

Chapter 9

Public Involvement Procedures

This document serves as NDOT's public involvement plan, which identifies NDOT's public involvement procedures as required by 23 CFR 771.111(h). This plan was approved by FHWA on August 21, 2020.

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Chapter 9 Public Involvement Procedures

NEPA ASSIGNMENT – CE Assignment vs. Full Assignment

The Nebraska Department of Transportation (NDOT) entered CE Assignment pursuant to [23 USC 326](#) on September 5, 2018. Under CE Assignment, NDOT assumed FHWA responsibilities for determining whether specific projects are categorically excluded from the requirement to prepare an EA or EIS. NDOT, rather than FHWA, now makes CE determinations for most projects (for exceptions, see [Chapter 1, Overview](#), Section 1.5). All EAs and EISs, as well as CE determinations not assignable to NDOT under [23 USC 326](#), continue to be formally approved by FHWA. Once full NEPA Assignment under [23 USC 327](#) is in place, all types of environmental approvals (CE, EA, and EIS, with limited exceptions; see [Chapter 1, Overview](#), Section 1.5) will be made by NDOT.

Public and agency involvement is an integral part of developing transportation solutions. Professionals involved in transportation know that every decision or action made by a transportation agency affects someone to some degree. This chapter outlines the Nebraska Department of Transportation’s (NDOT’s) public involvement procedures and provides guidance to NDOT project managers, environmental staff, consultants, and external transportation partners who implement public involvement on transportation projects in Nebraska. Specifically, this chapter provides an overview of public involvement procedures, a brief description of the federal and state requirements that govern public involvement for transportation projects, planning for public involvement, some of the public involvement tools and strategies used by NDOT, NDOT’s process for responding to public comments, NDOT’s public and agency involvement during the National Environmental Policy Act (NEPA) process, dealing with controversy, and NDOT public involvement documentation.

The cornerstone of meaningful public involvement is seeking public and agency input at key points in the decision-making process where such input has real potential to help shape the final decisions or actions.

9.1 Overview of Public and Agency Involvement

Public and agency involvement depends on two-way communication that considers public and agency views, concerns, and issues, and incorporates this input in the decision-making process. Public and agency involvement efforts should be consistent with the magnitude and complexity of the project, the potential environmental impacts, and public interest. In addition, as the project progresses, public involvement approaches should be modified as needed in response to changing conditions.

Considered broadly, the public is anyone outside of NDOT and the immediate project team, including other state and federal governmental resource agencies, local governments, elected officials, business owners, residents, interest groups, and the traveling public. NDOT considers the different viewpoints of various groups so that the most appropriate strategies can be used for engaging each of them. In this chapter, the public is generally considered separately from state and federal governmental agencies and local governments.

9.1.1 Purpose of Public and Agency Involvement

NDOT strives to be a customer-focused agency with open and transparent decision-making processes. By sharing information with the public and agencies and, in turn, listening to the issues that are important to them, NDOT builds credible and trusting relationships with the public, the

communities that NDOT serves, and other agencies. These relationships are beneficial in minimizing conflict and resolving issues that may arise during project development and implementation.

Because any change to the transportation system affects someone, implementing effective public involvement activities is important. While even the best transportation solution may not be agreed upon by all people all of the time, the public is more likely to understand, support, or take ownership of a project when given the time and opportunity to review information, share ideas and concerns, and observe changes made as a result of their input.

NDOT must balance many issues and audiences as it makes decisions about the transportation system. However, through effective public involvement, NDOT can have valuable conversations with community members, better understand people's concerns and desires, balance transportation needs and their impacts, and make thoughtful decisions that address as many concerns as practicable.

9.1.2 Guiding Principles for Public and Agency Involvement

The first step toward successful public and agency engagement should be to develop a plan for public involvement. The following guiding principles should be considered in developing a project-specific public involvement plan (commonly referred to as a PIP, and described in more detail in Section 9.4):

- **Process** – Public and agency involvement is ongoing and beneficial in all project phases. It allows the public to learn and participate in a transparent decision-making process.
- **Audience** – Public and agency involvement includes a variety of people, such as those who use and own the roads and bridges, and those who live in the communities where roads and bridges are built and improved. The audience, agencies in particular, may have different missions, interests, and priorities than NDOT.
- **Tools and Strategies** – Appropriate outreach tools are selected for each audience. It is essential to understand audience preferences and develop appropriate outreach strategies for each audience. It is also important to close the communication loop with each audience so participants know they have been heard and outcomes are understood.
- **Defining Context** – Transportation affects everyone, and transportation professionals must provide information on how proposed changes will affect users, owners, and stakeholders.
- **Documentation** – Documentation of comments and responses lets members of the public and agencies know that their concerns have been heard, demonstrates that requirements were met, and supports an effective process in evaluating alternatives and determining transportation solutions.

9.1.3 Assessing the Effectiveness of Public Involvement

As part of NDOT's commitment to effective public involvement, NDOT will periodically assess the effectiveness of its public involvement activities. The inquiries listed below are examples of considerations that may assist the NDOT Public Involvement Unit in assessing the effectiveness of public involvement activities and the need for developing new tools and strategies:

1. **Is the entire project community represented in public involvement activities?**
If representatives or segments of the affected community are missing from project public involvement activities, it may indicate that the timing or location of these activities, or both, are inconvenient, or it may indicate that project notices are not reaching the intended audience.
2. **Is there continuity among the attendance of participants?**
If people drop out of the process after one or two public involvement activities, it may indicate frustration with the process.

3. **Are the appropriate communications techniques being used?**
If input is limited, it may indicate that the audience does not understand the project information, or it may indicate that they do not believe their comments are important.
4. **Are the comments received from the community relevant to the project? Are they realistic and appropriate to the project phase?**
If the comments are not relevant to the project, it may indicate that people do not understand the project scope or the kind of information or input that is being sought. If people have unrealistic expectations about how they can influence the project, it may indicate they do not understand the decision-making process or the type of decisions that will be made during this phase of project development.
5. **Are there significant unresolved issues concerning the project?**
If there is significant opposition to the project, it may indicate that not all relevant issues have been identified and resolved. Continued dialog may be needed to identify concerns and develop acceptable solutions.

Assessment may involve project teams, stakeholders, or community members in a survey format. Assessment should also take into account the fact that the public may choose to limit or forgo participation because they agree with the project, have been provided sufficient information to answer their questions, or for other unknown reasons.

9.1.4 Public and Agency Involvement Roles and Responsibilities

NDOT's Public Involvement Unit determines project-specific public involvement tools and strategies, and conducts or oversees public involvement activities. In undertaking public and agency involvement for a project, the Public Involvement Unit interacts with many people, both internal and external to NDOT, such as staff of NDOT Divisions, city and county officials, interest groups, the media, and the general public.

The Public Involvement Unit is responsible for the following activities on NDOT projects:

- Coordinating with NDOT and consultant staff to understand the project and any unique project features or issues; to determine the public and agency involvement requirements, tools, and strategies; and to identify public involvement roles and responsibilities for the project. The Public Involvement Unit will make its initial determination regarding the need for public involvement on a project during determination of the probable class of NEPA action.
- Ensuring that public involvement materials and activities meet project needs and are in compliance with appropriate regulations and NDOT requirements.
- Developing public involvement materials, including project-specific PIPs, brochures, flyers, meeting displays, and presentations.
- Arranging meeting locations, notifications, and logistics.
- Posting meeting notices and other project information on NDOT's website and social media sites.
- Distributing press releases and responding to questions regarding NDOT projects.
- Documenting public involvement activities and outcomes.

NDOT's Environmental Section (rather than the Public Involvement Unit) is responsible for organizing meetings with federal and state resource agencies.

9.1.5 Local Public Agency Projects

Local Public Agencies (LPAs) are required to follow Federal Highway Administration (FHWA) and NDOT public involvement requirements for all federal-aid transportation projects.

As is the case for all NDOT projects, NDOT's Public Involvement Unit will initially determine if an LPA project requires public involvement during determination of the probable class of NEPA action, documented on the Probable Class of NEPA Action Form (NDOT-53). The need for public involvement is continually assessed throughout project development.

For LPA projects that are identified as needing public involvement, the following activities are to be completed:

- If NDOT is serving as the Responsible Charge (RC), the NDOT LPA Project Coordinator (PC) and/or consultant is responsible for preparing and submitting a project-specific PIP (see Section 9.4.1) to the NDOT Public Involvement Unit for review and approval.
- If the LPA is serving as the RC, the LPA and/or consultant is responsible for preparing and submitting the project-specific PIP (see Section 9.4.1) to the NDOT LPA PC, who will review the project-specific PIP for completeness and send it to the Public Involvement Unit for review and approval.
- Project-specific PIPs shall be prepared using the [NDOT template](#) unless another format is approved by Public Involvement Unit.
- Upon approval of the project-specific PIP, public involvement materials will be prepared and submitted by the LPA for review and concurrence by the Public Involvement Unit.
- Where the LPA is serving as the RC, the LPA is responsible for the following tasks:
 - Developing public involvement materials, including project-specific PIPs, brochures, flyers, meeting displays, and presentations
 - Arranging meeting locations, notifications, and logistics
 - Conducting meetings and collecting comments
 - Documenting public involvement activities and outcomes
 - Other tasks as identified and requested by the Public Involvement Unit as are necessary to accomplish meaningful public involvement

The LPA often uses consultant services to assist with the tasks identified. However, the LPA is ultimately responsible for review and approval of consultant work products.

The RC for LPA projects is responsible for maintaining all project-related documentation.

9.1.6 Consultants

Consultants who are involved in either state or LPA projects serve as an extension of NDOT or LPA staff and act on behalf of the agency by which they are retained. When engaged in public involvement, the consultant team coordinates closely with the NDOT Public Involvement Unit and/or the LPA on public and agency involvement activities, and maintains documentation and records of public and agency involvement activities. The consultant may be responsible for preparing project-specific PIPs and public involvement reports, among other tasks. At the discretion of NDOT and/or the LPA, the consultant may be a point of contact for project-specific questions and comments from the public. Interaction with government officials and the media should be handled directly by NDOT or the LPA unless the consultant is specifically directed otherwise by the RC or the Public Involvement Unit. The

consultant may be the primary presenter at public meetings and other public involvement activities, following an introduction by NDOT and/or LPA staff. The consultant will provide copies of all public involvement documents and records to NDOT and/or the LPA.

9.2 Federal Requirements for Public and Agency Involvement

Many different federal requirements govern public and agency involvement during the environmental review process for a project. This section provides a brief overview of relevant requirements. For more information on public and agency involvement requirements for specific resource topics, see other chapters of this *Environmental Procedures Manual* (Manual) or NDOT guidance documents for that topic. Understanding legal requirements provides a good basis for understanding the public involvement process and agency outreach.

