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TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE McINTYRE

SUBJECT: SEPTEMBER MONTHLY LEGISLATIVE UPDATE

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

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WASHINGTON NEWS

Congress Expected to Approve Continuing Resolution through December

The House and Senate will need to pass a short-term spending bill (i.e., Continuing Resolution) by Thursday, September 30, to temporarily fund the federal government and avoid a shutdown beginning the first day of Fiscal Year 2022 on October 1. The House will likely vote on the CR during the week of September 20, and the CR is tentatively expected to last through early- to mid-December 2021. Additional items that are expected to be part of the CR include a suspension or increase of the [federal debt limit](#); a [short-term extension](#) of the federal surface transportation programs included in the 2015 FAST Act; a short-term extension of the [National Flood Insurance Program](#) (NFIP); a [short-term extension](#) of the Temporary Assistance for Needy Families (TANF) block grant authorization and other related programs; and emergency supplemental appropriations to address Hurricane Ida and other storms and natural disasters in 2020 and 2021. In a [blog post](#) last week, White House Office of Management and

Budget (OMB) Acting Director Shalanda Young wrote that the Biden Administration is requesting the short-term CR [include](#) over \$30 billion in emergency funds for disaster relief and aid for Afghan refugees, in addition to funding “anomalies,” or deviations from simple extensions of funding provided in appropriations last year for FY 2021.

[Bipartisan Infrastructure Package Moves Toward House Consideration, Congress Continues Work on \\$3.5 Trillion FY 2022 Budget Reconciliation Package](#)

On August 24, the House adopted, by a vote of [220-212](#), a procedural resolution ([H. Res. 601](#)) that puts the chamber on track to vote on the Senate-passed *Infrastructure Investment and Jobs Act* ([H.R. 3684](#)) by Monday, September 27. H. Res. 601 also includes the adoption of the Senate-passed FY 2022 budget resolution, which includes instructions for 12 Senate committees and 13 House committees to craft sweeping legislation totaling \$3.5 trillion to “enact the Build Back Better agenda,” including large components of President Biden’s proposed American [Jobs](#) and [Families](#) Plans unveiled earlier this year.

The 13 House committees tasked with drafting the reconciliation package have finished marking up their components of the legislation. The committees faced a September 15 deadline to report their legislation to the House Budget Committee for a final markup, and the committees have met that deadline.

In order for the House to realistically pass the *Infrastructure Investment and Jobs Act* by September 27, both the House and Senate will need to have made significant progress on the budget reconciliation package prior to that date. Given concerns from moderate Democrats in both the House and Senate about the overall cost of the package, it is likely that additional time will be needed to renegotiate, and ultimately pass, the package.

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. TFG will also be producing a Special Report on the FY 2022 budget reconciliation package, which will be published after Congress approves the reconciliation package (likely later this month).

[Offshore Drilling Ban Advances in the House](#)

On September 9, the House Natural Resources Committee advanced its \$25.6 billion component of the FY 2022 budget reconciliation package, which includes an offshore drilling ban in most U.S. offshore waters. The measure would prohibit offshore drilling in areas of the outer continental shelf where it is currently banned and amend the *Mineral Leasing Act* by increasing onshore and offshore oil and gas royalty rates from 12.5 percent to 20 percent. The legislation also establishes an annual inspection fee on onshore and offshore oil and gas operators.

[Top Army Corps Pick Advances in Nomination Process](#)

In late July, the Senate Armed Services Committee approved the nomination of Michael Connor, a former Obama Interior official and Hill staffer, to serve as Assistant Secretary of the Army for Civil Works. The

Senate Environment and Public Works Committee (EPW) must also approve Connor's nomination before the nomination can proceed to the full Senate for consideration. EPW is set to vote on Connor's nomination on Wednesday, September 22.

FEMA Releases Revised Preliminary Damage Assessment Guide

On September 1, FEMA released the revised [Preliminary Damage Assessment Guide](#) (PDA Guide) and its accompanying [Preliminary Damage Assessment Pocket Guide](#) (PDA Pocket Guide). The PDA guide establishes a framework for how emergency management officials, at every level of government, document and validate details of damage following a disaster. The guide includes a concept of operations, defined roles and responsibilities, recommended methodologies, and the documentation and data required to validate damage.

The revised guide is effective October 1, 2021.

