

Charlotte County, Florida 2020 Federal Legislative Agenda





**Prepared by Thorn Run Partners for the
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Water Resources and Environment

National Flood Insurance Program

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Support efforts to improve the National Flood Insurance Program for the benefit of all participants. **Monitor** FEMA's implementation of the Risk Rating 2.0 program.

Fiscal Year 2021 Appropriations: Charlotte County, FL Shoreline and Inlet Management

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Support adequate annual funding for the Corps of Engineers Investigations account, including additional funding specifically for "shore protection" studies not identified in the annual Administration budget. **Support** an appropriate number of "new starts" for studies so the Manasota Key shoreline study may be initiated via the Corps of Engineers Work Plan to address sediment management and erosion of beaches, and to provide for safer navigation.

Water Resources Development Act: Charlotte Harbor Conservation; Central Sewers

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Support efforts to secure funding for Charlotte County sewer system expansion. **Support** amending existing Charlotte County water infrastructure authorization via the Water Resources Development Act to allow \$30,000,000 for the Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project.

Everglades Restoration

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Support adequate funding for Everglades restoration. **Support** continuing implementation of all facets of Everglades restoration, including: funding continued work on the Central Everglades Planning Project, full funding for the restoration of the Herbert Hoover Dike, and continued funding for the Tamiami Trail bridging project to send more water south and reduce the need for discharges from Lake Okeechobee during wet periods. **Monitor** the effort of the Army Corps of Engineers to update the Lake Okeechobee System Operating Manual.

Water Quality and Red Tide

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Support research and monitoring programs to address red tide. **Support** efforts to improve water quality for all water entering the Gulf of Mexico, including from the coast of Florida and other tributaries, such as the Mississippi River.

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Monitor activity related to the implementation of the Waters of the U.S. rule. **Oppose** aspects of the rule that would negatively affect Charlotte County.

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Oppose the potential expansion of energy exploration in Florida.

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Support efforts to streamline the Endangered Species Act and National Environmental Policy Act and increase cooperation with state and local authorities.

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Support appropriations activities to fund programs in CARA, the 21st Century Cures Act or other programs to address the opioid crisis. *Monitor* HHS for guidance regarding the allocation of 21st Century Cures state formula funding. *Support* attempts by entities within Charlotte County to secure funding to fight opioid addiction.

Assessment of Fair Housing Rule

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Monitor implementation of the Department of Housing and Urban Development’s Assessment of Fair Housing Rule.

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Monitor development and implementation of the Federal Emergency Management Agency’s Building Resilient Infrastructure and Communities program and the Housing and Urban Development’s Community Development Block Grant Mitigation program. *Support* Charlotte County’s efforts to secure funding from each program.



FEDERAL ISSUE: National Flood Insurance Program

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 1968, Congress established the National Flood Insurance Program (NFIP) to address the nation's flood exposure and challenges inherent in financing and managing flood risks in the private sector. Private insurance companies at the time claimed that the flood peril was uninsurable and, therefore, could not be underwritten in the private insurance market. A three-prong floodplain management and insurance program was created to (1) identify areas across the nation most at risk of flooding; (2) minimize the economic impact of flooding events through floodplain management ordinances; and (3) provide flood insurance to individuals and businesses.

Until 2005, the NFIP was self-supporting, as policy premiums and fees covered expenses and claim payments. Today, the program is roughly \$25 billion in debt due to a number of large storms.

In mid-2012, Congress passed, and the President signed, the Biggert-Waters Flood Insurance Act (BW12), a 5-year reauthorization of the NFIP that attempted to restore the program to firmer financial footing by making a number of changes to the program that impacts the Island's residents. Then, in early 2014, the Homeowner Flood Insurance Affordability Act (HFIAA), was enacted in an attempt to address some of the so-called unintended consequences of BW12. While HFIAA delayed many of the premium increases implemented by BW12, the only real difference between rate increases envisioned by the two bills is that HFIAA reinstated grandfathering. This provision, originally ended by BW12, allows property owners to pay flood insurance rates based on original risk, not that which is determined by new community flood maps.

Authorization of the NFIP will expire September 30, 2020. In Charlotte County, there are 36,516 NFIP policies for both homes and commercial properties.

116th Congressional Approach

In the summer of 2019, House Financial Services Committee Chair Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC) released a compromise bill to reauthorize the National Flood Insurance Program for five years, among other things. Given that the bill is a compromise, it appears less consumer-friendly or far-reaching than the bills that Chairman Waters released on her own in March 2019. While the compromise bill unanimously passed the Committee, it never saw action on the House floor. It also faced stiff criticism from several Senators who argue that the bill's consumer protections are not robust enough and do not do enough to keep rates affordable, particularly with FEMA's Risk Rating 2.0 initiative looming. Meanwhile, Senate Banking leadership remains relatively unengaged in the debate and Senate Majority Leader McConnell will not be eager to spend a week on the NFIP as he prefers any bill in that chamber to clear via unanimous consent. Future discussion of long-term reauthorization of the NFIP remains murky.

Risk Rating 2.0

"Risk Rating 2.0" will dramatically change the way the NFIP prices flood policies and is now expected to be released in April 2021 and go into effect in October 2021. All 5 million NFIP policyholders are expected to have different policy premiums under the new system, although not all will be negative. Among the new changes impacting policy prices will be the cost of rebuilding an insured structure, the potential impact of different types of flooding, and the distance of a property to a coast or river. It will also introduce new sources of flooding, such as intense rainfall, that have not previously been considered in the NFIP rating structure. Risk Rating 2.0 could create policy premiums that will remind policyholders of increases routinely faced after passage of the so-called Biggert-Waters NFIP reauthorization in 2012.



POSITION: *Support* efforts to improve the National Flood Insurance Program for the benefit of all participants.
Monitor FEMA's implementation of the Risk Rating 2.0 program.



FEDERAL ISSUE: Fiscal Year 2021 Appropriations: Charlotte County, FL Shoreline and Inlet Management

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Manasota Key

Over the past several years, highlighted most recently by Hurricane Irma, Charlotte County's beaches on Manasota Key have eroded to the point where the County has declared numerous emergencies to help with permitting and other homeowner challenges.

In 2016, upon seeking to engage the Corps of Engineers in a long-term solution to erosion issues, the County learned that the Corps completed a Chief of Engineers report on 29 June 1981 in response to a House Public Works Committee Resolution adopted 2 December 1971. Unfortunately, in the spring of 1981, the Charlotte County Board of County Commissioners withdrew support for the project, thereby effectively ending substantive work on the project.

