

No. 22-1103

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

NO MID-CURRITUCK BRIDGE-CONCERNED CITIZENS AND VISITORS
OPPOSED TO THE MID-CURRITUCK BRIDGE; NORTH CAROLINA
WILDLIFE FEDERATION,

Plaintiffs-Appellants,

v.

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; FEDERAL
HIGHWAY ADMINISTRATION; EDWARD T. PARKER, in his official
capacity as Assistant Division Administrator, Federal Highway
Administration; ERIC BOYETTE, in his official capacity as Secretary, N.C.
Department of Transportation,

Defendants-Appellees,

and

JAMES H. TROGDON, III,

Defendant.

Appeal from the United States District Court for the
Eastern District of North Carolina
No. 2:19-cv-00014-FL (Hon. Louise W. Flanagan)

***AMICUS CURIAE* BRIEF OF TOWN OF SOUTHERN SHORES,
TOWN OF DUCK, COUNTY OF CURRITUCK, DARE COUNTY
TOURISM BOARD, DUCK COMMUNITY AND BUSINESS
ALLIANCE, INC. AND CURRITUCK CHAMBER OF COMMERCE,
INC. IN SUPPORT OF DEFENDANTS-APPELLEES**

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 22-1103Caption: N. Carolina Wildlife Federation et al. v. N.C. Dept. of Transp. et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Town of Southern Shores

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? YES NO
If yes, identify entity and nature of interest:
5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:
6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.
7. Is this a criminal case in which there was an organizational victim? YES NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ John D. Leidy

Date: 6/7/2022

Counsel for: Town of Southern Shores, Amicus

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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No. 22-1103Caption: N. Carolina Wildlife Federation et al. v. N.C. Dept. of Transp. et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Town of Duck

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO
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Signature: /s/ John D. Leidy

Date: 6/7/2022

Counsel for: Town of Duck, Amicus

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No. 22-1103Caption: N. Carolina Wildlife Federation et al. v. N.C. Dept. of Transp. et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

County of Currituck

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
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Signature: /s/ John D. Leidy

Date: 6/7/2022

Counsel for: County of Currituck, Amicus

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No. 22-1103Caption: N. Carolina Wildlife Federation et al. v. N.C. Dept. of Transp. et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Dare County Tourism Board

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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Signature: /s/ John D. Leidy

Date: 6/7/2022

Counsel for: Dare County Tourism Board, Amicus

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No. 22-1103Caption: N. Carolina Wildlife Federation et al. v. N.C. Dept. of Transp. et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Duck Community and Business Alliance, Inc.

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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Signature: /s/ John D. Leidy

Date: 6/7/2022

Counsel for: Duck Comm. and Bus. Alliance, Inc.

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No. 22-1103Caption: N. Carolina Wildlife Federation et al. v. N.C. Dept. of Transp. et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Currituck Chamber of Commerce, Inc.

(name of party/amicus)

who is _____ amicus _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

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Signature: /s/ John D. Leidy

Date: 6/7/2022

Counsel for: Currituck Chamber of Commerce, Inc

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STATEMENT OF IDENTITY OF AMICI CURIAE

I. **BACKGROUND AND GENERAL INTERESTS OF THE AMICI**

The popularity of the Outer Banks, including Dare County and its municipalities, and Currituck County continues to grow, resulting in an ever increasing number of residents and visitors, particularly for the most northern area of the Outer Banks from Southern Shores to the Virginia border. The volume of traffic traveling back and forth along the corridor of U.S. Highway 158 (“US158”) on the Currituck County mainland, across the US158 bridge between Powells Point and the Town of Kitty Hawk, then through the towns of Southern Shores and Duck and along North Carolina Highway 12 (“NC12”) between Duck and the Currituck Outer Banks areas of Corolla and Carova increases greatly on Saturdays and Sundays during the summer vacation season. The summer vacation season historically begins about Memorial Day and ends about Labor Day (the “Summer Season”), but seems to expand each year. The traffic and associated congestion and hurricane evacuation times along that travel corridor were determined in 2008 to be substantial enough to necessitate a project, (MCB4596-4598), which was ultimately resulted in the Defendant-Appellees’ choice of the

preferred alternative, MCB4, for resolving the issues (the “Mid-Currituck Bridge”). (MCB34928-29, 34963-65).

