

CHAPTER 7 FINDING OF NO SIGNIFICANT IMPACT

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7. FINDING OF NO SIGNIFICANT IMPACT

7-1 OVERVIEW

For a minimum period of ten (10) days following the public hearing, the general public is provided the opportunity to send written comments to the Department related to a project. Such comments are appended to, and become part of, the official hearing transcript record (Part 1, Chapter 11). All comments and issues raised in the hearing, transcript record, and any design, cost, environmental, and other changes occurring since the approval of the Environmental Assessment (EA) must be considered and documented. Federal and State agencies, local agencies, and public interest groups also have the opportunity to comment. The FONSI process is shown in Figure 7.1.

A Finding Of No Significant Impact (FONSI) is prepared which:

1. Recommends an alternative for construction.
2. Summarizes all environmental impacts associated with the project including a statement of findings on all relevant impact categories (i.e., wetland, floodplain, coastal zone consistency). See Part 2, Chapter 3.
3. Summarizes mitigation of impacts.

Once completed, the FONSI is attached to the updated Environmental Assessment, and along with the Public Hearing Transcript and a cover letter, is submitted by the District to the Federal Highway Administration (FHWA) or other Lead Federal Agency for approval. Whenever FHWA is referenced hereinafter it may be exchanged with the Lead Federal agency. FHWA conducts a document review for compliance with its rules and regulations. The FONSI may also be sent to CEMO for review as well as all cooperating agencies.

Comments received by the District from FHWA are evaluated and incorporated in the FONSI and/or update of the EA and resubmitted to FHWA for approval. Once the FONSI is approved, FHWA will append a cover letter to the FONSI stating that location and design concept acceptance has been granted concurrently with approval of the FONSI. Notice of receipt of location and design concept acceptance and availability of the FONSI is also published by the District in a local newspaper.

The FONSI will be sent by the District to the Florida State Clearinghouse and all interested State and Federal agencies utilizing the Environmental Screening Tool (EST).

Subsequent to location and design concept acceptance, the FONSI is reevaluated in accordance with **23 CFR 771** to insure that there has not been a significant change in

the project impacts since approval of the environmental document. The reevaluation procedure is discussed in Part 1, Chapter 13.

7-2 PROCEDURE

7-2.1 Environmental Assessment Update

After the Public Hearing and subsequent ten (10) day public comment period, the District amends the EA as follows:

1. A Commitments and Recommendations section is added which includes:
 - a. A list of commitments and recommendations made by the Department not contained in the Department's Standard Specifications for Road and Bridge Construction, including but not limited to, mitigation measures, design commitments, and pollution control measures.
 - b. Other commitments as deemed necessary including commitments made during the EST screening events (Part 2, Chapter 32).
2. Updating the Comments and Coordination section to include:
 - a. Summary of meetings held including the public hearing. This includes places, dates, participants, and issues raised.
 - b. Written and oral responses to comments and issues raised after approval of the EA and the public hearing (Part 2, Chapter 31).
3. Modification of all other sections to reflect design, cost, or environmental changes since approval of the EA.
4. A Finding of No Significant Impact is prepared. It consists of a cover page and summary which recommends an alternative for construction and summarizes all environmental impacts associated with the project including statement of findings on all relevant impact categories (e.g., wetland, floodplain, coastal zone consistency) and mitigation of impacts. An example cover page and summary are provided in Part 2, Chapter 3.

7-2.2 Intradepartmental and FHWA Review Process

After preparation, copies (the number requested by FHWA) of the FONSI, one (1) copy of the public hearing transcript, and a copy of the ***Project Development Summary Report (PDSR)*** are submitted by District to FHWA. A cover letter is

submitted to FHWA requesting location and design concept acceptance as shown in Figure 7.2. At the District's option, CEMO may be requested to comment on the EA/FONSI and if there are cooperating Federal agencies the District submits 2 copies to each agency for their review and comments.

Within thirty (30) days of receipt of the EA/FONSI, FHWA will issue one of the following three responses to the District:

1. Review with comments.
2. A statement that the document is not ready for review.
3. Approval of the document by FHWA.

If comments are submitted by FHWA, appropriate revisions are made by the District. Two (2) copies of the revised EA/FONSI are sent to FHWA for their approval.

7-2.3 Actions Taken After Approval of the FONSI

One (1) copy of the approved EA/FONSI and a cover letter stating that location and design concept acceptance has been granted are forwarded by FHWA to the District. An example FHWA location and design concept acceptance letter is shown in Figure 7.3.

The approved EA/FONSI is uploaded to the Environmental Screening Tool (EST) by the ETDM Coordinator or Project Manager. When the document is uploaded the tool automatically sends an electronic copy of the EA/FONSI to the Florida State Clearinghouse and other contacts to which the Advance Notification was originally sent. The ETDM Coordinator or Project Manager may also send copies to other interested State and Federal agencies. Email and physical addresses can be stored and organized in the EST. This feature will allow documents to be sent electronically, or they may be printed out and mailed to other State and Federal agencies upon request. The ETDM Coordinator or Project Manager may also burn a copy of the EA/FONSI onto a CD for distribution. Copies must be sent to the cooperating agencies (i.e., U.S. Coast Guard, U.S. Army Corps of Engineers). All organizations and agencies have a comment period of 30 days.

