

## MEMORANDUM

**DATE:** October 12, 2022  
**TO:** Miami-Dade Board of County Commissioners  
**FROM:** Alcalde & Fay  
**SUBJECT:** Federal Government Relations Update

---

Prior to adjourning on September 30<sup>th</sup>, Congress approved a Continuing Resolution (CR), the *Continuing Appropriations and Ukraine Supplemental Appropriations Act of 2023*, H.R. 6833, which extends funding for the federal government through December 16<sup>th</sup>, narrowly avoiding a federal government shutdown. Both chambers have adjourned until after the elections, to reconvene on November 14<sup>th</sup>.

The CR includes several supplemental appropriations measures, including \$12.3 billion for the ongoing conflict in the Ukraine; \$2.5 billion for recovery efforts following the Hermit's Peak/Calf Canyon Fire in New Mexico; \$2 billion in Community Development Block Grants to address recovery needs in communities experiencing major disasters in 2021 and 2022; and \$18.8 billion for the FEMA Disaster Relief Fund to assist in recovery efforts following Hurricane Ian.

Although the CR package had originally included Senator Joe Manchin's (D-WV) permitting reform bill (*Energy Independence and Security Act of 2022*), it was removed after facing bipartisan opposition from Senate Republicans and a contingent of House progressive Democrats. At this time, it remains unclear if Senator Manchin's reform bill will be attached to legislation during the lame duck session of Congress, although any such effort would likely require further changes to his bill in order to garner sufficient bipartisan support.

Please see below, an overview of the status of issues of direct interest to PortMiami.

### I. MIAMI HARBOR

#### Miami Harbor Feasibility Study

As previously reported, the U.S. Army Corps of Engineers (USACE) *Infrastructure Investment and Jobs Act* (IIJA) Work Plan includes **\$2,245,000** to fully fund the remaining federal share of the ongoing Miami feasibility study. In addition, the House Transportation and Infrastructure Committee included language in the report accompanying the *Water Resources Development Act of 2022* (WRDA), H.R. 7776, **which**

**urges the Corps to prioritize and expedite completion of the Miami Harbor feasibility study** (House committee report #117-347 (Page 66)).

The feasibility study will identify the modifications needed to the federal project, to enable the new state-of-the-art (14,000) TEU container vessels to traverse directly to the U.S. and avoid cargo diversion to nearby non-U.S. transshipment ports (such as Panama, Freeport, Bahamas, and Jamaica).

**Miami Harbor O&M Funding**

The House and Senate FY 2023 *Energy and Water Development (E&W) Appropriations* bills each include the budgeted amount of \$50,000 for Miami Harbor maintenance needs. The final conference on the 2023 E&W appropriations bill is anticipated after the House and Senate reconvene on November 14<sup>th</sup>.

**Miami Harbor Restrictions**

The USACE has recognized a design deficiency in the completed 50-52 foot dredge project, as draft limits did not increase as originally planned. The USACE will prepare a report which identifies the improvements needed to eliminate these restrictions and assure efficient and safe navigation in the Miami Harbor. The Jacksonville District is using \$1.5 million in available funds to begin the report. If additional funding is needed in FY 2023, we will seek 2023 USACE work plan funds for the study.

As previously reported, we explored various Corps' documents over many months to identify a discretionary authority which the USACE could use to carry out this work. Otherwise, these critical improvements would be delayed until authorization of the next Miami Harbor modification (which is not anticipated until 2026).

We identified Section 562 of the 1915 *Rivers and Harbors Act* (33 US Code 562) which allows the Secretary of the Army (Civil Works) to change the dimensions in entrance channels “.... as may be necessary to allow for the free movement of boats.” We coordinated with the Port and the Jacksonville District Office and Mr. Tim Murphy, the lead civilian in the Jacksonville District office, who confirmed that this authority is adequate. The District started the process for moving forward with the work early this year.

**Water Resources Development Act (WRDA) of 2022**

On June 8, the House passed the *Water Resources Development Act of 2022*, H.R. 7776. As reported above, priority recognition to the ongoing Miami Harbor feasibility study is provided by the committee report accompanying the bill. Final action on WRDA 2022 is anticipated after the Congress reconvenes in November.

On May 17, we scheduled a meeting for Deputy Director Andy Hecker and Debra Owens with Congressman Peter DeFazio (D-OR), the Chair of the House Transportation and Infrastructure Committee. In addition to briefing the Chairman on “Net Zero,” we addressed the Miami Harbor immediate needs and our concern that the “deficiency” work could be delayed if subject to USACE new start requirements. We were pleased that the Chairman’s staff contacted Corps officials immediately after our meeting and confirmed, in a follow up call, that Section 562 is a discretionary authority which is not subject to new start rules. Therefore, a new start exemption for the Miami project will not be needed.

### **PortMiami as a Donor Port**

The House and Senate FY 2023 E&W appropriations bills each increase the cap on the *Donor and Energy Transfer Port* (D&ET) Program from \$50 million to \$56 million. The final E&W bill will be incorporated within the FY 2023 Omnibus, as addressed above.

