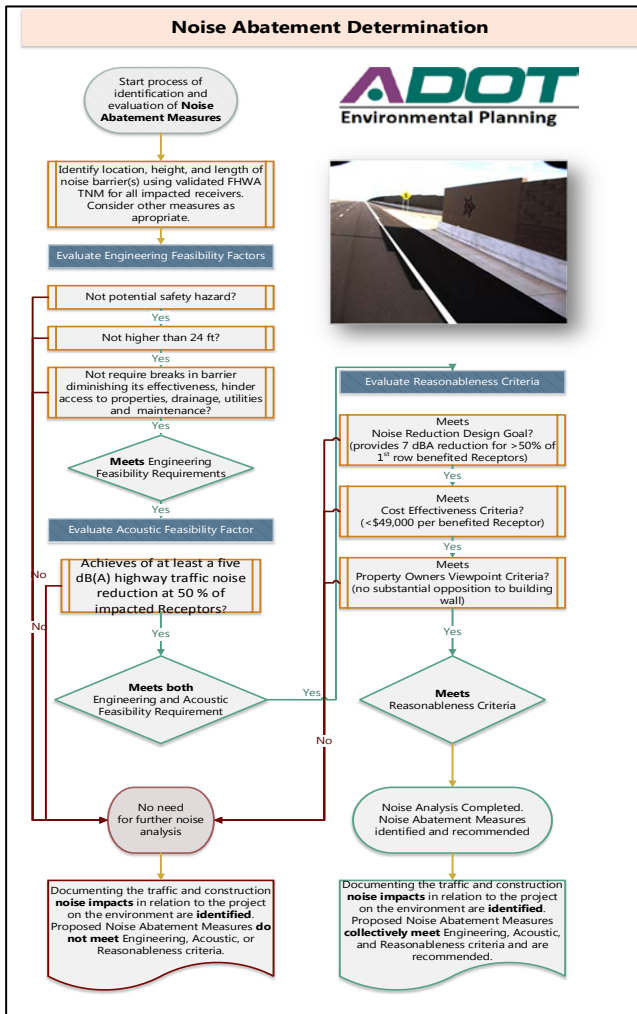


Arizona Department of Transportation

Instruction on Solicitation of Viewpoints under ADOT Noise Abatement Requirement

December 1, 2017

1. INTRODUCTION



This document is done in accordance with the ADOT Noise Abatement Requirements (NAR), ADOT Public Involvement Plan, and FHWA Evaluation of 23 Code of Federal Regulation (CFR) 772 for Opportunities to Streamline the Noise Study Process (FHWA-HEP-17-061).

It is a known fact that a perception is to a certain extent a reality. If people perceive that a project will alter their quality of life in some way, one must address those perceptions. For instance, if there is a perception that a project will add traffic to local streets or increase noise levels, one should not assume that the perception will go away after confidently telling the public that traffic volumes and noise levels are not expected to change. We are required to provide an in-depth explanation of what can be expected, and why, including a summary of the work that was done to arrive at that conclusion.

However, for 23 CFR 772 compliance purposes, there is only one situation when public participation is required.

Determination that receptors are impacted and abatement measures have been determined as both feasible and reasonable – public participation and documentation is REQUIRED. Determination that no receptors are impacted and determination that the noise abatement measures are not feasible and reasonable does not require public participation.

2. FEDERAL REGULATORY REQUIREMENT FOR DOCUMENTATION OF VIEWPOINTS

- a. It is a **requirement** to have a written document-proof on the process of obtaining public viewpoint in determining building/not building noise walls.
 - i. As stipulated by the 23 CFR 772.13.d(2)(i), "Consideration of the *viewpoints of the property owners and residents of the benefited receptors. The highway agency shall solicit the viewpoints of all of the benefited receptors and obtain enough responses to document a decision on either desiring or not desiring the noise abatement measure. The highway agency shall define, and receive FHWA approval for, the number of receptors that are needed to constitute a decision and explain the basis for this determination.*"
- b. The solicitation of viewpoints should occur following approval of the final noise abatement design in the Noise Analysis Report. The statement of likelihood should include a disclosure that the solicitation of viewpoints will occur during the completion of the project's final design and the public involvement processes, as stated in **23 CFR 772.13(g)(3)** "Documentation of highway traffic noise abatement: The environmental document shall

