



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE MCINTYRE

SUBJECT: JANUARY MONTHLY LEGISLATIVE UPDATE

DATE: JANUARY 18, 2019

MONTHLY LEGISLATIVE UPDATE

The January Monthly Legislative Update provides information on the following topics:

- Budget and Appropriations
- Disaster Aid
- Corps Beneficial Use of Dredged Material Pilot Projects
- Update on TISPC Federal Priorities
- Proposed Meetings in Washington

Budget and Appropriations

Parts of the federal government remain closed as Congress and the White House continue to debate how best to fund numerous federal agencies and border security efforts for the remainder of Fiscal Year (FY) 2019. It is unclear at this time when a compromise will be reached.

Federal agencies that are impacted by the shutdown include all of the agencies that are funded by the following appropriations bills: Interior-Environment; Financial Services; Agriculture-Rural Development; Transportation-Housing and Urban Development; Homeland Security; Commerce-Justice-Science; and State-Foreign Operations.

Disaster Aid

Disaster aid funding has been included in two House-passed bills, one which was passed on December 20 by the Republican House majority and one which was passed on January 16 by the Democratic House majority. The Republican measure could not secure the required 60 votes needed to pass the Senate, and it is unclear if the Democratic measure will have traction in the Senate. The Senate will most likely make changes to the Democrat-led bill and send it back to the House for its consideration.

Due to the partial government shutdown, the timing for final approval of a bill is unclear. The Senate will not consider a disaster aid package until after the partial government shutdown is resolved. *[Please see the below section on the Surf City and North Topsail Beach Project for more information on how a disaster aid package could benefit the project.]*

It has also been widely reported that President Trump is considering declaring a national emergency in order to build a wall along the U.S. border with Mexico, and paying for such an action by redirecting disaster aid funding provided to the Army Corps of Engineers in the 2018 *Bipartisan Budget Act*, which was approved by Congress early last spring. If the President decides to take such an action, it will likely be several weeks from now and will impact a limited and specific number of projects; however, this is speculation and subject to change. The projects that would reportedly be impacted are in California and Puerto Rico, but there has been significant pushback from a geographically diverse group of Senators and Members of Congress from both parties about the idea due to their concerns that projects in their states and districts could be indirectly impacted—or directly impacted if the list of projects for which funding is being redirected is changed. With such pushback, it is unclear if the President would follow through with redirecting the funds from the Corps.

Corps Beneficial Use of Dredged Material Pilot Projects

On December 28, 2018, the Army Corps of Engineers announced its selection of ten pilot projects pursuant to Section 1122 of the *Water Resources Development Act of 2016* (WRDA 2016). Section 1122 established a pilot program within the Corps to select 10 projects that beneficially use dredged material. The Corps received 95 applications in response to the solicitation, which was released on February 9, 2018.

According to the Corps, all 95 proposals were evaluated by a team of subject matter experts. Based on criteria contained in Section 1122, the ten projects selected were found to have a high likelihood of delivering environmental, economic, and social benefits, and exhibit geographic diversity. Below is a list of the 10 recommended projects, listed alphabetically by state/territory:

- California: Restoring San Francisco Bay’s Natural Infrastructure with Dredged Sediment: Strategic Placement;
- Hawaii: Haleiwa Small Boat Harbor Maintenance Dredging and Beach Restoration;
- Illinois: Public Beach Protection Pilot in Four Illinois Coastal Communities;
- Mississippi: Deer Island Lagoon Project;
- New Jersey: Beneficial Use Placement Opportunities in the State of New Jersey Using Navigation Channel Sediments: Barnegat Inlet;
- Puerto Rico: Condado Lagoon;
- South Carolina: Crab Bank Seabird Sanctuary;
- Texas: Hickory Cove Marsh Restoration and Living Shoreline;
- Washington: Grays Harbor South Jetty Sand Placement Pilot Project; and
- Wisconsin: Mississippi River Upper Pool 4, Pierce County Islands and Head of Lake Pepin Backwater Complex—Beneficial Use of Dredged Material.

The *America’s Water Infrastructure Act of 2018*, which was the 2018 version of biennial WRDA legislation, increased the number of authorized projects for the Section 1122 pilot program from 10 to 20. Therefore, it is anticipated that the Corps may seek additional proposals to be part of the pilot program.

