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TOPSAIL ISLAND SHORELINE PROTECTION COMMISSION
FROM: MIKE McINTYRE
SUBJECT: OCTOBER MONTHLY REPORT AND LEGISLATIVE UPDATE
DATE: OCTOBER 19, 2023

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

- Washington News
 - Government Shutdown Averted (For Now); The Office of the Speaker is Vacant as Crushing Deadline Approaches
 - White House Council on Environmental Quality Announces Plans to Accelerate Some Infrastructure Permitting Processes
 - Biden-Harris Administration Announces \$100 Million to Bolster Climate Resilience in Communities
 - EPA Issues Final Rule to Strengthen Water Protections, Support Clear and Timely Reviews of Infrastructure and Development Projects
 - FEMA Publishes a Proposed Rule for Public Comment on the Federal Flood Risk Management Standard
- Advocacy Update

Washington News

Government Shutdown Averted (For Now); The Office of the Speaker is Vacant as Crushing Deadline Approaches

A government shutdown was narrowly averted on September 30, 2023 as House Democrats and Republicans joined together to vote 335-91 on a short-term “CR” deal that would fund the federal government until November 17th, 2023. The CR also includes an extension of the FAA authorization and flood insurance programs, as well as \$16 billion in disaster relief. However, The CR is devoid of any funding for Ukraine, which has been a point of contention amongst House Republicans. The House of Representatives has passed only 4 of its 12 required appropriations bills.

On Tuesday, October 3, 2023, the United States House of Representatives voted to oust Speaker Kevin McCarthy. In a 216-210 vote, 8 House Republicans voted with the entirety of the House Democratic Caucus to formally “Vacate the Chair” of the Speaker.

On October 11, 2023, Representative Steve Scalise (R-Louisiana), the second highest ranking member of House GOP leadership, was nominated by the House GOP to be their candidate for Speaker. Rep. Scalise was nominated by a vote of 113-99 via a confidential ballot. Rep. Scalise failed to secure enough votes to become Speaker and removed himself from consideration.

Shortly thereafter, on October 13, Rep. Jim Jordan (R-OH) was nominated by the House GOP as their next nominee for the Speaker's office. The House subsequently voted to elect a new speaker on Tuesday, October 17, 2023. Rep. Jordan received only 200 votes on this round, failing to reach the 217 votes necessary to secure the Speakership.

On October 18, 2023, a second vote was held, again with Rep. Jordan as the Republican Nominee, and Rep. Hakeem Jeffries (D-NY) as the Democratic nominee. Rep. Jordan received only 199 votes, a net loss of 1 from the previous vote, and again short of the 217 needed to become Speaker. It remains unclear as to whether Rep. Jordan will be able to garner the votes necessary to become Speaker in future votes.

In the meantime, none of the 8 outstanding appropriations bills may be scheduled for a floor vote, nor may any votes (aside from electing the Speaker) be held until a new Speaker has been sworn in. There will be intense ongoing debate over many topics in these funding bills. For example, disagreements over foreign/military aid to both Israel and Ukraine will need to be resolved in order for Congress to fully fund the government.

White House Council on Environmental Quality Announces Plans to Accelerate Some Infrastructure Permitting Processes

The White House Council on Environmental Quality (CEQ) announced that two federal agencies plan to speed up the federal permitting process for energy and manufacturing projects. The Department of Transportation (DOT) and Department of Commerce's National Institute of Standards and Technology (NIST) are using a new process that was included in the bipartisan deal to raise the federal debt limit (Fiscal Responsibility Act) to speed up permitting of certain projects by adopting another agency's categorical exclusions (CEs), which are groups of actions that agencies have determined do not significantly impact the environment, so the permitting process can move more quickly. DOT will be using the Department of Energy's (DOE) electric vehicle charging CE to accelerate environmental reviews for future EV charging projects, while NIST will adopt 11 DOE CEs to expedite certain semiconductor manufacturing projects.

Meanwhile, the Biden Administration is moving ahead with multiple rules that would update environmental permitting requirements, including those in this year's debt limit law that made some changes to the National Environmental Policy Act (NEPA). The Environmental Protection Agency (EPA) has recently issued a proposed rule governing states' assumption of authority to permit dredge-and-fill activities, and last week it issued a final rule governing states' review of the federal approvals of pipelines, transmission lines, hydroelectric dams, and other major infrastructure under Section 401 of the Clean Water Act.