The District also forwards a copy of the letter authorizing Location and Design Concept Acceptance to the Department's Federal-Aid Management Office. Public notification is also made by the District in the same local newspaper used for the public hearing notification for the EA to inform the public that the project has received location and design concept acceptance from FHWA and that the FONSI is available at the appropriate locations for public review.

At each of the three major production phases subsequent to location and design concept acceptance, the project is to be reevaluated in accordance with **23 CFR 771** to

insure that there has not been a significant change in the project design or environmental impacts since approval of the environmental document. Part 1, Chapter 13 provides more detail on reevaluations.

7-2.4 Interim Guidance on Limitation of Claims Notice

Section 6002(a) of SAFETEA-LU (codified at **23 USC 139(1)**) includes a provision for limiting the time period for filing claims and seeking judicial review of permits, licenses, or approvals issued by Federal agencies for a highway or public transportation capital project. The provision creates a statute of limitations period of 180 days for filing a challenge following publication of the notice in the **Federal Register (FR)** of the agency action(s).

There could be occasions when a FONSI is controversial and expected to be litigated. In these situations, there should be a discussion with the District legal office and the FHWA Division Office (FHWA) on the need for publication of a 180 day limitation notice under **23 USC 139 (1)**. The determining factors in this decision will be the degree of controversy surrounding the project and the likelihood of litigation; and the anticipated time frames for advancing the project to maintain project schedules.

If the decision is made to publish a **Limitations of Claims Notice** the District will still publish a notice in a local newspaper stating that Location Design Concept Acceptance has been approved by FHWA. At the same time, the District will submit to FHWA the project information needed to publish the notice in the **FR**. FHWA will then submit the notice to the **FR**. The 180 day limitations period begins upon date of publication of the notice.

There may be occasions when associated Federal agency approvals (**Clean Water Act** permit, Coast Guard permit, etc.) will be received at or around the same time as final **NEPA** approval. On those occasions, as part of the notice publication discussion, FHWA and FDOT will confer as to whether one combined notice should be published for the **NEPA** document and any associated Federal agency actions. If other Federal agency permits, licenses or approvals will be obtained at a later phase of the project, notice would be published at that time for the subsequent approval if the need is agreed to between FHWA and the FDOT.

7-3 REFERENCES

1. Federal Register. August 28, 1987. Environmental Impact and Related Procedures. FR Vol. 52, No. 167.
2. Federal Highway Administration. Technical Advisory T6640.8A. "Guidance for Preparing and Processing Environmental and Section 4(f) Documents". October 30, 1987.

3. Council of Environmental Quality. 1978. Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act. 43 CFR 55978-56007 and 40 CFR 1500-1508.
4. Memorandum titled, "Florida-Meeting with U.S. Coast Guard", from FHWA Highway Safety and Environmental Coordinator to FHWA Assistant Division Administrator (Copy to C.L. Irwin), September 2, 1988.
5. Memorandum of Agreement between the Department of Transportation and the Department of the Army, U.S. Corps of Engineers. 1983.
6. Federal-Aid Policy Guide, 23 CFR 771, Subchapter H - Right-of-Way and Environment, Part 771 - Environmental Impact and Related Procedures, December 9, 1991, Transmittal 1.
7. Memorandum titled, "Interim Guidance on the use of 23 USC part 193(1) Limitation on Claims Notices" from FHWA Acting Chief Counsel to FHWA Directors of Field Services, Division Administrators, and Federal Lands Highway Division Engineers, December 1, 2005

