

## AGENDA

PLANNING COMMISSION  
MONROE COUNTY  
July 31, 2013  
10:00 A.M.

MARATHON GOV'T CENTER  
2798 OVERSEAS HIGHWAY  
MARATHON, FL 33050

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### ROLL CALL

### COMMISSION:

Denise Werling, Chairman  
Jeb Hale  
Elizabeth Lustberg  
Ron Miller  
William Wiatt

### STAFF:

Townsley Schwab, Senior Director of Planning and Environmental Resources  
Susan Grimsley, Ass't County Attorney  
John Wolfe, Planning Commission Counsel  
Mayte Santamaria, Assistant Director of Planning and Environmental Resources  
Joe Haberman, Planning & Development Review Manager  
Mitch Harvey, Comp Plan Manager  
Rey Ortiz, Planner  
Emily Schemper, Planner  
Barbara Bauman, Planner  
Timothy Finn, Planner  
Matt Coyle, Planner  
Gail Creech, Planning Commission Coordinator

### COUNTY RESOLUTION 131-92 APPELLANT TO PROVIDE RECORD FOR APPEAL

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### SUBMISSION OF PROPERTY POSTING AFFIDAVITS AND PHOTOGRAPHS

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### SWEARING OF COUNTY STAFF

### CHANGES TO THE AGENDA

-

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### APPROVAL OF MINUTES

-

### MEETING

New Items:

~~1. Wrenn Ekblom Development LLC Property, 479 Barracuda Boulevard, Key Largo, Mile Marker 103.7: A request for approval of a variance of fifteen (15) feet from the required twenty-five (25) foot front yard setback along the property line abutting the right-of-way of Turbot Street in order to construct a new single-family residence. The subject parcel is legally described as Block 7, Lot 32, Anglers Park Subdivision (PB1-159), Key Largo, Monroe County, Florida, having real estate number 00552340.000000.~~

~~(File 2013-052) WITHDRAWN~~

~~[2013-052 479 Barracuda Withdrawal Letter.pdf](#)~~

~~2. Wrenn Ekblom Development LLC Property, 578 Bonito Avenue, Key Largo, Mile Marker 103.8: A request for approval of a variance of fifteen (15) feet from the required twenty-five (25) foot front yard setback along the property line abutting the right-of-way of Turbot Street in order to construct a new single-family residence. The subject parcel is legally described as Block 7, Lot 1, Anglers Park Subdivision (PB1-159), Key Largo, Monroe County, Florida, having real estate number 00552030.000000.~~

~~(File 2013-053) WITHDRAWN~~

~~[2013-053 578 Bonito Withdrawal Letter.pdf](#)~~

1. AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, TO REVISE THE DEFINITION OF COASTAL BARRIER RESOURCES SYSTEM (CBRS) TO BE CONSISTENT WITH THE FEDERAL COASTAL BARRIER RESOURCES ACT; AMENDING SECTION 130-122, COASTAL BARRIER RESOURCES SYSTEM OVERLAY DISTRICT TO DISTINGUISH BETWEEN FEDERAL AND COUNTY PURPOSES; REVISING THE APPLICATION OF THE CBRS OVERLAY DISTRICT TO BE CONSISTENT WITH CBRS OBJECTIVES AND POLICIES OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

(File 2013-067)

[2013-067 SR PC 07.31.13.pdf](#)

[2013-067 Draft Resolution.PDF](#)

[2013-067 Draft Ordinance.PDF](#)

Pursuant to Section 286.0105 Florida Statutes and Monroe County Resolution 131-1992, if a person decides to appeal any decision of the Planning Commission, he or she shall provide a transcript of the hearing before the Planning Commission, prepared by a certified court reporter at the appellant's expense. For such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

ADA ASSISTANCE: If you are a person with a disability who needs special accommodations in order to participate in this proceeding, please contact the County Administrator's Office, by phoning (305) 292-4441, between the hours of 8:30 a.m. - 5:00 p.m., no later than five (5) calendar days prior to the scheduled meeting; if you are hearing or voice impaired, call "711".

