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SUBJECT: AUGUST REPORT AND LEGISLATIVE UPDATE
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This report and legislative update provides information on the following topics:

- Washington News
 - House and Senate Pass WRDA Bills, Prepare to Conference
 - North Carolina and Three Other Atlantic States to Benefit From \$421,238,074 Biden-Harris Administration Investment for Community-Driven Solutions to Cut Climate Pollution
- Advocacy Update

Washington News

House and Senate Pass WRDA Bills, Prepare to Conference

Congress is nearing completion of the 2024 *Water Resources Development Act* (WRDA), which authorizes various Army Corps of Engineers Civil Works projects and related work on a biennial basis.

On August 1, 2024, the Senate unanimously passed its version of WRDA. The House passed its version of WRDA in an overwhelmingly bipartisan vote of 359-13 on July 22, 2024. Now that both chambers have passed their respective WRDA bills, the House and Senate will start to resolve the differences between their bills to produce a final bill that must pass both chambers and be signed into law by the President by the end of the calendar year.

The bills include several provisions that will be of interest to coastal communities.

S. 4376, Thomas R. Carper Water Resources Development Act of 2024 (Senate Bill)

- Section 106. Processing Timelines. This section requires the Secretary to make timely updates to its online “permit finder” to accurately reflect the current status of projects for which a certain permit was, or is being, processed.
- Section 111. Outreach and Access. This section directs the Secretary to make publicly available information about ongoing studies and projects at each district of the Corps and to educate non-

Federal interests about operations, maintenance, repair, replacement, and rehabilitation responsibilities associated with a water resources development project.

- Section 225. Report on Efforts to Monitor, Control, and Eradicate Invasive Species. This section requires the Secretary to complete a report on the Corps' various authorities and programs related to monitoring, controlling, and eradicating invasive species.
- Section 229. Public-Private Partnership User's Guide. This section directs the Secretary to develop a public private partnership user's guide, including a description of applicable authorities, lessons learned, and best practices.
- Section 230. Review of Authorities and Programs for Alternative Project Delivery. This section requires the Secretary to complete a report on the authorities and programs that facilitate the use of alternative project delivery methods for water resources development projects, including public-private partnerships.
- Section 231. Report to Congress on Emergency Response Expenditures. This section requires the Secretary to complete a report on emergency response expenditures from the Flood Control and Coastal Emergencies Account and from prior post-disaster supplemental appropriations laws.
- Section 241. Assessment of Impacts from Changing Construction Responsibilities. This section directs the Secretary to submit a report to Congress on the impacts of increasing the depths of construction for navigation projects at ports. (Note that this provision is specific to navigation projects constructed to a depth of 50 feet or greater.)

H.R. 8812, Water Resources Development Act of 2024 (House Bill)

- Section 101. Continuing Authorities Programs. Directs the Corps to implement a pilot program to allow a non-Federal interest or the Secretary to carry out a project under a CAP program through the use of an alternative delivery method. The Corps must solicit project proposals from non-Federal interests and reach out to non-Federal interests that have previously submitted projects requests. Congress authorizes \$50 million per fiscal year.
- Section 102. Community Project Advisor. Directs the Corps to establish a single office to assist non-Federal interests in accessing Federal resources made available by the Corps related to water resources development projects, headed by a community project advisor. The Corps must establish an online, interactive platform that provides information related to Federal resources available through the Corps.
- Section 103. Minimum Real Estate Interest. Directs the Corps to provide to the non-Federal interest for an authorized water resources development project a real estate plan for the project that includes a description of the real estate interests required for construction, O&M, repair, rehabilitation, or replacement of the project, including any specific details and legal requirements necessary for implementation of the project.

- Section 104. Study of Water Resources Development Projects by Non-Federal Sponsors. This section clarifies requirements for a non-Federal interest carrying out a study of an authorized project or a study of a modification for an authorized project.
- Section 105. Construction of Water Resources Development Projects by Non-Federal Interests. This section clarifies requirements for a non-Federal interest carrying out construction of an authorized project.
- Section 116. Dredge Material Disposal Facility Partnership. This section allows non-Federal entities to utilize certain non-Federal disposal facilities managed by the Secretary for dredged material disposal with permission from the facility owner and the Secretary.

The term “non-Federal disposal facility” means a dredged material disposal facility under the jurisdiction of, or managed by, the Secretary that is owned by a non-Federal entity.

The Secretary may allow non-Federal use of these facilities if the Secretary determines that such use will not reduce the availability of the facility for the authorized water resources development project on a channel in the vicinity of the disposal facility for the 20-year period following the date of the request. The Corps must make a determination no later than 90 days after receiving a request.

Fees would be imposed to recover capital, operation, and maintenance costs associated with the non-Federal entity’s use of the facility. However, the Secretary is directed to reduce the fee to account for improvements made to the facility by the non-Federal entity for recovering capacity in the facility.

