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Board of Commissioners

Gulf County, Florida

Testimony before the U.S. House of Representatives

Fisheries, Wildlife, Oceans and Insular Affairs Subcommittee

Committee on Natural Resources

Legislative Hearing on H.R.4222

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Good afternoon, Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee, my name is Warren Yeager, Jr., and I serve as a Commissioner on the Gulf County (Florida) Board of Commissioners. Thank you for the opportunity to appear before you today to discuss H.R.4222, a bill to correct the boundaries of the John H. Chafee Coastal Barrier Resources System (CBRS) units in Florida, and for other purposes.

Gulf County, Florida is a small county with a population of 16,100, located in Florida's Panhandle. Because we are a small county all land use decisions impact our ability to raise revenue, which has a significant impact on our budget.

Gulf County Supports H.R. 4222

I am here today to testify in support of H.R.4222, a very narrowly focused bill that in our opinion corrects the CBRS by removing only the lands on Cape San Blas (CBRS Unit P-30) that should never have been placed in the CBRS in the first place. H.R.4222 would remove only the 942.6 acres of developed and planned development properties out of a total of 2,431 fast land acres in CBRS Unit P-30 and none out of CBRS Unit FL-92 (Attachment 1 – 2013 GIS Map). The total of 44,010 acres of aquatic habitat would remain in the CBRS untouched as well.

H.R. 4222 only removes a small part of Units P-30 and FL-92 from CBRS, totaling less than 2.5% of the total Gulf County CBRS footprint, by correctly removing the 942.6 acres on Cape San Blas (CBRS Unit P-30) that were already developed or planned to be developed prior to designation in 1982, and leaving the remaining 46,000+ acres within the units.

The reasons Gulf County is interested in the enactment of H.R. 4222 are threefold. First, after spending a substantial amount of local and State of Florida tax dollars (\$21 million) on a 2008 state and federally permitted beach habitat and storm surge berms rebuilding project on Cape San Blas CBRS Unit P-30, Hurricane Gustav severely damaged the 70% completed restoration project late in 2008. Federal emergency funding in the amount of approximately \$15 million was secured through the Federal Emergency Management Agency (FEMA), yet the U.S. Fish and Wildlife Service (USFWS) vetoed this funding, on the basis that it did not meet the requirements of the exceptions outlined for projects within the CBRS (44 CFR 206), even though in the past they had permitted similar requests within Unit P-30, including the issuance of a biological opinion on a similar project under the federal Endangered Species Act (ESA) in 2007.

If federal assistance for storm damage to the beaches of Unit P-30 do not currently meet any of the exceptions allowed under the CBRS rules (44 CFR 206), then we have no choice but to support H.R. 4222 to remove the 942.6 acres of developed or planned to be developed fast lands of Unit P-30 in order to access these emergency funds in the future. The habitats created by these beach restoration (and emergency storm rehabilitation) projects are extremely important to

endangered species of turtles, shorebirds, and beach mice, and to our County's ecotourism economy, which would not exist if these habitats were left unmanaged and in a state of disrepair.

Second, these developed or planned to be developed fast lands in CBRS Unit P-30 should never have been included in CBRS in the first place, as the backbone public infrastructure (i.e. roads, power, water, telephone, and Florida Department of Health allowed septic systems) and subdivision development plans were in existence, including about 100 housing units, at the time Unit P-30 was placed into CBRS, a clear contradiction with CBRS conditions for inclusion.

Finally, we believe our residents who own homes in the subdivision developments on CBRS Unit P-30 that existed at the time of CBRS inclusion should be able to participate and benefit from the same federal flood insurance and emergency beach restoration programs as their neighbors in Franklin County who live on lands that were correctly NOT included in the CBRS, and especially in the adjacent CBRS Unit FL-92 in Gulf County where similar lands that were developed or planned to be developed existed and were correctly excluded from the CBRS.

Inconsistent Application of CBRS Exclusions Prohibit FEMA Funding

In 2008, a 7.5 mile permitted beach and habitat maintenance project, "St. Joseph Peninsula Beach Restoration Project," was authorized under Florida Department of Environmental Protection (DEP) Permit Number 0266819-001-JC and the U.S. Army Corps of Engineers (USACE) Permit Number SAJ-2006-447 and consisted of: 1) the northern 1.6 mile "State Park Segment" located within the St. Joseph Peninsula State Park between DEP Monuments R-67 and R-74.8; and 2) the southern 5.9 mile "County Beach Segment" between DEP Monuments R-74.8 and R-105. The project was designed to withstand a 30-year storm return interval with storm surge elevation of approximately 6 feet, and to "mimic enhance, and restore natural stabilization systems" (i.e. beach and dune.) In March 2008, Gulf County had started work on beach maintenance using about \$21 million of local funding, after the community voted to issue bonds to fund the project.

