H. R._____

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process.

IN THE HOUSE OF REPRESENTATIVES

Mr. Graves of Louisiana introduced the following bill; which was referred to the Committee on ____________________________

A BILL

To amend the National Environmental Policy Act of 1969 to clarify ambiguous provisions, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023” or the “BUILDER Act of 2023”.

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SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.

(a) Paragraph (2) of Section 102.—Section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) is amended—

(1) in subparagraph (A), by striking “insure” and inserting “ensure”;

(2) in subparagraph (B), by striking “insure” and inserting “ensure”;

(3) in subparagraph (C)—

(A) by inserting “consistent with the provisions of this Act and except as provided by other provisions of law,” before “include in every”;

(B) by striking clauses (i) through (v) and inserting the following:

“(i) reasonably foreseeable environmental effects with a reasonably close causal relationship to the proposed agency action;

“(ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

“(iii) a reasonable number of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are
technically and economically feasible, are within the jurisdiction of the agency, meet the purpose and need of the proposed agency action, and, where applicable, meet the goals of the applicant;

“(iv) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity; and

“(v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented.”; and

(C) by striking “the responsible Federal official” and inserting “the head of the lead agency”;

(4) in subparagraph (D), by striking “Any” and inserting “any”;

(5) by redesignating subparagraphs (D) through (I) as subparagraphs (F) through (K), respectively;

(6) by inserting after subparagraph (C) the following:
“(D) ensure the professional integrity, including
scientific integrity, of the discussion and analysis in
an environmental document;
“(E) make use of reliable existing data and re-
sources in carrying out this Act;”;
(7) by amending subparagraph (G), as redesign-
nated, to read as follows:
“(G) consistent with the provisions of this Act,
study, develop, and describe technically and economi-
cally feasible alternatives within the jurisdiction and
authority of the agency;”; and
(8) in subparagraph (H), as amended, by in-
serting “consistent with the provisions of this Act,”
before “recognize”.
(b) NEW SECTIONS.—Title I of the National Envi-
is amended by adding at the end the following:
“SEC. 106. PROCEDURE FOR DETERMINATION OF LEVEL OF
REVIEW.
“(a) THRESHOLD DETERMINATIONS.—An agency is
not required to prepare an environmental document with
respect to a proposed agency action if—
“(1) the proposed agency action is not a final
agency action within the meaning of such term in
chapter 5 of title 5, United States Code;
“(2) the proposed agency action is covered by a categorical exclusion established by a Federal agency or by another provision of law;

“(3) the preparation of such document would clearly and fundamentally conflict with the requirements of another provision of law;

“(4) the proposed agency action is, in whole or in part, a nondiscretionary action with respect to which such agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action;

“(5) the proposed agency action is a rulemaking that is subject to section 553 of title 5, United States Code; or

“(6) the proposed agency action is an action for which such agency’s compliance with another statute’s requirements serve the same or similar function as the requirements of this Act with respect to such action.

“(b) LEVELS OF REVIEW.—

“(1) ENVIRONMENTAL IMPACT STATEMENT.— An agency shall issue an environmental impact statement with respect to a proposed agency action that has a significant effect on the quality of the human environment.
“(2) ENVIRONMENTAL ASSESSMENT.—An agency shall prepare an environmental assessment with respect to a proposed agency action that is not likely to have a significant effect on the quality of the human environment, or if the significance of such effect is unknown. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency’s finding of no significant impact.

“(3) SOURCES OF INFORMATION.—In making a determination under this subsection, an agency—

“(A) may make use of any reliable data source; and

“(B) is not required to undertake new scientific or technical research.

“SEC. 107. TIMELY AND UNIFIED FEDERAL REVIEWS.

“(a) LEAD AGENCY.—

“(1) DESIGNATION.—

“(A) IN GENERAL.—If there are two or more involved Federal agencies, such agencies shall determine, by letter or memorandum, which agency shall be the lead agency based on consideration of the following factors:

“(i) Magnitude of agency’s involvement.
“(ii) Project approval or disapproval authority.

“(iii) Expertise concerning the action’s environmental effects.

“(iv) Duration of agency’s involvement.

“(v) Sequence of agency’s involvement.

“(B) JOINT LEAD AGENCIES.—In making a determination under subparagraph (A), the involved Federal agencies may, in addition to a Federal agency, appoint such Federal, State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in paragraph (2).

