



TO: STEVE SMITH
TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION

FROM: MIKE McINTYRE

SUBJECT: NOVEMBER MONTHLY LEGISLATIVE UPDATE

DATE: NOVEMBER 30, 2021

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WASHINGTON NEWS

Congress Passes Bipartisan Infrastructure Package, Continues Work on the BBB

On November 2, the U.S. House of Representatives [passed](#) the \$1.2 trillion *Infrastructure Investment and Jobs Act* ([H.R. 3684](#)) by a vote of 228-206, with 13 Republicans voting in favor of the bill and six Democrats voting against. The Senate previously approved the package on August 10. President Biden signed the bill into law on November 15

The legislation includes a complete five-year, \$383.4 billion surface transportation reauthorization bill and an additional \$550 billion in new funding for roads and bridges, road safety, railways, airports, public transit, electric vehicle infrastructure, ports and waterways, the electric grid, broadband, water infrastructure, resiliency and western water storage, and environmental remediation. TFG's [Special Report](#) on the infrastructure package provides a detailed summary of what is included in the bill.

It is important to note that the *Infrastructure Investment and Jobs Act* is both an authorizing and appropriating bill. Some programs may have been provided an authorization in the bill but no appropriations, meaning that funding was not actually provided to the program. The authorization does, however, allow Congress to appropriate funding to the program later. For example, programs that only received authorization in the infrastructure package but did not receive appropriations may receive appropriations in the Build Back Better Act (BBB) or in FY 2022 appropriations. Division J of the *Infrastructure Investment and Jobs Act* is the section of the bill that provides appropriations for both existing and newly authorized programs in the bill, over and above the regular funding provided to the programs in Congress's annual spending bills and regular surface transportation reauthorization legislation. Refer to Division J to understand which programs in the bill were actually provided appropriations. Several programs that were provided appropriations in the bill that will be of interest to TISPC include:

- \$150 million for U.S. Army Corps of Engineers Investigations account.
- \$4 billion for the Corps' Operations and Maintenance account.
- \$11.615 billion for the Corps' Construction account, including \$2.55 billion for coastal and hurricane-related projects.
- \$1 billion for FEMA's Disaster Relief Fund.
- \$275 million for grants under the Save Our Seas 2.0 Act.

Congress has directed the Corps to provide a Work Plan for the Corps-related funds provided in the bipartisan infrastructure package by no later than 60 days after enactment. Accordingly, we expect that the Corps will publish the Work Plan for the additional funds provided in the bipartisan infrastructure package by January 25, 2022.

In addition to the House vote on the *Infrastructure Investment and Jobs Act*, the House also passed a [Rule](#) to vote on the \$1.75 trillion BBB package. The House later passed the BBB ([H.R. 5376](#)) on November 19. The Senate, on the other hand, has no set [timeline](#) to act on the BBB, with two key Senate moderates, Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ), likely to demand additional changes to the legislation.

[Biden Administration Appoints Infrastructure Advisor, Increases Staffing to Implement Infrastructure Bill Funds](#)

The Biden administration has announced plans to increase agency staffing and expand the federal workforce to manage the record amount of funding appropriated in the newly passed bipartisan infrastructure deal. The federal agencies responsible for disbursing the funding are preparing to hire more workers to manage everything from fixing highways to removing lead water service lines to upgrading aging sewers. President Biden announced the appointment of Mitch Landrieu, former mayor of New

Orleans and Louisiana lieutenant governor, to manage the implementation of the infrastructure package. The President also issued an [Executive Order](#) outlining his administration's priorities for implementing the package, including efficient and measurable funding distribution, enforcing Made in America requirements, focusing on prevailing wage and union access for newly created jobs, and a goal that 40 percent of the overall benefits from federal investments in climate and clean energy flow to disadvantaged communities.

Appropriators Disagree on Topline FY 2022 Spending Levels and Policy Riders

Government funding is set to expire on Friday, December 3, 2021, forcing Congress to pass another short-term Continuing Resolution (CR) to fund federal agencies and avoid a government shutdown. Congress will have four legislative workdays to pass a CR following its Thanksgiving recess. The CR, which will be introduced in the House on November 30, is expected to run through mid- to late-January.