FEMA Announces Partial Implementation of the Federal Flood Risk Management Standard for All Hazard Mitigation Assistance Programs

A new interim FEMA policy requires certain structures in [Special Flood Hazard Areas](#) to conform to higher flood elevation standards if they use [Hazard Mitigation Assistance](#) (HMA) grant funds. FEMA published the [Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Programs \(Interim\)](#) (FEMA Policy FP-206-21-0003) to better align with *Executive Order 14030 Climate-Related Financial Risk*. This follows the announcement of the new standard in the [Fiscal Year 2021 Notices of Funding Opportunities](#) for the Building Resilient Infrastructure and Communities (BRIC) and Flood Mitigation Assistance (FMA) programs.

The interim policy is effective on August 27, 2021. In addition to BRIC and FMA, it also applies to the Hazard Mitigation Grant Program (HMGP) for any major disaster declared on or after August 27 and assistance authorized for all 59 COVID-19 disaster declarations. The interim policy partially implements the Federal Flood Risk Management Standard (FFRMS) by requiring higher flood elevations established by the Freeboard Value Approach for certain actions such as elevation, dry floodproofing, and mitigation reconstruction in the Special Flood Hazard Area. The Freeboard Value Approach is the Base Flood Elevation plus two feet. Under the interim policy, FEMA does not require the partial implementation FFRMS Freeboard Value Approach if using it would cause the project to be unable to meet applicable program cost-effectiveness requirements.

FEMA Seeks Public Comment on Community Rating System

On August 23, FEMA issued a [Request for Information](#) (RFI) in the Federal Register seeking public comment on the National Flood Insurance Program's (NFIP's) Community Rating System (CRS). Public comment will be accepted through September 22, 2021, on Regulations.gov, Docket ID: [FEMA-2021-0021](#).

According to the RFI, “FEMA is seeking input on ways the agency can improve the CRS program: (1) to better align the CRS program with the improved understanding of flood risk and flood risk approaches that have developed since the program's inception; (2) to better incentivize communities and policyholders to become more resilient and to not only manage but to lower their vulnerability to flood risk; and (3) to support the sound financial framework of the NFIP.”

The RFI contains a list of questions that FEMA is asking stakeholders to answer. FEMA says answers to these questions “will assist FEMA in identifying those aspects of the CRS program that may benefit from modification, streamlining, or expansion. FEMA encourages public comment on these questions and seeks any other data commenters believe are relevant to FEMA's efforts.” The list of questions provided by FEMA in the FRI is as follows:

1. What are the strengths of the current CRS program? What components of the program are currently working well and why?
2. What are the challenges with the current CRS program that need to be addressed and why? How can the CRS program be modified, expanded, or streamlined to better address or resolve these challenges?
3. While the CRS program is technically available to all compliant NFIP communities, is access to the CRS program equitable for all communities? If not, what changes to the CRS program could make it more equitable for all communities? How could the CRS program provide better outreach to disadvantaged communities to encourage participation? How could the CRS program provide better outreach to households in disadvantaged communities to encourage participation in the NFIP?
4. How could the CRS program better promote and/or incentivize improved reduction of future conditions and risks such as climate change, sea-level rise, urban flooding, and future development?
5. How could the CRS program better address the mitigation of repetitive loss/severe repetitive loss [14] properties and how could FEMA further leverage the CRS program to achieve mitigation of repetitive loss/severe repetitive loss properties?
6. How can the CRS program be modified, expanded, or streamlined to best incentivize participation by communities and flood insurance policyholders to become more resilient and lower their vulnerability to flood risk?
7. How can the CRS program better incentivize floodplain management, risk management, and/or risk reduction efforts for communities through CRS discounts, grants, trainings, technical assistance or other means? Which efforts are most critical for the CRS program to support?
8. What existing sources of data can FEMA leverage to better assist communities to assess, communicate, and drive the reduction of current and future flood risk? Can FEMA leverage new technologies to modify or streamline the CRS program? If so, what are they and how can FEMA use new technologies to achieve the statutory objectives of the program?
9. The CRS program provides credits for flood risk reduction activities. Are there flood risk reduction activities that are not currently given credit within the CRS program that should be? If so, what are they and why? Are there flood risk reduction activities that are currently given excessive credit within the CRS program than they should be given? If so, what are they and

why? Should the CRS program provide a list of optional risk reduction activities for communities to choose from or a list of required risk reduction activities, and why?

