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## 6.0 Process for Future Environmental Reviews

### A. CPIP CONCLUSIONS

The CPIP project was initiated with the purpose of defining economically viable and environmentally sound improvements for the Port. At the time of initiation, it was believed that port expansions would be needed in the near future to address cargo demand. Previous studies indicated that substantial areas of waterfront fill would be needed to accommodate expansion, suggesting that significant environmental impacts would be associated with port development. However, the analyses of port, transportation network, and warehousing capacity conducted as part of the CPIP planning effort indicated that adequate cargo-handling capacity exists at the Port to accommodate cargo demand growth for the next several decades. Also, recent advances in cargo handling at container terminals have resulted in more efficient use of land and superseded the need to make new land with waterfront fills.

The following are the principal conclusions of the CPIP planning process:

- Forecasts of future cargo volumes and assessment of port-wide capacity indicate that the capacity in the Port is sufficient for several decades, such that implementation of necessary port improvements is not required in the near-term, beyond projects that are currently programmed and committed and additional projects to assist in maintaining transportation mobility for port terminal facilities;
- Port-related truck trips will continue to comprise a very small percentage (less than 10 percent) of total regional traffic, and port-related rail will constitute only a small proportion (4 and 5 percent) of forecasted rail growth;
- Local and regional transportation projects proposed by transportation agencies are related to ongoing increases in background traffic, not to Port improvement projects;
- Adequate suitable acreage for forecasted future warehousing demand is available in the Port area;
- Due to projected productivity improvements, the CPIP scenarios for future port-wide development would involve substantially less waterfront fill than anticipated at the inception of the CPIP process, and waterfront fill is not required in the near-term; and
- In the absence of statutory authority for the CPIP or a single governing agency, it is not possible to prescribe a pattern of phased implementation for the Plan, but the portwide scenarios resulting from the CPIP planning process provide a useful framework for guiding future development of the Port.

The CPIP planning process determined that cargo-handling infrastructure could be provided largely within the existing Port acreage and that various combinations of port-site-specific development options could be envisioned to accommodate the cargo demand forecast to 2060. Thus, the CPIP presents four portwide scenarios, each comprising specific cargo uses, site arrangements, and, in some cases, site expansions, which collectively would address future cargo-handling needs.

The CPIP does not identify a specific CPIP-related port plan that is being proposed for construction in the near future nor specific projects to implement any of the port improvement scenarios. Therefore, there is no current Federal action requiring review under NEPA, nor any required federal or state approvals. However, it is anticipated that future port improvement projects that will be considered within the CPIP framework will be subject to Federal, state, and/or local environmental reviews, depending on the particulars of a given project.

The CPIP recognizes the interconnectivity of the seven port sites considered in the CPIP project, and encourages innovative, cooperative solutions within the framework of the port improvement scenarios to accommodate expected future growth in cargo throughput. This EA qualitatively addresses the broad elements of the CPIP, as depicted in the four port improvement scenarios, including the general size and configuration of the seven port sites in future years. It documents existing conditions in the port sites' vicinities, and identifies the types of impacts that may be associated with the scenarios' long-term port improvements. However, because improvement projects may not occur for several decades, and the details of proposed projects are critical to understanding what impacts may result, the potential impacts described in this EA are merely an indication of what may be anticipated in future years. This EA provides a framework for the identification of future analyses that may be required for port-improvement projects or port-related transportation projects proposed in the future.

When the need for a future project has been demonstrated and sufficient site-specific design and operations-related information is available to allow detailed assessment of impacts, any proposed projects must be evaluated in subsequent EAs or EISs. This approach allows future environmental review documents to focus on port-site-specific projects and issues that are ripe for discussion in the future. Section C., on the following page, provides an overview of the types of future projects or project elements that would likely trigger future environmental reviews. A list of potential permits and approvals that may be required for future port improvement projects is also provided.

## **B. RECOMMENDATIONS FROM THE CPIP DEVELOPMENT PROCESS**

The CPIP represents the first effort for coordinated Port-wide planning for the future development of the Port of New York and New Jersey, and the first Port-related planning that consciously seeks to balance the dual interests of economic viability and environmental sustainability. In future years, as specific CPIP-related port and associated transportation improvement projects are defined, project sponsors; planning, resource, and regulatory agencies; and public and private stakeholders should continue Port planning in a coordinated, consultative manner with the CPIP goals in mind and in consideration of the following recommendations:

- Develop future Port and associated transportation improvement projects in the context of and in coordination with other regional as well as site-specific land use, development, and transportation plans, studies, and projects;
- Incorporate pertinent Environmental Management System (EMS) methods and GreenPort principles related to air quality, brownfields, dredged material disposal, ship and port-generated solid waste, community-related environmental stewardship, etc. into Port planning efforts;
- Review best port planning principles used at ports elsewhere in the United States and the world and apply those that would advance the Port's balancing of economic viability and environmental sustainability;
- Seek opportunities to divert increasing proportions of cargo transport to/from the Port sites from truck to other modes, notably including rail and barge;
- Investigate and incorporate newly emerging clean fuel technologies and equipment to improve the environmental performance of on-site operations; and
- Provide opportunities for ongoing public dialogue about Port development needs, related environmental issues and concerns, and reasonable and feasible solutions that will help the Port remain competitive, relative to other East Coast ports, in an environmentally sensitive and sustainable way.

### C. FUTURE ENVIRONMENTAL REVIEWS

While specific port improvement projects that may be proposed in the future are not currently known, it is possible to identify certain aspects of possible future projects that would likely “trigger” future environmental reviews. However, as this discussion is based on current regulatory requirements, future project sponsors will need to consider the need for environmental reviews and permits in light of then-current regulations. Environmental reviews must be responsive to the environmental regulations and standards at the time the project is ripe for review and implementation.

Different levels of environmental review may be triggered by CPIP-related port improvement projects depending upon the likely impacts related to the proposed project. As projects are brought forward, the type of impacts and their severity must be defined based on site-specific information and the specific construction and operation methods to be used. Also, future analyses should consider the comments received during the scoping process conducted for the CPIP EIS (see Appendix A) and address any issues that may be pertinent to the proposed project.

Initially, future projects can follow the analyses used for the CPIP and this EA, updating information, as appropriate. Over time, more of the CPIP and EA information will require updating, notably regarding the CPIP cargo forecasts, as changes in future cargo demand could change the timing of needed future port improvements.

Many of the potential environmental concerns/issues identified in Tables 5-4 through 5-7 could be addressed with best management practices or engineering design, which must not then trigger environmental review under NEPA or state environmental law. Some potential environmental issues may be addressed through the permits or approval process at the Federal, state or local level. For example, each of the port sites has documented spills or contamination that will require special handling or construction, which might not trigger NEPA or state environmental review. Similarly, any proposed project will be required to meet storm water discharge requirements that comply with water quality criteria and assure compliance with water quality standards. Extensive NEPA review may not be triggered by routine permit issues.

Land acquisition could trigger environmental review, depending upon the entity acquiring the area. A private port developer may acquire land using private funds and construct a port facility with no significant impacts that may require analysis and disclosure. A governmental agency making such an acquisition using state or Federal funds may be subject to NEPA or state environmental review. The likelihood of such acquisition and funding is not known at this time. The CPIP Plan notes that, in the past, port ownership was dominated by the public sector; however, since the 1990’s, private ownership participation in port development has increased.

Table 6-1 summarizes the regulatory framework within which future port projects must be reviewed and identifies Federal and state consultations, approvals, and permits that could be required. Table 6-2 (at end of this chapter) describes actions that would trigger each. The extent of the environmental review, specific permits and approvals that will be required for future port and associated transportation improvement projects cannot be firmly identified until such time as actual projects are defined with sufficient detail to allow evaluation of potential impacts.

**TABLE 6-1: POTENTIAL PERMITS AND APPROVALS**

Jurisdiction	Permits/ Concurrence		State and Local Certifications/ Conformity Statements	Required Consultations
National Environmental Policy Act (NEPA) of 1969  Council on Environmental Quality regulations on implementing NEPA (40 C.F.R. §1500-1508)  Project Lead Agency regulations implementing NEPA	USACE - Section 10 of the Rivers and Harbors Act of 1899 – Navigable Waters	Coastal Zone Management Program Consistency Certification Concurrence	New Jersey Department of Environmental Protection (NJDEP), Coastal Zone Management Program	Fish and Wildlife Coordination Act (FWCA) of 1958, as Amended, (16 U.S.C 469 et seq.)
		Coastal Zone Management Act of 1972 (16 U.S.C. 1451-1464)	New York State Department of State (NYSDOS), Division of Coastal Resources	Endangered Species Act (ESA) of 1973 as Amended, (16 U.S.C. 1531 et seq.):
			New York City Department of City Planning, New York City Local Waterfront Revitalization Plan Compliance	<ul style="list-style-type: none"> <li>• NJDEP, Division of Parks and Forestry, Office of Natural Lands Management, Natural Heritage Program, Database Review</li> <li>• NYSDEC, Division of Fish, Wildlife &amp; Marine Resources, New York Natural Heritage Program Database Review</li> </ul>
	USACE - Section 404 of the Clean Water Act (CWA) – Discharges of dredged and fill material into waters of the US.	New Jersey - N.J.A.C. 7:7E	Estuary Protection Act, (16 U.S.C. 1221 et seq.)	
	USACE – Section 103 of the Marine Mammal Protection, Research and Sanctuaries Act (MMPRSA) – Transportation of dredged material for disposal in the ocean	New York State Environmental Conservation Regulation 6NYCRR 608	Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 et seq.) Essential Fish Habitat (EFH) Consultation	
Federal Aviation Administration – 14 CFR 77, Objects Affecting Navigable Airspace, Form 7460-1		National Historic Preservation Act (NHPA) of 1966 (as amended) (16 USC 70) - Section 106 Consultation: <ul style="list-style-type: none"> <li>• New Jersey State Historic Preservation Office (SHPO) Consultation – New Jersey Register of Historic Places Act</li> <li>• New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) Consultation</li> <li>• New York City Landmarks Preservation Commission (LPC) Consultation</li> </ul>		

