



# ANALYSIS OF COASTAL BARRIER RESOURCES SYSTEM POLICIES AND REGULATIONS IN MONROE COUNTY, FLORIDA

**FINAL**

May 28, 2013

Prepared by  
Keith and Schnars, P.A.  
6500 North Andrews Avenue  
Fort Lauderdale, FL 33309

Prepared for  
Monroe County Growth Management Division  
2798 Overseas Highway, Suite 400  
Marathon FL 33050



**KEITH and SCHNARS, P.A.**

FLORIDA'S *Big* LOCAL FIRM

# Analysis of CBRS Policies and Regulations in Monroe County

## 1.0 PURPOSE AND SCOPE OF THIS REPORT

The protection and preservation of natural and water resources is a central tenet of the Monroe County Comprehensive Plan (Comprehensive Plan). The Comprehensive Plan recognizes the important linkage between these resources and the economic health of the County – the environment is the economy in the Keys. The County is also sensitive to the need for sustainable development and the protection of the private property rights of landowners.

In a coastal environment like Monroe County, good floodplain policy is an integral part of good comprehensive planning and sustainability. This is essential for public safety and the protection of coastal resources. In this regard, the Comprehensive Plan includes policies that restrict development in low lying coastal areas. Specifically, the Comprehensive Plan discourages the extension of utilities within Coastal Barrier Resources System (CBRS) System Units, and the Land Development Code (LDC) prohibits extension of utilities in CBRS System Units.

A policy debate and litigation over the electrification of No Name Key (most of which is in a CBRS System Unit) and extending wastewater lines in North Key Largo (to and through a CBRS System Unit) have engendered a controversy concerning CBRS policies and regulations for the entire County. In December 2012, the Board of County Commissioners (BOCC) directed County staff to engage Keith and Schnars, P.A. (as part of an existing Comprehensive Planning contract) to assist in evaluating these policies and regulations. In March 2013, after BOCC and public input, the County Growth Management Division developed a list of questions regarding CBRS policies and regulations. The County contracted with Keith and Schnars to review CBRS policies and regulations and to answer a specific set of questions on this issue (Appendix A).

The purpose of this Report is to: provide the results of the Keith and Schnars policy review; answer the above-mentioned questions; and recommend any necessary policy changes. The central policy issue can generally be summarized by the following over-arching question: Do the existing Comprehensive Plan CBRS policies and LDC regulations add any additional protection to land over and above those policies and code provisions that govern Tier I land? In other words, if the CBRS Comprehensive Plan policies and associated land development regulations were deleted, would CBRS System Units be less protected?

Keith and Schnars has completed the required analysis and answered the questions provided to the County staff.

Keith and Schnars has also provided recommended changes to the Comprehensive Plan CBRS policies and LDC (see Section 5.0).

## 2.0 OVERVIEW OF THE COASTAL BARRIER RESOURCES ACT OF 1982

In the 1970s and 1980s, Congress recognized that certain actions and programs of the federal government have historically subsidized and encouraged development on coastal barriers, resulting in the loss of natural resources; threats to human life, health, and property; and the expenditure of millions of tax dollars each year. To remove the federal incentive to develop these areas, Congress passed the Coastal Barrier Resources Act (CBRA) of 1982 which designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of the John H. Chafee Coastal Barrier Resources System, and made these areas ineligible for most new federal expenditures and financial assistance (USFWS 2013).

On November 1, 1990, the Coastal Barrier Improvement Act (CBIA) reauthorized the CBRA; expanded the CBRS to include undeveloped coastal barriers along the Florida Keys; and added a new category of coastal barriers to the CBRS called “otherwise protected areas” (OPAs), which are discussed in detail below. Appendix B includes a CBRA fact sheet prepared by the Federal Emergency Management Agency, and includes maps of CBRS units.

CBRA and its amendments do not directly prevent or regulate development, they only remove the federal incentive for development on designated coastal barriers. Therefore, individuals who choose to live and invest in these hazard-prone areas bear the full cost of development and rebuilding instead of passing it on to American taxpayers (USFWS 2013).

The CBRS consists of the undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and depicted on a series of maps entitled “John H. Chafee Coastal Barrier Resources System.” These maps are controlling and indicate which lands are affected by the CBRA. The maps are maintained by the Department of the Interior through the U.S. Fish and Wildlife Service (USFWS). Aside from three minor exceptions, only Congress has the authority to add or delete land from the CBRS and create new units. These exceptions include: (1) voluntary additions to the CBRS by property owners; (2) additions of excess

**KEY HIGHLIGHT:**  
CBRA does not restrict development by private owners or Monroe County; it only prohibits most types of federal expenditures in CBRS units.

# Analysis of CBRS Policies and Regulations in Monroe County

federal property to the CBRS; and (3) the CBRA 5-year review requirement that solely considers changes that have occurred to System Units by natural forces such as erosion and accretion. CBRA has been amended several times to replace certain maps with new maps containing modified boundaries (USFWS 2013).

## 2.1 CBRS SYSTEM UNITS AND OTHERWISE PROTECTED AREAS (OPAS)

The CBRS contains two types of units, System Units and Otherwise Protected Areas (OPAs). The County's definition in the LDC applies only to the 15 System Units; the County does not have policies or regulations for OPAs. OPAs are denoted with a "P" at the end of the unit number (e.g., FL-48P). **Table 1** lists the CBRS System Units and OPAs within Monroe County.

**System Units** are generally comprised of private lands that were relatively undeveloped at the time of their designation within the CBRS. The boundaries of these units are generally intended to follow geomorphic, development, or cultural features.

Most new federal expenditures and financial assistance, including federal flood insurance, are prohibited within System Units. Examples of prohibited Federal assistance within System Units include subsidies for road construction, channel dredging, and other coastal engineering projects. Federal monies can be spent within System Units for certain exempted activities, after consultation with the USFWS. Examples of such activities include emergency assistance, military activities essential to national security, exploration and extraction of energy resources, and maintenance of existing Federal navigational channels.

**KEY HIGHLIGHT:**  
System Units are mostly privately owned lands. OPAs are primarily government-owned parks and refuges.

Federal flood insurance is available within the CBRS if the subject structure was constructed (or permitted and under construction) before the CBRS unit's prohibition date (which is included in the USFWS' CBRA determination letter and shown on FEMA's Flood

Insurance Rate Maps). If an existing insured structure within the CBRS is substantially improved or damaged (i.e., over 50 percent of the structure's market value), the Federal flood insurance policy cannot be renewed (USFWS 2013).

**OPAs** are generally comprised of lands held by a qualified organization primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes.

**TABLE 1: CBRS Units in Monroe County**

System Unit Number	OPA Number	Unit Name	CBRS Acres in Unincorporated Monroe Co.
(1) FL-35		North Key Largo	4,621.4
	FL-35P	North Key Largo	*
	FL-36P	El Radabob Key	*
(2) FL-37		Rodriguez Key	314.14
(3) FL-39		Tavernier Key	87.49
(4) FL-40		Snake Creek	0
	FL-41P	Lignumvitae/ Shell Keys	*
	FL-42P	Long Key	*
(5) FL-43		Channel Key	14.31
(6) FL-44		Toms Harbor Keys	49.4
(7) FL-45		Deer/Long Point Keys	0
(8) FL-46		Boot Key	0
	FL-47P	Key Deer/ White Heron	*
	FL-48P	Bahia Honda Key	*
(9) FL-50		No Name Key	533.69
(10) FL-51		Newfound Harbor Keys	303.05
(11) FL-52		Little Knockemdown/ Torch Keys Complex	1,469.15
(12) FL-53		Budd Keys	106.96
(13) FL-54		Sugarloaf Sound	1,149.51
(14) FL-55		Saddlebunch Keys	1,151.76
(15) FL-57		Cow Key	110.37
	FL-59P	Fort Taylor	*
	FL-60P	Key West NWR	*
	FL-61P	Tortugas	*
<b>Total acres in unincorporated Monroe County</b>			<b>9,911.24</b>

\* These OPAs consist of National Wildlife Refuges, State Parks, National Parks and other areas that are preserved. Monroe County LDC does not include OPAs and therefore OPAs are not included in this analysis.

# Analysis of CBRS Policies and Regulations in Monroe County

The boundaries of these units are generally intended to coincide with the boundaries of conservation or recreation areas such as state parks and national wildlife refuges.

The only federal spending prohibition within OPAs is the prohibition on federal flood insurance. For new or substantially improved structures located within an OPA, Federal flood insurance may be available if written documentation is provided certifying that the structure is used in a manner consistent with the purposes for which the area is protected (e.g., a park visitors center) and the USFWS agrees with that assessment (USFWS 2013).

## 2.2 UNDEVELOPED COASTAL BARRIERS

The CBRA of 1982 defines an “undeveloped coastal barrier” as a depositional geologic feature that is subject to wave, tidal and wind energies; and protects landward aquatic habitats from direct wave attack. CBRA further defines a coastal barrier as all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets and nearshore waters, but only if such features and associated habitats contain few man-made structures and these structures, and people’s activity associated with them, do not significantly impede geomorphic and ecological processes.

**KEY HIGHLIGHT:**  
One of the criteria that DOI used for delineating CBRS units was relatively-undeveloped land...some CBRS units contain some development.

Section 2 of the Coastal Barrier Reauthorization Act of 2000 (P.L. 106-514) specifies that, at the time of the inclusion of a System Unit within the System, a coastal barrier area is considered undeveloped if (1) the density of development is less than one structure per five acres of land above mean high tide; and (2) there is not a full suite of existing infrastructure

consisting of a road with a reinforced road bed, wastewater disposal system, electric service, and fresh water supply to each lot or building site in the area.

**KEY HIGHLIGHT:**  
Monroe County does not have the authority to modify CBRS boundaries.

CBRA sought to include relatively undeveloped coastal barriers within the CBRS (i.e., those areas containing few man-made structures). Before CBRA was enacted in 1982, the Secretary of the

Interior was directed by the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) to map undeveloped coastal barriers for Congressional consideration. The definitions and delineation criteria that guided the Department of the Interior’s mapping efforts were published on August 16, 1982, in the Federal Register (Vol. 47, No. 158). The

Department of the Interior considered the density of structures and availability of infrastructure on the ground to evaluate development status. To be considered developed, the density of development on each coastal barrier area must have been more than one structure per five acres of land above mean high tide prior to its designation within the CBRS. In addition, a coastal barrier area was considered developed, even when there was less than one structure per five acres of land above mean high tide, if there was a full complement of infrastructure on the ground before designation. A full complement of infrastructure includes all of the following components for each lot or building site in the area: a road with a reinforced road bed, a wastewater disposal system, electric service, and a fresh water supply. The intent of the infrastructure criterion was to exclude areas where there was intensive private capitalization prior to its inclusion within the CBRS demonstrating a substantial on-the-ground commitment to complete the development.

In applying the density criterion, the USFWS generally considers the entire CBRS unit, not individual subdivisions. In cases where there are discrete segments of a coastal barrier unit (i.e., areas separated by inlets or by intervening areas that are otherwise protected or clearly developed), the density criterion is applied to each discrete segment (USFWS 2013).

## 3.0 SUMMARY OF EXISTING MONROE COUNTY CBRS POLICIES AND LAND DEVELOPMENT CODE

CBRS policies and LDC pertain to the 15 CBRS System Units only; the County does not have policies or regulations for OPAs.

The Comprehensive Plan identifies that Monroe County shall **discourage** private development in CBRS System Units (Objective 102.8); shall not create new access via new bridges, new causeways, new paved roads or new commercial marinas to or on units of the CBRS (Policy 102.8.2); and shall take efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS System Units (Policy 102.8.5).

The LDC **prohibits** the extension and expansion of specific types of public utilities to or through lands designated as a System Unit of the CBRS. Within the CBRS overlay district, the transmission and/or collection lines of the following types of public utilities are prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable. This prohibition does not preclude the maintenance and upgrading of existing public utilities in place on the effective date of the ordinance and shall not apply to wastewater nutrient reduction cluster systems (LDC Section 130-122).

# Analysis of CBRS Policies and Regulations in Monroe County

While the Comprehensive Plan “discourages” development<sup>1</sup> in CBRS System Units, the LDC prohibits such development – creating a potential internal inconsistency within the County’s planning policies and regulations. Section 163.3194(1)(b) F.S. requires that if there is a conflict between the Comprehensive Plan and the land development regulations, “...the provisions of the most recently adopted Comprehensive Plan...shall govern...”

Appendix C provides the specific language of salient parts of the Comprehensive Plan and the LDRs.