10. What successful approaches have been taken by State, local, Tribal, and Territorial governments that the CRS program could leverage to better support community participation in the CRS program? In what ways could the CRS program better support States, Tribes, Territories and Regions, and flood control and water management districts to improve community participation in the program? What innovative changes could the CRS program make to be simpler for communities to join and maintain participation?
11. How could the CRS program provide better outreach to disadvantaged communities to encourage participation? How could the CRS program provide better outreach to households in disadvantaged communities to encourage participation in the NFIP?
12. In what ways could the CRS program facilitate collaboration across jurisdictional boundaries to support a community's ability to reduce flood risk? How could the CRS program be modified, expanded, or streamlined to allow for multi-jurisdictional collaboration efforts to receive credit under the CRS program?
13. What opportunities exist for the CRS program to better integrate with other entities and/or programs? For example, in what specific ways could the CRS program better work and integrate with State, local, Tribal, and Territorial programs, including but not limited to, floodplain management, emergency services, land use planning and building code administration capital improvement, transportation, redevelopment, pre- and post-disaster recovery, climate adaptation, hazard mitigation planning, watershed management, and/or wetlands, riparian, or environmental management programs? In what specific ways could the CRS program better work and integrate with Federal disaster assistance programs or Federal mitigation programs?

FEMA Revises Regulation Governing Public Assistance Appeals Process

On August 16, FEMA published a final rule in the [Federal Register](#) that revises regulations to implement the new right of arbitration as part of the agency's Public Assistance appeals process. [Arbitration was authorized by the Disaster Recovery Reform Act of 2018](#) (DRRA).

To be eligible for Section 423 arbitration, a Public Assistance applicant's request must meet all three of the following conditions:

- The dispute arises from a major disaster declared after January 1, 2016.
- The disputed amount exceeds \$500,000 (or \$100,000 if the applicant is in a rural area, defined as areas with a population of less than 200,000 and outside of an urbanized area).
- The applicant properly submitted a first appeal of FEMA's determination to their regional administrator for their FEMA region and has either received an appeal decision that is not yet FEMA's final agency determination or has not received an appeal decision 180 calendar days from FEMA's receipt of the appeal request.

The regulation revision includes changes to the PA appeals process as well. For disasters declared on or after January 1, 2022, applicants and recipients must submit appeals electronically and FEMA will no

longer accept hard copy first or second appeal submissions. FEMA will also issue appeal responses electronically.

The regulation requires that applicants submit appeals within 60 days from the date of FEMA's determination (rather than the date it receives notice of the determination as is current practice); grantees will have 120 days from the date of FEMA's determination to submit an applicant's appeal along with its recommendation. The new regulation also requires that second appeals be submitted directly to FEMA headquarters, rather than the Regional Administrator.

Citing 9th Circuit Precedent, AZ District Court Judge Vacates Trump-Era WOTUS Rule

A federal district court judge in Arizona has granted a request from six tribes to vacate the Trump-era definition of "waters of the United States" (WOTUS), known as the Navigable Waters Protection Rule, citing precedent from the U.S. Court of Appeals for the 9th Circuit and potential environmental harms from leaving the rule in place, though it is unclear whether the vacatur will apply nationwide. The court's decision means the jurisdictional test for a WOTUS will revert to the policy that predated the Obama Administration's 2015 Clean Water Rule.

U.S. District Judge Rosemary Márquez's decision in *Pascua Yaqui Tribe, et al. v. EPA, et al.* marks the first defeat for the Biden Justice Department's (DOJ's) requests for the several district courts hearing challenges to the 2020 rule to remand it back to EPA and the Army Corps of Engineers without vacatur. The U.S. District Court for the District of South Carolina granted the agencies' request July 14, while other requests remain pending.

The tribes' litigation also challenges the Trump administration's 2019 rule repealing the Obama-era WOTUS definition, and that challenge remains pending. EPA and the Corps did not respond to the tribes' motion for summary judgment on the repeal rule, arguing instead for remand without vacatur. The order says it may be beneficial to have further briefing focused on that repeal and orders the parties to file a proposal or proposals within 30 days on how to proceed.

Biden CEQ to Overhaul Trump NEPA Regulations

The Biden White House Council on Environmental Quality (CEQ) advanced what will become a three-step plan to overhaul the 2020 changes made to National Environmental Policy Act (NEPA) regulations by the Trump administration. CEQ is charged with coordinating the NEPA process across dozens of federal agencies. The NEPA regulations help guide agencies on environmental review for some of the nation's biggest projects.