**TABLE 6-1: POTENTIAL PERMITS AND APPROVALS  
(CONTINUED)**

Jurisdiction	Permits/ Concurrence	State and Local Certifications/ Conformity Statements	Required Consultations
New Jersey Executive Order No. 215 (EO 215), 1989	NJDEP - Waterfront Development Permit, including Land Use Regulation Program (LURP) Application	NJDEP Bureau of Tideland Management (BTM) Review	
	NJDEP - New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B		
	NJDEP - New Jersey Stream Encroachment, Flood Hazard Area Control Act, N.J.A.C. 7:13		
	NJDEP - Pollution Discharge Elimination System - N.J.A.C. 7:14A		
	NJDEP - Air Pollution Control N.J.A.C. 7:27	General and Transportation Clean Air Act Conformity Statement:, Compliance with New Jersey State Implementation Plan (SIP)	
New York State State Environmental Quality Review Act of 1975 (SEQRA) - 6NYCRR 617	NYSDEC - New York State ECL Article 15, Title 5: Protection of Waters		
	NYSDEC - New York State ECL Article 24: Freshwater Wetlands		
	NYSDEC - New York State ECL Article 25: Tidal Wetlands	State Owned Lands Underwater/Riparian Rights NYSDOS Office of General Services (OGS) Review	
	NYSDEC - New York State ECL Article 17, Titles 7 and 8: Pollution Discharge Elimination System		
	NYSDEC - New York State ECL Article 19: Air Pollution Control	General and Transportation Clean Air Act Conformity Statement:, Compliance with New York State Implementation Plan (SIP)	
New York City City Environmental Quality Review (CEQR) - Executive Order No. 91, 1977	NYC - Department of Business Services		
	NYC - Waterfront Development Requirements, Uniform Land Use Review Procedure 1990 (ULURP) and special zoning districts - NYC Office of City Planning		

**1. Federal National Environmental Policy Act (NEPA) of 1969  
(42 U.S.C. 4341 et seq.)**

The environmental consequences associated with a proposed project and its alternatives must be considered before a decision is made to implement a project that requires Federal authorization. Federal authorization can include decisions to fund a project or to issue a permit or approval for a project. NEPA requirements for Federal environmental review provide for different levels of evaluation and analysis depending upon the significance of potential impacts. Under NEPA, some actions may be categorically excluded; projects with limited impacts may be evaluated using an EA; and major federal actions having significant environmental impacts are evaluated in an EIS. If port or associated transportation improvement projects are subject to review under the NEPA process, including the preparation of either an EA or EIS, the reviews must be conducted as discussed in Council on Environmental Quality regulations on implementing NEPA (40 CFR §1500-1508).

In addition to analyses of direct, project-related impacts, the review must also address potential indirect effects of project implementation and the potential cumulative impacts of past, present, and reasonably foreseeable future projects and actions within the study area. Assessment of indirect and cumulative impacts is of particular concern for projects proposed in the Port because of the Port of New York and New Jersey's complexity, size, and densely developed and congested character.

It is likely that Federal funding will be sought for port-associated transportation improvement projects, particularly if the project would be eligible for transit or transportation funds. The CPIP Plan does not identify specific projects and planning has not progressed to the point where potential sources of project funding are being considered. Therefore, it is not possible to determine which, if any, of the port-site-specific uses, as proposed in the alternative scenarios, would require future port improvements that would trigger NEPA review due to funding sources.

