

## **NEPA Regulatory Reform Talking Points (NPRM):**

### **Background:**

Passed into law with an overwhelming bipartisan majority in Congress and signed by President Nixon on January 1, 1970, the [National Environmental Policy Act](#) (NEPA) is a critical law that allows local communities to protect themselves and their environment from dangerous, rushed, or poorly planned federal projects. We teach our children to “look before you leap” – NEPA simply and sensibly requires our government to do the same.

At its core, NEPA is meant to ensure federal agencies and the public are fully informed of the environmental, economic, and health impacts *prior* to any major government decision. At the heart of this review process are a series of broad opportunities for members of the public to participate in government decisions that affect their environment and communities. Critically, NEPA recognizes the public—which includes industry, citizens, local governments, and businesses—can make an important contribution by providing information, perspective, and expertise to decision-makers.

NEPA [success stories](#) are as numerous as they are varied – from the construction of the 3.5-mile Hoover Dam Bypass and the redevelopment of the country’s largest Brownfield site in Atlanta to the continued preservation of Giant Sequoia National Monument and El Yunque National Forest – thanks to this law, hundreds of millions of Americans have participated in important federal decisions.

### **NEPA Regulatory Reform:**

NEPA is one of the most broadly applicable laws in the entire federal government and applies to every “major federal action” the government takes, but the actual law (the statute) is very short – the real substance of NEPA is largely contained in its implementing procedures outlined in the White House Council on Environmental Quality’s (CEQ) regulations.

On June 20, 2018, CEQ [announced](#) in an Advance Notice of Proposed Rulemaking (ANPRM) the Trump administration’s plans to re-examine NEPA’s implementing regulations. CEQ did not hold a single hearing and only accepted comments for 60 days.

A proposal rule (NPRM) is expected to be released sometime in late Spring of 2019. The NEPA campaign expects a 45-90-day public comment period accompanied by 1-3 public hearings, at least one of which CEQ Chair Mary Neumayr has said will be held in the Mid-Atlantic.

**“Protect Your Voice” – NEPA gives a voice to local communities to weigh in on decisions impacting their health and environment:**

- CEQ's NEPA regulations ensure that the public is given the opportunity to participate in decisions that impact their lives and that government agencies take a hard look at the environmental, public health, and economic impacts of proposed actions as a basis for making informed, science-based decisions.
- It's also one of the only laws allowing for public input in decisions that affect the health and safety of their communities. NEPA gives the public the right to know and comment on how federal projects will impact their community.
- Public participation in the NEPA process serves two functions. First, individual citizens and communities affected by proposed action can be a valuable source of information and ideas. Second, allowing citizens to communicate and engage with federal decision-makers serves fundamental principles of democratic governance.
- This rulemaking process has the potential to impact every person in America on the same level as healthcare or tax reform, yet CEQ is only **holding XYZ number of hearings and allowing public comment for XYZ days**. This is emblematic of the Trump administration's effort to roll back the NEPA process to silence the people and chill public participation. A paltry **XYZ-day** comment period is reflective of this administration's unwillingness to meaningfully engage with the American people.
- As we know, ignoring the potential impacts of an oil spill off the coast, a pipeline explosion, or a dam failure from flooding, can have disastrous effects on local communities. Shortcutting NEPA review limits consideration of these risks to local communities.
- The Trump administration's proposed rollbacks to NEPA would make it easier to rubberstamp permits for corporate polluters, resurrecting a "those in power know best" culture of secrecy that harkens back to the 1950s and 1960s, a time when inner cities across the country were paved over by new interstate highways without any regard for the local communities that lived there.
- Don't let the special interests from the Washington swamp take the public's voice out of government decision-making.

### **NEPA protects our public health and promotes environmental justice:**

- Everyone has the right to live, work, learn and play in healthy communities where the air is safe to breathe and the water is safe to drink. NEPA protects the health and safety of local communities by ensuring they are aware and properly informed of any possible threats to their health and environment.
- For example, if the federal government wanted to build a waste incinerator in a residential area, the NEPA environmental review process would almost certainly cite serious long-term health risks to the local community.
- For low-income and minority communities, which are often disproportionately impacted by health problems associated with poorly planned federal projects, NEPA isn't just an environmental protection statute. It's a critical tool for civic engagement they cannot afford to lose. Almost half of all Latinos live in this country's most polluted cities in areas where incinerators, power plants, and factories are clustered together.
- NEPA doesn't just protect US citizens – it protects everyone. It protects the health and safety of every family and community that stands to be threatened, regardless of citizenship status.

### **NEPA promotes government accountability and transparency:**

- NEPA's value is enormous yet simple: it ensures that those who manage federal projects make the best decisions based on the best information while involving and informing the public.
- By mandating public input on the impacts of major federal projects like power plants, pipelines and infrastructure, NEPA provides a forum for communities to make their voices heard in important decisions that affect their health, homes and environment.
- Without NEPA, decisions about major federal projects would once again be made behind closed doors with little or no accountability.

