

**Alaska Wilderness League * American Bird Conservancy * American Rivers
Center for Biological Diversity * Clean Ocean Action * Defenders of Wildlife
Earthjustice * Epic – Environmental Protection Information Center
Friends of the Earth * Greenpeace * GreenLatinos * Klamath Forest Alliance
National Wildlife Federation * Oceana * Ocean Conservation Research
Sierra Club * Southern Environmental Law Center**

July 27, 2015

Dear Senator:

On behalf of the millions of members our organizations represent, we write to express our strong opposition to provisions in the transportation bill, (H.R. 22) that radically undermine the National Environmental Policy Act (NEPA), by limiting public participation and environmental review of the construction of critical transportation and infrastructure projects in our communities.

Certain provisions, described more fully below, were added to this 1000 page bill in the 11th hour without the benefit of review or debate by the Senate. This action is clearly representative of those seeking to eliminate NEPA review altogether by shutting out the American public and their elected representatives under the guise of urgency.

This legislation unnecessarily dismantles a critical tool that has been the bedrock of our country's environmental protections for more than 40 years. Moreover, more times than not, informed federal decision-making set forth in NEPA actually lessens project delays. Over the last decade the independent Congressional Research Service has repeatedly concluded that infrastructure projects are typically delayed by changes in project design, project size or complexity, or lack of funding—not NEPA.¹ In fact, because NEPA provides a forum for stakeholders to address economic, environmental or community concerns upfront, it can reduce controversy and help avoid delays. NEPA is not the problem but “streamlining” it could certainly create one.

There are provisions in the bill that constructively create more efficiencies in the project review process but, those gains are fatally undermined by other provisions that prioritize project approval over informed review and community input. For example, some of the most troubling provisions, include:

- Financial Penalties for Agencies – Section 35503 – This provision extends a dangerous precedent from MAP21 to rail projects by fining agencies for deliberating on important environmental issues. This pressures the agencies to make decisions even if they do not have needed information. Rushing an

¹ Congressional Research Service (CRS), *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress*, R42479 (Washington, D.C.: April 11, 2012). See also, CRS, *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, R41947 (Washington, D.C.: August 3, 2011); and, CRS, *The National Environmental Policy Act: Background and Implementation*, RL33152, (Washington, D.C.: February 29, 2008).

uninformed decision is not a recipe for success. It may also contribute to delays as agencies that miss arbitrary deadlines because of a lack of capacity or resources will then have a harder time completing timely reviews because of the financial penalties that then just further aggravate the problem.

- Eliminating Public Input and Environmental Review – Section 35503 – The same section also extends broad categorical exclusions to rail projects. Most troubling is a categorical exclusion for projects that receive less than \$5 million dollars in federal funding. This provision is based on two demonstrably false assumptions – first, that projects where millions of dollars are spent cannot have significant impacts and, second, that the public will not want a say in how the spending of their taxpayer dollars will affect their health, environment, or community.
- Undermines Analysis of Alternatives – Section 61005 – This provision eviscerates the single most important requirement of NEPA: the consideration of reasonable alternatives. By allowing the agency to develop the preferred alternative to a higher degree of detail than other reasonable alternatives, this bill turns NEPA into a process that documents the impacts of a decision already made, instead of a process that informs decisions. In addition, it undermines citizen participation in decision-making for those stakeholders who offered a perfectly viable alternative to the preferred approach, but who will not have their alternative analyzed at the same scale and level of detail as the preferred alternative
- Severely Limits Judicial Review – Section 61007 – This section forces a fundamental shift in the balance of equities when considering judicial relief with the aim of making such relief more difficult for plaintiffs attempting to hold the government accountable. It does so in part by making it more challenging for citizens to raise issues in court, by shortening the time for bringing an action, and by significantly reducing the federal courts' equitable powers to weigh and balance the harm to the environment if a project goes forward.

Further undermining public input and environmental review, is the fact that many of the problematic provisions were taken from the “Federal Permitting Improvement Act” (S. 280) — a bill completely unrelated to transportation projects and that was never the subject of a hearing any Senate Committee with the expertise to analyze the policy implications. S.280 applies to an astonishingly broad category of non-transportation projects of incredible size, cost, and complexity -- energy and infrastructure projects of over \$200 million dollars. Incorporating S. 280 into the transportation bill severely limits the consideration of alternatives, judicial review, and public input, at a point in the process where full consideration of the economic, environmental, and community impacts are most warranted.

Taxpayers deserve reviews that carefully evaluate the full impacts of projects and rely on the ability of the expert resource agencies to raise concerns and objections free from undue pressure. NEPA discloses the true environmental and economic costs of projects and allows decision-makers and the public to determine whether those projects are deserving of investment by federal taxpayers. These provisions dismantle NEPA's safeguards without regard for the consequences.

While we support a more efficient and transparent permitting process, we strongly oppose proposals that prioritize speed and project approval over public input and careful consideration of how taxpayer dollars are spent. The development of our national transportation and infrastructure system should not come at the expense of the public who would lose the ability to provide public comment and judicial review on of our more complex and economically impactful transportation and infrastructure projects.

Sincerely,

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