Given the County's recent challenges and the work completed by the Corps in the past, the County requests that the Corps initiate a new study of the shoreline, focusing primarily on those areas recommended for a project in 1981. These include beach erosion control improvements along 3.9 miles beginning at Stump Pass and extending northward to the Sarasota County Line (along Manasota Key), including the Port Charlotte Beach State Recreational Area. At the time, the project had a benefit-cost ratio of 4.2, with initial placement of approximately 335,000 cubic yards (CY) and five-year nourishment intervals of approximately 68,000 CY each. Finally, a 1,250-foot long terminal groin was recommended to be constructed at the south end of the beach fill along Stump Pass. Sand was proposed to have come from an offshore borrow area.

To fund beach nourishment projects and studies that are generally not budgeted for by the Administration, Congress has appropriated additional funding for what Congress terms "Additional Funding for Ongoing Work." Funding for the study must be sought via the FY 2021 Corps of Engineers Work Plan.

Knight Island and Stump Pass

Knight/Don Pedro Island in Charlotte County is a popular tourist destination and residential area that lies to the south of the Stump Pass inlet. Independent engineering analyses have demonstrated that the inlet causes severe erosion to these downdrift beaches, yet it still serves as a vital navigation inlet for recreational and other boating.

To address the inlet impact and to maintain its navigational use, Charlotte County implemented a management plan and beach restoration project in 2003 by dredging Stump Pass' navigation channel and ebb shoal and transferring that sand to the downdrift beaches. Directly bypassing the trapped sand offsets erosion losses and protects upland development on the islands while also providing for safer navigation. In 2006 and 2011, the County conducted storm damage recovery and maintenance projects to address severe erosion and navigational concerns experienced in the wake of the 2004 and 2008 hurricane seasons. Unfortunately, these efforts are not long-term solutions for Stump Pass.

Congress provides the U.S. Army Corps of Engineers with standing authorization, known as the Continuing Authorities Programs (CAP), to respond to a variety of water resource problems without the need to seek specific congressional authorization or funding for each project. Related specifically to Stump Pass, two authorities are likely most relevant. They include CAP Sections 103 (Small Beach Erosion Control Projects) and 107 (Small Navigation Projects).



In 2012, the County engaged the Corps to explore opportunities to work with the Corps on solutions to Stump Pass erosion and shoaling concerns. A Corps team from the Jacksonville District visited the County to meet with staff, gather information, and tour Stump Pass and the downdrift beaches. While the Corps determined that there was little opportunity to get involved given the limitations of their authorities, there may be other federal opportunities in the future.

Meanwhile, Charlotte County and the Florida Department of Environmental Protection (FDEP) have jointly worked together to take a holistic approach to dredging Stump Pass and renourishing critically eroded beaches at Chadwick Park, the County's public beach park, extending southward along Palm/Knight/Bocilla/Don Pedro Islands Gulf frontage to Don Pedro State Park. Included within this project is a proposed beach stabilization structure to be placed on Manasota Key north of Stump Pass. The main purpose of this structure is to reduce the rate of coral migrating into the Pass, thereby reducing the frequency of dredging cycles. This overall effort, known as the 10 Year Management Plan, was approved by FDEP for permitting in September 2015.

This project provides for continued monitoring, as required by permitting, to dredge Stump Pass in order to re-establish the 1980 channel alignment and provide for re-nourishment of critically eroded beaches. Maintenance dredging of Stump Pass and beach re-nourishment will be conducted approximately every three years. An engineered structure will be installed at Stump Pass to improve program performance. In the permitting process, an Adaptive Management Plan Strategy will be employed to provide options for modifications to structure(s) placed with initial construction or installation of additional structures in the future in response to beach and inlet management activities and storm erosion impacts.

POSITION: *Support* adequate annual funding for the Corps of Engineers Investigations account, including additional funding specifically for "shore protection" studies not identified in the annual Administration budget. *Support* an appropriate number of "new starts" for studies so the Manasota Key shoreline study may be initiated via the Corps of Engineers Work Plan to address sediment management and erosion of beaches, and to provide for safer navigation.



FEDERAL ISSUE: Water Resources Development Act: Charlotte Harbor Conservation; Central Sewers

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: The health of Charlotte Harbor is critical to the future of Charlotte County. A significant issue that threatens the Harbor is the need to transition residents from older, often failing septic systems to central sewers.

The Environmental Protection Agency estimates that over the next 20 years, the nation must collectively invest \$390 billion to update or replace existing wastewater systems and build new ones to meet increasing demand. This is an issue that affects the whole country, but in Charlotte County, fewer than 60,000 residents are on central sewer.

Many of the County's homes are within 150 feet of waterways that flow into Charlotte Harbor, necessitating that residents will ultimately need to be on central sewer. The County is currently completing the first phase of converting homes within close proximity to the Harbor to central sewer and will begin moving toward the second phase of the initiative this year. In addition to taking advantage of State Revolving Funds and tax assessments, the County is pursuing funding for additional phases of this environmentally significant project.

The RESTORE Act offers the County an opportunity to develop central sewers. In late 2012, the County presented a proposal to the Charlotte Harbor National Estuary Program for a more than \$16 million project to remove septic systems, install a central sewer system, construct stormwater improvements, and implement an educational program on Best Management Practices on 10,400 total properties, 6,800 of which are existing homes. Additionally, the project is included in the State Expenditure Plan developed by the Gulf Consortium for the Spill Impact Component.

In the Senate version of the 2018 WRDA, S. 2800, the Charlotte County request to modify its existing water supply authorization be modified to allow \$16,000,000 for waste water infrastructure to address the County's Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project was included in Section 2203, entitled *Environmental Infrastructure Projects*. Unfortunately, the provision, similar to others like it, was not included in the final WRDA bill approved by Congress.

By providing a long-term solution to significantly reduce non-point source pollutants into the receiving waters of Charlotte Harbor, the ability to support economic activities dependent on water quality will improve with the reduction/elimination of beach closures, sanitary health hazard complaints, and related impacts of nutrient and sediment loading. Removal of septic systems will increase the amount of developable land for businesses and provide for a larger variety of uses. Improving water quality will retain and increase tourism. Lastly, a continuation of the cooperative effort between public, private, and nonprofit organizations will continue the enforcement of water quality regulations and Best Management Practices.

POSITION: **Support** efforts to secure funding for Charlotte County sewer system expansion. **Support** amending existing Charlotte County water infrastructure authorization via the Water Resources Development Act to allow \$30,000,000 for the Restoration of Water Quality in the Impaired Waters of Charlotte Harbor Project.



