U.S. Department of Transportation
Federal Railroad Administration

# Record of Decision

# HIGH SPEED RAIL EMPIRE CORRIDOR

U.S. Department of Transportation, Federal Railroad Administration

New York Department of Transportation

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# NEPA RECORD OF DECISION (ROD)/SEQR FINDINGS STATEMENT

## ROD-1. Introduction

This Record of Decision (ROD) documents the Federal Railroad Administration's (FRA) decision with regard to the High Speed Rail Empire Corridor Program ("Program") Tier I Environmental Impact Statement (EIS). In making its decision, FRA considered the information and analysis included in the Tier I Draft and Final EISs for the Program and public and agency comments.

FRA has prepared this ROD in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 et seq.), the Council of Environmental Quality (CEQ) NEPA Regulations (40 C.F.R. Parts 1500-1508), the FRA Procedures for Considering Environmental Impacts (64 Federal Register 28545 [May 26, 1999]), and FRA's Update to NEPA Implementing Procedures (78 Federal Register Part 2713 [January 14, 2013]). The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) were involved with the development of the Project throughout the NEPA process as cooperating agencies in accordance with the CEQ regulation 40 C.F.R. § 1508.5, in addition to the U.S. Coast Guard, the U.S. Environmental Protection Agency, and the New York State Office of Parks, Recreation, and Historic Preservation.

This document also presents the Findings Statement prepared in accordance with New York State Department of Transportation (NYSDOT) *Procedures for the Implementation of the State Environmental Quality Review Act* (17 New York Codes, Rules and Regulations [NYCRR] Part 15). NYSDOT has considered the facts and conclusions in the Tier 1 Final EIS and determined that the requirements of Article 8, Section 8-0109 of the New York Environmental Conservation Law (ECL) and implementing regulations have been met.

The proposed High Speed Rail Empire Corridor Program evaluates proposed improvements to intercity passenger rail services along the 464-mile Empire Corridor, connecting Pennsylvania (Penn) Station in New York City with Niagara Falls International Railway Station and Transportation Center in Niagara Falls, New York.

FRA and NYSDOT are using "tiering" to complete the environmental review, which is a phased environmental review process applied to environmental reviews for complex projects. In this initial phase, a Tier 1 EIS and Service Development Plan (SDP) were developed. The Tier I EIS qualitatively addresses broad corridor-level issues and sets forth a package of follow-on studies, proposals, and projects. The SDP provides a detailed definition of the service improvements and transportation network, and the operational and financial aspects for the alternative for passenger rail service that is selected through the NEPA process. Later Tier 2 assessments will analyze, at a greater level of detail, site-specific operations and proposals to be implemented as a phased package of separate improvement projects for appropriate Tier 2 NEPA assessments.

This ROD/Findings Statement:

- Describes the NEPA/State Environmental Quality Review (SEQR) process for publication and review of the Tier 1 EIS;
- Presents the Program background, including Program history, location, existing transportation corridor;
- Presents Program Purpose and Need;

- Identifies the alternatives considered, describes the Selected Alternative and reasons for the selection, and identifies the Environmentally Preferable Alternative;
- Summarizes the potential environmental impacts of the Selected Alternative; and
- Presents potential measures to avoid and minimize harm as well as future analysis for Tier 2.

## ROD-2. Background

The possibility of instituting high speed rail along the Empire Corridor has been the focus of studies by NYSDOT and others for more than twenty years. Developments in recent years by FRA and NYSDOT/New York State have advanced rail planning and funding at both the federal and state levels, culminating in the Tier 1 EIS to evaluate high speed passenger rail service along the Empire Corridor.

The Empire Corridor is one of eleven designated high speed rail corridors nationwide and connects New York City with the largest cities in New York State, extending north through Yonkers, Poughkeepsie, and Hudson, and turning west at Albany to extend through Schenectady, Utica, Syracuse, Rochester, Buffalo, and terminating at Niagara Falls. The corridor developed along the historic "Water Level Route" that followed the canal system connecting Lake Erie and the Hudson River to transport goods and services to and from New York City. The Empire Corridor helped to establish New York City as an international trade center, connecting markets in Canada and the Midwest with Albany (providing connections to Montreal and Boston) and New York City. For many decades, the railroad was operated by the New York Central Railroad as a four-track high speed mainline between Albany and Buffalo carrying passenger and freight trains on express and local tracks. As part of cost-saving measures that started in the late 1950s, tracks were removed, and the line exists today as a double track system through upstate New York (between Albany and Buffalo), where it is a heavily used shared-use corridor with freight, and it continues as a single track on portions of the line extending north to Niagara Falls.

The Empire Corridor consists of three main sections: Empire Corridor South, Empire Corridor West, and Niagara Branch, as shown in Exhibit ROD-1.

- **Empire Corridor South** begins at Penn Station in New York City and extends 142 miles along the east side of the Hudson River, from Manhattan through the Bronx, Yonkers, Croton-Harmon, Poughkeepsie, Rhinecliff, and Hudson, to Albany-Rensselaer Station. Empire Corridor South is dominated by commuter travel and carries a much greater frequency of intercity passenger rail services and only a limited number of freight trains.
- **Empire Corridor West** extends 294 miles west from Albany-Rensselaer Station to just east of the Buffalo-Exchange Street Station, passing through the cities of Albany and Schenectady, through the central-western New York cities of Utica, Syracuse, and Rochester to Buffalo on Lake Erie.
- The **Niagara Branch** extends 28 miles north, from east of Buffalo-Exchange Street Station to Niagara Falls.

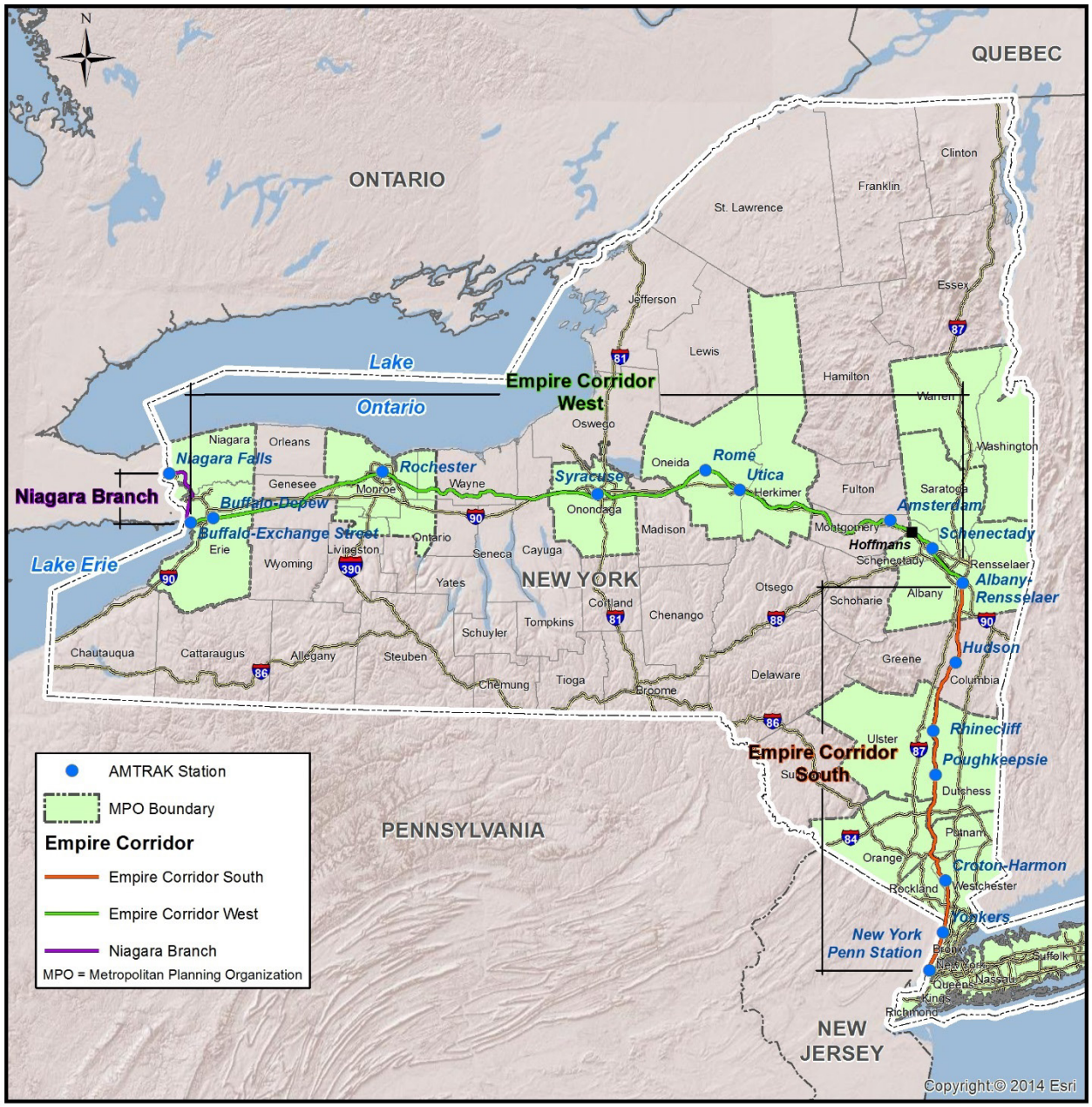



**Exhibit ROD-1—Program Location Map**

CSXT owns more than half of the Empire Corridor, primarily along Empire Corridor West and Niagara Branch. The Tier 1 EIS was developed in consideration of two agreements between NYSDOT and CSXT (dated May 28, 2010, referred to as the "Agreements"), that are both included as Appendix J in the Tier 1 EIS. CSXT agreed to work with NYSDOT as the Tier 1 EIS was developed by providing assistance and technical guidance, as well as documents and access to its property, as outlined in the Agreements. NYSDOT will consider the Agreements when implementing the Selected Alternative chosen by NYSDOT and FRA on property owned by CSXT; however, the negotiation of the actual value of any compensation to CSXT is not part of this Tier 1 EIS, and it will be developed if and when necessary as part of Tier 2 Program advancement. For these reasons, independent analysis by CSXT

of the impacts to CSXT property will be extremely important and valuable to NYSDOT and FRA as the NEPA process continues.

## ROD-3. NEPA/SEQR Process

Because of the magnitude of the Program study area, approximately 500 miles long, and the conceptual level of Program detail, NYSDOT and the FRA chose a "tiered" approach in developing the environmental documents for this Program. The Tier I Environmental Impact Statement is a program-level environmental document that presents a corridor-level review of the study area alternatives.

The publication of the Tier 1 Draft EIS in the Federal Register on January 31, 2014, was a major milestone in the tiered review process for this Program. Availability of the Tier 1 Draft EIS and notices of public hearings were widely advertised and made available online at the Program website at: https://www.dot.ny.gov/empire-corridor/deis. Publication of the Tier 1 Draft EIS included mailing notification letters to regulatory agencies; federal, state, local, and elected officials; tribes; and the public. NYSDOT held six public hearings across the state during the comment period: in Albany, Syracuse, Buffalo, Rochester, Utica, and Poughkeepsie. The public comment period, originally scheduled to close on March 24, 2014, was extended to April 30, 2014. NYSDOT held three additional public meetings in April after the public hearings, but prior to the close of the public comment period. NYSDOT held two of these meetings in the Niagara region and one meeting in the Albany region. Additional information on public involvement can be found in Chapter 7 of the Tier 1 Final EIS.

FRA received nearly 1,000 comments during the public comment period. The number and types of comments received during the public comment period reflect broad-based support for introducing rail improvements that increase service and travel speeds and the high level of public interest in improvements in the Empire Corridor. The Tier 1 Final EIS considered public and agency comments received during the public comment period and identified a Preferred Alternative to provide improvements in rail operations in the corridor. The comments on the Tier 1 Draft EIS were addressed in Appendix K of the Tier 1 Final EIS, which included responses to agencies, railroads (including CSXT), tribes, other stakeholders, and the general public.

## ROD-4. Purpose and Need

## ROD-4.1. Purpose of the Program

The purpose of the High Speed Rail Empire Corridor Program is to introduce higher passenger-train speeds on the Empire Corridor and improve reliability, travel times, service frequency, and passenger amenities. The High Speed Rail Empire Corridor Program will improve passenger rail service along the corridor and, in so doing, attract additional passengers, increase travel choices, and contribute to a balanced, multi-modal transportation system.

Improved service along the Empire Corridor will better connect the principal population centers of western New York State with Albany and New York City, further enhancing connections to Northeast Corridor (NEC) passenger rail service (Philadelphia and Washington) and other markets (Midwest and New England) and facilitating international travel to Canada. Its location within one of the most populated regions in the country, as well as its importance to national and international freight traffic, underscores the importance of the Empire Corridor to regional development. Providing time-

sensitive and efficient service will, in turn, promote economic vitality, improve quality of life for residents, and reduce automotive travel and emissions.

## ROD-4.2. Need for the Program

The High Speed Rail Empire Corridor Program is being undertaken to reduce infrastructure constraints and accommodate existing and projected demand.

**Reduce Infrastructure Constraints**

The Empire Corridor is distinguished by its diversity of private and public ownership and mix of passenger and freight usage. Empire Corridor West is the most important and heavily used freight route in the state, carrying one of the highest volumes on the CSXT system nationwide. Metropolitan Transportation Authority's (MTA's) Metro-North Railroad (Metro-North), operating the Hudson Line commuter rail service on the southern half of Empire Corridor South, is the second busiest commuter railroad in the country. Outside of the Northeast Corridor, Amtrak intercity passenger services run almost exclusively on railroads owned and controlled by private freight and commuter railroads. This can create delays due to freight and commuter train interferences, track work, and slow orders.

