ALCALDE & FAY

GOVERNMENT & PUBLIC AFFAIRS CONSULTANTS

February 14, 2012

MEMORANDUM

TO: Chairman Joe A. Martinez
Board of County Commissioners

FROM: Hector Alcalde
Lois Moore
Danielle McBeth
Charlotte Hrncir

SUBJECT: **January Monthly Report**

The House reconvened for the second session of the 112th Congress on January 17, 2012, followed by the Senate on January 23, 2012. Below is a summary of our work and an update on legislative issues of interest to the County for the month of January.

SEAPORT DEPARTMENT

Miami Harbor Operation and Maintenance Funds

The next maintenance dredge on the Miami federal channel is required within the next one to two years, costing a total of about $5 million.

We alerted the Seaport Department to the additional $55 million in O&M funds provided by the FY 2012 Omnibus Appropriations Act for ongoing maintenance work and recommended that the Port seek design funds from this account. The funds for the actual maintenance dredge, $4.5 million, could be included within the FY 2013 budget. The Port discussed both approaches with the Army Corps Jacksonville District and we drafted a congressional letter to Assistant Secretary Darcy requesting funds for the needed maintenance work. Congressman Diaz-Balart took the lead in securing delegation signatures and the letter was forwarded to Secretary Darcy the week of February 6, 2012.

Miami Harbor Deep Dredge

As previously reported, on October 7, 2011, the House Appropriations Committee gave final approval for the Army Corps to proceed with the Miami Harbor deep dredge

project. This followed clearances by the Senate Appropriations Committee and the Office of Management and Budget (OMB). These approvals authorized the Army Corps to prepare the Performance Partnership Agreement (PPA) between the Army Corps and Miami-Dade County.

We have been working with the Port and Army Corps to facilitate a timely implementation of the PPA agreement. We scheduled and accompanied Director Johnson and Port staff to a meeting at Corps Headquarters on December 9th to discuss the draft PPA which was prepared by the Corps. Responding to the Port's suggestions, Corps Headquarters attorney Susan Nee made several adjustments to the original draft and Port counsel is reviewing the revised draft PPA at this time.

Due to the significance of the deep draft, we have provided below a recap of numerous federal activities over the previous 18 months.

Recap:

House Committee approval followed numerous contacts with Chairman Frelinghuysen and staff of the House Appropriations Subcommittee on Energy and Water Development. Congressman Mario Diaz-Balart (R-FL) spoke with Chairman Frelinghuysen on two separate occasions regarding the urgency of moving forward with the project. Staff of the Miami-Dade Delegation, including the offices of Representatives Ros-Lehtinen and Wilson, were in constant contact with appropriations committee staff. In addition, Port Director Johnson made several inquiries to appropriations committee majority and minority staff members, following up on previous meetings.

At the request of Alcalde and Fay, on September 22, 2011, Congressman Bill Young (R-FL) also spoke personally with Chairman Frelinghuysen. At that time, the Chairman advised Congressman Young that the committee could not approve the project because, despite the assumption of the entire construction cost by the non-federal sponsor, it was his (the Chairman's) understanding that a deeper draft would result in additional federal maintenance costs. This is not accurate and we immediately moved to correct this misunderstanding. We worked with the Seaport Department and the Army Corps Jacksonville District Office staff to prepare a letter. The final letter signed by the Army Corps Jacksonville District, dated September 23, 2011 stated:

> "*Maintenance dredging is typically performed on a ten year cycle at the Port of Miami, which has one of the lowest average annual maintenance costs along the east coast, and is*

on average $350,000 per year. Any increase in shoaling of the newly authorized channel, once constructed, is expected to be negligible."

Representatives Young and Diaz-Balart met again with Chairman Frelinghuysen on October 6, at which time the Chairman agreed to release the hold on the project.

Multiple meetings were scheduled on behalf of the Seaport Department, including the following:

- 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 (R-FL).

The purpose of the meetings was to facilitate support for the Army Corps' proposal to accept and use non-federal funds for the deep draft (50 foot) dredging project. The proposed authority originates from a 1925 Rivers and Harbors Act/Section 561 of federal code. A letter which proposed the use of the 1925 authority was sent by Secretary Darcy to OMB Director Lew on June 22, 2011. Another letter from Secretary Darcy was sent to the House and Senate Appropriations Committees on July 19, 2011.