Appropriators have not come to agreement on any FY 2022 spending bills, with Democratic and Republican appropriators remaining far apart on domestic and national security spending levels and at odds with each other over controversial policy riders. Democrats say they have outlined priorities in their spending bills in both the House and Senate and are waiting for a Republican counteroffer. Meanwhile, Republican appropriators say they want an agreement to strip out policy riders they are calling "poison pills" on hot button issues like abortion and climate, but Democrats are saying they will deal with the riders once topline spending levels are agreed upon.

The top Senate Republican appropriator, Senator Richard Shelby (R-MS) has said he expects the CR to be extended into the next year to allow for an omnibus to be assembled, but he insinuated that if no agreement is reached, the CR may have to be extended for the entirety of FY 2022. Under a year-long CR, federal agencies would operate at FY 2021 spending levels and have few options for launching new programs or curtailing existing ones. It would put on hold billions proposed for a host of initiatives by the Biden administration and cut off billions in congressional earmarks, which just made a comeback this year.

Bipartisan Flood Insurance Reform Bill Introduced in Senate

A bipartisan group of lawmakers introduced legislation in early November to reauthorize the National Flood Insurance Program (NFIP). The *National Flood Insurance Program Reauthorization and Reform Act (S. 3128)* would, among other things:

- Reauthorize the NFIP for five years.
- Set guardrails on Risk Rating 2.0 by capping annual premium rate increases at 9 percent per year. Currently, premiums can increase by up to 25 percent per year.
- Provide means-tested voucher for low- and middle-income homeowners and renters if their flood insurance premium become overly burdensome.
- Require FEMA to offer flood insurance coverage to cooperative buildings on the same terms as a condominium owner in order to increase the number of properties that are insured.
- Increase maximum NFIP coverage limits for structural damage in accordance with federal standards.

- Set aside 10 percent of disaster assistance allocated to FEMA’s Disaster Relief Fund for buyouts, elevation, and other mitigation for the highest risk properties covered under the NFIP.
- Authorize an additional \$1 billion per year in flood mitigation grants. Prioritizes mitigation for properties that have suffered repetitive losses, currently have or will soon have unaffordable premiums, and have suffered losses that exceed the replacement value of the property.
- Authorize FEMA to create a low-interest mitigation loan where the upfront cost of the mitigation investment is less than the overall reduction in the risk of the property over 50 years. The low-interest loan will be paid with a portion of the premium savings achieved with the mitigation activity. Upon sale of the property, any outstanding loan will either be repaid with the proceeds of the sale or carried over to the new owner (with full disclosure before sale). This program would be eligible to all types of properties.
- Establish a revolving loan fund for the purpose of mitigation with a priority given to high-flood risk states. The initial funds would be supplied by both FEMA and the state, and then loaned out at low interest rates to help communities, schools, families, and businesses mitigate flood risk. The payments on the loans are then returned to the state fund and immediately become available for use in a new loan.
- Establish a dynamic, database-derived digital display environment for building specific flood risk information and estimates on the cost effectiveness of mitigation and reductions in flood insurance premiums—as has been accomplished in the state of North Carolina.
- Increase funding for FEMA’s flood mapping program to implement LiDAR technology for more accurate flood risk.
- Freeze interest payments on the NFIP debt and reinvest savings towards mitigation efforts.
- Increase Cost of Compliance Coverage to better reflect costs of rebuilding and implementing mitigation projects.

A detailed summary of the legislation can be found [here](#).

The NFIP is set to expire along with the current CR on December 3. An NFIP extension will likely be included in the CR, as it is not expected Congress will be able to approve a full NFIP reauthorization bill by December 3.