## 4.0 ANALYSIS OF CBRS LANDS

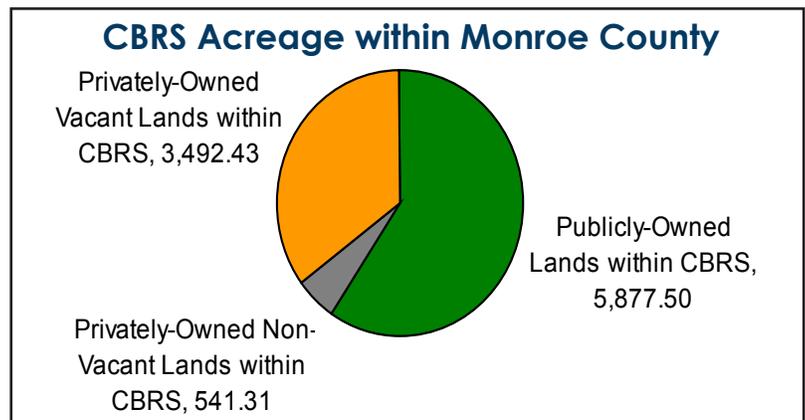
### 4.1 AMOUNT, LOCATION, ZONE, AND TIER OF CBRS LANDS

Within unincorporated Monroe County, there are 9,911.24 acres of land within CBRS System Units. Approximately two-thirds of this acreage is publicly-owned lands, a small fraction is privately-owned land that is already developed, and the remaining one-third is privately-owned vacant lands (Table 2 and Figure 1). The publicly-owned lands include parks, refuges, and other government-owned areas that are protected from development. Privately-owned non-vacant lands include parcels that already have residences or businesses built upon them; the risk of development of these lands has already passed. Privately-owned vacant parcels are the lands that are potentially subject to development, and are the focus of the analyses in this report.

**TABLE 2: Amount of Land within CBRS System Units in Unincorporated Monroe County**

CBRS Lands	Parcels in CBRS	Acres in CBRS	% of Total Acres in CBRS	Notes
Publicly-Owned Lands within CBRS	2,322	5,877.50	59.3%	Government-owned lands - not subject to development
Privately-Owned Non-Vacant Lands within CBRS	130	541.31	5.5%	Already developed
Privately-Owned Vacant Lands within CBRS	1,191	3,492.43	35.2%	Potentially subject to development - the focus of this report
All Lands within CBRS System Units (Unincorporated Monroe County)	3,643	9,911.24	100%	

**FIGURE 1: Illustration of the Amounts (Acres) of Publicly-Owned, Privately-Owned Non-Vacant, and Privately-Owned Non-Vacant Acreage within CBRS System Units**



<sup>1</sup> The definition of “development” in the LDRs (Section 101-1) pertains more to the clearing of and building on a parcel, and does not specifically identify extending infrastructure or utilities (water, sewer, roads, electric, cable, telephone) as development. Although the Comprehensive Plan Objective 102.8 does not explain what is meant by “discourage private development”, the underlying Policy 102.8.5 specifically identifies that Monroe County shall take efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone services to CBRS units. Similarly, the LDRs prohibit the extension and expansion of specific types of public utilities. Thus, in the context of CBRS policies and LDRs, “development” does include roads and utilities.

# Analysis of CBRS Policies and Regulations in Monroe County

Some of the privately-owned vacant lands are within defined subdivisions (5%), but the majority is outside subdivisions (95%). **Table 3** identifies the amount of CBRS land in each subdivision.

**TABLE 3: Subdivisions Containing Privately-Owned Vacant Lands within CBRS System Units**

Subdivision Name	Acres in CBRS	Parcels in CBRS	Location	Land Use District(s)
Largo Beach	1.23	11	Key Largo	Native Area
Atlantic View Estates	0.93	5	Key Largo	Native Area
Elbow Light Club	0.30	1	Key Largo	Native Area
Treasure Trove #2	0.02	1	Key Largo	Native Area
Treasure Trove #1	0.01	1	Key Largo	Native Area
Gulfstream Shores	0.61	4	Key Largo	Improved Subdivision
Ocean Reef Shores	0.55	4	Key Largo	Improved Subdivision
JHT	1.33	3	Key Largo	Improved Subdivision
Ocean Heights	1.49	9	No Name Key	Native Area
Tuxedo Park	0.57	5	No Name Key	Native Area
Refuge Point	3.20	2	No Name Key	Native Area
Galleon Bay	7.09	14	No Name Key	Commercial Fishing Village
Dolphin Estates	2.77	9	No Name Key	Commercial Fishing Special and Improved Subdivision
Rainbow Beach	16.70	139	Big Torch Key	Native Area
Dorn's	5.07	4	Big Torch Key	Improved Subdivision
Buccaneer Beach	94.50	599	Middle Torch Key	Offshore Island and Native Area
Middle Torch Key Estates	23.72	67	Middle Torch Key	Native Area
no subdivision - no Tier designation	54.91	51	Ocean Reef	Offshore Island
no subdivision - Tier I	3,277.32	261	Various	Various
no subdivision - Tier III	0.09	1	Key Largo	Urban Residential
<b>TOTAL</b>	<b>3,492.43</b>	<b>1,191</b>		

**TABLE 4: Zoning of Privately-Owned Vacant Lands within CBRS System Units**

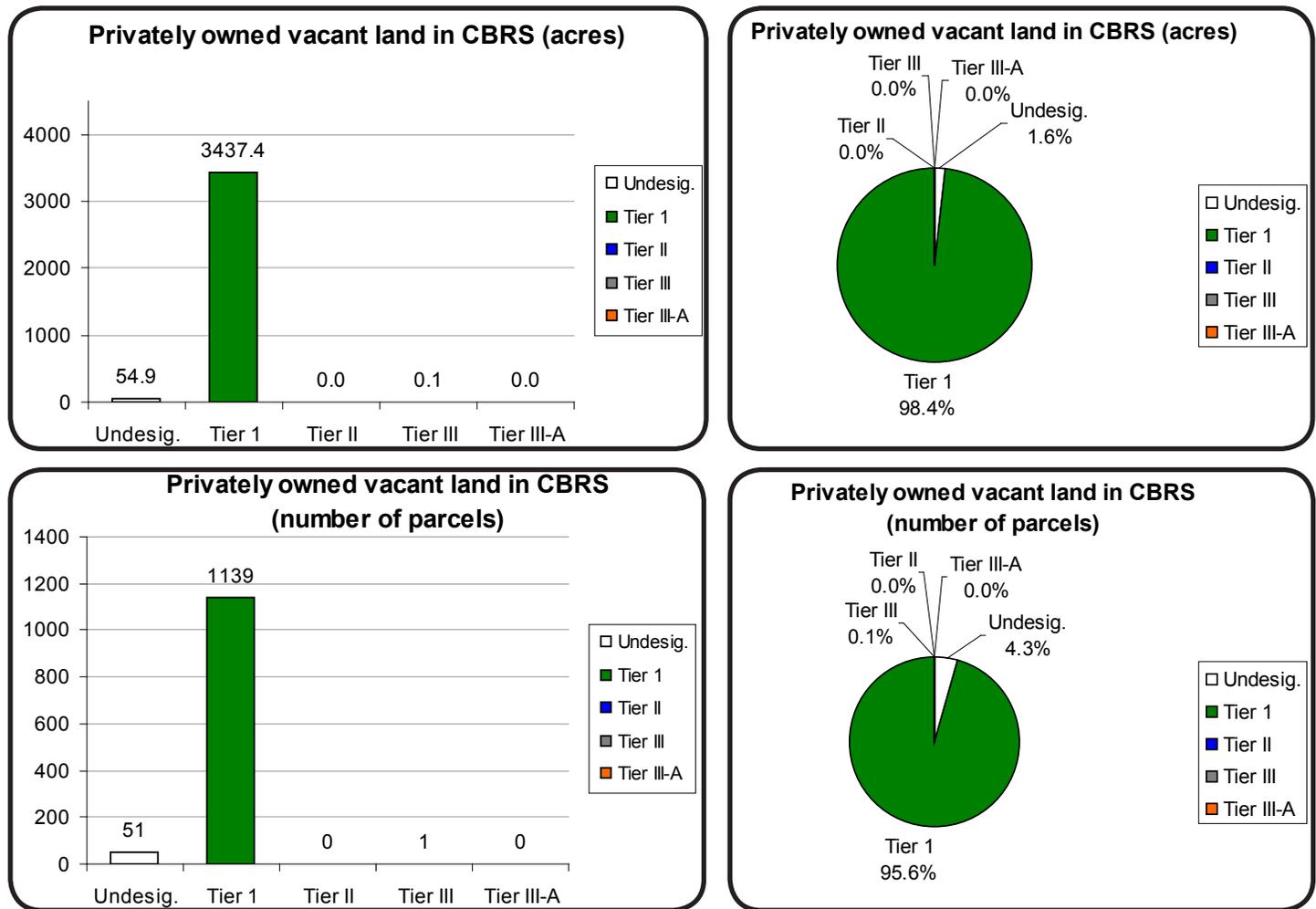
Land Use District	Parcels in CBRS	Acres in CBRS	% of Total Acres in CBRS	
Native Area (NA)	384	1,749.80	50.1%	98.2%
Offshore Island (OS)	720	1,144.75	32.8%	
other areas*	19	329.42	9.4%	
Sparsely Settled (SS)	9	191.63	5.5%	
Native Area - Offshore Island (NA-OS)	1	8.02	0.2%	
Native Area - Sparsely Settled (NA-SS)	8	5.09	0.1%	
Improved Subdivision (IS)	25	50.52	1.4%	1.8%
Commercial Fishing Village (CFV)	14	7.09	0.2%	
Commercial Fishing Special (CFS)	9	5.31	0.2%	
Industrial (I)	1	0.70	0.0%	
Urban Residential (UR)	1	0.09	0.0%	
<b>TOTAL</b>	<b>1,191</b>	<b>3,492.43</b>	<b>100%</b>	<b>100%</b>

Most privately-owned vacant lands within CBRS System Units are within land use districts that have relatively high levels of growth restrictions. For privately-owned vacant lands within CBRS System Units, 98.2 percent of the acreage is within Native Area, Offshore Island, Sparsely Settled, or similar land use districts (**Table 4**).

\* These lands, coded as "Research", include some offshore islands and areas with a future land use of Residential Conservation.

# Analysis of CBRS Policies and Regulations in Monroe County

Virtually all of the privately-owned vacant lands within CBRS System Units are designated Tier I: 98.4 percent of the acres and 95.6 percent of the parcels (Figure 2).



**FIGURE 2: Tier Designation of Lands within CBRS System Units**

# Analysis of CBRS Policies and Regulations in Monroe County

The only privately-owned vacant lands within CBRS that are not Tier I are the following:

- There are 54.9 acres of undesignated lands (no tier designation) in 51 parcels; these parcels are on the offshore islands north of Ocean Reef. These lands do not have a tier designation because Ocean Reef is exempt from the tier overlay ordinance. They are zoned OS (Offshore Island). The purpose of the OS district is to establish areas that are not connected to US-1 as protected areas, while permitting low-intensity residential uses and campground spaces in upland areas that can be served by cisterns, generators and other self-contained facilities. The maximum residential density allowed in OS is 1 dwelling unit per 10 acres, with an open space requirement of at least 95 percent (LDC Sec. 130-157).



**Offshore islands north of Ocean Reef - no tier designation**

- There is one parcel in Key Largo (total size of 1.35 acres) that has 0.09 acres of Tier III land in a CBRS System Unit. The Tier III land is the jetty at the Molasses Reef Marina (S Ocean Bay Drive, Key Largo) that extends into the CBRS System Unit; this jetty is not suitable for further development.



**Jetty at the Molasses Reef Marina - Tier III**

**KEY HIGHLIGHT:**  
If County policies and the LDC related to CBRS were eliminated, virtually all privately owned vacant lands within CBRS would still be protected as Tier I lands under the tier overlay ordinance.

## 4.2 WHERE DOES INFRASTRUCTURE PASS THROUGH CBRS SYSTEM UNITS?

There are several communities in the County that are geographically surrounded by a CBRS System Unit or where infrastructure passes through a CBRS System Unit.

No Name Key contains one area that is geographically surrounded by a CBRS System Unit. The parcels on Spanish Channel Drive, Bahia Shores Road, and No Name Drive are not within a CBRS System Unit, but are surrounded by CBRS System Unit FL-50 (No Name Key). The rest of No Name Key is within a CBRS System Unit, including the parcels on Bimini Lane and Tortuga Lane. Some infrastructure, including roads and privately-funded powerlines, pass through CBRS System Unit FL-50 (No Name Key).



