

ALCALDE & FAY

GOVERNMENT & PUBLIC AFFAIRS CONSULTANTS

MEMORANDUM

TO: Chairman Joe A. Martinez
Board of County Commissioners

FROM: Hector Alcalde
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SUBJECT: August Monthly Report

Just prior to the August recess, the House, Senate and Administration reached an agreement to raise the debt ceiling and avert a default. The bill places statutory caps on discretionary appropriations for fiscal years 2012 through 2021. The legislation established a cap of \$1.043 for FY 2012 discretionary spending, which is approximately \$24 billion greater than the House-passed budget resolution known as "The Path to Prosperity." The cap for FY 2013 would be \$1.047 trillion and for FY 2012 and FY 2013 a legislative "firewall" will exist between security and non-security accounts in order to prevent funding for domestic programs from being redirected to increase security spending. However, the discretionary caps for fiscal years 2014 through 2021 would not include this same "firewall."

There may be some pressure to enact more cuts to additional programs. Although House Majority Leader Eric Cantor (R-VA) initially sent a memo to the House Republican caucus requesting they adhere to funding levels in the debt ceiling agreement, he has publically stated that the cleanup costs for Hurricane Irene should be paid for by additional spending cuts to discretionary spending. Initial estimates of damage from the hurricane and related flooding are reported in excess of \$7 billion.

However, the enacted debt ceiling agreement supersedes the FY 2012 House Republican Budget Resolution. As such, the controversial proposal to transform the federal component of the Medicaid program into a block grant system has been effectively tabled in the FY 2012 appropriations debate. It remains unclear at this time whether this issue will be considered during negotiations by the bipartisan "super-committee,"

which is tasked with finding \$1.5 trillion in deficit reductions by November 23, 2011, presumably through tax, spending and entitlement reform.

Congress must vote on recommendations made by the bipartisan Congressional deficit reduction committee by December 23, 2011. If Congress fails to pass the committee's proposal, triggers are enacted that spur at least \$1.2 trillion in cuts, which will be approximately a 50/50 split between domestic/defense spending. The triggers exempt cuts to Social Security, Medicare beneficiaries, Medicaid and low-income programs. Payments to Medicare providers may still be cut. The cuts will take effect on January 2, 2013.

Below is a summary of our work and an update on legislative issues of interest to the County for the month of August.

SEAPORT DEPARTMENT

Miami Harbor Deep Dredge

During the month of August, we were pleased to report that the Office of Management and Budget (OMB) and the Senate Appropriations Committee each approved the Department of the Army's plan to enter into a Project Partnership Agreement (PPA) with the Miami Dade County to construct the Miami Harbor deep dredge (50-52 foot) project. The plan, which was described in a July 19th letter from Assistant Secretary Darcy, is currently before the House Appropriations Committee for approval. Approval by the House committee is the last of the clearances needed in order for Army Corps Headquarters to begin preparing the Project Partnership Agreement (PPA).

The authority for the Army Corps to use non-federal funds for the project is provided by the 1925 Rivers and Harbors Act/ Section 561 of federal code. Clearances from the Office of Management and Budget and the House and Senate Appropriations Committees are required for the use of this authority.

We are monitoring developments out of the House Appropriations Committee and will immediately alert the Port. Congressman Mario Diaz-Balart has personally spoken with the Chairman of the House Energy and Water Development Appropriations Subcommittee, Rodney Frelinghuysen (R-NJ). We prepared talking points for Congressman Diaz-Balart and are staying in contact with his staff at this time.

During the August recess period, we continued to stay in contact with Miami Dade County delegation staff and Army Corps Headquarters staff regarding the importance

of securing timely approval by the House Appropriations Committee. In addition, Port Director Bill Johnson was in contact with House Appropriations Committee staff members.

