

As described in Section II-01 of this manual, the purpose of this section is to describe the process for project level public involvement and not Statewide Transportation Improvement Program (STIP) level public involvement.

The process and procedures described herein comply with federal legislation pertaining to public involvement on federal aid highway projects, specifically Statute 23 U.S.C. 128 Public Hearings<sup>1</sup> and Statute 23 U.S.C. 109(h) Standards.

Statute 23 U.S.C. 128 requires the state transportation department to *certify to the Secretary* that it has conducted a public hearing or afforded the opportunity for a public hearing if a Federal-aid highway project involves the “by passing of or, going through any city, town, or village, either incorporated or unincorporated”. The state transportation department also must *certify to the Secretary* that they considered the “economic and social effects of such a location, its impact on the environment, and its consistency with the goals and objectives of such urban planning as has been promulgated by the community.”

Further, the Statute requires the state transportation department to *certify to the Secretary* that it has conducted a public hearing at a convenient location or afforded the opportunity for a public hearing on Interstate System project(s) “for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed locations of such highway. Such certification shall be accompanied by a report which indicates the consideration given to the economic, social, environmental and other effects of the plan or highway location or design and various alternatives which were raised during the hearing or which were otherwise considered.”

In addition to the certification, the state transportation department must submit a copy of the public hearing transcript with the environmental document.

Statute 23 U.S.C. 109(h) requires the state transportation department to ensure that “possible adverse economic, social, and environmental effects relating to any proposed project on any Federal-aid system have been fully considered in developing such project, and that the final decisions on the project are made in the best overall public interest, taking into consideration the need for fast, safe and efficient transportation, public services, and the costs of eliminating or minimizing such adverse effects and the following: (1) air, noise, and water pollution; (2) destruction or disruption of man-made and natural resources, aesthetic values, community cohesion and the availability of public facilities and services; (3) adverse employment effects, and tax and property value losses; (4) injurious displacement of people, businesses and farms; and (5) disruption of desirable community and regional growth.”

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<sup>1</sup> 23 CFR 771.111(h) (1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy of Users (SAFETEA-LU) includes guidance on linking planning and National Environmental Policy Act (NEPA) such that transportation decision-making considers environmental, community, and economic goals early in the planning stage, through project development and design, and ultimately construction. This process encourages greater public involvement and agency coordination on a broader, ecosystem-level perspective rather than on an individual basis. The NDDOT considers public involvement a key to a successful project. Public involvement begins in the planning phase and ends post construction. It is intended to assist in the understanding of the transportation facility and the proposed project, as well as any social, economic, and environmental effects that may be caused by the proposed project. It is also a tool to encourage input and provides the decision-makers valuable information to be considered in the process.

It is intended that the public involvement procedures be designed in a manner that will comply with Title VI of the Civil Rights Act of 1964. The purpose of Title VI is to eliminate race discrimination in federally funded programs by making sure that funds of the United States are not used to support race, color, sex, or national origin discrimination in programs receiving federal financial assistance.

The extent of involvement by the public in the development of a highway project varies according to the complexity of the project. Large complex projects may require several meetings and Public Hearings, while minor types of projects may not require any public meeting(s).

NDDOT, in consultation with FHWA, where appropriate, will determine the level of public involvement. Local officials may help in this determination.

#### **II-04.01 Solicitation of Views (SOV)**

The solicitation of views process ensures that the scope of the project is made known to other jurisdictions and government agencies. It ensures that they have an opportunity to comment on the project's impacts on the human, natural, and physical environment. The requirements for adequate planning and coordination exist in both state and federal regulations.

Solicitation of views should be performed on all projects that involve earthwork (excavation or drainage) or may have environmental impacts.

For county federal aid projects, the county is responsible for the solicitation of views. On urban federal aid projects, the city is responsible for the solicitation of views.

### II-04.01.01 SOV Form Letters

The environmental document author should prepare a letter describing all ground disturbing activities associated with the proposed project, such as slope flattening, culvert extensions, and temporary bypasses. Detour routes and potential road closures should also be included. All solicitation letters should have a map of the proposed project including the section, township, and range. The attached map should delineate the project area and any expected area of disturbance. These letters are used to request comments on the proposed project from federal, state, local, tribes, and private agencies. Agencies should be given a minimum of 30 days to respond.

Presently there are six different kinds of solicitation letters. All SOV letters can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.

#### Letter 1 (General Solicitation)

This is a general-purpose letter that can be used for almost all agencies.