FEDERAL ISSUE: Everglades Restoration

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 2000, Congress authorized a 30-year plan, termed the Comprehensive Everglades Restoration Plan (CERP), for the restoration of the Everglades ecosystem in southern Florida. CERP generally focuses on increasing the storage of excess water in the rainy season to provide more water during the dry season for the ecosystem and for urban and agricultural users. When originally authorized, it was estimated that CERP would cost a total of \$8.2 billion and take approximately 30 years to complete. More recent estimates indicate the plan may take 50 years to implement and could cost \$13.5 billion.

The construction of water control structures and facilities within the Everglades throughout the 20th century has altered the natural hydrologic patterns of water in the region. Over time, this has changed the ecosystem of the connected coastal regions.

There are a number of projects and studies under various stages of development that are expected to improve water quality and flow in the Everglades and surrounding areas as well as reduce harmful discharges to the east and west coasts of Florida.

\$200 million in federal funding for the Everglades program was included in the Fiscal Year 2020 Energy & Water Appropriations bill passed by Congress in December, providing the most significant boost in funding to the program in many years.

- The South Florida Water Management District secured a post-authorization change report to increase water storage south of Lake Okeechobee by constructing a reservoir in the Everglades Agricultural Area (EAA) which was authorized in the 2018 WRDA bill. While federal funding is now available to advance the project to the Preconstruction engineering and design phase given the passage of the Fiscal Year 2020 appropriations bills, the South Florida Water Management District is advancing the project by:
 - Starting full design work of the A-2 STA. Preliminary design work on the site has begun.
 - Working to obtain permits for early site preparation work.
 - Expediting the design of the inflow canal that will bring water diverted from Lake Okeechobee to the reservoir and STA. Expediting the design will allow construction of the canal to begin as soon as site preparation work is completed.
 - Surveying canals to expedite the design of canal improvements needed for the conveyance of water to the site.
- The Central Everglades Planning Project (CEPP) received its Corps of Engineers Chief's Report in 2015 and was authorized in the 2016 version of the Water Resources Development Act, included in another, larger piece of legislation. CEPP seeks to remove barriers to flow in the central Everglades to put the "river" back into the "River of Grass." CEPP, once fully constructed, is estimated to bring an average of 200,000 acre-feet of additional water from Lake Okeechobee into the Central Everglades each year. This is expected to reduce damaging discharges to the east and west coast estuaries while returning more flow to the Everglades. Federal components of CEPP are expected to be under construction by 2022 with completion expected in 2030.
- The overall purpose of the Modified Waters Delivery (MWD) to Everglades National Park (ENP) project is to restore the natural hydrologic conditions in ENP, which was altered by the construction of roads, levees, and canals. There are four major components of MWD: 8.5 Square Mile Area Flood mitigation,



Tamiami Trail Modifications, Conveyance and Seepage Control Features, and Combined Operation Plan. All four components are necessary to provide substantial flow increases to ENP.

- The most well-known portion of this project is the bridging of the Tamiami Trail. A one-mile bridge has been completed to date. In early 2015, the Department of Interior released a preferred alternative to bridge an additional 5.5 miles of the Trail called the Tamiami Trail: Next Steps project. The additional bridging will provide unconstrained flows of water to Northeast Shark River Slough (NESRS) in ENP. The resulting increased water volumes and improved flow distribution are expected to promote conditions conducive to the survival of myriad species of fish and wildlife. Groundbreaking for 2.6 of the 5.5 miles yet to be finished occurred in 2016.
- Flood mitigation work to protect a residential area near the project (the 8.5 Square Mile Area) was completed in 2016.

Lake Okeechobee System Operating Manual Update

The Army Corps of Engineers has begun the process to update the Lake Okeechobee Regulation Schedule to reflect new infrastructure that has or will be coming online (such as the Herbert Hoover Dike rehabilitation). The regulation schedule regulates the management of lake levels. As a part of this process, the Corps hosted several public meetings in Florida and accepted written comments in 2019. Since then, they have hosted monthly Project Delivery Team meetings to develop alternative options for management of the Lake. The Corps anticipates having a final report completed in September of 2022.

POSITION: *Support* adequate funding for Everglades restoration. *Support* continuing implementation of all facets of Everglades restoration, including: funding continued work on the Central Everglades Planning Project, full funding for the restoration of the Herbert Hoover Dike, and continued funding for the Tamiami Trail bridging project to send more water south and reduce the need for discharges from Lake Okeechobee during wet periods. *Monitor* the effort of the Army Corps of Engineers to update the Lake Okeechobee System Operating Manual.



FEDERAL ISSUE: Water Quality and Red Tide

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In 2018, Charlotte County and much of the southern Gulf Coast of Florida were impacted by significant levels of the algae *Karenia Brevis*, commonly known as red tide. Outbreaks of red tide off the Florida coast have been documented since Spanish explorers first began visiting the area in the 15th century, however, a 2007 study that was conducted by the University of Miami and funded by the National Institutes of Health found that the levels of red tide have significantly increased over the past fifty years. The study found that levels of red tide measured in the area from Tampa Bay to Sanibel Island between 1994 and 2002 is thirteen to eighteen times the levels measured between 1954 and 1963. The increase in the nutrient levels in the ecosystem was found to be a significant factor in this increase.

In reaction to the 2018 outbreaks of red tide, both the state and federal government have taken action to mitigate the impacts to the local ecosystem and economy. On the federal level, the Small Business Administration (SBA) opened several recovery centers to assist small businesses impacted by red tide. The National Oceanic and Atmospheric Administration (NOAA) also implemented several research and monitoring programs to track the algae. Members of the Florida delegation, particularly Representative Francis Rooney, called on the President to declare a state of emergency as a result of the outbreak, however this request was not fulfilled. During the FY 2019 appropriations process, \$1 million was allocated to the Centers for Disease Control to study, mitigate and respond to harmful algal blooms. The Florida delegation also worked to include several other provisions in the Commerce, Justice and Science appropriations bill and the Interior and Environment appropriations bill to address harmful algal blooms.

The water quality in the Gulf of Mexico also affects the water near the shores of Charlotte County. Other sources of nutrients and pollution, such as the Mississippi River delta also contribute to the overall ecosystem in the Gulf. The Mississippi River watershed stretches north into Canada, west to Montana, Wyoming, Colorado and New Mexico and east to North Carolina, West Virginia and Pennsylvania. This broad drainage sand creates challenges for determining and addressing causes of pollution that enters the Gulf of Mexico.

