

Chapter 16
PUBLIC INVOLVEMENT

MDT ENVIRONMENTAL MANUAL

October 2010

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Chapter 16

PUBLIC INVOLVEMENT

16.1 OVERVIEW

As reflected in the *Council on Environmental Quality (CEQ) Regulations* and FHWA Regulations for implementing the *National Environmental Policy Act (NEPA)* (42 USC 4321, et seq.) and the MDT regulations for implementing the *Montana Environmental Policy Act (MEPA)* (MCA 75-1-101, et seq.), public involvement is a key component of the process for developing proposed projects involving Federal and/or State funding or approvals. The public involvement requirements in the referenced directives recognize the importance of affording parties that will be affected by a proposed project an opportunity for meaningful participation in the project development process. The public involvement requirements are intended to ensure the views, suggestions and concerns of affected communities and individuals are identified and fully considered, along with other project needs, in defining the details of a project for implementation.

To support the intended objectives of the public involvement requirements, MDT has adopted the following public involvement goals:

- provide useful, timely information to the public throughout the development of projects, from planning, programming and preliminary engineering approval through final acceptance of the project by the District Administrator;
- proactively seek public comment and involvement in planning and project development;
- facilitate open discussion of controversial issues;
- respond to comments and suggestions; and
- ensure public comments are fully considered so that useful ideas are incorporated into projects.

These goals must be considered and reflected in the planning and implementation of public involvement programs and activities for all proposed MDT projects. In addressing the goals, MDT must ensure the needs of all affected parties, including traditionally underserved groups (e.g., persons with a disability, minority and ethnic groups, persons with limited English proficiency), are identified and accommodated.

This Chapter provides guidance for addressing public involvement requirements in the preconstruction program phase of project development, beginning with the Preliminary Field Review (PFR), including consideration of specific aspects associated with the level of environmental processing for the action. In applying the guidance in this chapter, consideration also should be given to the information provided in the *MDT Public Involvement Handbook*.

16.2 LAWS, REGULATIONS AND GUIDANCE

16.2.1 23 USC 128 “Public Hearings”

This Section of the *United States Code* (USC) establishes requirements for State transportation departments to certify that public hearings have been held, or the opportunity for public hearings has been afforded, for the following:

- any proposed Federal-aid highway project involving the bypassing of, or going through any city, town or village, either incorporated or unincorporated; and
- any Interstate System project.

16.2.2 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making”

This Section of the USC includes provisions regarding public involvement for certain types of projects. The applicable project-types include those requiring preparation of an environmental impact statement and those involving preparation of an environmental assessment, as determined by FHWA on a case-by-case basis. The pertinent provisions address requirements for the following:

- opportunity for involvement of participating agencies and the public in defining a project’s purpose and need and the range of alternatives,
- collaboration with participating agencies in determining the methodologies to be used and the level of detail required in the analysis of project alternatives, and
- development of a plan for coordinating public and agency participation in and comment on the environmental review process.

16.2.3 42 USC 126 “Equal Opportunity for Individuals with Disabilities”

Section 12132 “Discrimination” of this part of the USC provides that persons with a disability cannot, based on their disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity; this includes any department of a State government. For project-related public involvement, this requirement means accommodations must be made to ensure persons with a disability are afforded the opportunity for meaningful participation.

16.2.4 40 CFR 1500 through 1508 CEQ Regulations

These Parts of the *Code of Federal Regulations* (CFR) establish a framework of policies and procedures for Federal agency compliance with NEPA. They address requirements for public involvement in the following Sections:

1. Section 1500.1 “Purpose.” This Section requires Federal agency NEPA procedures to ensure environmental information is available to the public before decisions are made and before actions are taken.

2. Section 1500.2 “Policy.” This Section includes provisions requiring Federal agencies to encourage and facilitate public involvement in decisions that affect the quality of the human environment.
3. Section 1505.6 “Public Involvement.” This Section provides detailed guidance on public involvement requirements for NEPA compliance.

16.2.5 23 CFR 771 “Environmental and Related Procedures”

This Part of the CFR establishes the policies and procedures of FHWA and the Federal Transit Administration for implementing NEPA and the *CEQ Regulations* in 40 CFR 1500 through 1508 and for complying with 23 USC 128 “Public Hearings.” It includes applicable provisions regarding public involvement in the following Sections:

1. Section 771.105 “Policy.” This Section indicates that public involvement and a systematic interdisciplinary approach are essential parts of the development process for proposed actions.
2. Section 771.111 “Early Coordination, Public Involvement and Project Development.” This Section addresses the requirements for public involvement/public hearing programs that each State must have for compliance with 23 USC 128 and the *CEQ Regulations*.

16.2.6 Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency”

This Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP) and develop and implement a system to provide those services. Policy guidance for implementing this Executive Order is available on the website of the Federal Interagency Working Group on Limited English Proficiency.

16.2.7 ARM 18.2.235, et seq. “Rules Implementing the Montana Environmental Policy Act”

These parts of the *Administrative Rules of Montana* (ARM) include several provisions that address public involvement requirements for MDT projects. The relevant parts include the following:

- ARM 18.2.240 “Public Review of Environmental Assessments,”
- ARM 18.2.241 “Determining the Scope of an EIS,”
- ARM 18.2.246 “Time Limits and Distribution of Environmental Impact Statements,”
- ARM 18.2.252 “Record of Decision for Actions Requiring Environmental Impact Statements,” and
- ARM 18.2.257 “Public Hearings.”