#### Letter 2 (United States Army Corps of Engineers)

The documentation in letter 2 is to be written by both the environmental document author and the Environmental and Transportation Services – Environmental Section. Letter 2 will be sent after the wetland delineation is completed. This is described more in Section II-03.10 of the Design Manual. The letter will request a jurisdictional determination of all waters and wetlands within the project area and will contain the wetland delineation, wetland table, maps, data forms, and any other supplemental material that would assist the USACE in the jurisdictional determination. The wetland table can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.

#### Letter 3 (US Department of Agriculture)

This letter is used to solicit the views of the State Conservationist, specifically the identification of prime and unique farmland. A farmland impact rating form may be required and a completed form should be included in the environmental document if work will occur outside NDDOT right of way.

#### Letter 4 (State Health Department)

The solicitation of the North Dakota Department of Health requires traffic counts after project completion and forecast traffic 20 years after completion. It is directed towards air quality, but also requests information on water quality and solid/hazardous waste sites or spill locations.

Letter 5 (State Historic Preservation Officer)

The documentation in letter 5 is to be written by both the environmental document author and the Environmental and Transportation Services – Cultural Resource Section. Environmental document authors are asked to coordinate the completion of this letter through the Cultural Resource Section. An example is provided in the form letter.

Letter 6 (State Water Commission)

This letter is used to solicit specific information related to permitting from the State Engineer.

Notes: These letters are "form letters" and need to be merged with the Master SOV list to obtain the correct format. Contact Information Processing if further guidance on the use of form letters is needed. These letters can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.

**II-04.01.02 Mailing Lists**

The environmental documentation writer needs to evaluate what information is going to be provided in the form letters and where these form letters are going to be sent. A list of agencies from which views will be solicited should be developed and documented. Authors should start this list from the master SOV list. The most current SOV list is located on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.

The master solicitation of views list contains agencies, groups, associations and officials that NDDOT determines to have an interest in NDDOT projects. Interested individuals, groups or agencies may, at their request, be added to the NDDOT solicitation of views mailing list. A special effort should be made on projects to seek out and include the interests of minority groups or individuals.

Users should only print the mailing list when needed. This list will be updated frequently on the web. Users should always obtain a current master SOV list before selecting addresses. Please make recommendations to improve the master SOV list and send address revisions to the Environmental Section of the Environmental and Transportation Services Division.

A project specific mailing list should be created for each project from the master SOV list that requires solicitation of views. This list shall be included as an appendix in the environmental document.

**II-04.01.02.01 Usage Codes**

The agencies and interested parties on the master SOV list have been assigned a usage code. The usage code is a way of organizing the list. The date edited field is intended to help keep track of the last time an address was revised. The following information describes the usage code.

100 – These parties are always solicited for their views.

200 – The parties are not always solicited. The decision to solicit a view is dependent on the type of project.

300 – These parties are solicited when a project is within or adjacent to a municipality.  
(reference "*Directory of Government Officials*")

400 – These parties are always solicited.  
(reference "*County Officials Directory*")

500 – These parties are not always solicited. The decision to solicit is dependent upon the location of the project.

600 – All railroads and utilities located within the project limits and adjacent to the project shall be solicited. The environmental document author should contact the NDDOT Utilities Engineer to make sure all required utility companies are solicited.

**II-04.01.03 Printing, Signing and Distribution**

Once the final mailing list is established, the letters are distributed. Note that the solicitation of views for county or city-developed projects should be signed by the local agency's project engineer or consultant engineer. The solicitation of views for district developed projects should be signed by the District Engineer or Assistant District Engineer. The solicitation of views for in-house developed NDDOT projects should be signed by the Design Engineer or by the Bridge Engineer if the project is developed in the Bridge Division. The solicitation of views letter should be signed by the project manager for consultant developed projects. For State highway projects, Letter #2 is signed by the Environmental Section Leader and Letter #5 is signed by the Cultural Resource Specialist. For Urban and County highway projects, Letter #2 is signed by the Local Government Division Technical Support Contact and Letter #5 is not submitted on these projects. However, the designer shall submit the Project Information Form (SFN 52748) to the Cultural Resource Section Leader to coordinate the Section 106 process.

After the letters are signed, use one type of each form letter (without address when multiple addresses are solicited) and include the list of addresses solicited for that project. This should be scanned into FileNet and a copy kept for inclusion in the appendix of the environmental document. Consultants should submit a .pdf file of the information to the NDDOT Technical Support Contact. The Technical Support Contact shall then place the information in FileNet.

**II-04.01.04                      Comments**

Comments received in response to solicitation of views letters, and comments noted from public meetings, should be considered, and when appropriate, addressed in the environmental document. These comments should also be incorporated into an appendix to the environmental document. The SOV letters and responses should be compiled at the end of the comment period and placed in FileNet. Consultants should submit a pdf file of the information to the NDDOT Technical Support Contact. The Technical Support Contact shall then place the information in FileNet.