## BOARD DISCUSSION

### GROWTH MANAGEMENT COMMENTS

- Update from Mayte Santamaria on Keith & Schnars progress

## RESOLUTIONS FOR SIGNATURE

## ADJOURNMENT

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100 Wrenn Street  
Tavernier, Florida, 33070

July 15, 2013

Monroe County  
Planning and Environmental Resources  
2798 Overseas Highway, Suite 410  
Marathon, FL 33050

To whom it may concern:

I am requesting to withdraw the Planning Variance application for the property referenced below due to a deed restriction which is in effect that states that "No dwelling to be erected on property with less than 100 feet frontage on either Dolphin Ave, Bonito Ave, Barracuda Blvd, Tarpon Ave, and Pompano Dr." I do not expect the planning department to take any further action. The address is as follows:

Wrenn Ekblom Development, LLC  
479 Barracuda Blvd  
Key Largo, FL. 33037  
RE: 00552340-000000

Please feel free to contact me with any questions you might have.

Sincerely,

\_\_\_\_\_  
Brett Ekblom  
President  
Native Construction Contracting, Inc.

State of Florida  
County of Monroe

Sworn to and subscribed to before me this 15 day of July, 2013 He/she is personally known to me or has produced \_\_\_\_\_ as identification.

Nancy E. Jacobson Date 7/15/13  
Signature of Notary



NANCY E. JACOBSON  
MY COMMISSION # DD 980141  
EXPIRES: April 8, 2014  
Bonded Thru Budget Notary Services

Office: 305-852-3116 Fax Number: 305-852-2649  
Tax ID # 20-0338065 GC License # CGC1506439  
Licensed and Insured



100 Wrenn Street  
Tavernier, Florida, 33070

July 15, 2013

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578 Bonito Avenue  
Key Largo, FL. 33037  
RE: 00552030-000000

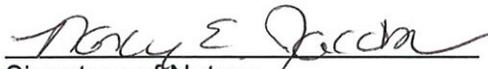
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Sincerely,

  
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Brett Ekblom  
President  
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State of Florida  
County of Monroe

Sworn to and subscribed to before me this 15 day of July, 2013 He/she is personally known to me or has produced \_\_\_\_\_ as identification.

  
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Signature of Notary

Date 7/15/13



NANCY E. JACOBSON  
MY COMMISSION # DD 980141  
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**MEMORANDUM**  
**MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT**

**To:** Monroe County Planning Commission

**Through:** Townsley Schwab, Senior Director of Planning & Environmental Resources

**From:** Mayté Santamaria, Assistant Director of Planning  
Emily Schemper, Senior Planner

**Date:** July 16, 2013

**Subject:** *AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, TO REVISE THE DEFINITION OF COASTAL BARRIER RESOURCES SYSTEM (CBRS) TO BE CONSISTENT WITH THE FEDERAL COASTAL BARRIER RESOURCES ACT; AMENDING SECTION 130-122, COASTAL BARRIER RESOURCES SYSTEM OVERLAY DISTRICT TO DISTINGUISH BETWEEN FEDERAL AND COUNTY PURPOSES; REVISING THE APPLICATION OF THE CBRS OVERLAY DISTRICT TO BE CONSISTENT WITH CBRS OBJECTIVES AND POLICIES OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.*

**Meeting:** July 31, 2013

## **I. REQUEST**

This is a request from the Planning & Environmental Resources Department to amend Sections 101-1 and 130-122 of the Monroe County Code to revise the definition, purpose and application of the Coastal Barrier Resources System (CBRS) overlay district. This request follows direction by the Board of County Commissioners on the recommendations included within the "Analysis of Coastal Barrier Resources System Policies and Regulations in Monroe County, Florida," data and analysis, prepared by Keith and Schnars, P.A., regarding the CBRS and the County's CBRS Comprehensive Plan policies and Land Development Code.

