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January XX, 2018

Senator Greg Steube
Chair, Committee on Judiciary
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Senator, Lizbeth Benacquisto
Vice Chair, Committee on Judiciary
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: Senate Bill 804 and House Bill 631 Language re Customary Use

Dear Senators Steube and Benacquisto,

We are writing to you today in opposition of the SB 804 and HB 631. This legislation threatens to interfere with the public's right to recreationally use beach areas that have been gained through customary use. It also could undermine local beach restoration programs across the State of Florida.

Florida's beaches are essential to both economic development and tourism and provide critical nesting habitat to protected sea turtles. Indian River County has over 20 miles of beautiful beaches along the Atlantic Ocean. Over the years, Indian River County has partnered with the State of Florida on various beach projects using taxpayer funds. These beach restoration projects not only provide a recreational benefit to the public, but they also provide a financial advantage to private property owners. As we witnessed with Hurricanes Matthew and Irma, a healthy beach restoration program saves valuable infrastructure from being impacted by pounding waves and the erosion of sand.

This symbiotic relationship, however, is being threatened by SB 804 and HB 631. Florida law currently has a balance to protect important private property rights with those of the public. The Florida Supreme Court has held that customary use of Florida dry sand beaches ("Customary Use Doctrine") is established where recreational use of the sandy area adjacent to mean high tide has been ancient, reasonable, without interruption and free from dispute. The Florida judicial branch has already determined that the Customary Use Doctrine requires courts to make a determination in certain circumstances.

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This legislation, however, would require the court to make a determination in *every* circumstance. What happens when there is no private fee owner of the sandy beach area involved in the case? Should local governments and the State of Florida continue to use tax dollar funds on beach restoration projects for the public's benefit knowing that the public access could be denied as soon as an impacted parcel is sold to a private fee holder? What happens when a private property owner restricts permitted sea turtle monitors access to a section of beach that has had a recent nest? The existence of customary use with respect to a particular section of beach is fact-specific and cannot be established by legislation.

Sincerely,

Peter D. O'Bryan, Chairman
Indian River County Board of County Commissioners

Sincerely,

Mike Ochsner, Chairman
Beach Advisory Committee

Cc: Senator Debbie Mayfield
Representative Grall
Indian River County Board of County Commissioners
Jason Brown, County Administrator
Dylan Reingold, County Attorney