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SUBJECT: OCTOBER MONTHLY LEGISLATIVE UPDATE

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

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WASHINGTON NEWS

Congress Approves Continuing Resolution through December 3

On September 30, Congress passed a Continuing Resolution (CR) to avert a federal government shutdown. President Biden signed the CR into law just hours before the October 1 deadline. The CR extends current FY 2021 funding levels through December 3, 2021, giving House and Senate appropriators two more months to finalize the FY 2022 budget. The CR also includes numerous additional provisions, including an extension of the National Flood Insurance Program (NFIP) through December 3; \$28.6 billion to address various natural disasters in 2020 and 2021; and \$6.3 billion to support Afghan evacuees, among other measures. Senate Republicans were successful in blocking a provision to suspend the debt ceiling until December 16, 2022.

Congress Approves Debt Ceiling Increase

After weeks of negotiations between Senate Majority Leader Chuck Schumer (D-NY) and Senate Minority Leader Mitch McConnell (R-KY), Congress approved a \$480 billion increase to the nation's debt limit. Without the increase, the country would have defaulted on its financial obligations by or around October 18. The \$480 billion is expected to stave off a default until sometime in December or early January. Congress will need to either increase or suspend the debt limit by December to again avert another potential default. Minority Leader McConnell has signaled that Republicans will not help Democrats approve another debt limit measure come December, requiring Democrats to use a legislative vehicle that only requires a simple majority to approve (budget reconciliation), which can be a complicated and time-consuming process.

Congress Continues Negotiations on Build Back Better Act, Bipartisan Infrastructure Framework

A final vote on the \$1.2 billion bipartisan infrastructure framework (BIF), also known as the *Infrastructure Investment and Jobs Act*, has been delayed. The final vote, which will occur in the House of Representatives because the bill has already passed the Senate, was originally supposed to occur by the end of September. However, both partisan and intraparty political infighting has delayed the vote. House Speaker Nancy Pelosi (D-CA) has now set an October 31 deadline for the House to pass the BIF.

For your reference, TFG produced a [Special Report on the Infrastructure Investment and Jobs Act](#), which provides summaries of key accounts of interest to local governments in the bill.

Majority Leader Schumer sent a “Dear Colleague” letter on October 4 sharing the realities of the road ahead for passing both the BIF and the Build Back Better (BBB) Act (also known as the budget reconciliation package), calling the process “difficult and, at times, messy.” He reiterated support for Speaker Pelosi’s new October deadline and signaled that members would need to be prepared to make concessions on the BBB. “Not every member will get everything he or she wanted,” he said in the letter. “But at the end of the day, we will pass legislation that will dramatically improve the lives of the American people. I believe we are going to do just that in the month of October.” Similarly, President Biden has told House Democrats to expect the final BBB package to be smaller than the current \$3.5 trillion proposal. President Biden reportedly discussed a topline figure of between \$1.9 and \$2.3 trillion. On October 11, Speaker Pelosi acknowledged that the topline number for the package needs to be lowered. “Overwhelmingly, the guidance I am receiving from Members is to do fewer things well so that we can still have a transformative impact on families in the workplace and responsibly address the climate crisis.”

TFG will also be producing a Special Report on the BBB package, which will be published after Congress approves the package (later this month or in early November).

South Atlantic Coastal Study Draft Report Available for Public Review and Comment

On October 15, the Army Corps of Engineers released its South Atlantic Coastal Study (SACS) Draft Report and associated documents for public review and comment. The documents can be accessed at <https://www.sad.usace.army.mil/SACS/>. Comments will be accepted for 30 days, until November 16, 2021. Comments can be provided through the following form: https://www.surveymonkey.com/r/SACS_comments.

USACE will be hosting Draft Report Roll-out Webinars for the SACS. These webinars will provide a brief overview of SACS, including an overview of the Final Draft SACS Main Report and its associated products. Each webinar will be focused on a particular state or territory, providing regional findings, strategies, recommendations, and information on the comment collection process. The North Carolina briefing was on October 20. A recording of the briefing is available [here](#).

Treasury Sets New Deadlines for ARPA Fiscal Recovery Funds Reporting

The U.S. Treasury Department has set new reporting deadlines for the first Project and Expenditure Report that must be submitted for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) program. States, territories, counties, cities, and tribal governments will report project and expenditure data next on January 31, 2022 (instead of October 31, 2021). The first reporting deadline for non-entitlement units of local government (NEUs), which includes all three towns on Topsail Island, will be April 30, 2022 (instead of October 31, 2021). This first report for NEUs will cover the period between the award date and March 31, 2022.

