

Environmental Provisions of the 21st Century ROAD to Housing Act

By David G. Mandelbaum | [August 20, 2026](#) | [The Legal Intelligencer](#)

On July 11, the 21st Century ROAD to Housing Act, Pub. L. No. 119-101, 140 Stat. 845, became law without the president's signature. The ROAD Act is an effort to facilitate an improvement in the affordability of housing. It passed both chambers with large bi-partisan majorities. Embedded within it are provisions addressing environmental issues—primarily environmental review of projects—that merit some attention by environmental practitioners for two reasons. First, for those thinking about what a reconstructed environmental regulatory system should look like after the current federal administration, the ROAD Act suggests a bipartisan antipathy to review under the National Environmental Policy Act (NEPA). Second, one of the provisions may seek to prompt exemption of certain housing projects from state environmental review and therefore may affect how the Environmental Rights Amendment to the Pennsylvania Constitution, Article I, Section 27, is implemented in the case of residential development.

The ROAD Act—named as an acronym for “Renewing Opportunity in the American Dream”—seeks to increase the supply of new housing and to encourage improvement in existing housing. By increasing supply, presumably the cost of housing to buy or to rent should come down. Of course, no one will build new stock if the price of the new houses does not exceed their cost, so the statute also seeks to reduce costs to build or to finance the new housing. The Committee Report, H. Rep. No. 457, 119th Cong., 2d Sess. (2026), has almost no discussion of environmental regulation. However, the text of the bill includes provisions addressing review of residential projects under the environmental laws, primarily NEPA. NEPA generally requires some sort of environmental assessment of any project receiving a federal permit or federal funding. If that EA shows that the project will significantly affect the quality of the human environment, the agency taking the permitting or funding action must prepare an environmental impact statement ahead of taking action.

The EA/EIS requirement has come under criticism for causing delay, adding expense and providing a litigation opportunity for opponents to a project. Accordingly, even the Biden administration put some emphasis on avoiding full NEPA review for most projects either through application of a “categorical exclusion” or a streamlined EA and issuance of a finding of no significant impact. Full EISs have been reasonably infrequent—perhaps 150 per year—for some time. And, the Supreme Court has recently constrained the scope of an EIS to only those impacts within the regulatory scope of the agency taking the action. See *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025).

The ROAD Act includes several provisions intended to reduce the likelihood that NEPA—or other environmental—review will occur.

Section 501(l), 140 Stat. at 911, amends the existing Cranston-Gonzalez National Affordable Housing Act statutorily to establish categorical exclusions of a number of actions from NEPA for agency action to promote several broad categories of residential development projects under the National Affordable Housing Act. It then goes on to preclude duplicative environmental reviews based upon additional sources of federal funding for housing projects or involvement of agencies other than the Department of Housing and Urban Development.

Section 103, 140 Stat. at 851, exempts assistance for development of an “infill site” from environmental review. An “infill site” is a previously developed site (that is, not a “greenfield”) served by existing infrastructure in addition to a road.

Section 202(b), 140 Stat. at 860, creates a pilot program for grants to support “whole home repairs.” Section 202(b)(11) requires grants under that pilot program to be treated as grants under another statute, 42 U.S.C. Section 3547, that calls for federal deferral of NEPA compliance if the state certifies that it will comply. Similarly, environmental review of grants under the Better Use of Intergovernmental and Local Development (BUILD) Housing Act will be treated in that way under Section 205 of the ROAD Act, 140 Stat. at 869.

Section 206, 140 Stat. at 870, goes further to specify a number of actions of the Department of Housing and Urban Development to be exempted or excluded from NEPA review, such as tenant and home-construction assistance, but also infrastructure construction, open space acquisition, small new construction projects, infill projects and voluntary acquisition of properties subject to floods or other environmental threats.

Section 504, 140 Stat. at 929, authorizes certain disaster relief funds to address housing needs after a disaster. It specifically exempts grants or other actions under this program from environmental review.

Section 802, 140 Stat. at 959, calls for streamlining NEPA compliance for rural housing assistance grants and suggests adoption of new or broader categorical exclusions.

Apart from the specifics, this catalog shows a Congressional skepticism that the purely procedural environmental review mandated by NEPA matters, at least with respect to housing projects, even large ones. Of course, a project with an air emission or a water discharge, a wetland or stream impact, or an effect on contaminated land would require substantive environmental review under the substantive regulatory statutes. Congress no longer seems to be confident that we need overall environmental review to assure decision-makers take environmental impacts into account, or at least it does not seem confident that the benefits of the review outweigh its costs and delay. Since 1969, NEPA has been regarded as the foundational environmental statute. Maybe the political consensus around comprehensive environmental review is not there now.

The ROAD Act extends that antipathy to environmental review beyond NEPA to state and local law. Section 107, 140 Stat. at 856, calls on HUD to issue guidelines for state and local “frameworks.” Frameworks include local land use ordinances, but also all the state and local permitting programs for new residential construction. Those guidelines must recommend measures for “streamlining of state and local environmental review policies.” Now these recommendations will not be binding, but a study will call out those states that conform and those that do not.

The Environmental Rights Amendment calls for some sort of environmental review by municipalities before making zoning and land use decisions and a similar review when the state acts. Exactly what that review must look like is disputed. That uncertainty, of course, is the opposite of “streamlining.” It remains to be seen whether these federal guidelines will inform—or at least provide litigation fodder—for the development of the contours of ERA review by the courts.

As a contrast to all this antipathy to review of environmental issues, Congress did add Section 804(c), 140 Stat. at 961, to the ROAD Act. It calls on the comptroller general to conduct a study by July 2027 that identifies how many residential units, and of those how many public housing units, are located within one mile of a site included on the national priorities list under the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA). CERCLA primarily addresses hazardous substances in soil or groundwater. A mile is a long way for those hazardous substances to move. Sometimes they do, but having

an apartment in a building within a mile of a Superfund site is not particularly risky, especially if the apartment has public water or a well up-gradient from the site. The Congressional assessment of relative risks posed by location and design of housing seems somewhat odd.

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