

Table of Contents

<u>Section</u>	<u>Page</u>
9.1 REGULATIONS & GUIDANCE	9.1-1
9.2 PUBLIC INVOLVEMENT PROCEDURES	9.2-1
9.2.1 General.....	9.2-1
9.2.2 Intent-To-Study Letter.....	9.2-1
9.2.3 Notice of Intent (NOI).....	9.2-1
9.2.4 Transportation Notice	9.2-2
9.2.5 Scoping.....	9.2-2
9.2.6 Guidelines for Planning Ongoing Public Involvement.....	9.2-2
9.3 PUBLIC INVOLVEMENT METHODS	9.3-1
9.3.1 Overview.....	9.3-1
9.3.2 Informational Meetings	9.3-2
9.3.3 Public Hearings	9.3-2
9.3.3.1 Legal Basis	9.3-2
9.3.3.2 Opportunity for Public Hearing.....	9.3-2
9.3.3.3 Types of Public Hearings	9.3-3
9.3.3.4 Scheduling of Public Hearings	9.3-4
9.3.3.5 Notice of Public Hearing	9.3-4
9.3.3.6 Public Hearing Formats	9.3-5
9.3.3.7 Public Hearing Handouts	9.3-7
9.3.3.8 Hearing Transcript/Documentation	9.3-7
9.4 INTERAGENCY COORDINATION	9.4-1

List of Figures

Figure

Page

Chapter 9

PUBLIC INVOLVEMENT PROCESS

9.1 REGULATIONS & GUIDANCE

Acting under the authority of NRS 408.245, which provides for the acceptance of Federal Acts, the NDOT accepts, as a continuing obligation, the responsibility for complying with the provisions of 23 USC 128 “Public Hearings” and [23 CFR 771.111 “Early Coordination, Public Involvement and Project Development”](#) for NDOT projects involving funding or approval from the Federal Highway Administration (FHWA). The procedures for accomplishing compliance apply to the development of Federal-aid projects, other than projects of an emergency nature that will necessitate immediate repair of a highway facility. Permanent restoration work will be handled like any other Federal action.

9.2 PUBLIC INVOLVEMENT PROCEDURES

9.2.1 General

Public involvement for NDOT projects involving funding or approval from the FHWA will be accomplished through a variety of methods, as suited to the scope, potential socio-economic and environmental impacts, potential for controversy and anticipated level of public interest. It will be initiated early in project development and will continue throughout the project development process. (See 23 USC 139, “Efficient environmental reviews for project decision-making” and associated implementation guidance for information on the requirements for involving “participating agencies” in the project development process.)

9.2.2 Intent-To-Study Letter

For projects requiring an Environmental Assessment (EA), the initial action to notify the public and interested/affected agencies and organizations of the project’s preliminary concept will be the issuance of an Intent-to-Study Letter. This letter contains a location map or sketch of the project area, the details of scheduled informational meetings (see [Section 9.3.2](#)) and a request for expressions of concern or special knowledge from the addressee. These letters are sent to affected Federal, State and local agencies; political leaders; recognized special interest groups and known concerned/affected citizens, including agencies serving as “participating agencies” in the environmental review process.

9.2.3 Notice of Intent (NOI)

For projects involving the preparation of an Environmental Impact Statement (EIS) (see [Chapter 8](#)), the initial action to notify the public and interested/affected agencies and organizations of the project’s preliminary concept will be the publication of a Notice of Intent in the *Federal Register*. The [CEQ regulations](#) and [23 CFR 771 “Environmental Impact and Related Procedures”](#) require the publication of a Notice of Intent in the *Federal Register* as soon as practicable after the decision is made to prepare an EIS and before the scoping process begins ([40 CFR 1501.7](#)). A Notice of Intent will also be published when a decision is made to supplement a Final EIS, but will not be necessary when preparing a supplement to a Draft EIS ([23 CFR 771.130\(d\)](#)). See the [FHWA Technical Advisory T6640.8A](#) for guidance on preparing a Notice of Intent including recommended format, content and processing. In general, the Notice of Intent will:

- describe the proposed action and possible alternatives to accomplish the goals of the proposed action;
- describe the proposed scoping process for the action, including when and where any scoping meetings will be held; and
- provide the names and addresses of one or more FHWA contacts and one or more NDOT contacts who can answer questions about the proposed project and the EIS.

