

WA Division FHWA Specific Constraint Thresholds for 23 CFR 771.117(e)

The following definitions were developed in collaboration with FHWA WA Division staff and adopted in March 2013 as part of the CE Programmatic Agreement. These definitions were designed to address the unique environmental context of Washington State. According to page 60109 Federal Register, Vol 79, No. 193, published Monday, October 6, 2014, these definitions now apply to 23 CFR 771.117(e).

Actions described in (c)(26)¹, (c)(27)² and (c)(28)³ may not be processed as CEs if they fail to meet any of the constraints listed in [23 CFR 771.117\(e\)](#). FHWA Washington Division agrees that the definitions of the following terms (negotiated under the 2013 CE Programmatic Agreement) shall apply to the constraints in section (e).

23 CFR 771.117(e)(1): Acquisition and minor amount of right of way

- Acquisition includes options to purchase, rights of first refusal, fee title, permanent easements, temporary easements, and/or access rights, including advance/early and post-NEPA acquisitions.
- Acquisition is considered more than minor if it will:
 - Require displacement of owners and/or tenants and personal property from residences, commercial or non-profit establishments, or farms.
 - Involve more than a quarter of the parcel or substantially affect the functionality of the primary structure on the property.

23 CFR 771.117(e)(4): Construction of temporary access, or the closure of existing road, bridge, or ramps, that would result in major traffic disruptions.

The project will NOT result in major traffic disruptions if the following are TRUE for the project.

- Provisions are made for access by local traffic and are so posted.
- Through-traffic-dependent businesses will not be adversely affected.
- The detour or ramp closures, to the extent possible, will not interfere with any local special event or festival.
- The temporary road, detour or ramp closure does not substantially change the environmental consequences of the action.
- There is no substantial controversy associated with the use of the temporary road, detour, or ramp closure.

¹(c)(26): Modernization of a Highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e).

² (c)(27): Highway Safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e).

³ (c)(28): Bridge rehabilitation, reconstruction, or replacement of the construction of grade separation to replace existing at-grade railroad crossing, if the action meets the constraints in paragraph(e).

23 CFR 771.117(e)(5): Changes in access control.

The constraint applies only when changes in access control affect traffic patterns.

- Changes that *would* affect traffic patterns include actions such as the installation of medians or C-curb.
- Changes that *would not* affect traffic patterns include actions such as breaks in access control for maintenance or emergency access, or minimal alternations or adjustments to driveways.

23 CFR 771.117(e)(6): A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths): or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

A floodplain encroachment is defined as:

- An action that may result in an increase in the designated regulatory floodway.
- An action that may result in an increase of more than 1 foot of surface water elevation in the base floodplain when no regulatory floodway is designated
- An action that may increase the risk of damage to property and loss of human life, or may result in modification of a watercourse.