*identify locations where noise impacts are predicted to occur, where noise abatement is feasible and reasonable, and locations with impacts that have no feasible or reasonable noise abatement alternative. For environmental clearance, this analysis shall be completed to the extent that design information on the alternative(s) under study in the environmental document is available at the time the environmental clearance document is completed. **A statement of likelihood** shall be included in the environmental document since feasibility and reasonableness determinations may change due to changes in project design after approval of the environmental document. The statement of likelihood shall include the preliminary location and physical description of noise abatement measures determined feasible and reasonable in the preliminary analysis. **The statement of likelihood shall also indicate** that final recommendations on the construction of **abatement measure(s)** is determined during the completion of the project's final design **and the public involvement processes.**"*

3. ADOT REQUIREMENTS FOR DETERMINING VIEWPOINTS FOR RESIDENTIAL AREAS

- a. After the Public Involvement Process, in the event the determination is made not to build the noise wall, it is to be integrated into the Final Noise Analysis Report/Noise Review in a form of an **Addendum** attached, thus documenting the alteration of noise abatement determination.
- b. **Public involvement process**, solely related to the traffic noise abatement measures, may be considered as any activity undertaken by ADOT to conduct public outreach to solicit active public input that engages **identified benefited residents and property owners** in participation to determine the viewpoint on the final noise abatement design in the Noise Analysis Report. This activity in lieu thereof may be one or a combination of the activities, but not restricted to, provided below:
 - i. public meetings/workshops
 - ii. surveys,
 - iii. mailings, emails
 - iv. community group meetings
- c. There is no need for vote process as such unless public involvement process, which may include public meetings, email correspondence, or community group meetings, establishes that a substantial portion of benefited receptors are opposed to the barriers.
- d. When it comes to determining viewpoints on noise walls, there are two main standpoints by which the voting is interpreted.
 - i. With some State DOT, as a first instance, a barrier is judged to be reasonable if a certain percentage of the benefited receptors **"vote" in favor of it.**
 - ii. In the second instance, and ADOT is here, the barrier is deemed to be **not** reasonable if a certain percentage of the benefited receptors **"vote" against it.** In this case, the benefited property owners and residents do not have to take positive action to demonstrate their desire for the barrier; it is presumed that the barrier is desired unless the needed number or percentage of benefited property owners and residents take action to reject it.
- e. ADOT NAR¹ requires a "substantial portion²" of the votes to be against the barrier for it to be determined to be not reasonable.

¹ NAR - Noise Abatement Policy, approved by FWHA, effective as of May 2017

- f. ADOT NAR states: *“If less than a 50% response rate of property owner and residents is achieved and a substantial portion of the received responses are opposed to the recommended abatement measures, then further outreach will be attempted through the use of public meetings until either a 50% response rate is achieved or it becomes apparent that such a level of response is not possible due to situational concerns.”*
- g. ADOT NAR indicates that it *“will make a good faith effort to determine the preferences of the property owners and/or legal occupants of each benefited receptor location through a survey process if there is substantial opposition to the barrier”*. It notes: *“Noise barriers that are otherwise feasible and reasonable will automatically be considered to be desired unless the public involvement aspect of the NEPA process indicates that a substantial portion of benefited receptors are opposed to the barriers. In that case, ADOT will make a good faith effort to determine the preferences...through a survey process.”* As noted earlier, ADOT strives to get a 50% response rate, using for example a public meeting. The absence of returned surveys or attendees to public meeting may be considered as an affirmative vote for noise abatement.
- h. *“ADOT will make a decision as to the reasonableness of the recommended mitigation based on the results of this process.”*
- i. Input on Aesthetic Preferences for the Barrier, is also an important aspect to be considered before public meeting. *“Third party funding cannot be used to make up the difference in cost between the reasonable cost-per-benefited-receptor and the actual cost of the barrier. Third party funding can only be used to pay for additional features such as **landscaping, aesthetic treatments, alternative barrier materials, etc.** for noise barriers that are feasible and already meet cost-effectiveness criteria.”*