Previously, during the month of July, we scheduled and accompanied Director Bill Johnson to meetings on July 15 and 16 with Members of Congress, congressional staff and agency officials. We coordinated the meeting schedule with the Miami Dade Washington Office. Bill Couch and Director Joe Rasco also participated in the following meetings:

- Stacey Brown, Chief, Integrations Division, South Atlantic Division; Susan Nee, Legal Department, Army Corps Headquarters;
- Sally Ericsson, Associate Director, Office of Management and Budget;
- Richard Patrick, Legislative Director to Congressman Ed Pastor (D-AZ), Ranking Democrat, Energy and Water Development Appropriations Subcommittee;
- John Anderson, Staff Director, Water Resources Subcommittee, Transportation and Infrastructure Committee;
- Roger Cockrell, Professional Staff, Energy and Water Subcommittee, Senate Appropriations Committee;
- Michael Higdon, Chief of Staff, Office of Congressman Hal Rogers (R-KY), Chair, House Appropriations Committee;
- Angie Giancarlo, Professional Staff (Majority) Energy and Water Development Subcommittee, House Appropriations Committee;
- Taunja Berquam, Professional Staff (Minority), Energy and Water Development Subcommittee, House Appropriations Committee;
- Senator Bill Nelson (D-FL); and
- Miguel Mendoza, Legislative Director, Office of Congressman Mario Diaz-Balart.

As previously reported, in May, the House and Senate Appropriations Committees approved the Army Corps' Accelerated Funds Agreement for the Preconstruction, Engineering and Design (PED) stage of the project. Also during the month of May, the Army Corps' FY 2011 work plan was released. For the Port of Miami, the Corps included \$1 million for completion of the PED and \$200,000 for regular Operation and Maintenance needs in the Miami federal channel. These allocations by the Army Corps were significant, as neither had been included within the original FY 2011 Corps budget introduced in February of 2010. These initiatives on the part of the Corps are indicative of the agency's growing support for the deep dredge project.

The Miami-Dade delegation members and Senator Nelson continue to be thoroughly supportive of this initiative. As previously reported, during the month of April,

Congresswoman Ileana Ros-Lehtinen (R-FL) held a delegation meeting in her office with the Assistant Secretary of the Army (for Civil Works), JoEllen Darcy. We assisted in preparing talking points in advance of the meeting and in coordinating with Congresswoman Ros-Lehtinen's staff and other delegation members.

We were pleased to hear that the Members received a commitment from Secretary Darcy at that time that the Port of Miami deep dredge would be a priority of the Department.

Port of Miami Landside Infrastructure Improvements

On October 19, 2010, the Department of Transportation announced a \$22.7 million grant to the Port of Miami for the proposed Intermodal and Rail Interconnection project at the Port of Miami. As indicated above, this was one of the largest grant awards under the TIGER II program and only one of seven port grants nationwide. Ground breaking ceremonies are scheduled for Friday, July 15, 2011.

The Department of Transportation released the TIGER III solicitation notice on June 30, 2011. Approximately \$500 million is available for federal grant awards under the TIGER III program.

WRDA 2011/Maritime Section of Transportation Bill

On July 7, 2011, Congressman John Mica (R-FL), Chairman of the House Transportation and Infrastructure Committee (T&I), introduced a summary of his Transportation Reauthorization bill.

As anticipated, the legislation includes a maritime title. One of the title's key provisions ensures that funds collected for the Harbor Maintenance Trust Fund (HMTF) are used as intended, which is accomplished by tying HMTF expenditures to revenues. Other provisions in the maritime title include:

- Expediting permits administered by the Corps to help address backlogs that increase project costs;
- Streamlining the study process for Corps navigation projects;
- Ensuring that policies and projects among departments sharing jurisdiction of maritime transportation are coordinated and streamlined;
- Encouraging short-sea shipping by prohibiting double-taxation of vessels shipping goods between domestic ports;

- Allowing non-federal project sponsors that have already arranged financing to contract with the Corps to expedite studies for navigation projects;
- Stimulating domestic shipbuilding and creation of maritime jobs by expanding the allowable use of tax-deferred Capital Construction Fund accounts; and
- Clarifying provisions relating to credit for work carried out by non-federal sponsors.

Staff is continuing to draft the maritime provisions at this time and markup is expected before the end of the session. We anticipate that the introduced bill will include language which amends the cost share formula for construction channel depths greater than 45 feet. While current law provides for a local cost share of 60 percent (50 percent plus 10 percent over three years) for depths greater than 45 feet, the proposed amendment will change the depth threshold from 45 to 53 feet. This is one of the WRDA requests which has been submitted to the committee by the Miami Dade delegation on behalf of the Seaport Department.