## **II. RELEVANT PRIOR COUNTY ACTIONS**

The County has adopted Comprehensive Plan Policies and Land Development Code (LDC) regulations which both discourage and prohibit the extension of utilities to or through areas designated as units of the CBRS.

On January 16, 2013, the BOCC discussed a contract amendment for professional services with Keith and Schnars (K&S), P.A., for additional services to evaluate the CBRS Comprehensive Plan policies to determine whether they add any additional protection to land over and above Comprehensive Plan and LDC provisions that govern the Tier System, including an analysis of the percentage of land and number of parcels within the CBRS units by tier designation and whether infrastructure extension to outlying neighborhoods or other platted areas increases a parcel's likelihood of being able to obtain a favorable recommendation, based on tier criteria, to change a tier classification from Tier I to Tier II, III, or III-A.

At the January 16, 2013 BOCC meeting, several speakers suggested that additional analysis be conducted, beyond the tier designations policy review. The BOCC requested staff to review the public input provided at the January meeting and requested staff to contact those who commented at the BOCC meeting for a description of the additional analysis they suggest should be added to the scope of services for the proposed K&S contract amendment.

On February 26, 2013, the BOCC discussed the contract amendment for professional services with K&S, with the additional analysis suggested by the public, and approved the Eighth (8th) Amendment to the agreement for professional services with K&S, for additional services to evaluate the CBRS Comprehensive Plan policies and LDC.

On May 15, 2013, the BOCC discussed the results of the "Analysis of Coastal Barrier Resources System Policies and Regulations in Monroe County, Florida," data and analysis, prepared for the BOCC by K&S, regarding the CBRS and the County's CBRS Comprehensive Plan policies and LDC. At that meeting, the BOCC directed Growth Management staff to proceed with the recommendations of the report, which included Phase I amendments to the LDC (the subject of this text amendment) and Phase II amendments to the Comprehensive Plan and the LDC (to be processed with the Evaluation and Appraisal Report amendments). A summary of the findings and recommendations of the report is provided below.

The complete report is attached as Exhibit 1.

**Summary Findings of  
"Analysis of Coastal Barrier Resources System  
Policies and Regulations in Monroe County, Florida"**

In summary, K&S found, "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)." K&S further states "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."

K&S recommends the County amend the LDC and Comprehensive Plan to continue to ensure that development in the CBRS is discouraged (maintain comprehensive plan's "discourage" policy), through the following phased approach:

### **Phase 1 – Amendment to LDC**

- 1) Amend LDC §130-122 to eliminate the “prohibition” regulation regarding extension of public utilities to or through lands designated as a CBRS unit, and make consistent with the Comprehensive Plan’s “discourage” language. Establish a presumption against development in CBRS lands which 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 Units.
- 3) Modify the LDC to clarify that extension and expansion of central wastewater lines are allowable through and in CBRS System Units. Connecting parcels to a central wastewater system is a key component to improving water quality in the County.
- 4) Modify LDC §130-122(a) (Purpose) to be consistent with the policy purpose of the Federal Coastal Barrier Resources Act (CBRA) of 1982.
- 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).

### **Phase 2 – Amendment to Comprehensive Plan and LDC**

- 1) Maintain the Comprehensive Plan “discourage” policies. Establish a presumption against development in CBRS lands which can be rebutted only by obtaining approval through the ROGO/Tier System.
- 2) Modify ROGO so that negative point(s) are assigned to all parcels in the CBRS – this would require both Comprehensive Plan and LDC amendments.
- 3) Maintain other point criteria in ROGO/NROGO to ensure that the ROGO/Tier System does not assign positive points or reward parcels based on the addition of other infrastructure (i.e., roads, electric service, and fresh water supply) proposed or added after the date of designation as CBRS land.
- 4) 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.