16.2.8 FHWA “SAFETEA-LU Environmental Review Process Final Guidance”

This guidance, available on the FHWA website, includes useful information for implementing the requirements in 23 USC 139. Answers to the following questions provide helpful guidance on the public involvement requirements addressed in 23 USC 139:

1. Question 34. SAFETEA-LU requires an “opportunity for involvement” for participating agencies and the public in defining the project purpose and need. How can this requirement be satisfied?
2. Question 37. SAFETEA-LU requires an “opportunity for involvement” by participating agencies and the public in defining the range of alternatives. How can this requirement be satisfied?
3. Question 47. Who is responsible for developing the coordination plan for public and agency participation?
4. Question 48. When should the participation plan be developed?
5. Question 49. What should be included in a coordination plan?
6. Question 51. Does each State DOT need to update its public involvement procedures that were developed pursuant to 23 CFR 771.111(h)?
7. Question 54. What deadlines have been established under SAFETEA-LU for the public and participating agencies to submit comments?
8. Question 55. Should the coordination plan provide the public and participating agencies with an opportunity for comment during the period between publication of a FEIS and the issuance of a ROD?
9. Question 57. How and to whom must the schedule be made available?

16.2.9 FHWA Public Involvement Techniques for Transportation Decision-Making

This publication, available on the FHWA website, provides guidance on designing and implementing a public involvement program. It also provides information on a wide range of public involvement techniques, grouped under the following four chapters:

- Chapter 1 “Informing People Through Outreach and Organization,”
- Chapter 2 “Involving People Face-To-Face Through Meetings,”
- Chapter 3 “Getting Feedback from Participants,” and
- Chapter 4 “Using Special Techniques to Enhance Participation.”

16.2.10 AASHTO Practitioner’s Handbook 05 Utilizing Community Advisory Committees for NEPA Studies

A Community Advisory Committee (CAC) is a group of stakeholders that meets regularly to discuss study-related issues or concerns during project development. CAC members serve as

liaisons between the community they represent and the project study team. This December 2006 Handbook outlines the role of a CAC in the NEPA decision-making process and provides recommendations for a successful CAC.

16.2.11 MDT Public Involvement Handbook

This *Handbook* provides detailed guidance on strategies and techniques for ensuring effective public involvement on proposed MDT projects. It includes discussion of responsibilities for addressing public involvement requirements and implementing various public involvement techniques.

16.2.12 Montana Business Process to Link Planning Studies and NEPA/MEPA Reviews

This document provides guidance on linking MDT transportation planning processes and NEPA/MEPA processes as provided for in SAFETEA-LU and 23 CFR 450, Appendix A “Linking the Transportation Planning and NEPA Processes.” The Business Process presents a strengthened Corridor Planning Process that feeds directly into the NEPA/MEPA processes, helps advance viable alternatives into NEPA/MEPA and provides the opportunity for partner involvement at all stages.

16.3 PROCEDURES

16.3.1 Public Involvement Plan

16.3.1.1 Content

Each proposed MDT project requires a public involvement plan. The plan describes the proposed public involvement measures to be implemented for the project. Examples of information that may be incorporated in a public involvement plan include:

- proposed public involvement methods to be applied,
- the proposed timing for implementation of the methods in relation to the project development schedule,
- the party or parties responsible for implementing the public involvement actions, and
- the intended objective(s) to be achieved through the public involvement actions.

The type and number of public involvement measure described in each plan is tailored to the specifics of the project (e.g., project scope, anticipated effects, potential for controversy, level of NEPA/MEPA environmental documentation). The level of detail in each plan corresponds to the nature and complexity of the public involvement methods to be implemented. To be effective, public involvement plans must remain flexible to respond to factors that may affect the original public involvement decisions (e.g., changes in proposed projects and their effects, differences between the anticipated and actual level of controversy, issues of concern and groups affected).

The results of public involvement conducted during the planning phase may be used in the NEPA/MEPA process, provided the planning process for the project complied with the provisions of Appendix A to 23 CFR 450 “Linking the Transportation Planning and NEPA Processes” and the *Montana Business Process to Link Planning Studies and NEPA/MEPA Reviews*. The public involvement plan should indicate if public involvement results from the planning phase will be used for the NEPA/MEPA process. If so, the public involvement plan should briefly explain how the planning process complied with the provisions of the aforementioned Federal and State directives for linking planning studies and the environmental compliance process.

16.3.1.2 Responsibilities

The lead unit (e.g., Road Design, Traffic Section), which is identified based on the type of project, is responsible for developing and documenting the public involvement plan, and for updating the plan, as necessary. The lead unit works with the District Administrator in formulating the plan. The District Administrator has overall responsibility and final authority for public involvement decisions. The Project Development Engineer (PDE) offers guidance, as needed, to ensure that the public involvement plan provides a level of public involvement that is appropriate for the scope of the project and the level of public concern.

