

# SOUTHERN ENVIRONMENTAL LAW CENTER

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Mr. Duane Callender  
Director  
TIFIA Joint Program Office (HITJ)  
US Department of Transportation  
1200 New Jersey Avenue, SE  
Room E64-301  
Washington, DC 20590  
([duane.callender@dot.gov](mailto:duane.callender@dot.gov))

**Re: TIFIA Funding for the Mid-Currituck Bridge Project**

Dear Mr. Callender,

On behalf of the North Carolina Wildlife Federation, the Southern Environmental Law Center ("SELC") writes to express its concerns about the consistency of the North Carolina Turnpike Authority's proposed Mid-Currituck Bridge project with the statutory and regulatory criteria governing the allocation of funding under the Transportation Infrastructure Finance and Innovation Act ("TIFIA"). *See* 23 U.S.C. 602(b); 49 CFR 80.15. Because the proposed project poses irreconcilable conflicts with the TIFIA program's objectives, we recommend that the U.S. Department of Transportation not invite the North Carolina Turnpike Authority to submit further application materials. The North Carolina Wildlife Federation is a non-profit organization dedicated to the conservation of North Carolina wildlife and its habitat. (See [www.ncwf.org](http://www.ncwf.org)). SELC is a non-profit environmental advocacy organization working in six southern states with expertise in transportation policy, among other areas. (See [www.southernenvironment.org](http://www.southernenvironment.org)).

At a cost of over \$700 million, the Mid-Currituck Bridge project would span seven miles of wetlands and coastal sound to access a barrier island that measures less than a mile across for most of its length. The primary purpose of the bridge would be to shorten tourists' trips to Bodie Island and the town of Corolla, an unincorporated community with 500 permanent residents and only 30 public beach access parking spaces. The project would encourage investment in real estate and infrastructure that would be highly vulnerable to hurricanes and sea level rise. It would significantly impact a fragile coastal ecosystem, and drain transportation resources away from sorely needed maintenance and repair projects in the immediate vicinity of the project.

The Mid-Currituck Bridge project expressly conflicts with the TIFIA program selection criteria. According to federal regulations, twenty percent of a project's eligibility for funding

under TIFIA depends upon “the extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.” 49 CFR 80.15. The hundreds of millions of dollars of public funding needed to construct this project would come at the expense of foregone improvements to the existing transportation network in coastal North Carolina, where the replacement of the Bonner Bridge connecting Bodie and Hatteras islands is long overdue. The Mid-Currituck Bridge proposal represents a distortion of priorities that would adversely affect “the long-term efficiency and reliability in the movement of people and goods” in the state. “Notice of Funding Availability,” 74 *Fed. Reg.* 63497, 63500 (Dec. 3, 2009). Shortening tourists’ trips to this small geographic area, with its small population and existing dependable route to the mainland, does little in the way of “supporting international commerce, or otherwise enhancing the national transportation system.” 49 CFR 80.15.

The regulatory criteria require that another twenty percent of a project’s eligibility reflect “the extent to which the project helps maintain or protect the environment.” 49 CFR 80.15. This criterion includes “sustainability: improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems.” 74 *Fed. Reg.* at 63500. A plan to build massive highway infrastructure to an ecologically fragile, hurricane prone barrier island should not receive any points for “sustainability.” While the Turnpike Authority’s Letter of Interest maintains that the bridge will reduce vehicle miles traveled, that assertion is premised on an unrealistic assessment of how the proposed bridge would induce traffic. “It is an irrefutable reality that the easier it is to get somewhere, the more people will be inspired to do so.” *Mullin v. Skinner*, 756 F. Supp. 904, 917 (E.D.N.C. 1990). The secondary impacts of the Mid-Currituck Bridge would include the decline of an essential primary and secondary nursery area for various fish species, and increased beach driving through the Currituck National Wildlife Refuge. This degradation of the area’s natural resources would far outweigh any benefits to the environment from the asserted reduction in vehicle miles traveled.

Finally, “the creditworthiness of the project” accounts for 12.5 percent of its eligibility for TIFIA funding, 49 CFR 80.15. According to TIFIA program guidelines, to assess creditworthiness the Department must ask, “How well substantiated is the financial plan and its revenue and cost assumptions?”<sup>1</sup> A preliminary evaluation of this program’s creditworthiness should take into account two factors.