To help address these issues, members of the Florida delegation introduced S. 10 (Sens. Rubio and Scott) and H.R. 335 (Rep. Brian Mast). The South Florida Clean Coastal Waters Act attempts to address harmful algal blooms and hypoxia by creating the Inter-Agency Task Force on Harmful Algal Blooms and Hypoxia and requiring that it must assess potential approaches to reduce harmful algal blooms and hypoxia in the south Florida ecosystem. The task force must also submit a plan, based on the assessment, for reducing, mitigating, and controlling harmful algal blooms and hypoxia in the region should the bill pass.

H.R. 335 passed the House in September 2019 by voice vote. S. 10 has passed the Senate Commerce Committee but awaits action by the full Senate.

POSITION: **Support** research and monitoring programs to address red tide. **Support** efforts to improve water quality for all water entering the Gulf of Mexico, including from the coast of Florida and other tributaries, such as the Mississippi River.



FEDERAL ISSUE: Waters of the United States

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: On January 23, Environmental Protection Agency (EPA) Administrator Andrew Wheeler and Assistant Secretary of the Army for Civil Works (USACE) R.D. James announced the Navigable Waters Protection Rule, which is the latest effort to redefine “Waters of the United States” (WOTUS). This comes after President Trump signed Executive Order 13778, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule,” which directed the EPA and the USACE to review President Obama’s 2015 Clean Water Rule and rescind or revise the 2015 Rule. The new rule rolls back the number of water bodies subject to federal regulatory oversight and will go into effect 60 days after being published in the Federal Register, which should occur soon.

Navigable Waters Protection Rule

The new rule aims to differentiate federally and state protected wetlands, yet clearly decreases federal regulatory authority to a greater extent than the rule which existed before the 2015 Obama-era proposed rule, which was never fully implemented. The new definition identifies four distinct categories that will be regulated under the Clean Water Act:

- 1) Territorial seas and traditional navigable waters;
- 2) Perennial and intermittent tributaries;
- 3) Certain lakes, ponds, and impoundments; and
- 4) Wetlands adjacent to jurisdictional waters.

While these four categories are subject to federal regulation, the rule also details what waters cannot be federally regulated:

- Features that only contain water in direct response to rainfall;
- Groundwater;
- Many ditches, including most farms and roadside ditches;
- Prior converted cropland;
- Farm and stock watering ponds; and
- Waste treatment systems.

Waterways that are exempt from federal regulations are subject to regulations by states, localities, and tribes. Republicans have generally praised the new rule while Democrats have expressed concerns, claiming the new rule will eliminate federal regulation on 18 to 71 percent of streams and river miles and over 50 percent of wetlands.

Legal Implications

Although the administration has issued its final rule, some legal experts believe it will be delayed by litigation, which similarly led to President Obama’s 2015 rule being put on hold in 28 states. Various environmental groups and states have already indicated they will challenge the new rule, likely leading to a court-imposed stay that would lead to uncertainty for those trying to develop land around streams and wetlands. Some legal experts say the court challenges will go all the way to the Supreme Court, leaving it to them to determine which streams and wetlands should ultimately be regulated by the Clean Water Act. Further, the permanence of the rule is almost certainly dependent on the Presidential election this year given the rule is expected to be rescinded if a Democrat is elected to the White House.

POSITION: **Monitor** activity related to the implementation of the Waters of the U.S. rule. **Oppose** aspects of the rule that would negatively affect Charlotte County.



FEDERAL ISSUE: Energy Exploration

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Active energy drilling currently occurs in both the western and central Gulf of Mexico, while nearly the entire eastern Gulf is protected from drilling until 2022 by the Gulf of Mexico Energy Security Act of 2006 (GOMESA).

For many years, the federal government has developed five-year Outer Continental Shelf (OCS) Oil and Gas Leasing programs to guide energy exploration activities in federal waters. On January 17, 2017, the Secretary of the Interior approved BOEM's finalized OCS Oil and Gas Leasing Program for 2017-2022. No lease sales were proposed for the Eastern Gulf and the area is currently under a moratorium through 2022.

Although typically a new five-year plan would not be developed for several years, in 2017, President Trump signed the America First Offshore Energy Strategy Executive Order. The Executive Order aims to increase domestic energy production and reduce the use of foreign oil by, in part, expanding offshore drilling. As a part of implementing that order, BOEM began to develop a new 2019-2024 National Outer Continental Shelf Oil and Gas Leasing Program.

In 2018, BOEM released a draft proposed program (DPP) for the National Outer Continental Shelf Oil and Gas Leasing Program for 2019-2024. The DPP included 47 potential lease sales in 25 of the 26 planning areas, which is the largest number of lease sales ever proposed for a 5-year lease schedule. The DPP included two sales in the Eastern Gulf of Mexico after the expiration of the moratorium. The County has commented in opposition to these sales in the Eastern Gulf.

In 2019, due to recent litigation the Department of Interior postponed the release of its new five-year OCS drilling plan "indefinitely." Despite the indefinite postponement, we know there is bipartisan opposition to offshore drilling from all 17 governors of coastal states in the continental U.S. that could see new drilling under the plan and that the oil industry hopes to still fight for an eventual limited expansion of drilling in Alaska, the eastern Gulf of Mexico near Florida and parts of the Atlantic.

The Department will at some point have to release a new plan, with or without court decisions influencing the proposal, but it may be that political realities caused the White House to back off the release of the plan until after the 2020 elections.

Congressional Action

In early 2019, Representatives Kathy Castor and Francis Rooney re-introduced their Florida Coastal Protection Act. The bill would make the current moratorium on oil and gas drilling in the Eastern Gulf of Mexico, which is set to expire in June of 2022, permanent. The bill is also cosponsored by Representatives Charlie Crist and Vern Buchanan. In conjunction with the introduction of the bill, seven other bills were filed to curtail offshore oil and gas drilling throughout the country, two of which would also curb offshore drilling in Florida. Taken together all of these bills would either ban or place a ten-year moratorium on offshore drilling in the Atlantic, Pacific, and Arctic Oceans, in addition to the Eastern Gulf of Mexico. While the bills may pass the House, it is unlikely they will be signed into law.

Meanwhile, Sen. Marco Rubio continues to place a hold on Kate MacGregor, whose nomination to be deputy Secretary of the Interior was reported favorably out of committee in 2019 given his ongoing concern about drilling off the coast of Florida. MacGregor was directly involved in the department's five-year Outer Continental



Shelf Oil and Gas Program under Interior Secretary David Bernhardt and his predecessor, Ryan Zinke. Sen. Rubio wants assurances that the final five-year plan specifically excludes waters off the coast of Florida from leasing and drilling activities.