Speed restrictions caused by the competing uses of the rail system are one of the most common causes of delay along Empire Corridor South between Albany-Rensselaer and Penn Station. Passenger rail service in Empire Corridor West is also frequently delayed as a result of the volume of freight and passenger service that shares the corridor's constrained infrastructure west of Albany-Rensselaer Station. While demand for service on the Empire Corridor has grown, the system operates as a two-track system west of Schenectady, and it is reduced to single-track in two places on the 27-mile section of track between CP169 at Hoffmans, New York and CP142 at Albany-Rensselaer.

Deferred infrastructure maintenance along the Empire Corridor has resulted in areas of speed restrictions that further reduce capacity (as detailed in Section 2.1.2 of the Tier 1 Final EIS), including the Livingston Avenue Bridge between Albany-Rensselaer and Schenectady Stations, where speed is presently restricted to 15 mph. FRA issued a Finding of No Significant Impact and Final Section 4(f) Determination in October 2022 on the Environmental Assessment/Draft Section 4(f) Evaluation for the project. There are several yards and industrial lead tracks that also contribute to congestion and negatively affect travel times and reliability for both freight and passenger rail services.

**Accommodate Existing and Projected Demand**

Despite these constraints and service problems, ridership on the Empire Corridor (including the Maple Leaf Service) had increased by 54 percent (561,881 passengers) over 17 years to 1.6 million passengers in 2019. The total ridership on all services operating on the line in 2019 had increased to 2.1 million passengers (including ridership on the Adirondack, Ethan Allen, and Lake Shore Limited). The Tier 1 Final EIS documented historic increases in ridership through 2019, as the latest available pre-pandemic condition. Since 2001, ridership on the Buffalo to Albany portion of the corridor had more than doubled, at the same time freight and commuter rail volumes had grown. Projections through 2035 indicated that freight traffic will continue to increase, and forecasts for the Metro-North Hudson Line, located along the Empire Corridor South, had also predicted substantial increases. The Hudson Line ridership increased 50 percent over 25 years to reach 17.4 million passengers in 2019, an increase of 5.8 million passengers. Congestion was expected to only worsen as demand for intercity passenger, commuter, and freight rail services all continue to grow on these shared-track systems.

Despite reduced or suspended services that operated during COVID, ridership, particularly on the Hudson Line, has rebounded by at least 75%, and in some locations (Yonkers (8.1% increase), Poughkeepsie (1.1%), Amsterdam (6.4%), Rome (22.7%), and Buffalo-Exchange Street (10.37%)) has exceeded 2019, pre-COVID levels, driven in part by increases in people relocating to the Hudson Valley and added leisure trips. Amtrak has added, in the last year, an additional service stop to Pittsfield, Massachusetts, on the seasonal Berkshire Flyer from New York City through Albany (operated as a 2022-2023 pilot program by the Massachusetts Department of Transportation). In addition, over the past year, the Ethan Allen Express service has extended service beyond Rutland to Burlington, and ridership on this line has increased to levels that are 28% higher than 2019 ridership. Despite cutbacks in service that included the complete suspension of the Adirondack service and reduced frequency of service on Empire Corridor itself, ridership statistics show only 10% to 12% decline from 2019 to 2022 in total services running on Empire/Empire Service. This decline includes the decrease attributed to suspension of the Adirondack Service, which has not yet resumed service and which comprised 5% of the total ridership on all lines operating on Empire Corridor in 2019. The total decline at Empire Corridor Stations was a combined average of 6.26% between 2019 and 2022, which is consistent with this anticipated decline in ridership. Moreover, ridership statistics from 2021 to 2022 show a substantial rebound in ridership of 65% to 68% on all services/Empire Services, and increases of over 400% on the Ethan Allan, even though full service matching pre-COVID levels has not yet been entirely restored. The average increase in Empire Corridor station ridership was 49.7% between 2021 and 2022. It is anticipated that full restoration of services and expansion/improvement of services will contribute to further increases in ridership. Amtrak is projecting increases system-wide that will restore ridership levels to pre-pandemic levels by 2024 and has a goal of doubling ridership by 2040.

## ROD-4.3. Goals and Objectives

FRA and NYSDOT propose to undertake the Program to improve intercity passenger service in New York State through infrastructure investments and operational improvements, which will:

- Enhance the attractiveness of the service to existing and potential riders,
- Increase the market share of intercity passenger rail, and
- Contribute to an overall balanced transportation network.

Improvements in service include tangible and measurable gains in operational reliability and travel time reductions of scheduled train trips; an increase in the frequency of train trips; and support of economic development, mobility, and environmental sustainability goals.

FRA and NYSDOT have identified the following performance objectives for the High Speed Rail Empire Corridor Program as measurable objectives that directly relate to the Program Purpose and Need to reduce infrastructure constraints to accommodate existing and projected demand:

- Improve system-wide on-time performance (OTP) to at least 90 percent,
- Reduce travel time along all segments of the Empire Corridor,
- Increase the frequency of service (number of daily round trips) along Empire Corridor West beyond the existing four daily round trips,
- Attract additional passengers,
- Reduce automobile trips, thereby reducing highway congestion,

- Minimize interference with freight rail operations.

These six performance objectives were used to evaluate and rank the high speed rail alternatives developed for the High Speed Rail Empire Corridor Program. The environmental impacts and costs of these alternatives are also considered, as presented in the Tier 1 Final EIS, and were an important factor in selecting the Selected Alternative.

In addition, NYSDOT identified the following transportation-related goals for the High Speed Rail Empire Corridor Program:

- Increase travel choices and improve quality of life by providing additional commuting and travel options for residents and workers,
- Contribute to economic revitalization by accommodating forecasted growth in population and employment and corridor rail freight operations and by accommodating and attracting additional tourists,
- Improve environmental quality by facilitating rail use and reducing reliance on automobile travel, thereby reducing fuel use and greenhouse gas (GHG) emissions.

## ROD-5. Alternatives

This section summarizes the alternatives analysis process, the alternatives evaluated in the Tier 1 Draft EIS and the Tier 1 Final EIS, and the process of identifying the Preferred Alternative. The Tier 1 Draft EIS and Final EIS analyzed multiple alternatives, including the Base Alternative, also known as the No-Build Alternative. The screening and selection of alternatives was performed in phases. An initial screening of the range of service levels and speeds formed the basis for selecting the five alternatives considered in the Tier 1 Draft EIS. Based on analysis performed in the Tier 1 Draft EIS. and review of comments received, the Tier 1 Final EIS selected a Preferred Alternative for the High Speed Empire Corridor Program, as described below. Additional information on screening criteria may be found in Chapters 3 and 6.

## ROD-5.1. Initial Alternatives Considered

NYSDOT developed an initial range of possible alternatives within the framework of six maximum authorized speed groups. The six maximum authorized speed groups for the alternatives development consisted of:

- **79 mph,** current track standards/in cab signaling capacity – **Base, 79A, 79B, 79C Alternatives**;
- **90 mph**, next step up in track standards/in cab signaling train control – **Alternatives 90A/90B**;
- **110 mph**, another step up in track standards – **Alternative 110**;
- **125 mph**, the first speed threshold for electrically powered trains – **Alternative 125**;
- **160 mph**, the practical upper limit of electrified dynamic tilt trains, such as Acela; and
- **220 mph**, the practical upper limit of high speed rail operations.

In addition to applying speed categories for high speed rail service levels, alternatives development also included an evaluation of service frequency, equipment requirements, and previously identified and potential physical improvements to enhance service.

The ten initial alternatives were identified according to speeds and service frequencies, then screened according to the Program Purpose and Need and associated performance goals and

objectives. Applying a consistent set of performance measures based on the Program Purpose and Need and a comparative assessment of the alternatives, certain alternatives were not advanced. These included:

- **Lower-speed 79 mph maximum authorized speed alternatives**: The 79 mph alternatives were rejected as not providing enough mobility benefit – in terms of speed and travel times – compared to the similar cost 90 mph alternatives.
- **Very High Speed (VHS) alternatives (160 mph, 220 mph):** The VHS alternatives were rejected for their extremely high cost – nearly triple the next most costly alternative – the likelihood of significant community and environmental impacts, and significant engineering design difficulties necessary to create a sufficiently straight track alignment to permit these speeds.

The options retained for further evaluation are discussed in the next section.

## ROD-5.2. Alternatives Advanced in Tier 1 Draft EIS

Five alternatives—the Base Alternative and four Build Alternatives—were advanced for further study in the Tier 1 EIS. Two alternatives with **90 mph maximum authorized speeds (MAS) were evaluated (Alternatives 90A and 90B)**, in addition to a **110 mph MAS alternative (Alternative 110)**, located along the existing Empire Corridor. An alternative with **125 mph MAS (Alternative 125)**, would continue existing service on the existing tracks while adding a new, separate high speed right-of-way reserved exclusively for express service for passenger trains and paralleling the existing alignment, as shown in Exhibit ROD-2.

Each Build Alternative includes the same suite of capital improvements for the Empire Corridor South (south of Albany/Rensselaer). Those enhancements were developed and agreed by the owners and operators of the Empire Corridor South and are set forth in the *Hudson Line Railroad Corridor Transportation Plan* (2005).[1]

For the Empire Corridor West (west of Albany/Rensselaer), the Tier 1 Final EIS analyzed additional alternative sets of improvements and projects. The following section describes the four High Speed Rail Empire Corridor Program alternatives that were considered in the Tier 1 Final EIS.

- **Base Alternative:** The Base Alternative, also referred to as the No-Build Alternative was carried through the Tier 1 EIS, as required by NEPA/SEQR, as the basis for comparing the cost and impacts of the Program's Build Alternatives in relation to the benefits gained by the public. The Base Alternative represents a continuation of existing Amtrak service with those operational and service improvements already programmed or constructed. Eight rail improvement projects that were planned and funded to address previously identified capacity constraints comprised the Base Alternative, and all have since been completed.

[1] the Hudson Line Railroad Corridor Transportation Plan Final Report, prepared in 2005 by Amtrak, Canadian Pacific Railway, CSXT MTA Metro-North Road, and NYSDOT

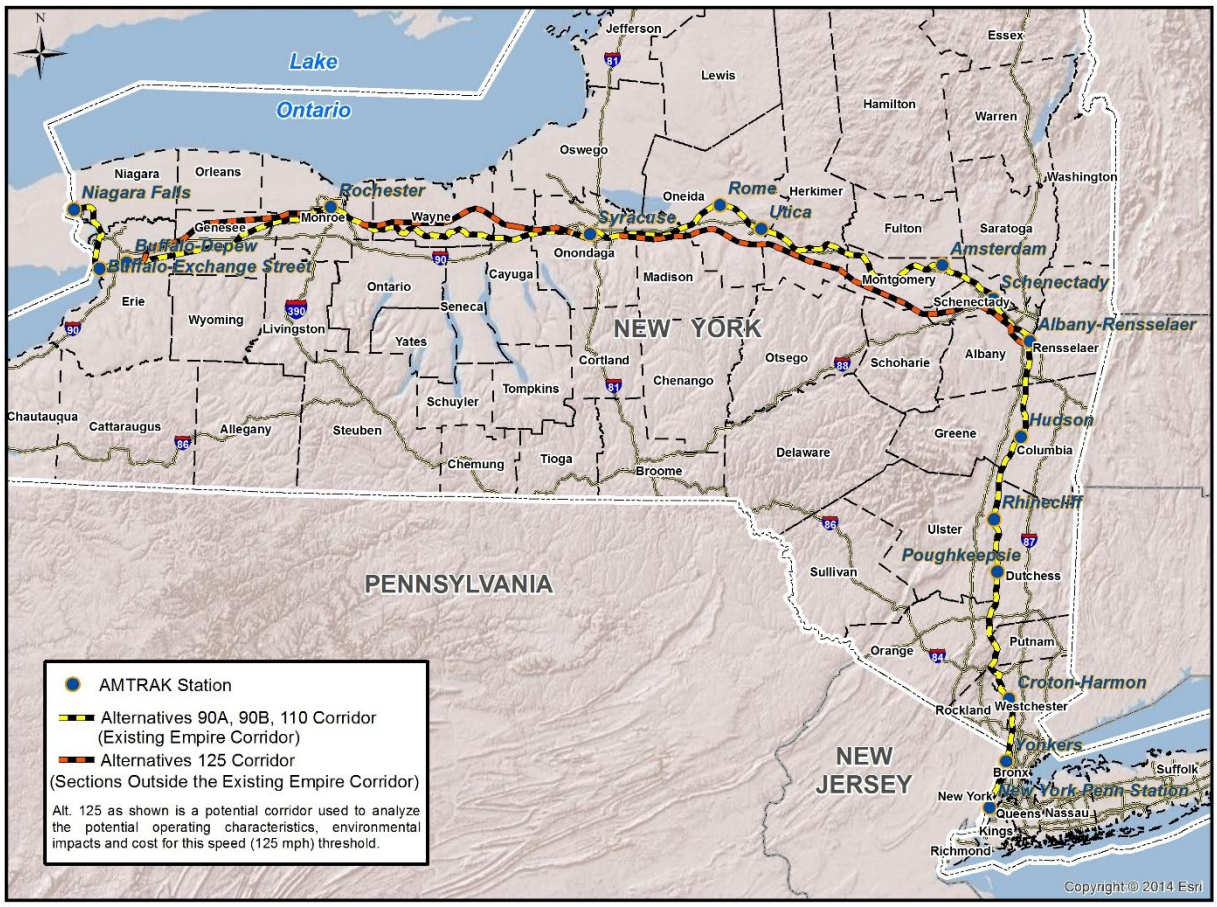



**Exhibit ROD-2—Corridor Map of the Build Alternatives**

Train frequency remains unchanged from the existing frequency. The Base Alternative would maintain the existing 13 round trips per day between New York Penn Station and Albany-Rensselaer Station and the four round trips per day between Albany-Rensselaer Station and Buffalo, with three trips continuing to Niagara Falls. The majority of the work would occur within the existing right-of-way (ROW). Train trips would continue to operate at the existing maximum speed of 79 mph. The Base Alternative would have the lowest impacts and cost, but results in the fewest transportation benefits, and fails in significant terms to achieve the Program goals and does not meet the Program Purpose and Need.

