



# Environmental Handbook

---

## Public Involvement

This handbook outlines the public involvement process steps necessary to comply with state and federal requirements during the environmental analysis phase of project development.

**Table of Contents**

1.0 Introduction..... 4

    1.1 TxDOT Public Involvement Policy ..... 4

    1.2 Responsible Parties..... 4

        1.2.1 Project Sponsor ..... 4

        1.2.2 Department Delegate..... 5

        1.2.3 Public Involvement Section, Transportation Planning and Programming Division..... 5

    1.3 Applicable Project Types..... 6

2.0 Compliance Overview ..... 6

3.0 Notice and Opportunity to Comment ..... 8

    3.1 Situations Requiring a Notice and Opportunity to Comment Pre-Environmental Clearance..... 8

    3.2 Situations Requiring a Notice and Opportunity to Comment Post-Environmental Clearance.... 9

    3.3 Notification..... 9

    3.4 Notice Format.....10

    3.5 Comments .....10

4.0 Public Meetings.....10

    4.1 Purpose of a Public Meeting .....11

    4.2 Situations Requiring a Public Meeting .....11

    4.3 Notification.....11

    4.4 Notice Format.....12

    4.5 Public Meeting Types .....14

        4.5.1 Open House Public Meetings .....14

        4.5.2 Traditional Public Meetings .....14

        4.5.3 “Virtual” Public Meetings.....14

        4.5.4 Traffic Noise Workshops.....15

5.0 Opportunity for Public Hearing.....16

    5.1 When to Afford the Opportunity for a Public Hearing.....16

    5.2 Notifications .....17

    5.3 Notice Format.....17

    5.4 Less than 10 Hearing Requests and No Request by an Agency with Jurisdiction .....19

    5.5 Ten or More Hearing Requests or a Request by an Agency with Jurisdiction.....19

6.0 Public Hearing.....20

    6.1 Notifications .....21

    6.2 Notice Format.....23

    6.3 Date and Time.....25

    6.4 Location.....25

6.5 Public Hearing Procedures .....25

6.6 Public Hearing Format .....26

6.7 Managing the Public Comment Session of Public Hearings .....27

6.8 “Virtual” Public Hearings.....27

6.9 Post Public Hearing Activities.....28

7.0 Notice of Intent (NOI) .....29

8.0 EIS Coordination Plan.....29

9.0 Notice of Availability (NOA).....29

    9.1 Draft Environmental Assessment (EA).....30

    9.2 Finding of No Significant Impact (FONSI).....30

    9.3 Draft Environmental Impact Statement (DEIS).....31

    9.4 Final Environmental Impact Statement (FEIS).....32

    9.5 Record of Decision (ROD).....33

10.0 Notice of Final Agency Action.....33

11.0 Notice of Impending Construction.....33

    11.1 Notification.....33

12.0 Section 4(f) De Minimis Findings .....34

13.0 Additional State Statutory Requirements .....34

    13.1 Chapter 26 of the Parks and Wildlife Code.....34

    13.2 Transportation Code, 203.021.....34

    13.3 Transportation Code, 201.811(b).....34

14.0 Documentation Requirements.....35

    14.1 Notice and Opportunity to Comment.....35

    14.2 Public Meetings .....35

    14.3 Public Hearing Opportunity .....36

        14.3.1 NAOPH Documentation.....37

    14.4 Public Hearing Documentation.....38

15.0 Glossary.....40

16.0 Abbreviations and Acronyms .....41

Appendix A.....42

## 1.0 Introduction

This handbook provides guidance and procedures for meeting public involvement requirements for projects, either state or federal, undergoing the environmental analysis project development process. Per the Texas Department of Transportation (TxDOT) public involvement policy, TxDOT commits to going beyond what is required. TxDOT intends to involve the public by providing for early, continuous, transparent, and effective access to information and decision-making.

Public involvement is an integral part of project development. The type and extent of public involvement varies according to the type, complexity, and level of public concern of the proposed project. TxDOT uses the terms public involvement and public participation interchangeably.

For the most part, the public involvement process applies equally for both state and federal projects. Depending on the type and complexity of the project, public concerns, and/or associated social, economic, and environmental factors, additional public involvement may be required. The level of public involvement should reflect TxDOT policy. Public involvement efforts include, but are not limited to, notices and opportunities to comment, public meetings, opportunities for a public hearing, and public hearings. Required public involvement must be completed prior to the final environmental decision.

Consistent with the approach set forth in Executive Order 13807, "Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure," the public notices required by this handbook should, to the extent practicable, be written to satisfy any public notice requirements of all applicable regulations, so as to minimize the number of duplicative notices of the same project under different regulations.

### 1.1 TxDOT Public Involvement Policy

The following policy was adopted by the Texas Transportation Commission on Jan. 27, 2011 with Minute Order 112555. For additional details, refer to [Section 2.0](#).

*The Texas Department of Transportation (TxDOT) commits to purposefully involve the public in planning and project implementation by providing for early, continuous, transparent and effective access to information and decision-making processes. TxDOT will regularly update public involvement methods to include best practices in public involvement and incorporate a range of strategies to encourage broad participation reflective of the needs of the state's population.*

### 1.2 Responsible Parties

#### 1.2.1 Project Sponsor

The project sponsor is responsible for initiating and conducting the applicable and/or appropriate public involvement procedures for a project. While consultants may assist, the project sponsor must host a public meeting or public hearing. TxDOT must host a public meeting or public hearing for a TxDOT sponsored project. For projects where a municipality, county, group of adjoining counties, regional mobility authority, local government corporation, or transportation corporation is the official project sponsor, that entity will coordinate, manage and deliver public involvement activities. For all public hearings on Federal Highway Administration (FHWA) projects, whether TxDOT or a local government is the project sponsor, an appropriately designated TxDOT employee must open the public hearing, officiate the public comment portion of the hearing, and close the public hearing.

The project sponsor is responsible for preparing and publishing notices for public involvement activities. The project sponsor maintains a list of interested individuals and groups to be notified of public involvement activities related to a proposed project and retains the list in the project file. Copies of notices are mailed to these individuals or groups.

### ***1.2.2 Department Delegate***

The department delegate is responsible for ensuring notices are posted on the TxDOT website, as appropriate. TxDOT's Environmental Affairs Division (ENV) arranges for publication of notices of availability for DEISs and FEISs directly with the Environmental Protection Agency. ENV also arranges for publication of required notices in the Texas or Federal Register.

### ***1.2.3 Public Involvement Section, Transportation Planning and Programming Division***

The TxDOT Office of Public Involvement was created by TxDOT in 2012 to assist districts, divisions, and offices with public involvement efforts throughout the life cycle of TxDOT projects. Now part of TxDOT's Transportation Planning and Programming (TPP) Division, the Public Involvement (PI) Section is an on-site resource that can help ensure the TxDOT public involvement policy is understood and followed. Staff can create and review public involvement plans, provide public involvement strategies and techniques, and provide additional staff for community meetings and other public involvement activities.

#### **PI Section Services**

- Develop custom public involvement strategies
- Create public involvement plans; review consultant plans
- Create project fact sheets and other meeting materials
- Develop and post meeting notices and project studies pages and supporting information such as exhibits, fact sheets, and maps to [www.txdot.gov](http://www.txdot.gov)
- Brainstorm appropriate notification techniques, which may include postcards, newsletters, and email blasts
- Review or improve map schematics, improve language for the public
- Build or revise leadership presentations
- Write and review public meeting scripts, presentations, and materials
- Facilitate and coordinate public meetings
- Create public event displays
- Provide on-site public event support
- Translate public materials into other languages
- Facilitate techniques for reaching out to limited English proficient (LEP) and Title VI populations (e.g., translating notices into languages predominantly spoken in the project area, identifying appropriate publications and other means to reach these audiences such as flyers, posters, radio advertisements, changeable message boards, etc.)
- Facilitate online public engagement, including virtual open houses and surveys

ENV recommends contacting the PI Section for the latest notification techniques and assistance with public outreach to improve public involvement and input opportunities statewide. This supports the TxDOT public involvement policy to “regularly update public involvement methods to include best practices in public involvement and incorporate a range of strategies to encourage broad participation reflective of the needs of the state’s population” (Minute Order 112555). The PI Section’s website with valuable resources, including Best Practices, is available at <http://crossroads.org/opi/>.

While project sponsors should consider implementing any suggestions or guidance provided by TPP’s PI Section, such suggestions or guidance do not alter the procedures set forth in this Handbook, which must be complied with at a minimum as part of the environmental review process. And because TxDOT has committed to going beyond what is the minimum required with its PI program, any of the optional items listed above are encouraged as appropriate on a project by project basis to enhance the outcome.

### 1.3 Applicable Project Types

Public involvement is applicable to all project types and is encouraged as an opportunity for the public to engage with TxDOT. Staff should work to ensure the public feels their views and opinions are considered and valued. Although the level of public involvement required depends upon the type and complexity of the project, public concerns, and/or associated social, economic, and environmental factors, all efforts should be carried out with the intent toward achieving meaningful and genuine engagement.

## 2.0 Compliance Overview

Public involvement activities are conducted in accordance with the requirements codified in the Texas Administrative Code (TAC) at [43 TAC 2.101 to 2.110](#) and [43 TAC 1.5](#), as well as in the Code of Federal Regulations (CFR) at [23 CFR Part 771](#) for federal projects.

The TxDOT public involvement policy applies to federal and state projects. To implement the TxDOT public involvement policy stated in [Section 1.1](#), the Commission also adopted the following eight key objectives to implement TxDOT public involvement more effectively.

- Ensure continued adherence to all regulatory guidelines and policies in compliance with federal and state statutes and sound public involvement practice.
- Solicit and encourage proactive public involvement that can be fully integrated into the planning process and incorporated in the various planning activities.
- Provide opportunities for accurate, timely information upon which Texas residents can rely.
- Establish and maintain a TxDOT reputation as a trusted source of information.
- Proactively seek early and continuing public input and involvement, and be responsive to inquiries and suggestions.
- Listen to stakeholders when comments are provided; be responsive and accountable to all stakeholders.
- Energetically adhere to or exceed all applicable TxDOT, state, and federal public involvement requirements for planning and project implementation.

- Use multiple methods to explain TxDOT processes, priorities, and procedures, so the public will have a solid foundation upon which to make requests, inquires, and suggestions.

In addition, TxDOT complies with the following federal and state requirements.

- [23 USC 139](#). Efficient Environmental Reviews for Project Decisionmaking
- [23 USC 128: Public Hearings](#)
- [Executive Order 13166](#): Improving Access to Services for Persons with Limited English Proficiency
- Title VI of the Civil Rights Act of 1964, as codified at [42 USC 2000d\(1-7\)](#)
- Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) regulations, as codified at [40 CFR 1500 – 1508](#).
- Section 106 of the National Historic Preservation Act at 16 USC 470 and [36 CFR 800](#) procedures for implementation
- Section 4(f) of the U.S. Department of Transportation Act as codified at [23 USC 138](#) and [49 USC 303](#); de minimis impact determinations under [23 CFR 774.5\(b\)](#)
- [Memorandum of Understanding between FHWA and TxDOT concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327](#) (Assignment MOU)
- [Chapter 26 of the Texas Parks and Wildlife Code \(PWC\)](#)
- [Chapter 183 of the Texas Natural Resources Code \(NRC\)d](#)
- [Texas Transportation Code 201.811, 203.021, 203.022, and 203.023](#)

As a recipient of federal assistance, TxDOT is required to comply with various nondiscrimination laws and regulations, including Title VI of the Civil Rights Act of 1964 and Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, to promote inclusive public involvement. Refer to the TxDOT [Community Impacts Assessment Toolkit](#) for additional guidance on complying with these requirements.