During a regularly scheduled meeting held on June 25, 2013, the Monroe County Development Review Committee considered the proposed amendment and recommended approval.

## **III. REVIEW**

The following amendments address those recommended as part of Phase 1, described above:

**MCC §101-1 – Definitions**

Proposed revisions to the definition clarify the origins of the CBRS and how land was designated as a system unit. The revised definition summarizes federal implications of designation and identifies agencies responsible for creating and revising CBRS boundaries.

**MCC §130-122 – Coastal barrier resources system overlay district**

Revisions to this section address Phase 1 items 1-5, as stated above:

1. Subsection (c) no longer prohibits extension of utilities to the CBRS overlay district. It is now consistent with the comprehensive plan’s language which discourages rather than prohibits utilities. Terminology regarding the types of facilities and services to be discouraged and language regarding system unit FL-57 has also been updated to be consistent with the adopted comprehensive plan policies.
2. Subsection (b) is now consistent with the comprehensive plan by removal of the words “or through.”
3. Subsection (c) now includes central wastewater treatment collection systems as a utility not subject to the discouragement.
4. Subsection (a) now describes the federal purpose of the CBRA and summarizes the federal restrictions on land designated as a system unit of the CBRS.
5. Subsection (d) advises against the use of County public tax dollars for improvements or financial assistance within the CBRS overlay district unless those improvements are consistent with the federal expenditures and financial assistance allowed under sections 5 and 6 of the CBRA. This subsection specifically states that wastewater systems will *not* be subject to restrictions on county public tax dollar use.

**IV. PROPOSED AMENDMENT**

Therefore, staff recommends the following changes (Deletions are ~~stricken through and in red~~, and additions are underlined and in green. Text to remain the same is in black):

**Sec. 101-1. – Definitions.**

\* \* \*

*Coastal Barrier Resources System (CBRS)* means those 15 ~~(CBRS)~~ system units in the County, except for the improved port property along the Safe Harbor entrance channel within system unit FL-57, designated under the federal Coastal Barrier Resources Act (CBRA) of 1982, comprising relatively undeveloped coastal barriers and all associated aquatic habitats including wetlands, marshes, estuaries, inlets and near shore waters. System units are generally comprised of lands that were relatively undeveloped at the time of their designation within the CBRS. The boundaries of these units are designated by the U.S. Department of the Interior and the boundaries are generally intended to follow geomorphic, development, or cultural features. Most new federal expenditures and financial assistance, including flood insurance, are prohibited within system units. System units are identified and depicted on the current flood insurance rate maps approved by the Federal Emergency Management Agency. Only the United States Congress can revise CBRS boundaries.

\* \* \* \* \*

**Sec. 130-122. – Coastal barrier resources system overlay district (CBRS).**

(a) **Federal Purpose.** The purpose of the federal Coastal Barrier Resources Act (CBRA) is to discourage further development in certain undeveloped portions of coastal barriers and remove the federal incentive to develop these areas. The federal law limits new federal expenditures and financial assistance, including flood insurance. These limitations have the effect of discouraging development in areas the U. S. Department of the Interior designates as coastal barriers within the Coastal Barrier Resources System (CBRS). The CBRS protects coastal areas that serve as barriers against wind and tidal forces caused by coastal storms, and serve as habitat for aquatic species.

(b) **County Purpose.** The County has included the federal CBRS system units located within unincorporated Monroe County, except for the improved port property along the Safe Harbor entrance channel within system unit FL-57, on the Land Use District Map as an overlay district. The purpose of the County's coastal barrier resources system overlay district is to implement the policies of the comprehensive plan by discouraging prohibiting the extension and expansion of specific types of public utilities facilities and services to or through lands designated as a system unit of the coastal barrier resources system CBRS.