**II-04.02                              Public Meetings**

A public meeting is any meeting which the public is encouraged to attend. The meeting will include information about the proposed project as well as time for the public to voice concerns or ask questions. A few types of public meetings are Public Input Meetings, Public Hearings, and Public Information Meetings. Each type of public meeting will be discussed in the paragraphs that follow.

Interested individuals may also be sought by a mailing within the project corridor. In addition, and as appropriate, use direct mail, a poster campaign, public service announcements, paid advertising, or other means of advertising to inform the public. Any interested agencies, officials, groups, or individuals that have expressed an interest in the proposed project shall be notified by mail.

The Distribution List should be used to determine additional people to be invited. The Distribution List can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm>.

### II-04.02.01 Public Input Meetings

Public Input Meetings provide an early opportunity for the public and other agencies to comment on the need for the project, suggest alternates, and identify areas of concern. NDDOT strongly encourages holding Public Input Meetings for all major urban projects and major reconstruction projects.

The decision to hold a Public Input Meeting should be discussed at the field review and/or management presentation meeting. This decision will be made by NDDOT and FHWA for all projects on the national highway system. Cities adjacent to or encompassing proposed projects should also be made part of this decision process. For county projects, the county is responsible for holding input meetings when necessary. Public input may also be obtained by an individual contact or through an invitation to attend a public meeting or Public Hearing.

The environmental document author will coordinate meeting location and time, advertise the meeting, prepare informational handouts and exhibits, and conduct the input meeting. Input meetings may be held either jointly with other meetings such as city council, city planning commission, county commission, etc., or a special meeting called specifically to discuss a given project.

#### II-04.02.01.01 Public Input Meeting Notification

The public must be given an adequate opportunity to attend a Public Input Meeting. This can only be accomplished through proper notification. The following points will ensure adequate notification is given to the public:

- A Legal Display Advertisement of a Public Input Meeting is published once in the official county newspaper in the area of the project. Additional papers having a general circulation in the area of the project may also be considered for publication after a consultation with the contact for the Legal Display Advertisement. The contact person is defined on the following page under process for submitting Legal Display Advertisement. The publication must be 15 to 21 calendar days prior to the Public Input Meeting<sup>2</sup>. Examples can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.
- A Press Release needs to be submitted for all Public Input Meetings. Templates can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>. The Press Release will be distributed 5 to 7 calendar days prior to the Public Input Meeting.

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<sup>2</sup> A public meeting must be advertised at least 15 days, but no more than 21 days prior to the meeting date. If this cannot be met, then the meeting must be rescheduled.

- The following must be considered when scheduling a Public Input Meeting.
  - The building in which the Public Input Meeting is held in shall be accessible to the mobility impaired.
  - Avoid holding meetings on Saturday, Sunday, or Wednesday nights, to avoid conflicts with religious activities.
  - Public Input Meetings should be scheduled for a minimum of two hours and the personnel conducting the meeting need to stay the entire time.

- Follow the process below when submitting a Legal Display Advertisement:
  - Consultant Projects – Design Division
    - Submit copy to the NDDOT Technical Support Contact 7 to 10 calendar days prior to the publication deadline
    - Technical Support Contact will review and provide comment to the consultant
    - The consultant will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document
  - Consultant Projects – Local Government Projects
    - Submit copy to the Local Government Technical Support Contact 7 to 10 calendar days prior to the publication deadline
    - The Local Government Technical Support Contact will review and provide comment to the consultant
    - The consultant will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document
  - District Design Projects
    - If a District needs to conduct a Public Input Meeting, direction shall be taken from Design Division when scheduling and submitting Legal Display Advertisements
  - Projects in Bridge and Design Division
    - The environmental document author will submit a copy to the appropriate Section Leader (Bridge) or Program Manager (Design)
    - The Section Leader or Program Manager will review and provide comment to the environmental document author
    - The environmental document author will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document

- Follow the process below when submitting a Press Release:
  - Consultant Projects – Design Division
    - Submit copy to the NDDOT Technical Support Contact 14 calendar days prior to the Public Input Meeting
    - Technical Support Contact will review and forward to the Administrative Assistant in Design Division
    - The Administrative Assistant in Design Division will submit the Press Release to the Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the Administrative Assistant in Design Division to be included in the Environmental Document
  - Consultant Projects – Local Government Projects
    - Submit copy to the Local Government Technical Support Contact 14 calendar days prior to the Public Input Meeting
    - The Local Government Technical Support Contact will review and submit to Local Government Program Manager
    - The Local Government Program Manager will review and submit to Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the Local Government Program Manager to be included in the Environmental Document
  - District Design Projects
    - If a District needs to conduct a Public Input Meeting direction shall be taken from Design Division when scheduling and submitting Press Releases
  - Projects in Bridge and Design Division
    - The environmental document author will submit a copy to the appropriate Administrative Assistant 14 calendar days prior to Public Input Meeting
    - The Administrative Assistant will review and submit to the Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the appropriate Administrative Assistant to be included in the Environmental Document

### II-04.02.01.02 Conducting a Public Input Meeting

Public Input Meetings should be held at a time and place convenient for affected citizens. The meeting location should be accessible to the mobility impaired. The following are the two most common formats, but there are others that may be appropriate.

