

Title: Findings of No Significant Impact
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Issued by the Office of Planning and Environment (TPE)

### **1. Purpose**

This document provides guidance on preparing an FTA finding of no significant impact (FONSI), in compliance with the Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) implementing regulations (40 CFR parts 1500-1508) and the FTA environmental impact regulations (23 CFR part 771).

### **2. Applicability/Scope**

The FONSI is a document in which FTA briefly explains the reasons why, based on the results of an environmental assessment (EA), an action will not have a significant effect on the human environment and, therefore, why an environmental impact statement (EIS) will not be prepared (40 CFR 1508.13).

If FTA determines that a project not determined to qualify for a categorical exclusion would not significantly affect the quality of the human environment, a FONSI would constitute the final stage of the NEPA process for a project that was evaluated in an EA. The FONSI is FTA's environmental decision document for that project, but it does not commit FTA to approve any future grant request for the proposed project.

### **3. Responsibilities**

After preparing an EA and allowing for public review, the FTA Regional Administrator (RA) determines whether a proposed project will significantly affect the quality of the human environment. When the RA finds the project will not significantly affect the quality of the environment, the RA, or delegated staff, issues a signed FONSI. The RA routinely consults with the Regional Counsel in making the determination.

The Office of Chief Counsel (TCC) reviews the FONSI for legal sufficiency before the RA signs the document, and that function is usually assigned to the Regional Counsel.

FTA Regional staff is responsible for overseeing the development of a FONSI and ensuring that the document meets all regulatory and statutory environmental requirements.

### **4. Standard Procedures for Developing a FONSI**

- 4.1. Review public record.** Before preparing a FONSI, Regional staff should review: (1) the public and interagency comments on the EA, both written and transcribed from the public hearing, if one was held; (2) responses to the comments; and, (3) any revisions made to the EA in response to the comments, as appropriate. Per 23 CFR 771.119(g), the project sponsor provides these materials to FTA, along with a recommendation for a FONSI, when no significant impacts are identified.

**4.2. Drafting the FONSI.** Regional staff may request the project sponsor prepare a draft FONSI for FTA review or prepare it internally.

**4.3. Content and format.** CEQ guidance provides the following direction regarding FONSI content: “The finding itself need not be detailed, but must succinctly state the reasons for deciding that the action will have no significant environmental effects, and, if relevant, must show which factors were weighted most heavily in the determination. In addition to this statement, the FONSI must include, summarize, or attach and incorporate by reference, the environmental assessment” (CEQ, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” Question 37(a), 1981). The FONSI, at a minimum, should consist of a signed cover letter that contains the FTA finding attached to a document that provides a brief project description and all final decisions (e.g., selected alternative, mitigation measures) and findings.

**4.3.1. Description of the project.** The FONSI should briefly describe the project, which may include brief summaries of the project need, alternatives considered, and public involvement, and should reference the EA for more information.

**4.3.2. Brief Summary of environmental consequences and findings.** The FONSI should summarize the environmental impacts. It should also identify all findings required by Federal environmental laws and executive orders, if not previously identified in the EA under 23 CFR 771.119(g). Findings may include:

- Section 106 determination and any agreements (i.e., Memorandum of Agreement or Programmatic Agreement);
- Section 4(f) finding;
- Project-level air quality conformity (if the project is in an air quality nonattainment or maintenance area); and
- Section 7 (Endangered Species Act) finding.

**4.3.3. Description of mitigation measures.** The FONSI should describe the mitigation measures incorporated into the project, and can be discussed in text or attached in a mitigation monitoring table. Mitigation can be incorporated by reference, as well, if it has not changed since publication of the EA and clearly identifies the mitigation as commitments (e.g., identify the action and the party responsible). When FTA issues a FONSI based on the incorporation of mitigation into the project (i.e., mitigation commitments to avoid, minimize, rectify, reduce, or compensate for potentially significant adverse environmental impacts that would otherwise require full review in an EIS), the FONSI should specify that FTA is making the FONSI determination based on the incorporation of mitigation into the project. If specific mitigation measures reduce an environmental impact below a “significant” level, it should be noted in the mitigation commitment discussion, as well; this notation will help FTA quickly determine later if a supplemental environmental document is needed should changes to the proposed mitigation occur. Lastly, when relying upon the mitigation to support a FONSI, it is especially important to monitor the mitigation, consistent with “Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” guidance (CEQ, 2011).

