

**CHAPTER 9
FINAL ENVIRONMENTAL IMPACT STATEMENT**

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9. FINAL ENVIRONMENTAL IMPACT STATEMENT

9-1 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. All comments and issues raised at the hearing, transcript record, and any design, cost, environmental, and other changes occurring since the approval of the Draft Environmental Impact Statement (DEIS) must be considered and documented by the District as explained under the procedures herein.

The Final Environmental Impact Statement (FEIS) is submitted only after the District has completed a quality control review and determined that the document is complete and ready for approval by the Federal Highway Administration (FHWA) or other Lead Federal Agency. Whenever FHWA is referenced hereinafter it may be exchanged with the Lead Federal Agency. A copy may also be sent to CEMO for review as well as all cooperating agencies. The FEIS process is shown in Figure 9.1.

The FHWA Division Office will review the document to assure that all issues have been resolved and all interagency agreements are complete. After the FHWA Division Office review is complete, the FHWA Division Office prepares a **Draft Record of Decision (DROD)**. The **DROD** shall accompany the FEIS during the internal FHWA review process.

The FHWA Division Office will send copies of the approved FEIS, along with a transmittal letter, to the District. After duplication by the District, copies of the FEIS are filed by the District with the U.S. Environmental Protection Agency (EPA) in Washington for publication in the **Federal Register (FR)** for public availability.

Thirty (30) days after the EPA publishes the notice of availability in the **FR**, the FHWA Division Administrator may sign the **Record of Decision**, and grant Location and Design Concept Acceptance (LDCA).

After receipt of LDCA, a notice is published in a local newspaper by the District stating that LDCA has been granted on the project. The FEIS 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 LDCA during the next phases of production, the FEIS is reevaluated in accordance with **23 CFR 771** to insure that there has been no new significant impacts from the project and that the document remains valid. The reevaluation procedure is discussed in Part 1, Chapter 13.

9-2 PROCEDURE

9-2.1 Environmental Impact Statement Update

After the public hearing and subsequent ten (10) day comment period, the District revises the DEIS to describe the outcome of the public hearing, issues raised, and the Department's response, including design changes since approval of the DEIS. This is accomplished by updating and modifying the DEIS in accordance with the referenced chapters in Part 2 of the PD&E Manual as indicated below:

1. A Commitments and Recommendations section (Part 2, Chapter 32 of the PD&E Manual) is added to the DEIS and 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.
2. Updating the Comments and Coordination section (Part 2, Chapter 31) to include:
 - (a) Summary of meetings held and including the public hearing(s). This includes places, times, participants, and issues raised.
 - (b) Written and oral responses to comments and issues raised after approval of the DEIS and the public hearing.
3. Modification of all other sections of the document to reflect design, cost, or environmental changes since approval of the DEIS.
4. The Summary in the DEIS (Part 2, Chapter 3 of the PD&E Manual) is revised to include:
 - (a) A recommended alternative for construction.
 - (b) A summary of all environmental impacts associated with the project including a statement of findings on all relevant impact categories (i.e., wetland, floodplain, coastal zone consistency).
 - (c) A summary of the mitigation of impacts.
 - (d) A comparison of long-term versus short-term impacts.

(e) A discussion of irreversible and irretrievable commitment of resources.

9-2.2 Intradepartmental and FHWA Review Process

Processing the FEIS may begin after the 45-day public comment period. The date is shown at the bottom of the cover page of the approved DEIS (see Part 1, Chapter 8-2.4). After preparation, the requested number of copies of the FEIS, one (1) copy of the public hearing transcript, and a copy of the **Project Development Summary Report** are submitted by the District to FHWA. The districts must contact the FHWA Division Office to determine the number of copies needed. A cover letter is submitted to FHWA as shown in Figure 9.2. If there are cooperating Federal agencies the District submits two (2) copies to each agency for their review and comments.

The FHWA Division Office will issue one of the following actions:

1. Review with comments,
2. A statement that the document is not ready for review, or
3. Prepares **Draft Record of Decision (DROD)** and forwards documents (**DROD** and FEIS) to Southern Resource Center of FHWA for legal sufficiency review.

The determination of FEIS approval authority is the responsibility of the FHWA Division Office.

9-2.3 Actions Taken After Adoption of the Final EIS

After adoption of the FEIS by the Division Administrator, one (1) copy of the approved FEIS with a transmittal letter is forwarded by FHWA to the District (Figure 9.5). Then the District fills in the date for which the formal review period for the document is completed on the cover page of the FEIS. The District reproduces copies of the approved FEIS and distributes the FEIS to State, Federal, and local agencies and public interest groups to whom the DEIS was previously sent (Figure 9.4). Part 2, Chapter 34 contains the names and addresses of all agencies to whom copies of the FEIS are sent including the appropriate number of copies.

