

MEMORANDUM

Subject: Processing Final EISs

From: Director, Office of Environmental Policy
Washington, D.C. 20590

To: Regional Federal Highway Administrators
Regions 1-10

Date: November 25, 1987

Reply to
Attn. of: HEV-11

Revisions to FHWA's environment al regulation will become effective November 27, 1987. These revisions contain new criteria (23 CFR 771.125(c)) for determining which final EISs need concurrence of the Washington Headquarters prior to approval. The criteria are somewhat subjective. Furthermore, the regulation does not state who is to determine the need for prior concurrence on individual projects. The following guidance addresses these issues.

Our memorandum transmitting draft EIS comments will state whether prior concurrence on the final EIS is needed. This will be based primarily upon the draft EIS review. Prior concurrence will not be necessary when:

- a. The draft EIS shows sufficient coordination with Federal, State or local government agencies (i.e., adequate scoping);
- b. the draft EIS shows that the social, economic or environmental impacts (including mitigation) are adequately explored;
- c. the proposed action does not have impacts which appear to be unusually great, and
- d. the proposed action does not involve National policy issues.

Where (1) it is apparent from the final EIS that the conditions in a-d above are no longer met, (2) the action is opposed by a Federal, State or local government agency on environmental grounds at the time the final is submitted to FHWA for approval, (3) the final EIS contains major unresolved issues, or (4) there is a strong likelihood of litigation, it will be incumbent on the Regional Office to forward the final EIS to the Washington Headquarters for prior concurrence.

The following examples illustrate some of the common Instances of

opposition on environmental grounds and major unresolved issues:

1. EPA rates a project environmentally unacceptable even after all mitigation (found to be in the public interest) has been negotiated with them.
2. An agency states that the project may be referred to CEQ.
3. It appears that issuance of Federal permits (such as a Section 404 permit) will be a major controversy.
4. The project requires massive relocations or causes other severe impacts.
5. Opposition from local governments.
6. Substantial community opposition based on environmental or community impacts.
7. Major cultural resource conflicts where agreement with the Advisory Council on Historic Preservation cannot be reached.
8. Disposal or treatment of hazardous wastes from the project has not been resolved.

/ Original signed by /

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