**2. Federal Permits Related to Dredging or Filling  
[Clean Water Act of 1977, as amended (33 U.S.C. 1251 et seq.) and Rivers and Harbors  
Act (33 U.S.C. 403)]**

When the CPIP planning process was initiated, the main environmental issue that was expected was the possibility of substantial waterfront and wetland fill to provide additional area for cargo handling. While waterfront and wetland fill remains the main impact associated with the alternative scenarios, the extent of filling proposed is far less than was initially considered and may be further minimized as actual port improvement projects on specific sites are developed in the future.

The USACE has regulatory authority over most of the nation's waters. USACE's regulatory program is governed by regulations in 33 USC Parts 320 – 330. Dredging or filling of waterfront habitat or wetlands would require permits under Section 10 of the Rivers and Harbors Act of 1899, and for work in Navigable Waters, under Sections 401 and 404 of the Clean Water act of 1977 (CWA).

The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Specific sections of this Act control the discharge of pollutants and wastes into freshwater and marine environments.

Section 404 of the CWA (33 USC 1344) prohibits the discharge of dredged or fill material into navigable waters of the United States without a permit from USACE. Two commonly confused terms used to describe areas under USACE jurisdiction are "navigable waters of the United States" and "waters of the United States." "Navigable waters of the United States" are those waters that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently

used, or have been used in the past, or may be susceptible to use in the future to transport interstate or foreign commerce. Once a determination of navigability has been made, it remains in effect even if subsequent actions impede or destroy the former navigable capacity. Thus, the waters in the CPIP project area are navigable waters where permits are required for certain activities pursuant to Section 10 (33 USC 403) of the Rivers and Harbors Act.

Section 10 prohibits the obstruction of, alteration of, or work in navigable waters or water bodies such as the Hudson River, and any tidal waters below the mean water line of the United States without a permit from USACE. “Waters of the United States” is a broader term that includes wetlands and tributaries adjacent to navigable waters of the United States and other waters where their destruction could affect foreign or interstate commerce. “Waters of the United States” applies to both tidally influenced and non-tidal wetlands.

Section 404 (b) of the CWA, as amended in 1977, requires that USACE evaluate the impact of the discharge of dredged or fill material into waters of the United States in order to make specified determinations and findings. Subpart A, Section 230.1(c) of the Section 404(b)(1) Guidelines states the following: “Fundamental to the guidelines is the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it is demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern.”

In making its determination to permit or not permit a specific project, the USACE determines that the impacts of a permit warrant not only a permit evaluation but an assessment under NEPA in the form of an EA or EIS, and that a project may be permitted under the Nationwide permit program or with an individual permit. It is possible that any waterfront fill or any wetland fill of sufficient size, or that is likely to generate significant public controversy due to proximity to residential areas, would need to be evaluated with an EIS.

If an individual permit were issued by USACE for a port improvement project, the permit evaluation process will involve a full public interest review that balances a proposal’s favorable impacts against its adverse impacts. Processing of individual permits involves publication of a public notice soliciting comment on the proposal, provision for public hearings as may be necessary, and opportunity for applicants to address concerns raised during the comment period. Additional authorizations and associated environmental reviews (e.g., Coastal Zone Management Plan Certification Concurrence, Essential Fish Habitat Evaluation, Section 7: Threatened and Endangered Species Consultation, Water Quality Certification) may be required before a permit decision can be made.

**3. Federal Approvals Associated with Rare and Endangered Species**  
[Threatened and Endangered Species/Significant Habitats/ Estuary Protection: US Fish and Wildlife Service - Section 7 Consultation - Fish and Wildlife Coordination Act (FWCA) of 1958, as Amended, (16 U.S.C 469 et seq.) and Endangered Species Act (ESA) of 1973 as Amended, (16 U.S.C. 1531 et seq.), Estuary Protection Act, (16 U.S.C. 1221 et seq.)]

The Endangered Species Act prohibits activities that affect federally protected threatened and endangered species. The U.S. Fish and Wildlife Service (USFWS) reviews projects affecting wildlife, and the National Marine Fisheries Service (NMFS) reviews projects affecting marine fisheries. Prior to any new Port construction, USFWS and NMFS should be contacted to request updated information on the presence of protected species, such as the bald eagle, which is a transient species in the Port area.

The Port provides habitat for four endangered sea turtles species and one endangered finfish species. Port improvement projects that would impact the aquatic habitats of these species would require agency review. Such projects would likely be subjected also to environmental review by the USACE under its regulatory program for dredging and filling activities (Section 1 above). The endangered species consultation could be incorporated into that NEPA process.

