



## INDIANA DEPARTMENT OF TRANSPORTATION

### **Memorandum**

**May 2020**

**TO: Federal Highway Administration Indiana Division**

**FROM: Indiana Department of Transportation – Office of Public Involvement / Division of Communications**

**RE: Request to Supplement FHWA approved Public Involvement Procedures to address Virtual Public Involvement.**

Following discussion and consultation with the Federal Highway Administration (FHWA) (Indiana), INDOT's Office of Public Involvement would like to request FHWA concurrence regarding interim virtual public involvement guidance effective Tuesday, May 26, 2020. This guidance will be available for public review and comment as part of the update to INDOT's Public Involvement Procedures (PIP). INDOT will initiate a minimum 45-day public comment and review period this year (2020). Following the public comment period, the PIP will undergo additional review, responses to public comments will be issued and revisions made to the document prior to formal approval.

The purpose of this guidance is to encourage the use virtual public involvement methods to broaden public participation and promote safe and prudent practices, particularly during emergencies, in a manner that meets all federal and state public involvement requirements. Draft Interim public involvement guidance was issued on 3/26/20. The interim guidance below will be added to INDOT's Public Involvement Procedures (last approved August 2012). Projects receiving federal-aid are subject to public involvement requirements.

**Decentralization of Public Involvement:** The transition to a decentralized public involvement process continues as project management is responsible for public involvement for their respective projects. The implementation timeline for PI decentralization is January 1, 2020 through June 30, 2020.

Decentralization of Public Involvement	Responsibilities
Project Management	Public involvement activities including public meetings/hearings, advertising the hearings opportunity, documenting all activities undertaken during formal (required) public involvement
Consultant Services	Certification of public involvement, ensuring public involvement activities were conducted in accordance to federal regulations, sign off on NEPA documentation indicating completion of public involvement
Office of Public Involvement	Develop/facilitate PI training sessions, develop resource and guidance materials, coordinate and deliver VPI innovation, complete public involvement procedures update, coordinate joint approval of PIP

**For INDOT projects**

Please continue to work with your PM to coordinate website posting for project documents. The documents that should be part of any submission include your legal/public notice, the released for public involvement NEPA document and either preliminary design sheets OR project map(s) to illustrate the proposed improvement.

An emergency situation would be defined as the Governor and/or President declares a health or other emergency and/or a local government jurisdiction determines that an in-person public hearing and/or in-person inspection of documents should be limited out of concerns for public health and/or safety. As federal, state and local municipalities issue guidance related to any current emergency situations, physical viewing locations may change from normal operations. When physical locations change in availability for use as project document repositories (i.e. public libraries, municipal offices, community centers), the currently available locations should be listed in public notices. The notice must also list any restrictions, limitations and/or any modified procedure that would apply. INDOT will continue to monitor these situations and related guidance at both the national and local levels. Project teams should closely monitor local jurisdiction guidance for their respective projects to determine the status of emergency restrictions.

Please remember to include a statement in your notice that offers the public the opportunity to request project information be mailed to them upon request. Offer the public the opportunity to request a public hearing in your notice. It may be that certain emergency situations may restrict how a public hearing will be held, however opportunities to interact with the public virtually may assist in reaching out to those that may not be able to attend in person as a result of the emergency conditions..

**DOCUMENT POSTING FOR INDOT WEBSITE**

For project teams, when you submit project documents for website posting:

- Allow 7 days for the INDOT E-Communications Web Administrator (Cole Thompson) [CoThompson@indot.in.gov](mailto:CoThompson@indot.in.gov) to create your project page and post your content

- Please account for this time when scheduling your notices for newspaper publishing
- Remember your notice must be published two times (two separate publishing dates) within a 15-day period
- The public must be given 15 days in which to submit comments and/or hearing requests
- Your website content must be posted prior to the date of the 1<sup>st</sup> legal notice publishing

Submit your documents in the following manner:

- Include the project name, limits/termini, city/town, county and DES# in your email
- Make sure the PM is cc'd in your email
- Submit copy of legal/public notice, released for PI version of NEPA document, preliminary plans and/or project maps showing proposed improvement

### **ADA and LEP**

Continue to include your Americans With Disabilities Act (ADA) statements in your notice. Project teams may list the consultant or PM as the ADA contact in their notice. If the PM or consultant are listed and you do receive an ADA related request, please forward a copy of the request to the Office of Public Involvement for tracking and reporting purposes.