(b)(c) **Application.** The coastal barrier resources system overlay district shall be overlaid on all areas, except for the improved port property along the Safe Harbor entrance channel within system unit FL-57 Stock Island, within federally designated boundaries of a coastal barrier resources system CBRS 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 facilities and services shall be discouraged 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 facilities and services. ~~in place on the effective date of the ordinance from which this section is derived and~~ This discouragement shall not apply to wastewater nutrient reduction cluster systems or central wastewater treatment collection systems.

For vacant property within the CBRS overlay district, it is presumed that non-CBRS lands are available for development and that development within CBRS system units can be avoided. This presumption may be rebutted only if the owner(s) of the vacant CBRS property obtains approval through the County's ROGO/NROGO/Tier system.

(d) **County Public Improvements.** Except for wastewater systems, within the CBRS overlay district, public tax dollars should not be used for new improvements and/or financial assistance, unless those new improvements and/or the financial assistance are consistent with the federal restrictions pursuant to section 5 and section 6 of the CBRA.

## **V. STAFF RECOMMENDATION**

Staff has found that the proposed text amendment would be consistent with one or more of the required provisions of §102-158(d)(5)(b): 1. Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based; 2. Changed assumptions (e.g.,

regarding demographic trends); 3. Data errors, including errors in mapping, vegetative types and natural features described in volume I of the plan; 4. New issues; 5. Recognition of a need for additional detail or comprehensiveness; or 6. Data updates. Specifically, staff has found that the proposed text amendments are necessary due to new issues and recognition of a need for additional detail or comprehensiveness.

Staff has found that the proposed text amendments would be consistent with the Monroe County Year 2010 Comprehensive Plan, the Florida Keys Principles for Guiding Development, and Sections 163.3194, 163.3201 and 163.3202, Florida Statute.

Staff recommends that the Board of County Commissioners amend the Monroe County Code as stated in the text of this staff report.

## **VI. EXHIBITS**

1. "Analysis of Coastal Barrier Resources System Policies and Regulations in Monroe County, Florida," prepared for the BOCC by Keith and Schnars, P.A., May 28, 2013.
2. Minutes of the Monroe County Board of County Commissioners May 15, 2013, Regular Meeting (see pages 15-16).
3. DRC Resolution DRC 06-13, recommending approval of the proposed amendment.