The Committees chose not to address other WRDA 2020 program changes, including the allocation of 12% of total HMTF (Harbor Maintenance Trust Fund) revenues to the D&ET program. We are prepared to work on behalf of PortMiami and other impacted ports, including the American Association of Port Authorities, to encourage the USACE to implement these changes in 2023. On implementation, PortMiami would receive as much as \$18 million annually, up from \$2.3 million.

Earlier this year, in advance of the appropriations markups, we submitted FY 2023 programmatic appropriations request forms to each member of the delegation and scheduled meetings for Port representatives with staff in the offices Senators Rubio and Scott, to brief on the importance of these program changes to PortMiami.

## **II. NET ZERO CARGO SUPPLY CHAIN PROGRAM/PORTMIAMI**

The following language, requested by PortMiami, is included in the *Explanatory Statement* accompanying the FY 2023 *Transportation, Housing and Urban Development Appropriations* bill, as posted by the Senate Appropriations Committee on July 28. We recommended and drafted this language, in order to prioritize Port Miami’s “Net Zero” program for Mega grant funding. With much appreciation to Senators Rubio/Scott for submitting this language to the committee. We prepared and submitted the programmatic request forms to the Senate offices.

### *Mega Grants -*

*The Committee recognizes that inland ports are an important element in the international supply chain, increasing intermodal capacity and efficiencies in the movement of global commerce from ships to major transportation networks for distribution. Benefits include reduced congestion at the marine terminal and on the Nation’s highways, lower costs of*

*moving cargo, environmental and safety benefits, economic development in underserved or rural areas as well as consolidation of import/export centers. Within the advance appropriations for this program, the Committee encourages the Secretary to consider Mega grant applications that include the development of coastal and inland ports in order to facilitate an efficient supply chain.*

The congressional support letter for PortMiami's "Net Zero" program was forwarded to DOT Secretary Buttigieg on June 24. The bipartisan letter, which requests \$240 million by a combination of Mega and INFRA program funds, was signed by 16 Members of the Florida delegation and follows the in person and virtual meetings which we scheduled on behalf of Director Webb, Deputy Director Hecker and Debra Owens (from March through May). Details of these meetings are provided by previous reports. We have recommended that Port officials follow up with the Miami-Dade delegation members, to ask the Members to reach out directly to Secretary Buttigieg.

On August 16, PortMiami was awarded a RAISE grant in the amount of \$16 million for two elements of the "Net Zero" Program: (1) Expanded Intermodal Rail Capacity and (2) Cargo Gate Optimization. The rail capacity component constructs two new rail tracks approximately 3,200 feet long, acquires three new electric rubber-tired cranes, reconstructs apron areas of the track and reconstructs the stormwater drainage system to address sea level rise. The cargo gate optimization project includes roadway realignments to and from cargo gates, rehabilitation of the stormwater management system to address sea level rise, cargo gate canopies, staging areas for trucks, direct access to rail yard gates and gate technology upgrades.

### III. INFLATION REDUCTION ACT (IRA)

#### Grants to Reduce Air Pollution at Ports

On July 27, the Senate leadership and Senator Manchin negotiated a reconciliation package which includes a new \$3 billion program to reduce emissions at ports. The agreement, enacted as the *Inflation Reduction Act (IRA)* on August 16, provides grants for the purchase or installation of zero emissions port equipment or technology that capture 100% of the emissions produced by an ocean going vessel at berth. Funds are available from FY 2022 through FY 2027 and the program will be administered by the Environmental Protection Agency (EPA).

If enacted, this new program could provide source(s) of grant funding for PortMiami's electrification needs, including implementation of shore power at cruise berths. We forwarded a detailed description of the new program to the Port.

If PortMiami has candidate projects for grant funds, it will be important to work with the *Environmental Protection Agency (EPA)* as the guidelines/eligibility criteria are

prepared. Since funds are available beginning in 2022, the EPA could decide to issue a NOFO in the near term, starting in 2022. We have offered to schedule a meeting with senior staff at the EPA.

Notably, the IRA provides an additional \$60 million for DERA (Diesel Emission Reduction) grants, with a focus on improving the quality of life of underserved communities.

#### **Additional Funding to the Urban and Community Forestry (UCF) Program**

Also of interest to PortMiami, the *Inflation Reduction Act* significantly boosts funding for the *Urban and Community Forestry (UCF) Program*. The agreement includes \$1.5 billion in multi year grants, up from approximately \$30 to \$50 million annually. Priority is provided to projects that benefit underserved populations.

As you recall, the UCF program is administered by the States; in Florida, by the Department of Agriculture and Consumer Services/Florida Forest Service: contact [William.Liner@FDACS.gov](mailto:William.Liner@FDACS.gov). The Department has recently announced three 2022 NOFO awards to: North Miami Beach: \$30,000; Palmetto Bay: \$25,000; and Tarpon Springs \$55,000, and is preparing for the next round of grants by about October.

