The Honorable Tom Leek
Chair, Appropriations Committee
221 The Capitol
402 South Monroe Street
Tallahassee, FL 32399

RE: Opposition to the Extension of the Hurricane Restoration Reimbursement Grant Program

Dear Chair Leek,

On behalf of the undersigned, we write to respectfully and strongly oppose Section 118 of PCB APC 24-01 and Section 57 of PCB APC 24-02, in particular, its extension of the Hurricane Restoration Reimbursement Grant Program into FY24-25 which was initially created during the December 2022 special session by Senate Bill-4A.

The Hurricane Restoration Reimbursement Grant Program (the "Program") provides grants to eligible private beachfront property owners to carry out dredge and fill projects ("sand placement"), as well as temporary and permanent armoring projects to protect their private properties. The Program's funding of private coastal armoring is an unconstitutional expenditure of public funds without serving a public purpose, and must be ended immediately.

Under the Florida Constitution, Article VII, Section 10, and Florida Supreme Court caselaw, the state and its political subdivisions are prohibited from using the state's taxing power or credit to aid a private entity or person unless the obligation serves a paramount public purpose, and any benefits to a private party must be merely incidental. (*See*, e.g., Fl. Const. Art. VII, Section 10; *Miccosukee Tribe v. S. Fla. Water Mgmt*, 48 So. 3d 811 (Fla. 2010); *Jackson-Shaw Company, Etc. v. Jacksonville Aviation Authority, Etc.*, 8 So.3d 1076 (Fla. 2008)). Even where there is no proposed public indebtedness, neither the State nor a political subdivision "may expend public funds for or participate at all in a project that is not of some substantial benefit to the public." (*Jackson-Shaw Company*, citing *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875, 886 (Fla. 1980)).

SB-4A created the Program within the Florida Department of Environmental Protection for the purported purpose of "providing financial assistance to mitigate coastal beach erosion *for coastal homeowners whose property* was significantly impacted by Hurricane Ian or Hurricane Nicole in 2022." (Emphasis added). Environmental organizations previously voiced concerns over the Program.[1] SB-4A appropriated $50 million of taxpayer funds from the State's General Revenue Fund, and eligible beachfront property owners may receive up to $150,000 per property for eligible projects. Section 143 of SB2500 and Section 61 of SB2502 extended the program through July 1, 2024 and increased the available funding to up to $300,000 per property for

eligible projects. Now, the House is proposing to increase available funding up to $600,000 per property for eligible projects. Any purported benefits of the Program-funded coastal armoring are *solely to private property owners*. Conversely, the beachgoing public and Florida's coastal public trust resources will be *significantly harmed* by taxpayer-funded coastal armoring.

Shoreline armoring only protects upland private property. It does not protect the public beach or mitigate public beach erosion. In fact, shoreline armoring adversely impacts beaches and public trust tidelands by exacerbating erosion. (Thomas K. Ruppert, Eroding Long-Term Prospects for Florida's Beaches: Florida's Coastal Construction Control Line Program Coastal Construction Control Line Program, Sea Grant Law and Policy Journal, Vol. 1, No. 1, p. 70 (June, 2008), *available at*: https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1330&context=facultypub) It also results in "coastal squeeze," as sea levels rise. Coastal squeeze refers to the narrowing of beach that occurs when the landward edge of a beach is fixed, for example with a seawall, as the water line migrates landward with sea level rise. This eventually means less, or even, *no* publicly accessible beach in the long run. (Charles Lester & Mary Matella, Managing the Coastal Squeeze: Resilience Planning for Shoreline Residential Development, Stanford Environmental Law Journal, Vol. 36:23, p. 25, *available at*: https://law.stanford.edu/wp-content/uploads/2017/11/lester.pdf ("Beaches, dunes, and wetlands that cannot migrate inland because of seawalls or other barriers will eventually be squeezed out and lost, caught between rising tides and immovable shoreline structures.") This also means less, or even, no coastal or sandy beach habitat for rare and endangered birds, nesting sea turtles, and wildlife.

Accordingly, this Program's publicly funded coastal armoring will adversely impact the public's rights to recreate on Florida's beaches, as they customarily have, and pursuant to the Florida Constitution, Article 10, Section 11, codifying the public trust doctrine.[2] Further, SB-4A's taxpayer-funded armoring will, at least initially, be located on private property, and be owned by private landowners; however, as the sea level rises, it's possible that the armoring may eventually encroach upon the public trust tidelands- again, interfering with the public's public trust rights. These adverse impacts are all for the protection of upland private property, at the taxpayers' and general public's expense, as well as the expense of Florida's shorelines.

In short, granting state funds to private property owners to construct temporary and permanent coastal armoring violates the rule against using public funds for nonpublic purposes. Under SB-4A, the Hurricane Restoration Reimbursement Grant Program was originally set to expire July 1, 2023, or earlier, if the $50 million of taxpayer funds ran out before then. However, SB2500 and SB2502 extended the Program through the 2023-2024 year, and the proposed budget and implementing language in the House would extend this program through the 2024-2025 fiscal year, and increase the available funding for harmful coastal armoring twofold. While the budget would also permit local governments and counties to access this funding, it does not preclude private property owners from accessing increased grant funds.

Immediate action is needed to stop this unconstitutional program. Florida's beaches are a fixture in the lives of Floridians, and attract residents and visitors alike. They're one of the state's most economically valuable natural resources, and the number one attraction drawing tourists.[3] Florida's beaches are put at an unacceptable risk by this private property-serving Program. On behalf of the undersigned, we implore you to strike Section 118 of PCB APC 24-01 and Section 57 of PCB APC 24-02, effectively sunsetting this unconstitutional program at the end of fiscal year 2023-2024.

Sincerely,

Emma Haydocy
Florida Policy Manager
Surfrider Foundation

Ragan Whitlock
Staff Attorney
Center for Biological Diversity

Stacey Gallagher
Policy Coordinator
Sea Turtle Conservancy

Eve Samples
Executive Director
Friends of the Everglades

CC:
Speaker Paul Renner
Secretary Shawn Hamilton, Department of Environmental Protection
Deputy Director Lainie Edwards, Office of Resilience and Coastal Protection

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[1] See the attached letter to Florida Department of Environmental Protection Secretary Hamilton (March 7, 2023).
[2] In Florida, the public has the right to access all beaches seaward of the mean high tide line, based on the public trust doctrine, as codified in the Florida Constitution, Article 10, Section 11.
[3] *See* "Florida's Tourism Continues To Grow in Q1 2022," Press Release From Office of Florida Governor Ron DeSantis, May 13, 2022 (Florida welcomed 36 million visitors in Q1 of 2022 alone), available at: https://www.flgov.com/2022/05/13/florida-tourism-continues-to-grow-in-q1-2022/; See *Economic Evaluation of Florida's Investment in Beaches*, Florida Office of Economic and Demographic Research, available at: http://edr.state.fl.us/content/returnoninvestment/beachreport.pdfp, 8-9.
