



**TO:** STEVE SMITH  
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

**FROM:** MIKE MCINTYRE

**SUBJECT:** APRIL MONTHLY LEGISLATIVE UPDATE

**DATE:** APRIL 27, 2017

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## MONTHLY LEGISLATIVE UPDATE

### **FY 2018 Presidential Budget Request**

On March 16, President Trump released a broad 62-page outline of his Administration’s \$1.15 trillion discretionary spending proposal for the fiscal year (“FY”) 2018 federal budget titled, “America First: A Budget Blueprint to Make America Great Again.” The budget outline proposes historically deep domestic spending cuts, and the total elimination of funding for 19 agencies, in order to pay for a \$54 billion increase in defense spending, a down payment on a border wall between Mexico and the U.S., and school voucher programs, among other things. The proposal only covers programs funded with discretionary budget authority—about 29 percent of the total federal budget—while the other 71 percent of the federal government is funded through mandatory budget authority. The outline is fairly short on details, with only department-level totals given. While several programs are identified for specific cuts, most are not. The Administration’s full FY 2018 budget request, which will include elements like mandatory spending and more a detailed analysis of line-by-line discretionary budget items, is expected to be released in May.

The Administration’s \$1.15 trillion proposal is certain to face strong opposition from lawmakers in both parties, who will resist cuts to many of the popular programs the President is proposing to chop. In addition to opposition from Democrats, several senior Republicans, including Senate Majority Leader Mitch McConnell (R-KY), have raised objections to specific rumored agency cuts even before the outlined was released. As details leaked out over the past several weeks, House and Senate appropriators made it clear that they will be the ones shaping the appropriations bills needed to fund the government, not President Trump.

*[For more details, please refer to the memo titled, “Summary of the Trump Administration’s FY 2018 budget outline titled, ‘America First: A Budget Blueprint to Make America Great Again,’” which was sent to TISPC in March. The document is also included as an attachment to this memo.]*

### **FY 2017 Appropriations**

Lawmakers will only have a few short days to approve a FY 2017 omnibus spending package during the week of April 24 before the current temporary continuing resolution (“CR”) funding the government expires on April 28. Failure to agree on the legislation could lead to a partial government shutdown on April 29, President Trump’s 100<sup>th</sup> day in office.

The FY 2017 omnibus spending package, which will fund the federal government for the balance of the fiscal year (ending September 30), is still being negotiated. Lawmakers are hopeful the FY 2017 Defense Appropriations bill passed by the House this spring will be the vehicle the Senate will use to attach the

other 11 negotiated spending bills to make up the omnibus legislation. Negotiations were going relatively smoothly until the Trump Administration requested that lawmakers include a provision withholding federal funding from states and localities that shield undocumented immigrants from deportation, better known as “sanctuary” jurisdictions. The Administration’s request has not gone over well with members of both parties, who have said “poison pill” provisions such as that will only derail efforts to approve an omnibus package before the April 28 deadline. However, this request will likely not cause a government shutdown crisis because the Administration already claims some authority to withhold funding from sanctuary jurisdictions. The Trump administration has also asked for \$33 billion in extra defense and border wall funding to be paired with \$18 billion in spending cuts to domestic agencies. It is unclear if he will get this request from appropriators in the final omnibus package.

