



NEPA and Infrastructure

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.

Environmental reviews and the NEPA process helps to ensure that critical infrastructure such as roads and bridges are built to last with the health, safety, and benefit of local communities as the primary goal.

Major NEPA Rollbacks (2012-2016)

Moving Ahead for Progress in the 21st Century Act (MAP-21)

- Established a sweeping series of new Categorical exclusions (CEs), including one exempting projects costing less than \$5 million from review, and established the legal authority to fine federal agencies that do not meet hard deadlines for project approval, regardless of unanticipated project complications.

Water Resources Development Act (WRDA)

- Severely limited the ability of the U.S. Army Corps of Engineers and other federal agencies to carry out meaningful environmental reviews by establishing arbitrarily short deadlines or public comment.

Fixing America's Surface Transportation Act (FAST Act) / FAST-41

- The FAST Act established a pilot program that allowed five states with laws "at least as stringent as" NEPA to substitute state regulations in place of NEPA. There are serious concerns this will pave the way for a total delegation of permitting responsibility to states in the future, regardless of the stringency of their environmental laws.
- FAST-41 established an entirely new and separate environmental permitting regime for selected non-highway infrastructure projects over \$200 million dollars.

The Largest Barrier to Project Completion is Adequate Funding

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.

FACT: The Army Corps of Engineers has \$90 billion in projects that have cleared all environmental reviews but remain stuck because of a lack of funding. The Corps' current budget is \$5 billion a year.

The Treasury Department's research supports this fact. In December of 2016, the department released a report stating that "a lack of funds is by far the most common challenge to completing" major infrastructure projects.

NEPA is a Roadmap to Smart Decisionmaking That Saves Taxpayer Money

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 cause such terrible ecological damage that Congress authorized the restoration of the Kissimmee River in 1992—just 21 years after the completion of the project. The multi-decade restoration project will cost at least \$1 billion—a roughly fivefold increase from the original cost of \$194 million.

In North Carolina, NEPA helped save over \$685 million dollars when it led to the conclusion that improving existing roads rather than constructing a new bypass could meet project goals of reducing severe congestion in the region without unnecessary expense to taxpayers or the environment.

Without ensuring robust environmental review of new infrastructure projects, we risk dramatically increased construction costs.

NEPA and Post-Disaster Reconstruction

Fast-tracking environmental reviews following natural disasters like earthquakes and hurricanes creates perverse incentives for big developers to rebuild the same structures in the same manner, all subject to the same pre-disaster vulnerabilities.

Existing environmental laws provide more than sufficient flexibility to facilitate timely post-disaster reconstruction. They include:

- The **Stafford Disaster Relief and Emergency Assistance Act**, which waives NEPA procedures for certain federal actions carried out within a Presidentially declared emergency or disaster area;
- The **Clean Water Act**, which generally exempts “emergency reconstruction of recently damaged” infrastructure from some permit programs and provides fast-track permitting for a variety of other activities;
- In the most extreme of circumstances, the **National Environmental Policy Act (NEPA)** also allows federal agencies to consult directly with the Council on Environmental Quality (CEQ) to make alternative arrangements.

Further NEPA reforms are likely to actually slow down project reviews

Agencies are already struggling to understand and implement NEPA reforms that have been piled one on top of the other.

In March 2017, the Department of Transportation’s Inspector General (IG) found that the Department of Transportation (DOT) has delayed implementing a significant number of MAP-21 reforms because they must be revised to comply with additional measures mandated in the FAST Act.¹⁰

In April of 2017, the Business Roundtable sent a letter to the White House stating that “existing law already provides a mechanism for comprehensive reform of the process of permitting major infrastructure projects” and urging federal agencies to focus on implementing existing legislative reforms.

Even if Congress repealed NEPA tomorrow, project sponsors would still have to comply with laws and regulations governing endangered species, water quality, air quality, historic preservation, and wetland protection, among others. The biggest difference is that, without NEPA, these reviews would become fragmented and balkanized and shielded from public scrutiny.

Many proposed NEPA reforms such as fining already cash-strapped agencies for missing deadlines or delegating environmental review to states facing their own budget crisis are also likely to contribute to delay.