



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE MCINTYRE

SUBJECT: MARCH MONTHLY LEGISLATIVE UPDATE

DATE: MARCH 23, 2017

MONTHLY LEGISLATIVE UPDATE

FY 2018 Presidential Budget Request

Although the FY 2018 budget and appropriations process has yet to officially begin, the new Trump Administration is preparing its FY 2018 Presidential budget request, which is expected to be released in May. The Administration will likely release the initial version of its FY 2018 budget proposal, known as a “skinny budget,” soon. The “skinny” budget outlines only the top-line spending levels for each agency and major program. We must wait until May to see the full budget details. Although we have yet to see final numbers, we know that the Administration is planning a military buildup in FY 2018 of an additional \$54 billion by making deep cuts to domestic programs, which will not sit well with many in Congress. Once the President’s budget request is released and submitted to Congress, lawmakers will be faced with the difficult task of weighing their own priorities against the President’s budget request. Ultimately, Congress will determine the overall spending levels in the budget resolution and for each discretionary program through the appropriations process.

FY 2017 Appropriations Omnibus Bill Expected by End of March

Prior to the expiration of the current temporary continuing resolution (“CR”) funding the government, which expires on April 28, appropriators in both the House and Senate are expected to negotiate an FY 2017 omnibus spending package that would fund the government for the balance of the fiscal year (ending September 30). Lawmakers are hopeful the FY 2017 Defense Appropriations bill passed by the House recently will be the vehicle the Senate will use to attach the other 11 negotiated spending bills to make up the omnibus legislation. It remains too early to tell if Republican lawmakers will insist on “poison pill” policy riders that Democrats will not support, and whether or not Democrats and conservative Republicans will support the FY 2017 spending levels previously agreed to under a budget “sequestration” deal Congress struck in 2015, given the rumored domestic spending reductions in the President’s FY 2018 budget request.

Infrastructure Package

During a March 8 meeting, President Trump reportedly pushed his White House team to craft a plan for \$1 trillion in infrastructure spending that would pressure states to streamline local permitting, favor renovation of existing roads and highways over new construction, and prioritize projects that can quickly begin construction. President Trump also expressed interest in building new high-speed railroads, inquired about the possibility of auctioning the broadcast spectrum to wireless carriers, and asked for more details about the Hyperloop, a project envisioned by Tesla founder Elon Musk that would rapidly transport passengers in pods through low-pressure tubes. We also expect his plan to include funding for water infrastructure, which has expressly been of interest to the Administration in recent months. In the meeting, the President

said he aims to win approval for an infrastructure plan once Congress finishes deliberations on health care and tax reform, and he suggested that an infrastructure plan may be part of the tax reform debate.

As previously reported in the February Topsail Island Shoreline Protection Commission (“TISPC”) Monthly Legislative Update, Senate Democrats unveiled their “Blueprint to Rebuild America’s Infrastructure,” a 10-year, \$1 trillion proposal to “rebuild our nation’s crumbling infrastructure and create 15 million middle-class jobs,” in January. In mid-February, House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) said the Republican infrastructure package will not be released until after the House wraps up work on the repeal of the Affordable Care Act and tax reform.

President Trump Signs Executive Order Calling for Review of WOTUS Rule

On February 28, President Trump signed an executive order calling for a review of the Waters of the United States rule (better known as the “Clean Water Rule” or “WOTUS”). It calls on the Environmental Protection Agency (“EPA”) and Army Corps of Engineers to “review all orders, rules, regulations, guidelines, or policies implementing or enforcing the final rule” and says the agencies shall “rescind or revise, or publish for notice and comment proposed rules rescinding or revising” such issuances.

The executive order also asks the EPA and Corps to consider interpreting the term “navigable waters” in a manner consistent with the opinion of Justice Antonin Scalia in *Rapanos v. United States*. In his *Rapanos* plurality opinion, Scalia concluded: “[i]n sum, on its only plausible interpretation, the phrase ‘the waters of the United States’ includes only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic features’ that are described in ordinary parlance as ‘streams[,] . . . oceans, rivers, [and] lakes.’ The phrase does not include channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall. The Corps’ expansive interpretation of ‘the waters of the United States’ is thus not ‘based on a permissible construction of the statute.’”