Limited English Proficiency (LEP) statements should also be included in your notices (when applicable). For project involving impacts to EJ populations, LEP support service statements must be part of your notice. Project teams may list the consultant or PM as the LEP contact in their notice. If the PM or consultant are listed and you do receive an LEP related request, please forward a copy of the request to the OPI for tracking and reporting purposes.

### **For LPA projects**

Project teams should work with the LPA to determine project document viewing protocols. It may be some municipalities will have the ability to offer some in-person public viewing locations, however it is encouraged that the project sponsor's website continue to be utilized to the fullest extent.

Continue to include your Americans With Disabilities Act (ADA) statements in your notice. Project teams may list the consultant or the LPA as the ADA contact in their notice.

Limited English Proficiency (LEP) statements should also be included in your notices. Project teams may list the consultant or the LPA as the LEP contact in their notice.

### **Summary of activities required if project meets public involvement criteria:**

For federal-aid projects (CE level) requiring public involvement, requirements can be satisfied by either holding a public hearing or offering the public the opportunity to request a public hearing be held. In some situations, public hearings may be restricted due to emergency

conditions. In these situations, project teams may rely on virtual public involvement techniques to supplement in-person hearings and enhance its reach.

**Public hearing opportunity - Advertise public hearing opportunity (applies to CE level projects where we need only to offer the public hearing opportunity)**

- Publish two legal notices in the local paper to advertise the project and offer the public the opportunity to request a public hearing
- If you have a project mailing and wish to mail/email notices to key stakeholders, property owners, etc. – this is encouraged
- Ensure project documents are available ON-LINE
- Coordinate with project manager and local officials to determine options for public viewing locations
- Your notice MUST include a statement that offers the public the opportunity to request project information be mailed to them. This is very important as we cannot assume everyone has reliable internet service and/or access. The statement in your legal notice should read “Persons with limited internet access may request project information be mailed, please contact XXXXXX, Phone Number and Email address”.....
- Your notice MUST include a statement that offers the public the opportunity to request a hardcopy of the CE; the CE must be mailed to anyone who specifically requests a copy; otherwise project information to be mailed (upon request) should include a project summary, a map, project description, contact information and explain how comments may be submitted for review and consideration.
- The CE and preliminary design plans/drawings/renderings must be posted ON-LINE via a project webpage/district page; additionally, a power-point presentation may also be posted on-line to provide the public with a more reader-friendly way to learn about the project
- The public must be offered a minimum of 15 days in which to submit comments or to request a public hearing; the 15 days are calendar days (not business days) and the 15-day comment period begins the date the first of the two notices is published
- The notice must offer the public the opportunity to request a public hearing be held, however hearings may be limited and/or restricted due to emergency circumstances. If a public hearing request is not granted, the project team must document and demonstrate how the request was addressed. This may require in-person meetings, conference calls, an on-line meeting, written letter, email correspondence or other means.
- At the end of the 15-day comment period, all comments received must be responded to; all comments and responses are to be documented
  - Any public comments submitted in response to your Notice of Planned Improvement must be responded to. The project team can determine the manner in which comments are responded to, however it is recommended that comments be responded to in the same manner in which they are received and there be clear documentation and evidence that the comment was addressed.
- If hearing requests are received, project sponsors review and consider the request. If a public hearing is held, coordinate with PM and local officials to determine if emergency guidance allows the public hearing to occur
  - Public hearings are held when determined to be in the public’s best interest. It may be that an individual hearing request or multiple requests are best addressed by contacting the requestor or requestors and arranging alternate ways to discuss and address their concerns including but not limited to in-person meetings, phone and/or on-line video conferencing, email correspondence, letter or other means rather than holding a public hearing.

