

**American Rivers * Center for Biological Diversity
Defenders of Wildlife * Earthjustice * League of Conservation Voters
Natural Resources Defense Council * Sierra Club
Southern Environmental Law Center * The Wilderness Society
Western Environmental Law Center**

October 22, 2015

Dear Representative,

On behalf of our millions of members and supporters, we strongly urge you to oppose provisions in H.R. 3763, the “Surface Transportation Reauthorization and Reform Act of 2015,” that threaten to undermine the National Environmental Policy Act’s (NEPA) guarantee that potential environmental impacts are thoughtfully considered, disclosed, and informed by public input. The NEPA process has improved the health and well-being of communities, saved billions in tax-payer dollars, and has expanded stakeholder engagement in government decision-making.

Provisions in Subtitle C of the House transportation bill would continue the slow evisceration of environmental review and meaningful public input for transportation projects that began in the last transportation reauthorization, MAP-21. That bill included the most severe NEPA rollbacks in recent memory. Despite the fact that the provisions of MAP-21 have not yet been fully implemented and the consequences of these rollbacks is not yet known, H.R. 3763 recklessly presses forward with unnecessary limitations which will further erode the ability of affected communities to be informed of, and to meaningfully participate in, major federal decisions affecting their communities. The following are among the bill’s most harmful provisions and should be opposed:

- Elimination of Federal Environmental Review – MAP-21 allowed States to take over NEPA responsibilities. Despite that program never being subject to any evaluation, Section 1313 of this bill goes even further by establishing a pilot program to authorize approved states to conduct environmental reviews and make decisions regarding projects under State environmental laws. This would throw environmental reviews – and potentially Clean Air Act protections – into an uneven patchwork quilt of state laws, many of which fall short of federal safeguards. In addition, there is no provision requiring states to waive sovereign immunity, potentially precluding judicial recourse for grossly deficient environmental reviews or for excluding the public from the process.
- Further Limitations on Public Input – Section 1305(g)(4)(B) of the bill would allow agencies to issue the final environmental impact statement (EIS) and record of decision (ROD) as a single document. Unwisely, this would not only eliminate a critical 30-day period where the public is allowed to evaluate the conclusions of the environmental study, but would also put enormous pressure to on the decisionmaker to sign the ROD without any further consideration or input. In addition, Section 1305(g)(2) would amend current law which gives agencies discretion to establish a deadline different than the 60 day public comment period

on draft EISs and, instead, restrict their to discretion to only establishing a shorter deadline – thus institutionalizing a bias against public input.

- Further Limitations on Alternatives Analysis – Section 1305(f) would severely undermine what the Council on Environmental Quality (CEQ) regulations describe as the “heart of the NEPA process” by restricting the ability of agencies to comment on alternatives and, even worse, possibly eliminating the agencies’ ability to consider superior alternatives or citizen-introduced alternatives.

These extreme provisions in H.R. 3763 are offered despite the nearly complete lack of evidence, highlighted in numerous CRS and GAO reports, that environmental reviews under NEPA are a primary source of project delay. The primary sources of delay most identified include lack of funding, change in project design, and project complexity.¹ In fact, the vast majority of transportation projects require limited review under NEPA – 96% of all FHWA approved projects involve no significant impacts and, hence, require limited documentation, analysis, or review under NEPA.²

Furthermore, the necessity of the changes proposed in H.R. 3763 is questionable since CEQ and the Office of Management and Budget have been engaged in an historic effort to improve the permitting process under existing law. Just last month, OMB and CEQ released guidance on reducing the permitting timelines of major infrastructure projects, improving environmental and community outcomes, and, in addition launched an updated online Federal Infrastructure Permitting Dashboard tracking the progress of these efforts. Critically, their approach is aimed at addressing actual causes of delay while improving environmental outcomes, and maintaining public involvement, and transparency in government decisionmaking.

As currently written, H.R. 3763 is being used as a Trojan horse to attack and undermine NEPA. It is the latest in a series of discrete attacks on NEPA, the ultimate goal of which was made explicitly clear in a Heritage Foundation report published after the passage of MAP-21 where the authors stated “*rescission of NEPA is the main goal.*”³ Extreme opponents of any form of environmental review and public engagement recognize that a direct attempt to repeal this landmark law would fail and instead urged “*the following steps*” which “*can pave the way to rescission*” of NEPA: *narrow NEPA reviews, mandate time limits, limit alternatives, eliminate consideration of GHGs and climate change.*”⁴ MAP-21 took nearly each one of these prescribed steps, followed by last year’s Water Resources Reform and Development Act for critical infrastructure projects, and now H.R. 3763 continues this ongoing effort to steamroll core guarantees of federal decisionmaking informed by environmental review and public input.

¹ Congressional Research Service, “The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress,” Linda Luther, April 11, 2012.

² Congressional Research Service, “The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress,” Linda Luther, April 11, 2012, p.13.

³ The Heritage Foundation, “Eight Principles of the American Conservation Ethic,” Diane Katz and Craig Manson, July, 2012 (est.), p. 64, available at:

http://thf_media.s3.amazonaws.com/2012/EnvironmentalConservation/Environmental-Conservation-Full-Book.pdf

⁴ Id.

We know that NEPA is a bridge, not a roadblock, to improving and accelerating delivery of much needed transportation projects. We urge you to oppose provisions in H.R. 3763 that undermine NEPA and stand up for both transparency in public decisionmaking and the ability of citizens to weigh in on major federal decisions impacting their lives.

Sincerely,

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