The Secretary is also authorized to perform disposition evaluations for non-Federal disposal facilities not utilized for 20 years. The owner of a non-Federal disposal facility may request that a disposition evaluation be performed by the Corps if: the Secretary has not used the facility for the disposal of dredged material during the 20-year period preceding the date of the request; and the Secretary determines that the non-Federal disposal facility is not needed for such use by the Secretary during the 20-year period following the date of the request.

- Section 117. Maximization of Beneficial Use. This section encourages additional beneficial reuse of dredged materials by making the program permanent, increasing the use of regional sediment management plans, and codifying the Corps’ goal of beneficially using 70 percent of dredged material.
- Section 139. National Coastal Mapping Program. This section authorizes the Secretary to carry out a National coastal mapping program to provide recurring mapping of coastlines to support navigation, flood risk management, environmental restoration, and emergency operations projects.
- Section 141. Removal of Abandoned Vessels. This section authorizes the Secretary to remove abandoned vessels.

- Section 146. Easements for Hurricane and Storm Damage Reduction Projects. This section directs the Secretary to provide flexibility and transparency for real estate requirements for hurricane and storm damage reduction projects.
- Section 149. Sense of Congress Relating to Comprehensive Benefits. This section expresses a sense of Congress that the Secretary should follow, when carrying out a feasibility study: (1) the guidance included in the “Comprehensive Documentation of Benefits in Feasibility Studies” memorandum, dated April 3, 2020; and (2) the policies included in the “Policy Directive – Comprehensive Documentation of Benefits in Decision Document,” dated January 5, 2021.
- Section 201. Authorization of Proposed Feasibility Studies. Section 201(b)(27) includes the language that would allow the Corps to conduct a coastal storm risk management feasibility study for Bald Head Island.
- Section 202. Expedited Completion. Directs the Secretary to expedite completion of certain feasibility studies, including the Surf City Coastal Storm Risk Management Project.
- Section 338. Environmental Infrastructure. This section authorizes new Corps Environmental Infrastructure (EI) projects and makes modifications to existing EI authorities. Under the subsection that makes modifications to existing EI project, the bill allows the Corps to consider natural and nature-based infrastructure projects for certain authorities.

One of the authorities modified under this subsection is the North Carolina Section 5113 authority, which provides grants to public entities in North Carolina for water resources projects, including but not limited to water, wastewater, and stormwater infrastructure projects. The bill increases the Section 5113 authorization from \$13 million to \$50 million.

North Carolina and Three Other Atlantic States to Benefit From \$421,238,074 Biden-Harris Administration Investment for Community-Driven Solutions to Cut Climate Pollution

As part of the Biden-Harris Administration’s Investing in America agenda, the U.S. Environmental Protection Agency (EPA) announced that the Atlantic Conservation Coalition [has been selected to receive a \\$421,238,074](#) Climate Pollution Reduction Grant to implement community-driven solutions that tackle climate change, reduce air pollution, advance environmental justice, and accelerate America’s clean energy transition.

The Atlantic Conservation Commission, consisting of the North Carolina Department of Natural and Cultural Resources, the South Carolina Office of Resilience, the Maryland Department of the Environment, and the Virginia Department of Wildlife Resources, will focus on the protection and restoration of coastal, peatland, and forest lands across the four member states.

The 25 selected applications from within these states will receive Federal funding to implement local and regional solutions. Many of these projects can be expanded and provide examples that other states, local governments, Tribes, and even businesses can replicate in their work to tackle climate change.

The EPA expects to announce up to an additional \$300 million in selections under the Climate Pollution Reduction Grants program for Tribes, Tribal consortia, and territories later this summer. The grants will fund projects supporting the deployment of technologies and programs to reduce greenhouse gases and other harmful pollution across the country and build the infrastructure, housing, industry, and competitive economy needed to promote clean energy options. These grants will also help businesses capitalize on new opportunities, spur economic growth and job creation in new and growing industries, and support development of training programs to prepare workers. EPA expects to award the funds later this year, once all legal and administrative requirements are satisfied.

Advocacy Update

Congress has departed Washington D.C. for its annual, month-long August recess, which allows Members of Congress to travel back to their states and districts for an extended period. In election years, Members running for re-election use the August recess to campaign and meet with their constituents. Though Congress does not pass legislation during the August recess, work continues behind the scenes to develop key bills, including Fiscal Year 2025 appropriations legislation, which has been slow to move through both chambers of Congress.