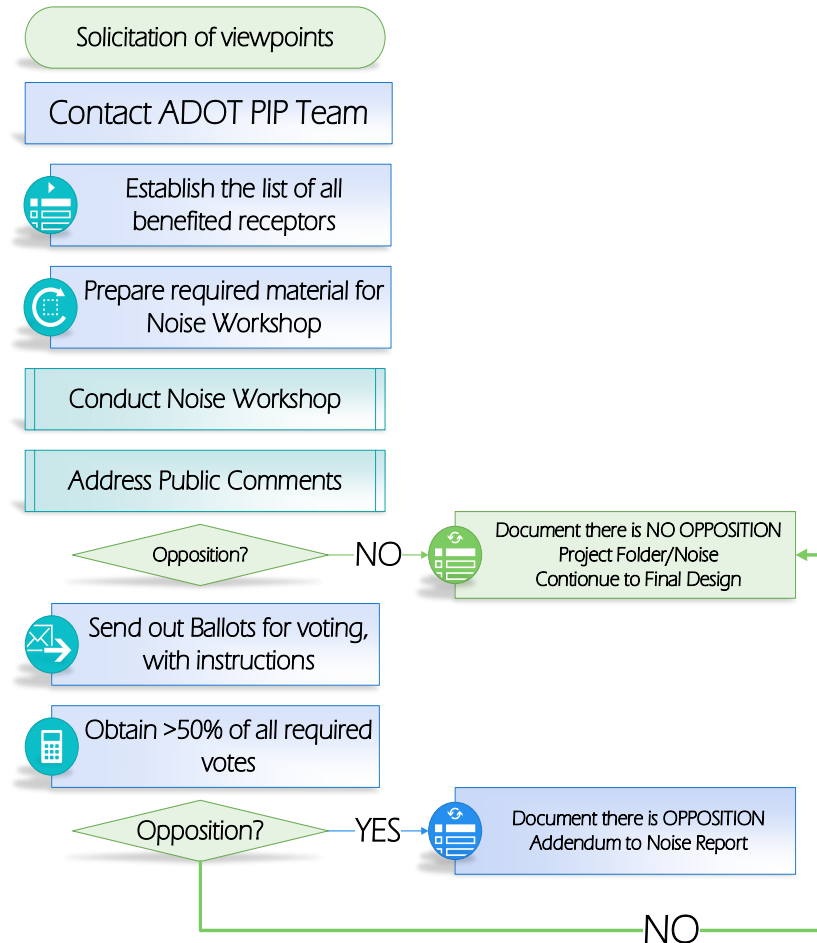
4. ADOT REQUIREMENTS FOR DETERMINING VIEWPOINTS WITH MIXED LAND USE CATEGORIES

- a) There is a need for consistency in the approach to determine the number of votes is allocated to a facility depending on its FHWA Noise Abatement Criteria – NAC Activity Category.
- b) All noise sensitive facilities, irrespective of their Activity Category, shall be given a vote for every receptor allocated to them in the Project Noise Analysis Report.
 - i. Facilities may be represented exclusively by the owner, legal representative, or legal occupant of the facility.
- c) Any potential consideration of commercial facilities such as malls, shops, retails, or other Activity Category F facility, is to be given **ONLY** if the Noise Abatement Measure-Sound Barrier in question is designed to provide noise mitigation for the Activity Category A, B, C, and D facilities.
- d) If it is evident that there is a substantial opposition to building a wall, the issue comes to be **how to assign votes to residential and commercial facilities**, as commercial facilities such as malls, shops, retails, as they fall under FHWA Activity Category F, and these facilities, as per 23 CFR 772 are not sensitive to highway traffic noise, and there is no Noise Abatement Criterion associated. However, decision makers may also consider a commercial establishment's preference to maintain visibility, but the primary consideration is to provide abatement, and there are examples in other state DOTs when commercial properties are considered in the event the proposed noise wall detracts visibility for their business from adjacent roadways. In such cases, as per review of other state DOT approach, maximum point to be assigned to a commercial facility-owner is 1 per every unit.

² Supermajority rules are often used in binary decisions where a positive decision is weightier than a negative one. Under the standard definition of special majority voting, a positive decision is made if and only if a substantial portion of the votes support that decision—for example, two thirds or three fourths.

