



Environment, Land Use & Natural Resources ADVISORY ■

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President Issues Executive Order on Expediting Infrastructure Investments

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On June 4, 2020, the President issued an [Executive Order](#), Accelerating the Nation's Economic Recovery from the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities. The purpose of the Order is to "facilitate the Nation's economic recovery" following the economic downturn from the COVID-19 pandemic. In general, the Order directs agencies to "take all appropriate steps to use their lawful emergency authorities and other authorities to respond to the national emergency and to facilitate the Nation's economic recovery."

Clients with infrastructure and other project applications planned or pending before federal agencies should be aware of the potential for agencies to use emergency and other authorities when processing project applications. This includes the emergency and other potentially available provisions of major environmental laws such as the National Environmental Policy Act (NEPA), Endangered Species Act (ESA), and Clean Water Act (CWA) and their implementing regulations. Also, agencies will be compiling reports to be submitted within 30 days identifying projects these emergency and other authorities may be used for to facilitate economic recovery. Clients may wish to inquire with agencies about whether their project has been identified as eligible under the provisions of this Executive Order and whether an emergency authority or another authority is available to assist in expediting the agency review process.

The Order contains provisions specific to NEPA, ESA, and CWA, among other authorities such as those applicable to Department of Transportation highway and infrastructure projects and U.S. Army Corps of Engineers civil works projects. The Order specifically notes the authority of the Council on Environmental Quality (CEQ) to provide "appropriate flexibility to agencies" for complying with NEPA in emergency situations and the CEQ's ability to approve alternative arrangements for agencies "to take actions with significant environmental impacts without observing the [NEPA] regulations."

The Order also directs the heads of agencies "to use, to the fullest extent possible and consistent with applicable law, the ESA regulation on consultations in emergencies, to facilitate the Nation's economic recovery." Agencies must identify planned or potential actions to meet this goal of economic recovery and report these actions within 30 days. The Order contains a similar obligation to identify and report actions under the CWA and other authorities administered by the U.S. Army Corps of Engineers, including under the nationwide permit program.

Alston & Bird has formed a multidisciplinary [response and relief team](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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