The Senate Appropriations Committee has approved 11 of the 12 annual spending bills. However, the full Senate has yet to pass any of the 12 bills. The House has made more progress than the Senate, with the House Appropriations Committee approving all 12 bills and the full House of Representatives passing five of the 12 bills, including the Defense, Homeland Security, Interior-Environment, Military Construction-Veterans Affairs, and State-Foreign Operations bills. We are hopeful that the Senate will be able to swiftly pass several of the less controversial bills, such as the Defense and Military Construction bills, when Congress returns to session in September. However, there is still much work to be done before the FY 2025 budget is solidified and signed into law by the President. Each chamber must pass all 12 bills separately and resolve their differences through the “Conference” process. In the Conference process, a temporary committee is assembled of members of both the House and Senate Appropriations Committees to reconcile differences in the bills and send final versions to the President to be signed into law.

If FY 2025 appropriations bills are not approved by the end of the fiscal year, which ends on September 30, 2024, Congress must pass a short-term extension of FY 2024 appropriations (known as a Continuing Resolution) until the House and Senate can resolve their differences on the FY 2025 budget.

Because this is an election year, Congress will be in recess for much of the last quarter of the year. Congress is out of session for all of October, two weeks in November, and just over a week in December. This provides a limited amount of time for Congress to pass remaining priorities, including appropriations bills, the 2024 Farm Bill, and the 2024 *Water Resources Development Act* (WRDA). It remains to be seen what the specific timelines will be for consideration of and votes on these bills, but Congress is clearly under significant time pressure before a new Congress is seated.

North Topsail Beach CBRA Mapping Issue

[H.R. 2437](#), Congressman Murphy’s bill to amend the mapped boundaries of Coastal Barrier Resources System (CBRS) Unit L06 in North Topsail Beach, remains before the House of Representatives. No further action has been taken with the bill since it was passed out of the House Committee on Natural Resources on November 11, 2023, in a 19-15 vote, largely along party lines. To date, the House has not scheduled a vote for H.R. 2437 on the House Floor. We are optimistic that there will be opportunities for the bill to progress through Congress by the end of the year, particularly during the lame-duck period after the election.

To be voted upon by the whole House, H.R. 2437 will also require a Congressional Budget Office (CBO) assessment of the bill's potential budgetary impacts to inform Members of Congress prior to casting their votes. Receiving a low or zero CBO score—indicating that the bill will have a negligible impact on the deficit—is an important condition that will mitigate certain procedural and potentially political concerns over the bill.

Two similar pieces of legislation—[H.R. 5490](#), the *Bolstering Ecosystems Against Coastal Harm Act*, and its Senate companion, [S. 2958](#), the *Strengthening Coastal Communities Act*—are also awaiting further action. These pieces of legislation would make various modifications to the CBRS. Of most interest to the Commission are provisions in the legislation that would remove 2.5 acres from CBRS Unit L06, including structures along Barton Bay Drive and New River Inlet Road. These are non-controversial technical changes that we expect to be included in the final bill.

The House still needs to pass H.R. 5490, but it was approved by the House Natural Resources Committee by unanimous consent, indicating strong bipartisan support. The Senate passed S. 2958 by unanimous consent in April. Once the House passes its bill, or possibly even before, the House Natural Resources Committee and Senate Environment and Public Works Committee will work to resolve differences between the two bills so a final bill can be approved by both chambers and signed into law by the end of the year.

Sand Borrowing

We are continuing to monitor [H.R. 524](#), Congressman Rouzer's bill to allow certain Federally authorized USACE beach nourishment projects to borrow sand from within the CBRS for use outside the CBRS. H.R. 524 most recently was passed out of the House on April 11, 2024, under "suspension of the rules," which allows the House to expeditiously pass non-controversial legislation. H.R. 524 has been referred to the Senate Environment and Public Works Committee, though it has not yet been heard by the Committee. As with the aforementioned unanimous consent procedure, suspension of the rules is a strong favorable indicator for a bill, and we are hopeful that this bill can be signed into law soon, given its non-controversial nature.

Surf City General Reevaluation Report (GRR)

As we previously reported, Section 202 (a)(11) of the House WRDA bill includes language directing the Secretary of the Army to expedite the completion of the Surf City Coastal Storm Risk Management Project feasibility study. Given the priority status of the study, we are confident this language will be included in the final version of WRDA that Congress expects to approve by the end of the year.

FEMA Issues

On July 11, FEMA published its [Final Rule](#) to implement the Federal Flood Risk Management Standard (FFRMS). We have updated the Commission on FEMA's efforts to implement the FFRMS several times over the years.

The FFRMS requires agencies to develop resilience and flood protection plans for Federally funded projects and buildings. The FFRMS applies to projects involving new construction, substantial improvements or

repairs aimed at addressing substantial damage. The initial rule was proposed under the Obama administration before the Trump administration withdrew it. FEMA resumed drafting the rule following an executive order from President Biden.

The Final Rule becomes effective on September 9, 2024.

The Final Rule updates the agency's 8-step decision-making process for floodplain reviews by changing how FEMA defines a floodplain with respect to certain actions and how FEMA uses natural systems, ecosystem processes, and nature-based approaches when developing alternatives to locating a proposed action in the floodplain.

