

# Chapter 8 Public Hearings

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## EXHIBITS

Exhibits applicable to this chapter can be found at:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>

[\*Exhibit 8-A: Sample Notice of Public Hearing\*](#)

[\*Exhibit 8-B: Sample Notice of Opportunity for Public Hearing\*](#)

## CHAPTER 8 PUBLIC HEARINGS

### 8.1 INTRODUCTION

Community involvement is essential to developing local transportation projects that fully consider social, economic, environmental and other impacts and minimize the effects on the community and environment. All affected interests must be aware of the project's impact. Community involvement must be an integral part of the overall project development process.

Generally, the most productive interaction with the public and other agencies takes place through informal meetings, conferences, and direct correspondence rather than through formal public hearings. The number and extent of these informal meetings will vary greatly depending on the proposal, impacts, location, etc. A basic strategy for securing community involvement should be determined early in the project development process. Who to contact, size of groups, area of interest, details of presentation, how to contact, etc. must be decided on a project by project basis. Individuals, businesses, neighborhood associations and other officials and institutions may be affected by the project and interested in participating in the development process.

As a culmination of the project and environmental information gathering and development, a public hearing is required for certain federal-aid projects (discussed later). This public hearing process may be satisfied through either a formal or an open forum public hearing.

#### **Formal Public Hearing**

The formal public hearing process provides a structured forum in which to test the conclusions reached during the preliminary stages of project development, specifically needed for the project, project alternatives and major design features, social, economic, environmental and other impacts, and consistency with local, regional and state planning goals and objectives.

The formal public hearing is conducted as a structured meeting between the project authorities and the public audience. A presiding officer has the project team of experts explain the project to the audience and then the audience, one at a time, responds with comments and questions. All these activities are formally recorded and entered into a hearing record. The record is held open after the formal meeting for 10 to 30 days for additional written comments.

The formal hearing or opportunity for a hearing occurs during circulation of the draft environmental document prior to making any commitment to a specific design alternative or location.

#### **Open Forum Public Hearing**

The open forum hearing is conducted in an open meeting format similar to a map showing or project briefing. Individuals may arrive at various times, be given a brief orientation and then directed to project team members for one-on-one explanations and discussions about their specific concerns and questions. The opportunity is provided to have their comments and questions recorded verbally or in writing for the hearing record. The less formal atmosphere of this type hearing can contribute to a better understanding of the project features, provide for a more direct response to specific individual questions and concerns and move toward the solution of problems. The open forum hearing also occurs during circulation of the draft

environmental document prior to making any commitment to a specific design alternative or location. The public notices of the hearing and a hearing record are required as in the formal hearing process.

[Caltrans Project Development Procedures Manual \(PDPM\) Chapter 11: Public Hearing](#) outlines the general concept and features for the two types of hearings. A review of these sections may assist the local agency in deciding which type is most appropriate for its project.

## 8.2 NECESSITY FOR A PUBLIC HEARING

### Federal Regulations

The agency shall hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency (40 CFR 1506.6(c)). The criteria shall include whether there is:

- Substantial environmental controversy concerning the proposed action,
- Substantial interest in holding the hearing, or
- A request for a hearing by another agency with jurisdiction over the action, supported by reasons why a hearing will be helpful.

### Categorical Exclusion

Projects processed with a Categorical Exclusion (CE) are actions which will not have any significant social, economic, or environmental effects, and therefore, do not require a public hearing.

### Environmental Assessment

Projects processed with an Environmental Assessment (EA), must involve environmental agencies, applicants and the public to the extent practicable (40 CFR 1501.4(b)). 23 CFR 771.111(h) requires that one or more public hearings or opportunities for hearings be provided for any federal-aid project which:

- Requires significant amounts of right of way
- Substantially changes the layout or functions of connecting roadways or the facility being improved
- Has a substantial adverse impact on abutting property
- Otherwise has a significant social, economic, environmental or other effect, or
- For those projects that Caltrans (under National Environmental Policy Act (NEPA) Delegation) determines a public hearing is in the public interest

### Environmental Impact Statement

A public hearing is required during the circulation period of all Draft Environmental Impact Statements (EIS) when it is determined to be in the public interest. [PDPM Chapter 11: Public Hearing](#) sets forth Department policy and procedures regarding public hearings. The manual

provides explicit information and instructions regarding when public hearings are necessary; how to conduct a public hearing; Title VI compliance documentation, open forum versus formal hearing, coordination with DED availability; public notices and publicity; map showings; hearing room arrangements; presiding officers, briefings; presentations; handouts; exhibits and interpreters, and hearings for local projects. Refer to the guidelines and samples for public hearing notices, PDPM Appendix HH.

### **Exception to the Public Hearing Process**

Compliance with the public hearing process is not required for emergency opening work on disaster assistance projects (see [Local Assistance Program Guidelines \(LAPG\) Chapter 11: Emergency Relief](#)).