9.2.1 National Environmental Policy Act Requirements

NEPA mandates that federal agencies consider the effects of their actions on the quality of the human environment. One essential element of NEPA is to encourage and facilitate public involvement in decisions that affect the human environment ([40 Code of Federal Regulations \[CFR\] 1500.2](#)). By making information available to public officials and citizens before decisions are made, the NEPA

“Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 CFR 1500.1(b)

process is intended to improve the decision-making process, fostering a better understanding of the environmental consequences of proposed federal actions ([40 CFR 1500.1](#)). One of the goals of the NEPA process is to provide quality information to the public and decision makers: “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA” ([40 CFR 1500.1\(b\)](#)). “Ultimately, of course, it is not better documents but better decisions that count. NEPA’s

purpose is not to generate paperwork—even excellent paperwork—but to foster excellent actions. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” ([40 CFR 1500.1\(c\)](#)). As such, public and agency involvement are essential elements of the NEPA process.

9.2.1.1 Council on Environment Quality NEPA Regulations

The Council on Environmental Quality (CEQ) within the Office of the President was created to oversee the implementation of NEPA, including promulgating NEPA regulations that establish procedures for preparing NEPA documentation and requirements for administering the NEPA process, including the process for inviting comments, defining agency roles and responsibilities, and addressing interagency disputes. CEQ regulations for implementing NEPA can be found at [40 CFR Parts 1500–1508](#). Parts 1500 through 1504 include general NEPA requirements, including public and agency involvement from scoping through the final NEPA documentation; lead agencies and cooperating agencies; public availability of NEPA documentation and response to public comments; and public notices, meetings, and hearings. [Section 1506.6](#) presents specific public involvement requirements, including the following:

- Providing public notice of public hearings, public meetings, and availability of NEPA documentation to those who may be interested or affected
- Holding public hearings or public meetings when appropriate and in accordance with agency requirements
- Soliciting information from the public

- Ensuring public availability of NEPA documentation, the comments received, and any underlying documentation pursuant to the Freedom of Information Act

9.2.1.2 Federal Highway Administration NEPA Regulations

FHWA regulations for implementing NEPA are found at [23 CFR Part 771](#), Environmental Impact and Related Procedures. [Section 771.105\(c\)](#) establishes FHWA policy that public involvement and a systematic interdisciplinary approach are essential elements of developing proposed projects. [Section 771.111](#) sets forth FHWA's philosophy of early public and agency involvement in the environmental review process and prescribes requirements for State Departments of Transportation to develop their own public involvement and public hearing procedures. These procedures must provide for the following:

- Coordination of public involvement and any required public hearings with the entire NEPA process
- Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions
- Public hearing(s) or the opportunity for public hearing(s), at a convenient time and place, for any federal-aid project that requires significant amounts of right-of-way (ROW); substantially changes the layout or functions of connecting roadways or the facility being improved; has a substantial adverse impact on abutting property; or otherwise has a significant social, economic, environmental, or other effect; or if FHWA determines that a public hearing is in the public interest. (For projects assigned to NDOT under NEPA Assignment, NDOT makes this determination.)
- Reasonable notice of any public hearings or opportunity for public hearings, including the availability of explanatory information and information required to comply with public involvement requirements of other laws, Executive Orders (EOs), and regulations
- Explanation of the following specified information at a public hearing, as appropriate:
 - Project purpose and need, and consistency with the goals and objectives of local planning
 - Project alternatives and major design features
 - Social, economic, and environmental impacts of the project
 - Relocation assistance and the ROW acquisition process
 - Procedures for providing oral and written public comments
- Preparation of a transcript of any public hearing or certification that a public hearing opportunity was offered when required, along with copies of all public comments from the public hearing or during the public review process
- Public notice and an opportunity for public comment on a Section 4(f) *de minimis* impact finding
- Determining, as part of a re-evaluation, whether changes in the project or new information warrant additional public involvement

These Public Involvement Procedures, Chapter 9 of the NDOT *Environmental Procedures Manual*, serve as documentation of NDOT's public involvement and public hearing procedures in accordance with [23 CFR 771.111\(h\)](#). FHWA approved these procedures on December 13, 2019.

See Section 9.7 for information on how NDOT meets public involvement requirements for the different types of NEPA documentation. Requirements for public hearings and public hearing notices are presented in Section 9.7.2.3. FHWA NEPA regulations address public involvement requirements for Categorical Exclusions (CEs; [23 CFR 711.117](#)), Environmental Assessments (EAs)/Findings of No Significant Impact (FONSIs; [23 CFR 771.119](#) and [23 CFR 771.121](#)), and Environmental Impact Statements (EISs)/Records of Decision (RODs; [23 CFR 771.123](#), [23 CFR 771.125](#), and [23 CFR 771.127](#)).

These Public Involvement Procedures, Chapter 9 of the NDOT *Environmental Procedures Manual*, serve as documentation of NDOT's public involvement and public hearing procedures in accordance with 23 CFR 771.111(h).

9.2.2 Other Federal Requirements

In addition to NEPA, Presidential EOs and several other federal laws affect how public and agency outreach should be conducted for NEPA projects. NDOT must meet these requirements and should consider them when developing project-specific PIPs.

9.2.2.1 23 United States Code 128, Public Hearings

In accordance with [23 United States Code \(USC\) 128](#), a public hearing or the opportunity for a public hearing is required for any federal-aid highway project that bypasses or goes through a city, town, or village, as well as for an Interstate Highway System project.

9.2.2.2 23 United States Code 139, Efficient Environmental Reviews for Project Decisionmaking

The efficient environmental review process established in [23 USC 139](#) has very precise public and agency involvement requirements for transportation projects requiring an EIS. This environmental review process may also be used for projects requiring an EA, but this occurs rarely. For further information on these requirements, see Section 9.7.3, Environmental Impact Statements.

9.2.2.3 National Historic Preservation Act of 1966, Section 106

The objective of Section 106 of the National Historic Preservation Act of 1966 ([54 USC 300101 et seq.](#)) is to balance the needs of federal agencies and their undertakings with historic preservation concerns, and to resolve potential conflicts between the two. Requirements for public and agency outreach under Section 106 include identifying consulting parties and conducting formal Section 106 consultation ([36 CFR 800.3](#)), as well as providing the public with information about the project and its effects on historic properties, and seeking public comment ([36 CFR 800.2\(d\)](#) and [800.3\(e\)](#)). This public outreach requirement is routinely satisfied through the NEPA process. See the NDOT [National Historic Preservation Act Section 106 Guidelines](#) for additional information on public involvement under Section 106.

9.2.2.4 U.S. Department of Transportation Act of 1966, Section 4(f)

Section 4(f) of the U.S. Department of Transportation (U.S. DOT) Act of 1966 ([49 USC 303](#); [23 USC 138](#)) governs the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for federal-aid projects. Before a *de minimis* finding is made, public outreach is required; however, the specific outreach requirements vary depending on what type of property would be affected. For example, prior to making a *de minimis* finding on a historic site, consulting parties identified in the Section 106 process must be consulted, and the State Historic Preservation Officer or Tribal Historic Preservation Officer and the Advisory Council on Historic Preservation (if participating) must concur with a "no adverse effect" or "no historic properties

affected” finding. Public notice and comment beyond that required by [36 CFR Part 800](#) is not required. For parks, recreation areas, and wildlife and waterfowl refuges, public notice and an opportunity for public review and comment are required ([23 CFR 774.5\(b\)](#)) before a *de minimis* finding can be made. NDOT’s practice is for this information to be included in the Notice of Availability (NOA) for the EA or Draft EIS, to include *de minimis* information at any public meetings and hearings, and to make the Section 4(f) document(s) available in the same locations as the NEPA documentation.

For project types that do not routinely require public review and comment, such as certain CEs and re-evaluations, but for which a *de minimis* finding is proposed, separate public notice and opportunity for review and comment is necessary. The NDOT Environmental Section, in coordination with the Public Involvement Unit, determines the appropriate method of public outreach for a proposed *de minimis* finding based on the specifics of the situation, the type and location of the Section 4(f) property, impacts on the property, and public interest. Public notice and the opportunity for public review and comment can be made in a number of ways, including newspaper advertisement, project website, bulletin board notice, placement at a public library, and public meeting or hearing. When public involvement is initiated solely for a *de minimis* impact finding, responses or replies to the public comments may not be required, depending on the substantive nature of the comments. All comments and responses are to be documented, as appropriate, in the project file; comments are provided to the Official with Jurisdiction when requesting concurrence with the *de minimis* finding for publicly owned parks, recreation areas, or wildlife and waterfowl refuges. See the [Guidance for Completing the Section 4\(f\) Review Process in Nebraska for Federal-Aid Projects](#) for additional information on *de minimis* findings and public involvement.

9.2.2.5 23 CFR 772, Procedures for Abatement of Highway Traffic Noise and Construction Noise

FHWA procedures for traffic noise abatement are found in [23 CFR 772](#). NDOT’s implementation standards for the FHWA noise abatement procedures are presented in the NDOT [Noise Analysis and Abatement Policy](#). FHWA procedures define traffic noise impacts and the consideration of noise abatement measures when traffic noise impacts are identified for certain projects. Noise abatement measures that are found to be reasonable and feasible must be constructed for such projects. As part of determining whether noise abatement is reasonable, NDOT considers the viewpoints of the property owners and residents of properties that would benefit from the proposed noise abatement. This is achieved through a noise abatement stakeholder meeting and through voting by the benefitted property owners and residents (Noise Abatement Stakeholders). See the NDOT [Noise Analysis and Abatement Policy](#) for additional information about this meeting and voting procedures.

9.2.2.6 Executive Order 11990, Protection of Wetlands

[EO 11990, Protection of Wetlands](#), requires that adverse impacts on wetlands be avoided whenever there is a practicable alternative. If the project has potential impacts on wetlands, the EO requires that an opportunity for early public review be provided ([EO 11990](#), Section 2(b)). NDOT provides an opportunity for early public review through a wetlands impact statement in public notices and other public involvement materials.

9.2.2.7 Executive Order 11988, Floodplain Management

[EO 11988, Floodplain Management](#), requires federal agencies to avoid adverse impacts on floodplains to the extent practicable. When NDOT determines that a project has potential adverse impacts on floodplains, opportunity for early public review is required and provided through NDOT public notices and other public involvement materials. See also [U.S. DOT Order 5650.2, Floodplain Management and Protection](#), Section 7, and FHWA’s implementing regulations found in [23 CFR 650](#).