The New Jersey Department of Environmental Protection notes the presence of constructed habitat for Federal and state endangered bird species on the outer edge of Port Jersey. Although none of the CPIP alternative scenarios infringe on the habitat, its proximity is likely to trigger a review of project impacts that could degrade the functioning of the area.

#### **4. Federal Clean Air Conformity Statement (Clean Air Act of 1977, as amended, (42 U.S.C. 7401 et seq.)**

The objective of the Federal Clean Air Act (CAA), administered by USEPA, is to protect and enhance the quality of the nation's air resources, and to promote public health and welfare and the productivity of its population. Under this Act, the USEPA administrator has established a set of National Ambient Air Quality Standards (NAAQS), with primary responsibility for the prevention and control of air pollution is left to the states.

The CAA defines non-attainment areas as geographic regions that have been designated as not meeting one or more of the NAAQS. The CAA requires that a State Implementation Plan (SIP) be prepared for each non-attainment area, and a maintenance plan be prepared for each former non-attainment area that subsequently demonstrated compliance with the standards. The SIP is a state's plan on ways it will meet the NAAQS under the deadlines established by the CAA. USEPA's Transportation Conformity Rule requires SIP conformity determinations on transportation plans, programs, and projects before they are approved or adopted. Conformity is defined as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. In addition, Federal activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment or required interim emissions reductions towards attainment.

The final conformity rule also establishes the process by which the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and local metropolitan planning organizations determine conformance of highway and transit projects.

The port sites in New Jersey fall within areas that are currently designated as non-attainment for the 1-hour and 8-hour ozone standard and the annual PM<sub>2.5</sub> standard and maintenance for CO. The port sites in New York fall within areas that are currently designated as non-attainment for the 1-hour ozone standard and the PM<sub>2.5</sub> annual standard and maintenance for CO. Manhattan (which could potentially be affected by project-generated truck traffic) is also classified as non-attainment for PM<sub>10</sub>. Should the identified non-attainment areas still be so designated in the future when port and associated transportation improvement projects are proposed and required environmental reviews are undertaken, project-specific air quality analyses will need to address whether a given proposed project could be implemented without exacerbating the existing violations of the NAAQS. Further, as noted above, the analyses will need to confirm that the given project would not interfere with timely attainment or with required interim emissions reductions leading to attainment.

Conformity determinations may be required to demonstrate compliance with the New York and/or New Jersey SIPs. These analyses may be required if a proposed action's potential impacts are above the Conformity de minimis thresholds. All necessary air quality approvals would need to be obtained

from the states of New York and New Jersey prior to construction of any port or associated transportation improvement project.

**5. National Historic Preservation Act of 1966, as Amended, (16 U.S.C. 470 *et seq.*)**

The National Historic Preservation Act (NHPA) established the National Register of Historic Places, which is a listing of sites, districts, structures, and objects significant in American history, including architecture, archaeology, engineering, and culture. Archaeological sites, historic buildings, and other cultural resources may be determined eligible for inclusion in the National Register on the basis of local, regional, state, or national significance. Section 106 of the NHPA requires Federal agencies to “take into account” the effects of a proposed project on such sites and structures which are listed, or which have been determined eligible for listing, on the National Register. This involves (1) consultation with the State Historic Preservation Officer to determine whether identified sites or structures in the Area of Potential Effect (APE) are eligible for the National Register and to analyze possible project-induced impacts, and (2) affording the Advisory Council on Historic Preservation an opportunity to comment.

Since CPIP-associated improvements may not occur until 2030 or beyond, properties within project-specific APEs that are currently less than 50 years of age will need to be evaluated in the future for potential National Register eligibility.

**6. Section 4(f) of the United States Department of Transportation Act of 1966 (49 U.S.C. 303)**

Section 4(f) of the Department of Transportation Act of 1966 sets national policy to preserve the natural beauty of the countryside, publicly owned parks, recreation areas, wildlife or waterfowl refuges, or any historic sites of national, state or local significance. A Section 4(f) statement is prepared when a transportation project has the potential to use land from a publicly-owned park, recreation area, wildlife or waterfowl refuge, or any historic site that is listed on or eligible for the National Register of Historic Places. Section 4(f) permits the use of such land for a transportation project only when the sponsoring agency, in this case, the Federal Highway Administration (FHWA) has determined that there is no feasible or prudent alternative to such use and the project includes all possible planning to minimize harm to the resource resulting from such use (23 CFR 771.135).