Federal assistance requirements also mandate TxDOT undertake public involvement specific to historic properties potentially affected by a project. Regulations promulgated by the Advisory Council on Historic Preservation (“ACHP”) implementing Section 106 of the National Historic Preservation Act provide that “[t]he agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.” 36 CFR 800.2(d)(1). The ACHP’s regulations further provide that the “agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.” 36 CFR 800.2(d)(2). Finally, the ACHP’s regulations provide that the agency official may use the agency’s procedures for public involvement under the National Environmental Policy Act or other program requirements to satisfy these requirements. 36 CFR 800.2(d)(3).

References and appropriate information regarding historic properties are integrated into the standard NEPA public involvement actions outlined in this handbook. Such integration may include the need to accommodate National Historic Preservation Act Section 106 consulting parties, such as Tribes, into the

schedule created for the project. Refer to the TxDOT [Archeological Sites and Cemeteries Toolkit](#) and [Historic Resources Toolkit](#) for additional guidance on complying with Section 106.

Effective December 16, 2014, FHWA assigned and TxDOT assumed, subject to the terms and conditions in [23 USC 327](#) and the Assignment MOU, select U.S. Department of Transportation Secretary's responsibilities for NEPA compliance with respect to highway projects. As such, TxDOT now acts as FHWA in making NEPA decisions for assigned projects. The Assignment MOU requires specific language as part of public involvement communication materials. This language is noted in later sections of this handbook.

TxDOT may collaborate with local governments, metropolitan planning organizations (MPOs), or other transportation entities to conduct joint public involvement activities. Public involvement activities hosted by local governments designated as project sponsors ([43 TAC 2.7](#)) can satisfy TxDOT public involvement requirements provided the project sponsor follows all TxDOT requirements.

TxDOT will coordinate, manage and deliver hearings for TxDOT sponsored projects, and local governments designated as project sponsors will coordinate, manage, and deliver hearings for local government sponsored projects. However, for public hearings on FHWA projects, an appropriately designated TxDOT employee must open the public hearing, officiate the public comment portion of the hearing, and close the public hearing, even if a local government is the project sponsor.

### 3.0 Notice and Opportunity to Comment

A notice and opportunity to comment is mailed or emailed directly to the required recipients (see Section 3.3 below). It is not publicly noticed like a public meeting, opportunity for public hearing, or public hearing. The purpose of a notice and opportunity to comment is to inform real property owners and affected local governments and public officials of the project, and allow them an opportunity to submit comments prior to the environmental decision on the project (43 TAC 2.104).

#### **3.1 Situations Requiring a Notice and Opportunity to Comment Pre-Environmental Clearance**

A notice and opportunity to comment is required in the following situations:

- Acquisition of new right-of-way (including a temporary or permanent easement)
- Added capacity
- Construction of a highway at a new location\*

The latter two triggers, added capacity and construction of a highway at a new location, are statutory triggers for a notice and opportunity to comment under Transportation Code, §203.022(a). The first trigger, acquisition of new right-of-way, is not statutorily required; however it is required by the department's environmental review rules (43 TAC 2.104).

If a public meeting, opportunity for public hearing, or public hearing is held for a given project, then it is not necessary to also do a separate notice and opportunity to comment so long as the notice of the public meeting, opportunity for public hearing, or public hearing is provided directly to the entities that would otherwise be entitled to receive a notice and opportunity comment (see Section 3.2 below).

\* A "highway" includes any kind of road or street, including a city street, county road, farm-to-market road, state highway, United States highway, or interstate highway. See 23 U.S.C. 101(a)(11), and definition of "highway" in the TxDOT Glossary.

Extension of an existing highway (on-system or off-system) onto new location would be considered construction of a highway at a new location.

However, widening (e.g., adding lanes, shoulders, clear zone, etc.), filling-in gaps in frontage roads on, or re-aligning an existing highway, even if new right-of-way is required, would not be considered construction of a highway at a new location. Also, the construction of a paved highway on the former location of an unpaved road would not be considered to be construction of a highway at a new location for purposes of this rule.

### **3.2 Situations Requiring a Notice and Opportunity to Comment Post-Environmental Clearance**

As required by Transportation Code, §203.022(b), following environmental clearance of a project (i.e., a CE determination, FONSI, or ROD) additional notice and opportunity to comment must be provided if all the following conditions apply:

- the project adds capacity or involves the construction of a highway at a new location (see Section 3.1 above for an explanation of “new location”);
- construction has not yet begun; and
- conditions relating to land use, traffic volumes, and traffic patterns have changed significantly since the project was originally subject to public review and comment.

Regarding the third bullet point above, notice that in order for this trigger to apply, land use, traffic volumes, and traffic patterns (all three) must have changed “significantly,” which is a subjective determination that includes considerations of both context and intensity.

### **3.3 Notification**

A notice and opportunity to comment is provided to the following recipients:

- Owners of real property that would be acquired
- Owners of real property that is adjacent to the project (only for projects that add capacity or construct a highway at a new location)
- Affected local governments and public officials (only for projects that add capacity or construct a highway at a new location)

As indicated above, consistent with Transportation Code, §203.022(a), owners of real property that is adjacent to the project and affected local governments and public officials are required to receive a notice and opportunity to comment only for projects that add capacity or involve construction of a highway at a new location.

A notice and opportunity to comment is typically mailed (non-certified) to the required recipients. Mailing the notice to the address listed for the property owner in county or city records is sufficient. The notice may also be emailed. If email is used, make sure that recipients cannot view other recipients’ email addresses, as email addresses of members of the public must be withheld from public disclosure in accordance with [Texas Government Code 552.137\(a\)](#). The notice and opportunity to comment must be in English and any other language identified as commonly spoken in the project area.

A notice and opportunity to comment, when required, can be provided at any time during the project development process prior to the environmental decision on the project (i.e., the categorical exclusion

determination). However, it must be provided in time to allow for the full 15-day comment period, and time to prepare the required documentation (see Section 14.1 below) prior to the environmental decision on the project.

### **3.4 Notice Format**

See ENV's Template: Notice and Opportunity to Comment, which is available on the [Public Involvement Toolkit](#).

### **3.5 Comments**

For any given recipient of a notice and opportunity to comment, the minimum comment period is 15 days after the date that the notice is provided to that recipient. For mailed notices, the 15-day comment period begins on the third date after the notice is mailed. For emailed notices or notices provided in person, the 15-day comment period begins on the day the notice is provided. Any timely comments received in response to a notice and opportunity to comment must be addressed in a comment/response matrix prior to the environmental decision on the project (i.e., the categorical exclusion determination), unless the notice is provided post-environmental clearance pursuant to Section 3.2 above.

## **4.0 Public Meetings**

Public meetings are meetings with the general public. Public meetings are tailored to suit individual projects and anticipated audiences ([43 TAC 2.105](#)). Public meetings are typically planned and coordinated by TxDOT; however, for projects where a municipality, county, group of adjoining counties, regional mobility authority, local government corporation, or transportation corporation is the official project sponsor, that entity can plan and coordinate public meetings as long as the TxDOT format and requirements are adhered to. Attendance by TxDOT staff at public meetings held by local government project sponsors, although not required, is recommended as another example of TxDOT doing more than the minimum.

Where practicable, public meetings should include historic preservation interest groups, as appropriate. This may avoid the need to separately meet with such groups under the consultation process required under Section 106 of the National Historic Preservation Act. ENV Cultural Resources Management Section (CRM) staff can assist in providing contact information for groups such as county historical commissions, local preservation offices, and other relevant groups.

Coordination of engaging public meetings will increase the level of participation and feedback, and many tools are available to encourage constructive public feedback. Although displaying exhibit boards and answering questions is important, consider other methods such as stakeholder workshops, using a skilled facilitator to display and/or categorize note card ideas, or allowing the public to write down questions and ideas on flip charts.

Non-public meetings, such as meetings with property owners, interested individuals, stakeholder groups, neighborhood associations, special interest groups, or businesses may be held as deemed appropriate by the project sponsor. Documentation of non-public meetings should be developed and kept by the project sponsor. The format and level of detail of such documentation is at the discretion of the project sponsor.

### **4.1 Purpose of a Public Meeting**

A public meeting is held to exchange ideas and collect input on the need for possible changes to design features, alternatives to, and potential impacts of, in addition to mitigation for, a proposed project. Public meetings are intended to gather input from the public and to keep the public informed during any phase of a project. Public meetings provide early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts and impacts associated with the relocation of individuals, groups, or institutions. There is no limit to the number of public meetings that may be held for a project.

Supplementing public meetings with additional public involvement techniques, such as online open houses, should be considered during project development.

### **4.2 Situations Requiring a Public Meeting**

A public meeting can be held at any stage of project planning and development. Public meetings occur as early as TxDOT determines it is feasible to provide an opportunity for public input in project planning, location, design alternatives, and potential mitigation. Holding public meetings is recommended for projects that require large amounts of ROW, projects that propose access changes, or projects where displacements, impacts to historic properties, substantial public interest, or substantial public controversy are anticipated.

In order to comply with the ACHP's regulations implementing Section 106 of the National Historic Preservation Act, the project sponsor must consider the project's effects on historic properties, and the likely interest of the public in the effects on historic properties, in determining whether to hold a public meeting on a given project. 36 CFR 800.2(d)(1)).

Public meetings, often referred to as scoping meetings, are required for all EIS projects ([23 USC 139](#) and [43 TAC 2.105\(b\)\(2\)](#)). Also, as explained in TxDOT's Traffic Noise Policy Implementation Guidance, a separate type of meeting, called a traffic noise workshop, is required under certain conditions.

### **4.3 Notification**

The public meeting notice must be posted on the TxDOT website 15 days before the public meeting, and provided to any public official, individual, or affected interest group that has expressed interest in the project. This includes any Section 106 consulting parties when appropriate. In addition, the project sponsor is responsible for public meeting notification tasks and can select one or more appropriate outreach methods to inform the public of a public meeting. To maximize attendance, outreach methods must be appropriate for the anticipated audience and can include options such as:

- Publishing notices in local newspapers;
- Publishing display ads in local newspapers;
- Posting meeting notices in local community gathering areas;
- Posting meeting notices on community, county, or municipality websites;
- Mailing letter notifications;
- Emailing notifications;
- Delivering television or radio spots;
- Posting changeable message signs;

- Posting community marquee and electronic displays;
- Mailing postcards;
- Facebook ads;
- Flyers;
- Water bill notifications; and
- Press release and/or media interviews.

Using a combination of these approaches is recommended to address the diversity of the affected population. Strategies to address the underserved and LEP populations must be developed and implemented where populations are identified in the project area. There is no required minimum or maximum number of days for noticing a public meeting. It is recommended to provide notice of public meetings at least 15 days prior to the meeting date (however, the TxDOT website notice of the public meeting must be posted at least 15 days prior, as indicated above).

Note that, for any project requiring a notice and opportunity to comment under Section 3.0 above, if the project sponsor intends to hold a public meeting, and for the public meeting to satisfy the requirement to provide a notice and opportunity to comment under Section 3.0 above, the notice of the public meeting must be mailed or emailed to the required recipients as explained in Section 3.3 above.