**No Name Key: contains a developed area within a CBRS System Unit, and a developed area surrounded by a CBRS System Unit**

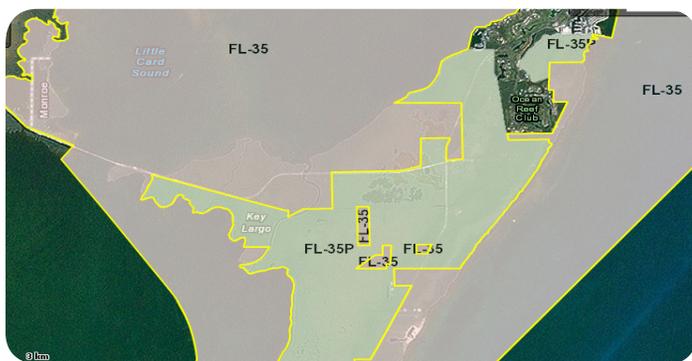
# Analysis of CBRS Policies and Regulations in Monroe County

On Big Torch Key, the communities of Dorn's and Torchwood West are surrounded by FL-52 (Little Knockemdown/Torch Keys Complex System Unit). Infrastructure, including electricity and roads, passes through the CBRS System Unit to reach these communities.



**Dorn's and Torchwood West: infrastructure passes through a CBRS System Unit to reach these subdivisions**

On Key Largo, Card Sound Road passes through FL-35 (North Key Largo System Unit).



**Key Largo: Card Sound Road passes through a CBRS System Unit**

## 4.3 ARE THERE ANY POINTS IN THE ROGO SCORING SYSTEM THAT ENCOURAGE OR DISCOURAGE DEVELOPMENT IN CBRS?

No. CBRS is not a factor in the Rate of Growth Ordinance (ROGO) scoring system.

## 4.4 IF INFRASTRUCTURE WERE BROUGHT TO AN AREA, WOULD IT INDUCE A HIGHER SCORE IN ROGO?

**Electricity, roads, or potable water:** If commercial electricity, roads, or potable water lines are extended into an area, it would not result in a higher score in ROGO.

**Central wastewater:** If a central wastewater line is extended into an area, it would result in a higher score in ROGO. A ROGO application receives +4 points if the development is required to be connected to a central wastewater treatment system that meets best achievable treatment/advanced wastewater treatment (BAT/AWT) standards established by the state legislature.

In North Key Largo, the Key Largo Wastewater Treatment District (KLWTD) has recently extended a force main north along CR 905 (Figure 3). The force main extends past the community of Gulfstream Shores and ends at the entrance to Ocean Reef Shores. If service were extended to Gulfstream Shores and Ocean Reef Shores, those communities would be part of the KLWTD centralized system in that the project would take the sewer from those areas and, by use of the force main, send it to the sewer treatment plant at MM 100.3. This would qualify the system for AWT standards established by the state legislature<sup>2</sup>.

**KEY HIGHLIGHT:**  
Adding central wastewater service would give a ROGO application +4 points. No other infrastructure improvements (e.g., electricity, roads) add points.

Most of Gulfstream Shores is not within a CBRS System Unit (Figure 3). There are some privately-owned vacant lots in Gulfstream Shores. Adding central wastewater service makes these privately-owned vacant lots eligible for +4 points under ROGO, and therefore increases their likelihood of being approved for development. All of the privately-owned vacant lots are Tier I, so the lands are protected as Tier I lands.



<sup>2</sup> Personal communication, Suzi Rubio, Construction / Project Administrator, KLWTD, April 23, 2013

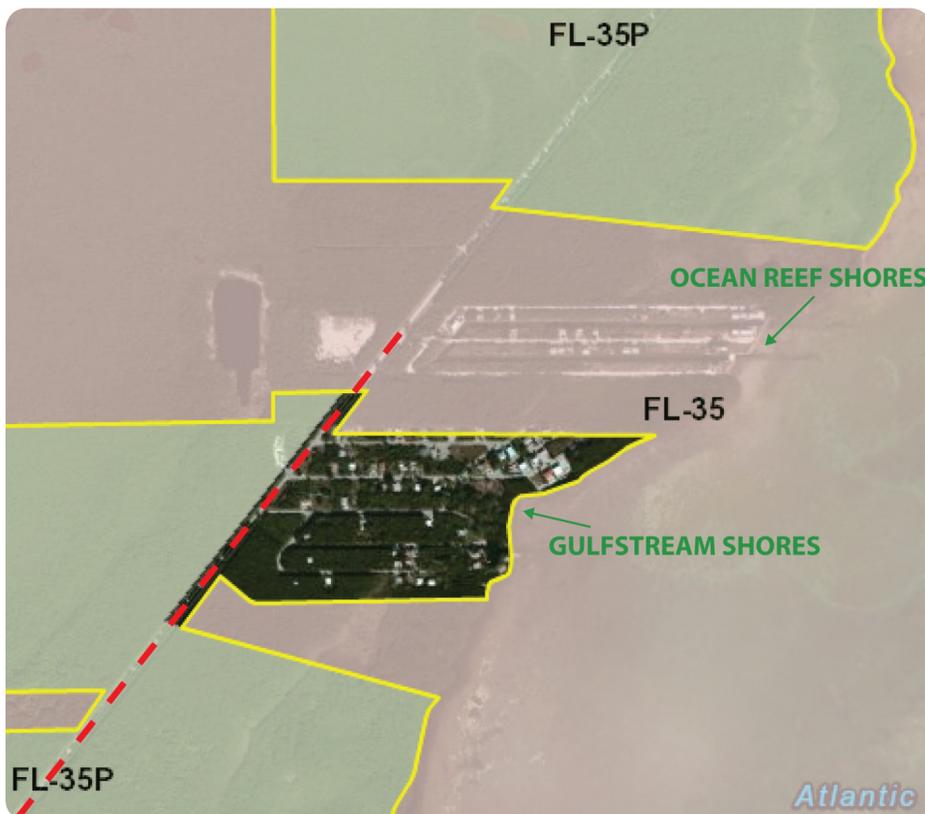
# Analysis of CBRS Policies and Regulations in Monroe County

## KEY HIGHLIGHT:

Adding central wastewater service to Ocean Reef Shores could facilitate development of the remaining four privately-owned vacant lots (by allowing +4 points in ROGO). However, there is no other private development potential here.

All of Ocean Reef Shores is within CBRS System Unit FL-35 (Figure 3). Most of the property in Ocean Reef Shores is government-owned (Board of Trustees of the Internal Improvement Trust Fund of the State of Florida) for conservation purposes. Of the 156 lots, 135 are government-owned and 21 are privately owned. About 30 of the lots have been developed (some developed lots are now government-owned). There are only 4 privately-owned lots that are vacant. Therefore, additional development is limited to these 4 privately-owned vacant lots (4 lots at 0.14 acre each = 0.55 acres total). Adding central wastewater service makes these 4 privately-owned vacant lots eligible for +4 points under ROGO, and therefore increases their likelihood of development. All of the privately-owned vacant lots are Tier I, so the lands are protected as Tier I lands.

The Comprehensive Plan policies to discourage extension of utilities within CBRS System Units, and the land development



**FIGURE 3: Extension of KLWTD Force Main in North Key Largo**

The red dashed line running along CR 905 is the approximate placement of the force main. The force main extends approximately 500 feet into CBRS System Unit FL-35. The force main is within the FDOT right-of-way. KLWTD has not extended lines into Ocean Reef Shores.

regulations that prohibit utilities in CBRS System Units, halted the extension of the central wastewater line into Gulfstream Shores and Ocean Reef Shores. It could be argued that central wastewater lines are distinctively different from other utilities such as powerlines in that central wastewater lines are less likely to promote development than the availability of commercial electricity. In considering whether to build on a vacant lot, a typical owner would generally not care whether their wastewater goes to a septic system or to a central wastewater treatment plant. Other than receiving the +4 points under ROGO, having access to a central wastewater treatment plant would not encourage the typical owner of a vacant lot to develop the land. However, if commercial power was added to a vacant parcel, then some landowners may have a greater desire to develop the land because of the conveniences of living with commercial electricity.

Wastewater lines provide a clear benefit to the environment; replacing cesspit and septic systems with connection to a central wastewater system has been a fundamental approach to improving water quality in the Keys and is specifically identified in the Monroe County Sanitary Wastewater Master Plan. Extending wastewater lines provides a benefit to the natural environment, and therefore is consistent with overall goals of growth management in the County and the State.

**KEY HIGHLIGHT:**  
Extending wastewater lines provides a benefit to the natural environment without inducing development, and therefore is consistent with overall goals of growth management in the County.

# Analysis of CBRS Policies and Regulations in Monroe County

## 4.5 HOW PROTECTIVE IS THE TIER SYSTEM?

LDC Section 138-24(a)(6) limits the number of allocation awards in Tier I. The annual number of allocation awards in Tier I is limited to no more than three (3) in the Upper Keys subarea and no more than three (3) in the Lower Keys subarea. The Incidental Take Permit (ITP) limits Big Pine Key / No Name Key subarea to ten (10) allowances over a 20 year period or  $H=0.022$ , whichever is lower.

During the 5 year period July 14, 2007 to July 13, 2012 (ROGO Years 16 through 20), there were 20 residential dwelling unit allocations in Tier I lands:

**KEY HIGHLIGHT:**  
Most CBRS lands are Tier I lands. The Tier Overlay Ordinance has been protective of CBRS lands. There were only 20 allocations in Tier I during the most recent 5-year period.

- 1 in the Upper Keys subarea,
- 8 in the Big Pine / No Name Key subarea, and
- 11 in the Lower Keys subarea.

During the most recent allocation ranking (ROGO Year 21, Quarter 2 [October 13, 2012 to January 14, 2013]), some of the applications were for Tier I lands:

- 9 in the Upper Keys subarea,
- 11 in the Big Pine / No Name Key subarea, and
- 6 in the Lower Keys subarea.

Applications that have been in the ROGO system for 5 years earn perseverance points at the rate of +2 points per year, up to a maximum cap of +4 points. The cap on perseverance points does not apply to applications that were submitted prior to the effective date of the tier overlay ordinance.

Tier I lands that are exempt from the cap on perseverance points will eventually accumulate enough perseverance points to receive ROGO allocations. During the most recent allocation ranking (ROGO Year 21, Quarter 2 [October 13, 2012 to January 14, 2013]), some of the applications were for Tier I lands that are exempt from the cap on perseverance points:

- 7 in the Upper Keys subarea
  - None are within a CBRS System Unit
- 10 in the Big Pine / No Name Key subarea
  - 7 are Galleon Bay parcels (which are within a CBRS System Unit)
  - The other 3 are not within a CBRS System Unit
- 4 in the Lower Keys subarea
  - None are within a CBRS System Unit

## 4.6 DOES ADDING INFRASTRUCTURE INCREASE THE POSSIBILITY THAT A TIER I PARCEL MAY BE REDESIGNATED TO TIER II, III-A, OR III?

Adding infrastructure to any of the subdivisions in CBRS System Units would not likely change their tier designation. Appendix D contains a list of each subdivision that contains CBRS lands, and how those lands compare to the tier criteria. In general, the subdivisions meet most of the Tier I criteria, and few of the Tier III criteria. No subdivisions meet all Tier III criteria except the infrastructure criteria, therefore, if infrastructure were added, they still wouldn't meet enough Tier III criteria to be redesignated to Tier III.

Tier designation criteria are established in the Comprehensive Plan (Policies 105.2.1 and 205.1.1) and in the LDC (Sec 130-130(c)). The County reviews all criteria when designating tiers.

Comprehensive Plan Policy 105.2.1 identifies the purposes, general characteristics, and growth management approaches associated with each tier as follows:

*1. Natural Area (Tier I): Any defined geographic area where all or a significant portion of the land area is characterized as environmentally sensitive by the policies of this Plan and applicable habitat conservation plan, is to be designated as a Natural Area. New development on vacant land is to be severely restricted and privately owned vacant lands are to be acquired or development rights retired for resource conservation and passive recreation purposes. However, this does not preclude provisions of infrastructure for existing development. Within the Natural Area designation are typically found lands within the acquisition boundaries of federal and state resource conservation and park areas, including isolated platted subdivisions; and privately-owned vacant lands with sensitive environmental features outside these acquisition areas.*

*2. Transition and Sprawl Reduction Area (Tier II): Any defined geographic area on Big Pine Key and No Name Key, where scattered groups and fragments of environmentally sensitive lands, as defined by this Plan, may be found and where existing platted subdivisions are not predominately developed, not served by complete infrastructure facilities, or not within close proximity to established commercial areas, is to be designated as a Transition and Sprawl Reduction Area. New development is to be discouraged and privately owned vacant lands acquired or development rights retired to reduce sprawl, ensure that the Keys carrying capacity is not exceeded, and prevent further encroachment on sensitive natural resources. Within a Transition and Sprawl Reduction Area are typically found: scattered small non-residential development*

# Analysis of CBRS Policies and Regulations in Monroe County

and platted subdivisions with less than 50 percent of the lots developed; incomplete infrastructure in terms of paved roads, potable water, or electricity; and scattered clusters of environmentally sensitive lands, some of which are within or in close proximity to existing platted subdivisions.