“(2) ROLE.—A lead agency shall, with respect to a proposed agency action—

“(A) supervise the preparation of an environmental document if, with respect to such proposed agency action, there is more than one involved Federal agency;

“(B) request the participation of each cooperating agency at the earliest practicable time;
“(C) in preparing an environmental document, give consideration to any analysis or proposal created by a cooperating agency with jurisdiction by law or a cooperating agency with special expertise;

“(D) develop a schedule, in consultation with each involved cooperating agency, the applicant, and such other entities as the lead agency determines appropriate, for completion of any environmental review, permit, or authorization required to carry out the proposed agency action;

“(E) if the lead agency determines that a review, permit, or authorization will not be completed in accordance with the schedule developed under subparagraph (D), notify the agency responsible for issuing such review, permit, or authorization of the discrepancy and request that such agency take such measures as such agency determines appropriate to comply with such schedule; and

“(F) meet with a cooperating agency that requests such a meeting.

“(3) COOPERATING AGENCY.—The lead agency may, with respect to a proposed agency action, des-
ignite any involved Federal agency or a State, Tribal, or local agency as a cooperating agency. A cooperating agency may, not later than a date specified by the lead agency, submit comments to the lead agency. Such comments shall be limited to matters relating to the proposed agency action with respect to which such agency has special expertise or jurisdiction by law with respect to an environmental issue.

“(4) REQUEST FOR DESIGNATION.—Any Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency with respect to a proposed agency action under paragraph (1) may submit a written request for such a designation to an involved Federal agency. An agency that receives a request under this paragraph shall transmit such request to each involved Federal agency and to the Council.

“(5) COUNCIL DESIGNATION.—

“(A) REQUEST.—Not earlier than 45 days after the date on which a request is submitted under paragraph (4), if no designation has been made under paragraph (1), a Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation
of a lead agency may request that the Council designate a lead agency. Such request shall consist of—

“(i) a precise description of the nature and extent of the proposed agency action; and

“(ii) a detailed statement with respect to each involved Federal agency and each factor listed in paragraph (1) regarding which agency should serve as lead agency.

“(B) TRANSMISSION.—The Council shall transmit a request received under subparagraph (A) to each involved Federal agency.

“(C) RESPONSE.—An involved Federal agency may, not later than 20 days after the date of the submission of a request under subparagraph (A), submit to the Council a response to such request.

“(D) DESIGNATION.—Not later than 40 days after the date of the submission of a request under subparagraph (A), the Council shall designate the lead agency with respect to the relevant proposed agency action.

“(b) ONE DOCUMENT.—
“(1) DOCUMENT.—To the extent practicable, if there are 2 or more involved Federal agencies with respect to a proposed agency action and the lead agency has determined that an environmental document is required, such requirement shall be deemed satisfied with respect to all involved Federal agencies if the lead agency issues such an environmental document.

“(2) CONSIDERATION TIMING.—In developing an environmental document for a proposed agency action, no involved Federal agency shall be required to consider any information that becomes available after the sooner of, as applicable—

“(A) receipt of a complete application with respect to such proposed agency action; or

“(B) publication of a notice of intent or decision to prepare an environmental impact statement for such proposed agency action.

“(3) SCOPE OF REVIEW.—In developing an environmental document for a proposed agency action, the lead agency and any other involved Federal agencies shall only consider the effects of the proposed agency action that—

“(A) occur on Federal land; or
“(B) are subject to Federal control and responsibility.

“(c) Request for Public Comment.—Each notice of intent to prepare an environmental impact statement under section 102 shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.

“(d) Statement of Purpose and Need.—Each environmental impact statement shall include a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action.

“(e) Estimated Total Cost.—The cover sheet for each environmental impact statement shall include a statement of the estimated total cost of preparing such environmental impact statement, including the costs of agency full-time equivalent personnel hours, contractor costs, and other direct costs.

“(f) Page Limits.—

“(1) Environmental Impact Statements.—

“(A) In general.—Except as provided in subparagraph (B), an environmental impact statement shall not exceed 150 pages, not including any citations or appendices.
“(B) EXTRAORDINARY COMPLEXITY.—An environmental impact statement for a proposed agency action of extraordinary complexity shall not exceed 300 pages, not including any citations or appendices.

“(2) ENVIRONMENTAL ASSESSMENTS.—An environmental assessment shall not exceed 75 pages, not including any citations or appendices.