#### **4.4 Notice Format**

Meeting notices can contain a combination of any of the following elements, on a level appropriate to the medium used. For example, internet postings and newspaper notices may contain most or all of the elements shown below, but changeable message signs, due to their size limitations, can only indicate that a meeting is scheduled for a particular project at a certain location and time (ex. US 290 meeting, 1/15/15, Cypress HS, 7:30 PM) and must comply with applicable safety-related requirements. If a newspaper is selected to advertise the meeting, a display ad can serve as the public meeting notice. A display ad is more visible and allows some control over the ad placement and size. The notice can be published in any section of the newspaper and in any format, although it is recommended that the notice not be published in the legal notices section. It is important to relay as much of the context of the proposed project to the public as possible to ensure proper advertisement of the meeting.

The following list provides suggested items to include in public meeting notices. The amount of information in a public meeting notice is reflective of the type of advertisement being used.

1. Identify the date, time, and location of the public meeting. Identify the lead agency that will ultimately approve the environmental review (TxDOT for a state or FHWA NEPA-assigned project, FHWA for a non-NEPA assigned project), and reference any joint lead agency, cooperating agencies, and any cooperating and/or sponsoring local governments if applicable.
2. Describe the proposed project, using simple and easy-to-understand language, including the following information.
  - Highway number(s)
  - Project termini
  - Type of facility

- Number of lanes
  - Counties, cities, and/or communities affected
  - CSJ(s)
3. Describe the existing and proposed ROW widths, including anticipated displacements or impacts to historic properties if known.
  4. Describe any Section 4(f) properties that are proposed to be impacted (*de minimis*, programmatic or individual). If the notice will be used to meet the public notice requirement for a Section 4(f) *de minimis* finding, include a statement describing the Section 4(f) property and the intent to pursue a *de minimis* finding, as well as a statement regarding how and by when comments may be made about the proposed *de minimis* finding.
  5. Include references to maps, drawings, environmental documents or studies, as available, and the tentative construction schedule regarding the proposed project, available for public inspection. Also, include the office name(s), location(s), and typical working hours where the project materials may be viewed. Typically, the district and/or area office(s) near the proposed project are identified as areas to review project documentation. Project materials should be made available on a TxDOT website, and the link should be included.
  6. If relocations are involved, include a statement that provides information regarding the TxDOT Relocation Assistance Program, benefits and services for displaced businesses and persons, and information about the relocation assistance office. Include information that the tentative schedule for ROW acquisition can be obtained from the district and/or area office.
  7. Include a statement that written comments may be submitted for a period of 15 calendar days after the public meeting and the address where written comments may be submitted. If available, provide an email address where comments may be submitted.
  8. Include a statement that TxDOT will make every reasonable effort to accommodate persons with special communication or mobility needs. The notice must include the following language.

*The <event name> will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to attend and participate in <event name>, please contact <contact name (PIO/ or other appropriate contact)>, District or Division Name>, at <phone number with area code> no later than 4 p.m. CT, <specific date that is at least three business days before the event>. Please be aware that advance notice is required as some services and accommodations may require time for the Texas Department of Transportation to arrange.*
  9. Include a map of the location of the public meeting.
  10. Include a statement identifying a contact person or office for questions.
  11. For projects assigned under the Assignment MOU, the following language must be included in the public notice.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

### 4.5 Public Meeting Types

There are three types of public meetings. Public meetings can be held as open house public meetings; traditional public meetings; or, under certain circumstances described below, “virtual” public meetings.

Attendance by TxDOT staff at public meetings held by local government project sponsors, although not required, is recommended as another example of TxDOT doing more than the minimum.

For federal assigned projects in accordance with the Assignment MOU, the following language must be included in the handout material, on a display board, or in the presentation.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

#### 4.5.1 Open House Public Meetings

An open house public meeting is less formal and allows participants to come and go at their convenience. Typically, a series of exhibits are staged in the meeting room, and district and/or project staff are located at various exhibits to answer questions. Strategies to communicate with potential LEP populations should be developed. Comment cards must be made available for attendees to submit written comments. Having a table or other specific area to submit public comments is recommended. Open house public meetings are often held during weekday afternoon and early evening hours (ex. 5 - 7 p.m.). A court reporter is not required for a public meeting, but may participate to record comments provided by participants. A written comment period must extend at least 15 calendar days after the event adjourns. Consideration should be given to avoid comment deadlines that extend into holiday and/or weekend periods.

TxDOT is also exploring more public-friendly and engaging open house methods, including meetings scheduled at non-traditional locations (ex. a shopping mall or booth at a festival) to increase the level of public involvement. The goal is to select a location and time that is convenient for the public and increase engagement opportunities. Project sponsors are encouraged to work with TPP’s PI Section toward this goal (see [Section 1.2.3](#) of this Handbook).

#### 4.5.2 Traditional Public Meetings

A traditional public meeting is a more formal event where a presentation is delivered to the meeting attendees. To maximize participation, public meetings typically are held on a weekday afternoon or early evening, unless the public prefers another time. Strategies to communicate with potential LEP populations should be developed. Comment cards must be made available for attendees to submit written comments. Providing a table or other specified area where attendees can submit public comments is recommended. A court reporter is not required for a public meeting, but may participate to record comments provided by participants. A written comment period must extend at least 15 calendar days after the event adjourns. Consideration should be given to avoid comment deadlines that extend into holiday and/or weekend periods.

#### 4.5.3 “Virtual” Public Meetings

A “virtual” public meeting is a meeting that is held on-line, in which members of the public log-on to the meeting and participate via the internet. A virtual public meeting may be held in the following two situations: (1) as a *supplement* to an in-person public meeting, or (2) as a *substitute* for an in-person public meeting when the Governor and/or President declares a health or other emergency or TxDOT determines that an in-person public meeting should not be held out of concerns for public health or safety.

Notice of a virtual public meeting must comply with the instructions stated in Subsections 4.3 (“Notification”) and 4.4 (“Notice Format”) above, including the requirement to develop and implement strategies to address the underserved and LEP populations where such populations are identified in the project area. Notice of a virtual public meeting must also include the following:

- clear instructions about how to log onto the virtual public meeting;
- an explanation of how the virtual public meeting will be conducted; and
- an explanation that members of the public may, as an alternative to logging-on to the virtual public meeting, call or email district or project staff to ask questions about the project, access project materials, and submit public comments via email or letter.

A virtual public meeting must satisfy the purposes of a public meeting identified in Subsection 4.1 (“Purpose of a Public Meeting”) above. Specifically, a virtual public meeting must comply with the following:

- Participants in a virtual public meeting may be asked to “sign-in” by entering their name and email address (no account or password will be required).
- For an FHWA project, the NEPA assignment disclaimer (see Subsection 4.4 above) must be displayed to participants in a virtual public meeting.
- A virtual public meeting must present the web address for a website at which project materials will be posted for public viewing during and after the virtual public meeting.
- A virtual public meeting must include a presentation by project staff, which will include both audio and visual components. The presentation must provide that participants may submit comments via email or letter. The presentation may be pre-recorded and uploaded for viewing at the scheduled public meeting time and thereafter.
- The presentation must explain to participants in the virtual public meeting that they may call project staff during regular office hours or email project staff to ask questions about the project at any time during the project development process.
- To the extent it is technologically feasible, a recording of the virtual public meeting must be made and posted on-line until at least the end of the 15-day comment period.

Strategies to communicate with potential LEP populations during a virtual public meeting should be developed. A court reporter is not required for a virtual public meeting. A written comment period must extend at least 15 calendar days after the virtual public meeting adjourns. Consideration should be given to avoid comment deadlines that extend into holiday and/or weekend periods. The documentation requirements set forth in Subsection 14.2 (“Public Meetings”) apply to a virtual public meeting.

### **4.5.4 Traffic Noise Workshops**

As explained in TxDOT's Traffic Noise Policy Implementation Guidance, a separate type of meeting, called a traffic noise workshop, is held when it is determined that a proposed project impacts noise receivers, and feasible and reasonable abatement measures have been identified. This type of meeting is held specifically to allow property owners and residents adjacent to proposed abatement measures to provide input on such measures, and therefore is generally not advertised to the public at-large.

Regardless of which format for a public meeting is followed, attendees' email addresses should generally not be collected on the sign-in sheet. However, if the district, or the core team in the case of an EA or EIS, determine during scoping that there is a valid reason for collecting attendees' email addresses on the sign-in sheet (for example, to provide project updates, newsletters, or other information about the project by email), then any email addresses provided by members of the public must be redacted from any publicly available documents and withheld from public disclosure in accordance with Texas Government Code 552.137(a).

## 5.0 Opportunity for Public Hearing

For projects that trigger the requirement for a public hearing (e.g., EIS projects), this Section 5.0 does not apply. Instead, refer to [Section 6.0](#) of this Handbook regarding Public Hearings.

A notice affording an opportunity for a public hearing (NAOPH) is required for specific projects, as outlined below, to determine if the public desires a formal public hearing. A project sponsor can hold a formal public hearing in lieu of providing an opportunity for a public hearing. The decision to afford an opportunity for public hearing is made by a project sponsor in consultation with the department delegate.

An NAOPH informs the public that a hearing may be held for a project if ten or more individuals request a hearing, or if an agency with jurisdiction submits a request supported with reasons why a hearing will be helpful ([43 TAC 2.106](#)).

### 5.1 When to Afford the Opportunity for a Public Hearing

For an EA project, an NAOPH can only be afforded when a draft EA is approved for circulation by the department delegate. For a CE project, an NAOPH can be afforded after preliminary location and design studies are developed; however, for an open-ended (d)-list CE project, approval by the Environmental Affairs Division's Project Delivery staff is required to proceed to an NAOPH. Additionally, for a project with a local government sponsor, approval by the department delegate is required to proceed to an NAOPH. The project sponsor may decide to either offer an opportunity for a public hearing or proceed directly to a public hearing (subject to the same conditions set forth earlier in this paragraph).

In lieu of holding a public hearing, an opportunity for public hearing must be afforded if the project meets any of the following conditions.

- The project requires the acquisition of significant amounts of ROW.
- The project has a substantial adverse impact on or abutting real property.
- The project is the subject of an EA. An opportunity for a public hearing is the minimum public involvement requirement for an EA.

### 5.2 Notifications

The project sponsor is responsible for preparing and providing an NAOPH. The notice must be published in a local newspaper having general circulation in the area affected by the project. The notice can be published in any section of the newspaper and in any format, although it is recommended that the notice not be published in the legal notices section. If there is no local newspaper in the area affected by the project, the project sponsor publishes notice in a newspaper with general circulation in the area affected by the project. In addition, the project sponsor must select a minimum of one additional outreach method to inform the public of an opportunity to request a public hearing. These methods can include, but are not limited to, posting information on project specific website, email blast to stakeholder list, publishing an additional notice in the newspaper or online media, providing notices to local community groups, neighborhood associations, schools, and other locations within the project area where the community might congregate, social media, or using changeable message signs. Strategies to address the underserved and LEP populations must be developed and implemented where populations are identified in the project area. Project sponsors are encouraged to work with the Public Involvement (PI) Section of TxDOT's Transportation Planning and Programming (TPP) Division in identifying additional outreach methods (see Section 1.2.3 of this Handbook). Notices must be provided in English and any other language commonly spoken in the project area. TPP's PI Section is available to assist with this requirement.

The project sponsor must mail (non-certified) or email the NAOPH to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records; affected local governments and public officials; and to any public official, individual, or affected interest group that has expressed interest in the project, including any Section 106 consulting parties. Mailing the notice to the address listed for the property owner in county or city records is sufficient. If email is used, make sure that recipients cannot view other recipients' email addresses, as email addresses of members of the public must be withheld from public disclosure in accordance with [Texas Government Code 552.137\(a\)](#).