3. *Infill Area (Tier III):* Any defined geographic area, where a significant portion of land area is not characterized as environmentally sensitive as defined by this Plan, except for dispersed and isolated fragments of environmentally sensitive lands of less than four acres in area, where existing platted subdivisions are substantially developed, served by complete infrastructure facilities, and within close proximity to established commercial areas, or where a concentration of non-residential uses exists, is to be designated as an Infill Area. New development and redevelopment are to be highly encouraged, except within tropical hardwood hammock or pineland patches of an acre or more in area, where development is to be discouraged. Within an Infill Area are typically found: platted subdivisions with 50 percent or more developed lots situated in areas with few sensitive environmental features; full range of available public infrastructure in terms of paved roads, potable water, and electricity; and concentrations of commercial and other non-residential uses within close proximity. In some Infill Areas, a mix of non-residential and high-density residential uses (generally 8 units or more per acre) may also be found that form a Community Center.

Comprehensive Plan Policy 205.1.1 establishes the following criteria to use when designating tiers:

1. *Land located outside of Big Pine Key and No Name Key shall be designated as Tier I based on following criteria:*

- Natural areas including old and new growth upland native vegetated areas, above 4 acres in area.
- Vacant land which can be restored to connect upland native habitat patches and reduce further fragmentation of upland native habitat.
- Lands required to provide an undeveloped buffer, up to 500 feet in depth, if indicated by appropriate special species studies, between natural areas and development to reduce secondary impacts; canals or roadways, depending on size may form a boundary that removes the need for the buffer or reduces its depth.
- Lands designated for acquisition by public agencies for conservation and natural resource protection.
- Known locations of threatened and endangered species.
- Lands designated as Conservation and Residential Conservation on the Future Land Use Map or within a buffer/restoration area as appropriate.
- Areas with minimal existing development and infrastructure.

2. *Lands on Big Pine Key and No Name Key designated as Tier I, II, or III shall be in accordance with the wildlife habitat quality criteria as defined in the Habitat Conservation Plan for those islands.*

3. *Lands located outside of Big Pine Key and No Name Key that are not designated Tier I shall be designated Tier III.*

4. *Designated Tier III lands located outside of Big Pine Key and No Name Key with tropical hardwood hammock or pinelands of one acre or greater in area shall be designated as Special Protection Areas.*

5. *Lands within the Ocean Reef planned development shall be excluded from any Tier designation.*

LDC Section 130-130(c) identifies the tier boundary criteria (excluding Big Pine Key and No Name Key) as follows:

(1) *Tier I boundaries shall be delineated to include one or more of the following criteria and shall be designated tier I:*

- a. *Vacant lands which can be restored to connect upland native habitat patches and reduce further fragmentation of upland native habitat.*
- b. *Lands required to provide an undeveloped buffer, up to 500 feet in depth, if indicated as appropriate by special species studies, between natural areas and development to reduce secondary impacts. Canals or roadways, depending on width, may form a boundary that removes the need for the buffer or reduces its depth.*
- c. *Lands designated for acquisition by public agencies for conservation and natural resource protection.*
- d. *Known locations of threatened and endangered species, as defined in section 101-1, identified on the threatened and endangered plant and animal maps or the Florida Keys Carrying Capacity Study maps, or identified in on-site surveys.*
- e. *Conservation, native area, sparsely settled, and offshore island land use districts.*
- f. *Areas with minimal existing development and infrastructure.*

On Big Pine Key and No Name Key, the tier boundaries are designated using the Big Pine Key and No Name Key Habitat Conservation Plan (2005) and the adopted community master plan for Big Pine Key and No Name Key:

*Tier I: Lands where all or a significant portion of the land area is characterized as environmentally sensitive and important for the continued viability of HCP covered species (mean H per 10x10 meter cell = 0.259 x 10<sup>-3</sup>). These lands are high quality Key deer habitat, generally representing large contiguous patches of native vegetation that provide habitat for other protected species as well.*

# Analysis of CBRS Policies and Regulations in Monroe County

**KEY HIGHLIGHT:** Based on the tier designation criteria, adding infrastructure to a Tier I land would not likely change the tier designation.

*Tier II: Scattered lots and fragments of environmentally sensitive lands that may be found in platted subdivisions (mean H per 10 x10 meter cell = 0.183 x 10-3). A large number of these lots are located on canals and are of minimal value to the Key deer and other protected species because the canal presents a barrier to dispersal.*

*Tier III: Scattered lots within already heavily developed areas that provide little habitat value to the Key deer and other protected species (mean H per 10x10 meter cell = 0.168 x 10-3). Some of the undeveloped lots in this Tier are located between existing developed commercial lots within the US-1 corridor or are located on canals.*

## 4.7 OTHER DISINCENTIVES TO BUILD IN AREAS WITHOUT UTILITIES

Other than the Tier Overlay Ordinance, there are other disincentives to build in an area without utilities:

- **Zoning:** Many areas without utilities have restrictive land use districts such as Offshore Island, Sparsely Settled, Native, Mainland Native, and Park and Refuge. LDC Sec. 130-157 limits the residential densities and provides open space requirements for various land use districts. For example, Offshore Island is limited to 1 dwelling unit (du) per 10 acres and has a 95 percent open space requirement. Sparsely Settled is limited

to 1 du per 2 acres and has an 80 percent open space requirement. Native is limited to 1 du per 4 acres. Mainland Native is limited to 1 du per 100 acres and has a 99 percent open space requirement. Park and Refuge is limited to 1 du per 4 acres with a 90 percent open space requirement.

- **Flood Zone:** Some areas without utilities have VE flood zone designation. In ROGO, a property within a V flood zone (this includes VE zones) is assigned negative points (-4 points). A V flood zone is subject to a 1-percent-annual-chance flood event and has additional hazards associated with storm-induced waves. V zones are generally limited to shallow submerged lands and the shoreline.
- **CBRA:** Some areas without utilities are in CBRS System Units. Federal flood insurance would not be available to new dwelling units (or substantially improved or rebuilt dwelling units) within a CBRS System Unit.

## 4.8 DETERMINE WHETHER THE AVAILABILITY OF INFRASTRUCTURE INCREASES POTENTIAL OF DEVELOPMENT DESIRABILITY IN AN AREA THAT CURRENTLY DOES NOT HAVE INFRASTRUCTURE

No peer-reviewed studies could be found that identified whether the availability of infrastructure increases development desirability. **Table 5** is a summary from anecdotal evidence.

**TABLE 5: Infrastructure and Development Desirability**

Type of infrastructure added	Potential change in development desirability	Increases probability of development under Tier System / ROGO
Roads	Most landowners would not want to build if there was no or very poor access to their property. Adding an access road would increase development desirability for most landowners.	No
Commercial electricity	Many landowners would not want to build unless they had the convenience of commercial power. Adding commercial electricity would increase development desirability for most landowners.	No
Potable water	If groundwater is available, most landowners are unlikely to care whether their potable water is from a municipal source or an onsite well. If groundwater is unavailable, most landowners would likely prefer the reliability of a municipal source compared to a cistern.	No
Central wastewater	Most landowners are unlikely to care whether their wastewater goes to a septic system or a central wastewater treatment facility.	Yes
Communication (telephone, TV, internet)	With the availability of cellular and satellite communication service, adding land communication lines are unlikely to be a deciding factor in whether to build for most landowners.	No

# Analysis of CBRS Policies and Regulations in Monroe County

## 4.9 HOW ARE THE NUMEROUS CBRS GOALS, OBJECTIVES AND POLICIES OF THE COMP PLAN, AND THE LDC, BEING IMPLEMENTED TODAY?

The end result of the CBRS policies and LDC can be summarized as follows:

- North Key Largo: The CBRS regulations in the LDC, which prohibit utilities to or through CBRS System Units, have blocked the Key Largo Wastewater Treatment District from extending central wastewater lines into parts of the community of Gulfstream Shores and all of Ocean Reef Shores.
- No Name Key: The CBRS regulations in the LDC, which prohibit utilities to or through CBRS System Units, have not blocked installation of privately-funded power poles on the island, but have blocked connection of the homes to the grid.

## 4.10 IS THERE ANY VARIATION OF PROTECTION OF THE CBRS SYSTEM UNITS WITHIN THE TIER SYSTEM WITHOUT THE CBRS OVERLAY ORDINANCE? DOES THE TIER SYSTEM PROVIDE FOR DIFFERENT LEVELS OF PROTECTION FOR LANDS TARGETED FOR ACQUISITION?

If the CBRS overlay ordinance was eliminated, CBRS System Units would still be protected from development by the County's tier system (virtually all CBRS lands are within Tier I, and ROGO has proved to be effective at minimizing development in Tier I lands).

There is variation of protection within the Tier System. For example, negative points are assigned for parcels that are on No Name Key, in designated Lower Keys Marsh

Rabbit habitat, and in a V flood zone. Developments on Big Pine Key and No Name Key receive fewer positive points than developments on other islands. The number of ROGO allocations varies by subarea: the annual number of allocation awards in Tier I is limited to no more than three (3) in the Upper Keys subarea and no more than three (3) in the Lower Keys subarea. The

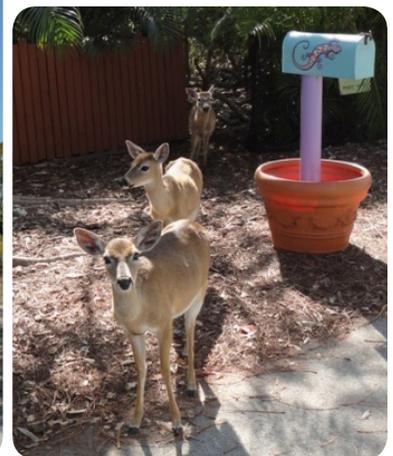
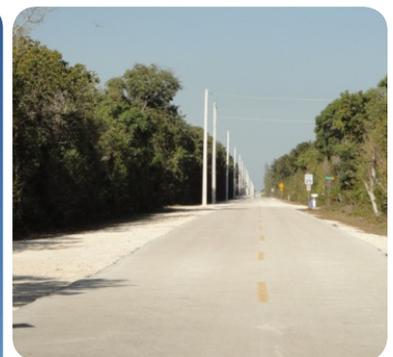
**KEY HIGHLIGHT:**  
The point and allocation system under ROGO, and land use districts, result in a variation of protection; some Tier I lands have higher protection than other Tier I lands.

Incidental Take Permit (ITP) limits Big Pine Key / No Name Key subarea to ten (10) allowances over a 20 year period or  $H=0.022$ , whichever is lower.

Zoning also results in variation of protection. Land use districts have varying levels of growth restrictions. For example, the Offshore Island land use district is limited to 1 dwelling unit (du) per 10 acres with a 95 percent open space requirement. Sparsely Settled is limited to 1 du per 2 acres and has an 80 percent open space requirement. Native is limited to 1 du per 4 acres. Mainland Native is limited to 1 du per 100 acres with a 99 percent open space requirement. Park and Refuge is limited to 1 du per 4 acres with a 90 percent open space requirement.

## 4.11 EFFECTS OF INFRASTRUCTURE ON THE COMMUNITY CHARACTER OF NO NAME KEY

Some aspects of community character could change on No Name Key if the island were brought onto the electric grid. **Table 6** lists those aspects of community character and qualitatively identifies whether those aspects would likely have a negative, neutral, or positive effect on community character. For those effects that are likely to be negative, non-CBRS policies and land development regulations that might mitigate the negative effects are identified.



# Analysis of CBRS Policies and Regulations in Monroe County

**TABLE 6: Aspects of Community Character on No Name Key**

Aspects of Community Character	Negative	Neutral	Positive
Air Quality	--	--	Air emissions from generators would be eliminated.
Noise	<p>Increased availability of electricity could result in increased noise from music, televisions, power tools, etc.</p> <p>Powerlines could produce an audible hum / buzz under certain conditions<sup>3</sup>.</p> <p>Non-CBRS policies and land development regulations that could mitigate these effects include Sec 17-130 (Prohibition against unreasonable noise) which includes “no person shall make, continue, or cause to be made any unreasonable noise.” The LDC could control, but not fully mitigate, increased noise.</p>	--	Noise from generators would be eliminated.
Visual - poles, wires, and generators	<p>Power poles and wires would detract from streetscapes that otherwise have little to no visible infrastructure. Reduced tree canopy along roadsides due to tree trimming for powerlines.</p> <p>Non-CBRS policies and land development regulations that could mitigate these effects: None. Keys Energy Services provides free professional tree trimming to ensure tree trimming around power lines is done safely and correctly.</p>	Visual effects of generators and tanks wouldn't likely change because many homeowners would likely keep them for emergency use.	--
Visual - lighting	<p>Increased availability of electricity could result in more indoor and outdoor light usage, which would increase nighttime light pollution.</p> <p>Non-CBRS policies and land development regulations that could mitigate these effects include Chapter 114 Article VI (Outdoor Lighting) which includes restrictions on height and maximum illumination. The LDC could control, but not fully mitigate, increased nighttime light pollution.</p>	--	Residents would have the option of increased outdoor lighting for recreational, decorative, or security use.
Traffic	--	--	Fewer fuel trucks on road because the need to refill tanks for generators is reduced.