UPDATE ON TISPC FEDERAL ADVOCACY PRIORITIES

The current status of priority agenda items are outlined below.

1. North Topsail Beach – Continue to facilitate changes to the CBRA maps

TISPC's congressional delegation has responded positively to supporting our request for reintroducing the North Topsail Beach CBRA mapping bill to remove from CBRS the areas of North Topsail Beach that were serviced by a full complement of infrastructure prior to the passage of the CBRA in 1982. As you know, Senator Tillis took the lead during the last Congress with regard to preparing and introducing the North Topsail Beach legislation. We met with the Senator's staff in mid-January to discuss reintroduction of the bill with potentially a couple minor language changes to the bill that would ensure that the U.S. Fish and Wildlife Service (USFWS) does not have any flexibility in its interpretation of the language, should it become law. Staff is in the process of evaluating these potential changes and discussing timing for reintroduction. We are in the process of setting up meetings with the rest of TISPC congressional delegation next week to discuss this TISPC priority and others, though it should be noted that we have had consistent electronic correspondence with all of TISPC's congressional delegation on TISPC's priority issues for the past several weeks.

2. Topsail Beach – Support legislation that would allow the use of sand from inlet CRBA areas for beach nourishment

On December 21, the USFWS provided a written response to the joint letter sent to the agency by former House Water Resources and Environment Subcommittee Chairman Garret Graves (R-LA), Congressman Jones, Congressman Rouzer and four other Members of Congress requesting information that will help the subcommittee draft legislative language to resolve the sand borrowing issue. The USFWS's response came approximately six months after the original request was made. *Copies of both the original request letter and the USFWS's response are included as attachments to this memo.*

In its response, the USFWS did not provide answers to several of the important and specific questions asked in the original letter, answers which would help subcommittee staff draft legislative language. We have already talked to Congressman Graves' staff regarding next steps in drafting language and getting answers to these important questions. However, additional work on this issue will be postponed until the partial government shutdown is resolved.

USFWS did, however, state that it does not plan to revisit its current interpretation of the CBRA as it pertains to borrowing sand from within a CBRA zone for use outside a CBRA zone. Therefore, it is clear that resolving the issue administratively is not an option, and thus the issue must be resolved legislatively.

We are continuing to discuss and strategize on next steps with TISPC's congressional delegation and other relevant parties.

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

We have had numerous conversations with TISPC's congressional delegation regarding next steps for funding the Surf City and North Topsail Beach Project. Typically, we would be required to wait until the next Work Plan process, which would occur in the fall. However, we have been working with the delegation to include language in an upcoming disaster aid package that would allow the Corps to use disaster aid funding for authorized, but not yet constructed, Corps projects (i.e. new starts). This could potentially allow the Surf City and North Topsail Beach Project to be eligible for Corps of Engineers funding outside the annual Work Plan process. This language has been included in both House-passed disaster aid packages and has support in the Senate. It is unclear when a disaster aid package will be approved by Congress because the Senate will not consider a disaster bill until after the partial government shutdown is resolved, but the expectation is that there will be a disaster package approved this spring.

It is our understanding that the Corps has a list of projects for which it would use the disaster aid funding to continue, complete or start. This list has been provided to Congress to help tabulate the total request that must be made in the disaster aid package. We have been informed that the Surf City and North Topsail Beach is considered a priority project and is included on this list. Although no guarantees can be made at this juncture, there is a good possibility that funds will be made available through an upcoming disaster aid package that can be used to start the Surf City and North Topsail Beach Project. We will keep you advised as the situation progresses.

PROPOSED MEETINGS IN WASHINGTON

It is our understanding that staff and/or officials from TISPC will be in Washington, D.C., for the American Shore and Beach Preservation Association (ASBPA) conference on March 12–14. **We strongly encourage that at least two staff and/or elected officials join Poyner Spruill and TFG for a series of meetings with TISPC's congressional delegation and possibly relevant congressional committees and federal agencies, subject to their availability, during this time. While meetings will be scheduled for Tuesday, March 12, some meetings may occur on Wednesday, March 13, if necessary.** Representatives from TISPC should plan accordingly.

By no later than January 31, TISPC should notify both Congressman McIntyre (mmcintyre@poynerspruill.com) and Stephanie Missert of TFG (smissert@tfgnet.com) which staff/elected officials from TISPC plan to attend these meetings. Once that information is received, we will begin scheduling meetings accordingly.