### **EPA to Use Two Rulemakings to Repeal and Replace WOTUS Rule**

The Environmental Protection Agency (“EPA”) reportedly plans to replace the Obama Administration’s Clean Water Act (“CWA”) rule over “waters of the United States” (“WOTUS”) with two separate rulemakings, one to repeal the contentious regulation and another to set a new jurisdictional standard. The agency plans to first rescind the WOTUS regulation and then work on a new definition for “waters of the United States” under the CWA. In repealing the WOTUS rule, the agency would revert to a 1986 definition of WOTUS and would also rely on the 2008 guidance developed in the George W. Bush Administration about how to apply that definition until a new rule is put into place. Repealing the WOTUS rule would essentially maintain the status quo, as the rule is currently stayed nationwide by the 6<sup>th</sup> Circuit Court of Appeals which asserted jurisdiction over challenges to the rule. That 6<sup>th</sup> Circuit jurisdictional decision is currently being reviewed by the Supreme Court, where a reversal could erase the nationwide stay of the rule, put the Obama Administration’s WOTUS rule into full effect (unless the rule is repealed by a new rulemaking), and require all new challenges to any WOTUS rule to begin at the district court level. The Supreme Court could reach a decision on jurisdiction by the end of 2017, likely placing a deadline for the Trump Administration to repeal the WOTUS rule by the end of the year.

### **UPDATE ON TISPC FEDERAL LOBBYING PRIORITIES**

The current status of and/or the strategy to address each item is outlined below:

#### **1. North Topsail Beach – Continue to facilitate the changes to CRBA mapping**

We continue to work with Senator Richard Burr (R-NC), Senator Thom Tillis (R-NC) and Representative Walter Jones (R-NC) on a potential legislative resolution to this issue. During our scheduled meetings in Washington on March 22 and 23, we discussed several options and potential opportunities to move a legislative fix forward. Ultimately, the congressional delegation (namely Senators and Burr and Tillis, who have taken the lead) will make the final decision on how they would like to proceed. We have emphasized to Senator Burr’s and Senator Tillis’ offices that we are eager to finalize legislative language and have a bill introduced in the near future. Both Senators are aware of our desire to move forward, with Congressman McIntyre having spoken personally with Senator Burr and Representative Jones on the recent trip to Washington. Representative Jones was encouraged by the progress we have made with Senators Burr and Tillis and expressed interest in introducing a companion bill in the House, which we will help to coordinate once the Senators finalize legislative language. We will advise TISPC once a decision has been made by the delegation on timing for moving forward.

## **2. Topsail Beach – Obtain waivers for use of sand from inlet CBRA area for beach nourishment**

On March 23, we met with the Army Corps of Engineers (“Corps”) at Corps Headquarters in Washington on behalf of TISPC to discuss the status of Topsail Island’s two authorized storm damage reduction projects; we also discussed the CBRA sand use issue. Corps personnel at the meeting included: Stacey Brown (Deputy Chief, South Atlantic Division Regional Integration Team), Jeff Jensen (Deputy Director, Flood Risk Management Program), Shannon Geoly (P.E. from the Wilmington District) and Ed Belk (Chief of Civil Works Programs Integration).

According to personnel from Corps Headquarters and the Wilmington District office, this CBRA sand restriction affects other Corps projects in multiple states across the country. Several years of internal discussions with the U.S. Fish and Wildlife Service (“Service”), which is responsible for making final determinations regarding which federally funded projects are exempt from CBRA restrictions, to resolve the issue has yet to yield a productive result. They suggested that the Service may be interpreting and applying CBRA inconsistently, stating that there may be cases where the Service has approved such activities in some areas but not others depending on which Service Region is making the determination. They also stated that a change to CBRA may be necessary to clarify this.

We also discussed this issue at length with staff from the offices of Senator Burr, Senator Tillis, Representative Jones and Representative David Rouzer (R-NC) during our meetings in Washington on March 22 and 23. We informed them of our discussion with Corps and provided the following two legislative solutions to resolve the issue:

1. Amend Section 6 of CBRA (16 USC § 3505) to allow the Corps to remove material from within a CBRA zone; and/or
2. Direct the Service to establish internal guidance on its interpretation of CBRA as it relates to the use of sand in a CBRA zone.

Before proceeding with either option, we advised the congressional offices that further discussion with both Corps personnel and Service personnel is necessary to determine which action(s) needs to be taken to properly resolve the issue. We have contacted relevant Service personnel regarding this matter and will follow up with the congressional offices once more information is secured from the Service. Thereafter, we will update information for our contacts at the Corps in order to receive their input before proceeding to congressional action. Each congressional office is eager to assist us with a legislative fix to this issue, if necessary.