**4.3.4. Responding to comments.** Regional staff may document responses to comments on the EA as part of the FONSI, but it is not required. This can be in the form of an attachment to the FONSI that summarizes the comments received and includes responses to those comments, or in the text of the FONSI. All comments and responses must be included in the project file, whether the responses to comments are part of the FONSI or not.

**4.4. Consider FTA funding source.** FTA only has a NEPA responsibility for FTA-funded projects.

Regional staff should confirm that the project is eligible to receive Federal funding and has identified FTA formula or flex funds for the project, has applied for a discretionary grant program (e.g., TIGER), or the project sponsor has stated it will seek Capital Investment Grant funds for the project prior to FONSI signature.

**4.5. Public review prior to FONSI signature.** When FTA issues a FONSI for a project type that is found in 23 CFR 771.115(a) and would, therefore, normally require an EIS, the draft FONSI must be available for public review for 30 days before FTA makes any final determination on whether to prepare an EIS or proceed with the FONSI (40 CFR 1501.4(e)(2)).

**4.6. Signature.** The Regional Administrator, or designee, may sign the FONSI after a 30-day public review period of the EA, or after the 30-day FONSI review noted in section 4.5 (above). The FONSI includes the date the finding was issued and the signature of the approving official.

**4.7. Notice and distribution.** Upon signature, Regional staff must provide a copy of the signed FONSI to the project sponsor, as the document must be available to the public from both FTA and the project sponsor (23 CFR 771.121(b)). The Region should direct the project sponsor to send the required notice of availability of the FONSI to the parties identified in 23 CFR 771.121(b). The Region should also request that the EA and FONSI be posted on the project sponsor's website and be maintained there until the project is open and operating (23 CFR 771.111(i)(3)). The FONSI signature date must be recorded in the Federal Permitting Dashboard within 10 days of signature, pursuant to USDOT's *Federal Permitting Dashboard Reporting Standard* (Dec. 2018) (internal only).

**4.8. Limitation of claims.** The FTA Regional Office should notify FTA's Office of Environmental Programs (TPE-30) when the FONSI is signed so it can be included in the next Limitation on Claims notice for the *Federal Register*. The publication of this notice will start the 150-day statute of limitations on challenges to the FONSI.

**4.8 Issuing FONSI on another agency's EA.** If another Federal agency issues a FONSI on an action that includes an FTA-funded element, FTA evaluates the other agency's EA/FONSI to determine whether the FTA-funded element of the project and its environmental impacts have been adequately identified and assessed (23 CFR 771.121(c)). If FTA determines that no significant environmental impact will result from the FTA-funded element, FTA will issue its own FONSI or categorical exclusion (CE), incorporating the other agency's EA/FONSI by reference. If FTA determines that the environmental issues associated with the FTA-funded element of the project have not been adequately identified and assessed for purposes of FTA's program, then FTA will require additional documentation (e.g., Section 4(f) evaluation) to satisfy FTA requirements prior to issuing a decision document or CE determination.

**4.9 Pre-award authority with issuance of FONSI.** The FONSI allows the project sponsor to incur certain project costs at its own financial risk, as detailed in the annual Apportionment Notice in the *Federal Register*.

**5. References**

- CEQ regulations implementing NEPA, [40 CFR parts 1500-1508](#)
- CEQ guidance on [Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact](#)
- [Executive Order 11988: Floodplain Management](#)
- [Executive Order 13690: Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input](#)
- [Executive Order 11990: Protection of Wetlands](#)
- FTA's Metropolitan Transportation Planning regulations, [23 CFR part 450](#)
- FTA's Environmental Impact and Related Procedures, [23 CFR part 771](#)
- Section 4(f) regulations, [23 CFR part 774](#)
- Section 404(b)(1) guidelines, [40 CFR part 230](#)
- Transportation Conformity regulations, [40 CFR part 93](#)
- USDOT Federal Permitting Dashboard Reporting Standard (2018), internal—FTA only

APPROVAL:



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DATE:

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