- e) Commercial properties shall be considered if the abatement measure negatively impacts the **visibility for their business from project roadways.**

Rationale: FHWA Noise Policy Frequently Asked Questions ([here](#)) states that “Decision makers should also consider a commercial establishment’s preference to maintain visibility, but the primary consideration is to provide abatement.”



5. WEIGHTING OF VOTES

It is determined that, for the purpose of “weighting” votes,

1. **1st-row benefited receptors** qualify for consideration of viewpoints, and receives **two points**
2. **Other benefited receptors** - every residential unit/single family residence is assigned **one point**
3. **Schools and other premises** from the category are assigned one point per receptor, *as in ADOT NAR 2017.*
4. **Commercial facility-owner** is assigned one point per every unit/business in the facility/building,
5. **All such qualified residences, schools, and commercial facilities** should be surveyed to determine the total number or 100 % of the poll. If a ballot is not received, after multiple attempts of contacting, it should be considered as a vote in favor of the wall.

For a wall **not** to be built, it is determined that the definition of “substantial” is 66% +1 vote, and therefore should constitute a prerequisite for the determination against building the wall. In case of different opinions between the property owner and renter, the opinion of the property owner shall prevail.

6. ROLE OF ENVIRONMENTAL PLANNING - NOISE

As per ADOT PIP, approaches to the degree of public involvement will vary with the complexity and impact of each project. It further stipulates that ADOT will implement public involvement efforts in response to federal guidelines under Title VI of the Civil Rights Act of 1964, Environmental Justice (EJ), Limited English Proficiency (LEP), the Americans with Disabilities Act (ADA) and the National Environmental Policy Act (NEPA). Federal regulations do not specifically define how to perform public involvement. Project teams develop and implement public involvement plans that are relative to the needs of the project and public. It continues on to determine that ADOT has identified the Environmental Planning as one of the core team members.

According to PIP, the Environmental Planning consists of multidisciplinary professionals. The focus of the EP is to:

- Serve as the liaison between ADOT Communications and FHWA for NEPA compliance.
- Ensure proper consideration of natural resources, the human environment, socioeconomic issues and cultural resources during all engineering design and construction projects.
- Provide assistance to ensure that each project complies with the NEPA and all applicable environmental laws to meet the requirements of the FAHP.

Example of a responsibilities matrix, from ADOT PIP.

	TASK/ACTIVITY	Communications	EPG	PM	FHWA	DISTRICT
I	Agency and public scoping letters ¹	Review (verify contacts)	Prepare	Review	Review	Review
II	Agency/ public scoping meetings ²					
	Team prep meeting	Participate	Lead project team/schedule prep meetings	Participate	Participate	Participate
	Meeting location(s)	Identify/ schedule	Review	Review	Review	Review
	Newspaper ads	Prepare/ submit	Review	Review	Review	Review
	Meeting signs	Provide	N/A	N/A	N/A	N/A
	Moderator	Lead	N/A	Assist	N/A	N/A
	Tech presentation	Review	Prepare	Prepare	Review	Review
	Respond to questions	Lead	Assist	Assist	Assist	Assist
	Scoping report	Prepare/distribute	Review	Review	Review	Review
III	Public meetings/ workshops/ hearing ³					
	Team prep meetings	Participate	Lead project team/schedule prep meetings	Participate	Participate	Participate
	Meeting location(s)	Identify/ schedule	Review	Review	Review	Review
	Newspaper ads	Prepare/ submit	Review	Review	Review	Review
	Meeting fliers	Prepare/ distribute	Review	Review	Review	Review
	Court reporter	Identify/ schedule	N/A	N/A	N/A	N/A
	Meeting signs	Provide	N/A	N/A	N/A	N/A
	Moderator	Lead	N/A	Assist	N/A	N/A
	Tech presentation	Review	Prepare	Prepare	Review	Review
	Respond to questions	Lead	Assist	Assist	Assist	Assist
	Comment summary	Prepare	Review	Review	Review	Review
	Transcript	Receive/ distribute	Review	Review	Review	Review

1. Used on all the CE's prepared under NEPA. See EPG "Guidelines for Scoping Projects with Categorical Exclusions."
 2. Used on EA's, EIS's and some CE's (consult with NEPA planner) prepared under NEPA
 3. Used on all EA's and EIS's prepared under NEPA. Some CE projects may have public meetings but they will not have a public hearing.