## **8.3 OPPORTUNITY FOR HEARING AND WITHDRAWAL OF REQUEST FOR HEARING**

If there is reason to believe that the project is noncontroversial and that it is unlikely that a hearing would be requested, either by the public or any agency, a Notice of Opportunity for a Public Hearing may be utilized rather than directly scheduling a hearing.

When only a small number of requests for a hearing are received, it is permissible to meet with the parties at a convenient time and location, explain the project and answer any questions. These meetings shall be very carefully documented and made a part of the project record. If satisfied, the requesting party may withdraw the request for a hearing in writing. If the requesting party does not wish to withdraw the request, a hearing shall be held.

## **8.4 PUBLIC NOTIFICATION**

Public notices are published as a means to inform the public of various proposals and to invite public participation. Methods of public notification include:

- Paid public notice in a local newspaper
- Supplemental news releases and special paid notices
- Flyers or bulk rate circulars distributed to residents
- Notices on bulletin boards in public places such as city halls, libraries, supermarkets
- Television and radio
- Distribution of notices through schools and service clubs
- Indication in the draft environmental document that a hearing will be held or a notice of opportunity for a hearing will be published.

40 CFR 1506.6(b) requires that a public notice of NEPA related hearings, public meetings, and the availability of environmental documents be provided to inform those persons and agencies who may be interested or affected. This includes groups, agencies or individuals who:

- Have requested notification, or
- By nature of their function, interest, or responsibility may be interested in or affected by the proposal

In all cases where non-English speaking people are affected by the proposal, the local agency determines if the language barrier is of such magnitude as to warrant special publicity in the language of those affected. Particular effort is to be made to seek out and invite minority leaders and representatives of low mobility groups. In lieu of sending the representatives of low mobility groups the notice, a letter containing the pertinent data can be sent.

In the case of an action with effects primarily of local concern, notification may include:

- Notice to state- and area-wide clearinghouses
- Notice to Indian tribes when effects occur on reservations
- Publication in local newspapers (in papers of general circulation rather than legal papers)
- Notice through other local media
- Notice to potentially interested community organizations including small business associations
- Publication in newsletters that may be expected to reach potentially interested persons
- Direct mailing to owners and occupants of nearby of affected property
- Posting of notice on and off site in the area where the action is located

### **Content of the Notice**

Both the Notice of Public Hearing and the Notice of Opportunity for Public Hearing shall include:

- Sufficient detail of the surrounding area to enable the reader to readily identify the proposal location
- An appropriate schematic map depicting the proposal limits. Alternative design features are to be either displayed by schematic inserts or described in the notice. Indicate if any alternatives would be located in wetlands.
- A statement to the effect that project maps, drawings, the environmental assessment or draft environmental impact statement, and other pertinent information received and/or developed by the local agency will be available for inspection and copying at the local agency's office or other convenient location in the vicinity of the proposal. In addition to the required information, any other data that will make the notice more informative should be included.
- A specific note that an open forum format will be used when this is the case. To ensure widespread and comprehensive project notification, the local agency shall establish and maintain a list upon which any federal agency, local official, public advisory group or agency, civic association, community group, or individual may enroll to receive notices of proposals in the area specified.

## Notice of Public Hearing

The Notice shall be published at least twice in a newspaper having a general circulation in the vicinity of the proposal and in any newspaper having a substantial circulation in the area concerned such as foreign language and community newspapers. The first Notice shall be published at least 30 days prior to the scheduled hearing. The second Notice should be published approximately one week before the hearing. The timing of additional publication is optional.

If a draft EIS is to be considered at a public hearing the agency shall make the statement available to the public at least 15 days in advance of the hearing (unless the purpose of the hearing is to provide information for the draft EIS (40 CFR 1506.6(c)(2)).

In addition to the items noted in the above Content of the Notice, each notice of public hearing shall specify:

- The date, time, and place of the hearing
- That tentative schedules for right of way and construction will be discussed
- That relocation assistance programs will be discussed
- That written statements and exhibits may be submitted up to a specified date at least 10 days after the hearing with the procedure for submissions

On projects of particular local interest or great complexity, the local agency may wish to consider the use of bulk-rate type circulars in addition to the published notices.

The local agency shall furnish the District Local Assistance Engineer (DLAE) with a clipping or legible copy (identify newspaper and date published) of the notice of public hearing at the time of first publication. Copies of all notices shall be incorporated into the hearing record.

- A sample public hearing notice is shown in [Exhibit 8-A: Sample Notice of Public Hearing](#).

## Notice of Opportunity for Public Hearing

The notice of opportunity for public hearing shall explain the procedure and specify the deadline for requesting a public hearing. The deadline for requesting a public hearing shall not be less than 21 days after the date of publication of the first Notice, or less than 14 days after the date of publication of the second notice.