Senate Passes Bill to Provide Greater Flexibility for ARPA Funds

On September 19, the Senate passed the *State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act* (S. 3011) by unanimous consent. This bill significantly expands how local and county governments can utilize their Fiscal Recovery Funds and is expected to streamline and strengthen the *American Rescue Plan Act* (ARPA) of 2021 (P.L. 117-2) in three key ways:

1. It would allow local governments to allocate up to \$10 million of ARPA funds for the provision of government services without using complicated budgetary analysis to calculate lost revenue, while at the same time retaining the original provision of the law that would allow for a higher amount to be used if justified under Treasury’s revenue loss calculator.
2. It would allow the greater of \$10 million or 30 percent of the total ARPA allocation provided to a local governments to be used for 27 new infrastructure-related activities authorized under federal surface transportation laws or Title I of the *Housing and Community Development Act of 1974*.

3. It would allow funding to be used to provide “emergency relief from natural disasters or the negative economic impacts of natural disasters, including temporary emergency housing, food assistance, financial assistance for lost wages, or other immediate needs.”

Regarding item #2, below is a list of the 27 infrastructure-related authorities:

1. **INFRA grants** under 23 U.S.C. §117
2. **National Highway Performance Program grants** under 23 U.S.C. §119
3. The new discretionary **Bridge Investment Program grants** under 23 U.S.C. §124
4. **Surface Transportation Block Grant Program grants** under 23 U.S.C. §133
5. **Metropolitan Planning grants** under 23 U.S.C. §134
6. **Highway Safety Improvement Program grants** under 23 U.S.C. §148
7. **Congestion Mitigation and Air Quality Program grants** under 23 U.S.C. §149
8. The new discretionary **Charging and Fueling Infrastructure Grants** under 23 U.S.C. §151
9. **Territorial and Puerto Rico Highway Program grants** under 23 U.S.C. §165
10. **National Highway Freight Program grants** under 23 U.S.C. §167
11. The new **Rural Surface Transportation grant** program under 23 U.S.C. §173
12. The new **Carbon Reduction Program grants** under 23 U.S.C. §175
13. The new **PROTECT grant program** under 23 U.S.C. §176
14. **Tribal Transportation grants** under 23 U.S.C. §202
15. **Federal Lands Transportation Program grants** under 23 U.S.C. §203
16. **Federal Lands Access Program grants** under 23 U.S.C. §204
17. **RAISE grants**
18. **TIFIA credit assistance** under chapter 6 of title 23 U.S.C.
19. **Appalachian Development Highway System grants** under 40 U.S.C. §14501
20. **Urbanized area formula grants** under 49 U.S.C. §5307
21. **Capital Investment Grants** under 49 U.S.C. §5309
22. **Rural area formula grants** under 49 U.S.C. §5311
23. **State of good repair grants** under 49 U.S.C. §5337
24. **Bus and bus facility grants** under 49 U.S.C. §5339
25. **National Culvert Removal, Replacement, and Restoration grants** under 49 U.S.C. §6703
26. **HUD Community Development Fund Grants**
27. Grants under the **new formula bridge program** created by Division J of the *Infrastructure Investment and Jobs Act*

The bill also allows states, counties, and localities to use their ARPA Fiscal Recovery Funds to “satisfy a non-Federal share requirement applicable to such project” for certain grant programs, including INFRA grants, FTA Capital Investment Grants, and RAISE grants. Governments would be limited to using no more than 30 percent of their COVID aid for such infrastructure purposes.

A House companion bill, H.R. 5735, was introduced by Representative Dusty Johnson (R-SD) on October 26 with nearly 30 cosponsors, including Representative Rouzer. The bill now has over 100 cosponsors. Efforts are underway to urge House consideration in December, but at this time, no vote has been scheduled.

House Passes Bill to Expedite Disaster Recovery Efforts

On November 4, the House passed [H.R. 1917](#), the *Hazard Eligibility and Local Projects (HELP) Act*, by a bipartisan vote of 409-16. The HELP Act would help municipalities and local agencies expedite certain disaster mitigation projects by removing unnecessary delays and streamlining the FEMA hazard mitigation grant program. Under current law, local and state agencies applying for federal funds to begin recovery projects under the hazard mitigation grant program must wait until they receive approval from FEMA before purchasing land or starting construction on a project. Purchasing land or starting construction without approval disqualifies the project from receiving federal assistance.

Congresswoman Lizzie Fletcher (D-TX) [introduced](#) the HELP Act with Congressman Michael McCaul (R-TX).