- **Alternative 90A:** Alternative 90A would add capacity and station improvements through twenty separate, capital improvement projects. Improvements for Alternative 90A would include 64 miles of new mainline track; and upgrades to 74 undergrade bridges (railroad bridges over roadways) and six stations/facilities. Trains would operate at 90 mph maximum authorized speed between Schenectady and Buffalo-Exchange Street. Alternative 90A would add three daily round trips between New York City and Albany, for a total of 16 round trips. It would also add four daily round trips between Albany and Niagara Falls, for a total of eight round trips to Buffalo, with seven continuing to Niagara Falls. Alternative 90A would cost $1.4 billion more than the Base Alternative.

  Although costs would be lower for Alternative 90A, this alternative, along with the Base Alternative, would have the poorest operating ratios (75%-76%) and cost-effectiveness of the

alternatives considered, both requiring an annual subsidy per rider of $17. Alternative 90A would not involve work outside of the right-of-way, but it would also not provide the transportation benefits provided by the Preferred Alternative-90B and would not meet the Program goals and the Program Purpose and Need.

- **Alternative 90B—Preferred Alternative:** Alternative 90B would include the improvement projects proposed under Alternative 90A and would construct new third and fourth main tracks to support the 90 mph maximum authorized speed. Alternative 90B would add approximately 370 miles of additional trackage, including a dedicated third main passenger track over 273 miles between Schenectady and Buffalo-Depew stations. The third main passenger track would be located 15 feet from the existing mainline and would generally occupy the portion of the existing railroad bed that historically contained two additional tracks. It would also add a fourth passenger track over a combined distance of approximately 39 miles in five separate locations. The fourth track would be located 15 feet north of the dedicated third track and have been designated with a maximum authorized speed of 90 mph. Alternative 90B improvements would include those Empire Corridor South Hudson Line Transportation Plan elements common among all of the Build Alternatives.

  Alternative 90B was identified as the Preferred Alternative in the Tier 1 Final EIS. Alternative 90B would result in the best on-time performance (OTP), 95.4 percent, for passenger rail and the least delays and the second-best trip times for freight operations along Empire Corridor West, as described in Section 6.3.2 of the Tier 1 Final EIS. For freight operations, the delay-minutes would be between 2 and 10 minutes faster per 100 train miles operated than the other alternatives and would be 32 minutes, 47 seconds per 100 train miles operated. The trip time between Selkirk Yard to Buffalo would be 8 hours 9 minutes, faster than all but Alternative 110. These improvements are anticipated to improve freight trip times between Selkirk Yard and Albany and Buffalo in 2035 by at least 5 minutes and up to 14 minutes compared to most of the other alternatives.

- **Alternative 110:** Alternative 110 would include the improvement projects proposed under Alternative 90A and would construct new third and fourth main tracks to support the 110 mph maximum authorized speed. Alternative 110 would add approximately 384 miles of additional trackage, including a dedicated third main passenger track over 273 miles between Schenectady and Buffalo-Depew stations. For reasons of safety, CSXT, the owner of the right-of-way, requires a 30-foot separation between freight and passenger tracks when passenger trains operate at 110 mph. In many places on the route, this is only possible by acquiring significant additional property. Because of the required property acquisition, Alternative 110 has significantly higher costs and greater potential for environmental impacts than Alternative 90B, while only achieving a modest improvement in overall performance. It would also add a fourth passenger track over 59 miles in six locations. Alternative 110 would add four daily round trips between Albany and Niagara Falls, for a total of eight daily round trips to Buffalo, and it would add four daily round trips along Empire Corridor South, for a total of 17 round trips.

  While Alternative 110 would improve frequencies, travel times, and attract more passengers than Alternative 90B, the differences are relatively minor. Alternative 110 would cost 12 percent, or $720 million, more than the Preferred Alternative, Alternative 90B, and would cost $6.38 billion more than the Base Alternative. Alternative 110 would not fully meet the goal of minimizing impacts to freight rail service because the passenger trains operating at a higher maximum speed would increase the potential for interference with freight trains. Alternative 110 would also require more right-of-way takings and would incur significantly more property takings (impacting 53 areas in 8 counties) and environmental impacts than the Preferred Alternative.

- **Alternative 125:** Alternative 125 would include improvements for Alternative 90A along Empire Corridor South and the Niagara Branch. Alternative 125 would continue the current Amtrak service on the existing right-of-way ("legacy service"). To achieve the highest speed among the alternatives, however, Alternative 125 would also add a new two-track, grade-separated high speed rail corridor of 283 miles between Albany/Rensselaer Station and a new Buffalo-Exchange Street Station. Within the densely developed areas around Albany, Syracuse, Rochester, and Buffalo, the new corridor would roughly parallel the existing corridor on a combination of new and existing right-of-way, with tracks elevated in sections. Alternative 125 would provide a total of 19 daily round trips between Albany, and Buffalo, of which six would continue on to Niagara Falls. Four daily round trips would be retained on the existing corridor and 15 daily high speed express round trips would be added on the new corridor. All of the trips on the new corridor would be express service servicing existing stations at Albany-Rensselaer, Syracuse, Rochester, and a new Buffalo-Exchange Street Station.

  Alternative 125 would attract the most passengers and would perform the best in terms of travel times and frequency for the express service only. However, Alternative 125 would have the highest cost, costing $15.4 billion more than the Base Alternative and almost $10 billion more than the Preferred Alternative. Moreover, it would involve substantially greater impacts, as it would require the assembly and acquisition of public and private lands along the 280-mile Albany-to-Buffalo corridor. An estimated two to three thousand acres of land would be needed. It also would not improve either existing freight service on Empire Corridor West or legacy Amtrak service to destinations along the existing Empire Corridor not serviced by the 125 express (Schenectady, Amsterdam, Utica, Rome, and Niagara Falls).

## ROD-5.3. Environmentally Preferable Alternative

Under the Council of Environmental Quality (CEQ) NEPA regulations, an agency must identify the alternative considered to be environmentally preferable (40 C.F.R. 1505.2). FRA weighed and balanced the environmental effects associated with the Build Alternatives, as well as those associated with the Base Alternative. Considering these factors, as well as input from the public and agencies, FRA determined Alternative 90B was the alternative that meets Purpose and Need and minimizes environmental impacts. Although it would provide approximately the same amount of additional trackage (approximately 370 miles) as Alternative 110, the placement of the tracks 15 feet closer to the existing right-of-way would result in fewer property displacements and environmental impacts.

The location of the proposed tracks on the north side of the existing tracks would further minimize the impacts of Alternative 90B. The Empire Corridor historically operated as a four-track system, and, as part of cost-saving measures that started in the late 1950s, the two tracks that formerly existed on the north side were either removed or converted to sidings to save on maintenance. The new passenger tracks would be added in the former locations of these two tracks. The primary factors for installing tracks on the north side include the ability to upgrade existing sidings in place to become the third and fourth tracks.

Moreover, Alternative 90B would have far fewer environmental impacts than the other Build Alternatives that would meet the Purpose and Need, as documented in the Tier 1 Final EIS. Alternative 90B would have land use impacts in nine areas in six counties, compared to impacts that would be much more extensive for Alternatives 110 and 125.

## ROD-5.4. Selected Alternative

FRA selects Alternative 90B (referred to as the Preferred Alternative in the Tier 1 Final EIS) to advance for further project-level analysis in Tier 2 for the High Speed Rail Empire Corridor Program. Alterative 90B (Selected Alternative) is selected because of its superior ability to meet the Program's Purpose and Need while minimizing environmental impacts. When compared to each of the other alternatives evaluated in the Tier 1 Draft EIS and Tier 1 Final EIS, the Selected Alternative provides a superior balance of benefits and impacts.

The installation of additional third and fourth tracks, under Alternative 90B will add capacity and provide the ability to route passenger trains around freight trains even while passenger trains operate at higher speeds. Additional infrastructure specific to Alternative 90B includes:

- A new signal system to support the 90 mph maximum authorized speed,
- Bridge modifications, grade crossing modifications, and culvert extensions,
- Station improvements, and
- Three grade separated flyovers to carry passenger track passes over the existing freight tracks.

Trains will operate at 90 mph maximum authorized speed between Albany and Buffalo and Niagara Falls. The average running speed in Alternative 90B will increase to 61 mph, 17 percent faster than the average speed of the Base Alternative and approximately 7 percent faster than the average speed of Alternative 90A, yet it would be slower than the other higher speed alternatives.

Considering all the factors described in the Tier 1 Final EIS, Alternative 90B best meets the Program Purpose and Need and best balances the Program's benefits and effects. Therefore, FRA has identified Alternative 90B as the Selected Alternative. Alternative 90B will:

- Attract 2.6 million riders annually by 2035, a gain of 1 million passengers over the Base Alternative.
- Have an operating ratio of 81 percent that would be 25 percent higher (better) than the Base Alternative.
- Include annual subsidy per rider of $13, compared with $17 for the Base Alternative.
- Reduce travel time to 7 hours and 36 minutes westbound between New York City and Niagara Falls, a time savings compared to Base Alternative of 1 hour and 30 minutes.
- Double service frequency, with 17 roundtrips per day between New York City and Albany and 8 roundtrips continuing to Buffalo (an increase of four roundtrips for each leg over the Base Alternative).
- Include the best OTP (on-time performance) of all alternatives considered, at 95.4% (Tier 1 Final EIS Section 6.3.2/Exhibit 6-3).
- Involve the least delay-minutes (32 minutes, 47 seconds) per 100 train miles operated for freight trains of all the alternatives considered (Tier 1 Final EIS Section 6.3.2/Exhibit 6-3).

## ROD-6. Summary of Environmental Consequences

This section summarizes the potential environmental impacts of the Selected Alternative. The Tier 1 Final EIS includes a detailed environmental impact analysis of the Selected Alternative, including analysis of the following resources: socioeconomics, cultural resources, Section 4(f) resources, natural resources, hazardous materials, air quality, noise, vibration, and indirect and cumulative impacts. Direct, indirect, long-term, and short-term impacts have been evaluated for each resource. These impacts are summarized in Exhibit ROD-3 and described in the following section. As part of the Tier 2 assessments, more detailed evaluations will be performed as appropriate for the categories of impacts described below.

| Exhibit ROD-3—Summary of Environmental Impacts of the Selected Alternative | |
|---|---|
| **Land Use/ Displacements** | Potential for impacts to 9 areas in 6 counties |
| **Regional Population and Employment** | Potential for increases in population, employment and business activity , especially in vicinity of station sites. |
| **Environmental Justice/Title VI** | Mobility benefits, disproportionately high and adverse impacts unlikely. Long term benefit to urban areas anticipated. |
| **Community and Public Facilities** | No direct impacts anticipated, proximity to proposed work. |
| **Historic and Cultural Resources/Section 4(f)** | Potential for effects to 303 previously identified resources located in direct/indirect APE. |
| **Parks and Recreational Areas/Section 4(f)** | Potential for impacts at crossings of the Mohawk River and Erie Canal will be evaluated in Tier 2. |
| **Visual Resources** | Potential for impacts from 2 new station buildings and 3 flyovers, relocation of portion of scenic byway (Route 5). Potential for impacts associated with some forest clearing, land conversions, bridge modifications, proximity to adjoining properties. |
| **Farmlands** | Potential for impacts at 3 areas and 2 Agricultural Districts/actively farmed areas.<br>Potential for impacts to prime farmland soils/Agricultural Districts in at least 3 counties. |
| **Surface Waterbodies and Watercourses** | Potential for modifications and impacts at approximately 219 existing surface water crossing . |
| **Designated Wild, Scenic and Recreational Rivers** | Three segments of the Hudson River are listed on the NRI, but no impacts are anticipated. A NRI-listed segment of the Black Creek crosses where a third track will be added, with potential for impact. |
| **Navigable Waters** | Potential for modifications and impacts at 15 existing crossings over navigable waters. |
| **Floodplains** | Potential for floodplain impacts in 11 counties. |
| **Wetlands** | Potential for modifications and impacts at 493 wetland crossings |
| **Coastal Resources** | Empire Corridor South: Work will occur within the coastal zone along the Hudson River, with potential for impacts associated with new bridge construction. Of the six Scenic Areas of Statewide Significance and 11 Significant Coastal Fish and Wildlife Habitats (SCFWHs), no impacts are anticipated.<br>Empire Corridor West: Bridgework has potential to affect one coastal area (Irondequoit Creek) and SCFWH. |
| **Aquifers** | Potential impact to sole source aquifer in 1 county, state primary or principal aquifer areas in 9 counties. |
| **General Ecology and Wildlife Resources/ Threatened and Endangered Species** | Empire Corridor South: Potential for impacts to Essential Fish Habitat, aquatic species and habitat associated with Livingston Avenue Bridge replacement.<br>Empire Corridor West: Potential for impacts at 7+ locations, including National Natural Landmarks/bird conservation area, 8 significant natural communities, 46+ protected resources/species. |
| **Critical Environmental Areas** | No impacts anticipated. |
| **Air Quality** | Potential for reduction in all pollutants but one pollutant (NOx). The minor increase in NOx would conform to regulations. No significant adverse impacts. |
| **Energy and Climate Change** | Long-term reductions in energy use and GHG emissions from diversions from automotive/bus ridership. Potential for decrease in annual energy use and GHG emissions |

| Exhibit ROD-3—Summary of Environmental Impacts of the Selected Alternative | |
|---|---|
| **Noise and Vibration** | Incremental increase over existing train noise, increases over Base would be imperceptible. Potential noise impacts from existing rail traffic (including freight and commuter rail) in more urbanized areas, between New York City and Schenectady, between Syracuse and Rochester, and between Buffalo and Niagara Falls. Potential for vibration impacts from these existing sources. |
| **Contaminated and Hazardous Materials** | Potential for encountering contaminated materials, land takings limited. No impacts anticipated for track improvements. Potential for impacts associated with station improvements, bridge replacement, new ROW in 7 locations, and new structures in urban areas. |
| **Traffic and Safety** | Benefits accrue from diversion of highway/bus traffic to rail, potential construction impacts to roadways, parking areas, loading zones and pedestrian access. |