2017 LOBBYING DIRECTION AND UPCOMING MEETINGS IN WASHINGTON

We have reviewed the 2017 lobbying direction document sent by Chairman Smith on March 11 and as revised on March 15, and we are currently strategizing on how to approach each item listed. We plan to discuss each item with Topsail Island’s congressional delegation in Washington on March 22 and 23. 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

On February 23 and 24, TISPC and the North Topsail Town Council, respectively, approved a legislative strategy that would accept the final recommended maps proposed by the U.S. Fish and Wildlife Service (“Service”) so long as an amendment is made to the maps to exclude from CBRS those areas of North Topsail Beach serviced by a full complement of infrastructure, which existed prior to 1982. We are now working with Senator Thom Tillis (R-NC), Senator Richard Burr (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 will discuss several options and potential opportunities to move a legislative fix forward. Ultimately, the congressional delegation (namely Senators Tillis and Burr, who have taken the lead) will make the final decision on when they would like to proceed. We will advise TISPC once a decision has been made by the delegation on moving forward.

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

On March 10, we held a phone conference with Pam Castens of the Corps’ Wilmington District office to discuss this issue in more detail. Ms. Castens informed us that the Corps has discussed this issue with the

U.S. Fish and Wildlife Service extensively to no avail. This is an issue that affects numerous projects throughout the country, so the Corps has a vested interest in finding a resolution to the problem and continues to try to resolve the issue administratively. We also plan to discuss a potential legislative fix with TISPC's congressional delegation during our scheduled meetings on March 22 and 23 in Washington.

3. Island Wide – Obtain federal funding or removal of 7-year sunset clause from approved federal beach nourishment projects (Surf City/North Topsail Beach & Topsail Beach). Currently Surf City only has the option of the federal project for assistance as they do not have inlet to qualify for NC state assistance. May need to push USACE to include our projects due to restrictions placed on new starts.

At this time, we recommend that TISPC advocate for federal funding for its two authorized projects rather than advocate for the removal or extension of the 7-year sunset provision.

There are two projects located on Topsail Island that were authorized in the Water Resources Reform and Development Act of 2014 ("WRRDA 2014"), the "West Onslow Beach and New River Inlet (Topsail Beach)" project and the "Surf City and North Topsail Beach" project (as titled in WRRDA 2014). We understand that construction has yet to begin on either project. Last year, members of TISPC expressed concern regarding a requirement in WRRDA 2014 which terminates the authorization for any project or separable element of a project authorized for construction after 7 years unless construction has been initiated. In correspondence to former TISPC Chairman Michael Curley on June 7, 2016, we advised that no formal request for a change to the 7-year sunset provision be made at the time, and we continue to uphold our initial recommendation. The House and Senate authorizing committees responsible for writing water resources bills established the requirement that construction be initiated within 7 years of authorization to try to encourage the Corps to make progress on a more expeditious basis on newly authorized projects. An extension of the 7-year sunset provision could take pressure off the Corps to act in a timely manner, potentially causing further delays to both projects.

If there is any concern that a deadline will not be met, then steps will need to be taken to ensure that the projects are not deauthorized and that there is a process in place to allow for extension of this statutory deadline for initiating construction. If it becomes apparent that an extension is needed, then we will follow up with the congressional delegation and the authorizing committees to discuss this concern. However, we do not anticipate this to be a pressing concern until at least 2019, two years before the 7-year sunset provision established in WRRDA 2014 takes effect.

Since there is unique pressure on the Corps to act on the projects authorized in WRRDA 2014 before the 7-year sunset provision takes effect, we advise TISPC to advocate for federal funding for the "West Onslow Beach and New River Inlet (Topsail Beach)" project and the "Surf City and North Topsail Beach" project. In order to receive funding for construction, both projects must be considered "new starts" in the Corps budget. There are a limited number of new starts included in the Corps budget yearly; therefore, it will take a concerted, multipronged advocacy effort to have both projects included in the budget as new starts. Therefore, here are the steps we recommend:

Step 1. Advocate for sufficient funds in yearly appropriations bills for "new starts" projects.

In discussions with Pam Castens of the Corps' Wilmington District office, she stated that the biggest hurdle to overcome regarding new starts projects is sufficient funding. Therefore, Ms. Castens suggested that the Corps can initiate "new starts projects" if TISPC advocates for sufficient funding in yearly appropriations bills.

Step 2. Advocate for the inclusion of both projects as new starts in the Corps' budget/work plan.