Senate Confirms Top Army Corps Nominee

On November 4, the Senate confirmed President Biden's nominee, Michael Connor, to lead the Army Corps of Engineers as the next Assistant Secretary of the Army for Civil Works. The vote was 92 to 5. Mr. Connor previously served as Deputy Secretary of the U.S. Department of the Interior from 2014-2017, as well as Commissioner of the U.S. Bureau of Reclamation from 2009-2014, leading efforts to carry out President Obama's energy, natural resources, conservation, climate change, and Native American policies. He previously served as counsel to the U.S. Senate Energy and Natural Resources Committee, which included managing the Water and Power Subcommittee. Connor also served as director of the Indian Water Rights Office at the Department of the Interior and as an adjunct professor at Georgetown Law.

Reminder: FEMA Gathering Feedback on NFIP Floodplain Management Standards

FEMA is seeking public comments on the NFIP's minimum floodplain management standards. 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.

Biden Administration Announces Plan to Regulate PFAS

The Biden administration has announced their plan to address every form of per- and poly-fluoroalkyl substances, known as PFAS pollution, proposing to regulate the "forever chemicals" linked to diseases including cancer and found in a wide range of everyday products and in thousands of drinking water systems nationwide. The EPA "[PFAS Strategic Roadmap](#)" includes timelines for regulating multiple compounds in drinking water and strategies for preventing more contamination. The Roadmap does not

directly answer the most burning question facing the agency: whether EPA will regulate PFAS together as a class or take a smaller-scale approach.

Biden Administration Moves to Rescind Trump-Era ESA Rulemakings

The Biden administration has moved to roll back two Trump administration policies finalized in the closing days of the administration that changed the designation of critical habitat under the Endangered Species Act (ESA) to protect threatened or endangered species. The U.S. Fish and Wildlife Service and NOAA Fisheries (NMFS) have [proposed](#) rescinding a Trump-era definition of critical habitat under the ESA that curtailed the definition of “habitat” to pertain to areas that currently support a species. FWS is also proposing to end a policy that made it easier to exclude territory in a critical habitat determination by barring the Service from granting critical habitat protections to an area if an analysis determined it was of greater (economic/societal) benefit not to provide such protections.

Under the ESA, critical habitat is considered "essential for the conservation of the species." Federal agencies that authorize, fund, or carry out an action on designated critical habitat must first consult with the Service to ensure it is not likely to destroy or damage a critical habitat. The ESA further states that critical habitat is to be designated "on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact."

Rouzer Introduces Bill to Define Waters of the United States

On November 4, Representatives Rouzer [introduced H.R. 5849](#), the *Defense of Environment and Property Act of 2021*, which would redefine “navigable waters” to exclude ephemeral or intermittent streams from federal jurisdiction. Senator Rand Paul (R-KY) introduced companion legislation in the Senate.

Specifically, the *Defense of Environment and Property Act* would:

- Define “navigable waters” as “navigable-in-fact, or permanent, standing, or continuously flowing bodies of water that form geographical features commonly known as streams, oceans, rivers, and lakes that are connected to waters that are navigable-in-fact.”
- Clarify the jurisdiction of the EPA and Corps of Engineers.
- State “ground water” is State water and not to be considered in asserting Federal jurisdiction.
- Prohibit the use of a “significant nexus test.”
- Prohibit the EPA and Corps of Engineers from creating new rules defining “navigable waters” or expanding or interpreting the definition of “navigable waters” unless expressly authorized by Congress.

EPA and Army Corps Propose Interim Definition of Waters of the United States as Administration Continues Development of New Definition

On November 18, the EPA and Army Corps of Engineers [proposed](#) an interim definition of waters of the United States (WOTUS) that aims to provide “stable implementation” of the Clean Water Act while the Biden administration seeks to develop its own WOTUS definition. The proposed interim definition will

re-establish the pre-2015 definition of WOTUS, which defines waters using a collection of Corps and EPA regulations referred to as the “1986 regulations,” with amendments to reflect the agencies’ interpretation of the statutory limits on the scope of WOTUS as informed by Supreme Court decisions, including *Rapanos v. United States*. In light of recent court actions, the agencies have been implementing the pre-2015 regulatory regime nationwide since early September 2021.