In addition, CEQ announced its "Phase 2" rule to overhaul NEPA implementing regulations, which Administration officials say will build on the debt limit law while also ensuring consideration of

climate change effects and environmental justice in future environmental permitting processes. Some critics argue that the NEPA proposal would not streamline permitting but instead create opportunities for additional delay in permitting important infrastructure projects nationwide.

Efforts in Congress to pass additional permit streamlining legislation appear to be slowing, especially as Congress deals with the possible government shutdown, but some in the Senate continue to promote consideration of permitting reforms that can accelerate energy and transmission projects.

Biden-Harris Administration Announces \$100 Million to Bolster Climate Resilience in Communities

The Department of Commerce and the National Oceanic and Atmospheric Administration announced \$100 million dollars in grant funding opportunities to climate resilient projects through U.S. Integrated Ocean Observing System (IOOS) Regional Associations. The funds were made available through the Inflation Reduction Act and aim to strengthen operations through investments that enable them to recapitalize and modernize infrastructure and sustain services that address climate resilience needs and priorities, particularly in frontline and underserved communities.

Funding will enhance national and regional coastal ocean observing systems while prioritizing climate resilience services. Of the funds allotted, \$55 million will be invested in activities at the regional scale including recapitalization, infrastructure investments and modernization of the system to support delivery of data and information services to address coastal and climate resilience needs. The amount of \$45 million will fund activities that benefit users at the national and/or regional scale with an emphasis on modernization, infrastructure, and recapitalization projects to support coastal resilience and equitable service delivery.

EPA Issues Final Rule to Strengthen Water Protections, Support Clear and Timely Reviews of Infrastructure and Development Projects

The U.S. Environmental Protection Agency (EPA) announced the final [Clean Water Act Section 401 Water Quality Certification Improvement Rule](#) aimed at supporting clear, efficient, and focused water quality reviews of infrastructure and development projects that are key to economic growth.

The purpose of the Clean Water Act's Section 401 is to enable states, territories, and authorized tribes to protect their water quality from adverse impacts of construction or operation of federally permitted projects. Under Section 401 of the Act, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into a water of the United States, unless the appropriate state, territory, or authorized tribe issues a CWA Section 401 water quality certification or waives certification. EPA's 2023 rule realigns the scope of Section 401 certification with established practices while restoring and strengthening the role of states, territories, and authorized tribes.

The new rule enhances the certification review process and provides regulatory certainty and clarity when advancing federally permitted projects. For example, the rule establishes a 6-month default timeframe (when the federal agency and certifying authority fail to reach an agreement) and a 1-year maximum timeframe for certification review (the statutory maximum). The rule emphasizes that states, territories, and tribes may only consider the adverse water quality-impacts from the activity. To limit delays, the rule also provides a clear approach to defining the required contents in a request for certification.

ADVOCACY UPDATE

It is a pleasure to serve and advocate on TISPC's behalf, and we welcome the opportunity to continue what has been a productive relationship.

For the time being, Congress' attention is narrowly fixed on electing a new Speaker. Once the Speaker's office is filled, there will be a rapid return to legislative business, as they will need to pass 12 appropriations bills in order to, once again, avert a government shutdown. Even after the Speaker's office is filled, there will likely continue to be limited action on issues aside from government funding legislation. It is possible that some Committee activity such as hearings and Committee votes are held, but limited to no action will occur on the floor of the House. We will continue to monitor opportunities to advance the Commission's priorities though such opportunities will be limited in the days and weeks to come.