All of the named *amici* (“*Amici*”) will be positively affected by accomplishment of the purposes of the future Mid-Currituck Bridge which are (i) to substantially improve traffic flow and reduce travel times to and from the northern Outer Banks and the Currituck County mainland; (ii) to reduce the amount of traffic coming through the towns of Southern Shores and Duck to and from the northern Outer Banks; and (iii) to substantially reduce the hurricane and disaster evacuation time for citizens of and visitors to the northern Outer Banks. All of the *Amici* favor construction of the Mid-Currituck Bridge over other proposed alternatives, such as substantially widening US158 and NC12. The *Amici* and other entities expressed their support during the EIS process, (MCB68971-86), and have expressed continued interest via the adoption of numerous resolutions of support going back, in some cases, to the 1990s.¹ The pending litigation, at a minimum, has caused

¹ In recent months, the *Amici* and many other local governments and business organizations, including Dare County, Chowan County, Perquimans County, Camden County, Town of Kill Devil Hills, Town of Nags Head, Town of Kitty Hawk, Albemarle Rural Planning Organization, the Outer Banks Association of Realtors have adopted resolutions of support for construction of the Mid-Currituck Bridge.

and continues to delay the construction of the Mid-Currituck Bridge to the detriment of the citizens, visitors and members of the *Amici*. All of the *Amici* via their governing boards or officers have authorized the undersigned to file this *amicus curiae* brief on their behalf.

A. Town of Southern Shores

In the Town of Southern Shores, NC12 and US158 are the only roadways not classified as local roads, and as such travel along NC12 should be the preferred method of travel through the Town from US158 to the northern border of the Southern Shores and vice versa. However, due to substantial and increasing traffic congestion on NC12 a significant amount of the increased traffic travels between US158 situated along the town's southern border and points upon NC12 in the northern portion of Southern Shores via interior residential streets rather than along NC12.

Southern Shores' residential streets are all classified as local streets under the North Carolina Department of Transportation ("NCDOT") and Federal Highway Administration ("FHWA") Highway Functional Classification. As such, they are not intended for use in long distance travel, except at the origin or destination end of the trip, due to

their provision of direct access to abutting land and design to discourage through traffic. The residential streets used for travel through Southern Shores being used by traffic attempting to avoid the congestion of NC12 are also not constructed in such a manner so as to be able to safely and efficiently support the increased traffic volume due to their narrow widths, low speed limits and the use of such streets by the citizens and visitors of Southern Shores and their children for recreational purposes such as walking and bicycling. The residential streets were not constructed to handle the increasing amount of traffic and the additional traffic causes early deterioration of the roadways and increased maintenance costs. The volume of traffic causes extreme congestion and delays for travel upon the residential roads within Southern Shores such that homeowners are often unable to leave their driveways for hours at a time and police, fire and emergency response ability could be affected. Similarly, Southern Shore's public works and other services are limited by the congestion for hours each weekend. In addition to congestion and delays, the increased traffic on residential streets often results in violations of set speed limits, running of stop signs and other traffic violations which create dangerous conditions for

those drivers and their passengers as well as other users of the roadways including, but not limited to, pedestrians, cyclists and other vehicle drivers and passengers.

While the increased traffic on residential roads creates these public safety, navigational and infrastructure issues, it typically does not actually result in substantial benefits to the individual traveler's travel time because the real bottleneck remains NC12. Construction of the Mid-Currituck Bridge and the associated lowering of congestion upon NC12 would greatly help to reduce the burden upon Southern Shores citizens and visitors as well as local vendors travelling between points north and south of Southern Shores on busy weekends and will reduce hurricane evacuation times too. (MCB69447)

B. Town of Duck

Duck is Dare County's northernmost municipality, and one of the most popular resort destinations on the east coast of the United States. Incorporated on May 1, 2002, Duck is also the Outer Banks' newest town. At its incorporation, Duck was already considerably built out, and the only way to travel by vehicle to or through Duck has long been NC12. NC12 is primarily two lanes from Hatteras Village in southern Dare County to the northern end of Corolla in Currituck County. NC12

through Duck is densely packed with businesses and residences along the highway right-of-way. Duck encourages and enjoys significant pedestrian use of the area along NC12 by citizens and visitors. Like other areas of the Outer Banks, Duck's resident population of under 1000 people swells to tens of thousands of people during the peak of tourist season. Weekend traffic congestion through Duck on NC12 creates safety hazards for users along the roadway as well as delays for travelers coming to Duck and travelling through the town to other areas. Duck expects the bridge to substantially alleviate traffic congestion and reduce hurricane evacuation times for its citizens and visitors by accommodating much of the traffic heading to and coming from the Currituck Outer Banks north of Duck.