16.3.1.3 Process

The initial step in development of a public involvement plan is to evaluate, during the PFR, the nature and extent of public involvement necessary to address the MDT public involvement goals and anticipated NEPA/MEPA requirements. In evaluating the level of public involvement needed, the lead unit confers with other PFR participants to consider, at a minimum, the following:

- potential for controversy;
- project alignment (i.e., new alignment);
- potential for social, economic and environmental impacts;
- level of environmental documentation;
- public involvement requirements associated with the anticipated environmental documentation level;
- populations in the project area that may require special accommodations for public involvement; and
- requirements of potential cooperating and participating agencies.

The lead unit documents in the PFR Report the results of the discussions during the PFR regarding the nature and extent of public involvement needed for the project.

If necessary after the PFR, the lead unit may conduct preliminary coordination with local officials and/or representatives of key groups and organizations in the project area to gather additional information for consideration in preparing the public involvement plan for the project.

The lead unit evaluates various public involvement methods to select those best suited to achieving the appropriate level of public involvement and addressing applicable requirements. The lead unit confers with the District Administrator on the public involvement methods to be used and then documents the results in a public involvement plan for the project. The lead unit provides copies of the public involvement plan to the District Administrator and other MDT units involved with the project.

16.3.2 Public Involvement Elements Associated with NEPA/MEPA Compliance

16.3.2.1 General

FHWA and Montana regulations for implementing NEPA and MEPA, respectively, include specific public involvement requirements that are linked to the level of environmental processing for a proposed action. In addition, 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making,” enacted as a part of the *Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), imposes additional public involvement requirements. These requirements are applicable to all projects requiring preparation of an environmental impact statement (EIS) and to projects involving preparation of an environmental assessment (EA) as determined by FHWA on a case-by-case basis.

The PDE in the Environmental Services Bureau (ESB) addresses the public involvement elements associated with NEPA/MEPA requirements as a part of the environmental documentation process for proposed projects. In developing the public involvement plan for a proposed project, the lead unit coordinates with the PDE to ensure the plan includes appropriate measures to address applicable requirements associated with the anticipated level of environmental processing. The following sections provide an overview of the key public involvement provisions associated with each environmental processing level. When any of the environmental processing levels involve issuance of public notices (e.g., for public hearings, availability of environmental documentation) the notices should be prepared in accordance with the MDT procedures for news releases, see [Section 16.3.3.1](#).

16.3.2.2 Categorical Exclusion (CE)

16.3.2.2.1 NEPA

Under FHWA regulations, projects that will be processed as a CE are subject to the general provision that recognizes early coordination. Early and ongoing coordination with the public and appropriate agencies aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis and related environmental requirements.

Proposed CE projects are also subject to the parts of the FHWA environmental regulations that describe the requirements for State public involvement/public hearing procedures. MDT is required to provide early and continuing opportunities during the project development process 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.

16.3.2.2.2 MEPA

The MDT implementing rules for MEPA do not include specific public involvement requirements for CE projects.

16.3.2.3 Environmental Assessment (EA)/Finding of No Significant Impact (FONSI)

16.3.2.3.1 NEPA

Projects processed with an EA/FONSI under the FHWA environmental regulations are subject to the two provisions discussed for CE projects in [Section 16.3.2.2.1](#). EA/FONSI projects are also subject to the following additional provisions for compliance with FHWA requirements:

1. Initiation. At the earliest appropriate time, the PDE, in consultation with FHWA, begins consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives:
 - determine which aspects of the proposed action have potential for social, economic or environmental impact;

- identify alternatives and measures that might mitigate adverse environmental impacts; and
- identify other environmental review and consultation requirements that should be performed concurrently with preparation of the EA.

This consultation is accomplished through an early coordination process or through a scoping process. The PDE summarizes the results of the public involvement and agency coordination and includes the summaries in the EA. See [Section 16.3.2.3.2](#) for other public involvement requirements that may need to be addressed pursuant to 23 USC 139.

2. Notification. After FHWA has approved an EA for public availability, the PDE sends notice of availability of the EA, briefly describing the action and its impacts, to affected units of Federal, Tribal, State and local governments. Copies of the EA are also sent to the Montana State Library and local libraries and the EA is posted electronically on MDT's website.
3. EA Public Hearings. Public hearings are not required for EA projects, but are held if requested by the public. If a public hearing is held for an EA project, the MDT Public Involvement Coordinator places a notice of the public hearing in local newspapers. The notice must announce the availability of the EA and where it may be obtained or reviewed.
4. No Public Hearing. If a public hearing is not held for an EA project, the Public Involvement Coordinator places a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of project development, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice must invite comments from all interested parties.
5. FONSI. After FHWA makes a FONSI for a project, the Public Involvement Coordinator sends a notice of availability of the FONSI to affected units of Federal, Tribal, State and local government. The FONSI is also made available from MDT and FHWA to the public upon request. Copies of the FONSI are sent to the Montana State Library and local libraries and the FONSI is posted electronically on MDT's website.