Responsibilities of EP/Noise

When it comes to traffic generated noise EP/Noise is required to provide lead expert knowledge on all pertaining issues.

Public meetings - Workshops

a. Prerequisite for attendance

EPG/Noise has to receive all information in due time to be able to prepare for the meeting. However, in course of daily activities it is expected that the EP/Noise holds all relevant information in project folders and keeps up to date with project developments that are ongoing.

b. How Noise team communicates in public

- i. All the activities are to be done in accordance with the ADOT PIP, as per the PIP responsibilities matrix.
- ii. Every effort is to be made to be fully prepared, obtaining all relevant information from all stakeholders beforehand.
- iii. Treat all attendees with utmost respect, courteously, and understanding. Listen carefully to understand their concerns.
- iv. In addressing the inquiries, provide answers relevant to their questions, in a clear and concise fashion, ensuring the highest regards to ADOT policies in place.
- v. No personal promises or any such a kind of commitment is to be made during or after the meeting.
- vi. Relevant general inquiries from the meeting are to be reflected in EP/Noise FAQ document, due to continuous improvement efforts and standardization.

c. Presentation

- i. EPG/Noise is required to draft and keep in the Communications folder a general presentation on issues related to traffic generated noise, regulatory requirements and how ADOT meets the requirements. Any changes in federal regulation or policies are to be reflected. Presentation is to be refreshed every 6-12 months. The presentation may be used at public meetings as a slide show.
- ii. In a particular case, if ADOT Communication requires, EP/Noise may make a project specific presentation that would address general noise issues and concerns from the public, and how ADOT is going to mitigate it.

d. Brochure, video material

For the purpose of public meetings, EP/Noise is to have a brochure and a video available, stored in the Communications folder. In order to reduce waste and unnecessary financial burden to the organization, only required number of copies will be made for a specific meeting, as it will be determined during the preparation for the meeting.

7. APPENDIX A - HOW SOME STATE DOT POLICIES ADDRESS NONRESIDENTIAL LAND USES

The state DOT policies have been sorted in two groups:

1. Where there are no additional weighting factors by first-row and other row or by impact condition
2. Where there are additional weighting factors by first-row and other row or by impact condition

Policies say “property owners and residents.” Not stated if every owner gets a vote whether or not a resident, or if every resident gets a vote, whether owner or renter.

LA and NV: preference of the property owner takes precedence over renter if different. NV also weights votes by the predicted noise reduction.

Massachusetts: “While MassDOT will consider commercial and industrial establishments’ desire to maintain visibility of their property from the highway, the property owners and renters of these types of land uses are not allocated any votes and, therefore, do not participate in the voting process.”

Texas: “Generally, residential property owners prefer traffic noise barriers, while commercial property owners prefer to maintain visibility for their business from adjacent roadways. This can cause conflicts in mixed-use developments, as noise barriers may block line of sight to adjacent businesses. When a mutually satisfactory compromise cannot be reached between businesses and residences, noise barriers may be terminated at property line dividing the two areas.”

Utah: “Nonresidential receptors get 1 vote per owner, except for commercial/industrial businesses, where the owner will have 1 vote per unit and, if applicable, the tenant will have 1 vote for the unit.” Also, the following text is in the policy:

- Day care centers, hospitals, libraries, medical facilities, parks, picnic areas, places of worship, playgrounds, public meeting rooms, public or nonprofit institutional structures: The owner will have 1 vote.
- Commercial/industrial businesses: The owner will have 1 vote per unit and, if applicable, the tenant will have 1 vote for the unit.

Virginia: Its Table 2 in its Section 12.4.1 includes other Activity Categories in addition to Category B (see Appendix A [of the VDOT policy, not included in this report]). For Categories C, D, and E, receptors that are “Impacted & Benefited” receive more votes than those that are “Not Impacted & Benefited.” For Category C receptors, each facility is granted only a single vote.

Washington State: Noise sensitive receivers “that can demonstrate a negative effect to their property values from the proposed abatement, but are neither impacted nor benefitted, may be eligible for a maximum 1.0 vote.