C. County of Currituck

The desirability of the Currituck Outer Banks was long projected to and actually has driven considerable development in the area, increasing both the permanent population and the visitor capacity. The Currituck Outer Banks population swells from the hundreds of permanent residents to the multiple tens of thousands of visitors during the peak of tourist season. The tourism industry is vital to Currituck County for the amount of revenue generated by occupancy and sales tax

from visitors, as well as the many jobs available with local businesses that are involved in tourism.

Currituck County has and continues to accommodate the vast majority of the burden of visitor traffic to not just the northern Outer Banks, but also to the rest of the Outer Banks via the main thoroughfare of US158 which runs the entire north-south length of the Currituck mainland from the NC/VA border to the US158 bridge at Powells Point. On the mainland, the increases in traffic are cause for considerable congestion and associated safety concerns.

The single point of access to US158 in Currituck from the Outer Banks for those travelling to safety in hurricane evacuations creates a single point of failure and substantial evacuation times even if all goes as planned. On the Currituck Outer Banks, the traffic congestion on NC12 slows travel times dramatically and greatly increases hurricane evacuation times. The proposed Mid-Currituck Bridge will have end points that are both located within Currituck County with one being on the Currituck mainland intersecting with US158 and the other being on the Currituck Outer Banks intersecting with NC12 in Corolla. The Mid-Currituck Bridge will help to alleviate both the traffic congestion and

hurricane evacuation issues for the Currituck mainland and Outer Banks.

D. Dare County Tourism Board

The Dare County Tourism Board is a North Carolina Public Authority and the managing body for the Outer Banks Visitors Bureau. The Outer Banks Visitors Bureau is the lead marketing and promotional agency for the Outer Banks and is funded by tourism generated revenues from one percent of the occupancy tax and one percent of the prepared meals tax collected in Dare County. Dare County tourism is a \$1.4 billion dollar industry supporting 11,803 jobs and generating \$55.7 million in State tax revenue and \$67.7 in local tax revenue annually (source: *The Economic Impact of Travel on North Carolina Counties*, a study prepared for Visit North Carolina by Tourism Economics). Tourism dominates Dare County's economy and has for generations.

Traffic and ease of movement directly impact the visitor's perception of trip satisfaction. In the *2014-2015 Visitor Survey Report for the Outer Banks Visitors Bureau*, (Exhibit 4–Satisfaction with Experiences During Stay–Summarized, page 8) ten fundamental

drivers of visitor satisfaction were studied. The results revealed “Ease of Local Travel” was a drag on overall perception of the vacation experience, rating next to last of the ten measures polled. Visitation has only increased since the time of the study, particularly as travelers sought the relative safety of the Outer Banks during COVID emergency lockdowns.

Visitor satisfaction is also heavily influenced by the experiences of the visitor within lodging properties, restaurants and attractions. Businesses rely on workers to provide adequate (and, hopefully, exceptional) experiences – workers must clean homes and rooms prior to new guests arriving, workers must be in place at front counters, workers are needed to prepare meals, supply trucks must be able to reach businesses in a timely manner etc. With roughly 60% of the Outer Banks’ weekly guests beginning and ending their stays on Saturdays, the time pressure and limited window for workers and suppliers to get in place and perform services is intense.

Without the Mid-Currituck Bridge, Dare County tourism workers – tourism jobs which equal nearly 1/3 of the County’s year-round population – are forced on to the same overburdened highways and

streets as visitors. Having the alternate route of the Mid-Currituck Bridge for Currituck visitors, workers and suppliers will allow Dare's tourism infrastructure to operate in suitable manner.

With the seasonal tourism population increase there are more vehicles, pedestrians and cyclists trying to share the roads, and alleviation of traffic congestion helps to increase public safety. All of the citizens and visitors to the Outer Banks occasionally face evacuation for disasters and hurricanes, and all deserve to have as rapid and as safe of an evacuation as possible. There is also little question that the Mid-Currituck Bridge will reduce evacuation times for visitors and residents.