The approved FEIS 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 FEIS 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, local agencies or public interest

groups upon request. The ETDM Coordinator or Project Manager may also burn a copy of the FEIS 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 files five (5) copies of the FEIS with the Office of Federal Activities, EIS Filing Section, EPA, Washington (Figure 9.3). In order for EPA to publish a notice of availability in the **Federal Register (FR)**, the District has to insure that EPA receives the FEIS by Wednesday afternoon of the first week for EPA to publish the notice in the **FR** by Friday of the second week. It is suggested that the five (5) copies sent to EPA, Washington, D.C. be mailed overnight express requiring a signature by the addressee (EPA) verifying receipt.

For deliveries in-person or by commercial express mail services, incl. Federal Express or UPS copies should be sent to:

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Room 7220
1200 Pennsylvania Avenue, NW
Washington,DC 20004

For deliveries by US Postal Service (incl. USPS Express Mail) copies should be sent to:

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Mail Code 2252-A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

EPA will then publish the notice of availability in the **FR**. The District will monitor the **FR** for publication of the notice and place a copy of the **FR** notice in the project file.

When thirty (30) days have elapsed after publication of the notice in the **FR**, the District forwards a formal request for location and design concept acceptance to the FHWA Division Office (Figure 9.6).

Also, after the 30-day publication period ends, the FHWA Division Office may sign the **Record of Decision** (Figure 9.7). The FHWA Division Administrator will forward a copy of the **ROD** to the District including a transmittal letter granting location and design concept acceptance (Figure 9.8). The District forwards a copy of both the **ROD** and location and design concept acceptance transmittal to the Department's Federal-Aid Management Office.

Upon receipt of location and design concept acceptance, a public notice is placed by the District in the same local newspaper used for public hearing notification to inform

the public that the project has received location and design concept acceptance from FHWA and that the project is being advanced to the next phase (Part 1, Chapter 11).

Subsequent to location and design concept acceptance, the project is to be reevaluated before advancing to future phases in accordance with **23 CFR 771** to insure that there have been no new significant impacts of the project not identified or addressed in the FEIS. Part 1, Chapter 13 provides more detail on reevaluations.

9-2.4 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 **FR** of the agency action(s).

Upon submittal of a **DROD** and FEIS to FHWA for review, the District will discuss with the District legal office and the FHWA Division Office (FHWA) 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, upon approval of a Final **ROD** for a FEIS, 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.

9-3 REFERENCES

1. Federal Register. 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, "Delegations of Authority to Division Administrators and State Directors", from FHWA Administrator Wykle to FHWA Division Administrators, May 13, 1998.
8. 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