- **Land Use/Displacements:** The Selected Alternative will affect nine areas in six counties. Most of the land uses affected consist of agricultural, industrial, or wooded, undeveloped property, with limited residential or building impacts. The work may require relocation of Route 5 in Montgomery County, which could involve property impacts, and the addition of maintenance service roads could also involve property takings. Easements and temporary use of private or public property outside of the railroad right-of-way may be required for construction activities, including storage of materials and equipment, access to construction areas, and other construction-related activities.
- **Regional Population and Employment:** There will be beneficial effects related to new employment opportunities associated with construction activities and positive fiscal impacts. The location of the Program improvements almost entirely within the right-of-way will minimize the potential for business or neighborhood impacts. However, there could be potential for adverse effects to some businesses, if property or other impacts, such as temporary loss of parking or difficulty accessing businesses caused by roadway and sidewalk closures, were to occur.
- **Environmental Justice/Title VI:** The Selected Alternative station upgrades, travel time reduction, and increased trip frequency will ultimately provide a benefit to low-income and minority communities, as well as populations protected under Title VI (Limited English Proficiency populations, disabled, and elderly). Based on the Tier 1 analysis, disproportionately high and adverse impacts to minority or low-income or other disadvantaged communities would be unlikely. However, potential for transportation and environmental impacts to both Environmental Justice (EJ) and non-EJ populations will be further assessed as part of Tier 2 evaluations. As discussed in the sections above, the Program will improve mobility, which involves transportation, economic, and air quality benefits, and displacements and noise and vibration impacts are relatively minor, as discussed under Land Use/Displacements and Noise and Vibration.
- **Community and Public Facilities:** The Selected Alternative will not incur direct impact on community facilities as there are very few community facilities directly adjacent to the proposed work. No direct impacts have been identified in this Tier 1 assessment; however, the proposed work will adjoin several sites, including minor league baseball stadiums in Syracuse and Rochester, a college and state offices in Schenectady, and a cemetery in Schenectady County. Short-term impacts could include interrupted access due to traffic circulation changes during construction. Noise and vibration impacts will be possible where construction activities are near sensitive uses such as schools, healthcare and eldercare facilities, houses of worship, etc. Relocations of adjoining roadways may indirectly affect community facilities, but these potential impacts will be better defined in Tier 2.

- **Surface Waterbodies and Watercourses:** The Selected Alternative will potentially involve 219 crossings of waterways, although in many locations, there may not be a need to modify or reconstruct existing bridges or culverts. This number includes approximately 47 waterway crossings along Empire Corridor South. However, new construction of bridges and culverts, or modifications/extensions of existing crossings, or the expansion of railroad embankment itself could involve work that could affect crossing or nearby waterways and stream crossings. Potential construction impacts could include stream discharge that may be altered due to silt loading, increased siltation downstream of stream crossings, and increased potential for hazardous substance release from construction vehicles or equipment.
- **Wild, Scenic, and Recreational Rivers:** No currently designated National or State Wild, Scenic or Recreational Rivers were identified in the Program study area, and the Selected Alternative will not have the potential to impact known designated National or State Wild, Scenic or Recreational Rivers. The National Park Service (NPS) also publishes a Nationwide Rivers Inventory (NRI) list of rivers that are potentially eligible for inclusion in the National System and would also require a permit if impacted by a project. The Black Creek (potentially eligible for listing as a National Wild and Scenic River) crosses the Empire Corridor at MP 386, near the location of 11 miles of proposed third track.
- **Navigable Waters:** The Selected Alternative will involve potential for modifications at 15 existing crossings over navigable waters. Where the existing bridge crossings are wide enough, there may not be the need for additional bridgework at navigable waterway crossings. Impacts to navigation and marine users could result from construction of bridge piers and abutments, as well as temporary placement of fill or riprap, and surrounding turbidity curtains/cofferdams. Temporary impacts may include the erection of staging facilities and use of construction barges and other work boats during construction to provide access for pier construction staging or placement of spans.
- **Floodplains:** The Selected Alternative will have the potential for floodplain encroachments in 11 counties. Changes to existing drainage structures, such as culverts through the embankment, or addition of new waterway crossings may change long-term peak flow rates upstream and downstream and the 100-year surface water elevation. Placement of new or modified bridge spans could change the hydraulic openings and either increase or decrease flood flows in the long-term. Temporary construction facilities, such as construction platforms and barges within waterways, where located within a floodway, could cause temporary elevated flood elevations, depending on the extent of the construction facilities and the severity of a flood event. Construction equipment would not be permitted to be stored in the floodplain.
- **Wetlands:** The Selected Alternative will involve potential for impacts at more than 493 wetland crossings, including 39 existing and proposed crossings along Empire Corridor South. Depending on design, these wetlands features would have the potential to be directly or indirectly impacted by any dredging or filling associated with proposed work. Potential for short-term impacts on wetland resources include the placement of fill material in designated wetland areas that may cause soil erosion, sedimentation, or increased risk of contamination associated with presence of heavy equipment. Wetland impacts may also include the removal of vegetation from areas that would be later regraded and reseeded, temporary loss of aquatic habitat, erosion and sedimentation, and disturbance and displacement of wildlife during construction.
- **Coastal Resources:** Along Empire Corridor South, the railroad transects the coastal zone along the Hudson River, a designated coastal waterway, which is the area with the greatest potential for coastal impacts. The Empire Corridor crosses through 11 Significant Coastal Fish and Wildlife

Habitats (SCFWHs) and 6 Scenic Areas of Statewide Significance (SASSs) in this area. For the Selected Alternative 90B, proposed work within or adjoining these SCFWHs and SASSs along this corridor will not involve substantial impacts outside of the right-of-way, will not result in appreciable changes in visual quality, and no impacts to the scenic qualities of the SASSs are anticipated. The Selected Alternative will involve bridgework in coastal areas for the Livingston Avenue Bridge and modifying or constructing a new bridge over the Irondequoit Creek, another designated coastal waterway, and its associated SCFWH. This work will be temporary in nature and will span these coastal waters.

- **Aquifers:** The Selected Alternative will involve work overlying a sole source aquifer in one county, and work overlying state primary and principal aquifers in 9 counties. Proposed structures that will require substantial excavation, deep foundation, or dewatering, such as new stations, platform extensions and bridge construction, could impact groundwater. Any construction-related action that may release contaminants can affect underlying aquifers and potentially impact drinking water supplies.
- **General Ecology and Wildlife Resources including Critical Environmental Areas:** The Selected Alternative will involve potential for impacts at more than 7 locations, including National Natural Landmarks (NNLs)/bird conservation area, eight significant natural communities, and will affect areas with documented occurrences of more than 46 protected resources/species. If required, in-water work within the Hudson River for the Livingston Avenue Bridge could affect several protected fish species. The location of the majority of the work within the right-of-way or within previously disturbed areas will minimize the potential construction impacts to wildlife, including the elimination and/or fragmentation of forested habitat. Depending on proximity to aquatic and wildlife habitats, construction noise and construction staging areas may affect or displace some wildlife. Effects to EFH could include habitat disturbance, and, without protections in place, spawning could be affected by in-water construction work.
- **Historical and Cultural Resources/Section 4(f) Uses:** As part of the Tier 1 corridor-level screening, consistent with Section 106 of the National Historic Preservation Act (NHPA), the Area of Potential Effect (APE) defined for the historic impact assessment considered both direct effects (within 100 feet of track centerline to encompass all locations where project construction could occur) and indirect effects (within 600 feet of centerline). Although unlikely, direct, adverse effects to architectural resources due to proximal construction-related activities could include damage from high vibration levels (e.g., pile driving) and disturbance of archeological sites from grading and excavation for cuts, foundations, and viaducts. This assessment also considered the potential for the Program to incur indirect, impacts to these resources. Based on the defined Tier 1 APEs, Alternative 90B could potentially directly affect a total of approximately 154 archaeological and architectural resources (including National Historic Landmarks, National Register of Historic Places or State Register listed and eligible individual resources and districts). In addition, indirect effects could also occur to an additional 149 architectural resources. It is anticipated that Tier 2 activities could be governed under the terms of a Section 106 Programmatic Agreement (PA) executed in accordance with 36 CFR 800.14(b). The Tier 1 Draft EIS included preparing a Draft Programmatic Agreement for public review even though FRA concluded that the Tier 1 EIS and the SDP represent non-destructive program planning activities, allowed for under 36 CFR Part 800(1)(c), which have no potential to cause effects to historic properties. Therefore, the Draft Programmatic Agreement was not executed for the Tier 1 EIS and SDP. The applicability of the railroad exemptions under Section 106 (including for placement of track in former track locations within rights-of-way and railroad bridges) will be examined in

Tier 2 assessments, when details are available regarding project-specific proposals and their relationship to the railroad right-of-way and the need for additional Section 4(f) documentation will be evaluated. Program sponsors will prepare additional site-specific environmental documentation, including Section 106 documentation as appropriate, for Tier 2 component projects.

- **Parks and Recreational Areas /Section 4(f) Uses:** With the possible exception of two crossings of the New York State Canal System, direct impacts on parks or recreational areas are not anticipated. The Selected Alternative will involve adding tracks at two crossings over the Erie Canal. In Schenectady, trackwork would cross over the Mohawk River/Erie Canal on an existing bridge in the vicinity of a riverfront park and bike trail, but impacts to these recreational uses are not anticipated. The addition of additional tracks around Rochester Station will cross the Erie Canal and Erie Canalway Heritage Trail, but are not anticipated to directly affect parklands. The potential for impacts at the canal crossings will be evaluated as designs are advanced in the Tier 2 assessments, and the need for additional Section 4(f) documentation will be evaluated. Where construction would occur near or adjacent to public open space and parklands, temporary impacts, such as increased noise and reduced access may adversely affect users of the facility. The potential for impacts at the canal crossings from construction activities will be evaluated in the Tier 2 assessments.
- **Visual Resources:** The Selected Alternative will involve minor visual changes as a result of the proposed addition of railroad tracks. This alternative could add new station buildings at Amsterdam and Buffalo-Depew stations. Portions of Route 5, a scenic byway, would need to be relocated, but this would be relatively minor in nature and would not markedly change the visual setting. Three new flyovers would be added, which would be more visible, but these would be located at least several hundred feet from the nearest residences and would be located in either rural agricultural, lightly forested, or industrialized areas. Short-term visual impacts could include the temporary presence and movement of construction machinery, equipment, building materials, construction access ways, construction cranes, fences, and screens, but only in areas where there are views of the site and receptors close to the construction site.
- **Farmlands:** The Selected Alternative will have minimal impacts to actively farmed areas and little or no impacts to active farms. This alternative would largely involve work within the right-of-way, with tracks being added in the location of the former track beds or existing access roads. The proposed work will include the addition of track, as well as maintenance service roads in selected areas, which may affect areas of mapped prime farmland soils and has the potential for minor encroachments on two areas within Agricultural Districts and actively farmed fields in Herkimer and Genesee counties. If construction requires easements for construction access and laydown areas on agricultural property, this could affect the temporary use of and access to agricultural lands. In this case, there will be potential for erosion, sedimentation, and stormwater runoff. Fugitive dust from construction activities may affect farmland functions temporarily. Removal of or damage to vegetation (e.g., trees, shrubs, grass, etc.) during construction can create longer term impacts to nearby farmland. In the Tier 2 assessments, the requirements and applicability of the U.S. Farmland Protection Policy Act will be further evaluated if acquisition of prime farmlands will occur.