E. Duck Community and Business Alliance, Inc.

The Duck Community and Business Alliance, Inc. ("DCBA") is a North Carolina nonprofit corporation, incorporated in 1999 and organized to protect, promote, and enhance the coastal village ambience of Duck by supporting polies that maintain Duck's environmentally and pedestrian friendly aspects, enhance Duck's material and physical appearance and sustain an active business community in Duck. As of April 2022, DCBA has 210 members. DCBA's 1999 incorporation pre-

dates that of Duck itself. Intended to represent the interests of Duck's residents, non-resident property owners, and business owners, DCBA ultimately merged with the Duck Civic Association (DCA) in July 2006. Working closely with DCA, DCBA assisted Duck with incorporation and local ordinance development, opposed efforts to widen NC 12 in Duck and advocated for the construction of the Mid-Currituck Bridge. DCBA also worked closely on Mid-Currituck Bridge advocacy and NC12 opposition efforts with Build the Bridge, Preserve Our Roads, Inc. (BBPR), a coalition formed in 2003 to represent interests in Duck, Southern Shores, and Currituck County. BBPR dissolved its corporation in 2016, transferring its remaining funds to DCBA for continued support of the Mid-Currituck Bridge. In doing so, DCBA agreed, among other things, to promote the proposition that the construction of the Mid-Currituck Bridge best balances legitimate environmental, future development, traffic safety and hurricane evacuation concerns with the equally legitimate concerns of residents, property owners, merchants and local governments to preserve the character and economic viability of Duck and surrounding communities.

F. Currituck Chamber of Commerce, Inc.

The Currituck Chamber of Commerce is a business membership organization that represents approximately 400 businesses and organizations in Currituck County and the surrounding area. The Currituck Chamber of Commerce views the Mid-Currituck bridge as a favorable project to due to several factors. The ability to use the Mid-Currituck Bridge during natural disasters such as hurricanes will be critical for the business community represented by the Chamber because business owners and employees are often some of the last ones to evacuate due to the need to secure both their personal homes as well as places of business.

The potential for an inlet opening and cutting off access to the Currituck Outer Banks communities of Corolla, Carova, Swan Beach, and North Swan Beach, which has occurred before, becomes more likely as sea levels rise. The Mid-Currituck bridge will provide an inland bridge that provides citizens and visitors to Currituck County a safe route off the beaches and will act as a measure of environmental resiliency to Mother Nature rather than be an environmental impact itself due to sea level rise.

With increasing traffic congestion over the past several decades many DCBA business members report seeing a decline in customers due the increased time that people are sitting in non-stop traffic. The Mid-Currituck Bridge will ensure that traffic moves at a steady pace in all directions, thus allowing for easy access to DCBA's roadside businesses.

STATEMENT OF COUNSEL

No party or their counsel authored this brief in whole or in part. No party or their counsel and no other person other than *amici* or their members, if applicable, contributed money that was intended to fund preparing or submitting the brief.

ARGUMENT

Amici respectfully submit this Brief pursuant to Fed. R. App. P., Rule 29 for the purpose of supporting the Defendant-Appellees' Response Brief filed herein on June 6, 2022 (the "Response Brief"). For the purposes of this Brief, *Amici* rely upon and adopt the Statement of the Case and the references and naming conventions contained in the Response Brief.

I. THE COURT SHOULD AFFIRM THE DISTRICT COURT

While the *Amici* do not intend to rehash the facts, procedure or detailed legal analysis of the Defendant-Appellees' exceptional Response Brief, we provide a concise summary of the conclusive analysis contained therein. Ultimately, the Defendant-Appellees have shown the Court that the Plaintiff-Appellants have failed to meet their evidentiary burdens and to overcome presumptions against them in their misplaced attempt to show that the Defendant-Appellees violated the procedures of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 et seq., and have allegedly done so in an arbitrary and capricious manner. *See Sierra Club v. Marita*, 46 F.3d 606, 619 (7th Cir. 1995) ("The party challenging the agency action also bears the burden of proof in [NEPA] cases."); *Ohio Valley Env't Coal. v. Aracoma Coal*