9.2.4 **Transportation Notice**

The NDOT provides additional public notice in the form of Transportation Notices. Transportation Notices are issued for public meetings and hearings. Transportation Notices are published in general circulation adjudicated newspapers of local, regional and/or ethnic distribution in the project area not less than 15 days prior to the meeting and, when newspapers are available and published on a suitable schedule, again on the day before and the day of the meeting, at State and local government buildings, libraries, NDOT offices and on the NDOT website.

9.2.5 **Scoping**

Scoping is a study management technique described in [40 CFR 1500](#) et seq. to provide “an early and open process for determining the scope of issue to be addressed and for identifying the significant issues related to a proposed action.” For NDOT projects that do not require preparation of an EIS, the use of a widely distributed Intent-to-Study Letter, together with one or more informational meetings (see [Section 9.3.2](#)) constitutes the NDOT Scoping Process. For projects requiring an EIS, the NDOT will schedule a formal scoping meeting with affected Federal, State and local agencies, including agencies serving as “participating agencies,” and will hold one or more informational meetings to accomplish scoping objectives with the public and interested organizations.

9.2.6 **Guidelines for Planning Ongoing Public Involvement**

After issuance of the Intent-to-Study Letter or Notice of Intent and completion of the Scoping process for a project, the project study group will plan ongoing public involvement activities based on consideration of the following guidelines:

1. **Meeting Type.** Select the appropriate meeting type for the situation (see [Section 9.3](#)). As practicable, use the Open Forum format . This format allows greater flexibility for the public to drop-in, when convenient, to individually discuss the project and tends to be more successful in eliciting feedback from participants. Formats may be varied, as needed, to accommodate specific needs.
2. **Time & Location.** Schedule public meetings or hearings at a convenient time and location for those expected to attend. Generally accepted times for meetings or hearings would be Tuesday, Wednesday or Thursday evenings between 4:00 p.m. and 7:00 p.m. (although the hours for meetings and hearings are flexible and will be tailored to the needs of the intended audience). The location will be convenient and as close to the project as practicable. Accessibility needs of persons with disabilities also will be considered in selecting the facility for a public meeting or hearing.
3. **Attendees.** Appropriate NDOT personnel (e.g., representatives from Planning, Design, Bridge, Environment, Right-of-Way, Construction, Districts) will participate in the public meetings or hearings and the FHWA will be invited for Federal-aid projects.
4. **Information.** Large plans and displays for the proposed project will be available for viewing. Handouts explaining the project’s purpose and need, consistency with local

planning, SEE impacts, relocation assistance and the right-of-way acquisition process will be available (see [Section 9.3.3.7](#)). Comment forms will be provided at public meetings and hearings (see [Section 9.3.1](#)).

5. Roles & Responsibilities. NDOT personnel will be available at public meetings and hearings to explain the project, answer questions and encourage individuals to provide comments on the project. The Project Manager will be responsible for ensuring that substantive comments received at public hearings and informational meetings are documented in the project file and responded to. When a public meeting or hearing is held for a project, the Environmental Services Division will submit a transcript of the meeting or hearing to the FHWA along with a certification that a required hearing was held or a hearing opportunity was offered. The Environmental Services Division will ensure the transcript is accompanied by copies of written statements from the public, both submitted at the public meeting or hearing or during the comment period.

The NDOT, in cooperation with the FHWA, will develop a coordination plan for public and agency participation on projects requiring an EIS. The plan will be developed early in the environmental review process after project initiation and will identify coordination points. The following are example coordination points for a project involving the preparation of an EIS:

- Notice of Intent publication and scoping activities;
- development of purpose and need;
- identification of the range of alternatives;
- collaboration on impact assessment methodologies;
- completion of the Draft EIS;
- identification of the preferred alternative and the level of design detail;
- completion of the Final EIS;
- completion of the Record of Decision (ROD); and
- completion of permits, licenses or approvals after the ROD.

In addition, the coordination plan will establish a schedule of regular Project Management Team meetings and identify which persons, organizations or agencies will be included for each coordination point, as well as timeframes for input by those persons, organizations and agencies.

FHWA policy requires a negotiated schedule for the NEPA process for EIS projects. If the negotiated schedule will be included in the coordination plan, that schedule will be prepared in consultation with each participating agency and will include the timing of coordination with those agencies and the public.

9.3 PUBLIC INVOLVEMENT METHODS

9.3.1 Overview

The Department may use different public involvement formats that afford participants the opportunity to interact with NDOT and FHWA personnel individually in an informal atmosphere, or in a more formal setting where presentations are given and comments are received and documented for the public record. Some formats include a combination of informal and formal elements. Public involvement methods used by the Department include the following:

- informational meetings; and
- public hearings (location, design or combined location/design).

