



Section 7 – Right of Way and Public Hearings

RIGHT OF WAY

Federal requirements concerning right of way are quite extensive. Detailed procedures are contained in MoDOT's Engineering Policy Guide (EPG) under Category: 236 Right of Way, 236.18 Local Public Agency Land Acquisition, accessible on-line at [http://epg.modot.org/index.php?title=236.18 Local Public Agency Land Acquisition](http://epg.modot.org/index.php?title=236.18%20Local%20Public%20Agency%20Land%20Acquisition). Project sponsors without Internet access should contact the MoDOT district right of way office for assistance.

Local agencies should adhere strictly to these procedures because receipt of federal construction funds is contingent upon compliance with the right-of-way requirements, whether or not federal participation is sought in the cost of right of way. Local agencies may not proceed with the development of right-of-way plans until they have received preliminary plan approval from MoDOT. Right-of-way acquisition may not begin until all applicable environmental clearances have been approved (see Section 4 for details). The project agreement between the agency and MoDOT must be fully executed prior to right-of-way acquisition (see Section 5 for details). MoDOT must approve the request to begin right-of-way acquisition (see [http://epg.modot.org/index.php?title=236.18 Local Public Agency Land Acquisition](http://epg.modot.org/index.php?title=236.18%20Local%20Public%20Agency%20Land%20Acquisition)).

Additional information accessible through the EPG at [236.10 Right Of Way Condemnation](#) relates directly to public hearing requirements and the proper notification of potentially affected property owners, specifically 236.10.7.3 Alternative Locations ([RSMo 523.265](#)) and 236.10.7.4 Written Notice ([RSMo 523.250](#)). Pursuant to Section 523.265, RSMo, effective August 28, 2007, property owners must be informed they have the right to propose an alternative location for planned right-of-way acquisition. Prior to the official design public hearing, property owners who will be impacted or potentially impacted by a need for right of way and/or other realty rights must be sent a certified letter notifying them of the hearing date, time and location, and inviting their attendance. This letter is to be sent twenty-one calendar days in advance of the hearing date. In the event that a public hearing is not required for the project, at such time as it is determined no hearing will be held (see Advertisement for the Opportunity for Public Hearings), a certified letter will be sent to those property owners from whom realty rights will need to be acquired.

PUBLIC HEARINGS

Public hearings are forums for receiving citizen comments. They are used to furnish the public with general information and to allow the public to express their opinions relating to the proposed improvements. Information related to the impacts of a proposed action can also be gathered. One or more public hearings or opportunity for hearing(s) are required by the National Environmental Policy Act (NEPA) and FHWA regulation 23 CFR Part 771. The Missouri Highway and Transportation Commission requires location and design public hearings. Public hearings must be held for all projects that meet the following:

1. Require the acquisition of significant additional right of way (Narrow strips of right-of-way frontage or easements will ordinarily not be considered significant); or
2. Would have a significant adverse effect upon abutting real property; or
3. Would substantially change the geometry or function of connecting roads or streets; or
4. Have a significant social, economic, environmental, or other effect; or
5. Require the construction of a new low-water crossing.

Public hearings must be advertised and structured to ensure opportunities for minority, low-income, and disadvantaged populations to participate. Additional effort may be required by the local agency to identify and contact these populations. Minority and disadvantaged populations are those defined by Title VI and Environmental Justice guidance. Low-income populations are those defined by the census category. These efforts, beyond advertisements in newspapers and media announcements, should be documented for inclusion in environmental documents and for department-wide Title VI and environmental justice compliance.

LOCATION PUBLIC HEARINGS

A location public hearing is generally held for all projects requiring an EIS (Environmental Impact Statement) and is encouraged for most EAs (Environmental Assessment). Projects with an environmental classification of CE (Categorical Exclusion) may require a location public hearing if conditions are similar to those described for design public hearings. It may be acceptable to hold a combined location and design public hearing for CE projects. It should be noted that FHWA can reclassify CE2 projects as either EA or CE; such reclassification will occur before the time of any expected location public hearing. If a CE2 is reclassified as an EA, a location public hearing may be required after FHWA approves the draft EA. A location public hearing may also be required when a CE2 is classified as a CE.

After the draft environmental documentation is approved by FHWA, MoDOT will notify the local agency that a location public hearing may be held. While tentative arrangements may be made for the location public hearing prior to the document being signed, it is not advisable to make the arrangements or advertise for the hearing until AFTER the signature is received. In the case of an EIS project, once the draft EIS is signed a notice of availability (NOA) must be published prior to advertising for the location public hearing. This is done by the EPA once it receives the approved draft EIS in Washington D.C. For a project with an environmental classification of CE, a location public hearing may be held after the conceptual plan is approved.