“(g) SPONSOR PREPARATION.—A lead agency shall allow a project sponsor to prepare an environmental assessment or an environmental impact statement upon request of the project sponsor. Such agency may provide such sponsor with appropriate guidance and assist in the preparation. The lead agency shall independently evaluate the environmental document and shall take responsibility for the contents upon adoption.

“(h) DEADLINES.—

“(1) IN GENERAL.—Except as provided in paragraph (2), with respect to a proposed agency action, a lead agency shall complete, as applicable—

“(A) the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable—

“(i) the date on which such agency determines that section 102(2)(C) requires
the issuance of an environmental impact statement with respect to such action;

“(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

“(iii) the date on which such agency issues a notice of intent to prepare the environmental impact statement for such action; and

“(B) the environmental assessment not later than the date that is 1 year after the sooner of, as applicable—

“(i) the date on which such agency determines that section 106(b)(2) requires the preparation of an environmental assessment with respect to such action;

“(ii) the date on which such agency notifies the applicant that the application to establish a right-of-way for such action is complete; and

“(iii) the date on which such agency issues a notice of intent to prepare the environmental assessment for such action.
“(2) DELAY.—A lead agency that determines it is not able to meet the deadline described in paragraph (1) may extend such deadline with the approval of the applicant. If the applicant approves such an extension, the lead agency shall establish a new deadline that provides only so much additional time as is necessary to complete such environmental impact statement or environmental assessment.

“(3) EXPENDITURES FOR DELAY.—If a lead agency is unable to meet the deadline described in paragraph (1) or extended under paragraph (2), the lead agency must pay $100 per day, to the extent funding is provided in advance in an appropriations Act, out of the office of the head of the department of the lead agency to the applicant starting on the first day immediately following the deadline described in paragraph (1) or extended under paragraph (2) up until the date that an applicant approves a new deadline. This paragraph does not apply when the lead agency misses a deadline solely due to delays caused by litigation.

“(i) REPORT.—

“(1) IN GENERAL.—The head of each lead agency shall annually submit to the Committee on Natural Resources of the House of Representatives
and the Committee on Environment and Public Works of the Senate a report that—

“(A) identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in subsection (h); and

“(B) provides an explanation for any failure to meet such deadline.

“(2) INCLUSIONS.—Each report submitted under paragraph (1) shall identify, as applicable—

“(A) the office, bureau, division, unit, or other entity within the Federal agency responsible for each such environmental assessment and environmental impact statement;

“(B) the date on which—

“(i) such lead agency notified the applicant that the application to establish a right-of-way for the major Federal action is complete;

“(ii) such lead agency began the scoping for the major Federal action; or

“(iii) such lead agency issued a notice of intent to prepare the environmental assessment or environmental impact statement for the major Federal action; and
“(C) when such environmental assessment and environmental impact statement is expected to be complete.

“SEC. 108. JUDICIAL REVIEW.

“(a) LIMITATIONS ON CLAIMS.—Notwithstanding any other provision of law, a claim arising under Federal law seeking judicial review of compliance with this Act, of a determination made under this Act, or of Federal action resulting from a determination made under this Act, shall be barred unless—

“(1) in the case of a claim pertaining to a proposed agency action for which—

“(A) an environmental document was prepared and an opportunity for comment was provided;

“(B) the claim is filed by a party that participated in the administrative proceedings regarding such environmental document; and

“(C) the claim—

“(i) is filed by a party that submitted a comment during the public comment period for such administrative proceedings and such comment was sufficiently detailed to put the lead agency on notice of the
issue upon which the party seeks judicial review; and

“(ii) is related to such comment;

“(2) except as provided in subsection (b), such claim is filed not later than 120 days after the date of publication of a notice in the Federal Register of agency intent to carry out the proposed agency action;

“(3) such claim is filed after the issuance of a record of decision or other final agency action with respect to the relevant proposed agency action;

“(4) such claim does not challenge the establishment or use of a categorical exclusion under section 102; and

“(5) such claim concerns—

“(A) an alternative included in the environmental document; or

“(B) an environmental effect considered in the environmental document.

“(b) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.—

“(1) SEPARATE FINAL AGENCY ACTION.—The issuance of a supplemental environmental impact statement shall be considered a final agency action for the purposes of chapter 5 of title 5, United
States Code, separate from the issuance of any previous environmental impact statement with respect to the same proposed agency action.