Under the FFRMS, a Federal agency may establish the floodplain for actions subject to the FFRMS using any of the following approaches:

- ***Approach 1: Climate-Informed Science Approach (CISA): Utilizing the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science.***
- ***Approach 2: Freeboard Value Approach (FVA): Freeboard (1 percent annual chance flood elevation + X, where X is 3 feet for critical actions and 2 feet for other actions).***

The FFRMS defines freeboard values as an additional 2 feet added to the 1 percent annual chance flood elevation, or, for critical actions, an additional 3 feet added to the 1 percent annual chance flood elevation. In other words, the floodplain established by the FVA is the equivalent of the 1 percent annual chance floodplain, plus either 2 or 3 feet of vertical elevation, as applicable based on criticality, and a corresponding increase in the horizontal extent of the floodplain.

- ***Approach 3: 0.2-percent-annual-chance Flood Approach (0.2PFA): 0.2 percent annual chance flood (also known as the 500-year flood).***

Agencies may use available 0.2 percent annual chance (or “500-year”) flood data as the basis of the FFRMS elevation and corresponding floodplain extent. Under this approach, the same floodplain and elevation is used for critical and non-critical actions. The FFRMS notes that often the 0.2 percent annual chance flood elevation data provided by FEMA in coastal areas only considers storm-surge hazards; this data does not include local wave action or storm-induced erosion that are considered in the computation of flood elevations. The FFRMS encourages agencies to obtain or develop the necessary data, including wave heights, to ensure that any 0.2 percent annual chance flood data applied will achieve an appropriate level of flood resilience or use the FVA approach instead for the proposed investment.

- ***Approach 4: the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.***

FEMA must reassess the FFRMS annually after seeking stakeholder input and provide recommendations to update the FFRMS, if warranted. FEMA must update the FFRMS at least

every five years in an effort to ensure the floodplain determination process for actions subject to the FFRMS reflects current methodologies.

CISA is the preferred approach, and the Final Rule states that Federal agencies should use this approach when data to support such an analysis are “available and actionable.” The Final Rules explains the CISA as follows:

“The CISA uses existing, sound science and engineering methods (e.g., hydrologic and hydraulic analysis and methods used to establish current flood elevations and floodplain maps), supplemented with best available and actionable climate science and consideration of impacts from projected land cover/land use changes, long-term erosion, and other processes that may alter flood hazards over the lifecycle of the Federal investment. **For areas vulnerable to coastal flood hazards, the CISA includes consideration of the regional sea-level rise variability during the lifecycle of the Federal action. This includes use of global mean sea-level-rise scenarios adjusted to the local relative sea-level conditions and would be combined with surge, tide, and wave data using state-of-the-art science in a manner appropriate to policies, practices, criticality, and consequences.** [Emphasis added.] For areas vulnerable to riverine flood hazards (i.e., flood hazards stemming from a river source), the CISA would account for changes in riverine conditions due to current and future changes in climate and other factors such as land use, by applying state-of-the-art science in a manner appropriate to policies, practices, criticality, and consequences (risk). The CISA for critical actions would utilize the same methodology as used for non-critical actions that are subject to Executive Order 11988, as amended, but with an emphasis on criticality as one of the factors for agencies to consider when conducting the analysis.”

The FFRMS states that when an agency does not use the CISA in a coastal flood hazard area and where the FEMA 0.2 percent annual chance flood elevation does not include wave height, or a wave height has not been determined, the 0.2 percent annual chance elevation should not be used, and the FVA should be used instead. The FFRMS notes that where the 0.2 percent annual chance flood elevation does not consider wave action, the result will likely either be lower than the current base flood elevation or the base flood elevation plus applicable freeboard. Where wave action has been incorporated into the 0.2 percent annual chance elevation, the 0.2 percent annual chance elevation can be used.

FEMA will apply FFRMS only to new actions for which assistance is made available pursuant to declarations under the Stafford Act that are commenced on or after the effective date of the Final Rule, and new actions for which assistance is made available pursuant to notices of funding opportunity that publish on or after the effective date of the Final Rule. Ongoing projects will not be impacted by the Final Rule.

FEMA notes this rulemaking will not expand the Special Flood Hazard Area (SFHA) for NFIP purposes nor does it apply to a local community's permitting processes under the NFIP's floodplain management regulations. The expanded floodplain established under this rule has no impact on where new flood insurance policies may be issued (including community eligibility for the NFIP participation and individual premiums).

In addition, the FFRMS requires the evaluation of natural features and nature-based approaches, where possible, in the analysis of practicable alternatives of the decision-making process for all Federal actions. Nature-based approaches can also help minimize an action's impacts to the floodplain and assist in restoring the natural and beneficial functions of floodplains.