POSITION: *Oppose* the potential expansion of energy exploration in Florida.



FEDERAL ISSUE: Endangered Species Act and National Environmental Policy Act Reforms

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY:

Endangered Species Act

The United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) in 2019 released three rules seeking to modify the application of the Endangered Species Act (ESA). These three proposals were open for comment and the County wrote to support streamlining regulations, increasing cooperation, and expediting the review process. The three rules generally attempt to clarify the situations when the ESA will apply, tighten the definitions regarding when species or habitat are designated under the ESA, and set forth streamlined procedures for consultations and biological opinions. Meanwhile, the new rules will apply only to future listing decisions. Plants and animals with existing protections will not be affected unless their status changes.

The first rule seeks to establish that any species newly listed as threatened by the USFWS would only have protective regulations if a special rule was promulgated. Currently, threatened species designated by USFWS have the same protections as species that are listed as endangered. This change would not impact the protections in place on any species that are currently listed as threatened. The rule would bring the USFWS approach in line with that of NMFS and would potentially limit the restrictions placed on newly designated or downgraded species in the future.

The second rule addresses the process for listing or delisting species and designating critical habitat. USFWS and NMFS propose to remove the phrase “without reference to possible economic or other impacts of such determination” from their regulations regarding the listing or delisting of species. This would allow them to evaluate, and make public, the economic impact of classifications.

The third rule addresses interagency cooperation, specifically dealing with instances where USFWS and NMFS enter into consultation with other federal agencies or must provide a biological opinion. This rule could impact the process for permitting projects, adopting management plans on federal lands, or any other instance where a federal agency is taking action that may impact threatened or endangered species.

National Environmental Policy Act Reform

In early 2020, the President announced long-expected proposed administrative changes to the National Environmental Policy Act (NEPA), issuing a notice of proposed rulemaking (NPRM) titled “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act.”

Broadly speaking, the proposed rule intends to promote a more efficient and timely NEPA process, although not necessarily change outcomes with respect to required mitigation or other concessions sought by the federal agencies for the approval of permits. Furthermore, the proposed rule among other things intends to codify earlier laws and regulations made by Congress via a variety of bills or prior administrative actions, so it is unclear how much of a practical impact this new rule, once finalized, will have.

Predictably, there is outrage among some for the so-called gutting of NEPA, while others praise the Administration for attempting to reform an onerous federal process. It is believed the changes could have significant impacts for large projects that may not now have to consider “cumulative” impacts, but for many routine projects, “simplify[ing] the definition of environmental ‘effects’ and clarify[ing] that effects must be



reasonably foreseeable and require a reasonably close causal relationship to the proposed action” may not change much. It is also expected that any finalized rule will be challenged in the courts, so it is unclear as to when its impact may be realized.

Following is a summary of the proposed rule, as provided by the Council on Environmental Quality:

Modernize, Simplify and Accelerate the NEPA Process

- Establish presumptive time limits of two years for completion of environmental impact statements (EISs) and one year for completion of environmental assessments (EAs)
- Specify presumptive page limits
- Require joint schedules, a single EIS, and a single record of decision (ROD), where appropriate, for EISs involving multiple agencies
- Strengthen the role of the lead agency and require senior agency officials to timely resolve disputes to avoid delays
- Promote use of modern technologies for information sharing and public outreach

Clarify Terms, Application and Scope of NEPA Review

- Provide direction regarding the threshold consideration of whether NEPA applies to a particular action
- Require earlier solicitation of input from the public to ensure informed decision-making by Federal agencies
- Require comments to be specific and timely to ensure appropriate consideration
- Require agencies to summarize alternatives, analyses, and information submitted by commenters and to certify consideration of submitted information in the ROD
- Simplify the definition of environmental “effects” and clarify that effects must be reasonably foreseeable and have a reasonably close causal relationship to the proposed action
- State that analysis of cumulative effects is not required under NEPA
- Clarify that “major Federal action” does not include non-discretionary decisions and non-Federal projects (those with minimal Federal funding or involvement)
- Clarify that “reasonable alternatives” requiring consideration must be technically and economically feasible

Enhance Coordination with States, Tribes, and Localities

- Reduce duplication by facilitating use of documents required by other statutes or prepared by State, Tribal, and local agencies to comply with NEPA
- Ensure appropriate consultation with affected Tribal governments and agencies
- Eliminate the provisions in the current regulations that limit Tribal interest to reservations

Reduce Unnecessary Burdens, Delays

- Facilitate use of efficient reviews (categorical exclusions (CEs), environmental assessments)
- Allow agencies to establish procedures for adopting other agencies’ CEs

POSITION: *Support* efforts to streamline the Endangered Species Act and National Environmental Policy Act and increase cooperation with state and local authorities.



FEDERAL ISSUE: Transportation Authorization and Infrastructure Investment

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In January 2020, House Democrats unveiled an ambitious and extensive infrastructure investment proposal entitled, *Moving America and the Environment Forward*. The \$760 billion proposal – to be spent over five years – would dramatically increase federal spending on a host of infrastructure categories, including the nation’s roads, bridges, transit systems, railways, airports, ports, inland waterways, wastewater and drinking water systems, brownfields, and broadband. Meanwhile, Speaker Nancy Pelosi (D-CA) indicated additional components for housing and education infrastructure, including school construction, will be added to the proposal before moving the legislation in the House this year.

However, in many ways, the package is simply an amalgamation of several bills that could (or should) move on their own, including a transportation reauthorization (the next iteration of the FAST Act, the existing \$305 billion, five-year transportation package that expires September 30, 2020), and a Water Resources Development Act (WRDA) reauthorization (which many hope to reauthorize in 2020), among other items.

Not only are House Democrats aiming to show they can legislate while impeaching President Trump, but this is also a redux of infrastructure discussions that have occurred over the past several years. The proposal also seeks to focus attention on climate change, adding climate-focused or resilience elements to most items to ultimately attempt to meet many of the goals of the Green New Deal.

To put the total price tag of the House Democratic plan in perspective, you may recall that the American Recovery and Reinvestment Act (ARRA, more commonly known as the Stimulus package) ended up as a \$787 billion bill. Many do not recall, however, that more than one-third of the total cost of that bill was for tax cuts (\$288 billion), while only \$111 billion was for infrastructure and science and nearly ten percent of that amount was for broadband.

Moving America and the Environment Forward

At this point, the bill is merely a framework; there is no legislative language to scrutinize, making it more difficult to provide specific details outside of the 19-page framework leadership has released. House leaders believe they may be able to get 70 Republican votes on the House floor in favor of the measure should it come up for a vote this spring or summer. Following are the items included in the framework released by the House.