The local agency shall furnish the DLAE with a clipping or legible copy (identify newspaper and date published) of the Notice of Opportunity for Public Hearing at the time of first publication.

A sample notice of opportunity is shown in [Exhibit 8-B: Sample Notice of Opportunity for Public Hearing](#)

## 8.5 JOINT PUBLIC HEARINGS

The local agency shall cooperate with State and other local agencies to the fullest extent possible to reduce duplication between NEPA, State and local requirements unless the agencies are specifically barred from doing so by some other law (40 CFR 1506.2). This procedure provides for concurrent compliance with the public review requirements, including joint public hearings

of both NEPA and CEQA. If a joint NEPA and CEQA environmental document is being prepared for a local agency project, and it has been determined that the criteria for deciding whether to hold a hearing has been met (40 CFR 1506.6(c)), a combined public hearing should be considered.

## 8.6 SCHEDULING

Federal regulation 40 CFR 1502.6(c)(2) states that if a Draft EIS is to be considered at a public hearing, the agency shall make the Draft EIS available to the public at least 15 days in advance (unless the purpose of the hearings is to provide information for preparing the Draft EIS).

Formal or open forum public hearings are held after the EA or Draft EIS has been approved for circulation by the Caltrans District Director (DD) and prior to commitment to any of the alternatives to be presented at the hearing.

## 8.7 HEARING PROCEDURES

Public hearings are held at a place and time convenient for persons affected by the proposal. Whether a hearing is conducted by representatives of the local agency or of a cooperating agency, the local agency arranges to have suitable personnel available to respond to questions which may arise. The local agency is responsible for successful completion of all hearing requirements.

A presiding officer shall be identified for the hearing. If the hearing covers controversial issues, the agency should consider selecting a neutral person, who has no interest in the project, to act as presiding officer.

At each public hearing, it shall be announced that:

- The hearing is being held to present studies to date on the location and/or design features of the proposal, and to provide a forum for public discussion of the major features, including social, economic and environmental effects of the proposal.
- The hearing is being held prior to making any commitment to the various alternatives being presented at the hearings that no studies or plans will be finalized until the complete public record has been analyzed including data gathered at the public hearing and received in response to the draft environmental document.
- The final deadline for submitting written statements and exhibits will be no later than 10 days after the hearing or for more complex or controversial proposals, a longer and clearly specified period. Written material should be submitted to the local agency at the address given in the handout.
- Subsequent to the hearing and prior to requesting approval, all data gathered at the hearing or submitted for the record will be available for inspection and copying at the local agency's office or other location.

The items to be covered in the presentation and/or hearing handouts are:

- A discussion of the local, State and federal roles for developing the proposal.
- A summary of coordination and interaction to date.
- The major features of the proposal and alternatives thereto.
- The location of any wetlands crossed by a project shall be identified.
- A discussion on the feasibility of providing a means of public access to any navigable river over which a new bridge is to be constructed.
- A discussion on the requirements for California Transportation Commission approval of any proposed new connections to freeways, where applicable.
- A discussion on tentative right of way requirements, the schedule of acquisition, the estimated number of families, business and other concerns to be relocated, housing availability, and the relocation assistance program.
- A discussion on the tentative time schedule for construction noting any significant items that may affect the schedule.
- A discussion of any other items that may be informative because of the particular conditions of the proposal.

## **8.8 RECORD OF PUBLIC HEARING**

Whenever a formal or open forum public hearing is held, a Record of Public Hearing is prepared to provide documentation of the proceeding. The Record of Public Hearing includes a title page, table of contents, resume of the hearing, index of speakers, a verbatim transcript, reproductions of displays, documents submitted for the record, reproductions of publicity items (including public hearing notices) and a list of invitations. The open forum hearing record shall also include a synopsis of the comments, concerns and questions discussed with the public but not entered into the formal verbatim transcript.

Copies of the Record of Public Hearing shall be forwarded to the DLAE. Additional copies may be requested by the DLAE. Requests for additional copies normally are made at the time of the hearing.

## **8.9 REHEARING**

The findings and conclusions of the public hearing are valid only as long as the conditions surrounding the original hearing remain constant.

Federal regulations (40 CFR 1502.9 (c)) require that the local agency prepares supplements to either draft or final environmental impact statement if:

- The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (e.g., substantial unanticipated development in the area affected by the proposal)



A new public hearing or opportunity for a public hearing is required under either of the above scenarios. The local agency is responsible for reassessing changes in project location and design features and changes in the surrounding area and shall prepare, circulate, and file a supplement to an environmental impact statement in the same fashion (exclusive of scoping) as a draft and final statement, and schedule rehearing as necessary.

### **8.10 LOCATION AND DESIGN APPROVAL**

Caltrans District Director's approval of the final environmental document constitutes location and design approval.