The proposed rule is significant because it is not simply a re-codification of the 1986 regulations, Kevin Minoli, a former EPA acting general counsel and co-author of the EPA-Corps 2008 Rapanos Guidance, told *InsideEPA*. “Rather than putting the old definition back in place and interpreting it in light of the intervening Supreme Court case law, the agencies have proposed to codify those Supreme Court decisions into the regulations. That is a significant change that will get a lot of scrutiny during the public comment period and, eventually, from the courts,” said Minoli.

In the proposed rule, which was signed by EPA Administrator Michael Regan and Acting Assistant Secretary of the Army for Civil Works Jaime A. Pinkham, EPA and the Corps interpret WOTUS to include: traditional navigable waters, interstate waters, the territorial seas, and their adjacent wetlands; most impoundments of WOTUS; tributaries to traditional navigable waters, interstate waters, the territorial seas, and impoundments that meet either the relatively permanent standard or the significant nexus standard; wetlands adjacent to impoundments and tributaries, that meet either the relatively permanent standard or the significant nexus standard; and “other waters” that meet either the relatively permanent standard or the significant nexus standard. (Sections of this summary were informed by a November 18, 2021, *InsideEPA* article titled, “EPA Offers Interim ‘WOTUS’ in Bid to Avoid ‘Whiplash’ from Future Fixes.”)

[Corps Publishes South Atlantic Coastal Study Newsletter](#)

On November 24, the Army Corps of Engineers circulated its latest South Atlantic Coastal Study (SACS) [newsletter](#), which provides updates for the time period between July and October 2021.

[Update on WRDA 2022](#)

As you know, Congress is already starting work on the Water Resources Development Act (WRDA) for 2022. WRDA bills are typically approved by Congress every two years to authorize new studies and construction projects, as well as to adjust existing projects, programmatic authorities, and policies related to the Army Corps of Engineers’ water resources portfolio. Congress typically begins work on WRDA bills a year in advance (or longer).

The Senate Environment and Public Works Committee has already set a deadline for Senators to submit their WRDA priorities to the Committee, which is December 17, 2021. The House has yet to set a similar deadline. However, House Transportation and Infrastructure Committee Members and staff are working behind the scenes to develop language. Please let us know as soon as possible if TISPC has any specific interests related to WRDA.

ADVOCACY UPDATE

Updates on TISPC's federal priorities are outlined below.

North Topsail Beach CBRA Mapping Issue

Based on our discussions with Congressional staff in November, the House Natural Resources Committee has not yet produced a bill related to the [proposed changes](#) to seven CBRS maps in North Carolina, South Carolina, and Florida, including Topsail Unit L06. As you know, the proposed changes, which were released by the U.S. Fish and Wildlife Service on August 12, would remove approximately 2.5 acres from Topsail Unit L06, 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 for Topsail Unit L06 will only take effect when adopted by Congress through legislation. The Committee is planning to draft legislative language, but the legislation is not expected to be ready for consideration in December. However, based on our discussions, the bill will likely be ready for consideration in early 2022. The extremely busy legislative calendar in December is another reason the legislation is not expected to be considered in December. We will continue to work with the Congressional delegation to expedite consideration of these mapping changes, and we will continue to discuss with the delegation the possibility of moving the larger CBRA mapping legislation for North Topsail Beach.

Topsail Beach Sand Borrowing Issue

As discussed in the Washington News section above, both the House and Senate are gearing up for the WRDA process in 2022. We have been in contact with Congressional offices regarding potential options to resolve the sand borrowing issue, but it is still not clear this early in the process what legislative solutions may be possible. We will continue these discussions and keep you updated as appropriate.

Surf City and North Topsail Beach Federal Project

We continue to be available to assist Surf City regarding 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 must again approve a short-term extension of the NFIP by December 3. This will mark the 19th short-term extension of the program in the past three years. Congress will continue to work on NFIP reauthorization legislation, but the committees of jurisdiction are still far from coming to an agreement on compromise legislation. Please see the Washington News sections above for more updates on the NFIP.