The NAOPH must be provided and published as described above at least 15 days prior to the deadline for submitting a written request to hold a public hearing. However, for an EA project, the NAOPH is combined with the notice of availability of the draft EA (see Section 9.2 below), and must be provided and published at least 30 days prior to the deadline for submitting a written request to hold a public hearing. If the notice is sent by mail, it is considered to be provided on the third day after the date of mailing.

### 5.3 Notice Format

The information required in the NAOPH includes several project specific requirements. It is important to present the following information in the notice, as it could be the only notice seen by the public regarding the proposed project, especially if a hearing is not held.

The procedure for requesting a public hearing must be explained in the notice and must include the following information.

- Identify the lead agency that will ultimately approve the environmental review, and reference any joint lead agencies, cooperating agencies, and any cooperating and/or sponsoring local governments if applicable.
- Describe the proposed project, in simple and easy-to-understand language, including the following information.
  - Highway number(s) and local names

- Project termini
  - Project length in miles
  - Type of facility
  - Number of lanes
  - Counties, cities, and/or communities affected
  - CSJ(s)
- Describe the existing and proposed ROW widths, including anticipated displacements.
  - Describe any Section 4(f) properties that are proposed to be impacted (*de minimis*, programmatic or individual). If the notice will be used to meet the public notice requirement for a Section 4(f) *de minimis* finding, include a statement describing the Section 4(f) property and the intent to pursue a *de minimis* finding, as well as a statement regarding how and by when comments may be made about the proposed *de minimis* finding.
  - Include references to maps, drawings, and environmental documents or studies regarding the proposed project that are recorded in the official project file and available for public inspection. In the notice include the office name(s), location(s), and typical working hours where the project materials can be viewed. Typically, the district and area office(s) near the proposed project are identified as areas to review project documentation. Project materials, including the draft EA for EA projects, should be made available on a TxDOT website, and the link should be included.
  - Include a statement concerning the potential for displaced residential and/or non-residential structures and the availability of relocation assistance for businesses and persons displaced.
  - If relocations are involved, include a statement that provides information regarding the TxDOT Relocation Assistance Program, benefits and services for displaced businesses and persons, and information about the relocation assistance office. Include information that the tentative schedule for ROW acquisition can be obtained from the district and/or area office.
  - If relocations are not involved but additional ROW is required, include a statement to that effect and the following language.

Although additional right-of-way is required, no residential or non-residential structures would be displaced. Information concerning services and benefits available to affected property owners and information about the tentative schedule for right-of-way acquisition may be obtained from the <district and/or area> office.

- If the project is a federal project and encroaches on a floodplain, wetland, or sole-source aquifer recharge zone, include a statement to that effect in the notice.
- Include a statement that the tentative construction schedule is available at the district and/or area office.
- Include a statement that any individual may request a public hearing by submitting a written request to the address provided in the notice. The deadline for requests is 15 days following all required notices have been provided (except for EAs, in which case it is 30 days).
- Include a statement that a hearing will be held if ten or more individuals submit timely written requests for a hearing, or if an agency with jurisdiction over the project submits a timely written request for a hearing that is supported by reasons why a hearing will be helpful.

- Include the address and phone number of the district and/or area office.
- If the proposed project or one of the alternatives is located in or has the potential to be located in a wetland, the notice must state that.
- For projects assigned under the Assignment MOU, the following language must be included in the public notice.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

Keep in mind that for environmental assessments the notice of an opportunity for a public hearing is combined with the notice of availability of the draft EA. See ENV's Template: Draft EA Notice of Availability and Opportunity for a Public Hearing, which is available on the [Public Involvement Toolkit](#).

### **5.4 Less than 10 Hearing Requests and No Request by an Agency with Jurisdiction**

If less than 10 requests for a public hearing, and no request by an agency with jurisdiction supported with reasons why a hearing will be helpful, are received by the deadline, the project sponsor prepares a certification to that effect which is signed by an appropriately designated TxDOT employee. The certification is retained in the project file. Guidance on writing the certification is provided in Section 14.3.1.

### **5.5 Ten or More Hearing Requests or a Request by an Agency with Jurisdiction**

When 10 or more requests have been received, or a request from an agency with jurisdiction supported with reasons why a hearing will be helpful has been received, the project sponsor may contact the individuals or agency requesting a public hearing to discuss their concerns regarding the proposed project. If an individual's or agency's concerns are satisfied and the individual or agency is agreeable to retracting their hearing request, the project sponsor must obtain correspondence (ex. letter, email, signature on a prepared form) from the individual or agency requesting the hearing stating that the hearing request was retracted. The letter must be submitted with a certification from the appropriately designated TxDOT employee to the department delegate. The certification must state that one or more requests were received and retracted after concerns were addressed and satisfied.

If 10 or more requests remain and have not been retracted, or if a request from an agency with jurisdiction remains and has not been retracted, a public hearing must be scheduled and conducted, and there is no need to fill-out a certification for the opportunity for public hearing.

If, after all retractions, less than 10 requests remain, and no request from an agency with jurisdiction remains, then no hearing is required. However, the project sponsor must inform the remaining requestors that the threshold for holding a hearing was not met and so no hearing will be held.

If many hearing requests are received, the project sponsor should proceed with arranging the public hearing instead of reaching out to each individual requestor as described above.

## **6.0 Public Hearing**

Public hearings are conducted to provide an opportunity during project development for the public to be more formally involved in the identification of social, economic, and environmental impacts and impacts associated with the relocation of individuals, groups, or institutions. Information regarding a proposed project – including project design information, project alternatives, and environmental findings – is presented at a public hearing, and the public is encouraged to provide comment on the proposed project ([23 USC 139](#)), ([43 TAC 2.107](#)). Public hearings provide the public with a venue and opportunity to hear and see information regarding a proposed project. Public hearings serve to encourage and solicit public comment on the location, design, and environmental analyses of a project. For an EA or EIS project, a public hearing cannot be conducted until the environmental document is approved for circulation by the department delegate. For a CE project, a public hearing can be held after preliminary location and design studies are developed, and sufficient information has been developed to present the social, economic, environmental, and other anticipated impacts of the proposed project at the hearing; however, for an open-ended (d)-list CE project, approval by the Environmental Affairs Division's Project Delivery staff is required to proceed to a public hearing. Additionally, for a project with a local government sponsor, approval by the department delegate is required to proceed to a public hearing. A public hearing or an NAOPH is required for all EAs, and a public hearing is required for all EISs. CE projects with any of the characteristics below also require a public hearing.

TxDOT holds a public hearing if any of the following statements apply to the project.

- Ten or more individuals submit a written request for a hearing, or an agency with jurisdiction over the project submits a written request for a hearing that is supported by reasons why a hearing will be helpful. However, a public hearing is not required if:
  - a public hearing was held concerning the project before the requests are received,
  - the hearing request(s) are received after the environmental review document or CE determination for the project is approved (43 TAC 2.107(b)(1)(B)),
  - the hearing request(s) are received after the deadline specified in an NAOPH, or
  - the project sponsor has addressed all of the concerns of the agency or persons requesting the hearing and they have submitted written withdrawals of their hearing requests such that no agency request and less than 10 individual requests remain.
- The project involves substantial public interest or controversy
- TxDOT approves a draft EIS (DEIS)
- The project substantially changes the layout or function of a connecting roadway or an existing facility\*
- TxDOT determines it is in the public interest
- The project bypasses a municipality (see [Transportation Code, Section 203.021](#))
- The project requires the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area, as covered under Chapter 26 of the PWC ([3 PWC 26.001](#)) (see [Section 13.1](#) below)
- The project requires the use or taking of private land encumbered by an agricultural conservation easement purchased under Chapter 183 of the NRC ([8 NRC 183](#)).

\* Substantial change in layout means: for a project involving intersecting roadways, the reconfiguration of the intersection; the horizontal re-alignment or extension of an existing highway that requires more than 30 acres of new right-of-way; or converting an undivided roadway to a divided roadway where substantial controversy is anticipated. Simple added capacity, widenings, ramp re-configurations, and frontage road conversions are not considered a substantial change in layout.

In determining whether a horizontal re-alignment or extension requires more than 30 acres of new right-of-way, consider only those fee simple or permanent easement acquisitions needed for the re-alignment or extension, including any advance acquisitions conducted for the project. Do not consider temporary easements. Also, do not consider fee simple or permanent easement acquisitions needed not for the re-alignment or extension, but for another aspect of the project, such as widening of the roadway.

In determining whether a project that reconfigures an intersection qualifies as a “substantial change in layout or function,” the project sponsor must take into account the context and impact of the reconfiguration on both the travelling public and local residents and businesses. Relatively minor reconfigurations that do not substantially affect travel patterns, such as adding a turn lane or a simple grade separation, may be determined to not qualify as a “substantial change in layout or function.” However, more complex projects that substantially affect travel patterns are considered as a “substantial change in layout or function.”

Substantial change in function means the addition of one or more managed lanes, high-occupancy vehicle lanes, bicycle lanes, or transit lanes to an existing highway; or the conversion of an existing highway from non-controlled access to controlled access.

“Bicycle lane” means a portion of a roadway that is designated by striping, signing, or pavement markings for the exclusive use of bicyclists. Bicycle lanes that are separated from travel lanes by landscaping, a median, or other buffer are still considered “bicycle lanes” for purposes of this requirement. Shared-use paths and wide shoulders are not considered “bicycle lanes” for purposes of this requirement. Also, none of the following situations regarding bicycle lanes are treated as “substantially changing the layout or function of a connecting roadway or an existing facility or facilities:”

- striping bicycle lanes when the pre-existing roadway already accommodated bicycles (does not include widening projects);
- striping one or more non-continuous bicycle lanes approaching or through intersections, driveways, or other conflict areas; or
- striping bicycle lanes not along, but across a roadway at an intersection to allow the continuation of planned or existing bicycle lanes on crossing local streets or other bicycle facilities.

Finally, no additional hearing under TxDOT’s Chapter 2 environmental review rules is triggered by the addition of bicycle lanes if the project was addressed in a local hearing held under [43 TAC 25.55](#), “Comment Solicitation on Bicycle Road Use.” For any such project, simply add a statement in the “Comments” field of the “Perform Opportunity for Public Hearing (OPH)/Public Hearing (PH)” Activity in ECOS indicating that the project was addressed in a local hearing held under 43 TAC 25.55 and the date of that local hearing. There is no need to prepare or upload documentation of the public hearing in this instance because the requirements of this Handbook do not apply to a local hearing held under 43 TAC 25.55.

### **6.1 Notifications**

The project sponsor is responsible for preparing and providing notices for a public hearing. One notice must be published in a local newspaper having general circulation in the area affected by the

project. The notice can be published in any section of the newspaper and in any format, although it is recommended that the notice not be published in the legal notices section. If there is no local newspaper in the vicinity affected by the project, the project sponsor publishes notice in a newspaper having general circulation in the area affected by the project.

In addition, the project sponsor selects a minimum of one additional outreach method to inform the public of a public hearing. Additional outreach methods can include, but are not limited to, posting information on project specific website, email blast to stakeholder list, publishing an additional notice in the same newspaper or online media as the first publication, providing notices to local community groups, neighborhood associations, schools, and other locations within the project area where the community might congregate, social media, or using changeable message signs. Strategies to address the underserved and LEP populations must be developed and implemented where populations are identified in the project area. Project sponsors are encouraged to work with TPP's PI Section in identifying additional outreach methods (see Section 1.2.3 of this Handbook). Notices must be provided in English and any other language identified as commonly spoken in the project area. The Public Involvement Section of TxDOT's Transportation Planning and Programming (TPP) Division is available to assist with this requirement.

