



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

**FROM:** MIKE MCINTYRE

**SUBJECT:** FEBRUARY MONTHLY LEGISLATIVE UPDATE

**DATE:** FEBRUARY 20, 2020

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

- Washington News
  - Budget and Appropriations
  - House Democrats Release Infrastructure Funding Framework
  - Administration Proposes Comprehensive NEPA Regulatory Changes
  - EPA and Corps of Engineers Announce Finalized ‘Navigable Waters Protection Rule’ to Define ‘Waters of the United States’
- Update on TISPC Federal Priorities
- Washington Advocacy Trip

## WASHINGTON NEWS

### Budget and Appropriations

On February 10, 2020, the Trump Administration released its [Fiscal Year 2021 Budget Request](#) to Congress, titled “A Budget for America’s Future.” The budget request proposes funding levels and policy changes for the upcoming fiscal year, which begins on October 1, 2020. Much of the proposal is unlikely to gain support from Congress, which makes the final decisions regarding federal spending, but it does provide insight into the Administration’s policy priorities.

The Administration’s \$4.8 trillion request tops last year’s historic request of \$4.75 trillion. The request stays under the congressional budget caps set for FY 2021, which allow for \$741 billion in defense discretionary spending and \$635 billion in domestic discretionary spending, a \$10 billion increase above current spending spread across both accounts for FY 2021. The Administration’s \$740.5 billion request for defense discretionary spending stays just within the congressional budget cap, but the \$590 billion request for domestic discretionary spending is \$45 billion below the congressional budget cap.

All but five federal agencies would receive cuts under the Administration’s proposal. The National Aeronautics and Space Administration, the Department of Veterans Affairs, the Department of Defense, the Department of Homeland Security, and the Department of the Treasury would receive budget increases under the proposal. The Department of Commerce, the Environmental Protection Agency, and the U.S. Army Corps of Engineers would see some of the steepest cuts.

The Administration's FY 2020 budget similarly proposed increased defense spending and cuts to other departments; however, Congress did not act on the large majority of the recommendations. The FY 2021 budget request is certain to face similar opposition from lawmakers in both parties.

Meanwhile, Congress is starting to ramp up its FY 2021 appropriations process. Markups of FY 2021 appropriations bills are expected to begin within the next couple of months.

### House Democrats Release Infrastructure Funding Framework

House Democratic leaders unveiled the outline of their long-awaited infrastructure proposal, the "Moving Forward Framework," at a January 29 press conference. The [19-page](#) outline calls for \$760 billion in spending between FY 2021 and FY 2025 via a package of bills from the House Transportation & Infrastructure (T&I) and Energy & Commerce (E&C) Committees. The Framework includes an amalgamation of existing highway, transit, and water legislation, of the type that Congress passes every few years (like the Water Resources Development Act), as well as new efforts to boost the availability of broadband and help communities counter the effects of climate change.

In response, T&I Republicans released a short list of infrastructure "[principles](#)" they hope will influence the final infrastructure package.

The Framework document provides additional details on infrastructure programs of importance to local governments and water-focused entities. Here are the investment breakdowns, over the FY 2021-2025 period, for each of the 12 areas of infrastructure addressed by the Framework:

- Clean Water & Wastewater Infrastructure: \$50.5 billion
- Drinking Water Infrastructure: \$25.4 billion
- Water Infrastructure (flood protection, navigation, etc.): \$10 billion
- Highways and Highway Safety Investments: \$329 billion
- Transit Investment: \$105 billion
- Rail Investments: \$55 billion
- Airport Investments: \$30 billion
- Harbor Infrastructure: \$19.7 billion
- Brownfield Restoration: \$2.7 billion
- Clean Energy Infrastructure: \$34.3 billion
- Broadband & Communications Infrastructure: \$86 billion
- Public Safety Communications Infrastructure: \$12 billion

### Administration Proposes Comprehensive NEPA Regulatory Changes

The Trump Administration recently [proposed changes](#) to the current rules for implementation of the National Environmental Policy Act (NEPA). If enacted without legal challenge, these would be the first complete changes to the regulations since they were put in place in 1978. The changes aim to reduce paperwork and streamlining the approval process associated with NEPA. Public comments on the proposed changes will be accepted through March 10.

Below is a summary of some of the major elements of the proposed rule:

- Simplify the definition of environmental “effects” and clarify that effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action.
- Make clear that the analysis of “cumulative effects” is not required under NEPA.
- Limit to two years the completion of environmental impact statements (EISs) and one year for completion of environmental assessments (EAs).
- Establish page limits.
- Require joint schedules, a single EIS, and a single record of decision (ROD), where appropriate, for EISs involving multiple agencies.
- Reduce duplication by making it easier to use documents required by other statutes or prepared by state, tribal, and local agencies to comply with NEPA.
- Mandate early public input and require that public comments be specific.
- Advance the use of modern technologies for information sharing and public outreach.
- Provide direction regarding the threshold consideration of whether NEPA applies to a particular action.
- Require agencies to summarize alternatives, analyses, and information submitted by commenters and to certify consideration of submitted information in the ROD.
- Make clear that a “major federal action” determination regarding a project does not include federally mandatory decisions and non-federal projects (those with minimal federal funding or involvement).
- Clarify that “reasonable alternatives” given consideration in the NEPA process for an activity or project must be technically and economically feasible.
- Facilitate use of efficient reviews (categorical exclusions (CEs), environmental assessments).
- Allow agencies to establish procedures for adopting other agencies’ CEs.
- Enhance the public’s input in the process by providing for an increased role for applicants/contractors in preparing an EIS under the supervision of an agency official.