- **Air Quality:** The Selected Alternative will result in a small net air quality benefit on a regional scale, with a reduction in all pollutants other than NOx.[2] The minor increase in NOx would conform to regulations. The Selected Alternative will result in a net reduction in 61 tons per year of carbon monoxide in the New York-Northern New Jersey-Long Island non-attainment area and 44 tons a year in the Syracuse area. Short-term fugitive dust emissions from land clearing and grading operations could occur from excavation, hauling, dumping, spreading, grading, compaction, wind erosion, and traffic over unpaved areas. Mobile source emissions from construction could occur because of operation of heavy-duty diesel and gasoline-powered construction equipment and operation of heavy-duty diesel trucks, and possibly locomotives involved in transporting excavated material and delivering construction materials. Disruption to traffic during construction, such as reduction in roadway capacity and increased queue lengths, could result in short-term elevated concentrations of localized pollutants such as carbon monoxide and particulate matter.
- **Energy and Climate Change:** The Selected Alternative will have beneficial impacts for greenhouse gas (GHG) emissions from permanently reduced annual on-road energy use and emissions as auto and bus riders switch to more energy-efficient and less polluting rail. The Selected Alternative will result in a reduction of approximately 33,000 metric tons per year of GHG emissions. The net annual operational benefits for the Selected Alternative will be roughly equivalent to eliminating the emissions associated with the energy and electricity consumption of 2,500 to 4,200 average U.S. single family homes every year.[3] Potential short-term impacts include direct GHG emissions from on-site activity during construction. Potential indirect impacts include GHG production from the extraction, manufacturing, and transport of materials used for construction. For a more detailed analysis of GHG emissions, including the Base Alternative, please refer to Appendix G of the Tier 1 FEIS.
- **Noise and Vibration:** Most of the trackwork will be contained within an active railroad corridor, which currently experiences heavy freight use (CSXT on Empire Corridor West) and commuter rail traffic (Metro-North on Empire Corridor South). The Selected Alternative will increase the number of Amtrak trains by 8 trains (or 4 roundtrips) on Empire Corridor South (along which Metro-North operates 50 to 77 roundtrips daily) or 6 to 8 trains (or 3 to 4 roundtrips) on Empire Corridor West (along which CSXT operates 50 to 60 daily roundtrips). The Selected Alternative will not increase noise levels over the Base Alternative between New York City and Schenectady, and the increases west of this point would be imperceptible (0 to 2 decibels). Increased noise and vibration from the construction activities may adversely impact sensitive receptors during the day and residences at night, although this is an active rail corridor and much of the existing corridor is currently impacted by high noise levels. Construction activities that can be vibration generators include bridgework, foundation work, station/platform construction, retaining wall, and sheet pile construction. Vibration nuisance can occur from pile driving, demolition, rock removal, pavement breaking, and the use of heavy construction vehicles and equipment. Building damage can occur from construction-related vibration, potentially resulting in structural damage. In most cases, the construction is anticipated to be far enough away from buildings, that the potential for building damage would be very low. Impacts based on more precise locations will be evaluated in Tier 2.

[2] Even this increase in NOx would be lower than the *de minimis* levels in the conformity regulations.

[3] Based on U.S. EPA's GHG Equivalencies Calculator, <http://www.epa.gov/cleanenergy/energy-resources/calculator.html>.

- **Contaminated and Hazardous Materials:** The Selected Alternative would have the potential to encounter contaminated materials where new third and fourth track subsurface work will occur within highly developed urbanized areas, including grade crossing modifications, new grade separated flyovers, culvert extensions, and new cut areas. Soil disturbance, including excavation, could encounter contaminated soil and/or groundwater. Demolition activities could encounter lead-based paint and asbestos-containing materials as well as PCB containing oils. Strategies for minimizing the risk for encountering contaminated materials will be further investigated, along with more precise site impacts, during Tier 2 assessments.
- **Traffic and Safety:** The Selected Alternative will be expected to divert passengers from automobiles and buses, thereby reducing highway congestion and improving highway safety. Alternative 90B is projected to result in an annual decrease in automobile ridership (which, according to the ridership analysis, would total 139,519 one-way vehicle trips in 2035, for a total of 209,279 one-way person trips). The ridership analysis indicated that diversions in bus ridership are also anticipated to occur (totaling approximately 290,000 in 2035, for a decline of 4.4 percent of the total bus ridership). Benefits will also accrue from not only diverting passenger trips from other modes, but by facilitating freight rail use and encouraging diversions from long-haul freight by truck. Construction activities that impede access or use of active rail lines could result in potential temporary delays for users of the rail right-of-way. However, the location of the majority of the tracks on the north side (in the location of former tracks) will minimize disruption to active railroad operations. Potential impacts include roadway relocations or diversions during construction in some areas. Construction could also affect vehicular operations from lane closures, roadway closures, detours, and disruption of general roadway operations during peak and nonpeak times. Potential impacts to transit stations include loss of or decrease in parking areas and loading zones from construction activities or staging if they extend into the station area. Temporary limitations to vehicular and pedestrian access may occur in certain areas to address public safety and to accommodate the construction activities.

## ROD-7. Mitigation

Impacts resulting from the Selected Alternative, which will be advanced as individual component projects in Tier 2, will be mitigated through the implementation of mitigation measures. The mitigation measures included in this ROD are final commitments, and FRA will require them to be implemented with advancement of the Program into Tier 2 Analysis, final design, and construction by any agency or entity seeking funding from FRA for Tier 2 projects. Through a combination of these mitigation measures and the refinements made since the Tier 1 Draft EIS, FRA has ensured that all practicable means to avoid or minimize environmental harm from the Selected Alternative have been adopted.

In a Tier 1 EIS, potential impacts are identified using data and analysis appropriate for a programmatic review. For the Program, FRA used existing information on known resources and estimated impacts with a lesser level of engineering than is used for a project-level analysis. As a result, the available information is not detailed enough to formulate specific mitigation measures. Therefore, each resource evaluation in the Tier 1 EIS includes a list of mitigation strategies that will be considered and further developed in the future as part of the Tier 2 environmental analysis. Project-specific mitigation strategies for project-related impacts will be considered and implemented as necessary during subsequent Tier 2 environmental studies. If FRA funding or approval is associated with any future construction of a component of the Program, FRA will require compliance

with the commitments and measures described below and any additional measures as appropriate which may be developed during a Tier 2 environmental review.

**Exhibit ROD-4—Mitigation Strategies**

**Land Use/Displacements:** Potential for impacts to 9 areas in 6 counties

- During the Tier 2 process, refinements in design will include efforts to avoid and minimize impacts on adjoining buildings and properties of the Selected Alternative.
- If it is not possible to avoid property impacts, relocation assistance and compensation will be provided, as appropriate, to affected property owners, in conformance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.). This law requires that fair and equitable assistance be provided to those persons displaced by federal or federally funded actions.
- During construction, local outreach plans will be developed, temporary relocation assistance offered, and compensation provided to affected property owners, as appropriate. For areas used for construction staging, consultation will be performed with affected property owners to provide adequate compensation and minimize property impacts.

**Regional Population and Employment:** Potential for job creation and sidewalk/road access changes due to construction

- Efforts will be made to avoid impacts on, and prevent construction from affecting, businesses and residential neighborhoods, whether through traffic disruptions or property impacts.
- Short-term construction mitigation measures can include outreach to affected communities regarding potential traffic disruptions and compensation to affected property owners for use of affected property. Mitigation will be achieved by providing alternative access or providing temporary relocation services to affected residences and businesses, where applicable.

**Environmental Justice/Title VI:** Mobility benefits, disproportionately high and adverse impacts unlikely

- Best Management Practices (BMPs) will be used to minimize construction effects as practicable. If effects cannot be avoided or minimized, mitigation strategies would be implemented.
- For the Selected Alternative, Alternative 90B, for displacements or other property impacts, a more detailed and refined study will be completed as part of the Tier 2 analysis to document the presence of low-income/minority communities and populations protected under Title VI (Limited English Proficiency populations, disabled, and elderly), and then to evaluate if there would be disproportionately high and adverse site-specific effects on those communities.
- Tier 2 analysis can examine in greater detail if any construction impacts are located within an environmental justice population, as required and appropriate. If necessary, mitigation efforts will include, as applicable and appropriate, targeted public outreach to affected communities and implementing additional measures, such as noise mitigation and dust controls, to avoid, minimize, or mitigate any adverse effects.

**Community and Public Facilities:** No direct impacts anticipated, proximity to proposed work

- Mitigation strategies identified for the other resources (e.g., Noise and Vibration and Air Quality) will contribute to minimization and avoidance of impacts on community and public facilities.
- During construction, NYSDOT will utilize temporary traffic control plans (including plans for transit stops, cyclists, and pedestrians) to maintain needed access to destinations and provide necessary circulation within and between communities.
- During the Tier 2 assessment, the design of the Selected Alternative will be refined to avoid or minimize impacts on community facilities to the extent feasible.
- If any impacts may occur, consultation with public officials and property owners/officials with jurisdiction will be performed regarding potential impacts and mitigation measures.
- Mitigation may include minimizing noise and vibration impacts on adjoining community facilities and coordination on the plans for the construction schedule and activities.

**Surface Waterbodies and Watercourses:** Potential for modifications and impacts at 219 crossings

- In the Tier 2 assessment, means of avoiding and minimizing waterway impacts will be further evaluated and identified through shifts in location of tracks and other facilities and use of design measures such as retaining walls or steeper slopes. Other potential mitigation to be considered will include permanent BMPs, such as stormwater treatment or detention/retention facilities or drainage channels/facilities where appropriate to improve stormwater management/flow and water quality.
- A Stormwater Pollution Prevention Plan (SWPPP), in accordance with the New York State Department of Environmental Conservation (NYSDEC) State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity will be prepared for construction projects that disturb more than an acre of land. All individual component projects that fall below SPDES thresholds are required to prepare erosion and sediment control plans.

## Exhibit ROD-4—Mitigation Strategies

- Temporary construction BMPs, such as seed, mulch, embankment protectors, grade techniques, inlet protection, silt fences, development of a Spill Prevention Control Plan (SPCC), Stormwater Management Plans (SWMPs) and vehicle tracking prevention will be used as appropriate.
- For work within waterways, the Selected Alternative will include temporary construction mitigation measures, such as cofferdams, turbidity curtains, etc., to prevent and control silt, debris and other materials from being carried into receiving waters.

**Wild, Scenic, and Recreational Rivers:** No designated rivers (only one existing crossing of a river potentially eligible for designation), no direct or indirect impacts anticipated

- For construction near or over Nationwide Rivers Inventory rivers, the Program will maintain physical access to the river, wherever possible, and implement measures to minimize visual impacts (such as use of temporary screens/fencing).

**Navigable Waters:** Potential for modifications and impacts at 15 existing crossings over navigable waters

- To mitigate impacts to navigable waters, coordination with the U.S. Coast Guard can be performed to identify any potentially affected navigational users and the frequency/timing/season for this navigation. An effort will be made to maintain navigable passage, as required, for local users and identify measures to minimize encroachments and disruptions to navigation during the construction period.
- In-water work will be limited or phased where possible to limit the area of navigable waters affected at any one time.
- Safety measures to protect marine users will be implemented as appropriate, such as notifications through the U.S. Coast Guard, installation of lighting on barges and the cofferdam, and use of automatic identification system transponders affixed to barges and cofferdams to enable electronic locating and tracking.
- Temporary protection of existing underwater utilities will be implemented, as appropriate.

**Floodplains:** Potential for floodplain encroachments in 11 counties

- Project development will incorporate avoidance and minimization of floodplain impacts to the extent practicable. Hydraulic analysis may be required to demonstrate the effects the design will have on mapped floodplains, and to determine mitigation appropriate for any effects on flood elevations. For new or modified bridges or culverts, mitigation might include improving hydraulic openings to accommodate passage of flood flows. Other types of mitigation that might be considered include minimizing encroachments in floodway areas and floodway fringe areas or providing compensatory flood storage in other areas.
- Hydraulic analysis can be performed, if appropriate, to demonstrate effects of the construction staging facilities on hydraulic openings/floodways, and, if needed, equipment and materials will be stored outside of floodplain areas to the extent practicable.
- Equipment and materials that have the potential to release pollutants (such as fuels and hazardous materials) can be stored outside of flood prone areas, to prevent potential release of contaminants during storm events.

**Wetlands:** Potential for modifications and impacts at 493 wetland crossings

- A permit under Section 404 of the U.S. Clean Water Act, administered by the U.S. Army Corps of Engineers (ACE), will be necessary to authorize direct impacts (discharge of dredged or fill material) to waters of the U.S., including wetlands. Under Section 10 of the U.S. Rivers and Harbors Act, work in, over, or under navigable waters also requires permit authorization from the U.S. ACE. The NYSDEC also administers permits for regulated activities that would affect protected tidal and freshwater wetlands under the state's Environmental Conservation Law Article 24 (freshwater wetlands) and Article 25 (tidal wetlands).
- Impacted wetlands and open water features will be mitigated in accordance with current U.S. Army Corp of Engineers and state jurisdictional mitigation policies. Strategies to offset impacts to wetlands can include on-site or off-site restoration, creation, or enhancement of wetlands within the same watershed as any impacted wetlands.
- Where appropriate, the mitigation will include use of features such as retaining walls and steeper slopes to help avoid encroachment into adjacent wetlands or wetland buffers.
- Flagging the edges of protected wetland resource areas prior to the start of construction would facilitate avoidance of work extending into these areas.

**Coastal Resources:** Potential for impacts at crossings of Hudson River (11 SCFWHs and 6 SASSs) and Irondequoit Creek

- If required, coastal consistency reviews will be performed to determine how the Program complies with federal, state, regional, and local coastal policies, and appropriate mitigation measures will be identified based on these reviews.
- Mitigation strategies may include permanent measures, such as providing permanent compensation for visual or coastal impacts or temporary construction measures, such as time of year fisheries restrictions for silt-producing work within coastal waters or restrictions to avoid navigational impacts.

## Exhibit ROD-4—Mitigation Strategies

**Aquifers:** Potential impact to sole source aquifer in 1 county, state primary or principal aquifer areas in 9 counties

- To comply with state water quality standards (i.e., 6 NYCRR Part 703), NYSDOT will identify and incorporate, as appropriate, Stormwater Pollution Prevention Plans (SWPPPs) prepared in accordance with the NYSDEC State Pollutant Discharge Elimination System (SPDES) permit program or Erosion and Sediment Control (ESC) Plans. Application of BMPs as defined in the SWPPPs or ESC plans will reduce the amount of erosion and sedimentation resulting from construction activities.
- BMPs could include centralized refueling, storing absorbent material and booms on-site, and locating portable fuel tanks in upland sites on a low permeability substrate.