The project sponsor must mail (non-certified) or email notice of the public hearing to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records; affected local governments and public officials; and to any public official, individual, or affected interest group that has expressed interest in the project, including any Section 106 consulting parties. Mailing the notice to the address listed for the property owner in county or city records is sufficient. If email is used, make sure that recipients cannot view other recipients' email addresses, as email addresses of members of the public must be withheld from public disclosure in accordance with [Texas Government Code 552.137\(a\)](#).

In addition the public hearing notice must also be posted on the TxDOT website.

The public hearing notice must be provided and published as described above at least 15 days before the public hearing. If the notice is sent by mail, it is considered to be provided on the third day after the date of mailing. Additionally, the project sponsor shall make the maps, drawings, environmental reports, and documents concerning the project available to the public for not less than the 15 consecutive days before the public hearing.

A project that requires the acquisition of public land designated as a park, recreation area, wildlife refuge, historic site, or scientific area under Chapter 26 of the Texas PWC has different advertising requirements ([3 PWC 26.002](#)), which include the following.

- The notice must be published in a newspaper of general circulation that is published at least six days a week in the county where the land proposed to be used or taken is located. The notice must be published for three consecutive weeks, with the last publication not less than one week or more than two weeks before the hearing date.
- When a project affects public land protected by Chapter 26 of the Texas PWC, a separate written notice must be provided to the person, organization, department, or agency that has supervision of the land proposed to be used or taken. The notice must be sent at least 30 days before the hearing date.

The hearing and other tasks needed to comply with Chapter 26 must be completed prior to completion of the environmental review of the project. Refer to the TxDOT [Chapter 26 Parks and Wildlife Code Toolkit](#) for additional guidance on satisfying these requirements.

### 6.2 Notice Format

It is important to present the following information in the public hearing notice to convey as much information regarding the proposed project as possible. Additional hearing notices may contain a combination of any of the following elements on a level appropriate to the medium used. For example, internet postings and newspaper advertisements contain most or all of the elements shown below, but changeable message signs only indicate that a hearing is occurring for a particular project at a certain location and time (ex. US 290 public hearing, 1/15/15, Cypress HS, 7:30 PM) and must comply with applicable safety requirements. For the newspaper notice of the hearing, the notice can be published in any section of the newspaper and in any format, although it is recommended that the notice not be published in the legal notices section. It is important to relay to the public as much of the context of the proposed project as possible to ensure proper advertisement of the meeting.

The notice must include the following information.

- Identify the lead agency that will ultimately approve the environmental review, and reference any joint lead agency, cooperating agencies, and cooperating and/or sponsoring local governments if applicable.
- Describe the proposed project, including the following information.
  - Highway number(s)
  - Project termini
  - Project length in miles
  - Type of facility
  - Number of lanes
  - Counties, cities, and/or communities affected
  - CSJ(s)
- Describe the existing and proposed ROW widths, including anticipated displacements.
- Describe any Section 4(f) properties that are proposed to be impacted (*de minimis*, programmatic or individual). If the notice will be used to meet the public notice requirement for a Section 4(f) *de minimis* finding, include a statement describing the Section 4(f) property and the intent to pursue a *de minimis* finding, as well as a statement regarding how and by when comments may be made about the proposed *de minimis* finding.
- Include references to maps, drawings, environmental documents or studies, and tentative construction schedule regarding the proposed project that are available for public inspection. Include the office name(s), location(s), and typical working hours where the project materials are available for viewing. Typically, the district and/or area office(s) near the proposed project are identified as areas to review project documentation. Project materials, including the draft EA for EA projects or the DEIS for EIS projects, should be made available on the TxDOT website, and the link should be included.
- Include a statement concerning the potential for displacement of residential and/or non-residential structures and the availability of relocation assistance for displaced persons and businesses.
- If relocations are involved, include a statement that provides information regarding the TxDOT Relocation Assistance Program, the benefits and services for displaced businesses and persons,

and the relocation assistance office. Include information that the tentative schedule for ROW acquisition is available from the district and/or area office.

- If relocations are not involved but additional ROW is required, include the following language.

*Although additional right-of-way is required, no residential or non-residential structures would be displaced. Information concerning services and benefits available to affected property owners and information about the tentative schedule for right-of-way acquisition may be obtained from the <district and/or area> office.*

- Provide the address where written comments may be submitted. If available, provide an email address where comments may be submitted.
- The notice must also provide information required to comply with public involvement requirements of other laws, Executive orders, and regulations. For example, if a federal project encroaches on a floodplain, wetland, or sole-source aquifer recharge zone, specific notification regarding that issue may be required.
- Include a statement that TxDOT will make every reasonable effort to accommodate persons with special communication or mobility needs.

*The <event name> will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to attend and participate in <event name>, please contact <contact name (PIO/or other appropriate contact), District or Division Name>, at <phone number with area code> no later than 4 p.m. CT, <specific date that is at least three business days before the event>. Please be aware that advance notice is required as some services and accommodations may require time for the Texas Department of Transportation to arrange.*

- Include a map showing the location of the public hearing (optional).
- Include a statement identifying a contact person or office for questions.
- For federal assigned projects in accordance with the Assignment MOU, the following language must be included in the public notice.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

The notice must also be posted on the TxDOT website 15 days before the hearing.

Keep in mind that, for environmental assessments and environmental impact statements, the notice of public hearing is usually combined with the notice of availability of the draft EA or draft EIS. See ENV's Template: Draft EA Notice of Availability and Public Hearing and Template: Draft EIS and Notice of Availability and Public Hearing, which are available in the [Public Involvement Toolkit](#). For an EIS project, there is a separate 45-day comment period following publication of the notice of availability of the draft EIS in the Texas or Federal Register, as explained in Section 9.3.

### 6.3 Date and Time

Hearings should be scheduled on weekday afternoons or early evenings, unless the public prefers another time. If there is a significant civic activity planned for a certain day, schedule the hearing when there is not a conflict. Also, avoid scheduling hearings near or on significant national, religious, or school holidays.

Remember to consider and implement appropriate strategies to overcome potential barriers to participation for underserved and LEP populations.

The project sponsor may schedule an open-forum time for people to review the exhibits and ask questions prior to convening the public hearing.

### 6.4 Location

Carefully select the location of the hearing for proximity to the proposed project, proximity and access for the anticipated audience, appropriate size, effective public address systems, and adequate room for exhibits. The location also must have adequate public parking, have accessible entries, and comply with the Americans with Disabilities Act. Public schools and civic auditoriums are often good locations for hearings.

### 6.5 Public Hearing Procedures

A registration area outside the public hearing room, if available, should be set up where the public may register their attendance, register for the verbal comment session, and ask general questions. If a sign-in sheet is used, attendees' email addresses should generally not be collected. However, if the district, or the core team in the case of an EA or EIS, determine during scoping that there is a valid reason for collecting attendees' email addresses on the sign-in sheet (for example, to provide project updates, newsletters, or other information about the project by email), then any email addresses provided by members of the public must be redacted from any publicly available documents and withheld from public disclosure in accordance with [Texas Government Code 552.137\(a\)](#).

Project sponsor representatives or district personnel must be on hand to explain the exhibits and to answer questions both before and after the hearing proceedings. Strategies for communicating with LEP populations also need to be developed, including providing interpreters if needed. An appropriately designated TxDOT employee must lead the hearing for TxDOT sponsored projects. For FHWA projects where a municipality, county, group of adjoining counties, regional mobility authority, local government corporation, or transportation corporation is the official project sponsor, an appropriately designated TxDOT employee must open the public hearing, officiate the public comment portion of the hearing, and close the public hearing. For federal assigned projects in accordance with the Assignment MOU, the following language must be included in the handout material, on a display board or in the presentation.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

When a hearing is conducted for an environmental assessment a copy of the Draft EA and any technical reports must be made available at the hearing. For categorical exclusion (CE) projects, a copy of any approved technical reports completed for the project must be made available at the hearing. In addition, maps showing the project location and design, schematics and tentative construction schedules must be available to the public at the hearing.

A professional court reporter must prepare and certify the public hearing transcript. The court reporter should be present at the hearing; however, if the project sponsor is unable to hire a court reporter to physically attend the hearing or if other circumstances prevent a court reporter from being present, then it is possible for a court reporter to prepare the public hearing transcript from a video recording. If a video recording will be used, methods to ensure the accuracy of completeness of the recording, such as multiple recorders, should be used. Strategies for any LEP population's ability to communicate with the court reporter or make video-recorded comments should be developed and implemented. Therefore, the hearing room must include an area close to the microphones to locate the court reporter or make video-recorded comments.

### **6.6 Public Hearing Format**

This section outlines the format typically used for a public hearing. The responsibilities and steps performed by a TxDOT employee or project sponsor are noted. Other entities may conduct the unassigned steps.

1. The TxDOT employee convenes the hearing and conducts the following tasks.
  - Make introductions.
  - State the purpose of hearing.
  - State that the public has 15 calendar days following the hearing to submit written comments (or for an EIS, a date that is both 15 calendar days following the hearing and 45 calendar days following the publication of the notice of availability in the Federal Register, or for a state project, the Texas Register).
2. The TxDOT employee or project sponsor reviews the hearing procedures and agenda.
3. The TxDOT employee or project sponsor discusses the state, federal, and local government relationship.
4. Present the proposed project, including the following information.
  - Layman description of the proposed project
  - Purpose and need of the proposed project
  - Project consistency with the goals and objectives of any local urban planning effort
  - Major design features
  - Proposed project alternatives
  - Anticipated ROW acquisitions and any advance ROW acquisitions that have taken place
  - Social, economic, environmental, and other anticipated impacts of the proposed project. If the hearing is being conducted to comply with Chapter 26, a discussion of the affected property and potential impacts is required.
  - Anticipated permits
  - Anticipated relocations
  - Anticipated detours (if known)
5. Discuss the relocation assistance program and the ROW acquisition process

6. The TxDOT employee or project sponsor has the option but is not required to call a recess for 30 minutes to allow the public to view displays and ask individual questions
7. The TxDOT employee or project sponsor reconvenes the presentation if a recess was called
8. The TxDOT employee or project sponsor reviews the procedure for receiving verbal and written comments
9. The TxDOT employee or project sponsor provides an opportunity for elected officials to speak
10. The TxDOT employee begins the formal public commenting session
11. The TxDOT employee manages/moderates the time for each speaker
12. The TxDOT employee ends the formal commenting session
13. The TxDOT employee presents the anticipated project schedule
14. The TxDOT employee restates how, by what date, and where to submit written comments
15. The TxDOT employee indicates where a copy of the response to comments may be obtained
16. The TxDOT employee adjourns the hearing

### **6.7 Managing the Public Comment Session of Public Hearings**

Public hearing practices can vary, depending on the anticipated number of speakers. Consult with ENV, TPP's PI Section, and/or the district public information officer for suggestions on public hearing practices, including how to set up the hearing room. The following requirements are elements of managing the public comment session of a public hearing.

