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WATERLOG
NEW IDEAS IN COASTAL RESILIENCY

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GOVERNMENT SHUTDOWN?: Until a few hours ago, it appeared that Congress was racing toward a government shutdown at 12:01am November 18th. Now, it appears they will next face a government shutdown not once, but twice early next year. House Speaker Mike Johnson supported the proposal broached by Andy Harris (R-MD) to have a two-stage "laddered" approach to dealing with a shutdown. The Corps, transportation, housing, and veterans' benefits programs are supposed to operate under the previous year's funding until January 19th. All other agencies including defense and NOAA, get until February 2nd. The theory is that the House will finish working on passing all 12 funding bills required to fund the government (it has already passed 7 and has another on the floor for debate as we write) and the Senate would pass its version of the 12 (it has done only 3 so far), and that the huge difference between the House and Senate funding levels would be resolved by the time. If not, agencies could get shut down on either January 16th or February 2nd. This is a new approach to what Congress does best when it can't act: Kick the Can Down the Road and see what happens at Tara (that's a movie reference).

CBRA AND CSRM PROJECTS: Some federal beach nourishment projects on the East Coast were authorized to be constructed with borrow zones located within Coastal Barrier Resources Act (CBRA) units. Many years ago, the US Fish & Wildlife Service did not object to this use because it falls under an exception in the law which allows sand within a CBRA unit to be placed on shorelines for "nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system." In the 1990's, however, the Service changed its position and issued an opinion that the exception only permitted sand from a CBRA unit borrow zone to be used on the shoreline within that CBRA unit.

The Service provided several one-time exceptions to that position and is alleged to have turned a blind eye toward one or two others. Now, the House has passed an amendment sponsored by Rep. David Rouzer (R-NC) that permits the use of sand from a CBRA unit to be placed outside of that unit if such borrow source, or a portion thereof, has been used as a borrow source by a coastal storm risk management project at least once prior to December 31, 2008. The provision was added to the House version of the Interior Department Appropriations Bill (HR 4821). A senate companion bill has been reported out of committee with strong support from Senate EPW Chairman Tom Carper (D-DE).

THE FLOOD INSURANCE PROGRAM IS SINKING: The actual words of David Maurstad, the federal official in charge of the Nation Flood Insurance Program, were "the NFIP is not fiscally sustainable in its present form" when he spoke with reporters in late October. That may not be a surprise, but what hasn't generally been reported is the wholesale reform package that the Biden administration has proposed to Congress.

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First, some background. With more than 4.7 million policies, FEMA has borrowed over $20 billion to stay afloat and nearly ran out of money in September. Even with the much-maligned Risk Rating 2.0 NFIP premium increases, the program is struggling to deal with hurricanes and fires at a time when those disasters might be fewer in number but are increasing in cost. Given that background, the Biden administration has sent Congress no less than 17 proposals to overhaul the NFIP.

Here's a short list of some of the most important points of this package –

- Requires communities participating in the NFIP risk reduction plan to establish minimum flood-risk reporting requirements for residential sellers and lessors.
- Allows for the use of replacement cost value in determining premium rates to "more accurately signal policyholders' true risk."
- Creates separate classes for coastal versus inland flood zones in the NFIP's rate tables.
- Provides a means-tested assistance program for offering a graduated discount benefit for low- and moderate-income households.
- Prohibits coverage for new construction in high-risk areas and prohibits [presumably new] coverage for all commercial properties "to promote the growth of the private market…."
- Prohibits coverage for "excessive loss properties" or properties that flood repetitively and require insurance payouts of at least $10,000 each time.

These are obviously major changes, and there are more we haven't listed. Congress has shown little interest in tackling NFIP reform, preferring to kicking the can down the road with two dozen extensions of the existing program. That means these proposals may be dead in the water. However, having to forgive over $20 billion in outstanding debt to the Treasury (which will happen next year or very soon after) plus inevitably needing to provide more billions to enable the program to stay afloat may be just the impetus Congress needs to face reality.