- Traditional format: The traditional format is effective in presenting and gathering information, and especially in disseminating large amounts of data to a large, diverse audience. It is commonly used at meetings designed to introduce a project, present alternative alignments or designs, or discuss potential social, environmental, and economic impacts. This format consists of an agency presentation (video and lecture), followed by a discussion period with the audience.

Drawbacks of the traditional format include the necessity of using microphones, and the physical and psychological separation of the agency from the community (with the agency in front, usually on a raised platform). This implied separation tends to discourage some speakers from participating, polarize positions, and reinforce the "us-vs-them" approach of some members of the public. However, a room separated from the Public Input Meeting could be provided with the court reporter available to transcribe comments privately, prior to and/or after the presentation to the whole group.

- Open-house format: The open-house format is becoming increasingly popular for dealing with the public on a one-to-one basis. It lets people express their thoughts about a plan without having to make a public speech. Participants are encouraged to:
  - Read the meeting brochure
  - Ask questions
  - Review exhibits
  - View a video
  - Send in a comment card or letter to formally express the oral communication made at the meeting
  - Interact informally with each other and with agency representatives

Since this type of meeting is, by its nature, easy to conduct during both daytime and evening hours, all segments of the project population can attend. There are no agendas, presentations, or other structured activities (except possibly for a brief, repeating video on the project), so people can come and go at will.

- The decision on which meeting format to use is made by: the city, on urban roads program projects; the county, on county major collector program projects; NDDOT on all other projects.

Whether a traditional or open-house format is conducted, the following information should be presented at the meeting:

- The project's purpose, need, and consistency with the goals and objectives of any local planning.
- The project alternatives under consideration and major design features.
- The social, economic, environmental, and other impacts of the project, including any floodplain and/or wetland impacts.
- The storm water poster should be on display.
- The right of way acquisition process, to include the relocation assistance program if needed. Also a tentative schedule of acquisition will be presented, and a brochure describing the land acquisition process and the owner's rights, privileges, and obligation will be distributed.
- A description of the procedures for receiving both oral and written statements from the public. The participants should be informed that statements or exhibits may be presented for 15 calendar days following the Public Input Meeting and will be made part of the record.
- Provide a tentative schedule of construction.
- The source of project funding.
- The agency responsible for developing the project.
- The back of the comment cards should have space for land owners to write down if they have wetlands or borrow on their property that they would be willing to mitigate or sell.

**II-04.02.01.03            Public Input Meeting Response Period**

There is a 15 calendar day response period following the Public Input Meeting in which the public may send written comments to the city, county, or NDDOT, depending on who developed the project.

Comments received during the Public Input Meeting should be compiled at the end of the comment period and incorporated into the environmental document in the appendices.

**II-04.02.02            Public Hearings**

Public Hearings are held to discuss the proposed improvements and their social, economic, and environmental impacts. Public Hearings are open discussions of the purpose and need for the project and any alternatives which are to be considered. A summary of any social, economic, or environmental impacts, or land use studies made in relation to the project are presented. Public Hearings will be held for certain projects after preparation and circulation of a Draft Environmental Impact Statement, an Environmental Assessment, or after preparation of the Project Concept Report for projects processed as Categorical Exclusions.

A Public Hearing, or an Opportunity for a Public Hearing, is required if a project:

- Involves the acquisition of large amounts of additional right of way. Narrow strips of right of way frontage or easement do not ordinarily require a Public Hearing.
- Has an adverse effect upon abutting property.
- Has a substantial change in roadway geometry or function of roads or streets connecting with the improved facility.
- Has a substantial change in roadway geometry or function of connecting roadways at or near a city or town.
- Has a substantial social, economic, environmental, or other impact.
- Is environmentally controversial.
- Involves a bypass or substantial change in traffic patterns.
- Has a temporary effect on traffic and possibly requires traffic detours.
- There is substantial interest in holding a Public Hearing.
- Another agency with jurisdiction over the actions has requested a Public Hearing.
- FHWA determines that a Public Hearing is in the public interest.
- It is determined at the management presentation that a Public Hearing should be held.