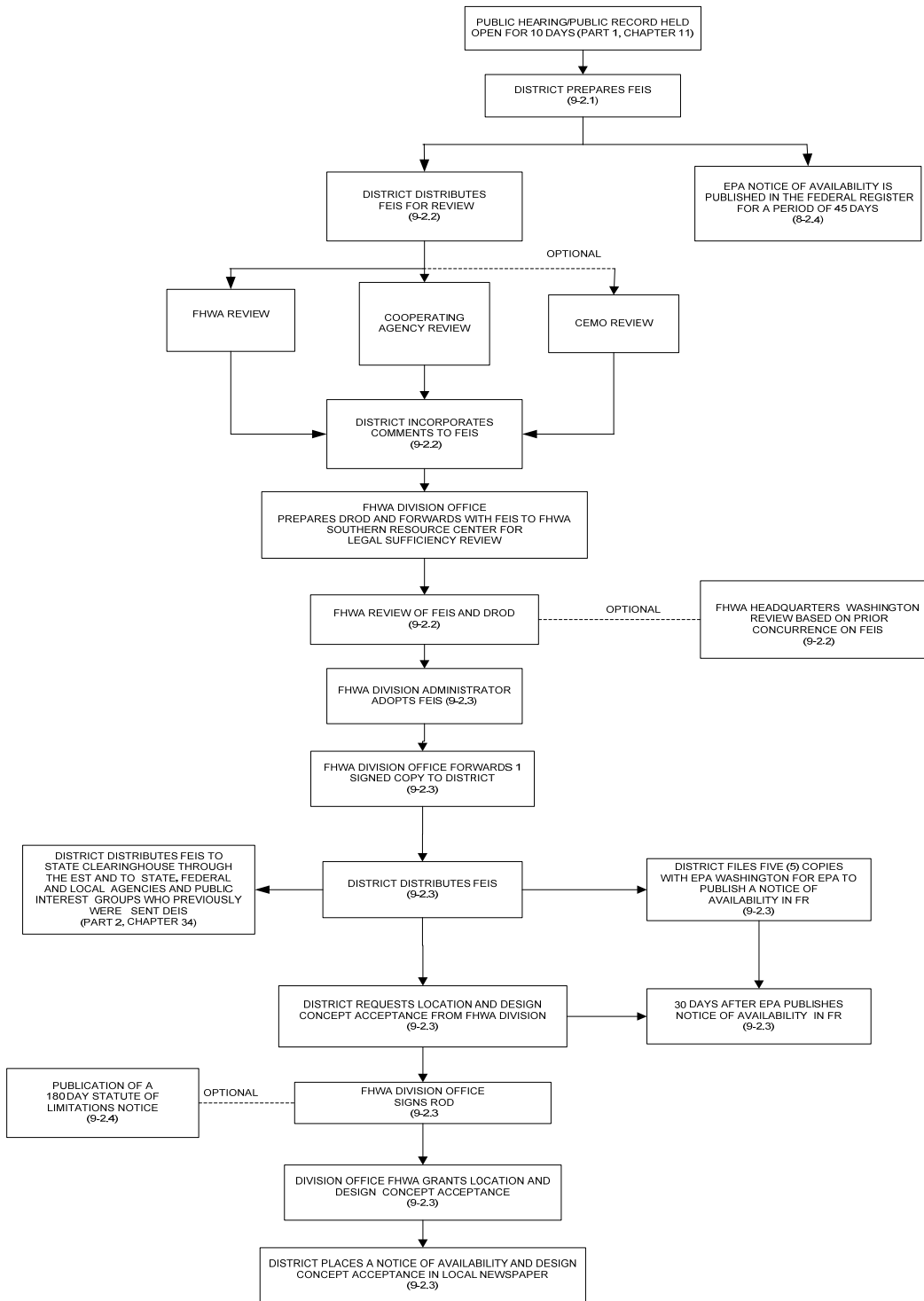


FIGURE 9.1 Final Environmental Impact Statement Process

(DATE)

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

Dear Mr./Ms.

Subject : Final Environmental Impact Statement
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
Any County, Florida

Enclosed are the requested _____ () copies of a Final Environmental Impact Statement 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 (date).

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

Sincerely,

District Environmental Management Office

Enclosures
cc : District Federal-Aid Coordinator

FIGURE 9.2 Sample Transmittal Letter to FHWA for Final EIS and Public Hearing Transcript

(DATE)

U.S. Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby)
Mail Code 2252-A, Room 7220
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Mr./Ms.:

Subject : Final Environmental Impact Statement
(PROJECT NAME)
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
(NAME OF COUNTY), Florida

In accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508), we are transmitting five (5) copies of the Final Environmental Impact Statement for your use. Please publish a notice of this Final Environmental Impact Statement in the Federal Register per the provisions of 40 CFR 1506.10.

Sincerely,

District Environmental Management
Office

Enclosures (5)

cc : FHWA / without enclosure

FIGURE 9.3 Example Transmittal Letter to EPA for Publication of FEIS Notice of Availability

(DATE)

(FEDERAL, STATE, OR LOCAL AGENCY)
(ADDRESS)

Mr./Ms.:

Subject : Final Environmental Impact Statement
(PROJECT NAME)
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
(NAME OF COUNTY), Florida

Pursuant to the National Environmental Policy Act of 1969, we are transmitting (insert number) copy(ies) of the subject document for your information. This distribution of the Final Environmental Impact Statement is being made on behalf of the Federal Highway Administration in accordance with Title 23, Code of Federal Regulation, Part 771.

Sincerely,

District Environmental Management
Office

Enclosures

cc : FHWA / without enclosure

*[NOTE: CONSULT PART 2, CHAPTER 34 FOR LIST OF AGENCIES AND
NUMBERS OF COPIES]*

FIGURE 9.4 Example Transmittal Letter to FEIS Distribution to Agencies

(DATE)

District Secretary
Florida Department of Transportation
Post Office Box 000
Any County, Florida

Dear Mr./Ms.

Subject : Florida - Financial-Aid Project No. X-XXX(X)-X
Financial Project Number XXXXX-XXXX
Final Environmental Impact Statement (FEIS)
FHWA-FLA-EIS-85-06-F
Any County

The subject FEIS has been approved by our office on (date). Enclosed for your use is a signed copy of the document.

Your office should distribute the FEIS to all appropriate parties, including copies to the Environmental Protection Agency (EPA) for publication of availability in the Federal Register. A copy of the transmittal letter to EPA should be provided to us for proof of distribution.