The following principles apply to all public meetings and hearings:

1. Public meetings or hearings will be held to provide an opportunity for interested persons to participate in the process of determining specific project location and major design features.
2. NDOT representatives will ensure the objectives of the public meeting or hearing are clearly communicated. This will include:
 - stating that the purpose of the hearing is to discuss project needs;
 - presenting studies on alternative location features of the proposal; and
 - providing an opportunity for public discussion of the major features, including the social, economic and/or environmental effects of the project.
3. NDOT representatives also will ensure a clear indication is provided that the public meeting or hearing is being held prior to making any commitments on the alternatives presented and that no studies or plans will be finalized until the complete public record has been analyzed, including data gathered at the public meeting or hearing and received in response to the EA or EIS.
4. At each public meeting or hearing, NDOT representatives will make available and discuss information about the project alternatives studied. NDOT's presentation will include, as available, tentative right-of-way requirements; acquisition schedule; estimated number of families and businesses to be relocated; housing availability and the Relocation Assistance Program. Also, a tentative construction schedule may be available, noting significant items that may affect the schedule.
5. At public meetings and hearings, comments forms will be provided and NDOT representatives will indicate that written statements and exhibits may be submitted to the address shown in the handouts in place of, or in addition to, oral statements made at the public meeting or hearing. The procedure for this submission will be described in the Transportation Notice, the Intent to Study Letter and at the public meeting or hearing, and will include the final date for receipt of comments following the public meeting or hearing. At each public meeting or hearing, NDOT representatives also will ensure that the public is informed that at any time after the hearing and before location and design

approval for the project, all information developed for the proposed location and/or design will be available upon request for public review and copying.

9.3.2 Informational Meetings

An informational meeting is a meeting in either a formal or informal setting, depending on its intended audience, at which NDOT and FHWA personnel present, receive and/or exchange information with the public. Notice of informational meetings is provided in general circulation adjudicated newspapers of local, regional and/or ethnic distribution in the project area not less than 15 days prior to the meeting and, when newspapers are available and published on a suitable schedule, again on the day before and the day of the meeting.

9.3.3 Public Hearings

9.3.3.1 Legal Basis

For certain projects, a public hearing, or the opportunity for a public hearing, is required by Federal statute, Federal regulation and/or Department policy (see [NDOT Policy for Public Involvement/Public Hearing Procedures](#)). 23 USC 128 states that “Any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, shall certify to the Secretary that it has had public hearings, or has afforded the opportunity for such hearings...” Furthermore, [23 CFR 771 FHWA “Environmental Impact and Related Procedures”](#), requires the “State highway agency” to hold one or more public hearings or offer the opportunity for public hearing(s) to be held at a convenient time and place for Federal-aid projects that:

- require significant amounts of right-of-way;
- substantially change the layout or function of connecting roadways, or of the facility being improved;
- have a substantial adverse impact on adjacent property;
- have a significant social, economic, environmental or other impact; or
- for which the FHWA determines a public hearing is in the public interest.

9.3.3.2 Opportunity for Public Hearing

An Opportunity for Public Hearing is a public notice that officially advertises a planned project that has local support and/or a minimum impact as may be demonstrated by the public’s input provided in response to the Intent-to-Study Letter and at Informational Meetings. This notice advises the public of the pending project, where information is available and how a public hearing may be requested, including time limitations on receipt of requests. If a request is not received by the deadline, the project proceeds directly to the applicable approval action without a public hearing.

When one or a few requests for a public hearing are received in response to the notice, it is permissible to meet with the parties, at a convenient location, to explain the project and answer questions. If satisfied, the requesting party may withdraw the request for the hearing in writing. The proceedings will be documented and made part of the project record. If the requesting party does not withdraw the request, an appropriate hearing will be held.

Additional opportunities for public hearings will be afforded when:

- substantial changes in the scope of the project have occurred,
- substantial unanticipated development has occurred in the area affected by the project,
- there has been an unusually long lapse of time since the last public hearing, or
- significant social, economic and/or environmental effects are identified that were not previously considered at earlier public hearings.