A location public hearing is held to provide effective participation by interested persons in discussing specific location features, including the social, economic, environmental, and other effects of all the reasonable project alternatives. These hearings afford the local agency an opportunity to receive information from local sources that will be of value in choosing a preferred location. The hearings are not intended to determine location by a majority vote of those persons present.

The extent of public involvement needed for projects that may involve Section 4(f) and Section 6(f) lands can vary, depending on the nature of the encroachment. Section 4(f) documents at the programmatic or inapplicability level require minimal public involvement, while projects with greater impact will require more extensive public input. The local agency must coordinate with MoDOT on all projects that involve Section 4(f) and Section 6(f) lands to determine whether a location public hearing is advisable. In all cases, the appropriate agency(ies) must be notified, with the notification issued at the same time as the request for newspaper publication of the notice of public hearing.

When known, the project's impacts on historic properties must be identified or discussed at public hearings. Documentation of public input or knowledge regarding these impacts is required. Some information, such as the location of archaeological sites, is considered confidential and is not for public release. This protects the site from looting and the landowner from trespassers. Archaeological site locations are not included in displays for public meetings and public hearings or otherwise disclosed to the general public. It is strongly recommended that inquiries regarding archaeological site locations be forwarded to the manager of the environmental study so that this information can be provided to the project cultural resources representative.

The local agency must advise all railroads by sending a notice to the railroads' chief engineers when the improvement is within an urban area or affects railroad yards or industrial properties belonging to the railroad. Preliminary layouts through yards or industrial areas should be discussed with the railroads to ensure their current plans are not in conflict with the layouts.

DESIGN PUBLIC HEARINGS

A design public hearing, or opportunity afforded for such hearing, is required for all projects, regardless of environmental classification, that are on a new location; require substantial amounts of new right of way; substantially change the layout or functions of connecting roadways or of the facility being improved; have a substantial adverse impact on abutting property or otherwise have a substantial social, economic, environmental, or other effect; or for which FHWA determines that a public hearing is in the public interest. Substantial amounts of right of way and substantial adverse impact on abutting property as used here are defined as total additional right of way and permanent easements greater than 8 hectares (20 acres) in rural areas or 18,500 square meters (200,000 square feet) in urban areas or acquisitions from five or more properties. The project sponsor must coordinate with MoDOT on all projects that involve Section 4(f) and Section 6(f) lands to determine whether a design public hearing is advisable. A design public hearing is held for any job requiring a road closure for all or a portion of the construction period. The criteria established in this section should be considered the minimum level for which a public hearing is required. Authority to conduct the design public hearing is given with MoDOT's approval of the preliminary plans.

A hearing should still be considered, even if not "required," if the impact on the traveling public, adjoining property owners, and businesses in the area is considered to be significant. A hearing may be desirable to advise local officials, adjacent property owners, and other users of the details

of the project. A hearing is an opportunity to gain comment from the public concerning the improvement and it allows the local agency an opportunity to outline a proposed solution to an identified transportation need. The desirability, methods of advertising, and format for these meetings are left to the discretion of the local agency. A summary of the meeting is submitted to MoDOT.

At design public hearings, the preliminary plans and other exhibits derived from the location study are displayed. Pertinent information about the location alternatives studied and reasons for selecting the proposed location are discussed. Details of the effect of the proposed design on individual properties are discussed. Information about design alternatives studied is made available.

ADDITIONAL HEARINGS OR MEETINGS

Additional hearings, meetings, or opportunities for such hearings or meetings may be scheduled when there has been a substantial change in the proposal; substantial unanticipated development in the area affected by the proposal; an unusually long lapse of time (more than 3 years) between the last location public hearing and location approval or design public hearing and design approval; and/or identification of significant social, economic, or environmental effects not previously considered at earlier hearings.

ADVERTISEMENT FOR PUBLIC HEARINGS

Notices concerning public hearings are to be published as a legal notice in a newspaper having general circulation in the vicinity of the proposed project. Additional paid advertisements are encouraged to ensure maximum public input. Additional efforts may be necessary to ensure that minority and disadvantaged populations are aware of the process. Examples of these efforts include house-to-house contact, bulletins at kiosks, community minority liaison contacts, and notices in newspaper and media outlets that cater to minority and disadvantaged populations. The notice of public hearing specifies the date, time, and place of the hearing and contains a description of the project. If the open-house format is to be utilized, this procedure is explained in the notice. The notice of public hearing specifies that maps, drawings, appropriate environmental documents, other pertinent information developed by the local agency, and written views received as a result of the coordination with other agencies or groups will be available for public inspection. The notice also specifies that this information is available in the appropriate local agency office and at some other convenient location such as a courthouse, city hall, or library for public inspection and/or copying. See [Figure 7-1](#) for an example of the proper format for the advertising notice. The notice of public hearing is to be published a minimum of 21 calendar days prior to the date of the hearing. A copy of the notice is to be sent to MoDOT.

