

## Federal Highway Administration, DOT

## § 771.119

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under 49 U.S.C. 5309(b).<sup>3</sup> Hardship and protective buy-

ing will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition quality for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 70 FR 24469, May 9, 2005]

### § 771.119 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this

property poses an undue hardship compared to others.

Protective acquisition is done to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

<sup>3</sup>Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the

through an early coordination process (*i.e.*, procedures under §771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The FTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in §771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good

cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in §771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

[52 FR 32660, Aug. 28, 1987, as amended at 70 FR 24470, May 9, 2005]

**§ 771.121 Findings of no significant impact.**

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to §771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.