- Allow adequate time for public comment. Speakers can be limited to three to five minutes for comments if there are a substantial number of people signed up to make verbal comments.
- State the ground rules for public comment, such as one speaker representing a group, agency, association, etc. This representative may only address TxDOT, not the audience.
- State whether elected officials will speak first.
- State that testimony questions are not answered or commented on during the hearing itself. Testimony at hearings is addressed the same way as written comments, after the hearing.
- Provide for interpreters if needed.

Contracting for security personnel to be present for the hearing is also recommended, especially for controversial projects.

### **6.8 "Virtual" Public Hearings**

A "virtual" public hearing is a hearing that is held on-line, in which members of the public log-on to the hearing and participate via the internet. A virtual public hearing may be held in the following two situations: (1) as a *supplement* to an in-person public hearing, or (2) as a *substitute* for an in-person public hearing when the Governor and/or President declares a health or other emergency or TxDOT determines that an in-person public hearing should not be held out of concerns for public health or safety.

Notice of a virtual public hearing must comply with the requirements stated above in Subsections 6.1 ("Notifications") and 6.2 ("Notice Format") above, including the requirement to develop and implement

strategies to address the underserved and LEP populations where such populations are identified in the project area. Notice of a virtual public hearing must also include the following:

- clear instructions about how to log onto the virtual public hearing;
- an explanation of how the virtual public hearing will be conducted; and
- a statement that members of the public may, as an alternative to logging-on to the virtual public hearing, call or email district or project staff to ask questions about the project, access project materials, and submit public comments via email or letter.

A virtual public hearing should be scheduled in accordance with the recommendations in Subsection 6.3 (“Date and Time”) above. A virtual public hearing must satisfy the purposes of a public hearing identified in Section 6.0 (“Public Hearing”) above. Specifically, a virtual public hearing must comply with the following:

- Participants in a virtual public hearing may be asked to “sign-in” by entering their name and email address (no account or password will be required).
- For an FHWA project, the NEPA assignment disclaimer (see Subsection 6.5 above) must be displayed to participants in a virtual public hearing.
- A virtual public hearing must present the web address for a website at which project materials will be posted for public viewing during and after the virtual public hearing. See Subsection 6.5 (“Public Hearing Procedures”) above for the project materials that must be made available.
- A virtual public hearing must include a presentation by project staff in accordance with numbered sections 1-5 in Subsection 6.6 (“Public Hearing Format”) above. The presentation will include both audio and visual components. The presentation must provide that participants may submit comments via email or letter. The presentation may be pre-recorded and uploaded for viewing at the scheduled public hearing time, and thereafter.
- The presentation must explain to participants in the virtual public hearing that they may call project staff during regular office hours or email project staff to ask questions about the project at any time in the project development process.
- Following the presentation, the virtual public hearing will include an allotted amount of time for members of the public to call a phone number and verbally provide testimony.
- Strategies for communicating with LEP populations during the virtual public hearing must be developed, including providing interpreters if needed.
- A transcript of the presentation given in the virtual public hearing must be prepared.
- To the extent it is technologically feasible, a recording of the virtual public hearing must be made and posted on-line until at least the end of the 15-day comment period (or, if the comment period is extended by TxDOT, for example on a very large scale project with a high level of public interest, at least until the end of the extended comment period).
- The post-public hearing activities set forth in Subsection 6.9 (“Post Public Hearing Activities”) below apply following a virtual public hearing.

### ***6.9 Post Public Hearing Activities***

After a hearing, the following activities are conducted.

1. The public can submit written comments to the project sponsor for 15 calendar days following the public hearing. This timeframe can be extended if needed by the project sponsor in coordination with the department delegate. The final date for submittal of comments must be announced at the hearing.
2. The project sponsor shall submit to the department delegate documentation of public hearing that includes the cover page; transcript; a comment and response matrix; and the original certification of the public participation process that conforms to guidelines established by TxDOT and signed by an appropriately designated TxDOT employee. The contents of the documentation of public hearing are discussed further below in [Section 14.0](#). The project's final EIS, EA, or CE determination shall reflect the holding of a public hearing, including project revisions to the proposed design or changes in anticipated impacts as a result of comments received.
3. The department delegate shall review the public hearing documentation and any revised environmental documentation if applicable. If additional resource agency coordination is necessary, the department delegate directs the project sponsor to initiate it.

Upon completion of any necessary coordination, the public hearing documentation and the final EA, EIS, and/or CE determination are forwarded to the department delegate for review and a project decision.

### 7.0 Notice of Intent (NOI)

The CEQ regulations codified at [40 CFR 1508.22](#), FHWA regulations codified at [23 CFR 771.123](#), and Texas regulations codified at [43 TAC 2.102](#) require that a notice of intent (NOI) be prepared and published prior the preparation of an EIS or supplemental EIS. An NOI must be published in the *Federal Register* or the *Texas Register*, depending on whether the project is a federal or state project. Additionally, an NOI must be published in a local newspaper having general circulation in the area affected by the project, or if there is no such newspaper, in any newspaper having general circulation in the area affected by the project. See ENV's Template: Notice of Intent for a State EIS Project, or Template: Notice of Intent for an FHWA EIS Project, which are available on the [Public Involvement Toolkit](#).

### 8.0 EIS Coordination Plan

A coordination plan is a plan to engage the public and collaborate amongst cooperating and participating agencies and consider comment(s) on the proposed project and the environmental review process when an EIS is required. The project sponsor, in collaboration with the department delegate and other cooperating and/or participating agencies for federal aid projects, prepares the coordination plan. Details regarding the contents of a coordination plan may be found at [23 USC 139\(g\)\(1\)](#).

### 9.0 Notice of Availability (NOA)

A notice of availability (NOA) is issued to inform the public or recipient that documents are available for review. The NOA provides direction on where documents are available for review and how to obtain copies. Notifications must be in English and any other language identified as commonly spoken in the project area. The Public Involvement Section of TxDOT's Transportation Planning and Programming (TPP) Division is available to assist with this requirement.

The NOA is published for various document types, as described in Section 9.1 through 9.5 below. The project sponsor is responsible for drafting the NOA. For projects assigned under the Assignment MOU, the following language must be included in the NOA.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

The project sponsor always publishes the NOA on TxDOT's website, and always provides copies of the NOA to the following entities:

- the appropriate metropolitan planning organization;
- any other affected public officials or federal, state, or local agencies or tribes;
- any entities that requested in writing to receive notices regarding the environmental review of the project; and
- any other entities with which environmental review of the project is being coordinated, except that if the project is being coordinated under a memorandum of understanding, the terms of the memorandum of understanding govern the provision of notice rather than this subsection.

The copy of the notice with instructions on how to access the document electronically or request a hard copy of the document may be provided by email or U.S. Mail. Mailing the notice to the address listed for the property owner in county or city records is sufficient. If email is used, make sure that recipients cannot view other recipients' email addresses, as email addresses of members of the public must be withheld from public disclosure in accordance with [Texas Government Code 552.137\(a\)](#). As discussed below, there are additional distribution/publication requirements for some types of NOAs.

### **9.1 Draft Environmental Assessment (EA)**

The NOA for a draft EA is combined with a notice of public hearing or an NAOPH. See ENV's Template: Draft EA Notice of Availability and Opportunity for a Public Hearing, and Template: Draft EA Notice of Availability and Public Hearing, which are available on the [Public Involvement Toolkit](#).

For projects for which a hearing is held, 23 CFR 771.119 requires the draft EA be available for public inspection a minimum of 15 days before the hearing.

However, when the draft EA NOA is combined with an NAOPH, it must establish a public comment deadline of not less than 30 days after the date of newspaper publication. The requirements of this paragraph are satisfied by combining the NOA with the NAOPH, which also must be published in the newspaper, and providing a 30-day deadline for both (see Section 5.2 above).

The project sponsor shall maintain a list of elected public officials, individuals, and affected interest groups that have expressed an interest in a transportation project. In addition to the publication/distribution requirements discussed above under Section 9.0, the project sponsor will also provide an NOA of a draft EA to these individuals and groups.

### **9.2 Finding of No Significant Impact (FONSI)**

To prepare an NOA for a FONSI, use ENV's Template: FONSI Notice of Availability, which is available on the [Public Involvement Toolkit](#). Follow the publication/distribution requirements discussed above under Section 9.0.

When TxDOT expects to issue a FONSI for an FHWA project that normally requires an EIS ([23 CFR 771.115\(a\)](#)), the final EA must be made available for public review for a minimum of 30 days before the issuance of a FONSI. (See [23 CFR 771.119\(h\)](#) and [40 CFR 1501.4\(e\)\(2\)](#)). The four project types listed as normally requiring an EIS at 23 CFR 771.115(a), and that are subject to this extra requirement, are as follows:

- a new controlled access freeway;
- a highway project of four or more lanes on a new location;
- construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way; and
- new construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

These projects are readily identifiable as they require the preparation of an EA classification letter by which the Environmental Affairs Division approves the “downgrade” from EIS to EA. For “a highway project of four or more lanes on a new location,” refer to the explanation of “highway at a new location” in Section 3.1, above. To prepare an NOA for a final EA, use ENV’s Template: Final EA Notice of Availability, which is available on the [Public Involvement Toolkit](#). For such projects, the NOA of the final EA must be issued as described above in Section 9.0 and published at least once in a local newspaper having general circulation in the area affected by the project. The NOA of the final EA can be published in any section of the newspaper and in any format, although it is recommended that the notice not be published in the legal notices section. If there is no local newspaper in the area affected by the project, the project sponsor publishes the NOA of the final EA in a newspaper having general circulation in the area affected by the project. Thirty days after issuance and publication of this NOA, the FONSI may be signed and a separate NOA for the FONSI may be issued.

### **9.3 Draft Environmental Impact Statement (DEIS)**

The NOA of the DEIS is combined with the public hearing notice. See ENV’s Template: Draft EIS Notice of Availability and Public Hearing, which is available on the [Public Involvement Toolkit](#). The combined notice of public hearing and NOA, and the notice that is published in the Texas or Federal Register, must specify a comment deadline that is both 15 days after the hearing and 45 days after publication of the notice in the Texas or Federal Register.

In addition to the publication/distribution requirements discussed above under Section 9.0, the department delegate reviews the combined NOA/public hearing notice, and submits it for publication in the *Texas Register* for state projects (43 TAC 2.108(c)(4)), or for an FHWA project, uses the e-NEPA system to request publication of a notice in the *Federal Register*. The combined NOA/public hearing notice must indicate that a combined FEIS/ROD will be prepared (unless there is a need to deviate from standard practice and issue a separate FEIS and ROD for some reason). Note also that the DEIS must identify a preferred alternative.

The project sponsor also publishes the combined NOA/public hearing notice in a local newspaper having general circulation in the area affected by the project. The notice can be published in any section of the newspaper, although it is recommended that the notice not be published in the legal notices section. If there is no local newspaper in the area affected by the project, the project sponsor publishes the combined NOA/public hearing notice in a newspaper having general circulation in the area affected by the project.

In accordance with 23 CFR 771.123, the combined NOA and public hearing notice shall be transmitted to the following entities:

- Public officials, interest groups, and members of the public known to have an interest in the proposed action or the DEIS;
- Appropriate state and local agencies and to the state intergovernmental review contacts established under [Executive Order 12372](#);
- State and federal land management entities that may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such a state or entity advise TxDOT in writing of any disagreement with the evaluation of impacts in the statement.

In accordance with 40 CFR 1503.1, the combined NOA and public hearing notice shall be transmitted to the following entities:

- Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards.
- Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.
- State, Tribal, or local governments that may be affected by the proposed action.
- Any agency that has requested it receive statements on actions of the kind proposed.