- The project sponsor must provide explanation and documentation demonstrating how public hearing requests, comments and concerns were addressed as part of the public involvement certification process
- If no hearing is held due to the project sponsor receiving no hearing requests or if requests for public hearing were received but addressed by other means whereas no hearing was held, submit all public involvement materials (publisher’s affidavits, public viewing project documents placement, mailing list, notification of project stakeholders – See Public Involvement Certification Checklist) to INDOT for review and to receive public involvement certification
  - Materials once reviewed by the INDOT PM, should be submitted to the Consultant Services Manager in your district
  - Consultant Services will sign-off for certification
- Once PI certification is received, submit PI materials to INDOT Environmental Services to initiate request for NEPA document approval



The opportunity to request a public hearing process is described in the INDOT Public Involvement Procedures document <https://www.in.gov/indot/2366.htm>.

**Scenario #2 – Hold Public Hearing (for projects where a public hearing is mandatory, such as CE projects involving Historic Bridges, EA and EIS)**

In specific cases, virtual options to supplement public involvement requirements may be considered by FHWA and INDOT:

- To supplement an in-person public hearing and/or to enhance the in-person public hearing experience
- A virtual public hearing can be held as a main way to supplement a smaller in person component when:
  - The Governor and/or President declares a health or other emergency and/or a local government jurisdiction determines that an in-person public hearing should not be held out of concerns for public health and/or safety

**In the event of such consideration by FHWA and INDOT, project teams should develop a public involvement plan proposal which will be reviewed and approved by both INDOT and FHWA.**

**Your plan must:**

- Ensure the public has an opportunity to view project documents prior to, during and following the public hearing
  - In-person and online
    - Project offices, local libraries, municipal offices could be used
    - Coordinate with local municipality to adhere to emergency related guidelines
- Ensure the public can submit comments (via testimony during comment session of the public hearing)
  - Implement protocol for in-person, over the phone and on-line submission of public comments; the intent is for the public to submit comments but also receive information
- Ensure comments are documented
  - Verbal comments submitted as part of the public hearing must be recorded and transcribed; options might include offering a toll-free telephone number to receive comments
  - Written comments submitted via comment station, mail and on-line repository
- Ensure public can have access to public hearing materials (presentation, displays, other)
  - On-line and in-person
    - Appointment only and office hours following any executive orders and/or safety protocols may be implemented as a way to meet with the public
    - Options might also include a public drive-thru where project information could be distributed
      - Project team members could work the “drive thru” to answer questions, share project information
    - Virtual public involvement options could include virtual and telephone town halls, webinars, Web-Ex, video conferencing tools, podcasts, project videos, social media
- If a public hearing venue is available for use, describe safety protocols to be taken



The public hearing process is described in the INDOT Public Involvement Procedures document <https://www.in.gov/indot/2366.htm>.

## **Applicable State Law**

### **IC 8-23-2-17 Public Hearing is an Assembly**

Sec. 17. (a) As used in this section, “public hearing” means an assembly or a meeting by the department for the purpose of:

- (1) Providing information early in the process of making decisions affecting proposed highway or bridge construction or improvement projects on a county arterial highway system or the state highway system so that the public can have an impact on the decision outcome, including a meeting in which the public is provided information, opportunity for review and comment, and an accounting for the rationale for a proposed project; or
- (2) Complying with 23 U.S.C. 128 and 49 U.S.C. 1602 (d) requirements in considering economic, social, environmental, and other effects of highway projects and proposals.

(b) Whenever the department holds a public hearing, the department shall allow any person an opportunity to be heard in the presence of other who are present to testify and in accordance with subsection (c).

(c) The department through the commissioner or the commissioner’s designee, may limit testimony at a public hearing to a reasonable time stated at the opening of the public hearing. As added by P.> 52-1995, SEC. 3.

**Following consultation with the INDOT Offices of Public Involvement and Environmental Services and with concurrence from FHWA, the project manager will approve your public hearing plan prior to implementation. Failure to submit and receive approval of your plan will result in a non-compliance determination, your project will not be certified as meeting public hearing requirements.**

Please feel free to contact Rickie Clark, INDOT Office of Public Involvement [rclark@indot.in.gov](mailto:rclark@indot.in.gov) (317) 232-6601 should you have questions and concerns.