## **3. Island Wide – Obtain federal funding for approved federal beach nourishment projects (Surf City/North Topsail Beach & Topsail Beach).**

During our March 23 meeting with the Corps at Corps headquarters, we advocated for and discussed the status of both Topsail Island storm damage reduction projects (the West Onslow Beach and New River Inlet project and the Surf City and North Topsail Beach project) in depth. Following our presentation, the Corps agreed that both projects have competitive benefit-cost ratios that are well within the range of projects that are “at the table” when the Corps is deciding which projects will be new starts under the flood risk management business line. When we directly requested a status update, Jeff Jensen, who is responsible for all projects in the flood risk management business line, responded that the West Onslow Beach and New River Inlet project and the Surf City and North Topsail Beach project are the only two coastal shoreline/flood risk management projects in the state of North Carolina that would be competing for new starts. When asked, Jeff also stated that there are only 10 to 15 projects throughout the country (of which five to six are in the South Atlantic Division) that have benefit-cost ratios competitive enough

to be seriously considered as new starts by the Corps under this business line. Both Topsail Island projects are included in this nationwide list of the top 10 to 15 projects.

Despite the positive response from the Corps on both projects, the agency cannot make any guarantees about funding in FY 2017 at this point. As discussed in email correspondence from Stephanie Missert (The Ferguson Group) to TISPC members dated April 12, Corps personnel at the meeting inquired about the readiness to proceed to construction and we assured them that the Towns are properly prepared to proceed. So that the Corps understands your readiness, we recommend that all three Towns—the project sponsors—jointly sign a letter to Corps Headquarters, providing assurance that the Towns are ready to proceed to construction without delay if construction new start funding is allocated. To help accomplish this task, we have provided the Towns with a draft letter, which Mayors Braxton, Burns and Medlin need to sign, with TISPC approval, so we can send it to the Corps on your behalf. We recommend that the letter be sent to the Corps as soon as possible to ensure receipt before the agency officially starts putting together its FY 2017 work plan, which will likely occur in the next one to two weeks. Ultimately, if funding is provided to the projects in the FY 2017 work plan, we will be notified approximately two months after the Corps commences work on the plan.

We also discussed both projects with the offices of Senator Burr, Senator Tillis, Representative Jones and Representative Rouzer during our meetings in Washington on March 22 and 23. All offices are willing to send letters to the Corps expressing support for the projects. We provided the offices with a draft letter and they are currently working to either send separate letters or a joint letter to the Corps in the near future.

*[For your reference, both draft letters discussed in this section are provided as attachments to this memo.]*

- 4. Island Wide – We need total North Carolina congressional delegations committed to supporting programs for coastal management – We believe we are responsible for a national park; as we have visitors from all states using our coast. It is important that both North Carolina Senators are seen supporting North Carolina coastal programs.**

We expressed TISPC's support for federal coastal programs to the congressional delegation during our March 22 and 23 meetings in Washington. We were assured that support for coastal communities is of importance to them and they will work to ensure federal support continues to be directed to coastal areas.

- 5. Federal Funding Proposal: Set up a dedicated funding such as NC State Shallow Draft Inlet Bill. It could charge for documented vessels both private and commercial and ask for a portion of the Federal Gas Tax to fund nourishment and inlet projects.**

We discussed this proposal with TISPC's congressional delegation during our March 22 and 23 meetings in Washington. The congressional staff stated that it would be difficult to mirror this program at the federal level; however, there may be some opportunities to discuss this type of funding as debate over a potential infrastructure package begins in Congress later this year, which we urged them to consider.

- 6. Island Wide: Notify TISPC of any legislation that could impact Topsail Island activities on the ocean, inlet and sound.**

We will continue to include information on any legislation of interest to Topsail Island the Monthly Legislative Update to TISPC.