The beach restoration project was under construction when Hurricane Gustav entered the Gulf of Mexico. The project was about 70% complete when Hurricane Gustav hit Gulf County. On October 27, 2008 a Declaration of "Public Assistance" and "Hazard Mitigation Grant Program" (DR-1806-FL) was issued the by Federal Emergency Management Agency (FEMA). Gulf County's beaches received extensive damage to approximately 4 miles of shoreline within the county-maintained portion of St. Joseph Peninsula Beach in Gulf County, Florida. The net result of this event was that the beach was effectively destroyed throughout much of the affected 4 miles of shoreline. As a County improved and maintained beach, FEMA worked with the County on a FEMA Project Worksheet for restoration of the beach following the Gustav event. The Worksheet, to repair storm-induced erosion, sand fencing and beach vegetation, and return the damaged facility (beach) to its pre-disaster condition, was submitted to FEMA along with an engineering study that determined that the beach could be restored with minimal adverse impact

on the natural ecosystem of the beach itself. On May 8, 2009 (Attachment 2 – May 8, 2009 FEMA Letter to USFWS), FEMA wrote to the USFWS stating that it determined that this project met the criteria for a CBRA exception under 44 CFR 206.347 (c) (4), nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems, in consultation with the USFWS as required by 44 CFR 206.348. USFWS indicated on May 27, 2009 that they did not concur with FEMA’s determination. However, in the USFWS response (Attachment 3 – May 27, 2009 USFWS Response to FEMA) the CBRS exception requested for CBRS Unit P-30 was not addressed nor referenced.

Furthermore, it should be noted that, as a result of Hurricane Ivan (in 2004), Gulf County received FEMA reimbursement for DR-1551, PW 20 for emergency berm work done within the same referenced CBRS Unit P-30. In a consultation letter from USFWS dated February 24, 2005 the USFWS states, “Section (6)(a)(6)(G) allows for nonstructural projects for shoreline stabilization systems.” The Service concurs in this letter that the proposed activities were consistent with CBRA policy (Attachment 4 – February 24, 2005 USFWS Letter).

Gulf County had also previously consulted with USFWS for work in CBRS Unit P-30. The St. Joseph Peninsula Erosion Control Project received a biological opinion from USFWS on May 17, 2007 and an amendment on July 18, 2007. In their letter USFWS states, “.....the Service determined that this level of anticipated take (from the project) is not likely to result in jeopardy to the piping plover species or destruction or adverse modification of its critical habitat.”

When Gustav hit in 2008, Gulf County went through the same process as above, but received a much different outcome. Not only did the USFWS veto FEMA participation with the restoration of the beach, it vetoed the project on our appeal to FEMA, even after a County-commissioned Cape San Blas biological report (Attachment 5 – Biological Report) determined that the effects of the project had actually improved habitat and numbers of shoreline species (endangered turtles, shorebirds, and beach mice).

The County is extremely concerned that if USFWS continues to determine that beach habitat restoration does not meet the exceptions for federal emergency funding established for such work in CBRS, they will not be able to keep this habitat protected and ecotourism to the County will diminish. The County’s interests are not to negatively impact the barrier peninsula; on the contrary, the County is interested in ensuring that future storms do not negatively impact the beach habitat the USFWS is interested in protecting or negatively impact residents who have already spent significant local funds to protect these beaches.

Portions of CBRS Unit P-30 Included in Error

Cape San Blas and Indian Peninsula (CBRS units P-30 and FL-92) in Gulf County, Florida were included in the CBRS by the Fish and Wildlife Service in 1982 and 1991 respectively. According to our records, these 2 CBRS units total over 47,000 acres. Cape San Blas (CBRS Unit P-30) consists of 2,431 acres of fast land and 43,010 acres of aquatic habitat. Indian

Peninsula (CBRS Unit FL-92) consists of 438 acres of fast land and 1,052 acres of aquatic habitat. However, in 1982, a full complement of infrastructure for each lot was already in place on Cape San Blas (CBRS Unit P30): FDOT-constructed roadway, water service since 1981, Florida Department of Health approved septic systems, power and telephone service since 1967.

In the case of Indian Peninsula (CBRS Unit FL-92), the Fish and Wildlife Service (FWS) excluded the most developed areas on Indian Peninsula in an effort to keep densities low for the CBRS designation. FWS maps show that the Service intentionally left the two most densely populated areas on the Indian Peninsula out of the CBRS. These areas are in the middle of the Peninsula, not on either end. In 1991, when the Peninsula was designated as an undevelopable coastal barrier under CBRS, a full complement of infrastructure was already in place for these lands: roadway, water, Florida Department of Health approved septic systems, power and telephone.