The Miami-Dade delegation members and Senator Nelson were consistently supportive of the deep dredge project. 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), Jo-Ellen 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/TIGER Grants

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. Another $567 million is available for FY 2011. Applications were due to the Department of Transportation by the end of October. The recently enacted FY 2012 DOT Appropriations Act includes an additional $500 million for another TIGER solicitation in 2012 and the NOFA was announced in January. Please advise, should the Seaport Department decide to submit a 2012 TIGER application.

Maritime Title of Transportation Bill

The surface transportation reauthorization bill was marked up on February 1, 2012. The Maritime Title comprises a Sense of the Congress resolution that the harbor maintenance trust funds be fully used for maintenance dredging of the nation's navigation channels. This provision may be strengthened as the transportation legislation moves through Congress. Committee staff advised that other issues that were being discussed for inclusion in the maritime title will be considered for inclusion in the next WRDA (water resources) legislation. These issues include:

- Ensuring that funds collected for the Harbor Maintenance Trust Fund (HMTF) are used as intended, by tying HMTF expenditures to revenues;
- 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;
- Clarifying provisions relating to credit for work carried out by non-federal sponsors; and

- Amending the cost share formula for construction of channel depths greater than 45 feet.

Water Resources Development Legislation (WRDA 2011)

Chairman Mica's staff has indicated to us that the committee plans to begin work on WRDA legislation sometime in the spring, after the transportation conference is finalized.

The Port of Miami previously submitted a WRDA request for federalization of the Dodge Island Cut extension for maintenance dredging. Since this is defined as an earmark, we contacted committee staff to suggest a policy approach establishing a mechanism whereby non-federal sponsors could request federal assumption of maintenance, based upon specific criteria. We provided the following suggested language for inclusion within the Maritime section of the transportation bill.

> *"Upon the request of a nonfederal interest, the Secretary shall be responsible for maintenance of navigation channels constructed or improved by the nonfederal interest if the Secretary determines that such maintenance is economically justified and environmentally acceptable and that the channel was constructed in accordance with applicable permits and appropriate engineering and design standards."*

We have been advised that the Senate EPW committee also has plans to work on WRDA legislation. We will monitor closely for any significant developments.

MIAMI INTERNATIONAL AIRPORT: FAA REAUTHORIZATION CONFERENCE

Although our firm is not assigned to the MIA, we reached out to MIA government relations in December to advise of Section 208(h) of the Senate – passed FAA bill (S. 223) which modifies the eligibility standards for the "noise set-aside program" to include water quality mitigation projects. The flexibility afforded by Sec. 208 provides an important funding opportunity for critical environmental projects which are integral to airport capacity expansion needs.

We thought MIA would be interested as sources of federal assistance for environmental needs are limited not only due to federal budget cutting, but also the current moratorium on legislated earmarks by Members of Congress. We also reached out to the Florida Airports Council and numerous other airports to alert them to this important provision, as we have learned that there was not widespread knowledge of the provision. The Florida Airports Council sent a letter of support to Congressman

Mica, who, as Chairman of the House Transportation and Infrastructure (T&I) Committee, was the lead House conferee.

We are pleased that Sec. 208(h) was incorporated into the final conference agreement during final staff deliberations on January 30, 2012.

WATER & SEWER DEPARTMENT

While the FY 2012 Omnibus Appropriations Act (enacted on December 23, 2011) includes $29 million for Army Corps Section 219/ Environmental Infrastructure projects, legislative language indicates that only continuing projects would be eligible for this funding. As the authorized reclaimed water pipeline is designated as a "new start" project, it would not be eligible for allocation of funds at this time. We will continue to seek funding from other sources.

While we prepared submissions to Senator Nelson's office for additional authorization for the pipeline project and other projects on behalf of the Water and Sewer Department, it is evident that that there will be no project specific provisions in WRDA legislation (unless projects have a finalized Chief of Engineers' report by the Army Corps). The pending projects are as follow:

$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 are seeking any opportunities for federal grant assistance with the following project.

$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 dollars 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

Metrorail Orange Line Expansion

In early January, we scheduled a conference call with representatives of the Office of Intergovernmental Affairs (OIA), Miami-Dade Transit (MDT), Federal Transit Administration (FTA) and the offices of Congressman Mario Diaz-Balart (R-FL) and Senator Bill Nelson (D-FL) to clarify eligible activities for which the $4 million allocation for the Metrorail Orange Line Expansion can be spent before September 30, 2012.