Disaster Assistance Equity Act Reintroduced in the House

On September 20, Representative Rouzer [reintroduced](#) the *Disaster Assistance Equity Act of 2021* ([H.R. 5298](#)) along with Representatives Jerrold Nadler (D-NY), John Garamendi (D-CA), Lee Zeldin (R-NY), Debbie Wasserman Schultz (D-FL), Nancy Mace (R-SC), Raul Ruiz (D-CA), and Andrew Garbarino (R-NY).

Under current law, FEMA inconsistently interprets regulations in a way that prohibits homeowners' associations from qualifying for federal disaster response and recovery programs. H.R. 5298 will make housing cooperatives, condominiums, and other homeowners' associations eligible for the same FEMA assistance available to other homeowners. The bill accomplishes this by making two key changes to the *Robert T. Stafford Disaster Relief Act*:

- Makes essential, common elements of a homeowners' association (such as a roof, exterior wall, heating and cooling equipment, elevator, stairwell, utility access, plumbing, and electricity) eligible under FEMA's Federal Assistance to Individuals and Households Program; and
- Makes homeowners' associations eligible under FEMA's requirements for the removal of debris in the aftermath of a major disaster.

President Biden Announces New Disaster Planning Tools and Information, FEMA Effort to Update NFIP Floodplain Management Standards

On October 12, the Biden administration announced an [initiative](#) “to deliver accessible and actionable information to individuals and communities that are being hit by flooding, drought, wildfires, extreme heat, coastal erosion, and other intensifying climate impacts.” The initiative is a direct result of President Biden’s January 27, 2021, [Executive Order on Tackling the Climate Crisis at Home and Abroad](#). The initiative is multi-faceted and includes actions like launching a redesigned [Climate.gov](#) website and outlining ways the federal government will improve access to climate tools and services.

The initiative also includes a directive for FEMA to assess National Flood Insurance Program (NFIP) standards. The statement released by the White House characterizes the effort as follows: “The NFIP’s minimum floodplain management standards—which communities adopt and enforce to become eligible for federal flood insurance—have not been substantially updated since 1976. Through a new Request for Information, FEMA will gather stakeholder input to inform potential revisions that make communities more resilient and save lives, homes, and money.”

The [Request for Information](#) (Docket ID: FEMA–2021–0024) released by FEMA on October 12 explains that FEMA is accepting public comments on two topics: “First, FEMA seeks the public’s input on revising the [NFIP] floodplain management standards for land management and use regulations to better align with the current understanding of flood risk and flood risk reduction approaches. Specifically, FEMA is seeking input from the public on the floodplain management standards that communities should adopt to result in safer, stronger, and more resilient communities. Additionally, FEMA seeks input on how the NFIP can better promote protection of and minimize any adverse impact to threatened and endangered species, and their habitats.”

Written comments are due on or before December 13, 2021.

Recent WOTUS Rulings Lead to Confusion, Biden Administration Sents its Own WOTUS Rule to OMB for Review

Water law experts largely disagree about the implications of recent court rulings dealing with the waters of the United States, or WOTUS, definition. The confusion stems mainly from at least four federal court rulings—two vacating the Trump-era rule and two remanding without vacatur.

Waters of the U.S. are widely expected to remain in limbo until an appellate court or the Supreme Court rules on the limits of federal waters jurisdiction under the Clean Water Act, or until Congress clarifies the law—all of which could take years.

But for now, the George W. Bush-era definition is back in force following an August 30 ruling from the U.S. District Court for the District of Arizona. A New Mexico federal court also vacated the Trump-era rule September 27, but federal district courts in Massachusetts and California chose not to vacate it in September. The EPA and Army Corps of Engineers, which had originally planned to keep the Trump-era rule in effect while writing a new definition, did not ask the court to vacate the Trump-era rule.

Since the Arizona district court ruling, the Army Corps has issued 211 determinations showing whether proposed development is in federal waters under the Bush-era rule, Corps spokesman Douglas Garman said (reported by Bobby Magill for [Bloomberg Law](#)).

On October 12, the EPA and the Army Corps sent their draft proposal for a new definition of waters of the U.S. to the White House Office of Management and Budget (OMB) for pre-publication review, according to OMB's website. The administration wants to propose the new rule by November, but OMB review is typically set for 90 days, though this timing can vary considerably (reported by Lara Beaven for InsideEPA.)

EPA Rescinds Previous Administration's Guidance on Clean Water Act Permit Requirements

On September 16, EPA [rescinded](#) a guidance document entitled "Applying the Supreme Court's *County of Maui v. Hawaii Wildlife Fund* Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program" that was issued by the Trump administration on January 14, 2021.