9.2.2.8 Executive Order 12898, Environmental Justice

[EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations](#), requires federal agencies to achieve environmental justice (EJ) by identifying and addressing adverse impacts on minority and low-income populations, and to gather input from these populations early in the public involvement process. Federal agencies must identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” ([EO 12898](#)) in support of their EJ goals. If a project has potential impacts on minority and low-income populations, NDOT must do the following as part of public outreach:

- Provide meaningful opportunities for public involvement to minority and low-income populations ([U.S. DOT Order 5680.1](#), Section 5.b(1))
- Provide access to information regarding potential impacts on minority and low-income populations ([U.S. DOT Order 5680.1](#), Section 5.b(2))
- Solicit input from affected minority and low-income populations in considering alternatives ([U.S. DOT Order 5680.1](#), Section 7.c(4))

[EO 12898](#) also addresses outreach to populations who speak limited English (see Section 9.2.2.9 for more information) and suggests that agencies do the following ([EO 12898](#), Section 5-5):

- “Translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations”
- “Work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public”

Further direction is given in [U.S. DOT’s EJ Strategy](#), specifically Section II (A.3), which encourages coordination with community leaders to develop outreach plans, and exploration of traditional and nontraditional outreach strategies to ensure participation. [CEQ Guidance on EJ](#) (Section III.C, Considering Environmental Justice in Specific Phases of the NEPA Process) lists potential options to consider during public involvement planning to overcome potential linguistic, institutional, cultural, economic, historical, or other potential barriers to public participation.

9.2.2.9 Executive Order 13166, Limited English Proficiency

[EO 13166, Improving Access to Services for Persons with Limited English Proficiency](#), requires federal agencies to provide meaningful access to limited English proficiency (LEP) populations. The EO requires all federal agencies to “develop and implement a system by which LEP persons can meaningfully access [agency] services consistent with, and without unduly burdening, the fundamental mission of the agency” ([EO 13166](#)). If a project has potential impacts on LEP individuals, NDOT must provide meaningful access to those individuals throughout the NEPA process.

The U.S. Department of Justice’s [LEP Guidance](#) describes a four-factor analysis that can be used to determine what steps should be taken to provide meaningful access for LEP persons and to develop an LEP outreach program (U.S. Department of Justice [LEP Guidance](#) and U.S. DOT [Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient \(LEP\) Persons](#)). If LEP-specific outreach is warranted, the aforementioned [U.S. DOT policy guidance](#) further describes how to select language assistance services, including interpretation and translation; how to design and update an LEP program; and how to provide notice to LEP persons.

9.2.2.10 Executive Order 13175, Tribal Consultation

[EO 13175, Consultation and Coordination with Indian Tribal Governments](#), requires that U.S. DOT honor any requests for government-to-government consultation, and is intended to strengthen the relationship between Indian tribes and the U.S. government. See [Chapter 10, Tribal Consultation](#), for additional information.

9.2.2.11 Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act; [49 CFR Part 24](#)) provides for fair and equitable treatment of persons whose property will be acquired or who will be displaced because of programs or projects that use federal funds. To satisfy FHWA NEPA regulations regarding public disclosure of the relocation assistance program and ROW acquisition process ([23 CFR 771.111\(h\)\(2\)\(v\)\(D\)](#)), if property acquisition is anticipated as part of the project, NDOT makes ROW brochures and staff available to the public at public hearings and includes information in the public notice regarding the property acquisition. The ROW brochures are also available on NDOT's website (see Section 9.10, Additional Resources, for links to the ROW brochures).

9.2.2.12 Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 ([42 USC 2000\(d\)](#)) requires that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

9.2.2.13 Americans with Disabilities Act of 1990

The Americans with Disabilities Act of 1990 (ADA; [42 USC 12101 et seq.](#)) prohibits the exclusion of individuals with disabilities from participation in the services, programs, or activities of a public entity. In addition, it encourages the engagement of people with disabilities. NDOT's policy is to ensure that communication with persons with disabilities is as effective as communication with others. When public meetings and events are planned, public notices must include standard language to offer assistance to individuals with disabilities. The current approved language is available from NDOT's Civil Rights Officer (CRO). Public meeting facilities will comply with ADA accessibility standards to the greatest extent practicable.

9.2.2.14 Freedom of Information Act

The Freedom of Information Act ([5 USC 552](#)) gives anyone the right to access information from the federal government. All federal-aid highway projects are subject to Freedom of Information Act requests. To build awareness among the public that their comments and any other information given to the project team are subject to the Freedom of Information Act, it is advisable when requesting comments to include language that states "All public comments received will become part of the public record and may be subject to Freedom of Information Act requests."

9.3 State Requirements for Public and Agency Involvement

Although state statutes do not require specific public involvement efforts as part of the project development process, NDOT is committed to engaging in effective public and agency involvement, and sees such involvement as critical to ensuring that the state transportation system continues to serve a wide range of needs. As a result of this commitment, NDOT conducts program hearings in conjunction with Highway Commission meetings to discuss projects in the Surface Transportation Program. Based in part on the input from the hearings, recommendations are made by the Highway

Commission. These hearings offer an early opportunity for public input on the projects included in the Surface Transportation Program.

9.4 Planning for Public Involvement

NDOT's Public Involvement Unit considers the need for public involvement for each project during the project planning stage. NDOT recognizes that each project is unique, and is committed to assessing individual projects to determine the best public involvement approach. NDOT has established, and will conduct, required activities for public involvement outlined in this chapter (see Section 9.4.2).

As the first step in determining the need for public involvement and the most appropriate public involvement approach, the Public Involvement Unit reviews the NDOT-53 for state and LPA projects along with project-specific conditions, such as the following:

- Type of project and work to be done
- The area that would be potentially affected
- Annual daily traffic
- ROW requirements
- Wetland mitigation
- Potential changes in access
- Historic properties
- Possible Section 4(f) properties
- Construction impacts and schedule
- Potential detour requirements
- EJ and LEP populations
- Proposed NEPA class of action

Based on an assessment of the project-specific conditions, the Public Involvement Unit will document on the NDOT-53 whether public involvement is needed and a PIP will be required. All projects classified as an EA or an EIS will require public involvement and a project-specific PIP. NDOT requires, at a minimum, that an EA or EIS project provide an opportunity for public hearing. NDOT typically holds a public hearing for an EIS project. FHWA shall be consulted to determine whether it is appropriate to offer, rather than hold, a hearing for an EA or EIS. Additionally, some CEs may warrant public involvement and a project-specific PIP as determined by the Public Involvement Unit in consultation with the Environmental Section. This determination is based on project type, scope, location, and complexity; community composition; community interest; and likely impacts of the project.

For state-funds-only projects without an NDOT-53, the Public Involvement Unit will determine the need for public involvement in coordination with the Environmental Section and the Roadway Design Division through project coordination meetings, change/control/accountability meetings, or the project scoping document. A project-specific PIP will be prepared for all projects that require public involvement.

For all projects, the need for public involvement and the most appropriate public involvement approach are reviewed at project coordination meetings, at change/control/accountability meetings, and/or through the project scoping document (see [Chapter 1, Overview](#), for additional information) and adjusted as needed.

If there is a change in a project's scope or class of action, the Public Involvement Unit is notified. If the project scope changes, the Public Involvement Unit will re-examine the need for outreach and a project-specific PIP, and will document the conclusions for the file.

9.4.1 Project-Specific Public Involvement Plan

The project-specific PIP documents the outreach that will be undertaken for a specific project and who will be responsible for each outreach component. The project-specific PIP takes into account the impact that the proposed project would have and the potential effects on the community and environment, and it outlines the best outreach for that specific project. The level of detail in the project-specific PIP should be commensurate with project size, complexity, community composition, and potential for controversy.

The project-specific PIP must do the following:

- Briefly describe the project
- Address public involvement requirements
- Describe the audiences for the project
- Identify public involvement tools and strategies to be used and the rationale for using them (see Section 9.5 for information on tools and strategies)
- Identify potential issues and any additional outreach targeted to these issues
- Assign responsibility for implementation of each element of the project-specific PIP
- Outline the schedule for implementation of the project-specific PIP

Each project-specific PIP is a living document and is modified, as necessary, as new information emerges and the public involvement needs of the project evolve. For EIS projects, project-specific PIP contents are incorporated into the larger project coordination plan required by [23 USC 139](#).

The parties responsible for developing project-specific PIPs on state and LPA projects are outlined in Section 9.1.4.

A [template for preparation of the NDOT project-specific PIP](#) has been developed and is available on NDOT's website.

9.4.2 Required Public Involvement Activities

All projects have initial opportunities for public input at the program level before they reach the environmental phase because they are included in the Statewide Transportation Improvement Program (STIP), and public input opportunities are associated with the planning processes used to develop the STIP.

Federal regulations for statewide and metropolitan transportation planning and programming (see [23 USC 134](#) and [135](#)) require that State Departments of Transportation and Metropolitan Planning Organizations develop proactive public involvement processes that provide opportunities for public review and comment during development of the STIP and the Metropolitan Planning Organization Long-Range Transportation Plan and Transportation Improvement Program. See NDOT's [The State Transportation Improvement Program \(STIP\) Public Involvement Plan](#) for additional information on public involvement during STIP development.

For individual projects, NDOT determines public involvement needs on an individual project basis; however, NDOT has established required public involvement activities for projects based on their class of action (see [Chapter 2](#) for descriptions of each class of action), as shown in Table 9-1. These are

only the *minimum* required activities that are conducted. Additional public involvement tools and strategies may be used for a project based on its type, scope, location, and complexity; community composition; community interest; and project impacts. Further, impacts on noise and floodplains, as well as on certain other resources (for example, historic properties and Section 4(f) properties with *de minimis* impacts), have specific public involvement requirements.