Additional background information on the rule, upcoming public meetings and opportunities to comment can be found [here](#).

### EPA and Corps of Engineers Announce Finalized ‘Navigable Waters Protection Rule’ to Define ‘Waters of the United States’

On January 23, the EPA and Army Corps of Engineers released the “[Navigable Waters Protection Rule](#)” to define which water are considered “waters of the United States” (WOTUS) under the Clean Water Act (CWA). The rule will become effective this spring. This is the second and final step of a two-step process that the Administration pursued to replace the Obama-era Clean Water Rule’s definition of WOTUS. The rule provides for exclusions for many water features that traditionally have not been regulated and defines terms that have not been defined previously.

Under the new rule, four categories of waters will be federally regulated, including:

- The territorial seas and traditional navigable waters
- Perennial and intermittent tributaries to those waters
- Certain lakes, ponds, and impoundments
- Wetlands adjacent to jurisdictional waters

Importantly, the final rule identifies 12 categories of exclusions – features that are not “waters of the United States” – including:

- Groundwater
- Many ditches
- Prior converted cropland
- Waste treatment systems
- Water in direct response to rainfall (e.g., ephemeral features)

The final rule also “clarifies” the scope of the CWA’s jurisdiction, including:

- Streamlining separate categories for jurisdictional ditches and impoundments
- Clarifying the definition of a “typical year”
- Defining “adjacent wetlands” as wetlands that are meaningfully connected to other jurisdictional waters, for example, by directly abutting or having regular surface water communication with jurisdictional waters.

## UPDATE ON TISPC FEDERAL ADVOCACY PRIORITIES

### Topsail Beach Sand Borrowing Issue

As per Chairman Smith's request, we developed a briefing document that provides an overview of the CBRA sand borrowing issue and the recent rule change by Interior Secretary David Bernhardt in order to provide an accurate narrative regarding the interpretation of the CBRA and the impacts of the rule change. We provided a draft of this document to Chairman Smith on January 29 for feedback and review. We were recently provided feedback on the document, and accordingly, we will be incorporating the feedback and finalizing the document within the next several business days.

### North Topsail Beach CBRA Mapping Issue

In preparation for the upcoming meetings in Washington, we will be developing strategic talking points on the North Topsail Beach CBRA mapping issue to further our discussions with committee staff on Capitol Hill. Committee staff, particularly the minority staff of the Senate Environment and Public Works Committee and the majority staff of the House Natural Resources Committee, have proven to be generally intractable in their position on the issue thus far. Based on recent conversations with congressional staff on Capitol Hill, *the committees are where we need to focus our advocacy attention*, and we certainly want to respect their recommendations. Regarding the U.S. Department of the Interior, because we have had such a good working relationship with the congressional delegation and they have been very effective at working with the Administration, it would be in our best interest to allow the congressional delegation to continue their efforts with the Administration in coordination with us. Regarding the National Audubon Society, because of our continued communication with congressional committee staff, they are well aware of the positions and interests of the TISPC. Because of their legislative and policy experience, and their knowledge of both sides of the issue, *committee staff are in the most effective position to proceed in working with us to negotiate this issue*. Therefore, we will concentrate our efforts on working with committee staff prior to scheduling any additional meetings with the National Audubon Society.

Also, please know that your congressional delegation is aware that this issue remains a top priority for the island. At the Washington meetings, we expect to continue our discussions on how to move the North Topsail Beach CBRA mapping bill forward in the legislative process.

### Request for Information – Topsail Beach Flood Mapping Issue

In order for us to properly investigate and address the new 2020 TISPC federal advocacy goal related to Topsail Beach's federal flood maps, we will need some additional documented information about the issue. Documentation like official correspondence with/from FEMA and the flood maps in question would be helpful in our efforts. Also, it would be helpful if Topsail Beach could provide us with a brief narrative on the background of the issue, including information such as how long this has been an issue for the Town, what the Town has done to address the issue up to this point, and what exactly the Town wants to achieve with the map changes. Please send this information to both Congressman McIntyre and Stephanie Missert at your *earliest* convenience.

## WASHINGTON ADVOCACY TRIP

We are looking forward to seeing representatives from TISPC in Washington, DC, in March! As we previously reported, we are aiming to schedule all the meetings for Tuesday, March 24, but some meetings may occur on the morning of Wednesday, March 25. We will be sure to keep the Commission apprised of the schedule as meetings are confirmed. For your information, we are requesting meetings with the following:

- Senator Burr
- Senator Tillis
- Congressman Rouzer
- Congressman Murphy
- House Natural Resources Committee (majority and minority staff)
- Senate Environment and Public Works Committee (majority and minority staff)
- FEMA

In addition, as we did for last year's visit, we will develop meeting materials and talking points for the meetings prior to the visit. We will be sure to provide the Commission ample time to review these documents and provide any feedback.