Water Resources Development Legislation (WRDA 2011)

While Chairman Mica has indicated an interest in moving WRDA legislation later this year, House leadership will not allow project-specific authorizations, as they are defined as “earmarks.” Therefore, a House WRDA bill would need to be restricted to policy provisions only. However, the Chair and Ranking member of the Senate Environment and Public Works (EPW) Committee, Barbara Boxer (D-CA) and James Inhofe (R-OK) do plan to include projects within their FY 2011 WRDA legislation. Senators Boxer and Inhofe forwarded letters to all Senators in the spring, requesting that they submit individual WRDA project requests by April 28. That deadline has since been moved to December, 2011. We prepared the submissions for the Port of Miami and submitted them to Senator Bill Nelson’s (D-FL) office by his deadline of April 25. The requests are as follow. (Senator Marco Rubio (R-FL) will not make WRDA requests).

- Language which amends the cost sharing formula for construction of channel depths greater than 45 feet.

In previous WRDA conferences, the Senate committee has opposed any change in the cost share. Therefore, we will work with the American Association of Port Authorities to generate support for the issue in the Senate. Assuming a minimum of two years of PED work, a cost share change in WRDA 2011 would be timely to impact the cost sharing on the Phase III construction project.

- Language (report) which clarifies that Sec. 221(4) - Credit for In-Kind Contributions of the 2007 Water Resources Development Act is applicable for “in-kind” work

accomplished by the Port during the preparation of the General Reevaluation Report (GRR).

This integral in-kind contribution included research assistance and other planning efforts in consultation with the Army Corps. The amount of the credit is estimated at \$400,000. The requested language reads:

Miami – Harbor, Miami-Dade County Florida: Credit for In- Kind Contributions

Section 221(4) – Credit for In-kind Contributions of the Water Resources Development Act of 2007 shall be applicable for work undertaken by the Port of Miami during the preparation of the General Reevaluation Report (GRR) which resulted in the Report of the Chief of Engineers dated April 25, 2005.

- Language which federalizes the Dodge Island Cut extension for maintenance dredging. This is important, should operation and maintenance (O&M) be needed in the future in this area of the Miami Harbor.

On the above request, since “earmarks” are not allowed on House legislation this year, we submitted suggested language for consideration by staff of the House and Transportation Committee which establishes a process whereby non-federal entities could apply to the Secretary of the Army Corps of Engineers to request consideration for federal assumption of maintenance.

WATER AND SEWER DEPARTMENT

The upcoming Senate WRDA bill will present an opportunity to secure authorizations for Water and Sewer Department priorities, and, along with the Seaport Department’s WRDA requests, we prepared submissions to Senator Nelson’s office for the following projects.

\$6.25 million for the Water Transmission Pipeline authorized in the Water Resources Development Act of 2007. Congress authorized this reclaimed water pipeline to receive up to \$6.25 million in grant assistance from the Army Corps, pending an appropriation.

Authorization of \$30 million for a pipeline to convey reclaimed water to the Florida Power and Light (FPL) complex at Turkey Point. The \$120 million project would require a nine-mile pipeline from the South District Water Treatment Plant to the FPL

complex. The reclaimed water would be used to cool a proposed power plant addition, and to replace cooling water for existing units.

Authorization of \$1.5 million for a Water Main to convey reclaimed water to Fisher Island and Miami Beach. The \$3 million project includes the construction of a 20-inch reclaimed water main from the Central District Wastewater Treatment Plant on Virginia Key to Fisher Island and Miami Beach. The reclaimed water, delivered through the 8,300 foot pipeline, would be used for irrigation replacing potable water from the Biscayne Aquifer.

Increase to \$20 million the authorization for the South Miami Dade Reuse Pipeline. Section 5158 (128) of the Water Resources Development Act of 2007 included the authorization of \$6.25 million for the \$357 million project to construct new water reuse treatment facilities and pipelines. This request will increase the federal participation level, in this important environmental project, to six percent.