North Topsail Beach CBRA Mapping Issue

We were pleased to welcome Commissioner Tom Leonard to Washington D.C. and to support his testimony before the House Natural Resources Committee's Subcommittee on Water, Wildlife and Fisheries, on September 28, 2023. The purpose of the hearing was to consider several pieces of legislation, including H.R. 2437 (sponsored by Rep. Murphy), which would revise boundaries in the John H. Chaffee Coastal Barrier Resources System. Commissioner Leonard eloquently outlined Topsail Island's challenges under the current CBRA maps, in particular the U.S. Fish and Wildlife Service's (USFWS) errant inclusion of North Topsail Beach in CBRA maps in the 1980s. Commissioner Leonard's testimony underscored the Commission's support for H.R. 2437, and the importance of modifying CBRA maps containing North Topsail Beach. Commissioner Leonard's comments focused on the need for equality and fairness for the communities of North Topsail Beach and their ability to access federal infrastructure funding, federal financing, and related federal support.

Many of the Subcommittee's Republican members, including Rep. Murphy, and Subcommittee Chairman Bentz (R-OR) indicated their support for the legislation. The Subcommittee's lead Democrat, Rep. Jared Huffman (D-CA), denounced the legislation, as did the USFWS representative, Mr. Matt Strickler, the Deputy Assistant Secretary for Fish, Wildlife, and Parks at the U.S. Department of the Interior. Rep. Murphy's legislation will likely continue to be supported along party lines despite its extremely limited scope and modification of the Coastal Barrier Resources System. Many House Democrats, as well as the Biden Administration, view the legislation as emblematic of efforts to tear down environmental protections despite Commissioner Leonard's comments reiterating the Commission's broad support for the protections provided by the Coastal Barrier Resources Act.

We remain hopeful that Rep. Murphy's legislation will have a path forward, likely as part of a larger legislative vehicle. At this time, it is uncertain what that vehicle will be, but we will monitor developments and keep the Commission apprised of opportunities and to advocate for its inclusion and passage.

Sand Borrowing

In August, the Biden Administration [announced](#) that they would grant an emergency exemption from the CBRA in order to conduct renourishment activity on Wrightsville beach. Though we are not aware of any further action regarding either the exemption itself, nor renourishment activity, we remain optimistic the renourishment will occur soon, in accordance with the exemption and applicable regulations.

Congressman Rouzer's legislation, [H.R. 524](#), to create exemptions for using federal funds in shoreline borrow sites within the Coastal Barrier Resources System, remains stalled alongside other legislative items. As a reminder, TISPC would not currently qualify for the exemptions in the bill, though it would qualify upon reaching the 15-year threshold set forth in the legislation. Upon reaching this 15-year threshold, TISPC would be able to use sand from the New Topsail Inlet and New River Inlet CBRS zones for non-CBRS renourishment activity, even when federal funds are involved. Until the Speaker's office is filled, we unfortunately do not anticipate any further action on this bill. Once the Speaker is elected, there is a good chance that the legislation will have an opportunity for consideration and a vote in the House Natural Resources Committee, which will allow for its consideration for a vote before the whole House of Representatives.

FEMA Issues

President Biden's Spring Regulatory Agenda made notice of the anticipated publication of an Interim Final Rule (IFR) to improve access to and efficiency in FEMA's Individual Assistance Program (IAP). The IFR was anticipated to be published in October 2023, though a government shutdown would delay the publication indefinitely – certainly until the government funding crisis is resolved. We are hopeful that this rulemaking would enable individuals impacted by natural disaster to access relief funds more expediently than under current procedures.

In general, the increased scrutiny placed on FEMA's bureaucratic processes in the wake of the wildfire in Lahaina, Hawaii, which took the lives of more than 100 people and destroyed thousands of homes and businesses, may result in a greater appetite among lawmakers to reform the agency.

The forthcoming publication of an Interim Final Rule (IFR), noticed in President Biden's Spring Regulatory Agenda, regarding FEMA's Individual Assistance Program (IAP) has yet to be published. This IFR would simplify processes and remove barriers to entry, in order to make the IAP more accessible to those impacted by disasters and related damage.

The Agenda indicated that the IFR would be published this month (October 2023), so it remains a distinct possibility that we will see publication of the IFR in the next few weeks. However, the Administration may be hesitant to issue significant regulatory updates in advance of a possible government shutdown in mid-November – particularly with the likelihood that such a shutdown may continue for an extended period.

Surf City General Reevaluation Report (GRR)

Your advocates at W&S and TFG stand ready to assist the Commission on the Surf City General Reevaluation Report (GRR) at the Commission's discretion and should the need arise.

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