16.3.2.3.2 23 USC 139

For EA projects determined by FHWA to be subject to the provisions of 23 USC 139 "Efficient Environmental Reviews for Project Decision-Making," the PDE, in cooperation with FHWA:

- identifies and invites agencies to serve as participating agencies¹ in accomplishing the environmental analyses for the project;

¹ The requirements of 23 USC 139 regarding the designation of participating agencies do not alter FHWA's responsibility under the *CEQ Regulations* to consult with Federal agencies qualifying to be cooperating agencies. If a Federal agency qualifies as a cooperating agency, it should be invited to serve in that capacity as well as the participating agency capacity. A non-Federal agency or Native American Tribe that qualifies to serve as a cooperating agency may be invited to serve in that capacity or as a participating agency, at the discretion of the lead agencies.

- establishes a plan for coordinating public and agency participation and comment during the environmental review process;
- affords participating agencies and the public an opportunity for involvement in defining the project purpose and need;
- affords participating agencies and the public an opportunity for involvement in defining the range of alternatives; and
- determines, in collaboration with the participating agencies, the appropriate methodologies to be used and the level of detail required in the analysis of alternatives.

See the FHWA *SAFETEA-LU Environmental Review Process Final Guidance* for further details on each of the above requirements.

16.3.2.3.3 MEPA

The transportation rules for implementing MEPA include the following public involvement provisions for EA projects:

1. Level of Involvement. The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest may also vary.
2. Methods for Public Reviews. MDT is responsible for providing opportunities for public review consistent with the seriousness and complexity of the environmental issues and the level of public interest. The project Design Team (DT) identifies the appropriate methods for public review, which may include:
 - publishing a news release or legal notice to announce the availability of an EA, summarize its content and solicit public comment;
 - holding public meetings or hearings;
 - maintaining mailing lists of persons interested in a particular action or type of action and notifying them of the EA's availability; and/or
 - distributing copies of the EA for review and comment.
3. Limited Impact and/or Public Interest. For an action with limited environmental impact and little public interest, no further public review may be warranted. However, where an action is one that normally requires an EIS, but effects that otherwise might be deemed significant are mitigated in the project proposal or by controls imposed by MDT, public involvement must include the opportunity for public comment, a public meeting or hearing and adequate notice.
4. EA Public Hearing. Under the transportation rules for implementing MEPA, public hearings are not required for EA projects. Whenever a public hearing is held on an EA, the Public Involvement Coordinator issues a news release or legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the

hearing. A hearing involving an action for which an EA was prepared must be held after the EA has been circulated and prior to any final agency determinations concerning the proposed action.

In addition to the issuance of a news release or legal notice, the DT takes other steps to promote public awareness of the scheduled hearing (e.g., purchasing paid advertisements, sending postcards).

16.3.2.4 Environmental Impact Statement (EIS)/Record of Decision (ROD)

16.3.2.4.1 NEPA

Projects requiring preparation of an EIS under FHWA environmental regulations are subject to the provisions discussed in [16.3.2.2.1](#) for CE projects. EIS projects are also subject to the following additional provisions for compliance with FHWA environmental regulations:

1. Public Involvement/Public Hearing Procedures. In accordance with 23 CFR 771.111(h), MDT public involvement/public hearing procedures address the following aspects:
 - a. Public Hearing(s)/Hearing Opportunity(ies). MDT holds one or more public hearings or offers the opportunity for hearing(s) for any project involving preparation of an EIS.
 - b. Notification. The lead unit and Public Involvement Coordinator:
 - provide reasonable notice to the public of either a public hearing or the opportunity for a public hearing,
 - indicate in the notice the availability of explanatory information, and
 - ensure the notice provides the applicable information required to comply with public involvement requirements of other laws, executive orders and regulations.
 - c. Required Hearing Information. If a hearing is held, the DT addresses the following information at the public hearing, as appropriate:
 - project's purpose, need and consistency with the goals and objectives of any local urban planning;
 - project's alternatives and major design features;
 - social, economic, environmental and other impacts of the project;
 - relocation assistance program and the right-of-way acquisition process; and
 - MDT's procedures for receiving both oral and written statements from the public.

2. Notice of Intent. When the decision has been made by FHWA to prepare an EIS, FHWA and the PDE coordinate to prepare and issue a Notice of Intent for publication in the *Federal Register*. In accordance with 23 CFR 771.123(a), MDT is encouraged to announce the intent to prepare an EIS by appropriate means at the local level.
3. Scoping. After publication of the Notice of Intent, the lead unit and PDE, in cooperation with FHWA, begin a scoping process. The scoping process is used to identify the range of alternatives, impacts, significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7 “Scoping.”
4. Circulation of Draft EIS (DEIS). After approval by FHWA, the PDE circulates the DEIS for comment. The PDE transmits the DEIS to the following:
 - public officials, interest groups and members of the public known to have an interest in the proposed action or the DEIS;
 - Federal, Tribal, State and local governmental agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. The PDE provides copies directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and
 - State and Federal land management entities that may be significantly affected by the proposed action or any of the alternatives.
5. Public Hearing Notice. The Public Involvement Coordinator mentions the availability of the DEIS and requests public comments in any public hearing notice. The DT also mentions the availability of the DEIS and requests public comments at any public hearing presentation.
6. Transmittal of Final EIS (FEIS). After approval, the PDE transmits the FEIS to any persons, organizations or agencies that made substantive comments on the DEIS or requested a copy, no later than the time the document is filed with EPA for formal notice of availability. The Public Involvement Coordinator publishes a notice of availability in local newspapers and the PDE makes the FEIS available for public and agency review. Review locations can include the MDT website, the Montana State Library, MDT offices, local government offices, libraries and schools.