Also, as instructed by EPA's e-NEPA website, for an FHWA project, a hard copy of the DEIS and a CD or USB drive with an electronic copy of the DEIS must be provided to Office of Communities, Tribes and Environmental Assessment, US EPA Region 6, 1201 Elm Street, Suite 500, Mail Code: ORACN, Dallas, TX 75270-2102 (check EPA's website to make sure this address is still correct).

### **9.4 Final Environmental Impact Statement (FEIS)**

The FEIS and ROD will normally be combined into a single document (unless a separate FEIS and ROD are required under 23 CFR 771.124(a)(1)). In addition to the publication/distribution requirements discussed above under Section 9.0, the requirements below apply equally to an NOA of an FEIS or a combined FEIS/ROD.

- The department delegate reviews the NOA and submits it for publication in the Texas Register for state projects or the Federal Register for federally assigned projects. For federally assigned projects, the department delegate uses e-NEPA to publish in the Federal Register.
- The NOA must indicate that a combined FEIS/ROD has been prepared (unless there is a need to deviate from standard practice and issue a separate FEIS and ROD for some reason).
- The project sponsor publishes the NOA in a local newspaper having general circulation in the area affected by the project. The notice can be published in any section of the newspaper, although it is recommended that the notice not be published in the legal notices section. If there is no local newspaper in the area affected by the project, the project sponsor publishes the NOA in a newspaper having general circulation in the area affected by the project.
- Copies of the FEIS/ROD or FEIS will be made available free of charge or a fee not more than the actual cost of reproducing the copy ([23 CFR 771.125\(e\)](#)). Prior to transmitting the FEIS/ROD to EPA using e-NEPA, the NOA shall be sent to any persons, organizations, or agencies that made substantive comments on the DEIS or requested a copy (23 CFR 771.125(f)).

- A copy of the FEIS/ROD or FEIS also must be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate (23 CFR 771.124 and 771.125(f)).

Also, as instructed by EPA's e-NEPA website, for an FHWA project, a hard copy of the FEIS and a CD or USB drive with an electronic copy of the FEIS must be provided to Office of Communities, Tribes and Environmental Assessment, US EPA Region 6, 1201 Elm Street, Suite 500, Mail Code: ORACN, Dallas, TX 75270-2102 (check EPA's website to make sure this address is still correct).

Use ENV's Template: FEIS-ROD Notice of Availability, which is available on the [Public Involvement Toolkit](#).

### **9.5 Record of Decision (ROD)**

Combining the FEIS and ROD into one document is the standard approach for both state and FHWA projects. Therefore, it will normally not be necessary to consult this Section 9.5, which applies only if there are separate NOAs for the FEIS and the ROD. However, if there ever were a need to issue a separate NOA for a ROD, it must comply with the requirements discussed above under Section 9.0.

## **10.0 Notice of Final Agency Action**

The 150-day limitation period established by [23 USC 139\(l\)](#) applies to a permit, license, or approval decision issued by a federal agency if the project meets both the following conditions.

- The decision relates to a highway or public transportation capital project
- A notice is published in the *Federal Register* announcing that federal agencies have taken action that is final under the federal law pursuant to which the action was taken

If no Section 139(l) notice is published, the period for filing claims is not shortened from what is provided by other parts of federal law. If other federal laws do not specify a statute of limitations, a six-year claims period applies.

A Section 139(l) notice can be used for a highway or transit project regardless of the category of documentation used under NEPA. ENV publishes Section 139(l) notices for federally funded EIS projects and EA projects, and select federally funded CE projects.

## **11.0 Notice of Impending Construction**

A Notice of impending construction informs individuals affected by certain projects that construction will begin.

### **11.1 Notification**

For a project that involves either added capacity or construction of a highway on a new location, the project sponsor must provide owners of adjoining property and affected local governments and public officials with notice of impending construction (see Section 3.1 for explanation of new location highway). The notification is provided by any means approved by ENV. This may include posting signs in the right-of-way, mailed notices, printed notices distributed directly to the individuals or via website if the recipient has previously been informed of the web address.

The notice must be provided after a CE determination or issuance of a FONSI or ROD for the project, but before earthmoving or other activities requiring the use of heavy equipment begin.

## **12.0 Section 4(f) De Minimis Findings**

Before making a *de minimis* finding with respect to a property protected under Section 4(f) ([23 CFR 774.5\(b\)](#)) for publicly owned parks, recreation areas, wildlife or waterfowl refuges, the department must provide public notice and comment. Issuing notice and opportunity for public comment in the context of a public meeting, public hearing, or opportunity for public hearing as described above in this Handbook will, in most cases, be sufficient to satisfy the public notice and comment requirements for the *de minimis* impact finding.

However, for those actions that do not routinely require public review and comment (e.g., certain categorical exclusions and reevaluations), but for which a *de minimis* finding is proposed to be made, a separate public notice and opportunity for review and comment will be necessary. In these cases, appropriate public involvement should be based on the specifics of the situation and commensurate with the type and location of the Section 4(f) property, the impacts, and public interest. Possible methods of outreach are many and include newspaper advertisements, public meetings, public hearings, notices posted on bulletin boards (for properties open to the public), project websites, newsletters, and placement of notices or documents at public libraries. All comments received and responses thereto should be documented in the same manner that other comments on the proposed action would be incorporated in the project file.

## **13.0 Additional State Statutory Requirements**

### **13.1 Chapter 26 of the Parks and Wildlife Code**

Chapter 26 of the Parks and Wildlife Code (PWC) outlines public hearing notice requirements for projects that take public lands designated and used as parklands, recreational areas, scientific areas, wildlife refuges or historic sites ([3 PWC 26.001](#)). The hearing and other tasks needed to comply with Chapter 26 must be completed prior to completion of the environmental review of the project. For additional guidance refer to the online [Chapter 26 Parks and Wildlife Code Toolkit](#).

### **13.2 Transportation Code, 203.021**

For a project that constructs a reliever route around or otherwise bypasses a municipality, a hearing must be held and notice must be published in a newspaper of general circulation in the bypassed area, and meet the other requirements of [Transportation Code 203.021](#), including holding the hearing not less than 3 or more than 10 days after the date of publication.

### **13.3 Transportation Code, 201.811(b)**

For a public hearing regarding an EIS, [Transportation Code, 201.811\(b\)](#) requires TxDOT to tally and document the number of positive, negative, and neutral comments received. This information must be presented to the commission in an open meeting, and reported on TxDOT.gov in a timely manner. The tabulation of positive, negative, and neutral comments received should be done solely for the purpose of complying with this statutory requirement, and should NOT be incorporated into the public hearing documentation prepared as part of the environmental review process. To prepare the report use the Template: Environmental Impact Statement Positive, Negative or Neutral Public Comments Report found in the [Project Delivery SharePoint](#) site.

## **14.0 Documentation Requirements**

Documentation requirements vary based on the type of public involvement conducted.

### **14.1 Notice and Opportunity to Comment**

Once a notice and opportunity to comment has been provided, documentation shall be prepared that includes the items enumerated below. The project sponsor forwards the documentation of the notice and opportunity to comment to the department delegate for review, and the documentation is retained in the official project file. Templates and guidance for the required documentation format are available in the online [Public Involvement Toolkit](#).

The documentation will be submitted as a single and complete packet. Documentation of a notice and opportunity to comment shall include the following:

1. Cover Sheet – Documentation of Notice and Opportunity to Comment

Include information listed on ENV’s Template: Documentation of Notice and Opportunity to Comment Cover Page, available in the [Public Involvement Toolkit](#).

2. Comments and Response Matrix

Document all comments received during the 15-day comment period. The responses must address the comments received. For instructions on how to prepare the comment and response matrix see the ENV’s Guidance: Public Meetings and Public Hearings Comment/Response Matrix found in the online Public Involvement Toolkit. The department delegate will review the comment and response matrix to ensure that all comments are adequately addressed before the matrix is finalized.

3. Notices

Include a copy of the notice provided and a mailing list, copies of emails sent, or an explanation of any in-person delivery of the notice. If the documentation of notice and opportunity to comment will be disclosed to the public (e.g., posted on the project website), redact any email addresses for members of the public in accordance with [Texas Government Code 552.137\(a\)](#).

4. Comments Received

Include a copy of all written comments received. If the documentation of notice and opportunity to comment will be disclosed to the public (e.g., posted on the project website), redact any email addresses visible on comments provided by members of the public in accordance with [Texas Government Code 552.137\(a\)](#).

### **14.2 Public Meetings**

Once a public meeting has been held, documentation of public meeting shall be prepared that includes the items enumerated below. The project sponsor forwards the documentation of the public meeting to the department delegate for review, and the documentation is retained in the official project file. Templates and guidance for the required documentation format are available in the online [Public Involvement Toolkit](#).

The documentation will be submitted as a single and complete packet. Public meeting documentation shall include the following:

1. Cover Sheet - Public meeting documentation

- CSJ(s)
  - Project Limits
  - Public meeting date, time, and location
  - Other information listed on the ENV's Template: Public Meeting Documentation Cover Page, available in the [Public Involvement Toolkit](#)
2. Comments and Response Matrix

Document all comments received during the public meeting and those received up to 15 calendar days following the meeting. The responses must address the comments received during the meeting and associated comment period. For instructions on how to prepare the comment and response matrix see the ENV's Guidance: Public Meetings and Public Hearings Comment/Response Matrix found in the online Public Involvement Toolkit. The department delegate will review the comment and response matrix to ensure that all comments are adequately addressed before the matrix is finalized.
  3. Notices

Include a copy of any mailed notices or flyers, mailing list, and documentation of additional outreach methods used to inform the public, agencies, and elected officials.
  4. Sign-in Sheets

Include sign-in sheets of private individuals, government officials, TxDOT staff, and consultant staff. Attendees' email addresses should generally not be collected on the sign-in sheets. However, if the district, or the core team in the case of an EA or EIS, determined during scoping that there is a valid reason for collecting attendees' email addresses on the sign-in sheet (for example, to provide project updates, newsletters, or other information about the project by email), then, in accordance with [Texas Government Code 552.137\(a\)](#), any email addresses provided by members of the public must be redacted from the sign-in sheets if the public meeting documentation will be disclosed to the public (e.g., posted on the project website).
  5. Comments Received

Include a copy of all comments received both written and those dictated, if applicable. If the public meeting documentation will be disclosed to the public (e.g., posted on the project website), redact any email addresses visible on comments provided by members of the public in accordance with [Texas Government Code 552.137\(a\)](#).
  6. Figures

Include photographs or pdfs of all boards and exhibits, presentations, general photos of the meeting, and written transcripts for any video presentations, if applicable.

### **14.3 Public Hearing Opportunity**

The project sponsor is required to submit documentation to the department delegate of completion of the NAOPH. Templates and guidance for the required documentation format are available online in the [Public Involvement toolkit](#).

The documentation must be retained in the official project file.

### 14.3.1 NAOPH Documentation

NAOPH documentation shall include the following information.

1. Cover Sheet – NAOPH documentation
  - CSJ(s)
  - Project Limits
  - Other information listed on the ENV's Template: Public Hearing Opportunity Cover Page, available on the Public Involvement Toolkit
2. Notices

Include any mailed notices or flyers, mailing list, and documentation of additional outreach methods used to inform the public, agencies, and elected officials.

3. Certification

If the threshold for holding a hearing is not met, the project sponsor submits the original certification of the public involvement process signed by an appropriately designated TxDOT employee to the department delegate. The certification must include the following statements and be retained in the official project file.