- Modern Highways & Highway Safety Investment — \$329 Billion
- Transit Investment — \$105 Billion
- Rail Investment — \$55 Billion
- Airport Investments — \$30 Billion
- Clean Water & Wastewater Infrastructure — \$50.5 Billion
- Drinking Water — \$25.4 Billion
- Water Infrastructure — \$10 Billion
- Harbor Infrastructure — \$19.7 Billion
- Brownfield Restoration — \$2.7 Billion
- Clean Energy — \$34.3 Billion
- Broadband & Communications — \$86 Billion
- Public Safety Communications — \$12 Billion



Financing the House Plan

Recently, the House Ways and Means Committee held a hearing entitled “Paving the Way for Funding and Financing Infrastructure Investments” in which Members discussed various funding mechanisms for infrastructure projects. Although this hearing was not specifically on financing the House Democratic infrastructure plan, clearly the Committee discussed broadly how Congress can generate revenue to fund the \$760 billion proposal.

Members on both sides of the dais agreed on the need to increase investment in infrastructure. However, they did not display bipartisan agreement on how exactly to do that. Democratic members and panel witnesses emphasized the need to raise the federal gas tax — noting that it has not been increased since 1993 — while Republican members argued against the idea, noting that many states have raised their own gas taxes in recent years. Some Republicans, however, have suggested we transition from the gas tax to a vehicle miles traveled fee in order to generate revenue.

GOP lawmakers also displayed frustration regarding the electric vehicle tax credit, maintaining that it does not help lower-income individuals who are also left to pay more in taxes through the gas tax. Meanwhile, Democrats stressed the need to consider climate change and include resiliency components when funding major infrastructure projects.

Senate Transportation Authorization Proposal

You may recall that last summer, the Senate Environment and Public Works Committee took Congress’ first formal step towards more traditionally reauthorizing surface transportation programs from 2020 to 2025 after the existing FAST Act expires. At the time, the Committee approved the America’s Transportation Infrastructure Act (ATIA) of 2019, which proposed to increase outlays from the HTF by 27 percent above current levels to a five-year funding level of \$287 billion. Under the bill, like recent surface transportation authorizations, more than 90 percent of the funding would be distributed to states by formula.

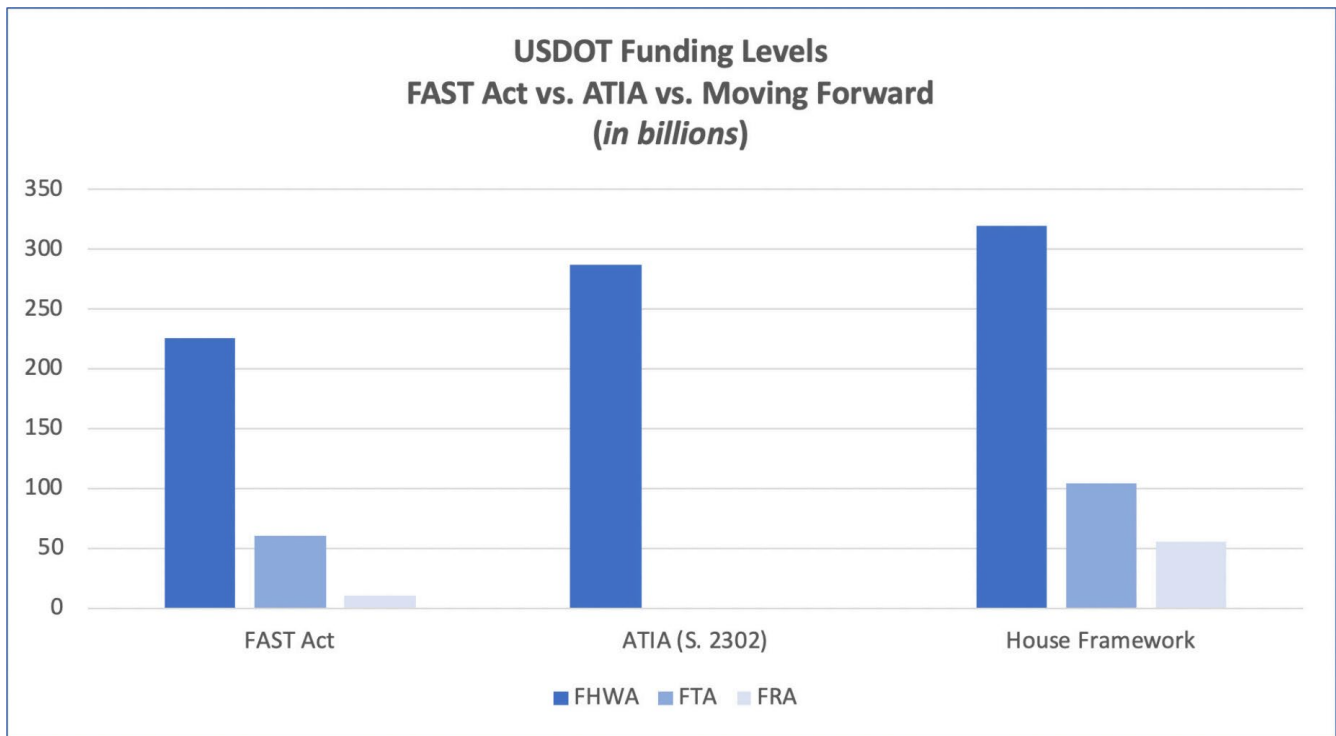
Given the level of funding proposed, the bill did still provide for several new, increased, or improved local grant funding opportunities, while also focusing on resiliency and continued efforts to streamline federal permitting requirements.

Like the House proposal, the Senate bill did not include revenue-raising provisions, which are necessary but must come from the Senate Finance Committee. It also did not include transit provisions developed by the Senate Banking Committee, nor other portions from the Senate Commerce Committee.



Overall Transportation Funding

For comparison, following is how the House and Senate bills compare with the FAST Act in terms of how much transportation funding is proposed.