We will continue to seek federal grant funding for the following projects:

\$5 million for the Pump Station Optimization Program (PSOP). The PSOP consists of the installation of a program addition to pump station Supervisory Control and Data Acquisition (SCADA) controls for each station. Five million is needed for program upgrades and monitoring well installations, upgrades to pump station control panels and level sensing equipment to allow for increased pressures, which result from increased wastewater elevations during the PSOP operations.

Chemical Facilities Security Bill

On June 29, 2011 the Senate Homeland Security and Governmental Affairs Committee reported out legislation which extends the Department of Homeland Security's program requiring high-risk chemical facilities to comply with federal security standards. The Chemical Facility Anti-Terrorism Standards program, or CFATS, sets 18 risk-based performance standards that high-risk chemical facilities must meet. The security standards cover a range of vulnerabilities, such as perimeter security, access control, theft, internal sabotage and cyber security.

Water Quality Standards/ Clean Water Cooperative Federalism Act

On June 24, 2011 the House Transportation and Infrastructure Committee reported a bill that would strip the Environmental Protection Agency (EPA) of its authority under the Clean Water Act to revise state water-quality standards once they are agreed to by the state and EPA. Under current law, EPA may veto a new state water quality standard for a previously regulated pollutant if the EPA determines that the new

standard is not consistent with the Clean Water Act. H.R. 2018, the Clean Water Cooperative Federalism Act, would give each state the final say in whether a revised state water-quality standard satisfies the Clean Water Act. Thirty Republicans and five Democrats on the committee supported the legislation.

TRANSPORTATION

Federal Highway Administration (FHWA) Discretionary Grants

We were pleased to notify the County that on August 17, 2011 Secretary of Transportation Ray LaHood announced an award of \$978,300 for the County's project to remove and relocate the Tamiami Canal Historic Swing Bridge. The grant was awarded under the Transportation Community System Preservation Program. The Secretary was joined by FHWA Administrator Victor Mendez, who highlighted the competitive nature of these grants, noting that FHWA had received more than 1,800 applications totaling nearly \$13 billion, which is more than 30 times the funds that were available.

Surface Transportation Reauthorization Bill

In addition to the pending debate over FY 2012 appropriations, upon their return from recess, Congress will also need to address the issue of reauthorizing the Surface Transportation Bill; the current and seventh short-term extension of SAFETEA-LU (H.R. 662, enacted in March 2011) is set to expire on September 30, 2011. On August 31, 2011, President Obama gave a speech in the White House Rose Garden in which he urged Congress to enact a clean extension of the surface transportation bill, as well as an extension of the FAA authorization bill. Joined by Secretary Ray LaHood and representatives from the AFL-CIO and Chamber of Commerce, the President said these extensions should not be a "Democratic issue or a Republican issue," and that they were necessary in order to provide "workers and communities across America the confidence that vital construction projects won't come to a halt."

Following the President's speech, Senate Environment and Public Works (EPW) Committee Chairwoman Barbara Boxer (D-CA) confirmed that she would be seeking a four-month extension of the highway bill in order to give Congress more time to work on enacting a longer-term reauthorization and to consider additional funding restrictions that could be enacted by the deficit-reduction Super Committee established in the Budget Control Act of 2011. Chairwoman Boxer also confirmed that her Committee would hold a markup of the extension on September 8, 2011. House Transportation & Infrastructure (T&I) Committee Chairman John Mica (R-FL) also

released a statement in response to the President's speech in which he indicated that he would "agree to one additional highway program extension," however he was silent on whether he would agree to a clean extension or if he would seek certain policy and/or funding adjustments. At this time the House T&I Committee has not scheduled a date for a markup on legislation to extend the surface transportation bill.

In addition to confirming that the Senate would be seeking a four-month extension of SAFETEA-LU, Chairwoman Boxer announced a tentatively scheduled markup of the highway title of her two-year reauthorization bill for September 15, 2011 with the Senate Banking Committee likely to hold a subsequent markup of the transit section, over which they have co-jurisdiction. As previously reported, Chairwoman Boxer proposed a two-year \$109 billion bill, tentatively titled the "Moving Ahead for Progress in the 21st Century" or MAP-21, which would reflect current funding levels plus inflation. The EPW Committee is still waiting on the Finance Committee to find funding to cover the bill's \$12 billion shortfall, which EPW Ranking Member James Inhofe (R-OK) indicated he wants resolved before the Committee moves forward with marking up the bill.