First, the toll revenues for this bridge depend on massive growth in the number of hotels and vacation rentals on Bodie Island. Currently, North Carolina’s state-backed insurance pool, colloquially referred to as “the Beach Plan,” heavily subsidizes these real estate investments, but it will not likely do so in the future, in light of growing recognition that the Beach Plan’s “\$72

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<sup>1</sup> TIFIA Program Guide (December 2009), App. E *available at*: [http://www.fhwa.dot.gov/ipd/tifia/guidance\\_applications/program\\_guide.htm](http://www.fhwa.dot.gov/ipd/tifia/guidance_applications/program_guide.htm)

billion in commitments well outstrip its ability to pay if there's a catastrophic hurricane."<sup>2</sup> The risk is particularly acute on Bodie Island where, according to the Draft Environmental Impact Statement for the project, the "entire barrier island would be inundated" within a few miles of the Bridge under the most conservative projections of sea level rise caused by climate change.<sup>3</sup>

Second, much of this project's financial plan relies on an illegitimate pledge of tax revenue. The Turnpike Authority indicates that the project's debt service obligations will be met by toll revenues and "an additional, continuing annual appropriation to NCTA of \$15 million for the Mid-Currituck Bridge." Letter of Interest at 5. This "annual appropriation" or "gap funding" must be renewed each year by the legislature. It does not meet North Carolina's constitutional requirements for a pledge of the faith and credit by the State, *see* N.C. Const. art. V, § 3, although it would effectively handcuff future North Carolina policymakers seeking to protect the state's credit rating. Because "such indebtedness is not subject to a vote of the people, and its repayment is based on the State's annual debt service appropriation," the State Treasurer's Debt Affordability Advisory Committee has recommended that future debt financing rely on conventional, transparent "general obligation debt."<sup>4</sup> The Treasurer's Committee has pointed out that "including all authorized but unissued debt," such as the appropriation bond debt that the Turnpike Authority seeks to issue for this project, "the percentage of non-GO [General Obligation] debt is projected to increase well beyond the medians for 'triple A' states and exceed the median for 'double A' states as well."<sup>5</sup> Issuing a TIFIA loan for this project would thus serve to undermine the state of North Carolina's credit rating.

Finally, while this project may not directly conflict with the remaining TIFIA criteria, its contribution to other TIFIA program objectives is unsubstantial. The project has a private partner, which along with the project's capacity to "attract private debt" accounts for 20% of the TIFIA scoring, but the private partner's equity stake would amount to less than 15% of the project's construction costs. The electronic tolling proposed by the Turnpike Authority may qualify for points based on "the extent to which the project uses new technologies," but this must be balanced against the project's overall lack of innovation as a 21<sup>st</sup> Century transportation strategy. And the fact that this project would be delayed indefinitely without \$250 million of TIFIA loans indicates its low ranking among North Carolina's transportation priorities.

The Department of Transportation should not choose this project over other worthy infrastructure proposals that meet all of the TIFIA program criteria. This bridge would gobble up state funding that could otherwise be used to fix the state's crumbling coastal infrastructure, particularly replacement of the Bonner Bridge. The Bonner Bridge has existed for over 40 years

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<sup>2</sup> *Insurance Journal*. Southeast News. "North Carolina Coastal Insurance Rates to Rise May 1" (April 23, 2009), available at: <http://www.insurancejournal.com/news/southeast/2009/04/23/99856.htm>

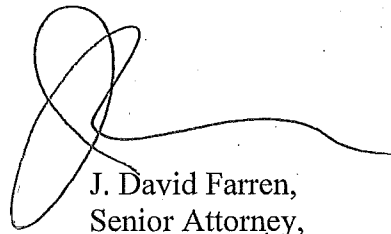
<sup>3</sup> *See* Draft Environmental Impact Statement. "Mid-Currituck Bridge Study" (March 2010), available at [www.ncturnpike.org](http://www.ncturnpike.org)

<sup>4</sup> *See* North Carolina State Treasurer's Office Debt Affordability Advisory Committee. "2010 Debt Affordability Study." (February 1, 2010) available at <http://www.nctreasurer.com/Dsthome/StateAndLocalGov/DebtAffordability>

<sup>5</sup> *Id.*

and is the only connection between Hatteras Island and the state's road network. A plan to replace the Bonner Bridge with a toll facility would be a better candidate for TIFIA funding. The Mid-Currituck Bridge continues to promote an unaffordable and unsustainable approach to mobility. This approach can no longer be reconciled with federal policy, as demonstrated by the TIFIA criteria's emphasis on livability, economic efficiency, maintaining the existing transportation infrastructure in a state of good repair, and reducing greenhouse gas emissions. The TIFIA loan program should not finance this project.

Sincerely,

A handwritten signature in black ink, appearing to read "J. David Farren". The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

J. David Farren,  
Senior Attorney,

A handwritten signature in black ink, appearing to read "Thomas Gremillion". The signature is more complex and scribbled than the one above, with multiple overlapping loops and a long horizontal stroke at the end.

Thomas Gremillion  
Associate Attorney

Encl.

CC:

Tim Gestwicki, North Carolina Wildlife Federation  
Janet Cowell, North Carolina Treasurer  
Gene Conti, NCDOT  
David Joyner, North Carolina Turnpike Authority  
Jennifer Bumgarner, Office of Governor