Co., 556 F.3d 177, 192 (4th Cir. 2009) (discretionary presumption in favor of agency especially in matters of special expertise). Rather, the detailed analysis and process provided in the approximately 78,000-page administrative record shows that the Defendant-Appellees duly considered all aspects of the proposed project, disclosed their analysis and assumptions, and made a lawful discretionary decision based on that thorough analysis and the use of their expertise. *Nat'l Audubon Soc'y v. Dep't of Navy*, 422 F.3d 174, 185 (4th Cir. 2005) (“a ‘hard look’ ... encompasses a thorough investigation into the environmental impacts ... and a candid acknowledgment of the risks that those impacts entail.”). While Plaintiff-Appellants question that ultimate decision, it is not for the Court to decide whether the decision was a wise one where the Defendant-Appellees took a “hard look” at all of the relevant issues. *Id.* Furthermore, the inconsequential arguments raised by the Plaintiff-Appellants do not affect the environmental impacts of the project itself, were reasonably considered and disclosed by the Defendant-Appellees and therefor do not warrant a remand of this action for the Plaintiff-Appellants’ requested relief of supplementing or reinitiating the EIS procedure. *See* 23 C.F.R. § 771.129(b) (2019)

(requiring evaluation of changes if more than 3-years without major action); 40 C.F.R. §§ 1502.9(c)(1)(ii), (c)(4) (2019) (requiring a supplemental EIS only where re-evaluation shows new “environmental concerns” of the proposed action); *Save Our Sound OBX, Inc. v. N. Carolina Dep't of Transportation*, 914 F.3d 213, 221 (4th Cir. 2019) (to require a supplemental EIS, new information must “affect the environmental impacts of the proposed action.”). Therefore, the Court should affirm the District Court’s grant of summary judgment in favor of the Defendants-Appellees.

II. THE MID-CURRITUCK BRIDGE WILL STIMULATE THE HEALTH AND WELFARE OF THE CITIZENS, VISITORS AND MEMBERS OF THE AMICI WHILE HAVING LESSER NEGATIVE IMPACTS THAN OTHER ALTERNATIVES

Importantly, NEPA does not limit its purpose solely to ensuring that governmental agencies consider the environmental effects of a project like the Mid-Currituck Bridge. Rather, the stated purpose of NEPA also includes the need to “stimulate the health and welfare of man.” 42 U.S.C. § 4321 (2022). The Defendant-Appellants are provided under the law with significant discretion to weigh “a project’s benefits with its costs” and its impacts. *See Webster v. U.S. Dep't of Agric.*, 685 F.3d 411, 430 (4th Cir. 2012) (discussing monetary costs); *Ohio Valley Env't Coal.*

v. Aracoma Coal Co., 556 F.3d 177, 192 (4th Cir. 2009) (discretion in methodology and decisions). To this end, NEPA “does not mandate particular substantive results, but merely prohibits uninformed – rather than unwise – agency action.” *N. Carolina Wildlife Fed'n v. N. Carolina Dep't of Transp.*, 677 F.3d 596, 601 (4th Cir. 2012) (quotations omitted).

The stated purposes and need for the Mid-Currituck Bridge project were established in 2008 and relate to the effects of existing conditions on the citizens, visitors and members of the *Amici*. (MCB4596-98) Those purposes are: (1) to “substantially improve traffic flow” on US158 and NC12; (2) to “substantially reduce travel time for persons” traveling between mainland Currituck County and the Currituck Outer Banks; and (3) to “substantially reduce evacuation times from the Outer Banks for residents and visitors who use US 158 and NC 168 as an evacuation route.” (MCB4596-98). The 2019 Reevaluation of the EIS confirmed that that when compared with the other possible alternatives for accomplishing these purposes, the Mid-Currituck Bridge offered the greatest overall traffic flow benefits and greatest travel time benefits and that the evacuation clearance time reductions would cause for

substantially more evacuees to make it to safety in time crunched evacuations. MCB68852, 688861, 68867-69. The Mid-Currituck Bridge was determined to be the most likely alternative to be funded, to have the least wetland fill impacts, and to have reduced impact on the community due to less widening of roads. (MCB34963-65, 69450-51).