<sup>3</sup> The lines on No Name Key are at a Distribution voltage (8,000 volts) which under most conditions would not produce an audible hum/buzz. An audible noise is typically noticeable at the much higher voltage for Transmission lines. For example, the main power line on US-1 is 138,000 volts; it is not uncommon for these lines to create an audible sound, especially during the dry season (rain usually cleans them). Residents on No Name Key may on rare occasions hear a much lower sound, especially if there has been a lot of salt spray and no rain for an extended period of time. Personal Communication, Dale Z. Finigan, Director of Engineering & Control, KEYS Energy, April 13, 2013.

# Analysis of CBRS Policies and Regulations in Monroe County

Soil / water pollution	--	Threat from fuel leaks not diminished much because many generators and tanks would likely be kept for emergency use.	Less illegal dumping of batteries.
Crime	--	No substantial effect, but residents would have the option of increased electronic security systems and outdoor lighting for security.	--
Employment of local residents	--	No substantial effect.	--
Home values	Some buyers who are attracted to the experience of living off-grid would not be willing to pay as much. Non-CBRS policies and land development regulations that could mitigate these effects: None.	--	Other buyers might pay more for a home with the conveniences of commercial power.
Sense of unique place, identity, or community	Some residents may feel a loss of uniqueness as a conservation-aware, off-grid community. Non-CBRS policies and land development regulations that could mitigate these effects: None.	Other residents may feel their identity as a rural, environmentally-sensitive island remains intact.	--

# Analysis of CBRS Policies and Regulations in Monroe County

## 5.0 CBRS POLICY RECOMMENDATIONS

It is widely accepted that development in floodplains and coastal areas is not consistent with the goals of good comprehensive planning and sustainability. Based on this review of development activities in the CBRS, it appears that the County's ROGO/Tier System policies have generally been effective in limiting development in the CBRS.

It is recommended that the County maintain an effective policy of discouraging development in the CBRS. Further, as a general rule, the County should not invest in and/or authorize new infrastructure projects that facilitate or induce the approval of new developments in the CBRS.

The following policy framework is recommended to ensure that development in the CBRS is discouraged. This policy could be implemented in two phases with each becoming effective immediately upon adoption by the BOCC of the required policy/code changes.

### Phase I

1. **Modify the LDC to remove CBRS “prohibit” language and add “discourage” language that establishes a presumption against development in CBRS lands. This presumption can be rebutted only by obtaining approval through the ROGO/Tier System;**
2. **Modify the LDC to eliminate the language relating to infrastructure or utilities passing “through” CBRS System Units. Given the geometry of the CBRS in the Keys (e.g., some existing communities are surrounded by CBRS System Units), discouragement of infrastructure or utilities “through” CBRS System Units to existing communities is not practical and is not consistent with the intent of CBRA;**
3. **Modify the LDC to clarify that extension and expansion of central wastewater lines are allowable through and in CBRS System Units where the lines would serve existing dwellings or parcels approved for development through ROGO/Tier System. Connecting such parcels to a central wastewater system is a key component to improving water quality in the County;**
4. **Modify LDC Section 130-122(a) (Purpose) to explain the policy purpose of CBRA. While the Act does not regulate how landowners can develop their property, it explicitly transfers the full cost from Federal taxpayers to the individuals who choose to build in such areas. Therefore, individuals who choose to live and invest in these hazard-**

**prone areas bear the full cost of development and rebuilding. The policy should steer new construction away from risky, environmentally sensitive places while minimizing impacts to communities where substantial commitments of time and money have been made;**

5. **Modify the LDC to state that areas within CBRS System Units are ineligible for most County expenditures and financial assistance for new infrastructure, except for central wastewater service and exemptions consistent with the federal restrictions under CBRA (such as emergency work). Individuals who choose to live and invest in these hazard-prone areas bear the full cost of development and rebuilding instead of passing it on to County taxpayers;**

### Phase II

6. **Maintain “discourage” language in CBRS Comprehensive Plan Policy. Consistent with changes to the LDC (recommendation 1), clarify the policy’s intent by establishing a presumption against development in CBRS lands. This presumption can be rebutted only by obtaining approval through the ROGO/Tier System;**
7. **Modify ROGO Comprehensive Plan and LDC provisions so that negative point(s) are assigned to all parcels in the CBRS;**
8. **Ensure that the ROGO/Tier System does not assign positive points or reward parcels based on the addition of infrastructure (i.e., roads, electric service, and fresh water supply) proposed or added after the date of designation as CBRS land. This policy would not apply to the addition of central wastewater services; and**
9. **Maintain the existing Comprehensive Plan policy limiting new access (via new bridges, new causeways, new paved roads, or new commercial marinas) to or on units of the CBRS.**

## 6.0 REFERENCES

USFWS 2012. The Coastal Barrier Resources Act, Harnessing the Power of Market Forces to Conserve America’s Coasts and Save Taxpayers’ Money, U.S. Fish and Wildlife Service, Division of Federal Program Activities, August. <http://www.fws.gov/habitatconservation/TaxpayerSavingsfromCBRA.pdf>

USFWS 2013. U.S. Fish and Wildlife Service Coastal Barrier Resources Act website, <http://www.fws.gov/CBRA/>, updated 4/11/2013.

# Analysis of CBRS Policies and Regulations in Monroe County

## APPENDIX A

The following are questions and tasks that the Board of County Commissioners (BOCC) and the public raised, and that Monroe County authorized Keith and Schnars to address.

Question / Task	Response
K&S will evaluate the percentage of land and number of parcels within the Coastal Barrier Resources System (CBRS) units that are designated Tier I or other Tiers such as: II, III, or IIIA;	See section 4.1
Using existing tier criteria, determine whether extension of infrastructure to outlying neighborhoods or other platted areas increases a parcel's likelihood of obtaining change in tier classification from Tier I to Tier II, III, or IIIA; and	See section 4.6
Review the existing Comprehensive Plan policies and/or Land Development Code provisions related to CBRS units and determine whether the existing CBRS policies add any additional protection to land over and above those policies and code provisions that govern Tier I land.	See section 4.0 and subsections
Comprehensive accounting of parcels and acreage located in CBRS units in Monroe County (including areas that would require new infrastructure to pass through a CBRS unit). To include: CBRS Unit #, Parcel RE #, size of parcel, Tier, FLUM, district, location within Monroe County, publicly or privately owned, vacant or developed, description of existing development (single family, multi-family, commercial, etc), type of infrastructure presently available (electricity, water, sewer, telephone, cable) including date the infrastructure was brought to the area.	See section 4.1
An analysis of how the establishment of full infrastructure in an area (under current laws) could affect the assigning of points in the ROGO and NROGO system and how it could affect the Tier designation for properties in Monroe County.	See section 4.3 and 4.6
How are the numerous CBRS Goals, Objectives and Policies of the Comp Plan being implemented today?	See sections 4.4 and 4.9
Are there any disincentives to build in an area without utilities beyond the designation/classification of Tier I lands?	See section 4.7
Is there any variation of protection of the CBRS units within the Tier System without the CBRS Overlay ordinance?	See section 4.10
How would CBRS lands be protected if the CBRS Goals Objectives and Policies in the Year 2010 Comprehensive Land Use Plan were to be weakened or removed?	See section 4.0 and subsections
How would CBRS lands be protected if the CBRS Overlay Ordinance in the Monroe County Code were to be weakened or removed?	See section 4.0 and subsections
How can Monroe County remove CBRS Goals Objectives and Policies from the Comprehensive Land Use Plan, and weaken or remove the prohibition in the Overlay Ordinance, and continue to provide the same level of protection we have had for CBRS units throughout Monroe County?	See section 5.0
How are CBRS properties treated differently from other Tier I lands in the County?	See sections 4.4 and 4.9
Does the Tier System provide for different levels of protection for lands targeted for acquisition?	See section 4.10
Does the Tier System adequately implement the intent of the Comp Plan with regard to lands within CBRS units?	See section 4.0 and subsections
What protections currently exist for CBRS areas in the Comp Plan and LDRs	See section 3.0 and Appendix C
How protections for CBRS areas would change if those lands were subject only to the Tier System	See section 4.0 and subsections
Review and determine any potential impacts if all CBRS Overlay policies and corresponding LDR language be stricken entirely.	See section 4.0 and subsections

# Analysis of CBRS Policies and Regulations in Monroe County

<p>Review and determine any potential impacts of adding the term “undeveloped CBRS areas” to the Comp Plan and Code.</p> <p>Example of suggested change: <i>Add the word UNDEVELOPED as so noted (highlighted) below: In general, future development in the County should be directed to the maximum extent possible away from the UNDEVELOPED Coastal Barrier Resources System (CBRS) units. This should be accomplished through land use policies of the Comprehensive Plan and its implementing LDRs. Other actions which the County should take to discourage further private investment in UNDEVELOPED CBRS units include:</i></p> <p><i>(1) no new bridges, causeways, paved roads or commercial marinas should be permitted to or on UNDEVELOPED CBRS units;</i></p> <p><i>(2) shoreline hardening structures should not be permitted along shorelines of UNDEVELOPED CBRS units;</i></p> <p><i>(3) public expenditures on UNDEVELOPED CBRS units should be limited to property acquisition, restoration and passive recreation facilities;</i></p> <p><i>(4) privately-owned undeveloped land located within the CBRS units should be considered for acquisition by the County; and</i></p> <p><i>(5) the County should coordinate with the Florida Keys Aqueduct Authority (FKAA) and private providers of electricity and telephone service to assess measures which could be taken to discourage extension of facilities and services to UNDEVELOPED CBRS units.</i></p>	<p>Based on the recommendations in the report, it is unnecessary to make a distinction between developed and undeveloped parts of a CBRS unit.</p>
<p>Review and determine any potential impacts associated with the suggestion to: Add the following (below highlighted) CBRS Executive Summary statement, and direction (not to harm existing communities), to all sections of the Comp Plan which reference the CBRS Act so there is no future confusion as to the exact Federal Intent of the Act (undeveloped status was the underpinning of the law), and the Federal direction regarding what actions the County should NOT take (harming of existing communities).</p> <p>SEE: The CBRS Executive Summary, Page 1, Introduction  <a href="http://www.fws.gov/habitatconservation/TaxpayerSavingsfromCBRA.pdf">http://www.fws.gov/habitatconservation/TaxpayerSavingsfromCBRA.pdf</a></p> <p><i>“The undeveloped status of System lands was an important underpinning of the law. The idea was to help steer new construction away from risky, environmentally sensitive places where development was not yet found, not to hurt existing communities where serious commitments of time and money had already been made.”</i></p>	<p>See section 5.0</p>
<p>Review and determine any potential impacts associated with the suggestion to: Add the following (below highlighted) statement, again from the CBRS executive Summary, Page 1, Introduction so as to further clarify the Federal intent of the Act for the reader of the Comp Plan.</p> <p>SEE: The CBRS Executive Summary, Page 1, Introduction  <a href="http://www.fws.gov/habitatconservation/TaxpayerSavingsfromCBRA.pdf">http://www.fws.gov/habitatconservation/TaxpayerSavingsfromCBRA.pdf</a></p> <p><i>The Act is the essence of free-market natural resource conservation; it in no way regulates how people can develop their land, but transfers the full cost from Federal taxpayers to the individuals who choose to build.</i></p>	<p>See section 5.0</p>
<p>The Comp Plan Update references the establishment of the CBRS Act in 1982, and does not reference the Reauthorization of the Act in 2000 which codified the criteria for determining the developed (or “undeveloped”) status of an area for purposes of inclusion under the Act.</p>	<p>Monroe County does not have the authority to modify CBRS boundaries; the developed vs undeveloped status of an area is not relevant to the policy issues at hand.</p>