Table 9-1. Required Public Involvement Activities

Class of Action	Required Public Involvement Activities
Categorical Exclusion (CE)	<ul style="list-style-type: none"> • Conduct program hearings in conjunction with Highway Commission meetings to discuss projects in the Surface Transportation Program, and ensure that public input received is considered in the NEPA process. • Ensure that the project is included in the STIP. • Initiate contact with emergency and public services if detours or roadway restrictions are anticipated that may cause substantial traffic disruption. • Initiate stakeholder involvement if a noise study has been completed and abatement is feasible and preliminarily reasonable (see NDOT Noise Analysis and Abatement Policy). • Initiate public involvement if triggered by the Floodplain Professionally Qualified Staff (PQS) memo • Issue a public notice and opportunity for public review and comment if Section 4(f) <i>de minimis</i> impacts or adverse effects on historic properties (Section 106) are anticipated (see Section 9.5.6). • Document all public involvement in the project file.
Environmental Assessment (EA)	<ul style="list-style-type: none"> • Conduct program hearings in conjunction with Highway Commission meetings to discuss projects in the Surface Transportation Program, and ensure that public input received is considered in the NEPA process. • Ensure that the project is included in the STIP. • Develop a project-specific PIP, and provide the plan to FHWA for review and concurrence. FHWA will also inform NDOT at this stage whether the EA is the type that should follow 23 USC 139 requirements. • Develop a public involvement distribution list (see Section 9.5.1). • Send a public notification letter to recipients on the public involvement distribution list (see Section 9.5.3.1). • Initiate contact with emergency and public services if detours or roadway restrictions are anticipated that may cause substantial traffic disruption. • Initiate stakeholder involvement if a noise study has been completed and abatement is feasible and preliminarily reasonable (see NDOT Noise Analysis and Abatement Policy). • Initiate public involvement if triggered by the Floodplain PQS memo. • Issue a public notice announcing the availability of the EA for review and comment (see Section 9.7.2.3), including the following: <ul style="list-style-type: none"> ○ Include information on the opportunity for hearing or on the public hearing if one is scheduled (see Section 9.7.2.3). ○ If Section 4(f) <i>de minimis</i> impacts; adverse effects on historic properties (Section 106), floodplains, or wetlands; or property impacts are anticipated, include this information (see Section 9.7.2.3). • Provide an opportunity for a public hearing or hold a public hearing (see Section 9.7.2.4). • Distribute a press release prior to construction that explains the construction schedule, roadway closures, and detours. • Document all public involvement in the project file.

Class of Action	Required Public Involvement Activities
Environmental Impact Statement (EIS)	<ul style="list-style-type: none"> • Conduct program hearings in conjunction with Highway Commission meetings to discuss projects in the Surface Transportation Program, and ensure that public input received is considered in the NEPA process. • Ensure that the project is included in the STIP. • Develop a 23 USC 139 project coordination plan that includes project-specific PIP elements. These plans shall be provided to FHWA for review and concurrence. FHWA will coordinate with NDOT at this stage to determine applicability of One Federal Decision (OFD) requirements, and to develop an outline for OFD compliance (if applicable). • Develop a public involvement distribution list (see Section 9.5.1). • Send a public notification letter to recipients on the public involvement distribution list (see Section 9.5.3.1). • Initiate contact with emergency and public services if detours or roadway restrictions are anticipated that may cause substantial traffic disruption. • Initiate stakeholder involvement if a noise study has been completed and abatement is feasible and preliminarily reasonable (see NDOT Noise Analysis and Abatement Policy). • Initiate public involvement if triggered by the Floodplain PQS memo. • Issue a public notice announcing the availability of the Draft EIS for review and comment (see Section 9.7.3.5), including the following: <ul style="list-style-type: none"> ◦ Include information on the opportunity for hearing or on the public hearing if one is scheduled (see Section 9.7.3.5). ◦ If Section 4(f) <i>de minimis</i> impacts; adverse effects on historic properties (Section 106), floodplains, or wetlands; or property impacts are anticipated, include this information (see Section 9.7.3.5). • Provide an opportunity for a public hearing or hold a public hearing (see Section 9.7.3.6). • Distribute a press release prior to construction that explains the construction schedule, roadway closures, and detours. • Document all public involvement in the project file.

The scope of public involvement differs with each project and is determined based on the project type, scope, location, and complexity; community composition; community interest; and likely impacts of the project. The Public Involvement Unit consults with the Environmental Section early in project development to determine the need for public involvement and a project-specific PIP, and identifies any public involvement requirements. The project-specific PIP is reviewed throughout the life of the project and revised as needed to identify project-specific outreach activities related to environmental requirements. When NDOT determines that public involvement during NEPA is not required, the NDOT-53 will document the basis for this decision. Public involvement considerations are reviewed at Project Coordination Meetings (PCM), and considerations are included in the PCM meeting minutes. If project scope changes warrant public involvement, documentation of the public involvement decision will be included in the project documentation, in the PCM meeting minutes, or by development of a PIP.

Examples of factors that may merit additional consideration in the project-specific PIP, based on context and intensity, may include, but are not limited to, the following:

- Permanent ROW acquisitions
- Acquisition of improvements such as homes, businesses, or buildings
- Detours

- Temporary or permanent access restrictions or closures
- Projects within or directly adjacent to federal land, a state park, or tribal land
- Projects that would construct a new interchange or new roadway on new alignment, or would add capacity
- Construction that would involve nighttime work in a residential area
- Projects that have the potential to adversely impact a vulnerable or underserved population (based on age, minority, low income, and/or disability)

Public involvement is not required for actions that qualify for an NDOT Minor Categorical Exclusion (MCE).

9.4.3 Civil Rights Considerations

NDOT has established review processes to identify and address specific outreach approaches with regard to civil rights considerations to encourage the full and fair participation by potentially affected communities in the transportation decision-making process. NDOT's public involvement tools are modified to effectively reach specific minority, low-income, LEP, or other traditionally underserved communities as they are identified. NDOT's CRO will recommend specific outreach approaches in the civil rights review that occurs early in the NEPA process.

9.4.3.1 Environmental Justice Considerations

If an EJ population is present, NDOT's CRO will determine the appropriate level of public outreach based on the context and intensity of the project (see factors described in Section 9.4.2) and the potential for disproportionately high and adverse effects. Public outreach will be tailored to effectively inform and involve the EJ community. Common outreach includes targeted mailings, event notifications, and meetings with community leaders. If a public meeting is held, NDOT will make efforts to host the meeting in an environment that is welcoming to the EJ populations in question. Determining mitigation activities through consultation with community groups and organizations representative of that community might be necessary. Outreach to EJ communities is dependent on the circumstances of the individual project, but at a minimum, outreach will be performed in accordance with federal regulations and guidance on EJ. See the NDOT [Community Impact Assessment Guidance](#) for additional information on EJ.

9.4.3.2 Limited English Proficiency Considerations

If a project requires public outreach, and if NDOT's CRO determines that an LEP population is present, then written project materials will be translated and provided to community resources in accordance with NDOT's FHWA-approved [Limited English Proficiency Plan](#). In addition, translated accommodation messages are included in public notices providing instructions on how to request translated materials. The Public Involvement Unit should be contacted for appropriate accommodation language to use on the public notice being prepared.

9.4.3.3 Americans with Disabilities Act Considerations

NDOT public involvement activities will comply with ADA accessibility requirements to the greatest extent practicable. If communications aids or services are requested, NDOT will provide for accommodations as appropriate to the circumstances and the type of aid requested. For further information on NDOT ADA compliance efforts, see the NDOT [ADA policy](#) and [transition plan](#).

9.4.3.4 Title VI and Other Considerations

NDOT strives to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts on communities and people are recognized early and continually throughout the transportation decision-making process.

NDOT's CRO serves as a resource to support compliance with applicable federal and state laws that govern public participation. The CRO will determine the appropriate level of public outreach based on the context and intensity of the project (see factors described in Section 9.4.2). Public outreach will be tailored to effectively inform and involve the affected population(s). Common outreach includes targeted mailings, event notifications, and meetings with community leaders. If a public meeting is conducted, the CRO maintains a standard statement that is included in public meeting and public hearing notices to meet Title VI requirements. The current approved language is available from the CRO. NDOT will make efforts to host public meetings in an environment that is welcoming to the affected population(s) in question. Determining mitigation activities through consultation with community groups and organizations representative of that community might be necessary. Outreach to affected communities is dependent on the circumstances of the individual project, but at a minimum, outreach will be performed in accordance with federal regulations and guidance.

NDOT's [Title VI Implementation Plan](#) is available on NDOT's website. Although not required, the CRO encourages that NDOT's [Title VI brochure](#) be made available to the public at public meetings and public hearings.

9.5 Public Involvement Tools and Strategies

NDOT has developed a list of public involvement tools and strategies that can be flexibly implemented on transportation projects in Nebraska based on the project type, scope, location, and complexity; community composition; community interest; and project impacts. These tools and strategies, which are described in the following subsections, include both the public information materials that are developed and the methods used to distribute that information to, or gather feedback from, the public. NDOT will continue to look for additional tools and strategies to use as appropriate.

On state projects, the following apply:

- The Public Involvement Unit, in coordination with the project team, determines the tools and strategies to be used on each project based on the project type, scope, location, and complexity; community composition; community interests; anticipated environmental impacts; and potential for controversy.
- The Public Involvement Unit prepares public involvement materials and is responsible for logistics. The Public Involvement Coordinator vets all materials with the NDOT project team, which can include design, right-of-way, traffic, and environmental staff, for example. The Public Involvement Unit has final approval of materials and is responsible for finalizing and distributing materials.

On LPA projects, the following apply:

- The RC (or designated consultant) determines the tools and strategies to be used on each project based on the project type, scope, location, and complexity; community composition; community interests; anticipated environmental impacts; and potential for controversy. This information is documented in the project-specific PIP and submitted to the NDOT Public Involvement Unit for review and approval.

- The RC (or designated consultant) prepares all public involvement materials and coordinates all logistics. All materials that will be distributed to the public must be submitted to the Public Involvement Unit via the LPA PC for review and concurrence prior to dissemination.

9.5.1 Public Involvement Distribution List

For each project requiring public involvement, NDOT creates a distribution list that includes physical mailing address information or email addresses, or both. This list includes, but is not limited to, property owners contiguous with the project, businesses directly affected by the project, and those parties who have expressed an interest in the project. Also included are city and county officials, schools, hospitals, libraries, railroads, state agencies, resource agencies, and interested groups and organizations (for example, chambers of commerce and neighborhood associations). When determining the outreach area for a project, NDOT considers project-specific conditions such as areas potentially affected, those impacted by detour routes, project type, construction schedule, ROW impacts, access restrictions, noise, EJ and LEP populations, and contiguous historic resources and Section 4(f) properties. The distribution list is updated as additional interested parties are identified.

9.5.2 Project Information Materials

Project information materials may be developed to share project information with the public and agencies as well as to gather input from these parties. Materials used to share information may include the following:

- Project purpose and need statements
- Project and alternatives descriptions
- Project maps and plan sets
- Project fact sheets
- Project schedules
- Brochures
- Flyers and door hangers
- Posters
- Displays
- Presentations
- News releases

Materials used to gather feedback may include the following:

- Comment forms
- Surveys
- Online engagement tools
- Project-specific email address

Approved agency logos must be included on all materials. All maps, plan sets, and project alternatives should include “preliminary plan” stamps.

Project information materials may be distributed through various means, including mailings, canvassing, meetings and hearings, public notices, media, websites, and social media. These are described in more detail in the following sections.