In addition to publishing a notice of public hearing, the local agency must submit news releases to the newspaper and electronic media at about the same time as the official notice is to be published and again approximately 5 to 12 calendar days prior to the date of the hearing. The news releases generally contain the same information included in the official notice. If the local agency feels that other methods of advertising a public hearing would help increase public attendance, these options should be explored along with the legal notice and news releases.

Options may include direct patron mailings, flyers in public areas, signs erected in the project area, or other methods.

ADVERTISEMENT FOR OPPORTUNITY FOR PUBLIC HEARINGS

If, in the judgment of the local agency, ample evidence of the desire for a public hearing is not apparent, the local agency may advertise the opportunity for a public hearing. In addition to the information required for the notices and news releases described above, the notice of opportunity for a public hearing includes instructions as to how to request a public hearing. All requests must be in writing and should be acknowledged in writing by the local agency.

This notice is published as either a paid advertising notice or a legal notice and submitted as a news release. This notice may be advertised on a website in addition to, but not instead of, a newspaper. This notice advises the public of a deadline for the request for a public hearing. This deadline for submission of a request is set 21 calendar days after the publication of the notice.

If a request is received, the local agency may contact the individual to discuss their concerns with the project. The person making the request is allowed 14 calendar days to withdraw their request in writing. If a request is made and not withdrawn, a public hearing is held.

If no requests are received by the local agency, the local agency must document the opportunity for public hearing notice and certify that no requests were received. This documentation and certification is forwarded to MoDOT.

PROCEDURES FOR CONDUCTING PUBLIC HEARINGS

Public hearings are to be held at a place and time generally convenient for persons affected by the proposed undertaking. When selecting the time and location of the meeting, special consideration should be given to making the setting comfortable for all, including minority and disadvantaged populations. The hearing is conducted by the local agency with possible assistance from MoDOT. The hearing location selected should provide adequate accessibility for physically disabled citizens. Accessibility should also be adequate for minority and low-income populations. Special attention should be paid to access from public transportation, the ability to walk to the meeting, and obstacles such as railroad tracks, crossing busy highways, etc. Two types of procedures may be used to conduct public hearings: the traditional formal speaker-audience format or the open-house format. The selection of format is at the discretion of the local agency and should be based on an analysis of the conditions involved, including consideration of minority and low-income populations. The recommended open-house format tends to be comfortable for a wider variety of people. Where there are language barriers, efforts should be made to ensure all voices are heard and all can understand presentations.

FORMAL PUBLIC HEARINGS

Formal public hearings consist of an opening statement, a period for statements and questions from the public, and a closing statement. Following is a list of actions and statements that should take place at all formal public hearings:

1. The public hearing is to be conducted in a business-like manner and answers to questions are to be as complete and unbiased as possible.
2. A complete record is made, including names and addresses, for all those in attendance and those speaking.
3. The opening statement includes an explanation of the purpose and need for the project. Information such as accident data, structural deficiencies, capacity problems, and public requests may be cited as justification for the project. Pertinent information about the location alternatives studied as well as major details of the proposed design are discussed. This information should describe the project's consistency with the goals and objectives of the area.
4. The following statement is to be made at all hearings: "This project is being processed in accordance with federal rules and regulations. Plans will be subject to review by FHWA. If federal funds are used in right-of-way acquisition and/or construction, the percentage of federal funds used will be in accordance with current regulations."
5. The tentative schedule of right-of-way acquisition and construction is mentioned. It is limited to a statement that as soon as design approval is received, the local agency will proceed with design and right-of-way acquisition and construction will take place when funds are available.
6. At any hearing on a project that will require additional right of way to accommodate the proposed facility, the right-of-way acquisition process must be discussed. The public must be adequately informed regarding relocation assistance procedures. The local agency must describe assistance and benefits available to those that will be displaced by this project. In addition, it is necessary to discuss the number of individuals, families, businesses, etc. that may be relocated by the project under consideration and whether studies indicate adequate replacement housing is available. It is also necessary to state that no one will be displaced from his or her residence unless an appropriate replacement dwelling is available or provided.

FORMAL LOCATION PUBLIC HEARINGS

For formal location public hearings, the following additional actions and statements should take place:

1. The public is advised that the public hearing is being recorded and that the transcript will be studied and submitted to MoDOT.