- An opportunity has been afforded the public to request a hearing addressing the project location and design.
- Either less than ten public hearing requests were received, or ten or more public hearing requests were received, but one or more were retracted after concerns were addressed and satisfied such that less than ten pending requests remain..
- Either no request from an agency with jurisdiction supported with reasons why a hearing will be helpful were received, or one or more such requests were received, but all have been retracted.
- The economic and social effects of the project location and design and its impact on the environment have been considered.
- In determining economic, social, and environmental effects, the statutory provisions of the Civil Rights Act of 1964 have been considered.
- The project consistency with the goals and objectives of urban planning, as dictated by the community, has been considered. If the project involves a community that does not have a known plan of development, include a statement to that effect in the submission, and modify the certification as necessary.
- The requirements of [43 TAC 2.106](#) have been met.
- For projects assigned under the Assignment MOU, include the following language in the certification.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

If a request for a hearing was received but later retracted, correspondence from the individual requesting the hearing stating that the hearing request was retracted must be included with the certification submitted to the department delegate.

If 10 or more requests remain and have not been retracted, or if a request from an agency with jurisdiction remains and has not been retracted, then a public hearing must be scheduled and conducted, in which case there is no need to complete the certification. Instead, simply include the request(s) with the NAOPH documentation packet.

If comments are received in response to the NAOPH, include the comments and a comment/response matrix responding to such comments with the NAOPH documentation packet. If a public hearing will be held, it is acceptable to include the comments and responses in the comment/response matrix prepared after the hearing instead of preparing a separate comment/response matrix for the NAOPH.

If the documentation will be disclosed to the public (e.g., posted on the project website), redact any email addresses visible on correspondence provided by members of the public in accordance with [Texas Government Code 552.137\(a\)](#).

### **14.4 Public Hearing Documentation**

The project sponsor is required to submit the following documentation to the department delegate after the completion of a public hearing. The documentation must be retained in the official project file. Templates and guidance for the required documentation format are available in the toolkit.

The final EIS, EA, or CE determination shall reflect the holding of a public hearing including project revisions to the proposed design or changes in anticipated impacts as a result of comments received. Additional public involvement may be required as a result of these revisions.

The documentation will be submitted as a single and complete packet. Public hearing documentation shall include the following.

1. Cover Sheet – Public hearing documentation
  - CSJ(s)
  - Project Limits
  - Public hearing date, time, and location
  - Other information listed on the ENV's Template: Public Hearing Documentation Cover Page, available on the [Public Involvement Toolkit](#)
2. Comments and Response
  - Document all comments received during the public hearing and those received up to 15 calendar days following the hearing. The responses must address the comments received during the hearing and associated comment period. The comment/response matrix template found in the toolkit is required for recording this information. The department delegate will review the comment and response matrix to ensure that all comments are adequately addressed before the matrix is finalized.
  - The comment/response matrix may be included as an appendix to an EA at the preparer's discretion, but it must be included as an appendix to an EIS. The matrix may also be posted on the TxDOT website either independently or along with the entire public hearing documentation packet.

### 3. Public Hearing Certification

Include a copy of certification, signed and dated by an appropriately designated TxDOT employee, as described in the previous section ([Section 14.3.1](#)). The certification must include the following statements and be retained in the official project file.

- A public hearing was held.
- The economic and social effects of the project location and design and its impact on the environment have been considered.
- In determining economic, social, and environmental effects, the statutory provisions of the Civil Rights Act of 1964 have been considered.
- The project consistency with the goals and objectives of urban planning, as dictated by the community, has been considered.
- The requirements of [43 TAC 2.107](#) have been met.
- For projects assigned under the Assignment MOU, include the following language in the certification.

*The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.*

### 4. Notices

Include copies of any mailed notices or flyers, mailing list, and documentation of additional outreach methods used to inform the public, agencies, and elected officials.

### 5. Sign-in Sheets

Include sign-in sheets of private individuals, government officials, TxDOT staff, and consultant staff. Attendees' email addresses should generally not be collected on the sign-in sheets. However, if the district, or the core team in the case of an EA or EIS, determined during scoping that there is a valid reason for collecting attendees' email addresses on the sign-in sheet (for example, to provide project updates, newsletters, or other information about the project by email), then, in accordance with [Texas Government Code 552.137\(a\)](#), any email addresses provided by members of the public must be redacted from the sign-in sheets if the public meeting documentation will be disclosed to the public (e.g., posted on the project website).

### 6. Transcript

### 7. Comments Received

Include a copy of all comments received, both written and dictated, if applicable. If the public meeting documentation will be disclosed to the public (e.g., posted on the project website), redact any email addresses visible on comments provided by members of the public in accordance with [Texas Government Code 552.137\(a\)](#).

### 8. Figures

Include photographs or pdfs of all boards and exhibits, presentations, general photos of the hearing proceedings, and written transcripts for any video presentations.

## **15.0 Glossary**

**Department Delegate** – The district, division, or other operational unit of TxDOT, designated by the executive director, that has the authority to review and approve on TxDOT's behalf work conducted under 43 TAC Chapter 2, including an environmental review document.

**Project Sponsor** – As defined by the [43 TAC 2.44](#), the project sponsor accepts the responsibility for preparing the environmental review document or CE documentation and performing any related tasks outlined in the project scope. A TxDOT district, division, or office or a municipality, county, group of adjoining counties, regional mobility authority, local government corporation, or transportation corporation may be a project sponsor. Private entities and other types of local government entities may not serve as project sponsors.

**EIS Scoping** – An open process, involving the public and other federal, state, and local agencies, conducted to identify the major and important issues for consideration during development of an EIS.

## **16.0 Abbreviations and Acronyms**

ACHP	Advisory Council on Historic Preservation
Assignment MOU	Memorandum of Understanding between FHWA and TxDOT concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CRM	Cultural Resources Management Section
CSJ	Control Section Job
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
EIS	Environmental Impact Statement
ENV	Environmental Affairs Division
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact
FHWA	Federal Highway Administration
HS	High School
LEP	Limited English Proficient
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
NAOPH	Notice Affording an Opportunity for Public Hearing
NEPA	Environmental Policy Act
NOA	Notice of Availability
NOI	Notice of Intent
NRC	Natural Resources Code
PI Section	Public Involvement Section, Transportation Planning and Programming Division
PWC	Parks and Wildlife Code
ROD	Record of Decision
ROW	Right-of-Way
TAC	Texas Administrative Code
TxDOT	Texas Department of Transportation
USC	United States Code

## **Appendix A**

The following table shows the revision history for this guidance document

<b>Revision History</b>	
<b>Effective Date Month, Year</b>	<b>Reason for and Description of Change</b>
September 2020	<p>Version 13 was released.</p> <ul style="list-style-type: none"> <li>• Revised to require notices of availability of EAs and EISs to be provided to tribes</li> <li>• Revised ADA/translation request language</li> <li>• Clarified that bicycle lanes that are separated from travel lanes by landscaping, a median, or other buffer are still considered “bicycle lanes”</li> <li>• Revised explanations of DEIS and FEIS notices of availability for clarity and accuracy, and added instruction about mailing hard copy and electronic copy to EPA Region 6</li> <li>• Other minor updates and revisions</li> </ul>
March 2020	Version 12 was released. Revised to allow for “virtual” on-line only public meetings and hearings under certain circumstances.
December 2019	Version 11 was released. Updated NEPA assignment disclaimer language to reflect first renewed NEPA assignment MOU date of December 9, 2019.
May 2019	<p>Version 10 was released.</p> <p>Various changes, mostly to incorporate changes to TxDOT’s environmental review rules (43 TAC Chapter 2) approved by the Texas Transportation Commission on August 30, 2018.</p>

<b>Revision History</b>	
<b>Effective Date Month, Year</b>	<b>Reason for and Description of Change</b>
March 2018	<p>Version 9 was released.</p> <ul style="list-style-type: none"> <li>• Clarified in Sections 3.2 and 14.1 that letters used to conduct MAPOs may be certified or non-certified</li> <li>• Moved “substantial change in layout or function” trigger from Section 5.1 (regarding opportunities for public hearing) to Section 6.0 (regarding public hearings) to implement newly enacted Transportation Code, §203.033, and added guidance in Section 6.0 regarding “substantial change in layout or function,” including the addition of a bicycle lane</li> <li>• Revised Section 5.1 to clarify that “added capacity,” rather than “addition of one or more vehicular lanes,” is one of the pre-requisites for the requirement of an additional opportunity for public hearing under certain circumstances</li> <li>• Revised definition of new location highway in Section 6.0</li> <li>• Amended Section 6.6 to specify that any advance ROW acquisitions are disclosed at a public hearing</li> <li>• Made revisions to language describing need to publish in language other than English in certain situations</li> </ul>
December 2018	<p>Version 8 was released.</p> <p>Updated section 9.2 to specify when to use the two separate NOA templates developed for a final EA and a FONSI:</p>
October 2017	<p>Version 7 was released.</p> <ul style="list-style-type: none"> <li>• Clarified notification requirements in Section 6.1</li> <li>• Included reference to Section 9.0 in section 9.2.</li> <li>• Provided additional guidance in Section 9.2.</li> <li>• Revised “should” to “must” in multiple locations.</li> <li>• Requirements for a court reporter updated in Section 6.5.</li> <li>• “Verbatim” as related to transcripts deleted in Sections 6.5, 6.8 and 14.4.</li> </ul>
June 2017	<p>Version 6 was released.</p> <ul style="list-style-type: none"> <li>• Revised MAPO documentation requirement to indicate form may be used but is no longer required.</li> <li>• Removed the reference to citizen(s) in compliance with Title VI of the Civil Rights Act of 1964. Replaced “citizen” with “public” or “individual” throughout.</li> </ul>

<b>Revision History</b>	
<b>Effective Date Month, Year</b>	<b>Reason for and Description of Change</b>
May 2017	<p>Version 5 was released.</p> <ul style="list-style-type: none"> <li>• Revised Section 9.0 to clarify the requirements pertaining to distribution of notices of availability</li> </ul>
April 2017	<p>Version 4 was released</p> <ul style="list-style-type: none"> <li>• Updated to clarify notification methods for opportunity for a public hearing and public hearings.</li> <li>• Added option to allow notices to local governments and public officials may be provided by email.</li> <li>• Updated to include required MAPO Summary Form.</li> </ul>
December 2016	<p>Version 3 was released.</p> <ul style="list-style-type: none"> <li>• Updated for consistency with revised state rules.</li> <li>• Added additional guidance on MAPOs.</li> <li>• Added guidance for notice of impending construction.</li> <li>• Updated documentation requirements.</li> <li>• Replaced “TxDOT public hearing officer” with “TxDOT employee.”</li> <li>• Updated documentation requirements.</li> <li>• Various other revisions</li> </ul>
August 2015	<p>Version 2 was released.</p> <ul style="list-style-type: none"> <li>• Updated to indicate 15 day comment period following public hearings for EIS projects</li> <li>• Added information on when to afford an opportunity for a hearing was revised for consistency with state rules (43 TAC 2.106 and 2.107)</li> <li>• Updated for Assignment MOU and deleted FHWA references as appropriate</li> <li>• Added information pertaining to the TxDOT Office of Public Involvement</li> <li>• Updated notification requirements</li> <li>• Added information regarding historic properties</li> <li>• Updated documentation requirements</li> <li>• Added information on Notice of Final Agency Action</li> </ul>
May 2014	<p>Version 1 was released.</p>