16.3.2.4.2 23 USC 139

See [Section 16.3.2.3.2](#) for additional public involvement requirements mandated by 23 USC 139 that must be addressed along with the public involvement requirements in the FHWA environmental regulations. The requirements described in [Section 16.3.2.3.2](#) apply to EA projects on a case-by-case basis and are applicable to all EIS projects for which the original Notice of Intent was/is published after August 10, 2005.

See the FHWA “SAFETEA-LU Environmental Review Process Final Guidance” for further details regarding the public involvement requirements in 23 USC 139.

16.3.2.4.3 MEPA

The following provisions apply for compliance with the public involvement requirements applicable to EIS projects, as defined in the transportation rules for implementing MEPA:

1. Scoping. Prior to the preparation of an EIS, the PDE initiates a process to determine the scope of the EIS. To identify the scope of an EIS, the PDE accomplishes the following actions:
 - invites the participation of affected Federal, State and local government agencies, Indian tribes, the applicant, if any, and interested persons or groups;
 - identifies the issues related to the proposed action that are likely to involve significant impacts and that will be analyzed in depth in the EIS;
 - identifies the issues that are not likely to involve significant impacts, thereby indicating that unless unanticipated effects are discovered during the preparation of the EIS, the discussion of these issues in the EIS will be limited to a brief presentation of the reasons they will not significantly affect the quality of the human environment;
 - identifies the issues that have been adequately addressed by prior environmental review, thereby indicating the discussion of these issues in the EIS will be limited to a summary and reference to their coverage elsewhere; and
 - identifies possible alternatives to be considered.
2. Distribution of DEIS. Following preparation of a DEIS, the PDE distributes copies to the Governor, Environmental Quality Council, appropriate State and Federal agencies and persons who have requested copies. MDT must allow 30 days for reply, provided that the period may be extended up to an additional 30 days at its discretion or upon application of any person for good cause. When preparing a joint EIS with a Federal agency or agencies, MDT may also extend this period in accordance with time periods specified in regulations that implement NEPA. However, no extension that is otherwise prohibited by law may be granted.
3. Public Hearing. MDT holds a public hearing whenever requested within 20 days of issuance of the DEIS by:
 - 10% or 25, whichever is less, of the persons who will be directly affected by the proposed action;
 - another agency that has jurisdiction over the action; or
 - an association having not less than 25 members who will be directly affected by the proposed action.

In determining whether a sufficient number of persons have requested a hearing as required by the above criteria, MDT must resolve instances of doubt in favor of holding a public hearing.

Public meetings may be held in lieu of formal hearings as a means of soliciting public comment on an EIS where no hearing is requested under the criteria described above. However, the PDE must provide adequate advance notice of the meeting and, other than the degree of formality surrounding the proceedings, the objectives of the meeting are essentially the same as those for a hearing.

4. Public Hearing Notice. Whenever a public hearing is held on an EIS, the PDE issues a news release or legal notice to newspapers of general circulation in the area to be affected by the proposed action prior to the hearing. The news release or legal notice must advise the public of the nature of testimony MDT wishes to receive at the hearing.

In addition to the issuance of a news release or legal notice, the PDE takes other steps as are reasonable and appropriate to promote the awareness by interested parties of a scheduled hearing.

5. Distribution of FEIS. Following preparation of an FEIS, the PDE distributes copies to the Governor, Environmental Quality Council, appropriate State and Federal agencies, persons who submitted comments on or received a copy of the DEIS and other members of the public upon request. The PDE ensures all written comments received on an EIS are available to the public upon request.
6. Record of Decision. At the time of MDT's decision concerning a proposed action for which an EIS was prepared, the PDE prepares a concise public record of decision. The record, which may be integrated into any other documentation MDT prepares regarding the decision, is a public notice of what the decision is, the reasons for the decision and any special conditions surrounding the decision or its implementation.

16.3.3 Public Involvement Methods

A broad range of methods are available for accomplishing public involvement objectives. This section provides guidance on several of the more commonly used methods.

16.3.3.1 News Release

News releases can be an important tool for promoting public interest and involvement in development of proposed MDT projects. An effective news release can get the public's attention, provide useful information (e.g., on the nature of the project and why it is being proposed) and set a tone that encourages open communication about the project. For projects involving preparation of an EIS, when FHWA issues a Notice of Intent, MDT can use a news release to notify the public at the local level.

To implement this option, the lead unit coordinates as necessary with other MDT units (e.g., ESB) to prepare a draft news release. The lead unit submits the draft news release to the District Administrator and the Public Information Officer for review and issuance.

See the *MDT Public Involvement Handbook* for a sample news release and guidance on writing news releases that provide appropriate information and tone that encourages communication with the public.

16.3.3.2 Personal Contacts with Landowners

Personal contact is one key to a successful public involvement program. Contacts with each potentially affected landowner early in project development, before any field work is done, can be used to explain the purpose and need for the project, the project development process and the right-of-entry requirements and request. The contacts can be used to provide the landowners informational brochures, discuss how the project might affect the landowner's property and determine if plans for use of the property might affect the project.