# Analysis of CBRS Policies and Regulations in Monroe County

<p>Review and determine any potential impacts associated with the suggestion to:ADD the (following) legal definition of “developed” for purposes of application of the CBRS Act and any local overlay, as is so noted in the CBRS ACT reauthorization of 2000, page 18, reference 6.</p> <p><a href="http://www.fws.gov/habitatconservation/CBRA_Digital_Mapping_Pilot_Project.pdf">http://www.fws.gov/habitatconservation/CBRA_Digital_Mapping_Pilot_Project.pdf</a></p> <p><i>“47 FR 35708: “A density threshold of roughly one structure per five acres of fastland is used for categorizing a coastal barrier as developed...All or part of a coastal barrier will be considered developed, even when there is less than one structure per five acres of fastland, if there is a full complement of infrastructure in place...A full complement of infrastructure requires that there be vehicle access to each lot or building site plus reasonable availability of a water supply, a waste water disposal system, and electrical service to each lot or building site.”</i></p> <p><i>“50 FR 8700 states “A man-made structure is defined as a walled and roofed building constructed in conformance with Federal, State, or local legal requirements, with a projected ground area exceeding two hundred square feet.”This criterion is codified in P.L. 106-514 Sec. 2, where a structure is defined as “a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent foundation; and covers an area of at least 200 square feet.”</i></p>	<p>Monroe County does not have the authority to modify CBRS boundaries; the developed vs undeveloped status of an area is not relevant to the policy issues at hand.</p>
<p>Precedent: We need to keep in mind that any additional permitted development or intensification of a current use on coastal barrier islands will set a precedent that may prove to be costly and indefensible in court should it appear that there was “spot zoning” or other irregularities.</p>	<p>Acknowledged</p>
<p>What non-CBRS policies in the Comp Plan will help protect No Name Key’s community character as an off –grid island if the CBRS policies in the Comp Plan are removed?</p>	<p>See section 4.11</p>
<p>What non-CBRS ordinances in the Monroe County Code will protect No Name Key’s community character as off-grid if the CBRS overlay ordinance is weakened or removed?</p>	<p>See section 4.11</p>
<p>List the aspects of community character that could change on No Name Key if the island were to be brought onto the electric grid (visual effects, noise, etc). Qualitatively identify whether these aspects would likely have a positive, negative, or neutral effect on community character.</p>	<p>See section 4.11</p>
<p>What data and analysis was used to justify the various changes in the ROGO and NROGO, which served to weaken the Code regarding the existing level of protection of Community Character and Coastal Barrier Resources System units within the County, with the adoption of the Tier System in 2007?</p>	<p>See Section 4.5 includes a discussion of the protectiveness of the Tier System. No definitive evidence of weakening the protection of community character or CBRS was found.</p>
<p>Determine whether the availability of infrastructure increases potential of development desirability in an area that current does not have infrastructure.</p>	<p>See section 4.8</p>
<p>Evaluate the definition of “development” and determine whether it includes infrastructure (water, sewer, roads, electric, cable, telephone), thereby being an improvement requiring County permitting or compliance with County Comprehensive Plan and Land Development Policy</p>	<p>See section 3.0 (see footnote)</p>
<p>Comprehensive history of Monroe County legislation pertaining specifically to CBRS units. Include date of enactment and description of each particular Comp Plan provision and LDR. Include a description and history of how CBRS properties have been treated by the County in the ROGO point system, NROGO point system and the Tier System, including all pertinent changes to those laws from the version in place at the time of enactment to the current version and how each of those laws was implemented to have an effect on development of properties within CBRS units.</p>	<p>See Appendix E and sections 4.4 and 4.9</p>

# Analysis of CBRS Policies and Regulations in Monroe County

## APPENDIX B



FEMA

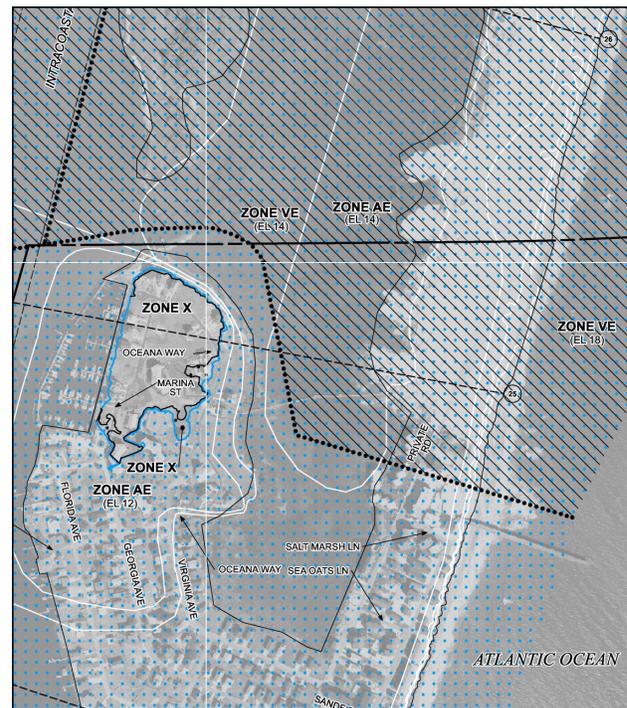
## Fact Sheet

Federal Insurance and Mitigation Administration

### Coastal Barrier Resources Act (CBRA)

*In 1982, Congress enacted the Coastal Barrier Resources Act (CBRA, Public Law 97-348; 96 Stat. 1653; 16 U.S.C. 3501 et seq.), which was later amended in 1990 by the Coastal Barrier Improvement Act (CBIA, P.L. 101-591; 104 Stat. 2931). The legislation was implemented as part of a Department of Interior (DOI) initiative to preserve the ecological integrity of areas that serve to buffer the U.S. mainland from storms and provide important habitats for fish and wildlife. In order to discourage further development in certain undeveloped portions of barrier islands, the law prohibits the availability of new Federal financial assistance, including Federal flood insurance, in areas DOI designates as part of the Coastal Barrier Resources System.*

- The Coastal Barrier Resources Act (CBRA) protects coastal areas that serve as barriers against wind and tidal forces caused by coastal storms, and serve as habitat for aquatic species.
- The CBRA protects coastal areas from development by limiting Federal financial assistance for development-related activities in designated areas.
- To manage development, limit property damage, and preserve wildlife and natural resources, CBRA restricts Federal financial assistance, including disaster relief assistance provided by the Federal Emergency Management Agency (FEMA) under the Robert T. Stafford Act and the National Flood Insurance Program (NFIP).
- Coastal Barrier Resources System (CBRS) boundaries and Otherwise Protected Areas (OPAs) are established and mapped by the U.S. Department of Interior's Fish and Wildlife Service (USFWS).
- Lenders should exercise special care with properties in or near these areas.
- Only Congress can revise CBRS boundaries.



CBRS boundaries are identified on Flood Insurance Rate Maps (FIRMs) by patterns of backward slanting diagonal lines, both solid and broken.

### Responsibilities and Restrictions

Various programs within FEMA have different responsibilities and restrictions under CBRA:

- NFIP
- Disaster Relief Assistance provided under the Robert T. Stafford Act, including:
  - Mitigation Grants
  - Public Assistance
  - Individual Assistance

The USFWS also has responsibilities under CBRA.

"FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."



# Analysis of CBRS Policies and Regulations in Monroe County

Federal Insurance and Mitigation Administration

Coastal Barrier Resources Act (CBRA)

## CBRA and the NFIP

- The NFIP **cannot** provide flood insurance coverage for structures built or substantially improved **after** the area is designated as a CBRS unit (initial designations went into effect October 1, 1983).
- The NFIP **may** provide flood insurance for units built or substantially improved **before** the subject property is included in a designated CBRS unit.
- If an NFIP-insured building within the CBRS unit is substantially improved or substantially damaged, the NFIP policy will be **cancelled**.
- NFIP flood insurance **can** be provided within CBRS units for new structures supporting conservation uses.
- Minimum NFIP floodplain management standards do not prohibit the rebuilding of substantially damaged buildings in CBRS units. However, such structures must meet the community's floodplain management regulations, and NFIP coverage is **not** available for such structures.

## CBRA and FEMA Hazard Mitigation Assistance (HMA) Program

- **Hazard Mitigation Grant Program (HMGP), Pre-Disaster Mitigation (PDM), Flood Mitigation Assistance (FMA), Repetitive Flood Claims (RFC), and Severe Repetitive Loss (SRL)**
  - Acquisition projects in CBRS units and OPAs are eligible only under PDM, FMA, RFC, and SRL, but not under HMGP. Acquisitions are eligible if they are consistent with the purposes of the CBRA, and qualify as projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats.

## CBRA and Public Assistance

- FEMA may reimburse or conduct emergency work such as debris removal and emergency protective measures to eliminate immediate threats to lives, public health, safety, and property.  
*Advance consultation with USFWS is encouraged, but not required for these activities. A report to USFWS, however, is required.*
- FEMA **may** reimburse permanent work on certain types of publicly owned facilities that may be eligible for permanent repair assistance (but not expansion of) such as:

- Essential links to larger systems.
- Restoration of existing navigable channels.
- Repair of energy facilities that are functionally dependent on a coastal location.
- Special purpose facilities such as navigational aids and scientific research facilities.
- Existing roads, structures, or facilities that are consistent with the purposes of CBRA.

***FEMA must consult with USFWS to allow comment before funding is approved for these activities.***

## CBRA and Individual Assistance

- FEMA **may** provide Individual Assistance to applicants located in CBRS units for the following:
  - Financial Temporary Housing Assistance (i.e., Rental Assistance), if they meet the eligibility requirements.
  - Medical, dental, and funeral expenses related to necessary expenses and serious needs.
  - Assistance to repair or replace personal property (e.g., furniture, clothing, and other necessities) if applicants prove they have permanently relocated outside the CBRS or OPAs.
  - Crisis Counseling, Disaster Unemployment Assistance, and Disaster Legal Services.
- FEMA **cannot** provide Individual Assistance to applicants located in CBRS units for the following:
  - Housing Assistance (i.e., Direct Assistance, Repair, Replacement, or Permanent/Semi-Permanent Construction) for a housing unit located in CBRS units.
  - Miscellaneous personal property items, such as chainsaws, generators, dehumidifiers, etc.

## USFWS Responsibilities

- Maintaining CBRS maps.
- Maintaining the administrative record for each unit.
- Consulting with Federal agencies to determine if funds can be spent within CBRS units.
- Determining whether properties are within CBRS units.

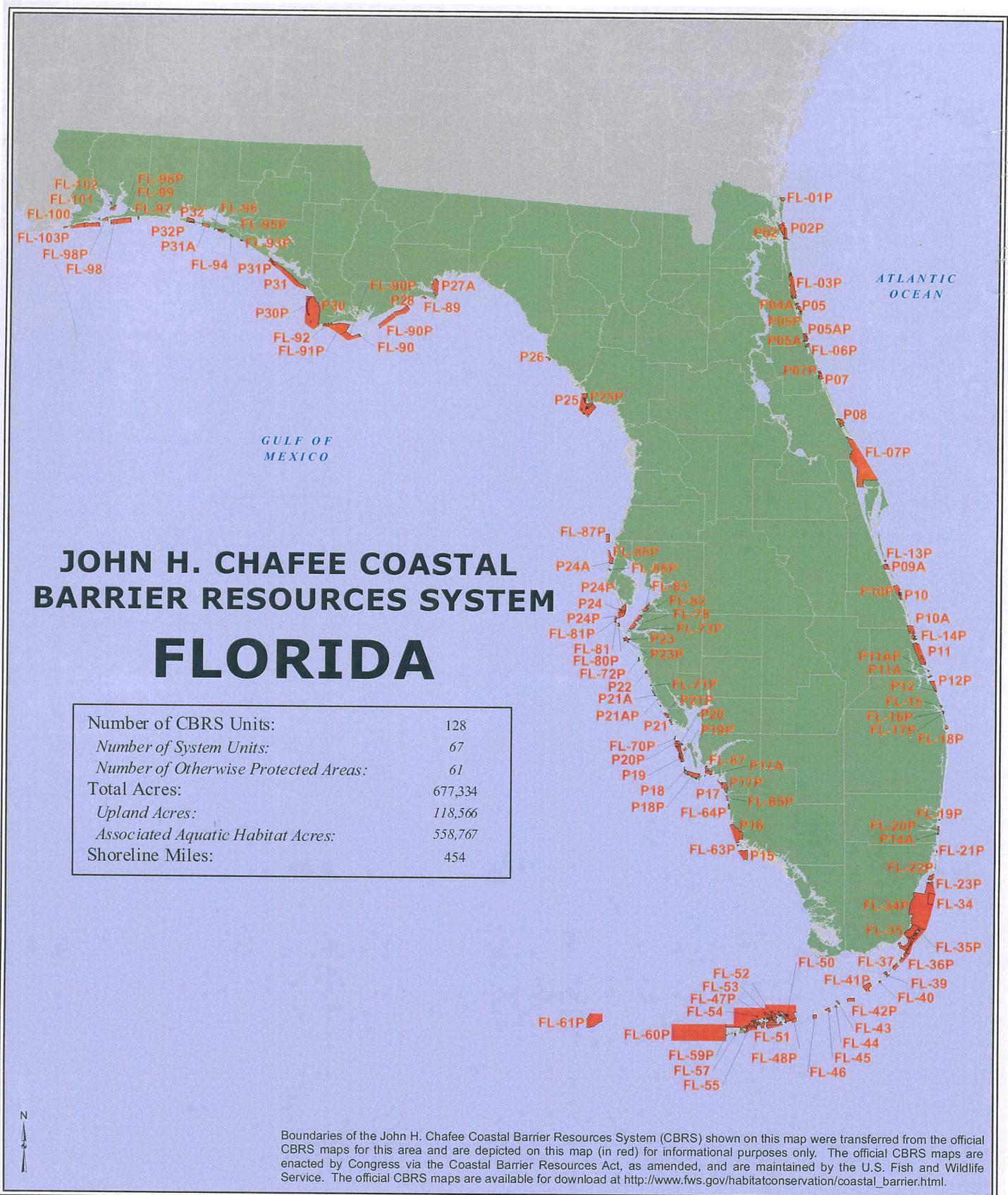
## For More Information

CBRA and OPA determinations can be made online at <http://www.fema.gov/business/nfip/cbrs/cbrs.shtm>.