**General Ecology and Wildlife Resources including CEAs:** Potential impacts at 7 conservation areas, 8 significant natural communities, 46 listed species

- To the extent practicable, future planning and designs for the Selected Alternative can incorporate avoidance and minimization of impacts to known protected ecological resources. Where avoidance and minimization are not practicable, mitigation for impacts to protected ecological resources may include:
  - Utilization of construction timing windows to avoid disturbance to nesting birds or certain seasonal processes;
  - Implementation of construction Best Management Practices;
  - Construction of safe wildlife crossings and fencing; or
  - Preservation, restoration, or rehabilitation of on- or off-site lands.
- As required or appropriate, the construction activities will be timed to avoid bird nesting or seasonal ecological processes. The construction activities will be scheduled to comply with applicable timing restrictions for in-water work to protect endangered and threatened species, or could employ less noisy construction techniques, in compliance with any permit stipulations. In protected habitats, additional mitigation could include training of workers to facilitate sightings and protection of rare species. Clearing of trees and other vegetation can be minimized, if critical to habitat for protected species. Flagging or field identification of protected terrestrial species on site could be performed, if appropriate.
- For work within the Hudson River, the National Marine Fisheries Service (NMFS) recommends that no in-water work be undertaken from March 1st through June 30th. In the event that this timeframe cannot be avoided, NMFS recommends additional mitigation to minimize shortnose sturgeon impacts to include: use of a soft start, use of a vibratory hammer, and other BMPs to minimize exposure to elevated levels of noise.

**Historical and Cultural Resources**: 300 National Register-eligible or listed resources or districts in indirect APE

- The Tier 2 assessments can refine the historic impact assessments for component projects, as required and appropriate. If the Tier 2 analysis concludes that a proposed project within the Program would have an adverse effect, measures to avoid, minimize, or mitigate adverse effects will be identified. If required, the Tier 2 assessments will adopt a Section 106 process outlining future identification, evaluation, and assessment of effects to historic properties including processes for the resolution of adverse effects.
- If a finding of adverse effect is made as part of any subsequent Tier 2 analysis, the product of Section 106 consultation will be a Memorandum of Agreement (MOA) or PA, as stipulated in 36 CFR Part 800. The document would include stipulations that specify measures to be implemented by the Project Sponsor, or other responsible party that would avoid, minimize or mitigate the adverse effects to historic properties.
- Furthermore, in order to avoid inadvertent damage to historic resources located in close proximity to possible project construction, a Construction Protection Plan (CPP) will be prepared, as appropriate. The CPP will identify the historic resources to be included in the plan. It will also set specific measures to be used and specifications that will be applied to protect these resources during the construction period.

**Parks and Recreational Facilities Impacts/Section 4(f) Uses**: Potential for impacts at 2 canal crossings

- Mitigation for impacts of the Selected Alternative on parklands and recreation areas will include avoiding and minimizing impacts to the extent practicable and minimizing any required right-of-way takings (e.g., at New York State Canal System crossings).
- Compliance with the requirements of Section 4(f) of the U.S. Department of Transportation Act requires that alternatives that avoid or minimize impacts be evaluated, and, if impacts are proposed, mitigation measures be developed, in consultation with officials with jurisdiction. If parklands that have received Land and Water Conservation Fund Act grants will be converted, Section 6(f) requires that recreation property of equal fair market value and usefulness be provided as compensation.
- Mitigation measures may include permanent measures, such as providing trail connections or compensatory parkland, or construction mitigation, such as maintaining trail or park access during construction or using time-of-year restrictions on construction work.

**Exhibit ROD-4—Mitigation Strategies**

- Direct impacts to parks, such as use for construction staging and storage, and indirect impacts, such as noise, will be avoided and minimized to the extent possible. The construction activities will be staged to minimize disruptions to, or avoid complete closures of, trail connections, and if required, plans to implement detours or partial closures will be developed, as appropriate.

**Visual Resources:** Potential for impacts from 2 new station buildings and 3 flyovers, relocation of portion of scenic byway (Route 5)

- The visual impacts of the Program can be minimized through design of more visually prominent facilities, such as stations and bridges, to improve the aesthetic characteristics. In the area of canal crossings and historic parks, design of bridge abutments, retaining walls, and other structures can consider aesthetic treatments to be consistent with the park environs and setting.
- Use of vegetated buffers can effectively screen the rail facilities from adjoining areas where there is adequate room for plantings. Consultation with agencies with jurisdiction over the canals and parks will be performed, as appropriate, to obtain input into the development of improvement project design concepts.
- Temporary screens/fencing could be installed around active construction sites to minimize visual impacts in heavily trafficked or populated areas. Construction staging, fencing, and materials can be kept neat in appearance, clean and orderly. Construction sites will be restored in a timely fashion. The Program can employ directional lighting at night to protect residences from light pollution. If appropriate, the construction could be performed during seasons/times of year that would be less impactful for tourists or visual resources accessed by the public.

**Farmlands**: Potential for impacts at 3 areas and 2 Agricultural Districts/actively farmed areas

- During the Tier 2 assessment, refinements in design and mapping for the Selected Alternative will be performed and the project development will incorporate avoidance and minimization of farmland impacts to the extent practicable. This will include avoidance of active farms, prime farmlands, and parcels included within Agricultural Districts to the extent practicable.
- If farmland impacts will occur, the Tier 2 assessments will comply with the U.S. Farmlands Protection Policy Act for acquisition of prime farmlands. The Tier 2 assessments will also comply with the State Agriculture and Markets law for work affecting a designated Agricultural District, if any impacts will occur.
- Potential mitigation measures for work affecting agricultural properties could include installation of crossings for farm animals or creation of new temporary farmland access roads, if the proposed work may impinge on these uses. Where impacts occur to current irrigation systems, these systems can be reconfigured. Construction activities near farmlands could be timed to occur at the end of harvest.

**Air Quality:** Long-term regional net reductions in all but one pollutant (NOx[4]), no significant adverse impacts expected

- Dust control measures, such as use of water sprays, in accordance with state requirements, can be implemented.
- Installation of a stabilized construction entrance and cleaning of tires can be performed of construction trucks prior to leaving the construction site to prevent tracking of dirt on local roads.
- Land and soil disturbance will be minimized, and disturbed areas will be stabilized within required timeframes to prevent dust emissions/erosion. Construction trucks will be covered when hauling soil, stone and debris.
- Best Management Practices can be used as applicable and may include the use of newer U.S. EPA certified Tier 4 construction equipment, diesel particulate filters, or similar emission control technology. The use of ultra-low sulfur diesel fuel or electric equipment may further reduce GHG emissions.
- Restrictions can be implemented for idling construction equipment to five minutes or less.

**Energy and Climate Change**: Long-term reductions in energy use and GHG emissions from diversions from automotive/bus ridership, constructions impacts expected to be offset by long-term operational benefits

- Mitigation efforts could include a shift to solar, green energy, energy efficient and electric sources of power for construction activities, such as message boards, signage, lighting, etc., to the extent required.
- Subsequent Tier 2 environmental studies will consider and implement climate change adaptation strategies, as appropriate.
- Additional mitigation measures identified during Tier 2 could include a shift to biodiesel fuel for construction engines to further reduce construction emissions.
- Local, renewable, recycled materials for construction materials may be used, when possible.

[4] The minor increase in NOx would conform to regulations.

| Exhibit ROD-4—Mitigation Strategies |
|---|
| **Noise and Vibration:** Incremental increase over existing train noise, increases over Base would be imperceptible |
| • For Tier 2 studies for the Selected Alternative if required, more comprehensive analyses can predict impacts with a greater degree of precision and assess the effectiveness of mitigation, such as vehicle and equipment noise specifications, operational restrictions, and resilient or damped wheel treatments.<br>• The need for a detailed vibration analysis can be assessed, if appropriate, and could include an assessment of potential mitigation measures, such as planning and design of special trackwork, vehicle specifications, and special track support systems (i.e., resilient fasteners, ballast mats, resiliently supported ties, floating slabs, and other marginal treatments).<br>• Noise and vibration emanating from construction vehicles and equipment can be limited through vehicle and equipment noise specifications, mufflers and operational restrictions. If appropriate, near noise-sensitive areas, Program specifications could develop standards for noise emissions during construction and construction noise monitoring could be performed, and compliance plans developed. When practicable, construction activities near residential communities will be performed during daytime and weekday hours, and construction near schools and community facilities will be performed at night. |
| **Contaminated and Hazardous Materials:** Potential for encountering contaminated materials, land takings limited |
| • Mitigation strategies for the Selected Alternative will focus on methods to avoid or minimize encounters with contaminated materials. Phase I and, if required, Phase II, Environmental Site Assessments (ESAs) will be performed prior to land acquisitions.<br>• Site-specific Health and Safety Plans and Materials Management Plans for the Selected Alternative, Alternative 90B, will be developed to address contaminated soil and groundwater, as appropriate. If buildings containing lead or asbestos will be demolished, an Asbestos Abatement Plan and a Lead-Based Paint Assessment Plan will be developed. |
| **Traffic and Safety:** Benefits accrue from diversion of highway/bus traffic to rail, potential construction impacts to roadways, parking areas, loading zones and pedestrian access |
| • Work will be staged during night-time, weekends, or off-peak hours if required to minimize service outages and disruptions to the traveling public.<br>• Any interruptions in service will be closely coordinated with the affected transportation agencies and freight companies and users and the traveling public and advertised as appropriate. |

## ROD-8. Agency, Elected Official and Public Coordination

FRA and NYSDOT encouraged agency and public input throughout the Program development. The purpose of this coordination was to inform stakeholders, increase awareness of public and agency concerns and interests, and consider that input in Program development. From scoping to alternatives development, to the identification of a Selected Alternative, information received from agencies and the public has supplemented data collected through desktop research and field visits. Comprehensive input from the public and agencies has aided in the identification of a Selected Alternative that both meets the Program Purpose and Need and minimizes impacts to the environment, to the extent possible.

The agency and public coordination process was implemented to be consistent with the CEQ NEPA regulations (40 C.F.R. §§ 1500-1508); FRA Procedures for Considering Environmental Impacts (64 FR 28545 [1999]); and FRA's Update to NEPA Implementing Procedures (78 FR 2713 [2013]). Agency and public coordination began in Fall 2010 with the scoping period and scoping meetings held at the initiation of the Program. The general-public involvement process evolved as the Program advanced. The process included the screening of the preliminary alternatives, the development and evaluation of alternatives carried forward, and the identification of the Selected Alternative.

FRA and NYSDOT have solicited and reasonably incorporated public input throughout the process, making refinements to the alternatives considered to minimize impacts. This section presents a brief summary of the agency, elected official, and public coordination and comments received throughout the process. More detailed information is available in Chapter 7 of the Tier 1 Final EIS.

- **Scoping**

  Given the length of the Empire Corridor, six public scoping meetings were held in major population centers located along the corridor: New York City, Albany, Utica, Syracuse, Rochester, and Buffalo. Meeting notices, press releases, and website postings were produced and/or sent to various media outlets in each of the six locations along the length of the corridor where public scoping meetings were held. Invitation letters to public scoping meetings were sent to potential cooperating and participating agencies, as well as to the potential members of the Empire Project Advisory Committee (EPAC). Over 50 individuals were invited from federal, state, and local agencies and organizations, and railroads/transportation agencies and groups.

  The public scoping meetings were conducted in an open house format from 5:30-7:30 p.m. at each location. In addition to the six public scoping meetings, an online scoping briefing was created and posted on the Project website for the benefit of interested parties unable to attend a public scoping meeting in person. The online scoping briefing contained the same information presented at the public scoping meetings in a downloadable electronic format. The online scoping briefing was a very successful public outreach tool that was visited by 231 unique individuals during the scoping period.

  A total of 102 public comments were collected and recorded during the scoping period. NYSDOT grouped the comments into 12 different categories based on the subject of the comment. The 12 categories include: general, alternatives, regional connections, stations, operations, alignment, speed, intermodal, vehicles, scoping meetings, safety, and ridership. The alternatives and regional connection comment categories accounted for the second largest categories of comments received, with each representing 13 percent of the total at the corridor level. In general, these comments centered around the proposed alignment alternatives or the desire for increased regional connections. The stations category represented the next largest category of comments, followed by operations, at 12 and 11 percent, respectively. The majority of these comments highlighted the desire for local station improvements with multimodal linkages.

  In addition to the EPAC, NYSDOT and FRA provided key Program partners, National Railroad Passenger Corporation (Amtrak) and CSX Transportation, Inc. (CSXT) with briefings on the status of the alternatives development phase of the Program. These briefings provided both Amtrak and CSXT with an opportunity to individually view a presentation on the range of alternatives under consideration and provide feedback.

- **Agency Coordination**

  At the onset of the Program, FRA and NYSDOT identified over 34 appropriate federal, state, regional and local agencies as having a role and/or interest in the Program and invited their involvement as cooperating and/or participating agencies.

  FRA and NYSDOT formed a project advisory committee, the Empire Project Advisory Committee (EPAC), comprised of 47 agencies, to help shape and guide decision making throughout the environmental review process. The purpose of the EPAC was to create a forum to hold meetings with representatives from key agencies, statewide government organizations, major railroads, metropolitan planning organizations, and other key stakeholders. The EPAC also served as a communication conduit whereby members could share the Program's progress with their constituents. Four EPAC meetings were held in an effort to seek input and feedback as the Program progressed through the environmental review process.

  Additionally, FRA received comments submitted by the U.S. EPA on March 20, 2023, pursuant to U.S. EPA's responsibilities under Section 309 of the Clean Air Act. U.S. EPA commented on the Tier

1 Final EIS and provided feedback for consideration as Tier 2 documentation is developed. FRA has reviewed and considered these comments and will note them for future Tier 2 projects.