To be clear on why the can keeps getting kicked, there is no doubt that members of congress recognize the problem with the program – premiums are too low and do not reflect actual risk exposure carried by the program. Yet these same members are essentially held hostage by their voter bases to ensure NFIP premiums stay low. Because constituents simply do not want to pay more, supporting more expensive premiums (which reflect actual risk) puts members' re-election on the line.

BETTER SEVERE WEATHER FORECASTING: You can't always tell the importance of a bill by it's name. The "Weather Research and Forecasting Innovation Reauthorization Act" (HR 6093) sounds like the kind of periodic reauthorizations of programs that Congress is often required to do. But this one is a bipartisan bill recently approved by the House Science, Space and Technology Committee, that focuses on more accurate and effective forecasting of hurricanes and tornadoes. Given the fact that there have already been 25 billion-dollar weather events this year that caused both hundreds of deaths and nearly $75 billion in damages, severe weather affects the coastal economy as much as it does farmers and other segments of our country. So far, the bill has yet to be voted on by the full House, and there isn't a similar bill in the Senate. Stayed tuned, however, because there will probably be more to report on the measure next year.

COASTAL LEGISLATIVE UPDATE: Our latest list of bills affecting coastal communities is posted here Among the last is HR 6304, sponsored by Rep. Nick LaLota of New York and Vincente Gonzalez of Texas that would raise the limit for the Increased Cost of Coverage (ICC) and adding additional coverage that will prevent policyholders from being penalized for making essential repairs and improvements. A copy

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of the official draft of the measure is available at the bottom of this page: https://lalota.house.gov/media/press-releases/lalotaimproveNFIP. Finally, a bill to establish a national coastal resilience policy was introduced after we posted our list of bills online. It's sponsored by Sen. Chris Coons of Delaware and a solid bipartisan list of his colleagues.

MAJOR NEW JERSEY OFFSHORE WIND PROJECT GONE WITH THE WIND: In a spooky Halloween press release, the Danish energy company Orsted announced that it would withdrawal from both of its Ocean Wind 1 and 2 projects in New Jersey, citing macroeconomic challenges, including supply chain issues, inflation, and the inability to secure an enormous amount of federal and state subsidies. Despite billions in federal and state subsidies and having nearly every financial incentive available to them, Orsted just couldn't make it happen.

But what also helped kill the project was the significant level of grassroots opposition from Cape May County. In just a few months, support for offshore wind the in state has cratered in part due to various advocacy groups across the East Coast educating the public about the hidden costs of offshore wind – everything from the economic impacts to ratepayers, fishermen, tourism, and the local economy, to the environmental, historic, and (of course), visual impacts that make the Jersey Shore so popular today.

New Jersey Governor Murphy, who has hinged his entire legacy on the State's offshore wind program, was quick to call into question the company's "credibility and competence." However, after fast tracking offshore projects against the will of many communities in the state and passing legislation and executive orders to further along his personal offshore wind agenda, even members of his own party in the state legislature began to question the governor's ambitious offshore wind plan.

In Cape May County, county commissioners celebrated the news by holding a press conference, but they recognize the fight goes on. Orsted still holds the lease area and could rebid a project or sell it to another developer. In addition, the Atlantic Shores project to the north 9 miles off of Atlantic City is still underway, although the company has indicated its project faces the same economic challenges that Orsted and the rest of the offshore wind industry currently face. Many conceptual projects from other developers are still on the table.

The offshore wind industry is in a tough place. Depending which way the wind is blowing, you might hear drastically different stories on how well or how bad things are really going. Right now, there is no doubt it's hurting. While industry proponents point to the significant number of projects in the pipeline, a dozen projects have been scrapped or delayed, not just in the US, but globally. Under current economic conditions, without asking ratepayers for double or triple the market rate for electricity prices, most projects currently proposed will not be built. Depending on who you ask, that's either good or bad news.

What is clear through all of this is that New Jersey, as well as many other states, want clean energy. What is not clear is how to get that without harming the environment, commercial fishing, and tourism industries, or without forcing ratepayers to pay significantly more for electricity.

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