This option is implemented by Right-of-Way agents. ESB personnel may be asked to assist with landowner communications.

16.3.3.3 Personal Contacts with Officials, Groups and Individuals

Personal contacts with interested and affected officials, groups and individuals, including both those that support and those that oppose the proposed project, can be very effective in facilitating open exchange of information. These contacts can promote a better understanding of the project and assist in identifying issues, concerns, options and constraints. As a rule, less formal meetings are more productive than formal ones. The most important thing is to share information and elicit ideas and comments.

This option is implemented by the District Administrator.

See the *MDT Public Involvement Handbook* for guidance on choosing appropriate settings for the contacts, recommended preparations before the contacts and suggested practices for use in conducting the contacts.

16.3.3.4 Contacts with Potentially Interested and/or Affected Agencies, Officials and Organizations for Environmental Impact Evaluations

These contacts are initiated early in project development and may be accomplished in person or through electronic or written communications. They are intended to elicit information necessary for identifying and assessing project-related environmental impacts. They are an essential component of the process for gathering and evaluating information on environmental resources and issues associated with proposed projects to ensure they receive appropriate consideration in project decision-making.

This option is implemented by the PDE.

16.3.3.5 Scoping

As described in Section 1501.7 of the *CEQ Regulations*, scoping is an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Scoping is required for projects involving preparation of an EIS and also may be applied on EA projects. Scoping differs from other forms of public involvement and coordination in terms of its specific objective to define and refine the focus of the environmental analyses for a proposed project early in the process. The *CEQ Regulations* address the following points regarding scoping for an EIS:

1. Required Actions. As part of the scoping process, MDT must accomplish the following actions:
 - Invite the participation of affected Federal, State and local agencies, any affected Indian tribe, the proponent of the action and other interested persons, including those who might not be in accord with the action on environmental grounds.
 - Determine the scope and the significant issues to be analyzed in depth in the EIS.
 - Identify and eliminate from the detailed study the issues that are not significant or have been covered by prior environmental review.
 - Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
 - Indicate any public EAs and other EISs that are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.
 - Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the EIS.
 - Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decision-making schedule.
2. Optional Actions. As part of the scoping process MDT may:
 - set page limits on environmental documents;
 - set time limits; and
 - hold an early scoping meeting or meetings that may be integrated with any other early planning meeting the agency has. This scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.
3. Revision of Scoping Determinations. MDT must revise the scoping determinations if substantial changes are made later in the proposed action, or if significant new circumstances or information arise that bear on the proposal or its impacts.

Also consider the principles reflected in the above provisions when applying scoping for EA projects.

See [Chapter 8 "Project Scoping and Early Coordination"](#) and the *MDT Public Involvement Handbook* for further guidance on scoping and scoping meetings.

16.3.3.6 Public Information Meetings

The purpose of public information meetings is to share information and seek public input on a proposed project. Public information meetings provide an opportunity to assemble a large and potentially diverse group at one time in an informal setting to discuss the status of the project, the decisions made to date, the options yet to be decided and the criteria considered critical for the remaining decisions. These types of meetings may be used when a formal hearing is not required, but a meeting to exchange information with the public would be helpful. They also may be used in conjunction with formal hearings for separate, informal exchange of information apart from the formal hearing.

To implement this option, the District Administrator and lead unit coordinate with other affected MDT units for their input and then initiate arrangements for the meeting. The District Administrator and lead unit work with the Public Information Officer to determine a suitable and effective format. In determining meeting location and format, the District Administrator, lead unit and Public Information Officer ensure appropriate consideration is given to accommodate persons with special needs (e.g., persons with a disability, persons with limited English proficiency). ESB personnel may be asked to assist with these meetings. Generally, PDEs are expected, or strongly encouraged, to attend these meetings.

Public meetings are often conducted in the “open-forum” format, in which project exhibits and information are available for viewing and knowledgeable staff (e.g., from Right-of-Way, Road Design, Environmental Services, Construction) is present to answer questions.

See the *MDT Public Involvement Handbook* for guidance on meeting notices, meeting formats, presentations, the recording of comments and evaluation of the effectiveness of the meeting.

16.3.3.7 Public Hearings

A public hearing is a more formal event than a public information meeting. A key difference is that a public hearing gathers community comments and positions from interested parties for the public record. Public hearings are required for certain types of projects and may be held on other types of projects if FHWA and/or MDT determine they would be beneficial for gathering and formally documenting public input (e.g., for projects anticipated to involve strong opposition).

Hearings are conducted in a structured “traditional” format and may be accompanied by an “open-forum” and/or “open-house” public meeting. The hearing portion of the event generally has one or more speakers addressing the audience and affording members of the audience an opportunity to provide formal comments, which are transcribed and addressed in writing in the environmental document. Formal comments for the official record are also collected through various other means. Examples include providing a website for submittal of on-line comments, providing sheets for written comments at the hearing, providing postcards for mailing in comments and providing stations at the hearing for recording verbal comments by a court reporter or electronic recording device.