Pursuant to 36 CFR 800.3(f)(2), FRA, in consultation with NYSDOT and SHPO, identified federally recognized Indian tribes (tribal nations) under Section 106 of NHPA and invited them to participate as consulting parties per 36 CFR Part 800.2(c)(2). These tribal nations included:

- Cayuga Nation,
- Seneca Nation of Indians,
- Tonawanda Seneca Nation,
- Onondaga Nation,
- Oneida Indian Nation,
- Tuscarora Indian Nation,
- Stockbridge-Munsee Community Band of the Mohican Nation,
- Delaware Nation,
- Shinnecock Nation,
- St. Regis Mohawk Tribe,
- Seneca-Cayuga Tribe of Oklahoma.

Three tribal nations, Mohican Nation, the Oneida Nation, and the Seneca Nation, expressed their interest in the Program and their desire to participate in consultation on the Program in accordance with Section 106 of NHPA. In 2012, FRA and NYSDOT engaged in meetings and discussions with federally recognized tribal nations to gather comments and provide Program information. Section 4.15.2 describes the outreach and coordination with tribal nations and other consultation parties under Section 106. FRA and NYSDOT, in coordination with SHPO, developed a Draft Programmatic Agreement (PA) to govern future requirements under Section 106 of the NHPA. A Draft PA was provided as part of the Tier 1 Draft EIS for review and comment as well as transmitted to the federally recognized Indian tribes and consulting parties for review and comment. FRA received comments from the Oneida Indian Nation. FRA has determined that the Tier 1 EIS planning process does not have the potential to cause effects to historic properties, and FRA has no further Section 106 responsibilities with respect to Tier 1 activities.. A PA would be executed as part of future Tier 2 projects and was not finalized as part of the Tier 1 Final EIS.

- **Public Involvement/Comments**

FRA and NYSDOT designed the public involvement program to be an inclusive and transparent process that adheres to the requirements of the National Environmental Policy Act (NEPA). The Program's multifaceted public involvement plan utilized several mediums to engage and inform the public and other key stakeholders.

A stakeholder database was developed, regularly updated, and used for the Program. A media outreach plan, including press releases, meeting notices, and general Program-related outreach releases, was utilized to disseminate Program information to local media channels in each of the six major population centers along the Empire Corridor. NYSDOT produced and distributed three informational newsletters to stakeholders at key Program milestones, as well as maintained a project website throughout the Program. The website received over 3,000 unique hits within the first couple of months of being launched and by completion of the Tier 1 Final EIS, the website has been viewed by nearly 14,231 unique visitors.

CSXT, as a major stakeholder, was consulted during the Tier 1 EIS preparation and contributed inputs to the railroad simulation efforts and also commented extensively on potential conflicts with their freight operations. Appendix K responds to their comments, and Appendix J presents

information on agreements which NYSDOT will follow in continuing to work with CSXT as the Program advances.

Most of the comments received on the Tier 1 Draft EIS were favorable, with 83 percent (770 of 932) of the commenters expressing support for improvements to Empire Corridor. On the Tier 1 Final EIS, in addition to comments received from the U.S. EPA (see Appendix ROD-1), one other agency comment letter from the U.S. Department of Interior (U.S. DOI) was received. The U.S. DOI letter noted that the Tier 1 Final EIS mentions that, if Program activities may affect protected resources, consultation may be required with certain agencies and requests that the National Park Service be added to this list for Tier 2 consultation. To date, only two comments have been received on the publication of the Tier 1 Final EIS from the public expressing general (but not specific) concerns. The Tier 2 assessments will consider these comments received from the agencies/public.

## ROD-9. Decision

Having carefully considered the Tier 1 EIS documents, the mitigation strategies described herein, the written and oral comments offered by agencies and the public on this record, and the written responses to the comments, FRA has determined that the Selected Alternative best meets the purpose and needs, represents the best option for the Program and includes all practicable measures to minimize harm to the environment.

FRA finds that the Selected Alternative best balances meeting transportation objectives with impacts on the natural and human environment and is the Environmentally Preferable Alternative. In reaching this decision, FRA considered the physical and operational characteristics and potential environmental consequences associated with the alternatives analyzed during the environmental review process.

FRA's identification of Alternative 90B as the Selected Alternative is made with consideration that after the approval of Tier 1/Program EIS and prior to the initiation of Tier 2/Project-Level analysis, the State and/or local agency seeking to advance the Selected Alternative will:

- Conduct additional operations simulation analysis on the Selected Alternative to assess whether different infrastructure or operating plans would further improve the estimated performance of freight and passenger trains.
- Determine the initial operating plan for service and infrastructure improvements for the Selected Alternative based on good faith negotiations with the host railroads and the passenger rail service operator prior to the implementation of service.

Tier 2 assessments will also be performed to further refine individual component projects, define the impacts of these projects, and determine the applicability of these other regulatory programs.

## ROD-9.1. Section 106

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 listed or eligible for listing on the NRHP.

FRA and NYSDOT identified and engaged with consulting parties, including state recognized tribal nations, in accordance with 36 CFR 800.2(c)(3) through (5) and 800.3(f). FRA and NYSDOT, in consultation with SHPO, identified potential consulting parties for the Tier 1 based on a demonstrated interest in broad, corridor-wide, or regional-level aspects of the proposed undertaking. In addition to the SHPO and ACHP, the list of potential consulting parties included non-federally recognized tribes and state or region-wide preservation organizations. On May 2, 2013, FRA and NYSDOT held a meeting to provide Program information to the consulting parties and give them an opportunity to provide comments.

On August 6, 2018, FRA notified the SHPO and consulting parties that the Section 106 process for the Tier 1 phase of the Program is considered complete. FRA has determined that the Tier 1 EIS planning process does not have the potential to cause effects to historic properties, and FRA has no further Section 106 responsibilities with respect to Tier 1 activities. FRA concluded that the Tier 1 EIS represents non-destructive program planning activities, allowed for under 36 CFR Part 800(1)(c), which have no potential to cause effects to historic properties. FRA and NYSDOT remain committed to following the requirements of 36 CFR 800 for Tier 2 projects that receive federal funding, as well as determining the applicability of Section 106 exemption for "railroad rights-of-way."

## ROD-9.2. Section 4(f)/Section 6(f)

Projects that are undertaken by an operating administration of the U.S. DOT or that may receive federal funding and/or discretionary approvals from a U.S. DOT operating administration must demonstrate compliance with Section 4(f) of the DOT Act of 1966 and Section 6(f) of the U.S. Land and Water Conservation Fund (LWCF). Section 4(f) protects publicly owned parks, recreational areas, and wildlife refuges. Section 4(f) also protects historic sites of national, state, or local significance that are on public or private land. Section 6(f) provides funding for state, county, and local efforts to advance public recreation, and once LWCF funds are utilized to acquire or develop, a particular recreation project, conversion of that park facility for any non-recreational purpose is prohibited unless alternatives are assessed and steps are taken to identify, evaluate, and supply replacement parkland.

Preliminary assessments of potential Section 4(f)/Section 6(f) resources were performed as part of this Tier 1 Final EIS, and potential impacts are discussed in Section 4.23. In the Tier 2 assessment(s), FRA will determine the need for additional Section 4(f) and/or Section 6(f) Evaluation(s), as appropriate. for individual improvement projects comprising the Selected Alternative. The formal Section 4(f) process and any needed Section 4(f) or Section 6(f) documentation, coordination and agency consultation will then be undertaken, as appropriate, during the Tier 2 analysis when specific boundaries and uses are determined.

## ROD-9.3. Environmental Justice Finding

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, signed by the President on February 11, 1994, directs federal agencies to take the appropriate and necessary steps to identify and address disproportionately high and adverse effects of federal projects on the health or environment of minority and low-income populations to the greatest extent practicable and permitted by law. In addition, the New York State Department of Environmental Conservation (NYSDEC) Commissioner's Policy 29, Environmental Justice and Permitting, provides additional guidance on incorporating environmental justice concerns into environmental reviews and projects subject to the State Environmental Quality Review

Act (SEQR), where NYSDEC has a lead agency role. While NYSDEC is not a lead agency for the Program, this guidance provided useful background information for the Tier 1 Final EIS environmental justice analysis.

The Selected Alternative station upgrades, travel time reduction, and increased trip frequency would ultimately provide a benefit to communities. Determinations on disproportionality will be based on site-specific analyses in Tier 2 assessments. Within the Tier 2 assessments, any residential property displacements will consider and evaluate census block group data to identify minority and low-income populations within the study area as outlined in NYSDOT and NYSDEC guidance.

To evaluate if there would be disproportionately high and adverse effects on these communities, Tier 2 studies would involve a quantitative analysis for parameters that have the potential to affect these communities, such as:

- Right-of-way (number of acquisitions in low-income or minority communities versus in the general reference population),
- Noise and vibration (number of noise and vibration impacts in low-income or minority community versus in the general reference population),
- Other applicable parameters that may directly or indirectly affect identified environmental justice communities.
- Permitting by the NYSDEC through Commissioner's Policy 29 for environmental justice may be required depending on the results of the Tier 2 analysis. This policy provides guidance for incorporating environmental justice concerns into the NYSDEC environmental permit review process for individual projects in the Program.

## ROD-10. Conclusion

FRA has reached a decision for the (Empire Corridor) Program that most closely aligns with FRA's statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors based on the information contained in the Tier 1 EIS documents. FRA approves the Program and selects Alternative 90B for Program implementation. FRA has selected this alternative because it provides for the best overall balance in consideration of both the Purpose and Need and the potential environmental impacts of the Program, including the offsetting benefits of the Program and accompanying mitigation measures.

**Signatories:**

**Federal Railroad Administration**

Marlys A Osterhues

Marlys Osterhues

Director-Office of Environmental Program Management

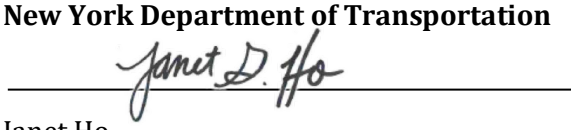
Federal Railroad Administration

U.S. Department of Transportation

3/30/2023

Date

**New York Department of Transportation**



Janet Ho

Assistant Commissioner, Finance & Integrated Modal Services

New York State Department of Transportation

4/6/2023

Date

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# Appendix ROD-1 Agency Comments on the Tier 1 Final EIS

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# Index

# 1. U.S. Environmental Protection Agency Comment Letter

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

March 20, 2023

Brandon Bratcher, Environmental Specialist
Office of Program Delivery
Federal Railroad Administration
1200 New Jersey Avenue SE, W36-317
Washington, DC 20590

RE: Empire Corridor Program Final Environmental Impact Statement

Dear Mr. Bratcher:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA) and the National Environmental Policy Act (NEPA), the United States Environmental Protection Agency (EPA) has reviewed the Federal Railroad Administration's (FRA) and New York State Department of Transportation's (NYSDOT) High Speed Rail Empire Corridor Program Tier 1 Final Environmental Impact Statement (FEIS)/Record of Decision (ROD). The CAA Section 309 role is unique to EPA, providing EPA the authority to review and comment in writing on the environmental impact of any major Federal agency action and to make EPA's written comments available to the public.

The Empire Corridor is a passenger and freight rail corridor that runs approximately 436 miles between Pennsylvania Station, New York City, New York and Niagara Falls Station, Niagara Falls, New York. The purpose of the project is to reduce infrastructure constraints to accommodate existing and projected demand. The Tier 1 FEIS describes and summarizes the environmental impacts of four proposed system improvements to intercity train travel along the Empire Corridor, along with a base case or "no action" alternative.

The Preferred Alternative, Alternative 90B, would include the improvement projects proposed for all the build alternatives, and would add a dedicated third main passenger track for approximately 273 miles between Schenectady and Buffalo-Depew stations. It would also add a fourth passenger track over a combined distance of approximately 39 miles in five separate locations. This alternative would also add an additional round trip between New York City and Albany daily. Impacts are anticipated to many resource categories but due to the nature of a Tier 1 FEIS, these impacts are not fully assessed in this document.

EPA reviewed and provided comments to FRA on the Draft Environmental Impact Statement (DEIS) in correspondence dated March 7, 2014. Many of our original comments were addresses in this FEIS. We are providing comments on this Tier 1 FEIS and for consideration as Tier 2 documentation is developed. EPA looks forward to providing additional feedback as more detailed impact assessments are developed.

Thank you for the opportunity to provide comments on this FEIS. EPA is committed to continuing to work with your team throughout the NEPA process and in the future, especially as full projects come to fruition. Please feel free to contact Samantha Nyer at (212) 637-3666 or by email at nyer.samantha@epa.gov with any comments or questions.