**7. New York State – State Environmental Quality Review Act of 1975 (SEQRA) – 6NYCRR 617**

In New York, state and local government agencies must determine if a proposed action within their jurisdiction will result in significant environmental impacts. Actions are classified as either Type 1, Type 2, or unlisted. Type 1 actions are generally associated with large projects that are likely to have significant impacts, and often require preparation of an EIS. These projects must follow a mandated SEQRA process, which includes public participation. The regulations governing the SEQRA review process can be found in 6NYCRR 617. Specific triggers for Type 1 actions, which may be pertinent to future port improvement projects, include projects that involve the physical alteration of 10 acres or the expansion of existing facilities by more than 5 acres.

**8. New Jersey - Executive Order No. 215 (EO 215), 1989**

An EA or EIS must be prepared pursuant to the requirements of Executive Order No. 215 for major construction projects initiated or funded by "departments, agencies and authorities of the State." The determination of whether an EA is required in lieu of an EIS is dependent upon the dollar value and acreage of the proposed construction. Projects where construction costs will exceed 5 million dollars

and disturbance would be greater than 5 acres are subject to the requirement to prepare an EIS. An EIS may also be required by individual municipalities when a project exceeds certain thresholds for development established by the municipality in which the project site is located.

**9. New York City – City Environmental Quality Review (CEQR) – Executive Order No. 91, 1977 and Rules of Procedure for City Environmental Quality Review Title 62, Chapter 5, as adopted June 26, 1991**

CEQR was established to address the potential environmental concerns/issues of some of the unique aspects of urban development in New York City. Actions may be subject to CEQR if the proposed project requires discretionary approval, if the City undertakes or funds the action directly, or if the project may have a significant effect on the environment. Environmental Assessment Statements are prepared to assist in determining whether a proposed project is likely to result in significant impact. For projects with significant impact potential, an EIS is then prepared. CEQR EISs include some analysis categories, such as urban design and shadows, that do not typically appear in an EIS prepared pursuant to NEPA or SEQRA.

**TABLE 6-2: PERMITS/APPROVALS AND TRIGGERS FOR CPIP ALTERNATIVES**

<b>AUTHORITIES UNDER WHICH AN ENVIRONMENTAL IMPACT STATEMENT (EIS) IS PREPARED</b>	
Federal – National Environmental Policy Act (NEPA) of 1969	A finding of significant impact (FOSI) on the environment triggers the need for an EIS, which is then prepared in accordance with Council on Environmental Quality regulations on implementing NEPA (40 C.F.R. §1500-1508).
New York State – State Environmental Quality Review Act of 1975 (SEQRA) – 6NYCRR 617	State and local government agencies determine if a proposed action will result in significant environmental impacts. Classification of a project as Type 1 generally triggers preparation of an EIS in accordance with regulations governing the SEQRA review process found in 6NYCRR 617.
New Jersey - Executive Order No. 215 (EO 215), 1989	An EIS is required if a major construction project is initiated or funded by the State, if construction costs would exceed 5 million dollars, and if more than 5 acres would be disturbed as result of the proposed project.
New York City – City Environmental Quality Review (CEQR) – Executive Order No. 91, 1977	An EIS is required if significant impact is likely, as determine through completion of an Environmental Assessment Statement and any supporting studies, if required. CEQR reviews include some analysis categories (e.g., urban design, shadows) unique to urban environments.
<b>FEDERAL PERMITS THAT MAY BE REQUIRED</b>	
<i>United State Army Corps of Engineers (USACE) regulatory program is governed by regulations published in Title 33 of the Code of Federal Regulations (CFR), Parts 320 – 330.</i>	
USACE – Section 10 of the Rivers and Harbors Act of 1899	Permit is triggered by construction in, over, or under navigable waters of the United States, as well potential obstruction of or alteration of navigable waters.
USACE – Section 404 of the Clean Water Act (CWA)	Permit is triggered by the discharge of dredged or fill material into waters of the United States.
USACE – Section 103 of the Marine Mammal Protection, Research and Sanctuaries Act (MMPRSA)	Permit is triggered by transport of dredged material for disposal at approved ocean sites.
<b>STATE PERMITS THAT MAY BE REQUIRED</b>	
<b>New York State Permits</b>	The New York State Department of Environmental Conservation (NYSDEC) issues permits for a range of activities under the New York State Environmental Conservation Law (ECL). The state program is governed under regulations known as the Environmental Conservation Regulation (6NYCRR 608) and by the Uniform Procedures Regulation (6NYCRR 621).
NYSDEC – New York State ECL Article 15, Title 5: Protection of Waters	Permit is triggered by disturbance of the bed or banks of a protected stream or other watercourse, including adjacent wetlands; construction and maintenance of dams; and excavation and/or filling in navigable waters.
NYSDEC – New York State ECL Article 24: Freshwater Wetlands	Permit is triggered by discharge of dredged or fill material into freshwater wetlands or disturbance, including discharges, in the buffer zone.
NYSDEC – New York State ECL Article 25: Tidal Wetlands	Permit is triggered by discharge of dredged or fill material into tidal wetlands or disturbance, including discharges, in the adjacent area.
NYSDEC – New York State ECL Article 17, Titles 7 and 8: Pollution Discharge Elimination System	Permit is triggered by discharge of stormwater or other effluent.
NYSDEC – New York State ECL Article 19: Air Pollution Control	Permit is triggered by new sources of air pollution
<b>New Jersey State Permits</b>	The New Jersey Department of Environmental Protection (NJDEP) issues permits under the authority of several statutes, including the Waterfront and Harbor Facilities Act of 1914, the Coastal Wetlands Act of 1970, the Coastal Area Facility Review Act, the Freshwater Wetlands Protection Act, Shore Protection laws, Tidelands Statutes, the Ninety-Day Construction Permit Law, and the Harbor Clean-Up Bond Issues of 1977 and 1980.
NJDEP – Waterfront Development Permit, N.J.S.A. 12:5-3	Permit is triggered by any development (e.g., piers, bulkheads, dredging) in a tidally flowed waterway, including tidal wetlands.
NJDEP – New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B	Permit is triggered by any activity proposed in wetlands (e.g., filling, excavation, pile driving, cutting vegetation).