“(2) DEADLINE FOR FILING A CLAIM.—A claim seeking judicial review of a supplemental environmental review issued under section 102(2)(C) shall be barred unless—

“(A) such claim is filed within 120 days of the date on which such supplemental environmental impact statement is issued; and

“(B) such claim is based on information contained in such supplemental environmental impact statement that was not contained in a previous environmental document pertaining to the same proposed agency action.

“(c) PROHIBITION ON INJUNCTIVE RELIEF.—Notwithstanding any other provision of law, a violation of this Act shall not constitute the basis for injunctive relief.

“(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create a right of judicial review or place any limit on filing a claim with respect to the violation of the terms of a permit, license, or approval.

“(e) REMAND.—Notwithstanding any other provision of law, no proposed agency action for which an environmental document is required shall be vacated or otherwise
limited, delayed, or enjoined unless a court concludes allow-
ing such proposed action will pose a risk of an immi-
ent and substantial environmental harm and there is no other equitable remedy available as a matter of law.

“SEC. 109. DEFINITIONS.

“In this title:

“(1) CATEGORICAL EXCLUSION.—The term ‘categorical exclusion’ means a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of section 102(2)(C).

“(2) COOPERATING AGENCY.—The term ‘cooperating agency’ means any Federal, State, Tribal, or local agency that has been designated as a cooperating agency under section 107(a)(3).

“(3) COUNCIL.—The term ‘Council’ means the Council on Environmental Quality established in title II.

“(4) ENVIRONMENTAL ASSESSMENT.—The term ‘environmental assessment’ means an environmental assessment prepared under section 106(b)(2).

“(5) ENVIRONMENTAL DOCUMENT.—The term ‘environmental document’ means an environmental
impact statement, an environmental assessment, or a finding of no significant impact.

“(6) **ENVIRONMENTAL IMPACT STATEMENT.**—
The term ‘environmental impact statement’ means a detailed written statement that is required by section 102(2)(C).

“(7) **FINDING OF NO SIGNIFICANT IMPACT.**—
The term ‘finding of no significant impact’ means a determination by a Federal agency that a proposed agency action does not require the issuance of an environmental impact statement.

“(8) **INVOLVED FEDERAL AGENCY.**—The term ‘involved Federal agency’ means an agency that, with respect to a proposed agency action—

“(A) proposed such action; or

“(B) is involved in such action because such action is directly related, through functional interdependence or geographic proximity, to an action such agency has taken or has proposed to take.

“(9) **LEAD AGENCY.**—The term ‘lead agency’ means, with respect to a proposed agency action—

“(A) the agency that proposed such action; or
“(B) if there are 2 or more involved Federal agencies with respect to such action, the agency designated under section 107(a)(1).

“(10) MAJOR FEDERAL ACTION.—

“(A) IN GENERAL.—The term ‘major Federal action’ means an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility.

“(B) EXCLUSION.—The term ‘major Federal action’ does not include—

“(i) a non-Federal action—

“(I) with no or minimal Federal funding;

“(II) with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project; or

“(III) that does not include Federal land;

“(ii) funding assistance solely in the form of general revenue sharing funds which do not provide Federal agency compliance or enforcement responsibility over the subsequent use of such funds;
“(iii) loans, loan guarantees, or other forms of financial assistance where a Federal agency does not exercise sufficient control and responsibility over the effect of the action;

“(iv) farm ownership and operating loan guarantees by the Farm Service Agency pursuant to sections 305 and 311 through 319 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1925 and 1941 through 1949);

“(v) business loan guarantees provided by the Small Business Administration pursuant to section 7(a) or (b) and of the Small Business Act (15 U.S.C. 636(a)), or title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.);

“(vi) bringing judicial or administrative civil or criminal enforcement actions; or

“(vii) extraterritorial activities or decisions, which means agency activities or decisions with effects located entirely outside of the jurisdiction of the United States.
“(C) ADDITIONAL EXCLUSIONS.—An agency action may not be determined to be a major Federal action on the basis of—

“(i) an interstate effect of the action or related project; or

“(ii) the provision of Federal funds for the action or related project.

“(11) REASONABLY FORESEEABLE.—The term ‘reasonably foreseeable’ means likely to occur—

“(A) not later than 10 years after the lead agency begins preparing the environmental document; and

“(B) in an area directly affected by the proposed agency action such that an individual of ordinary prudence would take such occurrence into account in reaching a decision.

“(12) SPECIAL EXPERTISE.—The term ‘special expertise’ means statutory responsibility, agency mission, or related program experience.”.