In support of their position that the Defendant-Appellants should prepare a supplemental EIS, Plaintiff-Appellants point to three (3) areas of information that were updated between the 2012 Final EIS and the 2019 ROD which they argue required preparation of a supplemental EIS: (i) new traffic forecasts, (ii) new estimates of growth and development on the Outer Banks, and (iii) new sea level rise forecasts. *See* Opening Brief at 17-21, 31-41. None of these issues change the actual environmental impact of the proposed bridge itself, nor do they negate the existing needs for the Mid-Currituck Bridge project determined to exist by the Defendant-Appellees since 2008. The best that can be said about the Plaintiff-Appellants' argument is that the need for the bridge was the same in 2019 as it was in 2008 and 2012, and in the future that need will increase, but just not as much some models estimated at the time of the Initial EIS in 2012. That is not

sufficient under NEPA to require the preparation of a supplemental EIS prior to a record of decision being issued. 40 C.F.R. §§ 1502.9(c)(1)(ii), (c)(4) (2019) (requiring a supplemental EIS only where re-evaluation shows new “environmental concerns” of the proposed action).

The issues raised by the Plaintiff-Appellants do not increase the environmental impacts of the Mid-Currituck Bridge itself and do not adjust the cost analysis sufficiently to require a different result. Furthermore, none of the purposes for the Mid-Currituck Bridge are negated by the by traffic forecasts, development growth estimates or modeled future sea level rise raised by Plaintiff-Appellants, but accomplishment of the purposes will certainly “stimulate the health and welfare of [the citizens, visitors and members of the *Amici*].” 42 U.S.C. § 4321 (2022). As noted above, the *Amici* support the Mid-Currituck Bridge project in hopes that it will accomplish these important purposes sooner rather than later.

While the Plaintiff-Appellants prefer the continued reanalysis, expenditure of funds and never-ending delay to the much needed providing of traffic congestion relief and reduced hurricane evacuation times for citizens, visitors and property owners in Currituck County and

Dare County, it is not necessary that the Court follow suit. The U.S. Supreme Court recognizes that administrative decisions always occur some amount of time after the associated fact finding and that it would be inappropriate to require reopening the analysis every time “some new circumstance has arisen, some new trend has been observed, or some new fact discovered, [because] there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.” *Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 555, 98 S. Ct. 1197, 1217, 55 L. Ed. 2d 460 (1978) (quotations omitted). Furthermore, the additional information relied upon by Plaintiff-Appellants are predictions and estimates looking out to 15-20 years in the future or even out to the year 2100 for the sea level rise analysis, (MCB35047). Any reanalysis at any time of such modeling will likely show different results, and it should not require a reanalysis of the entire project every time that future modeling predicts a different result that does not change the fundamental existing need for the project.

Of course, Plaintiff-Appellants’ real goals are to either end the Mid-Currituck Bridge project or to delay it as long as possible, and the

obviously inadequate arguments they have made on this appeal are the best they can do to introduce the desired delay. Plaintiff-Appellants are merely manipulating the environmental process through their misplaced and unsupported legal analysis, and doing so is harming the people and businesses of the Outer Banks without legal or environmental justification. Despite Plaintiff-Appellants' attempts to show otherwise, the Defendant-Appellants duly considered whether benefits of the Mid-Currituck Bridge to the *Amici*, their citizens, visitors and members outweigh the environmental impacts and in the eyes of the *Amici*, the Defendant-Appellants made a reasoned and wise decision to issue the ROD for the Mid-Currituck Bridge.

CONCLUSION

For all of the reasons stated herein and within the Defendant-Appellees' Response Brief, this Court should affirm the District Court's grant of summary judgment to the Defendant-Appellees. In doing so, the Court will move the Mid-Currituck Bridge one major step closer to construction and to providing the citizens, visitors and members of the various *Amici* with much needed relief from burdensome traffic congestion and with the increased public safety appurtenant to the substantial reductions in hurricane and disaster evacuation times.

Respectfully submitted, this the 13th day of June 2022.

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CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limits because, excluding the parts of the document exempted by Fed. R. App. R. 32(f) (cover page, disclosure statement, table of contents, table of citations, statement regarding oral argument, signature block, certificates of counsel, addendum, attachments), this brief contains 3,980 words as reported by the word processing program used, and it has been prepared in a proportionally spaced typeface in 14 pt. Century Schoolbook font using Microsoft® Word for Microsoft 365 MSO (Version 2205 Build 16.0.15225.20028) 32-bit.

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