### **NEPA saves taxpayer money:**

- Shortcutting environmental reviews doesn't just affect the health of our local communities, it also costs taxpayer money. NEPA is one of the few tools the federal government possesses to help it assess whether proposed infrastructure projects will have unexpected consequences and costs. By forcing the federal government to gather all available information, consider project alternatives, and listen to local communities, NEPA ensures public dollars are spent wisely with public input.
- When safeguards like NEPA that prevent poorly conceived projects from being pushed through are ignored, the financial, environmental, and public health consequences have been severe. In Florida, the channelization of the Kissimmee River began in the 1960s before NEPA was enacted. The ecological damage caused by this channelization was so profound that Congress authorized the restoration of the Kissimmee River in 1992—just 21 years after the completion of the project. The restoration will cost at least \$1 billion—a roughly fivefold increase from the original project cost of \$194 million.<sup>1</sup>
- Conversely, NEPA helped save over \$1 billion in North Carolina when environmental review found that the proposed Garden Parkway toll road outside Charlotte would not fix congestion and would instead have severely damaged the Catawba River. Further, NEPA analysis indicated that, instead of creating jobs, the Parkway would likely have encouraged jobs to move out of state. These conclusions galvanized the public to oppose the project and prevented taxpayers from being saddled an enormous bill of \$1 billion. Similar NEPA success stories can be found across the nation.
- By mandating public input, the NEPA process allows for modifications to be made and the consideration of alternatives. Eliminating public input does not eliminate public concern; without community input and consensus, projects are more likely to encounter delays.

### **NEPA is a not a roadblock, it's roadmap to smarter decision-making:**

- It's no secret, America badly needs an infrastructure upgrade. In 2017, the crumbling state of America's infrastructure earned it a grade of D+ from the American Society of Civil Engineers.
- But as sea levels continue to rise and extreme weather events become more frequent, we must insist that our roads, bridges, and other infrastructure are engineered to be more resilient to the increasingly severe effects of climate change. If Hurricanes Irma, Harvey, and Maria have

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<sup>1</sup> "Kissimmee River Restoration Project: fact and tour sheet." *South Florida Water Management District*. August 2010. Available at: [https://www.sfwmd.gov/sites/default/files/documents/krr\\_krrep\\_facttour\\_sheet.pdf](https://www.sfwmd.gov/sites/default/files/documents/krr_krrep_facttour_sheet.pdf)

taught us anything, it's that such a build-first-ask-questions-later approach isn't just short-sighted – it's dangerous.

- NEPA requires state, local, and federal governments make decisions with such safety considerations in mind. Without NEPA, the federal government would be able to rubber stamp permits for corporations to build oil pipelines and toxic waste dumps without a single environmental review.

### **NEPA ensures climate change remains an integral part of the federal government's decision-making process**

- The NEPA review process doesn't just require federal agencies to identify the impacts a project will have on the environment and the surrounding community (e.g., pollution from a power plant) – NEPA also requires federal agencies to quantify the project's anticipated carbon footprint and eventual contribution to climate change.
- It is long established and well-settled that NEPA requires consideration of greenhouse emissions and climate change. Federal Agencies, Courts, and CEQ all recognize the existing legal requirement of agencies to consider climate change in their environmental reviews of projects and permits. As CEQ recently noted, "Climate change is a fundamental environmental issue, and the relation of Federal actions to it falls squarely within NEPA's focus."
- In essence, NEPA embodies the recognition that you can't just build a massive fossil fuel project and pretend that the impacts end at the property line. The result of this is a true accounting of climate and public health costs of dirty fossil fuel projects.
- **NEPA also makes our infrastructure safer and more resilient.** A key component of the NEPA review process also requires federal agencies consider the impacts of climate change on federal projects such as coastal roads and bridges.
- Smarter planning is a hallmark of the environmental review process and can go a long way to saving taxpayers tens of millions of dollars – as sea levels continue to rise and extreme weather events become more frequent, we must insist that our infrastructure is engineered to be more resilient to the increasingly severe effects of climate change.

### **The largest cause of project delay has always been local and state opposition, not environmental laws like NEPA:**

- For decades, Congress and the federal government have starved state and local governments of badly need money to finance infrastructure upgrades, effectively stalling projects before they can even be started.<sup>2</sup>
- The Army Corps of Engineers has \$97 billion in projects that have cleared all environmental reviews but remain stuck because of a lack of funding.<sup>3</sup> Currently, the Corps' budget is \$5 billion a year.