In April 2020, the Supreme Court issued its opinion in *County of Maui v. Hawaii Wildlife Fund* addressing the question of whether a Clean Water Act NPDES permit is required for releases of pollutants from a point source to a WOTUS jurisdictional water through groundwater. The Court held that an NPDES permit is required "if the addition of the pollutants through groundwater is the functional equivalent of a direct discharge from the point source into navigable waters." Following the Court's decision, in January 2021, EPA issued a guidance document explaining how to apply the Court's decision in the NPDES program. On January 20, 2021, President Biden signed Executive Order 13990, "Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." This Executive Order directed EPA to review all regulations and policies undertaken by the previous administration and rescind or revise any that do not protect public health and the environment. Accordingly, EPA conducted a review of the Maui guidance.

In a [press release](#), EPA explained its reasoning for rescinding the Trump-era guidance:

"The previous Administration's Maui guidance reduced clean water protections by creating a new factor for determining if a discharge of pollution from a point source through groundwater that reaches a water of the United States is the "functional equivalent" of a direct discharge to such water. The addition of that factor skewed the "functional equivalent" analysis in a way that could reduce the number of discharges requiring a National Pollutant Discharge Elimination System (NPDES) permit. The agency is rescinding this guidance upon determining that this additional factor is inconsistent with the Clean Water Act and the Supreme Court decision in County of Maui v. Hawaii Wildlife Fund.

The Clean Water Act and a straightforward application of the U.S. Supreme Court's decision provide important protections for the nation's waters by ensuring that discharges of pollutants to groundwater that reach surface waters are appropriately regulated. This action will help protect water quality in lakes, streams, wetlands, and other waterbodies. EPA will work with state permitting agencies and the regulated community to implement the Supreme Court's decision in County of Maui, consistent with law and science.

The Office of Water is evaluating appropriate next steps. In the interim, consistent with past practice and informed by the factors specified by the Supreme Court, EPA will continue to apply site-specific, science-based evaluations to determine whether a discharge from a point source through groundwater that reaches jurisdictional surface water requires a permit under the Clean Water Act. The agency is committed to working with its state co-regulators, Tribes, and local partners to better protect water quality that is essential to public health and thriving ecosystems.”

ADVOCACY UPDATE

Updates on TISPC's federal priorities are outlined below.

North Topsail Beach CBRA Mapping Issue

With Congress nearly finished negotiating two major legislative packages (infrastructure and budget reconciliation) that have taken significant time away from other legislative activities this summer and fall, Senators and Members of Congress will begin turning their attention to other end-of-year priorities. We will be reaching out to the Congressional delegation in the coming weeks to again discuss both the CBRA mapping legislation and the new proposed changes to Topsail Unit L06 released by the U.S. Fish and Wildlife Service on August 12. We will provide a more in-depth update to TISPC on the status of both legislative efforts in the November Monthly Report.

Topsail Beach Sand Borrowing Issue

Both the House and Senate are gearing up for the Water Resources Development Act (WRDA) process in 2022. The Senate Environment and Public Works Committee (the committee in the Senate with jurisdiction over WRDA issues) has already set a December 17, 2021, deadline for Senators to submit their WRDA requests to the Committee for consideration. We will be reaching out to the Congressional delegation in the coming weeks to discuss issues that could potentially be addressed in WRDA 2022 legislation. As you may recall, prior to the 2019 policy change, congressional committee staff were working on a legislative compromise to resolve the sand borrowing issue. A similar opportunity may be possible as Congress begins work on WRDA 2022.

Surf City and North Topsail Beach Federal Project

We continue to be available to assist Surf City regarding recent developments related to the economic analysis that must be conducted to update the costs and benefits of the project. Please advise as to how best we can assist the Town as the situation progresses.

Topsail Beach Flood Mapping Issue

We continue to be available to assist the Town of Topsail Beach with resolving its FEMA flood mapping issue. Topsail Beach is to keep us apprised as to the status of their efforts so we can engage the congressional delegation, as needed and as discussed.

Greater Island-Wide Coordination in Disaster Recovery

At this point in time, developing legislative language or directive report language may be the most effective way to address Topsail Island's issue regarding coordination of FEMA disaster recovery activities. Ward and Smith and TFG would like to discuss this possibility further with TISPC. Please advise as to which staff and/or officials from Topsail Beach, Surf City, and/or North Topsail Beach would be best to speak with us about the specific coordination issues being experienced by the Towns. We will set up a phone conference with these individuals once we receive a list of the participants from TISPC.

Support and Promote the Community Rating System and the Federal Flood Insurance Program

Congress again approved a short-term extension of the NFIP in September. The program has been extended through December 3, 2021, following the same timeline as the FY 2022 budget extension. This marks the 18th short-term extension of the program in the past three years. The program will have to be extended again come December 3, as Congress is not expected to come to an agreement on a long-term reauthorization for the program before then.