In the House, Chairman Mica has publicly criticized the Senate's two-year proposal, calling it a "recipe for bankrupting the trust fund," and arguing that it "cuts the knees out from under states" by preventing state DOTs from making long term infrastructure plans. As previously reported, the Chairman released a general overview of his proposal on July 7, 2011, in which he noted that the bill would authorize \$230 billion over six years from the Highway Trust Fund. This level of funding represents a nearly 33 percent cut below the current level of \$51 billion and limits funding levels to the amount of revenue provided by the Fund. Chairman Mica has not indicated when he will formally introduce his reauthorization bill or when the T&I Committee will hold a markup on the legislation.

Another looming issue Congress will be faced with upon returning from the August recess will be whether to reauthorize the current 18.4-cent-per-gallon gas tax, of which 14.1 cents is set to expire on September 30, 2011. The Highway Trust Fund (HTF), which has been the primary source of federal funding for road, bridge and transit projects, has faced a shortfall in recent years as the revenue it pulls from primarily from the gas tax has suffered a steady decline. Without an alternative source of significant dedicated funding, Congress is likely to reauthorize the gas tax in order to continue funding transportation programs and projects; however, it is unclear at this time whether this tax will be used as leverage during separate debates regarding the reauthorization of the surface transportation and FAA bills.

FY 2012 Transportation Appropriations

Upon returning from the August recess, Congress will only have 11 days to work on the remaining appropriations bills for Fiscal Year (FY) 2012, as the House is currently scheduled for a “Constituent Work Week” during the final week of September and the current fiscal year ends on September 30, 2011. We anticipate markup of the House Transportation, Housing and Urban Development (T-HUD) spending package in early September. Both Senate Appropriations Chairman Daniel Inouye (D-HI) and House Appropriations Chairman Hal Rogers (R-KY) have indicated they will be adhering to the \$1.043 trillion cap on discretionary spending established in the Budget Control Act of 2011.

As previously reported, while this provides approximately \$24 billion more than the cap included in the House-passed budget resolution known as “The Path to Prosperity,” it is unclear whether the additional funding provided by the debt limit package will be used to increase funding for transportation programs. Notably, these additional funds will have no direct effect on programs funded by the Highway Trust Fund or the Mass Transit Account, as these are considered mandatory and not discretionary. While these additional funds may ease negotiations between the House and Senate as they work to conference the 12 appropriations bills, the limited time on the legislative calendar would suggest that FY 2012 appropriations legislation appear destined to end with an omnibus spending package.

ECONOMIC DEVELOPMENT

Community Development Block Grant Program (CDBG)

The House Appropriations Committee recently approved FY 2012 spending limits, known as 302(b)s, for each of the 12 Appropriations Subcommittees that amount to nearly \$47 billion less in available funding for federal programs important to cities and towns. The Committee and each of the Subcommittees began considering legislation with these spending limits in a process Chairman Hal Rogers (R-KY) plans to complete by September 30, 2011. The FY 2012 Transportation, Housing and Urban Development Funding Bill has a discretionary spending level of \$55.15 billion, a \$217 million decrease from FY 2011. This subcommittee has CDBG grants within its jurisdiction. The T-HUD Appropriations Subcommittee plans to markup their FY 2012 bill on September 8, 2011. The FY 2012 proposed bill includes almost \$7 billion for community planning and development programs, with \$3.5 billion of that going towards CDBG, the same as FY 2011 funding. The US Conference of Mayors organized and drafted a letter to be signed by Mayors urging for the full appropriation of funds to the CDBG/HOME programs.

On the Senate side, Senators Patrick Leahy (D-VT) and Olympia Snowe (R-ME) coauthored a bipartisan [Dear Colleague Letter](#) urging the Senate T-HUD Subcommittee to fund CDBG at the highest level. This *Dear Colleague Letter* had the support of 28 Senators.