9.5.3 Mailings

9.5.3.1 Public Notification

NDOT uses public notification to let the public know about a proposed project in their area. A public notification is typically used to announce a project that requires an EA or an EIS. It may also be used on relatively simple projects to inform the public about a project in their area, such as maintenance projects that may temporarily impact the public's commute or access, a detour in a rural area, or a short-term closure, or to describe multiple projects that may be occurring sequentially. A public notification may also be used to provide project updates.

A public notification provides information on a project and includes the following items based on their availability and the stage of the project: project description; purpose and need; ROW or easement requirements; traffic or access disruption; anticipated construction schedule; map (detour and location); accommodation of traffic; potential environmental impacts; accommodation information for EJ, LEP, and ADA populations; and agency contacts (including the NDOT Public Involvement Unit). This notification is mailed to the public involvement distribution list (see Section 9.5.1). This notification can also be sent via email if that is determined to be the most effective method of delivery. Public notification materials are included in the project file. While there is no formal comment period noted, comments are always accepted from the public. See Section 9.6 for information on responding to public comments.

9.5.3.2 Project Information Packet

A project information packet formally solicits comments in order to receive input on constraints in the project vicinity that may be otherwise unknown to NDOT as well as public input on elements of the design. The packet may be developed and distributed when a public information meeting is not planned or when NDOT is concerned that attendance may be low at public meetings (for example, a resurfacing project in a rural setting).

The packet should include a cover letter, project fact sheet, comment form, project contacts (including the NDOT Public Involvement Unit), and any other information that helps summarize the project. Because the information packet is used in lieu of a public information meeting, public comments are invited during a comment period, typically 30 days, or as otherwise determined by the Public Involvement Unit in consultation with the Environmental Section Manager. The dates of the comment period and methods to provide feedback are to be included in the packet. The project information packet and all comments received on the packet are included in the project file.

For state projects, the Public Involvement Unit compiles the input received in response to the project information packet and transmits it to the project team.

For LPA projects, the LPA and/or consultant is responsible for compiling the input received in response to the project information packet. Section 9.6 discusses the process for responding to public comments.

9.5.4 Canvassing

Targeted canvassing may be used to build project awareness. When canvassing is used, residences and businesses in the project area are typically contacted. Information shared should include a brief project description and notification of any upcoming public meeting or public hearing. Canvassing

may consist of information exchange or leaving materials, such as a project flyer, door hanger, or a project information packet. Canvassing materials and documentation of project-related conversations are included in the project file.

9.5.5 Meetings and Hearings

Meetings can occur in many different formats and can be an excellent mechanism for two-way communication with the interested public.

Meetings with the general public can occur in the form of public information meetings, online meetings, or hearings. Public information meetings can be held in an open-house format or can include a formal presentation, or both. Online meetings are web-based and offer an additional forum for the public to engage with the project. Online meetings are typically used in tandem with a public meeting or hearing and offer information similar to that shared in the in-person public meeting or hearing. Online meetings offer an opportunity to comment on the project and its impacts, similar to a public meeting or hearing. Public hearings are formal meetings required by regulation to be held under certain circumstances. See Section 9.7.2.4 for additional information on public hearings.

Small group meetings may be held with stakeholder groups; examples of stakeholder groups include bicycle advocacy or environmental interest groups, a specific community or community group (including, but not limited to, EJ or LEP populations), or property owners who are considered benefited receptors as defined in the NDOT [Noise Analysis and Abatement Policy](#). One-on-one meetings may also be held with potentially affected businesses or residents to discuss access, parking, construction, and ROW issues. Project meetings are also typically held with federal and state resource agencies and local governments. Meetings may be held at any time during the project development process. Project information materials may be shared, and input is received. Meetings should be documented, including areas of discussion, input received, and decisions and commitments made; documentation is placed in the project file.

9.5.5.1 Meeting Notifications

There are several ways to notify people of upcoming meetings and hearings. Notifications include a brief description of the project and the date, time, and location of the meeting or hearing. Information on how to provide feedback and maps of the project area or detour may also be beneficial.

Efforts should be made to send notifications directly to those who will be affected by the project, including property owners, businesses, local officials, and resource and land management agencies whose interests may be affected by the project. Notifications to those who will be directly affected should be distributed via mail, email, or canvassing, depending on the project and the audience.

Following are some ways that information on upcoming meetings and hearings can be distributed:

- Send a letter, flyer, or post card via mail or email to the following:
 - Affected audiences, including property owners and businesses
 - City and county representatives for distribution and posting on their websites
 - Local organizations and community groups for distribution to their members
 - Resource and land management agencies that may be affected by the project
- Send a news release to local media outlets
- Place a display advertisement in a local newspaper or run a spot on a local radio station
- Send an email to those on the public involvement distribution list

- Post information on NDOT’s website or social media accounts, or both
- Publish the required public notice for a public hearing (see Section 9.5.6).

Additional information about public involvement during the NEPA process, including public meeting and hearing requirements, is provided in Section 9.7.

9.5.6 Public Notice

Publication of a public notice is required to advertise a public hearing or opportunity for public hearing, and NDOT may elect to publish a public notice for other public meetings, as determined by the Public Involvement Unit in consultation with the Environmental Section based on the project type, scope, location, and complexity; community composition; community interest; and project impacts. A public notice is also used to announce the public availability of an EA or Draft EIS for review and comment. The same public notice can be used for a project with anticipated Section 4(f) *de minimis* impacts; adverse effects on historic properties (Section 106), floodplains, or wetlands; or property impacts so long as those anticipated impacts/effects are disclosed in the public notice and an opportunity for the public to comment is provided. The public notice must be published at least 15 days in advance of a meeting in a Nebraska Press Association newspaper having general circulation in proximity to the project area. A public notice is typically placed in the legal notices section of the newspaper.

The notice includes the following:

- Brief project description, including the location of the project and the proposed improvements
- Announcement of the availability of the EA or Draft EIS for review and comment, when applicable
- Invitation for interested parties to provide comments on the EA or Draft EIS (when applicable), the comment period, and information on where to submit comments
- Location, time, and date of the meeting or hearing
- Brief description of any anticipated Section 4(f) *de minimis* impacts; adverse effects on historic properties (Section 106), floodplains, or wetlands; or property impacts resulting from the project
- Agency contact (NDOT Public Involvement Manager)
- Information regarding ADA accessibility and provisions for persons with disabilities, including a statement that additional accommodations can be made or additional information can be provided in alternate formats
- Location(s) where additional information is available

9.5.7 Media Releases

Media releases may be used to provide notice to the public of NEPA public involvement events, such as meetings or hearings, and also to distribute project information and meeting details to local, regional, and other press or media services (for example, newspapers, radio stations, television stations, and news websites) in the project vicinity. NDOT media releases are distributed as determined appropriate for the project. All NDOT media releases are distributed by the NDOT Communication Division.

For LPA projects, media releases may be used for similar purposes as detailed above for NDOT media releases, but are distributed by the LPA to local, regional, and other press or media services as determined appropriate for the project by the LPA.

The use of media releases is optional and is not a requirement.

9.5.8 Websites and Social Media

9.5.8.1 Nebraska Department of Transportation Website

The NDOT website (<http://dot.nebraska.gov/>) provides the public with timely access to project information. Individual project web pages may be established on NDOT's website to share a variety of project information with the public and receive feedback. Project web pages may also be used to host online public meetings, which allow the public to provide feedback when convenient, rather than at a specific time and place. Project web pages typically include the following information:

- Project fact sheets
- Location maps
- Videos or presentations
- Public meeting displays
- Comment forms

A GovDelivery (<https://public.govdelivery.com/accounts/NEDOR/subscriber/new>) subscription on NDOT's website gives any individual the ability to request notification of information changes on a project web page or to receive NDOT news releases. Individual notifications occur through an automated email.

LPAs should include project information on their websites as applicable.

9.5.8.2 Social Media Posts

NDOT uses Twitter to share program and project-specific information as well as to promote upcoming events. All posts are developed and disseminated by the NDOT Communication Division.

9.6 Responding to Public Comments

Comments received about a project during an official comment period will be transmitted to the Public Involvement Unit for consideration in further development of the project. The NDOT Public Involvement Unit reviews these comments and coordinates with the project team to prepare responses; NDOT provides responses to all substantive comments received during the official comment period, and provides detailed responses to comments that include project-specific questions. Project-specific questions relate to project planning and development, are requests for additional project information or data, or relate to one or more specific environmental resources. The NDOT Public Involvement Unit consults with the NDOT Environmental Documents Unit to ensure that all substantive comments have been identified and adequately addressed. The NDOT NEPA Specialist is responsible for incorporating comments and responses into the NEPA documentation as appropriate. NDOT's Public Involvement Unit will compile a matrix ([form provided](#)) of comments and responses for projects that include a comment period. These comments and responses will be retained in the project file. See Section 9.9 for more information on documentation.

For LPA projects, the RC and/or consultant is responsible for reviewing all comments received during a comment period and coordinating the preparation of responses to comments that have project-specific questions. The RC and/or consultant will compile a matrix ([form provided](#)) of comments and draft responses for projects that include a comment period. The NDOT Public Involvement Unit reviews these comments and responses, and coordinates with the project team to ensure that comments have been adequately addressed. The LPA provides responses to all substantive

comments received during the official comment period, and provides detailed responses to comments that include project-specific questions. Comments and responses will be retained in the project file. See Section 9.9 for more information on documentation.

Comments pertaining to a project may also be received outside of an official comment period or on projects where no official comment period is provided. Occasionally such comments are received after environmental documentation is complete. The NDOT Public Involvement Unit reviews these comments and, if a comment is substantive, coordinates with the project team to determine whether a formal response to the comment is necessary, whether environmental documentation is affected, and whether a re-evaluation is required. NDOT or the LPA RC and/or consultant (as outlined above) provide responses to comments that include project-specific questions. Documentation of comments received outside of an official comment period are placed in the general project file, or with NEPA documentation where appropriate.

Additional requirements for comments and responses as part of the environmental process for an EA or EIS are outlined in Section 9.7.

9.7 Public and Agency Involvement during the NEPA Process

Public and agency involvement are essential elements of the NEPA process.

As discussed in Section 9.2.1, public and agency involvement are essential elements of the NEPA process. This section describes public and agency involvement requirements and NDOT practices for NEPA documentation: CEs, EAs, and EISs.

Re-evaluation documentation does not require public review.

However, NDOT may elect to conduct public outreach to inform the public of changes to the scope of work, resulting resource impacts, or environmental commitments, or to announce the availability of the re-evaluation documentation. Public involvement may also assist in identifying new community impacts or public controversy that could affect the project's class of action. For re-evaluations associated with EAs or EISs, NDOT shall coordinate with FHWA to determine whether public outreach may be warranted.