#### **IV. IMPLEMENTATION OF THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA)/ GRANT OPPORTUNITIES**

While the Port has submitted its 2022 applications for PIDG, Mega and INFRA, we continue to consult with the Port regarding additional grant opportunities and continue to monitor activities surrounding the implementation of the *Infrastructure Investment and Jobs Act* (IIJA). We have reached out to FDOT and the FHWA regarding the *Carbon Emission Reduction Program* (CRP) which is a new formula program established by the IIJA. Both offices have recommended that the Port make inquiries to the MPO regarding eligibility for port electrification projects.

We previously reported on the new and ongoing programs which received significant funding plus ups. For instance: PIDG includes eligibility for a wide range of electrification projects and is funded at \$2.25 billion over five years, \$450 million annually, in addition to the annual appropriations provided to the program; RAISE includes eligibility for port inland infrastructure projects and will receive an additional \$7.5 billion (\$1.5 billion annually); *Nationally Significant Freight and Highway Projects* (NSFHP) or INFRA, will receive an additional \$8 billion; and *Railroad Rehabilitation and Improvement Financing* (RRIF) includes eligibility for the development of landside infrastructure for seaports serviced by rail.

#### **V. OTHER ISSUES OF INTEREST**

## **Healthy Streets Program/Transportation, Housing and Urban Development Appropriations/ FY 2023**

Notably, the House FY 2023 THUD appropriations bill includes \$55 million for a comparable program to the UCF program addressed above. The *Healthy Streets Program*, which was established by the *Infrastructure Investment and Jobs Act* (but not funded by the IIJA) provides grants to state and local units of government, tribes and nonprofit organizations, to deploy cool pavements and porous pavements and to expand tree cover. The goals are to mitigate urban heat islands; improve air quality and reduce the extent of impervious surfaces, stormwater runoff and flood risks and heat impacts to infrastructure and road users. Priority is provided to eligible entities which carry out the activity in a low or disadvantaged community.

This funding will be subject to negotiations during the conference on the FY 2023 Omnibus.

## **H.R. 7579, Western Hemisphere Nearshoring Act**

We are monitoring for developments on the *Western Hemisphere Nearshoring Act*, H.R. 7579, sponsored by Congressman Mark Green (R-TX), with original cosponsor Congressman Albio Sires (D-NJ). The legislation incentivizes producers to relocate to Latin America and the Caribbean, with the intent of reducing the U.S. supply chain dependence on China as well as the root causes of migration to the U.S. The bill has joint referral to the Committees on Ways and Means and Foreign Affairs.

Representatives Gimenez (R-FL) and Salazar (R-FL) have signed on as cosponsors, along with Representatives Meuser (R-PA); Buck (R-CO); Barr (R-KY); Hern (R-OK); Huizenga (R-MI); Hill (R-AR); Miller-Meeks (R-IA).

## **Customs and Border Patrol (CBP) Facility Upgrades**

PortMiami has joined other ports in addressing its concerns with the escalating costs of CBP facility upgrades. Despite language in recent appropriations bills which address seaport concerns, the agency's practices continue. To remedy this situation, the American Association of Port Authorities (AAPA) has prepared legislation which enables customs processing fees to be used for facility upgrades and is seeking sponsors for the proposed legislation.

The *Explanatory Statement* accompanying the FY 2023 Senate *Department of Homeland Security appropriations* bill provides the following direction to the CBP:

*The Committee is also concerned about reports that CBP is imposing costly facility and security requirements on seaports without adequate consultation and justification. The Committee*

*encourages CBP to defer all current and future seaport facility requests until it has provided details on baseline service levels to each port operator and provide the Committee with estimates for future facility and security requirement upgrades and associated federally-mandated technology. The Committee expects CBP to act in partnership with seaports and refrain from imposing requirements on seaports in a unilateral fashion.*

### **PortMiami as a Strategic Defense Port**

The Port has indicated an interest in designation as a *Strategic Defense Port* by the Department of Defense (DOD). We have previously provided the information on the process for consideration by the DOD. The first step is for PortMiami to provide an Expression of Interest to the Surface Deployment and Distribution Command (SDDC) which is the Army component of the U.S. Transportation Command (USTRANSCOM).

MARAD administers the *Strategic Port Program* and is charged with facilitating the movement of deploying military forces through strategic ports while minimizing commercial disruptions. There are 23 Strategic Ports and 13 Alternate Ports.

Please note that the WRDA 2020 calls for allocations of HMT (Harbor Maintenance Trust) funds to the 17 commercial seaports, with allocations based on the percentage of HMT dollars collected and the historic share of annual HMT funds provided to these ports. Also, the House and Senate Appropriation Committees generally include a port's strategic designation as one of **multiple factors** that the Corps should take into consideration when allocating Army Corps work plan funds.

### **Ocean Shipping Reform**

On June 13, the House of Representatives approved the *Ocean Shipping Reform Act*, S. 3580, which was subsequently signed into law. The legislation, which is intended to ease current supply chain challenges, includes the following provisions:

- Expands safeguards to combat retaliation and deter unfair business practices;
- Clarifies prohibited carrier practices pertaining to detention and demurrage charges and vessel space accommodation;
- Establishes a shipping exchange registry through the FMC;
- Expands penalty authority to include refund of charges;
- Increases efficiency of the detention and demurrage complaint process.