There is potential for both projects to be included in the Corps' FY 2017, FY 2018 and FY 2019 budgets and "work plans." The yearly Corps work plan identifies which projects, programs, and activities within the Corps' Civil Works program will receive the funding provided by Congress to the Corps in any given fiscal year and how much each of them will receive. However, since a limited number of projects are chosen to be new starts in the work plan, we recommend that the following steps be taken to advocate for the inclusion of both projects as construction new starts in the work plan:

- a. Request that your congressional delegation send a letter to the Assistant Secretary of the Army for Civil Works expressing support for both projects and the need for both projects to receive funding for construction, and urging the Corps to include both projects as new starts in upcoming work plans (FY 2017, FY 2018 and FY 2019).
- b. Schedule a series of meetings with relevant Corps offices and personnel to advocate for the inclusion of both projects as construction new starts in upcoming work plans. Since decisions on which projects are Corps priorities start at the district level (Wilmington District office) and work their way up to the regional level (South Atlantic Division) and finally to headquarters (Washington, DC), we strongly recommend that select TISPC members attend the following series of meetings along with Mike McIntyre (Poyner Spruill), along with Stephanie Missert and Roger Gwinn (The Ferguson Group) to properly advocate for both projects at all necessary levels.
 - i. We have already had a conference call with relevant Corps personnel in the Wilmington District office. We have discussed our proposed advocacy plans with Pam Castens of the Wilmington District office; therefore, she is aware of our intentions and supports our proposed advocacy strategy.
 - ii. Meet/conference call with relevant Corps personnel in the South Atlantic Division office located in Atlanta, GA.
 - iii. Meet with the Assistant Secretary of the Army for Civil Works and/or other relevant Corps personnel in Washington, DC, at Corps headquarters.
 - iv. Meet with relevant personnel at the White House Office of Management and Budget ("OMB"), which is responsible for preparing the President's annual budget request.
 - v. Meet with TISPC's congressional delegation.

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 will express TISPC's support for federal coastal programs to its congressional delegation and will urge the delegation to support such programs, including—but not limited to—programs established by the Coastal Zone Management Act of 1972, the Regional Coastal Resilience Grants Program, and other programs that support coastal research and technical assistance resources for coastal communities.

We are aware of reports that the Trump Administration’s FY 2018 budget proposal may include funding cuts to several National Oceanic and Atmospheric Administration (“NOAA”) coastal programs, including the National Coastal Zone Management Program, the Regional Coastal Resilience Grant Program, the Coastal Ecosystem Resiliency Grant Program and the National Estuarine Research Reserve System Program. At a federal advisory committee meeting in Bethesda, Maryland on March 7, the Acting Administrator of NOAA, Benjamin Friedman, did not dispute reports of the proposed cuts, although he cautioned that the cuts were only proposed. We will know more about the Administration’s proposed budget cuts when it releases its FY 2018 “skinny budget” in mid-March and full budget proposal in May.

It is important to note that Congress makes the final decisions regarding federal spending. Currently, many of these NOAA programs enjoy strong bipartisan support in Congress; however, it is important to keep pressure on the congressional delegation so they are aware of how vital these programs are to coastal communities.

- 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 will discuss this proposal with TISPC’s congressional delegation in Washington on March 22 and 23.

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

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

- 7. North Topsail Beach – A partnership with Onslow County, the federal government (U.S. Marines) and North Topsail Beach to dredge New River Inlet and maintain for commercial and U.S. Marines use. Sand to be use for beach nourishment**

This request has been the subject of previous detailed discussions with the Town Manager of North Topsail Beach, as well as with the Town Council of North Topsail Beach, including discussion at the Town Council meeting on September 1 last year and again during the Town Council's workshop—both informally in person on February 23 and more formally by telephone conference on February 24 of this year.

Pursuant to these discussions, as well as correspondence dated September 1 and December 21 of last year, along with a phone conference with the Town Manager on December 20, 2016, and as previously discussed with TISPC, we are ready and willing to proceed on behalf of the Town once authorized to do so, but the Town of North Topsail Beach has directed our firm not to take any action on this until such time as the Town has obtained an agreement with Onslow County with regard to its sharing the cost of pursuing this separate matter. This matter has consistently been considered a separate project for North Topsail Beach and would be subject to a separate agreement between our firm and the Town of North Topsail Beach.