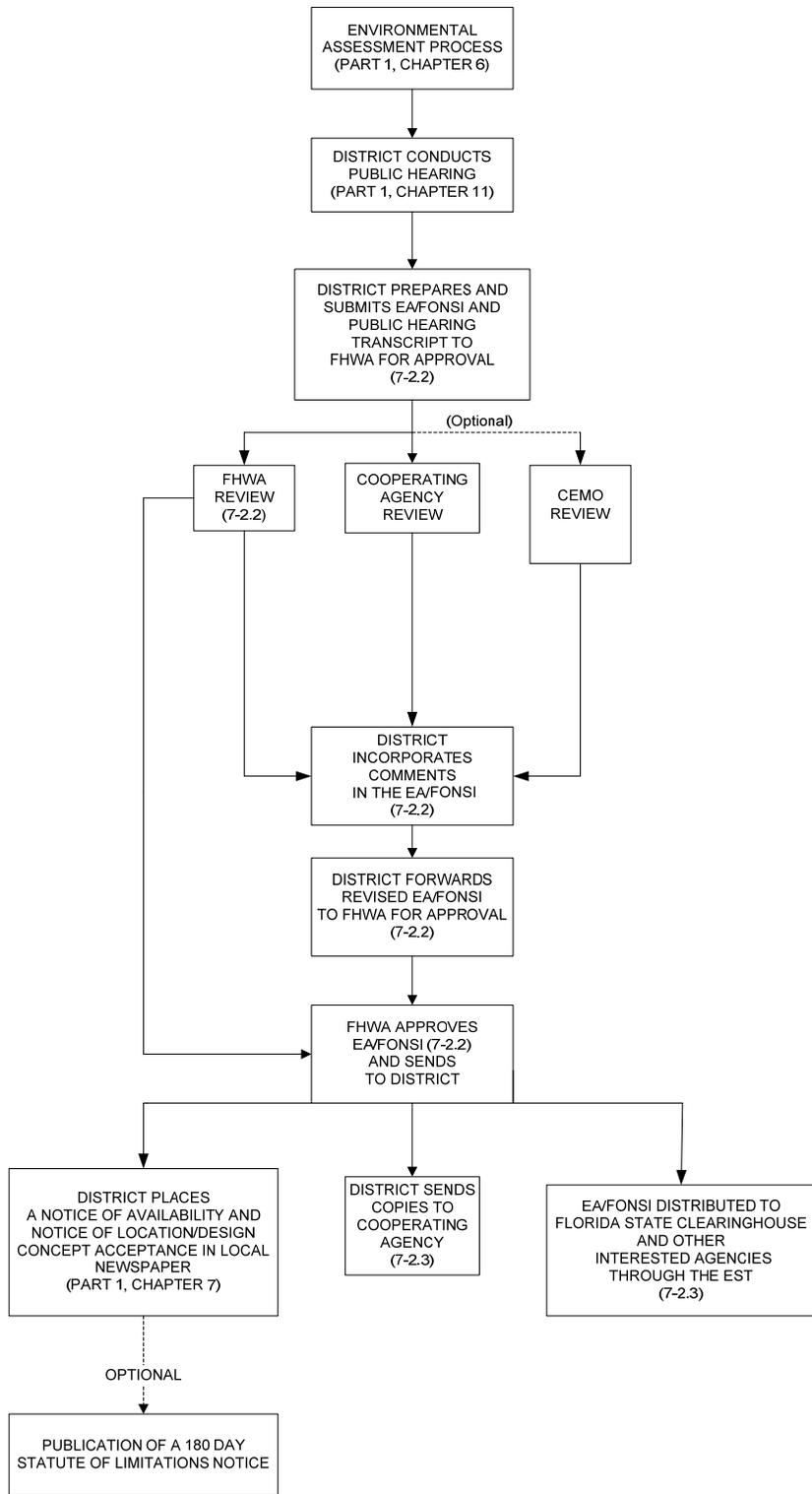


FIGURE 7.1 Finding of No Significant Impact Process
PART 1, CHAPTER 7

Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Attention:

Dear Mr./Ms.

Subject : Environmental Assessment with
Finding of No Significant Impact
Financial Project Number XXXXX-XXXXXX
Federal-Aid Project. No. X-XXX(X)-X

Any County, Florida

Enclosed are two (2) copies of an Environmental Assessment with Finding of No Significant Impact for the subject project as required by the National Environmental Policy Act of 1969 and submitted in compliance with 23 CFR Part 771.

Also, transmitted is a copy of the transcript of the project location and design concept public hearing held on _____ and a copy of the Project Development Summary Report.

Since this project has been developed under the guidelines of 23 CFR Part 771 , location and design concept acceptance for the preferred alternate is also requested upon the approval of the subject document.

Please advise us of your actions so that we may proceed with the project.

Sincerely,

District Environmental Management Office

Enclosure

cc: Federal-Aid Programs Coordinator

FIGURE 7.2 Example Transmittal Letter to FHWA for EA / FONSI and Associated Reports

(DATE)
HEC-FL

District Secretary
Florida Department of Transportation
Any City, Florida

Attention: Mr./Ms.

Subject: Florida - Federal-Aid Project. No. X-XXXX(X), Any County
Financial Project Number XXXXX-XXXX
Finding of No Significant Impact

We have reviewed the Environmental Assessment and Finding of No Significant Impact for the subject project which you submitted in compliance with the requirements of the National Environmental Policy Act of 1969 and 23 CFR 771.

Based on the EA and our familiarity with the proposed improvement and project site, we find that the construction of this project will have no significant adverse impact on the quality of the human environment. Therefore, the Finding of No Significant Impact is considered appropriate and is adopted.

Since this project has been developed consistent with your "Project Development and Environment Manual," the location and design concept of the selected alternative is also accepted, per your request.

A signed copy of the Finding of No Significant Impact is returned.

Sincerely,

FHWA Division Administrator

Enclosures

FIGURE 7.3 Example Transmittal Letter of Approval of FONSI