Control Act (NJSA 58:16A-50, Rules at NJAC 7:13.)	NJDEP	Construction in certain flood hazard areas.
Coastal Zone Management Act (16 USC §§ 1451, et seq.; 15 CFR Part 930)	NOAA[4]	Projects affecting the federal Coastal Zone.
Coastal Area Management Program (New York Executive Law Article 42; 19 NYCRR Part 600)	NYSDOS[5]	Projects affecting the New York State Coastal Zone.
Coastal Management Program (NJAC 7:7 and 7:7E)	NJDEP	Waterfront development, coastal areas, tidelands (i.e., riparian rights), and flood hazard area encroachment.
Waterfront Development Act (NJSA 12:5-3)	NJDEP	Plans for the development of any waterfront upon any navigable water or stream of New Jersey that involve the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable, or any other waterfront development.
Local Waterfront Revitalization Program	NYCDCP	Construction in New York City's designated Coastal Zone.

Table 2-1 (cont'd)
Potential Approvals Needed

Permits/Approvals	Agency	Regulatory Trigger
Endangered Species Act (16 USC §§ 1531-1544; 50 CFR Part 402)	USFWS[6]/ NMFS[7]	Presence of Threatened and/or Endangered Species, and Essential Fish Habitat (EFH) Review.
Magnuson-Stevens Fishery Conservation and Management Act (16 USC §§ 1801-1884)	NOAA, NMFS	Any effects on Essential Fish Habitat (EFH).
Marine Protection, Research and Sanctuaries Act (16 USC §§ 1431, et seq., 33 USC §§ 1401, et seq.)	USACE	Ocean disposal of dredged material.
Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern; Incidental Take Permits (ECL Article 11, 6 NYCRR Section 182)	NYSDEC	Consultation regarding impacts on threatened and endangered species; permit for potential impacts.
Endangered and Nongame Species Act (NJSA 23:2A-6 et seq., Rules at NJAC 7:25-4)	NJDEP	Impacts on state or federally listed endangered species of wildlife.
Section 106 of National Historic Preservation Act (16 USC § 470, et seq.; 36 CFR Part 800)	FHWA/ ACHP/ NYSHPO[8]/ NJHPO[9]	Projects potentially affecting historic and archaeological resources.
Section 4(f) of the USDOT Act (49 USC § 303; 23 CFR §774)	FHWA	Use of a publicly owned parkland, recreation area, or wildlife and waterfowl refuge of national, state, or local significance; or land from a historic site of national, state, or local significance.
Clean Air Act (42 USC § 7506(c); 40 CFR Part 93) Transportation Conformity (40 CFR Part 93)	FHWA, USEPA	Conformity of transportation projects with State Implementation Plans (SIP).
Environmental Justice (Executive Order 12898 of 1994, 59 FR Page 7629, February 16, 1994; U.S. Department of Transportation [USDOT] "Order to Address Environmental Justice in Minority Populations and Low-Income Populations," Order 5610(2)(a) May 2, 2012; FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," FHWA Order 6640.23a, June 14, 2012	USEPA	Impacts and benefits from a federal transportation project affecting environmental justice communities.
New York State Smart Growth Public Infrastructure Policy Act (ECL § 6-0101, et seq.)	NYSDOT	Approval, undertaking, support, or finance of a public infrastructure project by a New York State infrastructure agency.

Notes:
1 NYSDEC = New York State Department of Environmental Conservation
2 NJDEP = New Jersey Department of Environmental Protection
3 NYSOGS = New York State Office of General Services
4 NOAA = National Oceanic and Atmospheric Administration
5 NYSDOS = New York State Department of State
6 USFWS = United States Fish and Wildlife Service
7 NMFS = National Marine Fisheries Service
8 NYSHPO = New York State Historic Preservation Office
9 NJHPO = New Jersey Historic Preservation Office

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