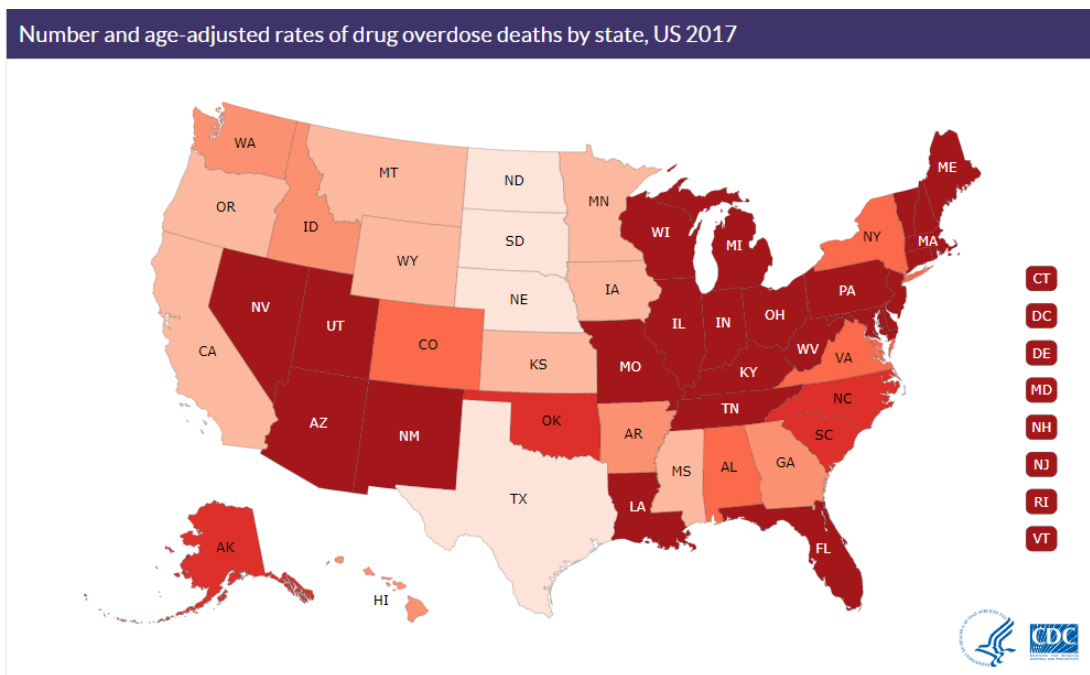
POSITION: *Monitor* proposed changes to federal highway programs. *Support* the passage of a long-term surface transportation reauthorization bill. *Support* new federal investment in infrastructure. *Support* all opportunities to secure funding for Charlotte County’s infrastructure priorities.



FEDERAL ISSUE: Opioid Addiction

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Opioids are a class of drugs made from opium, as well as synthetic or semi-synthetic drugs that resemble these opium-based drugs. Many opioids are available by prescription. Examples include oxycodone, codeine, morphine, and fentanyl. Heroin is an opioid that is illegal. These drugs are often referred to as narcotics.

70,237 drug overdose deaths occurred in the United States in 2017. Of those, over 47,000 people died of opioid overdoses. The below map from the Centers for Disease Control shows total overdose death rates by state. Ohio, Kentucky, West Virginia, the District of Columbia and Pennsylvania have highest death rates in the country, yet states with statistically significant increases in drug overdose death rates from 2016 to 2017 include Florida. For 2017, Florida has the 17th highest opioid related death rate among states as calculated by the CDC.



Legend

- 6.9 to 11.0
- 11.1 to 13.5
- 13.6 to 16.0
- 16.1 to 18.5
- 18.6 to 21.0
- 21.1 to 57.0

Congress has taken several major steps on opioid addiction. First was the Comprehensive Addiction and Recovery Act (CARA) passed in 2016. This bill authorized a variety of activities across many federal agencies to combat opioid addiction. This includes pharmaceutical research and development, law enforcement tools,



addiction recovery programs, and the like. However, CARA does not provide any funding for these activities, leaving the funding levels for each of the authorized activities subject to annual appropriations.

The 21st Century Cures Act, passed in 2016, also addresses opioid abuse. Section 1003 of the bill provides \$1 billion to the states to address opioid abuse. The \$1 billion is to be provided over a two-year period, and the first \$500 million was appropriated in the FY 2017 Continuing Resolution in December 2016. Florida received just over \$27.1 million through the first allocation of funding. During a recent Senate Health, Education, Labor and Pensions (HELP) Committee hearing regarding the implementation of the 21st Century Cures Act, the Administration stated that they plan to continue to allocate opioid epidemic funding based on a state's population, rather than considering need. This will provide more funding to Florida as a high-population state.

In October of 2017, President Trump declared the opioid crisis a national public health emergency. Public health emergencies are typically reserved for outbreaks of infectious diseases and provide a narrow focus. The public health emergency declaration falls short of the national emergency declaration recommended by the President's Commission on Combating Drug Addiction and the Opioid Crisis. No additional federal funds are provided through the declaration and it provided few tangible, on the ground benefits.

In addition to the public health emergency declaration, the President announced a new anti-drug advertising campaign and emphasized several other ongoing efforts, such as a public-private partnership through the National Institute of Health to develop safer pain treatments. He also stated that the administration would be looking at waiving some inpatient treatment Medicaid restrictions, but did not commit any additional dollars to the effort or outline any details about the waivers.

The 115th Congress pursued several avenues for addressing the opioid crisis, ultimately passing the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, or the SUPPORT for Patients and Communities Act in late 2018. All parties agree that this legislation is simply a first step in addressing the crisis and will not solve the problem on its own. The bill addresses sober living homes, in part by making it illegal to receive a kickback or payment for enrolling someone in a sober home. This does not comprehensively address the issue but is a step in the right direction. The bill also has a significant impact on increasing Medicaid coverage for substance use disorders. The bill temporarily allows states to use federal Medicaid funds for coverage of institutional treatment of all substance abuse disorders for up to 30 days. Currently, federal law prohibits the use of Medicaid funds for treatment in facilities with more than 16 beds. This should assist those in need to be able to access care and enable facilities to increase the number of treatment beds they offer. The bill will also require providers to check prescription drug monitoring databases (PDMP) prior to prescribing a controlled substance and facilitate access to PDMPs for state Medicaid agencies, Medicaid providers and managed care plans. Finally, the bill creates several small grant programs for providers to support implementation of voluntary programs for care and treatment of individuals after a drug overdose, to support treatment for individuals with a substance abuse disorder at comprehensive opioid recovery centers, and for hospitals and emergency departments to develop, implement, enhance, or study alternatives to opioids for pain management. Each of these programs is authorized at \$10 million per year for the next five years.

State Opioid Response grant program

Most recently, the state of Florida has received \$126 million over two fiscal years (FY 2019 and 2020) through the State Opioid Response (SOR) grant program from the Department of Health and Human Services. While the program technically expires at the end of Fiscal Year 2020, Congress continues to fund it, as evidenced by the \$1.5 billion allocation in the appropriations bills that were passed in late 2020. SOR is a popular program because now it can be used for the full continuum of services for substance use disorders.