The Deputy Director for Engineering, in consultation with FHWA, where appropriate, will determine whether a Public Hearing or Opportunity for Public Hearing is required under the National Environmental Policy Act (NEPA). The Deputy Director for Engineering, in consultation with Design Division, will determine:

- Whether a Public Hearing is held or an Opportunity for Public Hearing offered for those projects which NEPA requires formal notification to the public for an opportunity to request a Public Hearing.
- Whether or not a Public Hearing will be held for projects not requiring Public Hearings under NEPA.

On county and urban federal aid projects, the Local Government Engineer will make this decision.

In general, a Public Hearing is not held for improvements such as resurfacing, widening existing lanes, adding auxiliary lanes, replacing existing structures or separations, installing traffic control devices, or similar improvements.

Additional Public Hearings, or Opportunities for Public Hearing, will be provided when there is:

- Substantial change in the proposal
- Substantial unanticipated development in the area affected by the proposal
- An unusually long lapse of time since the last Public Hearing
- Identification of additional social, economic, or environmental effects not previously considered at earlier Public Hearings

Comments received during the Public Hearing should be compiled at the end of the comment period and incorporated into the Transcript for Public hearing for projects processed under a CatEx. For projects where an EA or EIS is prepared this information should be contained in the appendices. The information should then be scanned into FileNet. Consultants should submit a pdf file of the information to the Technical Support Contact. The Technical Support Contact shall then place the information in FileNet.

### II-04.02.02.01 Public Hearing Notification

The public must be given an adequate opportunity to attend a Public Hearing. This can only be accomplished through proper notification. The following points will ensure adequate notification is given to the public:

- A Legal Display Advertisement of a Public Hearing is published once in the official county newspaper in the area of the project. Additional papers having a general circulation in the area of the project may also be considered for publication after a consultation with the contact for the Legal Display Advertisement. The contact person is defined on the following page under process for submitting Legal Display Advertisement. The publication must be 15 to 21 calendar days prior to the Public Hearing<sup>3</sup>. Examples can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.
- A Press Release needs to be submitted for all Public Hearings. Templates can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>. The Press Release will be distributed 5 to 7 calendar days prior to the Public Hearing.
- The following must be considered when scheduling a Public Hearing.
  - The building in which the Public Hearing is held in shall be accessible to the mobility impaired
  - Avoid holding meetings on Saturday, Sunday, or Wednesday nights, to avoid conflicts with religious activities
  - Public Hearings should be scheduled for a minimum of two hours for PCR projects and three hours for EA and EIS projects
  - The personnel conducting the meeting need to stay the entire time
  - Where can the public view related maps, drawings, and proposed documents

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<sup>3</sup> A public meeting must be advertised at least 15 days, but no more than 21 days prior to the meeting date. If this cannot be met, then the meeting must be rescheduled.

- Follow the process below when submitting a Legal Display Advertisement:
  - Consultant Projects – Design Division
    - Submit copy to the NDDOT Technical Support Contact 7 to 10 calendar days prior to the publication deadline
    - Technical Support Contact will review and provide comment to the consultant
    - The consultant will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document
  - Consultant Projects – Local Government Projects
    - Submit copy to the Local Government Technical Support Contact 7 to 10 calendar days prior to the publication deadline
    - The Local Government Technical Support Contact will review and provide comment to the consultant
    - The consultant will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document
  - District Design Projects
    - If a District needs to conduct a Public Hearing direction, shall be taken from Design Division when scheduling and submitting Legal Display Advertisements
  - Projects in Bridge and Design Division
    - The environmental document author will submit a copy to the appropriate Section Leader (Bridge) or Program Manager (Design)
    - The Section Leader or Program Manager will review and provide comment to the environmental document author
    - The environmental document author will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document

- Follow the process below when submitting a Press Release:
  - Consultant Projects – Design Division
    - Submit copy to the NDDOT Technical Support Contact 14 calendar days prior to the Public Hearing
    - Technical Support Contact will review and forward to the Administrative Assistant in Design Division
    - The Administrative Assistant in Design Division will submit the Press Release to the Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the Administrative Assistant in Design Division to be included in the Environmental Document
  - Consultant Projects – Local Government Projects
    - Submit copy to the Local Government Technical Support Contact 14 calendar days prior to the Public Hearing
    - The Local Government Technical Support Contact will review and submit to Local Government Program Manager
    - The Local Government Program Manager will review and submit to Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the Local Government Program Manager to be included in the Environmental Document
  - District Design Projects
    - If a District needs to conduct a Public Hearing, direction shall be taken from Design Division when scheduling and submitting Press Releases
  - Projects in Bridge and Design Division
    - The environmental document author will submit a copy to the appropriate Administrative Assistant 14 days prior to the Public Hearing
    - The Administrative Assistant will submit to the Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the appropriate Administrative Assistant to be included in the Environmental Document