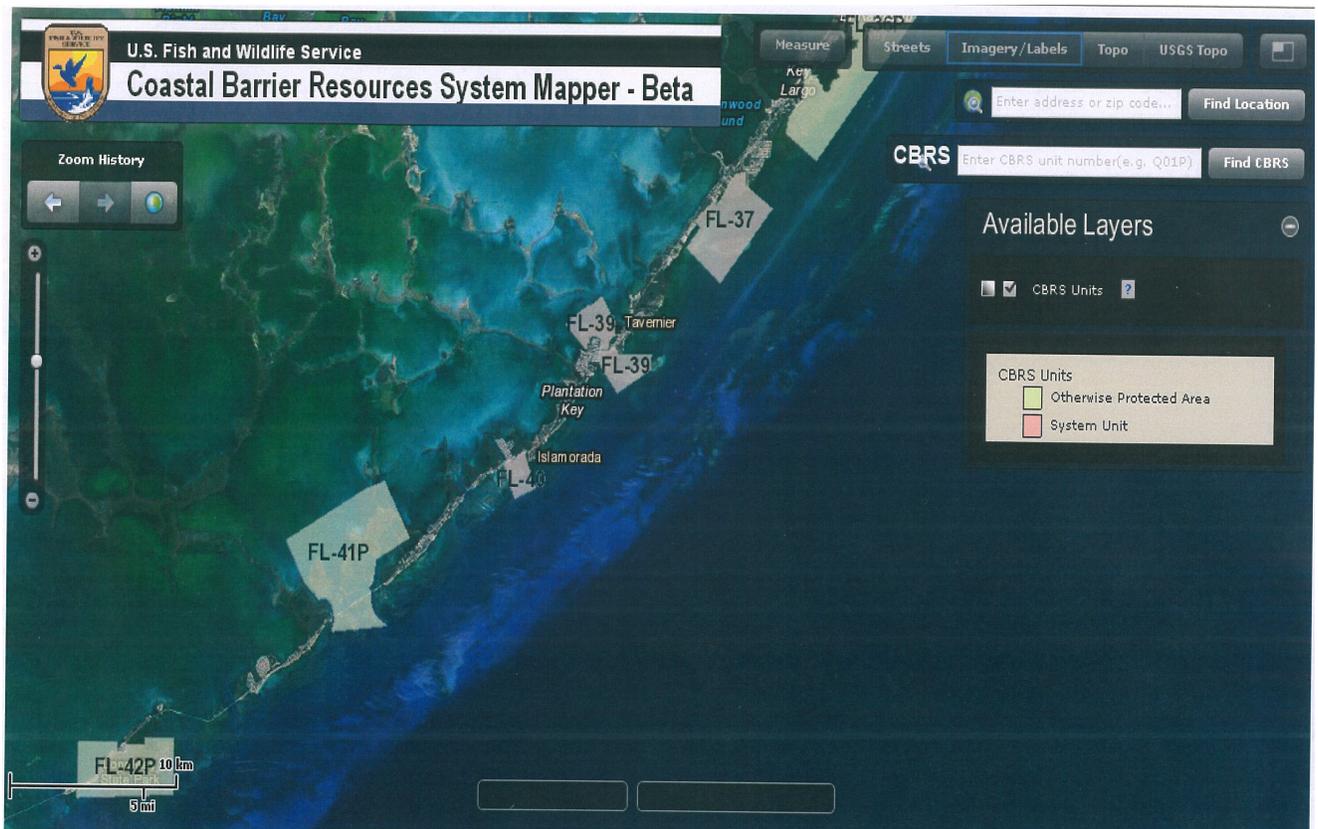
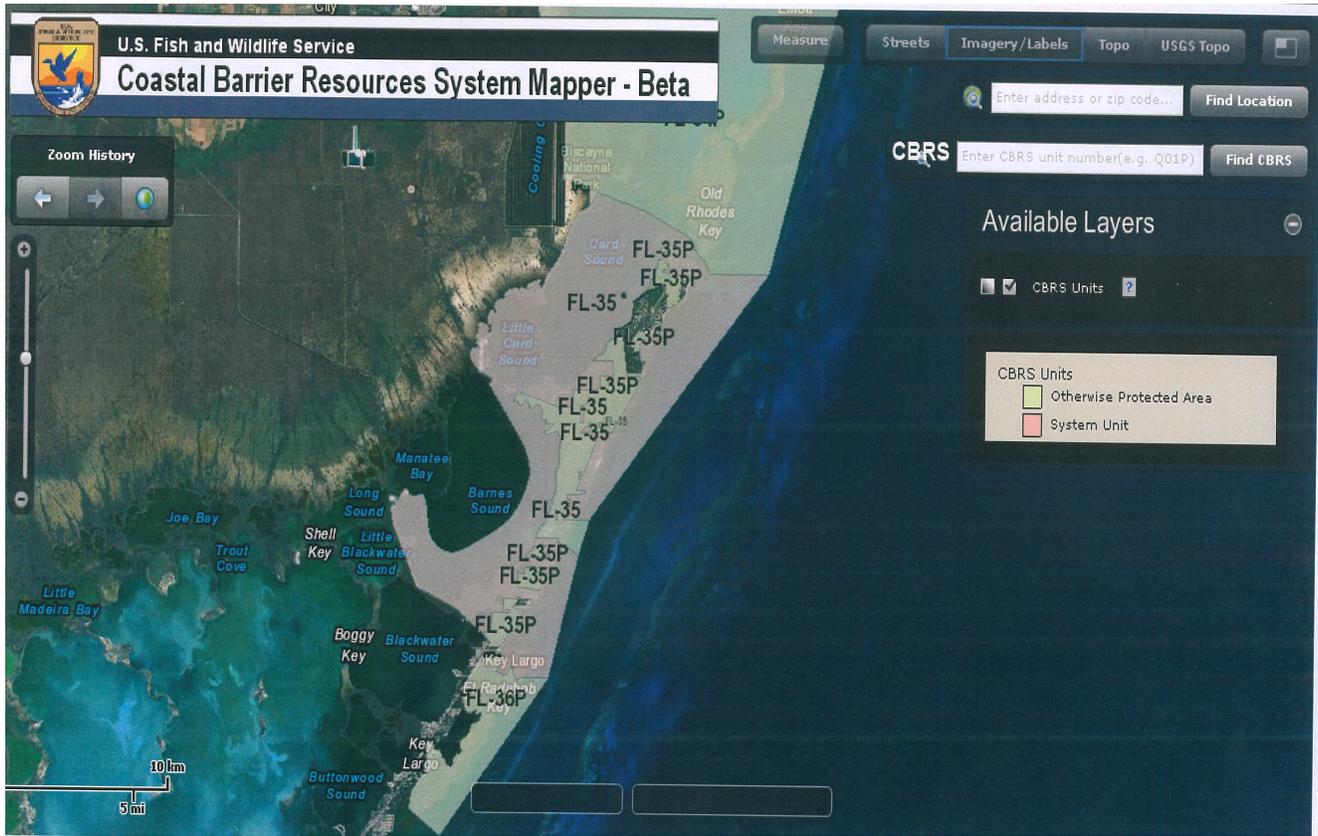
"FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."



# Analysis of CBRS Policies and Regulations in Monroe County



# Analysis of CBRS Policies and Regulations in Monroe County





# Analysis of CBRS Policies and Regulations in Monroe County

## APPENDIX C

### Existing Comprehensive Plan Goals, Policies and Objectives and Existing Land Development Code Related to CBRS

#### Comprehensive Plan

##### **Objective 102.8**

Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System. [9J-5.006(3)(b)4]

##### **Policy 102.8.1**

Monroe County shall discourage developments which are proposed in units of Coastal Barrier Resources System (CBRS). [9J-5.006(3)(c)6]

##### **Policy 102.8.2**

Upon adoption of the Comprehensive Plan, Monroe County shall not create new access via new bridges, new causeways, new paved roads or new commercial marinas to or on units of the Coastal Barrier Resources System (CBRS). [9J-5.005(3)(c)6]

##### **Policy 102.8.3**

By January 4, 1997, shoreline hardening structures, including seawalls, bulkheads, groins, rip-rap, etc., shall not be permitted along shorelines of CBRS units. [9J-5.006(3)(c)6]

##### **Policy 102.8.4**

By January 4, 1998, privately-owned undeveloped land located within the CBRS units shall be considered for acquisition by Monroe County for conservation purposes through the Monroe County Natural Heritage and Park Program. [9J-5.006(3)(c)6]

##### **Policy 102.8.5**

Monroe County shall take efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS units. These efforts shall include providing each of the utility providers with:

1. a map of the areas of Monroe County which are included in CBRS units;
2. a copy of the Executive Summary in Report to Congress: Coastal Barrier Resources System published by the U.S. Department of the Interior, Coastal Barriers Study Group, which specifies restrictions to federally subsidized development in CBRS units;
3. Monroe County policies regarding local efforts to discourage both private and public investment in CBRS units [9J-5.006(3)(c)6]

##### **Policy 103.2.10**

Monroe County shall take immediate actions to discourage private development in areas designated as units of the Coastal Barrier Resources System. (See Objective 102.8 and related policies.) [9J-5.006(3)(b)4]

##### **Policy 103.2.4**

Upon adoption of the Comprehensive Plan, Monroe County shall require that the following analyses be undertaken prior to finalizing plans for the siting of any new public facilities or the significant expansion (greater than 25 percent) of existing public facilities:

1. assessment of needs
2. evaluation of alternative sites and design alternatives for the selected sites; and
3. assessment of impacts on surrounding land uses and natural resources.

# Analysis of CBRS Policies and Regulations in Monroe County

The assessment of impacts on surrounding land uses and natural resources will evaluate the extent to which the proposed public facility involves public expenditures in the coastal high hazard area and within environmentally sensitive areas, including disturbed salt marsh and buttonwood wetlands, undisturbed beach/berm areas, units of the Coastal Barrier Resources System, undisturbed uplands (particularly high quality hammocks and pinelands), habitats of species considered to be threatened or endangered by the state and/or federal governments, offshore islands, and Conservation Land Protection Areas.

Monroe County shall require that public facilities be developed on the least environmentally sensitive lands and shall prohibit the location of public facilities on North Key Largo, unless no feasible alternative exists and such facilities are required to protect the public health, safety, or welfare.