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<sup>2</sup> Politico. "Morning Transportation," March 23, 2017. Available at: <http://www.politico.com/tipsheets/morningtransportation/2017/03/what-the-health-care-implosion-means-for-infrastructure-219441>

<sup>3</sup> "Army Corps Fiscal Challenges: Frequently Asked Questions." Congressional Research Service, December 15, 2011. Available at: <https://fas.org/sgp/crs/natsec/R41961.pdf>

- The Treasury Department similarly noted that “a lack of funds is by far the most common challenge to completing” major infrastructure projects in December of 2016.<sup>4</sup> The report listed three additional challenges to large-scale infrastructure projects in order of their impact on the project development process.<sup>5</sup> The second largest challenge was lack of consensus when multiple public and private entities and jurisdictions are involved. The third largest challenge was capital costs increasing at a greater rate than inflation.
- Scapegoating environmental regulations fails to acknowledge the great lengths to which federal agencies have gone to reform NEPA. If it is uncertain whether a proposed project will have significant effects on public health and the environment, federal agencies prepare a concise, preliminary evaluation of potential consequences. If the initial assessment demonstrates no significant effects, the agency issues a FONSI (“Finding of No Significant Impact”) and proceeds with the action without further environmental analysis. Preparation of a detailed Environmental Impact Survey (EIS) is only required for actions where an initial finding indicates that the action “may significantly affect the quality of the human environment.”
- Because of this process, over 99% of projects are cleared with minimal environmental assessment. The federal government undertakes 50,000 actions every year subject to NEPA review, but only 500 draft EISs are prepared annually. A Federal Highway Administration study found that from 1998 to 2004, no more than 3.5% percent of all proposed transportation projects required a detailed environmental study.
- “Permitting reform” is the latest buzzword President Trump and fossil fuel developer friends are using in their attempts to circumvent responsible planning and management.

### **The Trump administration is not using the available toolbox to speed environmental reviews:**

- As CEQ itself has acknowledged in its own recent guidance, the regulations already provide ample flexibility and a wide array of tools to meet the goal of high quality, efficient, and timely reviews. The strength and flexibility of NEPA and its implementing regulations are one of the reasons it is the United States most widely imitated law, with over 160 other countries adopting laws modeled after NEPA. More funding – not more rollbacks – are what we need.
- Moreover, since 2012, Congress has enacted legislation on three separate occasions to modify the infrastructure permitting process. President Trump has numerous tools at his disposal to increase permitting efficiencies. They simply aren’t being used or properly implemented.
- In one of his first actions after taking office, President Trump issued an Executive Order creating a new federal permitting council housed within the Department of Commerce.<sup>6</sup> By establishing a new permitting council independent of FPISC, the administration’s Executive Order was duplicative and further fragmented the review process.
- The Trump administration has also failed to provide funding - the most powerful tool speeding reviews. Rather than providing adequate funding for the Environmental Protection Agency, U.S. Army Corps of Engineers, DOT, and other permitting agencies, the Trump administration has proposed budget cuts that would only make it more difficult to fast-track permitting timelines.

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<sup>4</sup> “40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance.” *AECOM, Compass Transportation Inc., Raymond Ellis Consulting, and Rubin Mallows Worldwide Inc.* Fall 2016.

<sup>5</sup> Toni Horst, et al., 40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance. AECOM, (2016). Available at:

<https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>

<sup>6</sup> Executive Memorandum, 82 FR 8667 (2017). Available at: <https://www.federalregister.gov/d/2017-02044>

- If President Trump was truly interested in speeding up the environmental review process, his administration would provide additional staffing to agencies' permitting offices. Instead, the White House has proposed drastic cuts. A 2003 GAO report found that 69% of transportation stakeholders reported that both state departments of transportations and federal environmental agencies lacked sufficient staff to handle their workloads.<sup>7</sup>

#### **A positive agenda for NEPA reform:**

- **Fully Fund Federal Projects:** A lack of federal funding is responsible for an overwhelming number of project delays, not permitting. The Army Corps of Engineers, which has over \$90 billion in shovel-ready projects that have cleared all environmental reviews but remain stuck because of a lack of funding, is emblematic but hardly unique. Currently, the Corps' budget is \$5 billion a year.
- **Make Agency Mitigation Promises Enforceable:** Agency promises to "mitigate" the adverse effects of federal projects must be made mandatory. Failure to implement mitigation commitments undermines the integrity and the very purpose of NEPA.
- **Require Ongoing Monitoring of Project Impacts:** Too often, federal agencies invest significant resources in complex scientific assessments without committing sufficient resources to monitoring a project's actual impacts.
- **Improve Training Increase Staff Responsible for NEPA Compliance:** Although NEPA has been in effect for almost 50 years, serious financial shortfalls remain. Without adequate funding and staffing, pressure will mount on agencies to cut corners and bypass NEPA compliance. Rather than weakening NEPA, Congress should provide additional funding for full-time technical staff at the state and federal levels to ensure timely completion of environmental review.
- **Expand Native Consultation for Off-Reservation Cultural Resources:** Federal agencies, particularly the Department of the Interior, have historically been unwilling to consult with Native groups for environmental reviews with the potential to impact off-reservation cultural resources. This is totally unacceptable. CEQ should expand requirements for tribal early consultation.

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<sup>7</sup> "Highway Infrastructure: Stakeholders' Views on Time to Conduct Environmental Reviews of Highway Projects." GAO-03-545. Available at: <https://www.gao.gov/new.items/d03534.pdf>