9.7.1 Categorical Exclusions

Based on limited impacts and the absence of significant impacts, public involvement is not required for all CE projects and is undertaken commensurate with project type, scope, location, and complexity; community composition; community interest; and project impacts. If the CE project is located near an EJ or LEP population or has some level of controversy, project-specific public involvement may be required by NDOT. A project-specific PIP is prepared for any CE project for which public involvement is planned. When public involvement is required for a CE project, the minimum required public involvement activities must be conducted (see Section 9.4.2). Additional typical tools to be considered depending on the location, complexity, and impacts of the project include one-on-one or small group meetings, a public notification letter or project information packet, a public meeting, and a comment period. If a public hearing is held for a CE project, the procedures outlined in Section 9.7.2.4 would be followed as applicable.

Public involvement activities undertaken on a CE project are documented and retained in the project file. This typically occurs through preparation of a public involvement report that provides a record of the process and results of public involvement and agency outreach (see Section 9.9, Documentation).

9.7.2 Environmental Assessments

For each EA project, the NDOT Public Involvement Unit will determine if additional public involvement activities are needed beyond the minimum required for all NDOT EA projects (see Section 9.4.2). Until

full NEPA Assignment is in place, FHWA is involved in the development of the project-specific PIP and its implementation for each EA project. Public involvement activities are documented and retained in the project file. This typically occurs through preparation of a public involvement report that provides a record of the process and results of public involvement and agency outreach (see Section 9.9, Documentation). For more information on preparing an EA, see [Chapter 5, Environmental Assessment](#).

9.7.2.1 Project-Specific Public Involvement Plan

A project-specific PIP is developed for all EAs. Section 9.4.1 identifies project-specific PIP requirements, and the following sections discuss public involvement steps for an EA that are also addressed in the project-specific PIP. The NDOT Public Involvement Unit should be contacted immediately following the determination that an EA will be prepared to begin a project-specific PIP.

9.7.2.2 Early Coordination

In accordance with FHWA requirements, NDOT uses early outreach on EA projects to engage the public and agencies in the following ([23 CFR 771.119\(b\)](#)):

- Determining the scope of environmental issues to be addressed
- Identifying the alternatives and measures that may avoid, minimize, or mitigate adverse environmental impacts
- Identifying other environmental requirements that should be performed concurrently with the EA

Agency consultation should begin at the earliest appropriate time during the EA process ([23 CFR 771.119\(b\)](#)). Early coordination is important in identifying environmental impacts, determining alternatives and mitigation, establishing permit requirements, and anticipating issues or concerns that may affect the project design, cost, and schedule.

NDOT general practice is to hold a resource agency scoping meeting for EAs; this meeting is arranged by the Environmental Section. Project background information, typically consisting of a map, project description, and resources potentially affected, is sent to the involved agencies approximately 1 week before the meeting to familiarize participants with the project and its potential issues. Stakeholder meetings and a public information meeting(s) may be held depending on project complexity, location, and issues, and the communities affected. If public information meetings are held, they are announced with a public notice as described in Section 9.5.6. For more information on public meetings, see Section 9.5.5. If a public information meeting is not held for an EA project, a public information packet is developed and distributed as described in Section 9.5.3.2.

Copies of letters, information transmitted, documentation of other substantive contacts with the public and agencies, and input received are maintained in the project file. Public involvement activities are summarized and the results of public and agency coordination included in the EA ([23 CFR 771.119\(b\)](#)).

9.7.2.3 Notice of Availability and EA Distribution

As required by FHWA regulation, NDOT publishes a newspaper notice advising the public of the availability of the EA and where additional project information may be obtained, regardless of whether a public hearing is held ([23 CFR 771.119\(d\)](#), (e), and (f)). This NOA briefly describes the project and its impacts, and specifies the locations where the EA can be reviewed. Required locations include NDOT Headquarters and the appropriate NDOT District office ([23 CFR 771.119\(d\)](#)); typical additional locations may include the local public library, NDOT's website, community centers, and other similar locations. The NOA invites written comments from all interested parties. Comments are to be

submitted in writing to NDOT within 30 days of the availability of the EA unless FHWA (NDOT under NEPA Assignment) determines for good cause that a different comment period is warranted ([23 CFR 771.119](#)(e) and (f)). By policy, NDOT requires, at a minimum, an opportunity for public hearing on all EA projects and may decide to hold a public hearing rather than offer the opportunity for one. When NDOT will hold a public hearing or offer an opportunity for a hearing on a project, NDOT typically publishes a combined NOA and Notice of Public Hearing/Notice of Opportunity for Public Hearing.

If the project would have *de minimis* impacts on Section 4(f) properties; adverse effects on historic properties (Section 106), floodplains, or wetlands; or property impacts, the NOA identifies these impacts to meet the public notification requirements for these resources. The NOA also includes standard language from NDOT's CRO to address Title VI and LEP compliance, and ADA accessibility.

The NDOT Environmental Section coordinates with the NDOT Communication Division to publish the NOA in a local newspaper recognized by the Nebraska Press Association. The Environmental Section sends the NOA to affected federal, state, and local government and tribal entities as well as to those who request it ([40 CFR 1506.6](#)(b)(1); [23 CFR 771.119](#)(d), (e), and (f)). Notice may also be given through additional local media, community organizations, newsletters, direct mail, on- and off-site notice boards, and similar media. The NDOT Public Involvement Unit will determine appropriate media notification based on the project's potential impacts and affected populations. Distribution of the NOA is documented in the project file.

Neither FHWA nor CEQ NEPA regulations require that the EA be circulated to agencies and the general public; however, the EA must be made available for public review ([23 CFR 771.119](#)(d)). FHWA policy encourages that the EA be distributed to agencies known to have interest or special expertise, as identified during scoping, and to any agency that has permitting authority (FHWA [Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#), Section IV.A).

9.7.2.4 Public Hearing

Planning

A public hearing is a formal meeting that is required by regulation to be held under certain circumstances and requires a complete, verbatim transcript ([23 CFR 771.111](#)(h)). FHWA regulations ([23 CFR 771.111](#)(h)(2)(iii)) require one or more public hearings or the opportunity for hearing to be held for any federal-aid project that meets the following criteria:

- Requires significant amounts of ROW
- Substantially changes the layout or functions of connecting roadways or of the facility being improved
- Has a substantial adverse impact on abutting property
- Has a significant social, economic, environmental, or other effect
- FHWA (NDOT under NEPA Assignment) determines that a public hearing is in the public interest

A public hearing or opportunity for public hearing is also required under [23 USC 128](#) for any federal-aid highway project that bypasses or goes through a city, town, or village, as well as for an Interstate Highway System project.

Planning for a public hearing or the opportunity for a public hearing should begin as early as possible.

NDOT, at a minimum, requires an opportunity for a public hearing for EA projects, even if not required by regulation. If NDOT anticipates public interest in a public hearing to be high, its general practice is

to hold a public hearing. The Public Involvement Unit, in consultation with the design engineer and the Environmental Section, makes the determination of whether to hold a public hearing based on project type, scope, location, and complexity; community composition; community interest, and project impacts.

If NDOT believes that public interest in holding a public hearing is low, it may elect to provide a Notice of Opportunity for Public Hearing, which would be advertised in the same manner as a public hearing. When an opportunity for a public hearing is advertised, it includes a date by which any request for a public hearing must be received by NDOT. Any person with a social, economic, or environmental interest in the project may request that a public hearing be held. When such a request is received, the NDOT Public Involvement Unit contacts the requesting party or parties to determine their interest in the project. If only a few parties request a hearing, a meeting may be held with those parties to discuss their concerns. If the concerns of the requestor(s) cannot be satisfied, a public hearing is scheduled and conducted. The Notice of Opportunity for Public Hearing and any responses are included in the project file.

When a public hearing is held, NDOT determines the format of the public hearing, which may be either a formal hearing or an open forum hearing. A formal public hearing must include a court reporter who prepares a written transcript, and usually includes a formal presentation. An open forum public hearing allows interested parties to view project information, to informally discuss the project with members of the project team, and to comment orally before a court reporter and the public. According to FHWA's [Public Involvement Techniques for Transportation Decision Making](#), "Any meeting can become a hearing by including a verbatim transcript of comments.... The main purpose of a hearing is to accurately hear the public's input." For additional information on types of public hearings, see FHWA's [Public Involvement Techniques for Transportation Decision Making](#) and [Transportation Planning Capacity Building](#).

"The main purpose of a hearing is to accurately hear the public's input." FHWA's *Public Involvement Techniques for Transportation Decision Making*.

Notice of Public Hearing

Public notice is required for a NEPA public hearing. In addition to meeting NEPA requirements, a Notice of Public Hearing is required to provide information necessary to comply with the public involvement requirements of other laws, EOs, and regulations ([23 CFR 771.111\(h\)\(2\)\(iv\)](#)). The Notice of Public Hearing is typically published jointly with the NOA, and must meet the same publication standards and be distributed to the same parties identified in Section 9.7.2.3 for NOAs ([40 CFR 1506.6\(b\)](#)).

When a public hearing is held for an EA, [23 CFR 771.119\(e\)](#) requires that the public notice be published at least 15 days in advance of the hearing, announces the availability of the EA, and identifies where the EA can be obtained or reviewed. The notice is also to state the deadline for submitting comments, which is 30 days from the availability of the EA, unless FHWA (NDOT under NEPA Assignment) determines for good cause that a different comment period is warranted ([23 CFR 771.119\(e\)](#)).

Conducting the Public Hearing

Public hearings have requirements that do not apply to public meetings. According to [23 CFR 771.111\(h\)\(2\)\(v\)](#), public hearings must explain the following:

1. The project's purpose and need, and consistency with local planning
2. Project alternatives and major design features
3. The social, economic, environmental, and other impacts of the project

4. Relocation assistance and the ROW acquisition process
5. Procedures for receiving oral and written comments from the public

All oral and written public statements made at the public hearing become part of the project record.

A public hearing record, which includes the public hearing notice, copies of public meeting materials, the hearing transcript, and all written comments received during the comment period, is prepared by the NDOT Public Involvement Unit. The LPA or its consultant is responsible for preparing the public hearing record on LPA projects where the LPA is RC. The public hearing record is placed in the project file.

9.7.2.5 Comment Response

Substantive comments received and responses to those comments are included in the Final EA; comments and responses are included in an appendix to the Final EA.