As we understand it, the intent of the undeveloped coastal barrier designation is to deter development on those landscapes. H.R.4222 would remove 942.6 acres from CBRS Unit P-30 that never should have been included in the CBRS since they were already developed or were planned (add the word “permitted” ?) to be developed at the time of their CBRS designation, and possessed a full complement of infrastructure that supported continued development. I’d like to re-emphasize in detail that in 1982 the following infrastructure was already in place to each lot on Cape San Blas (P-30): FDOT-constructed and paved roadway and connecting driveways for existing homes, water service, power and telephone service and availability of septic tank permits for sewage (Attachment 6 – 1983 aerial map). In 1991, when Indian Peninsula (CBRS Unit FL-92) was designated an undevelopable coastal barrier, the following infrastructure was also in place: roadway, water, power, telephone and availability of septic tank permits for sewage. In this case, the developed or planned to be developed fast lands were excluded from CBRS in Unit FL-92.

County Residents Unfairly Disadvantaged by CBRS

The County is supportive of a change to the CBRS footprint that corrects the unfair provision in CBRS that prevents homeowners within the CBRS Unit P-30 from purchasing federal flood insurance. Because of the CBRS prohibition on federal flood insurance for private inholdings, homeowners had been purchasing insurance through private sector insurers through 2002. But, in November 2002, FEMA designated Gulf County as a higher risk flood zone. Since FEMA’s 2002 determination, private sector insurers have stopped offering insurance in these areas, preventing many residents from obtaining flood insurance of any kind. However, in nearby Franklin County, St. George Island was originally (and correctly) excluded from the CBRS, yet it had the same basic infrastructure supporting developed or planned to be developed properties that Unit P-30 had in 1982. Franklin County residents can still get flood insurance and our residents cannot, which puts our residents at an unfair disadvantage by allowing no access to any flood insurance at all. Also, Franklin County has benefited from FEMA emergency funding in

the past as well for post-storm beach restoration projects while Gulf County has been denied access to the same emergency programs.

Our community on CBRS Unit P-30 has grown tremendously since 1982 when the Unit was placed into the CBRS. As a result of the existing backbone infrastructure in 1982, Cape San Blas (CBRS Unit P-30) has grown 10 fold --from 100 homes in 1982 to 1023 homes today. And, development on Indian Peninsula (CBRS Unit FL-92) has doubled from 89 homes in 1991 to 182 today. While the future growth in these established developments on CBRS Unit P-30 is minimal, existing homeowners in CBRS Unit P-30 deserve uniform treatment and should not be disadvantaged by inclusion in the CBRS and the inconsistent approach taken by USFWS in managing the program.

Removing these existing lands that are developed or planned to be developed from CBRS Unit P-30 will not increase density or growth in these areas – it will simply preserve the development that already exists. Three quarters of Cape San Blas will never be developed and will remain in the CBRS. The 942.6 acres removed from the CBRS by H.R. 4222 are already 100% subdivided and platted, and are already 75% built out. Gulf County has density restrictions that only allow for 2 units per acre on the St. Joseph Bay side of the peninsula and 3 units per acre on the Gulf of Mexico side. Gulf County has been good stewards of the land and environment and has made a choice to stay low-rise and low-density with rigid height restrictions because the environment is a draw for locals and tourists alike.

Under Florida law, all development must be consistent with the state-approved comprehensive plan (Chapter 163.3194 of the Florida Statutes). Currently, the adopted comprehensive plan of Gulf County allows for either 2 or 3 dwelling units per acre within the privately-held sections of the St. Joseph Peninsula, depending on the exact location of the subject property. This provision in the County's pre-existing land use regulations effectively means that approximately 95% of the existing parcels within the St. Joseph Peninsula are already built out to the maximum possible density allowed under the regulations. This limitation through the comprehensive plan was negotiated between the County and the State of Florida as a result of a 1992 challenge to the local comprehensive plan, and would require the approval of both the state land planning agency, as well as the courts, to change.

Conclusion

Gulf County believes the lands H.R. 4222 would remove from the CBRS should never have been included in the CBRS. H.R. 4222 does not remove the entire CBRS units from the system, but only makes a small correction, totaling less than 2.5% of the total Gulf County CBRS footprint, by correctly removing the 942.5 acres on Cape San Blas (CBRS Unit P-30) that were already developed prior to designation in 1982, and leaving the remaining 46,000+ acres within CBRS Units P-30 and FL-92. This correction will restore eligibility for FEMA disaster assistance and allow for County residents of the St. Joseph Peninsula Unit P-30 to protect the beach habitat

important to endangered and threatened species as well as have fair and equal access to federal flood insurance within this small developed area, all while leaving 97.5% of the existing CBRS acreage untouched. By removing these lands from CBRS Unit P-30, H.R. 4222 would also remove the costs, uncertainty and frustrations associated with the USFWS' inconsistent application of the CBRS rules and exceptions for FEMA funding to help repair future storm damage to our residents' investments in important beach habitat.

On behalf of Gulf County, Florida, I very much appreciate the opportunity to testify before the Subcommittee in support of H.R. 4222, and I would be happy to answer any questions you may have at this time.