**TABLE 6-2: PERMITS/APPROVALS AND TRIGGERS FOR CPIP ALTERNATIVES  
(CONTINUED)**

<b>New Jersey State Permits (continued)</b>	
NJDEP – New Jersey Stream Encroachment, Flood Hazard Area Control Act, N.J.A.C. 7:13	Permit is triggered by any construction activity or land disturbance within a mapped floodplain.
NJDEP – Pollution Discharge Elimination System – N.J.A.C. 7:14A	Permit is triggered by discharge of stormwater or other effluent.
NJDEP – Air Pollution Control N.J.A.C. 7:27	Permit is triggered by new sources of air pollution
<b>LOCAL PERMITS THAT MAY BE REQUIRED</b>	
<i>Within New York City, depending on whether or not the work is done on the applicant's property, permits may be required to demonstrate that the work would comply with building standards and codes. In the State of New Jersey, Newark, Elizabeth, Bayonne, and Jersey City may have local permits that could be required for work at facilities discussed in the CPIP. Local approvals, not referred to as permits, may also be required.</i>	
<b>New York City Permits</b>	New York City permits may be triggered by several factors, e.g., who owns the property, what type of work would be undertaken. Often permits from City agencies are obtained after federal and state requirements are met.
NYC – Department of Business Services	Permit is triggered if work is done on property owned by the City of New York.
NYC – Waterfront Development Requirements, Uniform Land Use Review Procedure 1990 (ULURP) and Special Zoning Districts – NYC Office of City Planning	ULURP is triggered by several actions including, but not limited to, changes in the City Map, disposition of city property, waterfront landfills, site selection for capital projects, and designation or change of zoning districts.
<b>Other Localities (Bayonne, Elizabeth, Newark, and Jersey City)</b>	CPIP facilities are located in these cities. All will have local laws that may require authorizations.
New Jersey localities	Permits are triggered by a variety of actions. Prior to undertaking any projects requirements of each locality should be investigated independently.
Soil Conservation Districts in New Jersey	Required sediment and erosion control plan is triggered by ground disturbance of 5,000 square feet or more.
<b>CONCURRENCES OR CERTIFICATIONS THAT MAY BE REQUIRED</b>	
<i>Certain authorizations (e.g., certifications, concurrences, licenses, leases, etc.) must be obtained prior to undertaking a Federal action, including issuance of a permit. These authorizations are often related to other federal programs or laws that are administered by the states. Similarly, state actions or permits may require or be dependent upon receipt of other authorizations, including leases or land grants related to property. These "other governmental authorizations," the authorities from which they derive, and the state's administration of these programs are discussed below.</i>	
<b>Coastal Zone Management Program Consistency Certification Concurrence</b>	Federal activities, including permit issuance, affecting land or water resources located in the coastal zone must be consistent with Federally approved, state-administered coastal zone management plans. Project proponents certify that their project complies with the state program and the responsible state agency either concurs or denies concurrence with the certification.
New York State Department of State (NYS DOS), Division of Coastal Resources	Consistency review is triggered by a federal action in or affecting the coastal zone.
New York City Department of City Planning, New York City Waterfront Revitalization Plan Compliance	Consistency review is triggered by a project located in the coastal zone requiring a federal, state or local discretionary action.
New Jersey Department of Environmental Protection (NJDEP), Coastal Zone Management Program	Consistency review is triggered by a federal action in or affecting the coastal zone.
<b>Section 401 Water Quality Certification</b>	This Act controls the discharge of pollutants and wastes into aquatic environments. Section 401 of the CWA requires certification that a project complies with the water quality standards, established by the state, for actions within its waters. CWA provisions to which Section 401 water quality certification applies include Section 404 permits from the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency National Pollution Discharge Elimination System permits.