Sincerely,

Mark Austin

Mark Austin, Team Lead
Environmental Review Team

**EPA Technical Comments – 3/20/2023**
**Tier 1 Final Environmental Impact Statement (FEIS)**
**High Speed Rail Empire Corridor**

## General:

- It would be beneficial to include a summary of changes in conditions since the 2014 DEIS publication. The document should discuss if existing conditions reflect conditions from 2014 or whether this information has been updated. Additionally, it may be appropriate to conduct additional outreach to stakeholders and permitting agencies as appropriate.
- EPA appreciates FRA's clear approach to describing which analyses will be conducted as part of the Tier 2 assessments. We look forward to reviewing additional detailed Tier 2 environmental review documents as they become made available. EPA understands that these Tier 2 assessments will include greater detail on specific project impacts throughout the study area.
- The FEIS uses a rating system to designate impacts as Low (L), Medium (M) and High (H). Additional details on this relative rating system are needed. For example, clarification on how distinctions are made between these impacts ratings and how this differs by resource category. Further information on what impacts are relative to or what thresholds are used to support an impacts determination is warranted. If a similar rating system is planned to be used for the Tier 2 assessments, further clarification should be provided in these documents.
- EPA recommends FRA consider developing regional working groups to hold early discussions of the Tier 2 analyses of impacts on communities and businesses.
- It should be made clear whether US Army Corps of Engineers (USACE) federal permits (Section 10) are required in the Navigable Waters chapter.
- Many of the anticipated benefits of the project presented in the FEIS arise from the projected increase in ridership and relative market share of rail travel. EPA suggests that the executive summary include a brief overview of the ridership forecasting model and how the outputs from the model inform the environmental impacts of the project.
- EPA recommends that a Monitoring and Mitigation Plan be developed to clearly identify responsibilities and time periods for properly and successfully implementing the project's mitigation measures to reduce or avoid significant environmental impacts. This could be further benefitted by including plans for coordinating with other federal and state agencies as appropriate.

## Environmental Justice (EJ):

The Council on Environmental Quality (CEQ), which oversees implementation of NEPA, has promulgated a guidance document to assist agencies in implementing EJ principles (See Environmental Justice Guidance under the National Environmental Policy Act, Council on Environmental Quality, December 10, 1997).

- EPA has a strong commitment to promote the principles of EJ outlined in Executive Order 12898 - Federal Actions to Address EJ in Minority and Low-income Populations. According to the Executive Order, "Each Federal Agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by NEPA. Mitigation measures outlined or analyzed in an environmental assessment, environmental impact statement, or record of decision, whenever feasible, should address significant and adverse environmental impacts of proposed Federal actions on minority communities and low-income communities."
- EPA acknowledges that a further analysis of potential impacts to communities with EJ concerns

will be conducted in the Tier 2 evaluations. In assessing impacts, we note that the benefits of improved transportation access do not negate the potential impacts to communities with EJ concerns. The Tier 2 analyses should consider impacts separately from benefits when determining whether there are disproportionately high and adverse effects.

- The FEIS indicates that the potential for transportation and environmental impacts would be considered EJ impacts only if they disproportionately affected EJ populations. While agencies must consider whether environmental effects are disproportionately high and adverse, it should be noted that impacts can occur to communities with EJ concerns even if a determination of disproportionately high and adverse is not made. This distinction should be made clear in the NEPA document, and any potential impacts to EJ communities should be disclosed regardless of the evaluation of disproportionality. Impacts to various resource areas should be considered within the context of current environmental burdens.
- Additionally, we encourage selecting the use of a higher geographical resolution (such as block group) for the impacts determination. The FEIS mentions that the Tier 2 analysis will include a more detailed study using census block group data to identify minority, low-income, and disadvantaged populations within the study area that may experience adverse impacts due to the Preferred Alternative. We recommend that impacts associated with the full range of alternatives be propagated as part of this analysis.
    - The EJ analysis should also identify the reference community to provide comparative context for the disproportionate effects analysis. Additional information on selection of an appropriate reference community for identifying minority and low-income populations can be found in the Federal Interagency Working Group on Environmental Justice Promising Practices for EJ Methodology in NEPA Reviews.
    - Furthermore, we recommend utilization of the EJScreen as a useful first step in highlighting locations that may be candidates for additional analysis. As a general guidance for the purposes of NEPA review, a project is considered to be in an area of potential EJ concern when the area shows one or more of the twelve EJ Indexes at or above the 80th percentile in the nation and/or state. However, scores under the 80th percentile should not be interpreted to mean there are definitively no EJ concerns present.
- EPA strongly encourages the ongoing engagement of potentially impacted communities and Indian Nations as the development of studies and designs progress. This should ideally be conducted prior to Tier 2 deliverables so that summaries from this engagement can be included in the documentation.

**Wetlands:**

- The Tier 1 FEIS is general regarding wetland impacts. EPA may have more specific comments in the future once specific acreage impacts to delineated federally regulated wetlands are determined.

**Air Quality:**

- The air quality analysis indicates that there is no net increase in emissions of criteria pollutants projected, with the exception of a small increase in $NO_x$, due to implementation of the Preferred Alternative. Although changes in emissions are anticipated to be very small to negligible, EPA encourages FRA to consider measures to address the potential increase in diesel locomotive emissions associated with idling. Please refer to EPA's webpage on rail facility best practices to improve air quality.
- The FEIS would benefit from an expanded discussion on the methodology for the mesoscale emission analysis. In particular, in presenting the mesoscale emission changes in context, estimates were compared with the emissions projected to occur in each analysis area in 2035 from

the on-road sector. The FEIS should provide the rationale for comparing locomotive emissions to those from the on-road sector.

- Additionally, the FEIS states that the vehicle miles traveled (VMT) were "multiplied by the corresponding emission factor and summed for each nonattainment area modelled in the Tier 1 Draft EIS". Air quality impacts to regions outside of nonattainment areas should also be assessed. Please clarify whether this analysis was limited to nonattainment areas.

**Climate:**

- Executive Order 13990 (E.O. 13990, 86 FR 7037; January 20, 2021) urges agencies to "consider all available tools and resources in assessing Greenhouse Gas (GHG) emissions and climate change effects of their proposed actions". On January 9, 2023, CEQ published interim guidance effective immediately to assist federal agencies in assessing and disclosing climate change impacts during environmental reviews. CEQ developed this guidance in response to EO 13990. CEQ indicated that agencies should use this interim guidance to inform the NEPA review for all new proposed actions and may use it for evaluations in process. EPA recommends future NEPA documents apply the interim guidance as appropriate, to ensure robust consideration of potential climate impacts, mitigation, and adaptation issues.
- EPA recommends that the tiered assessments include a discussion of reasonably foreseeable effects that changes in the climate (for instance, sea level rise or increased precipitation) may have on the proposed project and the project area. This could help inform the development of measures to improve the resilience of the proposed project. Climate change can make ecosystems, resources and communities more susceptible as well as lessen resilience to other environmental impacts apart from climate change. In some instances, this may exacerbate the environmental effects of the proposed action. If projected changes could notably exacerbate the environmental impacts of the project, we recommend these impacts also be considered as part of the NEPA analysis.
- The FEIS states that benefits are projected for greenhouse gas emissions as on-road benefits would eventually offset construction impacts. EPA recommends that FRA expand upon this discussion to explain how the net greenhouse gas reductions would help meet relevant national and local climate action goals and commitments. As there will still be greenhouse gas emissions produced during construction and operations and maintenance, a chart comparing the magnitudes of the produced emissions and avoided emissions would also be helpful in assessing project impacts and benefits.
- The FEIS notes that GHG analyses are not prepared for the existing condition consistent with the NYSDOT guidance. It is unclear how a determination on GHG emissions or reductions can be made for various alternatives given the lack of comparison to the no action alternative. Please provide a citation to the referenced NYSDOT guidance and indicate why this precludes a GHG analysis for the existing condition.
- The FEIS states that "energy and greenhouse gas emissions is ultimately always positive, as the on-road benefits persist year after year and eventually offset the initial construction impacts". Although EPA understands the benefits of the project in reducing emissions compared to other modes of transportation, construction emissions are still considerable based on the information presented in Exhibit 4-27. Furthermore, these benefits would not be realized for more than half of the project lifetime (assuming an 80-year lifetime of the proposed program). EPA recommends FRA consider utilizing tools such as the Social Cost of Greenhouse Gases which can demonstrate the net costs or social benefits of greenhouse gas emission reductions across different alternatives.

**Cumulative Impacts:**

- EPA notes that the FEIS considers cumulative impacts that result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions.
    - As currently written, it is unclear whether cumulative impacts are considered in the determination of impacts, particular within the EJ analysis. In accordance with the Promising Practices for EJ Methodologies in NEPA Reviews, "agencies may wish to consider factors that can amplify identified impacts (e.g., the unique exposure pathways, prior exposures, social determinants of health) to ensure a comprehensive review of potential disproportionately high and adverse impacts to minority populations and low-income populations."
    - CEQ's guidance, *Environmental Justice: Guidance Under the National Environmental Policy Act* (1997) also encourages agencies to consider relevant public health and industry data concerning the potential for multiple or cumulative exposures to human health or environmental hazards in the affected population and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available. . . even if certain effects are not within the control or subject to the discretion of the agency proposing the action".
    - Given potential preexisting community vulnerabilities, EPA urges FRA to consider how relevant existing conditions across cumulative environmental, health, socioeconomic and climate stressors may ultimately lead to impacts that are disproportionately high and adverse.

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## 2. U.S. Department of Interior Comment Letter

# United States Department of the Interior

Office of the Secretary
Washington, D.C. 20240

March 15, 2023

IN REPLY REFER TO: 4111
ER 23/0064

*Via Electronic Mail Only*

Brandon Bratcher, Environmental Specialist
Office of Program Delivery
Federal Railroad Administration
120 New Jersey Avenue SE, W36-317
Washington, DC 20590

Subject: High Speed Rail Empire Corridor - Final Tier 1 Environmental Impact Statement

Dear Brandon Bratcher:

The Department of the Interior (Department) has reviewed the Final Tier 1 Environmental Impact Statement (EIS) for the High Speed Rail Empire Corridor Project in New York, on behalf of the U.S. National Park Service (NPS) and provides the following comments. The purpose of the project is evaluation of the proposed system improvements to intercity passenger rail services along the 464-mile Empire Corridor, connecting Pennsylvania (Penn) Station in New York City with Niagara Falls International Railway Station and Transportation Center in Niagara Falls, New York.

National Park Service Resources

There are several NPS resources in the project area that will need further review as you move to the Tier 2 EIS phase. We will work with your agency to analyze and avoid potential impacts to those resources. The NPS resources include National Heritage Area, National Historic Landmarks, and National Natural Landmarks, and more information on each is provided below.

National Heritage Areas

National Heritage Areas are places where natural, cultural, historic, and recreational resources combine to form a cohesive, nationally distinctive landscape arising from patterns of human activity shaped by geography. National Heritage Areas may be managed by a State or local agency, a commission, or a private nonprofit corporation. The NPS provides technical and financial assistance for a limited time (usually 10-15 years) following designation. There are three Natural Heritage Areas in the project area, as follows:

- Hudson River Valley National Heritage Area: Extends from New York City north to Albany, along the Empire Corridor South. The heritage of the region dates back to the Revolutionary War, with several National Historic Landmarks and historic districts, estates of well-known historical figures, scenic parks, and gardens.

- Erie Canalway National Heritage Area: Extends through upstate New York, along most of the central and eastern portions of the Empire Corridor West. This waterway played a key role in turning New York City into our country's most important center for commerce, industry, and finance.
- Niagara Falls National Heritage Area: Stretches from the western boundary of Wheatfield, New York, to the mouth of the Niagara River on Lake Ontario, including the community of Niagara Falls at the western end of the Niagara Branch. The region is home to dramatic natural features, rich cultural traditions, and nationally significant historical sites.

More information on the National Heritage Areas can be found at National Heritage Areas (U.S. National Park Service) (nps.gov).

National Historic Landmarks

National Historic Landmarks (NHLs) are nationally significant historic resources that possess exceptional value or quality in illustrating or interpreting the heritage of the United States. Information on NHLs can be found at National Historic Landmarks Program (U.S. National Park Service) (nps.gov). The primary contact regarding potential effects of your proposed project on NHLs is the State Historic Preservation Officer (SHPO); however, if your project could have an effect on an NHL, you should contact our Preservation Assistance Office/NHL Program Manager as a potential consulting party under Section 106 of the National Historic Preservation Act and provide information regarding the issues that may affect NHLs. The NHL Program Manager can be reached at nps_nhl_nereview@nps.gov.

National Natural Landmarks

The National Natural Landmarks Program recognizes and encourages the conservation of outstanding examples of our country's natural history in both public and private ownership. The NPS administers the National Natural Landmarks Program and, if requested, assists National Natural Landmarks owners and managers with the conservation of these important sites. The National Registry of Natural Landmarks includes nationally significant geological and biological features. Areas within 1,000 feet of the corridor centerline include:

- Moss Island, near Milepost 216 and Lock 17 on the Erie Canal in Little Falls, Herkimer County,
- Albany Pine Bush, which extends south of the Empire Corridor, Albany County,
- Montezuma Marshes, located more than 4 miles from the Empire Corridor, Seneca County,
- Bergen-Byron Swamp, which lies within 1,000 feet from the Alternative 125 corridor but more than 1,000 feet from the existing Empire Corridor, Genesee County, and
- Iona Island Marsh, on the west side of the Hudson River in Rockland County, is within a half mile of the corridor centerline.

More information on National Natural Landmarks can be found at National Natural Landmarks (U.S. National Park Service) (nps.gov).

Furthermore, we note that the Final Tier 1 EIS (Section 4.13.6 – Future Analysis) mentions that, if project activities may affect protected resources, consultation may be required with certain agencies. We request you add NPS to this list for Tier 2 consultation.

The Department appreciates the opportunity to provide these comments, and we look forward to working with you on this project to protect our cultural and natural resources as the Federal Railroad Administration moves forward in the planning and environmental review process for this project. If you have any questions or concerns related to these comments, please contact Mark Eberle at mark_eberle@nps.gov.

Sincerely,

STEPHEN TRYON

Digitally signed by STEPHEN TRYON
Date: 2023.03.15 14:08:55 -04'00'

Stephen G. Tryon
Director
Office of Environmental Policy and Compliance

cc: Brandon Bratcher, brandon.bratcher@dot.gov
SHPO-NY (daniel.mackay@parks.ny.gov),
NPS-Mark Eberle, mark_eberle@nps.gov