**II-04.02.02.02            Opportunity for Public Hearing**

The activity of providing an “Opportunity for Public Hearing” is used when a Public Hearing is required, but interest in the proposed project is limited and the project is not controversial. This activity is a tool that can be used in lieu of a Public Hearing if the lack of interest can be demonstrated and documented, or the interested parties can be addressed on an individual basis. This activity can be complicated and lengthen the project development process if used incorrectly. Often, directly conducting a Public Hearing is quicker than providing a notice of opportunity for a Public Hearing, determining that a Public Hearing is required, advertising for a Public Hearing, and finally conducting the Public Hearing.

Follow the Public Hearing Notification process found in Design Manual Section II-04.02.02.01 when publishing an Opportunity for Public Hearing. The notice should:

- Describe the location and types of the proposed improvements
- Contain a statement indicating where and when the plans and other documents are available for review
- Instructions for the public as to how they may request a Public Hearing
- Include the deadline for submission of a request for Public Hearing is 15 calendar days after the first publication
- Indicate that all requests on state and urban projects must be made in writing, addressed to the Director, North Dakota Department of Transportation (NDDOT), and will be acknowledged in writing by the NDDOT. City or county contact information shall be included in notices for city or county projects and the owner should acknowledge receipt of requests in writing.

If, after the deadline date has passed and:

No requests have been received, NDDOT forwards to FHWA, where appropriate, a copy of the published notice and a certification that no written requests for a Public Hearing were received.

If only one or two persons request a Public Hearing and the issues can be satisfactorily resolved by meeting with the individuals, the persons making the request may withdraw the request. The person making a request is allowed five days after the deadline for the submission to withdraw the request, in writing. No reason for withdrawal need be given. When a request is withdrawn, it is treated as if no request was made. If, after the five days allowed for withdrawal, any bonafide request remains, a Public Hearing is held.

### **II-04.02.02.03          Conducting a Public Hearing**

Public Hearings should be held at a time and place convenient for affected citizens. The meeting location should be accessible to the mobility impaired. The following are the two most common formats, but there are others that may be appropriate. The two settings start out the same with a formal presentation of the overall project information.

- **Traditional format:** The traditional format is effective in presenting and gathering information, and especially in disseminating large amounts of data to a large, diverse audience. It is commonly used at meetings designed to introduce a project, present alternative alignments or designs, or discuss potential social, environmental, and economic impacts. This format consists of an agency presentation (video and lecture), followed by a discussion period with the audience. A Public Hearing should be recorded to include all comments in the Transcript of Public Hearing.

Drawbacks of the traditional format include the necessity of using microphones, and the physical and psychological separation of the agency from the community (with the agency in front, usually on a raised platform). This implied separation tends to discourage some speakers from participating, polarize positions, and reinforce the "us-vs-them" perception of some members of the public. However, a room separated from the Public Hearing could be provided with the court reporter available to transcribe comments privately, prior to and/or after the presentation to the whole group.

- **Open-house format:** The open-house format is becoming increasingly popular for dealing with the public on a one-to-one basis. It lets people express their thoughts about a plan without having to make a public speech. Participants are encouraged to:
  - Read the Public Hearing brochure
  - Ask questions
  - Review exhibits
  - View a video
  - Send in a comment card or letter to formally express the oral communication made at the Public Hearing
  - Interact informally with each other and with agency representativesSince this type of Public Hearing is, by its nature, easy to conduct during both daytime and evening hours, all segments of the project population can attend. There are no agendas, presentations, or other structured activities (except possibly for a brief, repeating video on the project), so people can come and go at will.
  
- The decision on which Public Hearing format to use is made by the: city, on urban roads projects; county, on county projects; NDDOT on all other projects.

Whether a traditional or open-house format is conducted, the following information should be presented at the Public Hearing:

- The project's purpose, need, and consistency with the goals and objectives of any local planning.
- The project alternatives under consideration and major design features.
- The social, economic, environmental, and other impacts of the project, including any floodplain and/or wetland impacts.
- The storm water poster should be on display.
- The right of way acquisition process, to include the relocation assistance program if needed. Also a tentative schedule of acquisition will be presented along with a brochure describing the land acquisition process and the owner's rights, privileges, and obligation will be distributed.
- A description of the procedures for receiving both oral and written statements from the public. The participants should be informed that statements or exhibits may be presented for 15 calendar days following the Public Hearing and will be made part of the record.
- Provide a tentative schedule of construction.