2. All substantive written views received prior to the location public hearing must be made available to the public as part of the hearing, either by display at the hearing or by reading into the transcript. These letters may be included as part of the environmental document and displayed in that manner.
3. Provision is made for acceptance of written statements and other exhibits in place of, or in addition to, oral statements at the time of the location public hearing. A statement is made that any additional pertinent information received within ten working days after the hearing will be made a part of the transcript and substantive comments will be addressed in any final environmental documentation.
4. The opening statement also includes a brief explanation of the content and availability of the environmental impact statement (EIS) or environmental assessment (EA). For projects with an environmental classification of CE, a statement is made that the proposed improvement is expected to have no significant impact on the environment and hence is categorically excluded from the need to prepare an EIS. For EA and EIS projects, at least two copies of the approved draft environmental document must be available for public review at the hearing. However, to avoid vandalism and looting, the location of archaeological sites should not be disclosed to the public.
5. Any significant encroachment on floodplains or wetland areas is discussed.
6. Pertinent information about all of the location alternatives studied is discussed and shown on exhibits. All alternatives carried forward in the draft environmental document as reasonable are to be given equal consideration at the hearing in terms of exhibit presentation and design detail. All alternatives considered but dropped from further consideration should have pertinent information regarding this decision available for discussion at the hearing. The approved draft environmental document is also made available. If the draft environmental document indicates a preferred alternative, it should be identified as such at this hearing.

FORMAL DESIGN PUBLIC HEARINGS

For formal design public hearings, the following additional actions and statements should take place:

1. The public is advised that the public hearing is being recorded and that the transcript will be studied and submitted to MoDOT.
2. All substantive written views received prior to the design public hearing must be made available to the public as part of the hearing either by display at the hearing or by reading into the transcript.
3. Provision is made for acceptance of written statements and other exhibits in place of, or in addition to, oral statements at the time of the location public hearing. A statement is

made that any additional pertinent information received within 10 working days after the hearing will be made a part of the transcript and substantive comments will be addressed.

4. Preliminary plans and other exhibits derived from the location study are displayed. It is also recommended that the approved final environmental document is made available for public review at the design hearing.

OPEN-HOUSE PUBLIC HEARINGS

An open-house public hearing has the same requirements as formal public hearings except that some items are included in an informational handout. The advertising is the same except all notices and letters describe the format being used with emphasis on the optional hours during which interested persons may attend. Alternate methods of submitting comments also are included in the notice. The normal time for an open-house public hearing is a weeknight other than a holiday, Monday through Thursday, from 4:00 p.m. until 7:00 p.m. These hours should accommodate persons wishing to attend during normal working hours and those wishing to attend after normal working hours. The duration of the hearing may be increased as needed if a large turnout is expected.

The site for open-house public hearings is separated into areas for greeting, display, and recording comments. This may be done with a large, single room or a group of smaller rooms. One or more greeters stationed at the entrance to the hearing room or rooms ask people upon arrival to fill out an attendance card and direct them to exhibit and comment areas. Each person is given a comment sheet and an informational handout. The handout has all information normally included in the opening statement at a formal hearing. In addition, it may include a location sketch, summary of environmental documents, or other detail. Return postage may be included on comment sheets for the benefit of persons desiring to submit written comments by mail. Several sets of exhibits should be available in order to provide visitors ample opportunity to see the information. The exhibits of the project should be of sufficient quality and scale such that property owners can clearly identify their property. It is recommended that a wide corridor is shown at the location public hearing instead of showing specific lines and design features as these are subject to change. Additional exhibits showing traffic, accident, environmental, economic, or other data may also be displayed. To avoid the potential for vandalism or looting, the location of archaeological sites should not be disclosed. Exhibits of the NEPA process and project schedule may be shown in a simple format. It may also be advisable to invite other agencies, cities, or counties to be present or set up displays if they have projects going on in the area for which public questions are anticipated. Right-of-way personnel are stationed in a separate, clearly labeled area to discuss right-of-way matters. Another area is provided for submitting written comments. Visitors should be reminded that written comments may be submitted up to 10 working days after the hearing.

TRANSCRIPTS

The local agency is responsible for the preparation of an accurate written transcript of the oral proceedings of each public hearing. The oral proceedings may be recorded by a tape recorder, a court recorder, or any reliable method that will assure a verbatim transcript. Shorthand notes are

not considered adequate. Public comments that are expressed at the hearing but are not recorded should also be noted. Two copies of the transcript must be submitted to MoDOT.

The transcript must contain the following:

1. Executive summary that describes and discusses issues raised at the hearing or during the open comment period. No recommendations are included in this summary.
2. Project information handout.
3. Double-spaced transcript of any oral hearing proceedings.
4. Color location map(s) showing the alternate locations presented (location public hearing only) or the location of the recommended design (design public hearing only).
5. Data pertinent to statements or exhibits used or filed in connection with the public hearing.
6. Data pertinent to information made available to the public prior to the public hearing.
7. Pertinent correspondence.
8. Copy of all written comments received.