The project may be advanced in a normal manner after the Record of Decision (ROD) is approved by our office. The ROD can be approved 30 days after the EPA publishes the availability of the Final EIS in the Federal Register.

Sincerely,

FHWA Division Administrator

Enclosure
cc:

**FIGURE 9.5 Sample Transmittal Letter from FHWA to the Department
Stating Approval of the FEIS and Location and Design Concept
Acceptance Given After the Record of Decision is Approved**

(DATE)

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

Dear Mr./Ms.

Subject: Final Environmental Impact Statement
Financial Project Number XXXXX-XXXX
Federal-Aid Project No. X-XXX(X)-X
Any County, Florida

On (date), the availability of the subject document was published by the Environmental Protection Agency in the Federal Register. As required by the CEQ Guidelines and 23 CFR 771, the 30-day review period ended on (date). Location and design concept acceptance for this project is therefore requested.

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

Sincerely,

District Environmental Management
Office

cc: District Federal-Aid Coordinator

FIGURE 9.6 Sample Request Letter from District to FHWA for Location and Design Concept Acceptance

Subject: Florida - Federal-Aid Project No. _____
Financial Project Number XXXXX-XXXX
Final Environmental Impact Statement and Record of

Decision

Any County, Florida

From: Division Administrator
Tallahassee, Florida

To: Mr./Ms.
Federal Highway Administration, Southern Resource Center
Atlanta, Georgia

Attached for your processing and approval are ___ copies of the subject FEIS, which are to be processed in accordance with the provisions of 23 CFR 771.

Decision

This project provides for reconstruction of approximately eight miles of State Road _____ between _____ and State Road _____ in the municipalities of _____ and _____. The selected alternative consists of constructing a multi-lane divided highway.

Alternatives Considered

Five alternatives, including a "do-nothing alternative", were considered.

We find that the highway section covered by this FEIS is adequate to preclude questions on "piecemealing."

This FEIS contains an adequate detailed statement of the following : proposal description and purpose; probable impact of the proposal; alternates; unavoidable adverse environmental effects; short- term impacts vs. long-term benefits; irreversible and irretrievable commitment of resources; and measures to minimize environmental harm. The proposal conforms with the State's air quality implementation plan and the National Ambient Air Quality Standards.

No lands as described in 49 USC 303 will be affected by this proposal. The provisions of 36 CFR 800 have been fulfilled as applicable.

FIGURE 9.7 Sample Record of Decision (continued)

The statement has been coordinated with and endorsed by appropriate local, State, and Federal agencies and also made available for public comment and at the public hearing. The comments received have been adequately addressed in the final statement. The proposal appears to be well accepted, without significant opposition, and therefore not controversial.

Measures to Minimize Harm

Section VI on page F-12 of the FEIS provides for various mitigation measures for the proposed improvement. The section provides for coordination with the Federal Aviation Administration to ensure that any street lighting system used on State Road _____ does not compromise aircraft safety by intrusion into the runway approach clear zones or by glare from the street lights. This section also provides for the accommodation of citizen complaints during construction. In addition, Section VI provides for mitigation measures for wetland involvements, construction noise, and borrow pits.

Monitoring of Enforcement Program

Personnel of the FDOT have developed extensive operating procedures to ensure compliance with the various environmental commitments. In addition, appropriate personnel from the Division Office participate in the development of individual projects to ensure that environmental commitments are incorporated into the project design and construction plans. FHWA Transportation and Supervisory Transportation Engineers also review the plans, specifications, and estimate (PS&E) for all Federal-Aid highway projects to ensure that all environmental commitments have been implemented.

The final statement is in conformance with the applicable provisions of 23 CFR 771, and it satisfactorily covers the anticipated environmental impacts, including physiographic and cultural effects; therefore, we recommend approval of it.

Upon receipt of your notification of approval, we will initiate distribution of copies of the statement as set forth in 23 CFR 771.125.

Prior concurrence of the Washington Office is not recommended.

Please return three (3) signed copies of the document.

FHWA Division Administrator

cc: FDOT District Secretary

FIGURE 9.7 Sample Record of Decision (concluded)

(DATE)

District Secretary
Florida Department of Transportation
Post Office Box 000
Any City, Florida

Dear Secretary

Subject : Federal-Aid Project Number X-XXX(X)-X
Financial Project Number XXXXX-XXXX
Final Environmental Impact Statement (FEIS)
FHWA-FLA-EIS-85-08-F

We have signed the Record of Decision (ROD) for the subject project on (date). Enclosed is a copy of the ROD for your information and use.

Location and design concept acceptance is hereby given for this project.

Sincerely,

FHWA Division Administrator

Enclosure

FIGURE 9.8 Sample Transmittal Letter from FHWA to Department Containing Location and Design Concept Acceptance