

President Trump signed an [executive order](#) on June 4 directing federal agencies to waive environmental regulations to speed up infrastructure projects under the auspices of responding to the “economic emergency” presented by the COVID-19 pandemic. The good news is that the Order does not attempt to create a blanket waiver of environmental regulations, but is limited to directing agencies to use existing emergency authorities to expedite projects.

Nonetheless, the Coalition for American Heritage has profound concerns that agencies will invoke the Order to limit public involvement in federal projects, to deprive tribes of their rights to government-to-government consultation, and to limit consideration of impacts to heritage resources.

The Executive Order directs agencies to use emergency authorities they already have under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Clean Water Act (CWA), and to review all statutes, regulations, and guidance documents that provide emergency or expedited treatment—which includes 36 CFR 800.12. the part of the Section 106 National Historic Preservation Act (NHPA) regulations addressing declared emergencies.

Our concerns include:

- Emergency authorities have traditionally only been used to respond to emergency threats to national security and natural disasters. It is unclear whether existing emergency authorities can be invoked to respond to an economic slowdown.
- The Order does not give an end date or any indication of when the Administration would decide the economic effects of the public health emergency have improved enough to return to the normal course of business.
- Some emergency authorities, such as those in NEPA, do not require public notice that they are being applied. We are concerned that agencies will apply emergency procedures inappropriately, and we will not learn about it in time to object or litigate.
- Invoking emergency authorities when not consistent with existing law will increase litigation risk for infrastructure projects and their proponents, creating uncertainty and delays for projects.

The Order puts considerable pressure on agency heads to expedite projects, requiring that they submit reports in 30 days of how they are using the Order.

Members of Congress have already expressed their disapproval (see Speaker Pelosi's statement [here](#) and Chairman Grijalva's statement [here](#).) The Coalition will be communicating its concerns to Congress and to the agencies.

You can help: Our greatest strength is our network of advocates across the country. Please let us know when you see agencies attempting to invoke this Order on projects on which you work or on projects you hear about. We need to know how the Order is being applied so that we can formulate the most effective responses.

Please stay tuned for more information.