9.3.3.3 Types of Public Hearings

When a public hearing is held for a project, the Project Manager will conduct the hearing in coordination with the Environmental Services Division and the FHWA. Project location, project design and associated impacts typically are the primary focus of public hearings. The project location and design may be addressed at one or more types of public hearings as follows:

1. Location Public Hearing. A Location Public Hearing is held when a project involves a new location where feasible alternatives can be developed before the route location is approved and before the Department is committed to a specific proposal.
2. Design Public Hearing. A Design Public Hearing is held for a project after a Location Public Hearing has been conducted and location approval has been issued, but before the NDOT is committed to a specific design proposal.
3. Location/Design Public Hearing. A Location/Design Public Hearing, often referred to as a Combination Hearing, is held for a project in the following situations:
 - alternatives are limited to a single location as determined by public involvement, terrain or development restrictions; or
 - there are a limited number of minor alignment alternatives available on a basic location.

Depending on the project class and project development phase at the time of a hearing, copies of the EA or EIS (Final or Draft) will be available at the hearing for review. The Environmental Services Division will be present to explain and answer questions on the document and its contents.

9.3.3.4 Scheduling of Public Hearings

Public hearings will be held after the release of the draft environmental document and before NEPA approval. For projects requiring an EIS, the public hearing will be scheduled after the FHWA approves the DEIS. For projects involving an EA, the hearing will be scheduled after FHWA approval to circulate the EA.

The NDOT's program and project management system provides for the scheduling of hearing dates when a project is first programmed. Periodically, the NDOT Assistant Director and managers for Design, Right-of-Way and Environmental Services will review this schedule to assess project readiness to proceed with public involvement and to establish or revise dates for public hearings according to the overall project status.

9.3.3.5 Notice of Public Hearing

The Department will provide advance notice of public hearings through advertisements that will appear in general circulation adjudicated newspapers of local, regional and/or ethnic distribution in the project area. The first notice must appear a minimum of 15 days prior to the hearing. Additional advertisements will be published before the hearing, including, if newspapers are available and published on a suitable schedule, the day before and the day of the hearing. News releases also may be issued to further publicize the public hearing and encourage attendance.

Additional notice will be provided through direct mail to individuals, agencies and organizations, including Federal, State and local officials, listed on a mailing roster kept current by the NDOT. Anyone wishing to receive notice of transportation public meetings or public hearings will be placed on this list upon request.

Published notices will include schematic map(s) depicting the proposed project limits and sufficient details of the project area to enable the reader to easily identify the proposed improvement. Alternatives under consideration will be described in the text of the notice. The notice will state that:

- project information will be on display at the hearing location;
- Department personnel will be available to explain the project and answer questions;
- maps, drawings, EA or Draft EIS and other pertinent information will be available for review and copying by the public at the nearest District Office and/or some other location convenient to the hearing; and
- the NDOT's policy and procedures for oral and written statements (i.e. written statements must be submitted no later than 15 days following the hearing).

When residential and/or business structures are to be acquired, the notice will also indicate that the Relocation Assistance Program will be discussed. The Department will furnish the FHWA Division Administrator with a copy of the Notice of Public Hearing at the time of first publication.

9.3.3.6 Public Hearing Formats

9.3.3.6.1 Overview

Depending on the type of project, its impacts and the phase of project development, a public hearing that is required for an NDOT project will be conducted in one of the following formats:

- open forum,
- formal presentation, or
- combination of open forum with formal presentation.

9.3.3.6.2 Open Forum Format

The open forum format allows for a continuous flow of visitors over a period of hours. The open forum format facilitates a higher level of personalized service through NDOT personnel interaction with attendees and is less intimidating to the public than the formal presentation format. At the open forum, NDOT representatives will be in attendance to provide explanatory project information and answer questions. In addition, the Special Projects/Hearing Officer, or their representative, will be present. The FHWA has recognized the benefits of this format and encourages its use as an effective public involvement method that meets the public hearing requirements of [23 CFR 771.111](#) “[Early Coordination, Public Involvement and Project Development.](#)”

At the hearing, aerial photos will be displayed showing the proposed project, property lines, existing and proposed right-of-way, and proposed easements for each alternative being studied. Duplicate displays may be provided, depending on the expected attendance. Right-of-way plans also may be provided for viewing, if available. In addition, a handout will be prepared to describe and explain the location, design and alternatives for the project and will include maps depicting the project location/alternatives.

Right-of-way representatives will be at the hearing for projects involving property acquisition and will be available to explain and discuss the Relocation Assistance Program. In addition, right-of-way booklets will be available for each affected person attending the public hearing. Each affected person also will receive a handout prepared by the Right-of-Way Office that explains certain right-of-way procedures, indicates the number of persons to be displaced and makes reference, as appropriate, to the right-of-way booklet provided.