The Trump administration adopted changes that reduced review times, cut page counts, limited public input, cut out "cumulative impacts" analyses, and expanded projects that could be excluded entirely from NEPA review. The Biden administration has laid out a three-step plan to overhaul the Trump administration regulations, with CEQ advancing the first step recently when it sent to the White House Office of Information and Regulatory Affairs (OIRA) a proposal that would make a "narrow set of

changes” to the Trump rules. In a second step, CEQ has extended a deadline by two years to 2023 for agencies to comply with procedural requirements mandated by the Trump administration regulations. The third step will be to replace the regulations altogether.

ADVOCACY UPDATE

Updates on TISPC's federal priorities are outlined below.

Proposed Critical Habitat Designation for the Rufa Red Knot

After participating in briefings on the rufa red knot critical habitat designation hosted by NCBIWA and the U.S. Fish and Wildlife Service (which several of you also participated in), we suggested to Chairman Smith that TISPC consider requesting an extension of the public comment period given the complexity and scope of the proposed rule. Chairman Smith agreed with our recommendation and requested that we reach out to the Congressional delegation to request an extension on the proposed rule. We promptly contacted the delegation on August 24, and as you know, Congressman Rouzer, Congressman Murphy, Senator Burr, and Senator Tillis sent a [joint letter](#) to the U.S. Fish and Wildlife Service on September 2 requesting an extension of the comment period. We express our great appreciation to Congressman Rouzer's office for coordinating this joint letter.

As you know, the comment period closed on September 13. The U.S. Fish and Wildlife Service has received several requests to extend the public comment period (in addition to your Congressional delegation) to give stakeholders additional time to review the data and methodology used in the proposed rule. It is our understanding that the Service will indeed be reopening the public comment period. However, we do not yet know when the comment period will reopen. We will continue to keep TISPC updated.

North Topsail Beach CBRA Mapping Issue

As you know, on August 12, the U.S. Fish and Wildlife Service [proposed](#) changes to seven CBRS maps in North Carolina, South Carolina, and Florida, including Topsail Unit L06. The proposed change to Topsail Unit L06 would remove approximately 2.5 acres from the CBRS, comprising four lots within Barton Bay Yacht Club, which includes two structures along Barton Bay Drive and New River Inlet Road, and a portion of one lot to the south of New River Inlet Road. The revised map will only take effect if adopted by Congress through legislation.

As per a request from Vice Chairman Benson, we contacted your Congressional delegation to provide them information about the proposed mapping changes and request that they support the mapping changes in Congress. Typically, noncontroversial CBRS mapping changes proposed by the Service are packaged together in a single legislative package and approved at the end of the year. We will work with your Congressional delegation and relevant Congressional committees on moving these mapping changes forward legislatively for approval.

Topsail Beach Sand Borrowing Issue

A Congressional inquiry has been made to the Department of Interior regarding implementation of the Biden administration's new CBRS sand borrowing policy, especially as it relates to ongoing projects. We will continue to work with the Congressional delegation and other interested stakeholders on exploring additional strategies to address the new policy. For example, as you may recall, prior to the 2019 policy change, congressional committee staff were working on a legislative compromise to resolve the issue. A

similar opportunity may be possible in the next 1-2 years as Congress begins work on the Water Resources Development Act of 2022.

Surf City and North Topsail Beach Federal Project

We have been in contact with Surf City regarding recent developments related to the economic analysis that must be conducted to update the costs and benefits of the project. We have requested additional information from Surf City on these developments and will continue to 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

As you know, we have discussed the need for greater island-wide disaster recovery coordination with your congressional delegation on several occasions during the current session of Congress. We will continue to speak with your congressional delegation about this issue in the context of disaster recovery legislation.

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

As we reported above in the Washington News section of the report, FEMA issued a Request for Information (RFI) in the *Federal Register* seeking public comment on the Community Rating System. According to the RFI, “FEMA is seeking input on ways the agency can improve the CRS program: (1) to better align the CRS program with the improved understanding of flood risk and flood risk approaches that have developed since the program's inception; (2) to better incentivize communities and policyholders to become more resilient and to not only manage but to lower their vulnerability to flood risk; and (3) to support the sound financial framework of the NFIP.”

If TISPC would like to submit any comments to FEMA related to the CRS program, we would be happy to help TISPC draft a comment letter. Public comments will only be accepted through September 22, 2021. So, please let us know as soon as possible if TISPC would like to submit any comments.

Also, please note that we expect Congress to again approve an extension of the NFIP before September 30, as Congress has yet to agree on comprehensive NFIP reauthorization legislation. This will mark the 18th short-term extension of the program in three years.