In the future, opioid lawsuits could add another factor to Congress' calculation of how much SOR money states need going forward. Many states are likely to try to make the case that they should receive a significant amount of settlement or lawsuit money in the future.

POSITION: **Support** appropriations activities to fund programs in CARA and the 21st Century Cures Act. **Monitor** HHS for guidance regarding the allocation of 21st Century Cures state formula funding. **Support** attempts by entities within Charlotte County to secure funding to fight opioid addiction.



FEDERAL ISSUE: Assessment of Fair Housing Rule

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: In January 2020, the Department of Housing and Urban Development (HUD) published its proposed Affirmatively Furthering Fair Housing (AFFH) rule, which is meant to offer guidance to states and local governments on implementing affordable housing and rolls back a 2015 rule that was perceived as being burdensome. Specifically, the new proposed rule changes the definition of AFFH, develops metrics to allow comparison of jurisdictions, and requires jurisdictions to certify that they will achieve fair housing goals by identifying actions they will take over the following five years, all while not having to use a HUD-prescribed computer assessment tool to determine compliance with AFFH.

Background

In 2015, the Obama Administration published a final rule entitled Affirmatively Furthering Fair Housing (AFFH), which aimed to provide HUD program participants with new guidance to help them meet the requirements of the Fair Housing Act. This rule however, was seen as overly prescriptive and burdensome by some stakeholders and did not do anything to assist with the overall inadequate supply of affordable housing, instead of diverting significant time and effort to data collection and compliance. Additionally, there were concerns that the rule could make local governments and housing authorities more vulnerable to third-party lawsuits. The rule required stakeholders to use an Assessment Tool, created by HUD, to conduct and submit an Assessment of Fair Housing to HUD, however, these tools proved difficult to develop and the Trump Administration subsequently withdrew the tool for local governments.

During the development of the first round of Assessments of Fair Housing, HUD found the tool to be labor-intensive for both HUD and local governments and to produce incomplete or inaccurate reports. The overall rule was to be implemented in two phases, with the first phase impacting communities that receive at least \$500,000 in CDBG funding and the second phase, following five years later, for those communities receiving less than \$500,000 in CDBG funds a year.

Proposed Rule

In January, HUD proposed a rule that rewrites a provision in the Fair Housing Act that requires HUD to affirmatively further fair housing and changes its definition “advancing fair housing choice within the program participant’s control or influence.” The proposed rule does away with reporting regulations contained in the 2015 rule and would require program participants to examine their own circumstances to determine how to address their fair housing performance. This would require jurisdictions to commit, in the certification, to taking steps to address obstacles to fair housing choice, allowing jurisdictions to make fair housing commitments that are perceived to be best suited for their community. Further, public housing agencies would be required to participate in the development of the certification through their participation in the planning process. For HUD to ensure that jurisdictions are taking actions on AFFH, HUD proposes a system that would use publicly available metrics to score and rank jurisdictions that receive Community Block Grant funding and that submit a consolidated plan that year.

Among other things, the proposed rule would:

- Determine housing discrimination based on whether there have been legal findings of civil rights violations and whether there is an adequate supply of affordable and quality housing
- Eliminate the assessment tool used to map racial segregation
- Require each jurisdiction submit three goals it plans to reach to overcome obstacles to fair housing choice



- Rank jurisdictions based on housing costs and market rates
- Give top-performing jurisdictions priority for federal housing grants
 - HUD is proposing to reward outstanding AFFH performers through advantages in grant competitions. While many funding programs are based on a statutory formula, there are 32 numerous grant programs, including Choice Neighborhood Planning and Implementation Grants, Jobs-Plus, lead-based paint reduction programs, ROSS and FSS programs, and the Fair Housing Initiative Program, where it may be appropriate to award points in the competition to applicants that are within outstanding AFFH jurisdictions.

POSITION: *Monitor* implementation of the Department of Housing and Urban Development's Assessment of Fair Housing Rule.



FEDERAL ISSUE: Federal Funding for Mitigation and Resilience

BACKGROUND; HOW IT MAY AFFECT CHARLOTTE COUNTY: Apart from funding for public assistance generally provided by Congress through the Federal Emergency Management Agency (FEMA) directly after storms, Congress has developed two other common funding streams to help address long-term mitigation and resilience projects. They are FEMA's newly developed Building Resilient Infrastructure and Communities (BRIC) and the Department of Housing and Urban Development's (HUD) Community Development Block Grant Mitigation program (CDBG-MIT).

Building Resilient Infrastructure and Communities

The Disaster Recovery Reform Act (DRRA) from 2018 included reforms to federal disaster programs and amended many sections of the Robert T. Stafford Disaster Relief and Emergency Act including Section 203, Pre-Disaster Mitigation. Among others, Congress created BRIC which will be funded through the Disaster Relief Fund as a six percent set aside from estimated disaster grant expenditures.

BRIC expands the concepts of pre-disaster mitigation by prioritizing the building of resilient infrastructure to make communities better prepared to withstand the next disaster. It will provide incentives for states to work with local communities to identify their most pressing hazards and encourage innovative solutions for building a culture of preparedness. BRIC is expected to favor risk-based approaches and will emphasize projects that build a community's capability and capacity to manage emergencies and buy down the impacts and risk from future disasters. BRIC is likely to favor projects that have whole community partnerships and look at the bigger picture.

FEMA estimates that the program will be funded at \$300 million to \$500 million per year, with significantly greater amounts of money in years that have a high number of catastrophic disaster obligations. The federal/nonfederal match is expected to be 75/25, with possible exceptions for smaller, low-income communities.

The rules for the BRIC program are expected to be finalized sometime in early 2020.

Community Development Block Grant Mitigation program

Congress created the CDBG-MIT program after disasters of 2016 and 2017, leaving much of the implementation up to HUD and individual states to ultimately disburse. In early 2018, HUD notified Florida that it would receive more than \$633 million in CDBG-MIT money for disaster events that occurred during 2016 and 2017. In the middle of 2019, HUD finally released a Federal Register notice to formally disburse the funds to the states who are eligible, once states submitted their individual State Action Plans. Florida submitted the second iteration of its State Action Plan to HUD in February 2020. HUD should have sixty days to either approve or disprove of the plan, after which Florida should be able to finally access and spend the funding.

POSITION: **Monitor** development and implementation of the Federal Emergency Management Agency's Building Resilient Infrastructure and Communities program and the Housing and Urban Development's Community Development Block Grant Mitigation program. **Support** Charlotte County's efforts to secure funding from each program.