- The source of project funding.
- The agency responsible for developing the project.
- The back of the comment cards should have space for land owners to write down if they have wetlands or borrow on their property that they would be willing to mitigate or sell.

**II-04.02.02.04            Public Hearing Response Period**

There is a 15 calendar day response period following the Public Hearing in which the public may send written comments to the city, county, or NDDOT, depending on who developed the project.

**II-04.02.02.05            Transcript of Public Hearing**

After the Public Hearing response period has passed, the Public Hearing Transcript is prepared by the environmental document author. The Public Hearing Transcript contains information about the Public Hearing such as: when and where it was held; affidavit of publication including a copy of the Public Hearing Legal Display Advertisement; Press Release; an explanation of the Public Hearing; a copy of any handouts; a list of the exhibits presented; the video script (if video was used); a copy of the roster; a copy of all comments received; and any other information about the Public Hearing. For county and urban projects, the consultant should coordinate with the Local Government Technical Support Contact for distribution of the Public Hearing Transcript. For NDDOT developed projects, the original copy of the Public Hearing Transcript is submitted to the administrative assistant in the Office of Project Development. Members of the public who request a transcript at the Public Hearing should also be sent a free copy. The administrative assistant will make copies of the original and send a copy to the public who requested it and any other copies that are required.

Please note that the Public Hearing Transcript is prepared as a separate document for projects processed under a CatEx only. For projects where an EA or EIS is prepared, this information should be contained in the appendices.

**II-04.02.02.06            Post Hearing Meeting**

A Post Hearing Meeting should be conducted to discuss the project concept, alternatives, and public testimony approximately 30 calendar days after the Public Hearing is held. The purpose of this meeting is to make recommendations to executive management.

On local developed projects, the local agency determines who should attend the meeting. Included in the list of invitees should be the NDDOT District Engineer.

For NDDOT developed projects, the environmental document author will invite the attendees in accordance with the Distribution List. Each individual that receives a copy of the environmental document shall be invited to the Post Hearing Meeting.

For PCR projects, the Transcript of Public Hearing and a draft Summation of Public Hearing and Decisions Document should be made available to meeting invitees seven calendar days prior to the Post Hearing Meeting.

For EA/EIS projects, a draft copy of the meeting materials for the appendices should be made available to meeting invitees seven calendar days prior to the Post Hearing Meeting.

#### **II-04.02.02.07            Summation of Public Hearing and Decisions Document**

After the Post Hearing Meeting, a “Summation of Public Hearing and Project Decisions” document containing recommendations is prepared. This document should address all comments received and should include the following information: certification page (located on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>), project overview, summary of Public Hearing, a summary of comments received from the Public Hearing, proposed alternatives, Post Hearing Meeting comments, cost estimate and construction schedule, decisions section, and any other important information. The final document is submitted to executive management for final decisions.

For county and urban projects, the Mayor or Commission Chairman signs the Summation of Public Hearing and Project Decisions document and sends it to NDDOT for the purpose of receiving federal funds. Following NDDOT approval, the local agency distributes the Summation to all interested agencies and local officials and the Local Government Technical Support Contact will distribute to in-house recipients.

For NDDOT developed projects, the designer or environmental document author will submit the original copy to the administrative assistant in the Office of Project Development. The Summation of Public Hearing and Project Decisions will be distributed (using FileNet where applicable) to all interested agencies and local officials after the Deputy Director for Engineering has approved the project concepts. The Distribution List is on the web at <http://www.dot.nd.gov/manuals/design/designmanual/designmanual.htm>.

#### **II-04.02.03            Public Informational Meetings**

The purpose of Public Informational Meetings generally is to inform the public of project proposals, not to receive input from the public. This distinction should be made clear on Press Releases advertising the meetings.

### II-04.02.03.01 Public Informational Meeting Notification

The public must be given an adequate opportunity to attend a Public Information Meeting. This can only be accomplished through proper notification. The following points will ensure adequate notification is given to the public.

- A Legal Display Advertisement of Public Information Meeting is published once in the official county newspaper in the area of the project. Additional papers having a general circulation in the area of the project may also be considered for publication after a consultation with the contact for the Legal Display Advertisement. The contact person is defined on the following page under process for submitting Legal Display Advertisement. The publication must be 15 to 21 calendar days prior to the Public Information Meeting<sup>4</sup>. Examples can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>.
- A Press Release needs to be submitted for all Public Information Meetings. Templates can be found on the web at <http://www.dot.nd.gov/manuals/design/designmanual/reference-forms.htm>. The Press Release will be distributed 5 to 7 calendar days prior to the Public Information Meeting.
- The following must be considered when scheduling a Public Information Meeting.
  - The building in which the Public Information Meeting is held in shall be handicapped accessible
  - Avoid holding meetings on Saturday, Sunday, or Wednesday nights, to avoid conflicts with religious activities
  - Public Information Meetings should be scheduled for a minimum of two hours and the personnel conducting the meeting need to stay the entire time.