9.7.2.6 Availability of FONSI

The FONSI is not required to be circulated publicly, but a notice of its availability is required to be sent to affected agencies and the FONSI is to be made available to the public upon request ([23 CFR 771.121\(b\)](#)). The Public Involvement Unit is responsible for this communication. While not specifically required, it is NDOT's practice to publish the availability of the FONSI in the manner used to distribute the NOA of the EA. The FONSI availability notice is placed in the project file.

9.7.2.7 Limitation of Claims Notice

[23 USC 139\(l\)\(1\)](#) establishes a 150-day statute of limitations on legal claims against U.S. DOT, NDOT (for projects under NEPA Assignment), and other federal agencies for certain environmental and other approval actions if specific circumstances apply. A Limitation of Claims Notice must be placed in the *Federal Register* for the 150-day statute of limitations to apply. Publication in the *Federal Register* starts the clock for the statute of limitations. Because only federal agencies may post in the *Federal Register*, even under NEPA Assignment, NDOT's Environmental Section prepares the notice and transmits it to FHWA for placement in the *Federal Register*.

9.7.3 Environmental Impact Statements

Public and agency involvement is an integral part of the EIS process. Because an EIS involves issues and impacts of greater magnitude than CEs and EAs, public and agency involvement is usually more robust than for other project types, and additional steps are required. The enhanced public involvement requirements are intended to increase engagement with the public and agencies, and to

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support early identification and efficient resolution of issues that could delay project approval. Public involvement activities are documented and retained in the project file. This typically occurs through preparation of a public involvement report that provides a record of the process and results of public involvement and agency outreach (see Section 9.9, Documentation). For more information on preparing an EIS, see [Chapter 6, Environmental Impact Statement](#).

Until full NEPA Assignment is in place, FHWA is involved in the development of the project-specific PIP and agency coordination plan, and in the implementation of these plans on EIS projects.

9.7.3.1 Environmental Review Process

Congress included a number of environmental streamlining provisions as part of the 2005 transportation funding act referred to as the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Notable among these is Appendix A, Section 6002, Efficient Environmental Review Process, codified at [23 USC 139](#). The 2012 transportation funding act, Moving Ahead for Progress in the 21st Century (MAP-21), and the 2015 Fixing America's Surface Transportation Act (FAST Act) modified the environmental review process enacted with SAFETEA-LU. The process is mandatory for EISs with a Notice of Intent (NOI) dated after August 10, 2005; it is optional (but rarely used) for EAs. Enhanced public and agency involvement is a cornerstone of the process. Environmental review process requirements in [23 USC 139](#) related to public and agency involvement include the following:

- The lead agency must invite all federal, state, local, and tribal government agencies that may have an interest in the project to be participating agencies ([23 USC 139\(d\)](#)).
- Agencies defined as participating and cooperating agencies are required to carry out their obligations under other applicable laws concurrently and in conjunction with their NEPA review in a timely and environmentally responsible manner ([23 USC 139\(d\)\(7\)](#)).
- To the maximum extent practicable, all permits and reviews for a transportation project are to rely on a single NEPA document developed by the lead agency; that NEPA document is to be sufficient to satisfy the requirements for any federal approval or other federal action for the project, including federal agency permits ([23 USC 139\(d\)\(8\)](#)).
- The lead agency must develop a coordination plan for public and agency participation and comment in the environmental review process; the plan must include a schedule ([23 USC 139\(g\)](#)).
- Participating and cooperating agencies and the public must be given an opportunity for input in the development of the project's purpose and need statement and the range of alternatives to be considered ([23 USC 139\(f\)](#)).
- The lead agency is to collaborate with participating and cooperating agencies on the appropriate methodologies to be used and the level of detail for the analysis of project alternatives ([23 USC 139\(f\)\(4\)\(C\)](#)).
- The lead agency, participating agencies, and cooperating agencies are to work cooperatively to identify and resolve issues that could delay the completion of the environmental review process or result in denial of any approvals required for the project under applicable laws. [23 USC 139\(h\)](#) provides an issue identification and resolution process, including referral to CEQ and imposing financial penalties.

Additional guidance on complying with the [23 USC 139](#) efficient environmental review process can be found in FHWA and the Federal Transit Administration's [SAFETEA-LU Environmental Review Process Final Guidance](#), [Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews](#), and [Questions and Answers on the procedural changes to 23 USC 139](#).

Participants in the Environmental Review Process

Lead Agency

Under [23 USC 139](#), U.S. DOT (FHWA for most NDOT projects) serves as the lead federal agency for projects, and NDOT, as the direct recipient of federal-aid highway funds, is required to be a joint lead agency ([23 USC 139\(c\)](#)); [SAFETEA-LU Environmental Review Process Final Guidance](#), question 16). However, under NEPA Assignment, NDOT will serve as lead federal agency for assigned projects.

Other federal, state, or local governmental entities may act as joint lead agencies at the discretion of FHWA (NDOT under NEPA Assignment). On local agency-sponsored projects, the local agency serves as joint lead agency. For more information on this topic, see the FHWA and Federal Transit Administration [SAFETEA-LU Environmental Review Process Final Guidance](#).

In compliance with [23 USC 139](#), NDOT must initiate the efficient environmental review process by inviting federal, state, tribal, regional, or local agencies that have jurisdiction or expertise or that will comment on the project to be participating or cooperating agencies. For additional information on tribal consultation, see [Chapter 10](#) of this Manual and the [Programmatic Agreement Among the Federal Highway Administration, the Nebraska State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Nebraska Department of Roads to Satisfy the Requirements of Section 106 for the Federal-Aid Highway Program in the State of Nebraska](#).

Participating Agencies

To enhance interagency coordination and identification of issues of concern, [23 USC 139](#) created a new category of involvement in the environmental review process: the participating agency. The intent of this category is to encourage agencies at all levels of government with an interest in the project to be active participants in the NEPA evaluation. Under [23 USC 139](#), any federal or non-federal agency that “may have an interest in the project” is required to be invited to become a participating agency in the project environmental review process ([23 USC 139\(d\)](#)). The participating agency category casts a very broad net and is not limited to agencies with jurisdiction or special expertise. Participating agency invitation letters are required to be sent within 45 days of NOI publication and are to include a deadline for response by the agency. A common response deadline is 30 days. Any federal agency invited to be a participating agency will be designated as a participating agency unless it declines, in writing, stating that the invited agency ([23 USC 139\(d\)\(3\)](#); emphasis added):

- A. **Has no jurisdiction or authority with respect to the project;**
- B. **Has no expertise or information relevant to the project; and**
- C. **Does not intend to submit comments on the project.**

To enhance interagency coordination and identification of issues of concern, 23 USC 139 created a new category of involvement in the environmental review process: the participating agency. The intent of this category is to encourage agencies at all levels of government with an interest in the project to be active participants in the NEPA evaluation.

State and local agencies that are invited to be participating agencies will be designated as participating agencies only if they respond affirmatively, in writing, to the participating agency invitation.

Participating agency invitation letters are typically prepared by the NDOT Environmental Section. Until NEPA Assignment, the NDOT Environmental Documents Unit coordinates with FHWA regarding identification of participating agencies and transmits participating agency letters to FHWA for distribution.

Cooperating Agencies

A federal participating agency may also be designated as a cooperating agency under NEPA ([40 CFR 1501.6](#) and [23 CFR 771.111\(d\)](#)). A cooperating agency is defined as any federal agency with jurisdiction by law or special expertise with respect to any environmental issue that should be addressed in the EIS ([40 CFR 1508.5](#)). Any such federal agency is to be invited to be a cooperating agency. Any cooperating agency would also meet the definition of a participating agency and is to be

invited, in writing, to serve both roles. FHWA and the NDOT Environmental Section will determine what agencies are to be invited to serve as cooperating agencies.

Initiating the 23 USC 139 Efficient Environmental Review Process

As the first step in the [23 USC 139](#) efficient environmental review process, the project sponsor (typically NDOT) is required to notify FHWA that the review process is being initiated. For projects under NEPA Assignment, this is initiated by the Environmental Section once a decision to prepare an EIS has been made; the requirement is handled through an email exchange among the Environmental Section Manager, the Project Development Engineer, and the District Engineer. The notification includes the type of work, its termini, length, and general location, as well as the federal permits and approvals anticipated to be necessary for the proposed project ([23 USC 139\(e\)](#)).

9.7.3.2 Notice of Intent

An NOI is the official notification that a federal agency is beginning the process to prepare an EIS. The NDOT Environmental Section develops an NOI for publication in the *Federal Register* after it has reached the decision to prepare an EIS, consulted with any other project sponsor, and initiated the [23 USC 139](#) efficient environmental review process ([23 CFR 771.123](#)). NDOT submits the NOI to FHWA for its publication in the *Federal Register*. (Only federal agencies may publish in the *Federal Register*, so FHWA retains responsibility for publishing the NOA, even under NEPA Assignment.) CEQ regulations require that the NOI include the following ([40 CFR 1508.22](#)):

- A description of the proposed project
- A description of potential alternatives, including the no-build alternative
- Information regarding the scoping process, including when and where scoping meetings (if any) will be held
- The name and address of a contact person at NDOT who can answer questions about the proposed project and EIS

For the NOI to also serve as the [23 USC 139](#) initiation of the efficient environmental review process, the NOI must also include the following:

- The type of work
- The proposed project's termini, length, and general location
- Other anticipated federal approvals required for the project, such as permits

In addition to being published in the *Federal Register*, the NOI should be made available locally, through sources such as notice in a local or regional newspaper or as part of a project mailer to appropriate project area zip codes, or both. For additional information on the content and format of an NOI, see the FHWA [Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#), Appendix B.

9.7.3.3 Coordination Plan

As required by [23 USC 139](#), NDOT develops a coordination plan for public and agency participation during the environmental review process ([23 USC 139\(g\)](#)). At NDOT, the coordination plan is typically developed by the Environmental Section. The coordination plan describes how agencies and the public will participate and comment during project environmental review. The coordination plan is required to be in place within 90 days of NOI publication. An environmental review schedule is required to be part of the coordination plan, and is to be established after consultation with, and concurrence from, each participating and cooperating agency. The schedule and any adjustments to it are to be provided to all

participating and cooperating agencies and made available to the public. NDOT may shorten the environmental review schedule only with the concurrence of the affected cooperating agencies. The coordination plan will include appropriate elements of the project-specific PIP. See Section 9.4.1 for project-specific PIP considerations.

9.7.3.4 Scoping

Scoping is the process through which a federal lead agency solicits input from the public, agencies, and other stakeholders regarding the project purpose and need, the range of alternatives, and the scope and significance of the issues to be addressed in the EIS ([40 CFR 1501.7](#), [23 CFR 771.123\(b\)](#), and [23 USC 139\(f\)](#)). Scoping begins after the NOI is published in the *Federal Register*.