After MDT representatives presented several potential options to obligate the funding including purchase of rail cars, it was confirmed that only a fixed guideway expansion project on a segment other than the North Corridor would fit FTA eligibility criteria as explained by Elizabeth Day, FTA Director, Office of Planning and Environment, Office of Project Planning. The Transit Department was therefore left to consider whether to federalize the Miami Intermodal Center–Earlington Heights segment of the Metrorail Orange Line Expansion and submit a New Starts Exempt application to FTA. FTA may also require a NEPA study and is currently determining whether the recent U.S. Coast Guard review would be sufficient as it addressed only navigable waterways. In addition, it is possible to get approved into preliminary engineering within two months.

Surface Transportation Authorization Act

The extension of the authorizations for highway and transit programs provided in SAFETEA-LU will expire March 31, 2012. The House and Senate remain divided on the issues surrounding the surface transportation bill, including the best way to finance the various authorized programs as well as how long the bill's authorization should last.

The Senate EPW Committee approved its bipartisan two-year reauthorization bill, titled "Moving Ahead for Progress in the 21st Century" or MAP-21 last November. However, the $109 billion bill did not reach the Senate floor in January due to the fact that two titles of the proposal had not received a hearing and/or markup; the Senate Banking, Housing and Urban Affairs Committee, which has jurisdiction over the mass transit section of the legislation, scheduled a markup of its section for February 2, 2012, and the Senate Finance Committee will markup the revenue-offset portion on February 7, 2012.

As previously reported, the Senate Commerce, Science and Transportation Committee approved the rail and safety components last December, however the Committee vote was marred by partisan disagreements over language added by the majority that would establish a new national freight policy aimed at encouraging multimodal investment, as

well as a grant program to fund multimodal projects. This issue is likely to be addressed by the full Senate when the full authorization bill reaches the Senate floor in February.

National Infrastructure Investments (TIGER IV)

On January 31, 2012, U.S. Department of Transportation Secretary Ray LaHood announced that approximately $500 million would be available for a fourth round of the Transportation Investment Generating Economic Recovery (TIGER) grant program, and we provided the County with the **Notice of Funding Availability.**

TIGER IV grants can be used for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the nation, a metropolitan area, or a region. Eligible projects include, but are not limited to: (1) highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Grants may not be less than $10 million and may not be greater than $200 million for urban entities. TIGER IV grants will require a 20 percent local cost share, although this requirement can be waived for "rural" entities.

Although this round of TIGER grants is similar to the previous round, the NOFA did include a list of significant changes from the August 2011 TIGER grant notice:

- To ensure applicants receive the most accurate information possible, eligible applicants must contact DOT directly, rather than through intermediaries, to get questions answered, set up briefings on the TIGER Discretionary Grants selection and award process, or receive other assistance.

- As in previous rounds of TIGER, high speed and intercity passenger rail projects remain eligible for funding under this program and a high priority of this Administration. DOT would like to encourage those seeking funding for passenger rail projects to consider TIGER and will, therefore, make up to $100 million in TIGER funds available to high speed and intercity passenger rail projects.

- Applications must include a detailed statement of work, detailed project schedule, and detailed project budget in the project narrative. Due to the shorter timeframe allowed for the obligation of TIGER Discretionary Grant funds in this round of funding in comparison to previous rounds, applicants must include this detailed information in their application in order to demonstrate that their projects are ready to proceed within this shortened timeframe.

- The discussion on Benefit-Cost Analysis (Appendix A: Additional Information on Benefit-Cost Analysis) has been streamlined and includes tools to aid applicants in preparing their analyses.

The Department's pre-application system will open on or before February 13, 2012 and pre-applications must be submitted by February 20, 2012, at 5 p.m. EST. Final applications must be submitted through Grants.gov by March 19, 2012, at 5 p.m. EDT.

ECONOMIC DEVELOPMENT

Build America Bonds (BABs) &
Transportation and Regional Infrastructure Project Bonds (TRIPs)