The key for public hearings is to ensure that appropriate notice of the hearing is provided and that public comments are accurately recorded. FHWA regulations require submission of a transcript for each public hearing and a certification that a required hearing or hearing

opportunity was offered. The regulations also require, with the transcript, copies of all written statements from the public, both submitted at the hearing or during an announced period after the hearing.

The lead unit coordinates with the District Administrator, other affected MDT Sections and the Public Information Officer to initiate arrangements for a public hearing. The District Administrator assists in scheduling and finding a site to ensure the schedule and location are appropriate. The Public Information Officer assists in preparing public notices for the hearing. The District Administrator, lead unit and Public Information Officer ensure appropriate consideration is given to accommodate persons with special needs. The PDE assists in coordinating the meeting and its content to ensure it complies with MEPA and NEPA.

See the *MDT Public Involvement Handbook* for guidance on hearing notices, formats, presentations, the recording of comments and evaluation of the effectiveness of the hearing.

16.3.3.8 News Accounts of Public Meetings, Hearings and/or Project Decisions

More people are likely to read about the results of a meeting or hearing than usually attend those events. A news account that covers the important details of the proposed project (e.g., purpose and need, alternatives) and the meeting or hearing can be very helpful in ensuring the public has the opportunity to be informed and become involved.

To implement this option, the lead unit and District Administrator request the assistance of the Public Information Officer in seeking news coverage. If a press release is prepared, the PDE assists with its preparation and ensures it is consistent with information provided in the MEPA/NEPA documentation.

See the *MDT Public Involvement Handbook* for guidance on the effectiveness of different news media for these accounts and recommendations regarding formats and information needs for the news accounts.

16.3.3.9 Advisory Committees

An advisory committee may be formed as another means of facilitating information exchange regarding a proposed project. Advisory committees are not decision-making bodies, but can provide an important two-way communication link between MDT and the public. Meetings between MDT representatives and the advisory committee are an opportunity for detailed discussion of issues and concerns in a small group setting. The advisory committee members, in turn, communicate the information from the meetings to various segments of the affected community. This promotes better public understanding of difficult issues. The committee provides a focal point for community discussion of the issues.

To implement this option, the lead unit submits a request to the District Administrator to establish an advisory committee for a project. Typically, this request is submitted in the early stages of project development. In response to the request, the District Administrator invites local citizen volunteers representing constituent groups in the affected community to serve on an advisory committee for the project. On projects with unique problems or circumstances, the District Administrator may also invite local representatives of State and Federal agencies to

participate. The District Administrator ensures membership on the advisory committee includes a balanced group that will represent all sides of anticipated issues. The District Administrator outlines the committee's role so all participants understand their function.

See AASHTO Practitioner's Handbook 05 *Utilizing Community Advisory Committees for NEPA Studies* for additional guidance on the use of advisory committees.

16.3.3.10 Interdisciplinary Teams

An Interdisciplinary Team can be useful in identifying, analyzing and addressing issues and impacts associated with proposed projects. The Interdisciplinary Team is composed of cooperating agency representatives, individuals with needed expertise and representatives of groups and organizations with special expertise (e.g., the Audubon Society). Bringing together cooperating agency representatives, experts and knowledgeable group representatives affords the opportunity for these parties to gain a sound understanding of a project's purpose and need and contribute information and ideas for consideration in project development.

For projects subject to the requirements of 23 USC 139 "Efficient Environmental Reviews for Project Decision-Making," the coordination with participating agencies accomplishes similar objectives to those addressed through establishment of an Interdisciplinary Team.

To implement this option, either the lead unit initiates a request to ESB to establish an Interdisciplinary Team, or ESB determines an Interdisciplinary Team would be beneficial. ESB consults with FHWA and the District in establishing an Interdisciplinary Team for a proposed project.

16.3.3.11 Personal Contacts for Final Design

After approval of final design for a project, Right-of-Way agents contact landowners in writing and arrange for a meeting to discuss the plans, schedule and construction features of the project.

The Right-of-Way agents make these contacts as they begin the appraisal process and obtain assistance from District staff, as necessary.

16.3.4 Public Involvement Plans for Different Levels of Project Scope

The nature and extent of information included in a public involvement plan is keyed to the project specifics. In developing public involvement plans for actual projects, the lead unit must carefully consider the factors involved and configure the plan accordingly. See the *MDT Public Involvement Handbook* for guidance and examples of public information plans for different levels of project scope.

16.3.5 Public Involvement Documentation

Documentation is a key component of the public involvement process for demonstrating full compliance with all applicable requirements. Retain information on all public involvement

activities for MDT projects as a part of the administrative record. Examples of the type of documentation that should be retained include:

- copies of notices or advertisements for the activity;
- participant sign-in sheets;
- copies of handouts;
- documentation of displays or exhibits used;
- documentation of discussions, comments, questions and oral or written responses, including primary issues identified;
- public hearing transcripts;
- all correspondence and associated acknowledgements or responses; and
- information on the purpose of the activity.

As discussed in [Section 16.3.3.7](#), FHWA environmental regulations require the PDE to submit to FHWA a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The PDE also submits with the transcript, copies of all written statements from the public, both submitted at the hearing or during an announced period after the hearing.