**TABLE 6-2: PERMITS/APPROVALS AND TRIGGERS FOR CPIP ALTERNATIVES  
(CONTINUED)**

New York State Environmental Conservation Regulation 6NYCRR 608	Certification is triggered by the discharge of dredged or fill material into waters of the United States.
New Jersey – N.J.A.C. 7:7E	Certification is triggered by the discharge of dredged or fill material into waters of the United States.
<b>State Owned Lands Underwater/ Riparian Rights (State Reviews)</b>	Underwater lands are owned by the states unless rights to the lands have been conveyed to others. Authorization to use public underwater land requires authorization from the state agency charged with protecting those lands.
NYSDOS Office of General Services (OGS) Review	Certification is triggered by the discharge of dredged or fill material into waters of the United States.
<b>NJDEP Bureau of Tideland Management (BTM) Review</b>	Certification is triggered by the discharge of dredged or fill material into waters of the United States.
<b>General and Transportation Clean Air Act Conformity Statements</b>	A General Statement of Conformity (GSOC) is required for all Federal projects that would occur within a nonattainment area (i.e., a region that fails to meet one or more National Ambient Air Quality Standards (NAAQS) for designated air pollutants). A Transportation Statement of Conformity is required for all Federal transportation projects that would take occur within a nonattainment area.
Compliance with New York State Implementation Plan (SIP)	A non-exempt Federal action cannot interfere with or hinder progress of the SIP in reaching attainment with NAAQS.
Compliance with New Jersey State Implementation Plan (SIP)	A non-exempt Federal action cannot interfere with or hinder progress of the SIP in reaching attainment with national ambient air quality standards.
<b>REGULATORY AGENCY CONSULTATIONS THAT MAY BE REQUIRED</b>	
<i>Federal regulatory approvals require consultation with federal and state agencies, as well as an opportunity for the public to comment, prior to making a permit decision. The consultations are required under authority of several statutes.</i>	
<b>Fish and Wildlife Coordination Act (FWCA) of 1958, as Amended, (16 U.S.C 469 et seq.)</b>	Consultation is triggered by issuance of a Public Notice or Letter of Coordination issued by USACE.
<b>Endangered Species Act (ESA) of 1973 as Amended, (16 U.S.C. 1531 et seq.)</b>	Consultation is triggered when the National Marine Fisheries Service or the Fish and Wildlife Service determine that an action may have an impact on a threatened or endangered species or the species habitat.
NYSDEC, Division of Fish, Wildlife & Marine Resources, New York Natural Heritage Program Database Review	Database review is triggered by written request for information on listed species or their habitat that may be found in proposed project area.
NJDEP, Division of Parks and Forestry, Office of Natural Lands Management, Natural Heritage Program, Database Review	Database review is triggered by written request for information on listed species or their habitat that may be found in proposed project area.
<b>Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 et seq.) Essential Fish Habitat (EFH) Consultation</b>	Consultation is triggered by any federal action that may have an impact on EFH or on EFH-designated species.
<b>National Historic Preservation Act (NHPA) of 1966 (as amended) (16 USC 70) - Section 106 Consultation</b>	Consultation is triggered by any federal action that may have an effect on historic properties listed in or eligible for listing in the National Register of Historic Places.
New York State Office of Parks, Recreation, and Historic Preservation (NYSOPRHP) Consultation	This agency will consult with the federal agency on potential impacts to historic properties in State of New York.
New York City Landmarks Preservation Commission (NYCLPC) Consultation	This agency will consult with the federal agency on potential impacts to historic properties that it has designated as landmarks in New York City.
New Jersey Historic Preservation Office (NJHPO) Consultation – New Jersey Register of Historic Places Act.	This agency will consult with the federal agency on potential impacts to historic properties in State of New Jersey.
<b>Department of Transportation (DOT) Act of 1966 - Section 4(f) Analysis and Consultation (FHWA and FTA)</b>	Consultation is triggered when either FHWA or FTA propose to use land from a significant publicly owned public park, recreation area, wildlife or waterfowl refuge, or any significant historic site for a project.