As you are aware, Congress did not renew the BAB program prior to its expiration on December 31, 2010, and while the program has enjoyed some renewed support in the 112th Congress, the majority in Congress has been opposed to reauthorizing the BAB program because of its costs to the federal government, and neither Chairman Mica nor Chairwoman Boxer included the program in their respective surface transportation reauthorization proposals. However, prior to the 1st session August recess, Senator Ron Wyden (D-OR) introduced bipartisan legislation, with Senators John Hoeven (R-ND) and Mark Begich (D-AK), that would create Transportation and Regional Infrastructure Project Bonds, or TRIPs bonds, in an attempt to rebrand BABs by changing certain aspects of the original program that concerned members of Congress. The "Transportation and Regional Infrastructure Project Bonds Act of 2011" (S. 1436) differs from BABs in that TRIP bonds would exclusively fund transportation investments and the program would be capped at providing $50 billion over six years. Also, TRIPs would be issued/run by State Infrastructure Banks, which would be authorized to issue $1 billion over the program's six-year duration for projects in their state, while also allowing multiple states to work together on larger projects of regional and national significance. Senator Wyden commented recently that, "TRIPs will build on recent experience with tax-credit bonds and leverage private funding in a fair and efficient [manner] that has been proven to save taxpayer money." It remains unclear whether this bill will be considered during the second session of Congress.

ELECTIONS

On January 27, 2012, the Senate Judiciary Constitution, Civil Rights and Human Rights Subcommittee held a field hearing in Tampa entitled "New State Voting Laws II: Protecting the Right to Vote in the Sunshine State." According to the Subcommittee's

Chairman, Senator Dick Durbin (D-IL), the hearing was to examine the impact of Florida's new voting law.

As previously reported, the House has approved, H.R. 3463, a measure to terminate the Presidential Election Campaign Fund and abolish the Election Assistance Commission, a national clearinghouse on the mechanics of voting. Senate Majority Leader Harry Reid (D-NV) has stated that the controversial legislation will not likely garner approval in the Senate.

FY 2013 Budget Information

The President's FY2013 Budget Proposal is scheduled to be released on February 13, 2012.

Election Assistance Commission (EAC)

FY2012 Actual	*FY2013 Administration Request*	*House Mark*	*Senate Mark*	*FY2013 Conference Final*
$11,500,000				

TRAVEL & TOURISM

Draft Internet Travel Tax Fairness Act

We continue to monitor the internet hotel tax issue. The South Carolina Legislature is considering a bill that would exempt travel agents and online travel companies from paying taxes on hotel occupancy. Passage of this bill would reverse a state Supreme Court ruling and upend a Town of Hilton Head Island settlement. In late January, it was announced that Palm Beach County had reached a settlement with online travel companies, including Expedia, Orbitz, Priceline and Travelocity, who have agreed to pay nearly $1.9 million for disputed hotel "bed" taxes.

OTHER LEGISLATION OF INTEREST

National Flood Insurance Program (NFIP) Reauthorization

The current extension of NFIP expires May 31, 2012. This is the fifteenth NFIP extension since 2002 and was agreed to after the Senate failed to address the Flood Insurance Reform and Modernization Act of 2011 (S. 1940), which as you recall was approved by the Senate Banking Committee last fall. A month before the current extension was approved, Senator David Vitter (R-LA) introduced legislation that would have

extended NFIP through the end of FY 2012; however this proposal was reportedly met with stern opposition from Congresswoman Judy Biggert (R-IL), the House-passed bill's sponsor, who pushed for a five-month extension so that the Senate would face renewed pressure to address this issue early in 2012. At this time it remains unclear if the Senate will move quickly on this issue, however the full Senate would need to pass their bill soon in order to give House and Senate negotiators enough time to reconcile the differences between the two bills prior to the current extension's expiration.

We confirmed that the Senate bill's current iteration includes a 15 percent cap on annual premium rate increases, instead of the 10 percent the County prefers or the 20 percent cap included in the House version of the bill. Furthermore, the bill included a provision requiring the mandatory purchase of flood insurance by residents living behind federally certified levees; however, this provision has garnered significant opposition and Senators Thad Cochran (R-MS) and Mark Pryor (D-AR) sent a letter to the Banking Committee's leadership requesting reconsideration of this provision (Section 107). We provided the County with a draft copy of the letter, which was ultimately co-signed by a bipartisan group of 11 Senators; however, Senators Nelson and Rubio did not sign the letter.

The legislation that is ultimately approved by the full Senate will still need to be reconciled with the House-passed bill, which would extend the program for five years, provide for a five-year phase-in of full premium rates for newly re-mapped areas, and allow for qualifying "areas" to apply for three one-year delays for the mandatory purchase of flood insurance. The bill also allows for a fourth and fifth year of extensions, provided that a community can demonstrate that "more than adequate progress has been made on the construction of a flood protection system for such area." The bill would also establish a 16-member Technical Mapping Advisory Council to provide recommendations and reports to FEMA regarding the adoption of updated mapping standards to be used in creating 100-year flood insurance rate maps.