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<sup>4</sup> A public meeting must be advertised at least 15 days, but no more than 21 days prior to the meeting date. If this cannot be met, then the meeting must be rescheduled.

- Follow the process below when submitting a Legal Display Advertisement:
  - Consultant Projects – Design Division
    - Submit copy to the NDDOT Technical Support Contact 7 to 10 calendar days prior to the publication deadline
    - Technical Support Contact will review and provide comment to the consultant
    - The consultant will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document
  - Consultant Projects – Local Government Projects
    - Submit copy to the Local Government Technical Support Contact 7 to 10 calendar days prior to the publication deadline
    - The Local Government Technical Support Contact will review and provide comment to the consultant
    - The consultant will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document
  - District Design Projects
    - If a District needs to conduct a Public Information Meeting, direction shall be taken from Design Division when scheduling and submitting Legal Display Advertisements
  - Projects in Bridge and Design Division
    - The environmental document author will submit a copy to the appropriate Section Leader (Bridge) or Program Manager (Design)
    - The Section Leader or Program Manager will review and provide comment to the environmental document author
    - The environmental document author will coordinate with newspaper(s) on publication and will obtain affidavit of publication for inclusion in the environmental document

- Follow the process below when submitting a Press Release:
  - Consultant Projects – Design Division
    - Submit copy to the NDDOT Technical Support Contact 14 calendar days prior to the Public Informational Meeting
    - Technical Support Contact will review and forward to the Administrative Assistant in Design Division
    - The Administrative Assistant in Design Division will submit the Press Release to the Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the Administrative Assistant in Design Division to be included in the Environmental Document
  - Consultant Projects – Local Government Projects
    - Submit copy to the Local Government Technical Support Contact 14 calendar days prior to the Public Informational Meeting
    - The Local Government Technical Support Contact will review and submit to Local Government Program Manager.
    - The Local Government Program Manager will review and submit to Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the Local Government Program Manager to be included in the Environmental Document
  - District Design Projects
    - If a District needs to conduct a Public Information Meeting, direction shall be taken from Design Division when scheduling and submitting Press Releases
  - Projects in Bridge and Design Division
    - The environmental document author will submit a copy to the appropriate Administrative Assistant 14 calendar days prior to the Public Information Meeting
    - The Administrative Assistant will submit to the Director of the Communications Division
    - The Director of the Communications Division will review and send to the appropriate media and provide an email receipt to the appropriate Administrative Assistant to be included in the Environmental Document

**II-04.03                    Making Arrangements for Public Meetings**

The following checklist can be used to help schedule public meetings.

- Review needed preparation time for information, pamphlets and exhibits, and adjust time frame accordingly.
- Determine desired individual representation at the meeting
- Determine time that will work with the local representation
- Clear with local calendar, check for other events that will influence public attendance (i.e. sporting events, religious holidays or activities)
- Reserve location (accessible to the mobility impaired)
- Make audio and visual equipment arrangements if necessary

**II-04.04                    Environmental Document Availability**

The environmental document, along with any applicable supplemental reports, must be made available for public viewing at the NDDOT district office appropriate to the project location and at the NDDOT central office on the day the ad appears in the newspaper. Additional public viewing locations may include local libraries and city/county offices.

**II-04.05                    Citizen Advisory Committee Meetings**

Citizen advisory groups are established on complex projects to obtain early public involvement and input for the projects. The groups should be comprised of adjacent property owners, business people, the general public, or special interest groups, as appropriate for that project. Normally, the first meetings with the group are held before the completion of detailed engineering studies. The group should be involved throughout the project development process. The environmental document author will conduct citizen advisory meetings to provide review and comment of project development activities; prepare informational handouts and exhibits, as necessary; prepare and distribute written summary of comments received; and prepare and distribute project newsletters to participants, as necessary.

**II-04.06                      Technical Advisory Committee Meetings**

Technical advisory groups are established on complex projects to obtain early expert involvement and input on the projects. The group should be comprised of federal, state, and local representatives. Normally, the first meetings with the group are held before the completion of detailed engineering studies. The group should be involved throughout the project development process. The environmental document author will conduct technical advisory meetings to provide review and comment of project development activities; prepare informational handouts and exhibits, as necessary; prepare and distribute written summary of comments received; and prepare and distribute project newsletter to participants, as necessary.