Build America Bonds (BABs)

Building America Bonds, which were enacted as part of the American Recovery and Reinvestment Act of 2009, expired this past December and the president has reauthorized BABs in his FY 2012 budget. Three proposals to revive BABs with varying rebate levels have been introduced in the House of Representatives, H.R. 736, H.R. 747 and H.R. 11, but they all face opposition from the Republican majority, which insists BABs rebates rewards wasteful spending of states. In the Senate, Senator Ron Wyden (D-OR) has introduced a bill, S. 722, the Bipartisan Tax Fairness and Simplification Act, to make municipal bonds a “tax-credit.” Instead of paying interest to investors that is exempt from taxation, the bonds would give buyers credits against their taxes. All of these measures have been read and referred to the House Ways & Means Committee or the Senate Finance Committee. As of the end of August all measures are still in their respective Committees.

ELECTIONS

As we reported last month, there has been no further action on [H.R.672](#) which would transfer most of the Election Assistance Commission’s responsibilities to the Federal Election Commission. As you may remember the bill was defeated in June; however, the bill’s sponsor, Rep. Gregg Harper (R-MS), has indicated that he hopes to bring the bill up again under a rule rather than suspension.

FY 2012 Budget Information

As reported previously, for FY 2012 the Administration did not request funding for the Help America Vote Act (HAVA) grants to the states. The House Appropriations Committee reported out [H.R. 2434](#), the FY 2012 Financial Services and General Government Act, on July 7, 2011.

Election Assistance Commission (EAC)

		FY 2012	H.R. 2434
<i>FY 2010 Actual</i>	<i>FY 2011 Actual</i>	<i>Administration Request</i>	<i>House Mark</i>
\$14,000,000	\$16,267,000	\$13,716,000	\$6,858,000

In [H. Rept. 112-136](#), which accompanies the bill as reported, the House Appropriations Committee states the following about the EAC:

The Committee believes that while the request is less than fiscal year 2011, it does not go far enough in realizing efficiencies within the EAC. The EAC is close to the end of distributing all of the Section 251 Requirements grant payments under HAVA and no additional election reform grant funding is provided this year that requires administration. The Committee remains concerned that the EAC's operating costs are too high. The Commission's fiscal year 2012 requested amount for management expenses is 40 percent higher than the requested amount for grants programs to be managed. The Committee believes there are efficiencies yet to be realized within the Commission's administrative operations. The Committee notes that the National Association of Secretaries of State (NASS) has once more adopted a resolution encouraging dissolving the EAC. The Committee finds this especially concerning as NASS is the constituency that the EAC should be serving most. The Committee believes it is possible that the EAC has outgrown its utility in this area. While the Committee strongly supports the successful administration of Federal elections, it has significant concerns about the effectiveness of the EAC in this regard.

Minority Views included the following statement:

The Election Assistance Commission will receive only \$6,858,000 in funding, which will devastate the agency. The agency will no longer be able to help states improve their election practices and equipment to ensure fair and well-run elections in our nation.

OTHER LEGISLATION AND ISSUES OF INTEREST

Draft Internet Travel Tax Fairness Act

We continue to monitor the internet hotel tax issue. Of recent interest are suits by Breckenridge, CO and Helena, MT against Online Travel Companies (OTC). Also, in Georgia the long-running issue of lodging taxes paid by online travel companies has now become a legislative one, as a State Senator has proposed legislation to exempt online travel companies from paying local taxes on the fees charged to customers. Those taxes are at the heart of lawsuits in which Columbus and some other Georgia cities have prevailed in court. At issue is whether the taxes should be paid on the retail rate customers pay, or the lower wholesale rate the online companies pay. The Georgia

Supreme Court has ruled that the full price paid by the customer is the legal basis for the tax. In New Jersey, a federal appeals court panel has affirmed a lower court's 2009 ruling that Lyndhurst, the township acting as a lead plaintiff in a class action lawsuit of all New Jersey towns, has no authority to sue OTC's. In Lawrence County, Pennsylvania, the County Court sustained the objections of the OTC's and dismissed the County's proposed class action.