For projects involving an EA, the PDE submits, with the recommendation for a FONSI, the public hearing transcript, where applicable, and copies of any comments received and responses thereto.

For projects involving preparation of an EIS, the final EIS must discuss substantive comments received on the draft EIS and responses thereto, and must summarize public involvement.

16.3.6 Public Involvement Associated with MS4 Permit Compliance

As of the date of publication of this Chapter, seven municipalities in Montana are subject to Municipal Separate Storm Sewer System (MS4) permit requirements under the Montana Pollutant Discharge Elimination System (MPDES). The affected areas include the following:

- Billings Urbanized Area,
- Great Falls Urbanized Area,
- Missoula Urbanized Area,
- Bozeman Area,
- Butte Area,
- Helena Area, and
- Kalispell Area

Within these areas, storm sewer systems associated with MDT highways are included in the facilities subject to the MS4 permit requirements. The Montana Department of Environmental Quality (DEQ) has issued a "General Permit for Storm Water Discharge Associated with Small Municipal Separate Storm Sewer System (MS4)" for use in these areas. The MS4 General Permit stipulates six minimum control measures that a permittee must implement as part of a Storm Water Management Program (SWMP). Two of the minimum control measures are for public involvement activities. One requires public education and outreach on storm water impacts and the other requires public involvement/participation (i.e., in development and submittal of the permit application for coverage under the MS4 General Permit and development and implementation of the SWMP).

As allowed by the MS4 General Permit, to the fullest extent practical, MDT coordinates with other governmental entities in the areas subject to the MS4 requirements in developing and implementing shared SWMPs. For these SWMPs, each permittee is responsible for those activities that are within their area of legal authority and jurisdiction. MDT will comply with the following provision to satisfy the MS4 General Permit requirements for storm water facilities under MDT jurisdiction within the MS4 areas.

16.3.6.1 Public Education and Outreach

MDT will maintain documentation on the development of a storm water public education and outreach program. The documentation will address the overall public education program and the individual Best Management Practices (BMP), measurable goals and person(s)/position(s) responsible for the program. To comply with the permit requirements for MDT facilities in MS4 areas, the documentation will include the following information, at a minimum:

- how MDT plans to inform individuals and households of the steps they can take to reduce storm water pollution
- how MDT plans to inform individuals and groups on how to become involved in the SWMP (e.g., through activities such as local stream and beach restoration activities);
- the target audiences for the education program that are likely to have significant storm water impacts (including commercial, industrial and institutional entities) and why those target audiences were selected;
- target pollution sources the public education program is intended to address;
- the outreach strategy and mechanisms (e.g., printed brochures, newspapers, media, workshops) to be used to reach the target audiences and an estimate of the number of people expected to be reached through the program over the MS4 General Permit term;
- the person(s)/position(s) responsible for overall management and implementation of the storm water public education and outreach program and the person(s)/position(s) responsible for each of the BMPs identified for the program, if different than the person(s)/position(s) with overall management and implementation responsibility; and
- how success of the public education and outreach program will be evaluated, including how the measurable goals for each BMP were determined.

Examples of BMPs for the storm water public education and outreach program include:

- public education programs for development and distribution of information on storm water and pollution prevention (e.g., through speaking engagements, booths at State and county fairs);
- presentation of storm water information at public meetings for proposed MDT projects;
- maintaining and updating an MDT Storm Water Program website;
- making available guidance materials and manuals on storm water issues; and

- providing training on storm water and pollution prevention.

16.3.6.2 Public Involvement/Participation

As required by the MS4 General Permit, MDT, at a minimum, will comply with State, Tribal and local public notice requirements when implementing a public involvement/participation program. In accordance with the MS4 General Permit, MDT will maintain documentation on the development of its storm water public involvement/participation program. The documentation will address the overall public involvement/participation program and the individual BMPs, measurable goals and person(s)/position(s) responsible for the program. To comply with the permit requirements for MDT facilities in MS4 areas, the documentation will include the following information, at a minimum:

- how the public was involved in the development and submittal of the permit application and SWMP;
- plans for actively involving the public in the development and implementation of the SWMP;
- target audiences for the public involvement program, including description of the types of ethnic and economic groups engaged (e.g., potentially affected stakeholder groups, including commercial and industrial businesses, trade associations, environmental groups, homeowner associations and educational organizations);
- types of public involvement activities included in the program (e.g., citizen representatives on a storm water management panel, public hearings, working with citizen volunteers willing to educate others about the program, volunteer monitoring or stream/beach cleanup activities);
- the person(s)/position(s) responsible for overall management and implementation of the storm water public involvement/participation program and the person(s)/position(s) responsible for each of the BMPs identified for the program, if different than the person(s)/position(s) with overall management and implementation responsibility; and
- how success of the public involvement/participation program will be evaluated, including how the measurable goals for each BMP were determined.

Examples of BMPs for the storm water public involvement/participation program include:

- internal MDT meetings on the MS4 program and related issues;
- stakeholder meetings including MDT, co-permittees and/or others for developing and implementing the SWMP;
- addressing storm water and pollution prevention in public involvement activities conducted as part of the project planning and project development processes; and
- feedback solicitation and action, including use of feedback questionnaires for obtaining evaluations of the MDT MS4 program.