Representatives of the Environmental Services Division will be in attendance at each hearing to explain the environmental study and process and to answer questions. Copies of the environmental study will be available for review at the hearing. A written summary of the environmental study will be included in the public hearing handout package. In addition, the Environmental Services Division will mail a copy of the environmental document to anyone who requests a copy.

The open forum format provides the following ways that attendees can express their concerns for the official record:

1. Provide a Written Statement at the Hearing. A comment sheet will be provided to each hearing participant and provisions will be made to facilitate its completion at the hearing (e.g., tables, chairs, pens).
2. Provide an Oral Statement at the Hearing. A court reporter will be available to record oral statements from anyone wishing to comment. Oral statements will be transcribed for the hearing record.
3. Provide a Written Statement after the Hearing. A 15-day period following the hearing will be established for submitting written comments. That timeframe will be announced in all advertisements concerning the hearing and will also be noted on a sign that will be displayed at the hearing.

9.3.3.6.3 Formal Presentation Format

The formal presentation format requires a moderator to preside over the public hearing. An NDOT representative will serve as moderator for formal presentation public hearings, but the NDOT may arrange for local public officials to conduct the required public hearing for some projects. In these instances, the NDOT will ensure that appropriate Department representatives are in attendance to fulfill NDOT's responsibilities for public hearing requirements (e.g., the requirement for providing an official transcript of the proceedings).

The moderator will open with a brief explanation of the format, who will make presentations and how public comments will be received. In areas where a project may affect large non-English speaking groups, the NDOT will provide interpreters. Provisions will be made for submitting written and oral statements that will be tape recorded or documented by a court reporter and entered into the official hearing transcript. The procedure for submitting written statements will be described in the Transportation Notice (see [Section 9.2.4](#)), the Intent-to-Study Letter (see [Section 9.2.2](#)) and at the public hearing, including the final date for receipt of comments following the hearing.

NDOT representatives will provide a presentation that discusses the proposed project's location/design, environmental and potential right-of-way impacts. The remainder of the public hearing will be reserved for receipt of public comment and discussion of items of interest to the hearing participants.

9.3.3.6.4 Combination Open Forum-Formal Presentation Format

This approach builds on the recognized benefits of the open forum format for maximizing public participation by adding a scheduled formal presentation and formal question and answer session. The open forum hearing will be scheduled as appropriate with a formal presentation scheduled for a specific time during the hearing. Members of the public will then have the opportunity to ask questions and hear what others have to say about the project. A stenographer will record the proceedings. Public comments will be limited to three minutes each. If an individual wishes to speak longer, they will be encouraged to provide further testimony to the stenographer. The NDOT Public Hearings Officer will announce the limitations on commenting time and will facilitate the hearing.

9.3.3.7 Public Hearing Handouts

As discussed in [Section 9.3.3.6.2](#), a handout will be provided explaining the location and design of the project, including an explanation of the alternatives and a map showing the proposed project. Handouts may be provided describing the following:

- major features of the proposed improvement and the alternatives being considered;
- tentative right-of-way requirements, including:
 - + the estimated number of families, business and other concerns to be relocated;
 - + housing availability, and details of the Relocation Assistance Program;
 - + a schedule for right-of way acquisition and construction; and
 - + other explanatory material such as facility operation information, etc.

9.3.3.8 Hearing Transcript/Documentation

Formal Location, Design and Location/Design Hearings will be attended by a court reporter who will prepare a verbatim written transcript of the oral proceedings. Open Forum Location, Design and Location/Design Hearings will be attended by a court reporter who will prepare a verbatim written transcript of oral statements made to the court reporter. These transcripts will be available for public review and copying at the NDOT Headquarters and at applicable District Offices. A copy of the transcripts also will be forwarded to the FHWA along with copies of written statements from the public, both submitted at the public hearing or during the announced comment period.

The final transcript also may include exhibit photos, attendance roster, public notices, listings of agencies, organizations and individuals notified of the hearing, and a copy of written material submitted by these groups or individuals.

9.4 INTERAGENCY COORDINATION

During the development of a proposed project, the NDOT coordinates with a variety of regulatory and resource agencies and Native American Tribes/Groups. Many of these contacts are informal and are intended to discuss certain aspects of upcoming projects (e.g., potential effects of the project on specific resources, cost participation by local agencies associated with a project that affects local-system facilities). Notices of upcoming public involvement activities (see [Section 9.3](#)) afford another method for agencies to obtain information on proposed projects. See [Chapters 2, 5, 6, 7](#) and [8](#) for further information on interagency coordination in the project development process.