## **GOAL 209**

Monroe County shall discourage private land uses on its mainland, offshore islands and undeveloped coastal barriers, and shall protect existing conservation lands from adverse impacts associated with private land uses on adjoining lands. [9]-5.012(3)(a); 9J-5.013(2)(a)]

### **Objective 209.3**

Monroe County shall take immediate actions to discourage private development in areas designated as units of the Coastal Barrier Resources System (CBRS). (See Future Land Use Objective 102.8 and related policies.) [9]-5.012(3)(b)1]

### **Objective 215.2**

By January 4, 1997, Monroe County shall initiate programs which require exploration of feasible alternatives to funding of public facilities and infrastructure which will result in the loss of or damage to significant coastal or natural resources, including, but not limited to, wilderness areas, wildlife habitats, and natural vegetative communities. [9]-5.012(2)(b)11]

#### **Policy 215.2.1**

By January 4, 1997, Monroe County shall adopt Land Development Regulations which require consideration of feasible design and siting alternatives for new public facilities and infrastructure proposed within the coastal zone in order to minimize adverse impacts to natural resources. [9]-5.012(3)(c)1]

#### **Policy 215.2.3**

No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System, saltmarsh and buttonwood wetlands, or offshore islands not currently accessible by road, with the exception of expenditures for conservation and parklands consistent with natural resource protection, and expenditures necessary for public health and safety. [9]-5.012(3)(c)1]

### **Objective 217.4**

With the following exceptions, public expenditures within the CHHA shall be limited to the restoration or enhancement of natural resources and parklands, expenditures required to serve existing development such as the maintenance or repair of existing infrastructure, and expenditures necessary for public health and safety:

1. public expenditures within the CHHA may be permitted where required to meet adopted level of service standards or to maintain or reduce hurricane evacuation clearance times and where no feasible alternatives to siting the required facilities within the CHHA exist.
2. public expenditures within the CHHA may be permitted for improvements and expansions to existing public facilities, which improvements or expansions are designed to minimize risk of damage from flooding. [9]-5.012(3)(b)5]

#### **Policy 217.4.2**

No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System, undisturbed saltmarsh and buttonwood wetlands, or offshore islands not currently accessible by road, with the exception of expenditures for conservation and parklands consistent with natural resource protection, and expenditures necessary for public health and safety. [9]-5.012(3)(c)1]

# Analysis of CBRS Policies and Regulations in Monroe County

## **Policy 1301.7.12**

By January 4, 1998, Monroe County shall initiate discussions with the FCAA and providers of electricity and telephone service to assess the measures which could be taken to discourage or prohibit extension of facilities and services to Coastal Barrier Resource Systems (CBRS) units.

## **Policy 1401.2.2**

No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System, undisturbed saltmarsh and buttonwood wetlands, or offshore islands not currently accessible by road, with the exception of expenditures for conservation and parklands consistent with natural resource protection, and expenditures necessary for public health and safety.

## **Land Development Code**

### Sec. 101-1. - Definitions

Coastal Barrier Resources System (CBRS) means those 15 (CBRS) units in the county designated under the Federal Coastal Barrier Resources Act (CBRA) of 1982, comprising undeveloped coastal barriers and all associated aquatic habitats including wetlands, marshes, estuaries, inlets and near shore waters.

### Sec. 130-122. - Coastal barrier resources system overlay district

#### (a) Purpose.

The purpose of the coastal barrier resources system overlay district is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the coastal barrier resources system.

#### (b) Application.

The coastal barrier resources system overlay district shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a coastal barrier resources system unit on current flood insurance rate maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of the ordinance from which this section is derived and shall not apply to wastewater nutrient reduction cluster systems.

(Code 1979, § 9.5-258; Ord. No. 43-2001, § 1)

# Analysis of CBRS Policies and Regulations in Monroe County

## APPENDIX D

### Comparison of Subdivisions within CBRS Units to Tier Criteria

CBRS unit	Subdivision (mm & key)	Percent developed	Current Tier Designation	Paved roads	Potable water	Electricity	Tier I					Draft	
							Environmentally Sensitive Upland Habitat (Habitat GIS Layer data)	Within State/Federal Acquisition boundary	Known locations of threatened & endangered species	Conservation & Residential Conservation FLUM	Minimal development		Minimal infrastructure (paved roads, potable water, electricity)
FL-35	Treasure Trove 1 & 2 (SR 905, North Key Largo)	0.00%	I	1 - Yes 2 - No	1 - Yes 2 - No	1 - Yes 2 - No	Yes (Hammock)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	Yes	Meets 6 of 6 criteria of Tier I
FL-35	Elbow Light Club (SR 905, North Key Largo)	5.90%	I	Yes	Yes	Yes	Yes (Hammock, Developed & Mangroves)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	No	Meets 5 of 6 criteria of Tier I
FL-35	J.H.T (SR 905, North Key Largo)	4.80%	I	Yes	Yes	Yes	Yes (Hammock, Mangroves, Developed & Undeveloped Land)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	No (RM)	Yes	No	Meets 4 of 6 criteria of Tier I
FL-35	Atlantic View Estates (SR 905, North Key Largo)	0%	I	partial	partial	partial	Yes (Hammock, Buttonwood & Mangroves)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	Yes	Meets all 6 criteria of Tier I
FL-35	Largo Edmar (SR 905, North Key Largo)	0%	I	partial (no)	partial	partial (no)	Yes (Hammock)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	Yes	Meets all 6 criteria of Tier I
FL-35	Ocean Reef Shores (SR 905, North Key Largo)	15.40%	I	Yes	Yes	Yes	Yes (Hammock & Developed Land)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	No (RM)	Yes	No	Meets 4 of 6 criteria of Tier I
FL-35	Gulfstream Shores (SR 905, North Key Largo)	34.4%	I	Yes	Yes	Yes	Yes? (Undeveloped Land)	Yes North Key Largo Hammocks FF	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	No (RM)	Yes	No	Meets 3 of 6 criteria of Tier I
FL-39	Largo Beach (includes Tier I and III) (MM 91, Tavernier)	42.60%	I & III	partial	partial	partial	Yes? (appears to be mainly Developed Land & Mangroves with some Hammock, Salt Marsh & Scrub Mangrove)	Yes Florida Keys Ecosystem FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Partial (Developed & Hammock - RM) (Wetlands with some hammock - RC)	Yes	Yes	Meets 4 of 6 criteria of Tier I
FL-50	Dolphin Estates (No Name Key)	18.20%	I	Yes	No	No	No (Exotic, Developed & Undeveloped Land)	Yes Coupon Bight/Key Deer FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	No (MCF)	Yes	Yes	Meets 4 of 6 criteria of Tier I
FL-50	Galleon Bay Revised (No Name Key)	0%	I	partial	No	No	Yes (Hammock & Undeveloped Land)	Yes Coupon Bight/Key Deer FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	No (MCF)	Yes	Yes	Meets 5 of 6 criteria of Tier I
FL-50	Tuxedo Park (No Name Key)	0%	I	No	No	No	Yes (Pineland & Hammock)	Yes Coupon Bight/Key Deer FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	Yes	Meets all 6 criteria of Tier I
FL-50	Ocean Heights (No Name Key)	0%	I	No	No	No	Yes (Pineland)	Yes Coupon Bight/Key Deer FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	Yes	Meets all 6 criteria of Tier I
FL-50	Refuge Point (No Name Key)	0%	I	No	No	No	Yes (Hammock, Freshwater wetland, Buttonwood, Scrub Mangrove & Mangroves)	Yes Coupon Bight/Key Deer FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC & C)	Yes	Yes	Meets all 6 criteria of Tier I
FL-52	Buccaneer Beach Estates (Middle Torch Key)	0%	I	No	No	No	No (Buttonwood, Scrub Mangrove, Mangroves, Salt Marsh, Water - with small patch of Hammock)	Yes Florida Keys Ecosystem FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC)	Yes	Yes	Meets 5 of 6 criteria of Tier I
FL-52	Middle Torch Key Estate (Middle Torch Key)	2%	I	partial (no)	No	Yes	Yes (Mangroves, Scrub Mangrove, Salt Marsh, Hammock, Buttonwood, & Freshwater wetland)	Yes Florida Keys Ecosystem FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC, C & RM)	Yes	Yes	Meets all 6 criteria of Tier I
FL-52	Dom's (Big Torch Key)	20%	I	Yes	No	Yes	Yes (Hammock, Buttonwood, Mangroves, Scrub Mangrove & Developed Lands)	Yes Florida Keys Ecosystem FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	No (RL)	Yes	Yes?	Meets 4 of 6 criteria of Tier I
FL-52	Rainbow Beach (Big Torch Key)	0.2%	I	partial	No	No	Yes (Hammock, Freshwater wetland, Scrub mangrove, Mangroves, and Water)	Yes Florida Keys Ecosystem FF Project	Identified in USFWS Species Focus Area (potentially suitable habitat for 9 federally protected species)	Yes (RC & C)	Yes	Yes	Meets all 6 criteria of Tier I

# Analysis of CBRS Policies and Regulations in Monroe County

## APPENDIX D

### Comparison of Subdivisions within CBRS Units to Tier Criteria - continued

CBRS unit	Subdivision (mm & key)	Tier III-A	Tier III				Draft
		Environmentally Sensitive Upland Habitat (1 acres)	NOT Environmentally Sensitive Upland Habitat (dispersed & isolated fragments)	Existing platted subdivision	Substantially Developed (50% or more development)	Complete infrastructure (paved roads, potable water, electricity)	
FL-35	Treasure Trove 1 & 2 (SR 905, North Key Largo)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-35	Elbow Light Club (SR 905, North Key Largo)	Yes	No	Yes	No	Yes	Meets 2 of 4 criteria of Tier III
FL-35	J.H.T (SR 905, North Key Largo)	Yes	No	Yes	No	Yes	Meets 2 of 4 criteria of Tier III
FL-35	Atlantic View Estates (SR 905, North Key Largo)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-35	Largo Edmar (SR 905, North Key Largo)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-35	Ocean Reef Shores (SR 905, North Key Largo)	Yes	No	Yes	No	Yes	Meets 2 of 4 criteria of Tier III
FL-35	Gulfstream Shores (SR 905, North Key Largo)	Yes	No	Yes	No	Yes	Meets 2 of 4 criteria of Tier III
FL-39	Largo Beach (includes Tier I and III) (MM 91, Tavernier)	Yes		Yes	No	No	Meets 1-2 of 4 criteria of Tier III
FL-50	Dolphin Estates (No Name Key)	No	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-50	Galleon Bay Revised (No Name Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-50	Tuxedo Park (No Name Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-50	Ocean Heights (No Name Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-50	Refuge Point (No Name Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-52	Buccaneer Beach Estates (Middle Torch Key)	No	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-52	Middle Torch Key Estate (Middle Torch Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-52	Dom's (Big Torch Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III
FL-52	Rainbow Beach (Big Torch Key)	Yes	No	Yes	No	No	Meets 1 of 4 criteria of Tier III

# Analysis of CBRS Policies and Regulations in Monroe County

## APPENDIX E

### History of Monroe County CBRS Legislation

July 1, 1985: Florida's State Comprehensive Plan became effective.

1986: The County adopted the State Comprehensive Plan as an interim land use control.

November 1, 1990: The Coastal Barrier Improvement Act (CBIA) reauthorized the Coastal Barrier Resource System (CBRS) Act of 1982; expanded the CBRS to include undeveloped coastal barriers along the Florida Keys and other areas; and added a new category of coastal barriers: "otherwise protected areas" (OPAs).

April 15, 1993: The County adopted the *Monroe County 2010 Comprehensive Plan* (the "Plan"), pursuant to Chapter 163, Part II, F.S., which included the existing Goals, Objectives and Policies identified in Appendix C. However, subsequent legal proceedings prompted a Final Order and Recommendations by the Administration Commission. The effect of the Final Order was that 90 percent of the Plan became effective but the disputed provisions required further action. Because of this Final Order, it was necessary to amend the Plan in order to bring it into compliance and to make it consistent with the "Principles for Guiding Development" as required by Chapter 380, F.S.

January 4, 1996: The Plan was amended pursuant to Rule 9J-14.022, F.A.C.

January 2, 1996: The Plan was adopted by Rule 28-20.100, Part I.

July 14, 1997: The remainder of the Plan was adopted by Rule 28-20.100, Part II, resulting in the "Work Program";

December 18, 2001: Ordinance 043-2001 was adopted creating MCC Section 9.5-258, "Coastal Barrier Resources System Overlay District", which included a prohibition of the extension and expansion of utilities to or through lands designated as CBRS unit.

September 17, 2008: Subsequent to a Court Order granting summary judgment in favor of the defendants: Taxpayers for the Electrification of No Name Key, Inc, et. al. v Monroe County (Case No. 99-819-CA-19), Ordinance 020-2008 was adopted by the County which amended MCC Section 9.5-258 to allow for the provision of utilities to develop properties located within the CBRS Overlay District.

December 12, 2008: Florida Department of Community Affairs (DCA) rejected Ordinance 020-2008 for inconsistency with the Rule 28-29 F.A.C.: *Land Planning - Part VIII Boundary And Principles For Guiding Development For The Florida Keys Area Of Critical State Concern*. At that time, DCA determined an amendment to the Comprehensive Plan was required in order to resolve the conflict between it and MCC Section 9.5-258.

February 08, 2009: Ordinance 003-2009 was adopted rescinding Ordinance 0202-2008. Thus the original language of MCC Section 935-258, which prohibits extension and expansion of utilities within the CBRS units, is currently in effect.