Through collaboration with participating and cooperating agencies, NDOT develops methodologies and level of detail to be used to analyze alternatives ([23 USC 139\(f\)\(4\)\(C\)](#)). NDOT makes the ultimate decision on the methodologies to be used, taking into account participating and cooperating agency expertise.

Public meetings are not required as part of the scoping process, but are commonly held and serve as an excellent tool for sharing information with, and receiving input from, the public and agencies. If a public scoping meeting is held, a notice is published in a local or regional newspaper as described in Section 9.5.6. The notice may also be sent within a project mailer to property owners immediately adjacent to the project limits. It is NDOT's practice to include the same information and distribution list for a scoping meeting public notice that are used for an NOA.

FHWA's [Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#), provides detailed guidance on the scoping process.

9.7.3.5 Draft EIS Notice of Availability and Circulation

Notice of Availability

Once the Draft EIS is completed, it is made available for public review and comment. To announce the availability of the Draft EIS, the U.S. Environmental Protection Agency (EPA) places a notice in the *Federal Register* ([40 CFR 1506.9](#)) based on information provided by NDOT (FHWA until full NEPA Assignment). The NOA specifies the locations where the EIS can be reviewed. Required locations include the FHWA Division office, NDOT Headquarters, and the NDOT District office; typical additional locations include the local public library, NDOT's website, community centers, and other similar locations. The *Federal Register* NOA identifies the public comment period for the EIS, which will be not less than 45 days and not more than 60 days unless NDOT establishes a different deadline, with the agreement of all participating and cooperating agencies. NDOT may also extend the comment deadline for good cause ([23 USC 139\(g\)\(2\)](#)). The NOA will state where comments are to be sent ([23 CFR 771.123\(i\)](#)).

If the project would have *de minimis* impacts on Section 4(f) properties; adverse effects on historic properties (Section 106), floodplains, or wetlands; or property impacts, the NOA identifies these impacts to meet public notification requirements for these resources. The NOA also includes standard language from NDOT's CRO to address Title VI and LEP compliance, and ADA accessibility (see Section 9.4.3).

The NOA of the Draft EIS is also published in a local or regional newspaper, and may be included within a project mailer to appropriate project area zip codes. It is NDOT's practice to publish a combined public notice of Draft EIS availability and Notice of Public Hearing.

Circulation

The Draft EIS must be made available to the public and circulated to agencies for comment no later than the time the Draft EIS is filed with EPA for *Federal Register* notification ([23 CFR 771.123\(g\)](#)). The Draft EIS is transmitted to public officials, interest groups, and members of the public known to have an interest in the proposed project; federal, state, and local agencies with jurisdiction or expertise, including those that have been designated as participating or cooperating agencies; and affected federal and state land management agencies (see [23 CFR 771.123\(g\)](#)). NDOT must request comments from appropriate state and local agencies, affected Indian tribes, and any agency that has requested that it receive EISs on actions of the kind proposed ([40 CFR 1503.1](#)), and invite comments from the public. NDOT's Environmental Section prepares a Draft EIS transmittal letter; both the letter and the Draft EIS are to identify where comments are to be sent ([23 CFR 771.123\(i\)](#)).

9.7.3.6 Public Hearing

FHWA's public involvement requirements dictate that one or more public hearings be held or opportunities for public hearings be given for projects for which an EIS is prepared ([23 CFR 771.111\(h\)](#)).

See Section 9.7.2.4 for requirements related to public hearings and opportunities for public hearings; these apply to any public hearing for a Draft EIS. The Draft EIS is to be available at the public hearing and for a minimum of 15 days in advance of the public hearing ([23 CFR 771.123\(h\)](#)).

9.7.3.7 Comment Response

The Final EIS is required to discuss all substantive comments received on the Draft EIS, to provide responses to those comments, and to summarize public involvement ([23 CFR 771.125\(a\)](#)). Comment responses are to be written in an appropriate and respectful manner, and are to adequately address the issue or concern raised by the commenter, or when substantive comments do not warrant further response, explain why they do not warrant further response and provide sufficient information to support that position (FHWA [Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents](#), Section V.J)).

9.7.3.8 Distribution of the Final EIS

The Final EIS is distributed to all agencies, organizations, and individuals who provided substantive comments on the Draft EIS, or who requested a copy, no later than the time the Final EIS is filed with EPA ([23 CFR 771.125\(g\)](#)). A public notice of the Final EIS availability must be published in a local or regional newspaper and the Final EIS made available for public review at NDOT offices and potentially at other public locations (see [23 CFR 771.125\(g\)](#)).

Every reasonable effort is to be made to resolve interagency disputes before the Final EIS is approved ([23 CFR 771.125\(a\)\(2\)](#)).

9.7.3.9 Record of Decision

Although not formally required, it is advisable to publish notice of a ROD in the same manner as the Final EIS. If a revised ROD is subsequently published, it should be circulated to the same entities that received a copy of the Final EIS ([23 CFR 771.127](#)), to the extent practicable.

If the Final EIS and ROD are issued separately, the ROD cannot be issued for a minimum of 30 days after the Final EIS is available ([23 CFR 771.127\(a\)](#)).

9.7.3.10 Limitation of Claims Notice

The efficient environmental review process ([23 USC 139\(l\)\(1\)](#)) established a 150-day statute of limitations on legal claims against U.S. DOT, NDOT (for projects under NEPA Assignment), and other federal agencies for certain environmental and other approval actions if specific circumstances apply. A Limitation of Claims Notice must be placed in the *Federal Register* for the 150-day statute of limitations to apply ([23 CFR 771.139](#)). Publication in the *Federal Register* starts the clock for the statute of limitations. Because only federal agencies may post in the *Federal Register*, even under NEPA Assignment, NDOT's Environmental Section prepares the notice and transmits it to FHWA for placement in the *Federal Register*.

9.8 Identifying and Addressing Controversy

As a customer-focused agency, NDOT is committed to having open and transparent decision-making processes that include effective public involvement. The public involvement process is a useful avenue for NDOT and LPAs to identify concerns or controversy regarding a project. NDOT's practice is to identify and be aware of those concerns and controversies if they arise and to gather information to better understand the issues. NDOT's Public Involvement Unit will take the concerns to the project team, discuss what options there may be to address the concerns, and determine how to proceed. Concerns will be elevated as appropriate.

If "substantial controversy on environmental grounds" is identified on a project classified as a CE ([23 CFR 771.117\(b\)\(2\)](#)), NDOT's Environmental Section will review the environmental class of action to determine if it remains appropriate, and will also assess whether the environmental effects would be "highly controversial" ([40 CFR 1508.27\(b\)\(4\)](#)) in determining the appropriate class of action. [Chapter 2, Class of Action](#), has additional information on controversy in determining class of action and significance.

If LPAs identify concerns or controversy on one of their projects, they should contact NDOT's Public Involvement Unit to review the issues and determine the best way to proceed. The NDOT Environmental Section also considers substantial controversy on environmental grounds on LPA projects.

EIS projects are subject to the [23 USC 139\(h\)](#) issue resolution process, which is a formal process for resolving major issues that could delay or result in denial of a required project approval or permit. This process may be invoked by the project sponsor or the state governor, and requires the FHWA Division Administrator, the heads of the lead agencies and affected participating agencies, and the project sponsor to meet to resolve issues. For projects under NEPA Assignment, the Director of NDOT would assume the FHWA Division Administrator role. Issues identified for resolution through [23 USC 139\(h\)](#) would be logistically coordinated with the Office of the Secretary of Transportation at U.S. DOT.

9.9 Documentation

Documentation and record keeping of public and agency outreach is as important as the outreach itself. Because NEPA is a procedural law, great care should be taken to preserve proper documentation of public and agency outreach. This documentation represents an important component of the decision-making process. It also may be critical information should litigation occur. A formal transcript of any public hearing must be prepared and included in the project files ([23 CFR 771.111\(h\)\(vi\)](#)). Until NEPA Assignment, the Public Involvement Unit will provide the formal transcript to FHWA with the Final EA or Final EIS.

Public involvement activities are documented and retained in the project file. This typically occurs through preparation of a public involvement report that provides a record of the process and results of

public involvement and agency outreach. If prepared, the public involvement report typically includes the following:

- Project-specific PIP
- Record of the public involvement tools and strategies used and project information dispersed (for example, project mailers, flyers, and door hangers)
- Record of small group meetings and public meetings and hearings held, including materials distributed; certification of publication for all public notices; sign-in sheets; distribution lists; and for hearings, the formal hearing transcript
- Record of compliance with ADA, LEP, and Title VI requirements
- Comments and responses provided, and a summary of project-specific conversations with the public and stakeholders during the NEPA process

If formal scoping is undertaken for the project, a scoping summary report should be prepared at the end of the scoping process. The scoping summary report provides a comprehensive record of the scoping process and of the results of scoping, including substantial issues to be addressed in the EA or Draft EIS, alternatives, and purpose and need. A scoping summary report guides further development of the project and NEPA documentation. The scoping summary report should include the items listed above for the public involvement report, but should cover only the formal scoping process.

9.10 Additional Resources

FHWA's [*Technical Advisory T 6640.8A, Guidance for Preparing and Processing Environmental and Section 4\(f\) Documents*](#), is not regulatory but provides helpful guidance on a number of topics, including distribution of NEPA documentation and handling comments and responses.

FHWA's [*Public Involvement Techniques for Transportation Decision Making*](#) presents a wealth of guidance on public involvement for transportation projects.

The FHWA web page [*Planning Public Involvement and its Role in Project Development*](#) presents additional FHWA guidance on public involvement for project development.

[*23 USC 139*](#), also known as the efficient environmental review process, is required for EISs and is optional, but rarely used, for EAs. It includes considerable information about public and agency involvement and documentation for projects under the process.

[*American Association of State Highway and Transportation Officials \(AASHTO\) Practitioner's Handbook 02, Responding to Comments on an Environmental Impact Statement*](#), offers practical advice on response to comments.

[*AASHTO Practitioner's Handbook 09, Using the SAFETEA-LU Environmental Review Process*](#), provides additional guidance on implementing the environmental review process.

NDOT has developed a number of resources useful in public outreach:

- [*Title VI Implementation Plan*](#)
- Title VI brochure ([English](#) | [Spanish](#))
- [Civil Rights web page](#)
- [*Limited English Proficiency Plan*](#)

- *Relocation Assistance As Administered by The Right-of-Way Divisions of the Nebraska Department of Transportation* ([English](#) | [Spanish](#))
- ROW brochures
 - [Transportation Projects and Your Property](#)
 - [What is Eminent Domain?](#)
 - [Personal Property Only Relocation Assistance](#)
 - [In This Together](#)