# 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

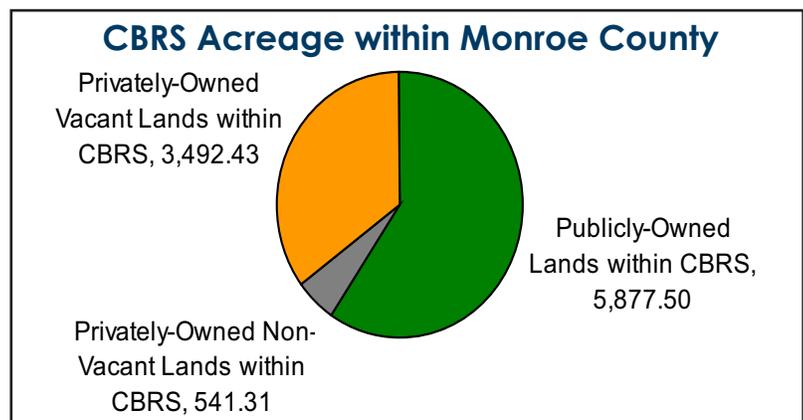
### 4.1 AMOUNT, LOCATION, ZONE, AND TIER OF CBRS LANDS

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**

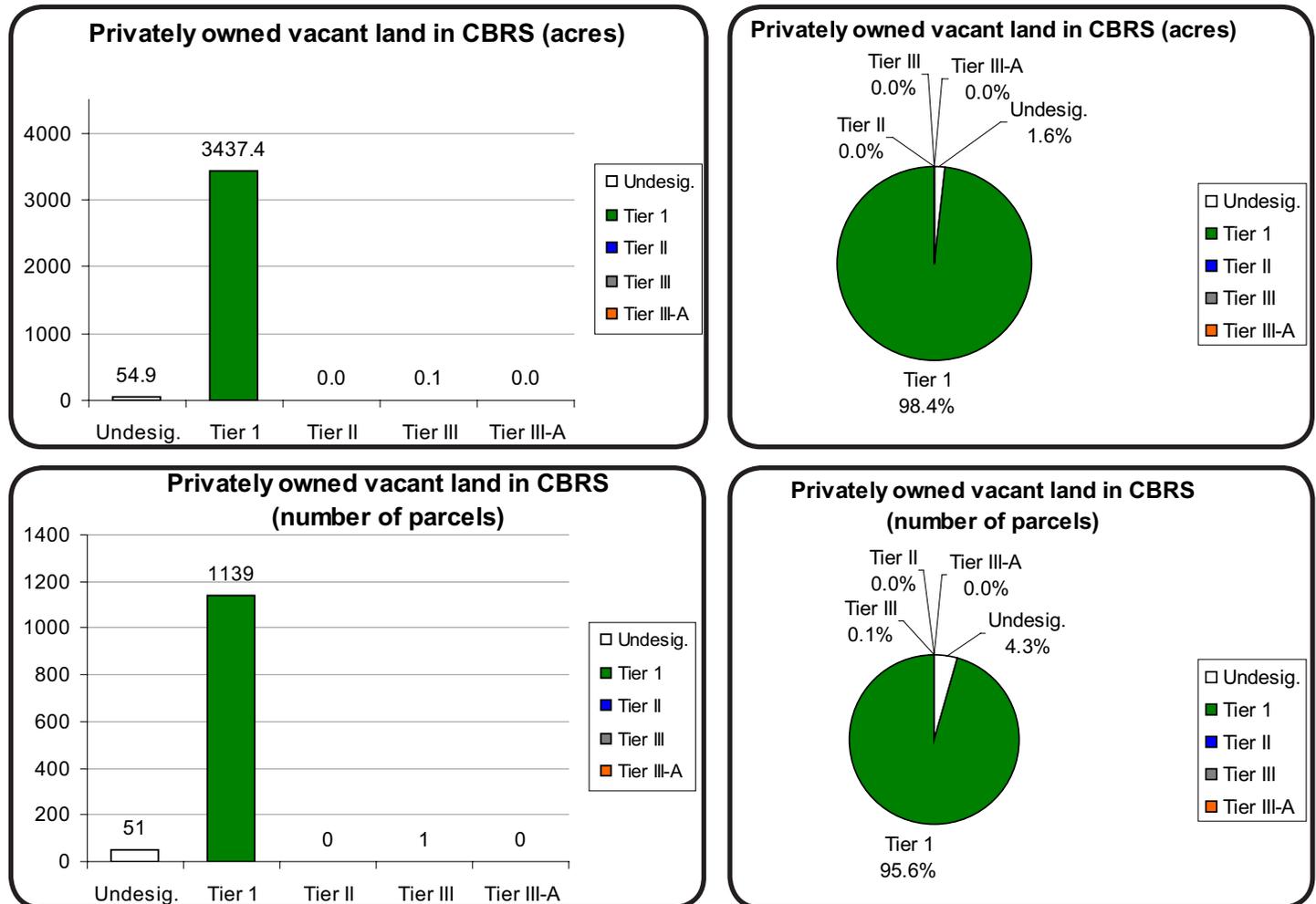
Land Use District	Parcels in CBRS	Acres in CBRS	% of Total Acres in CBRS	
Native Area (NA)	384	1,749.80	50.1%	98.2%
Offshore Island (OS)	720	1,144.75	32.8%	
other areas*	19	329.42	9.4%	
Sparsely Settled (SS)	9	191.63	5.5%	
Native Area - Offshore Island (NA-OS)	1	8.02	0.2%	
Native Area - Sparsely Settled (NA-SS)	8	5.09	0.1%	1.8%
Improved Subdivision (IS)	25	50.52	1.4%	
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 BigTorch 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.

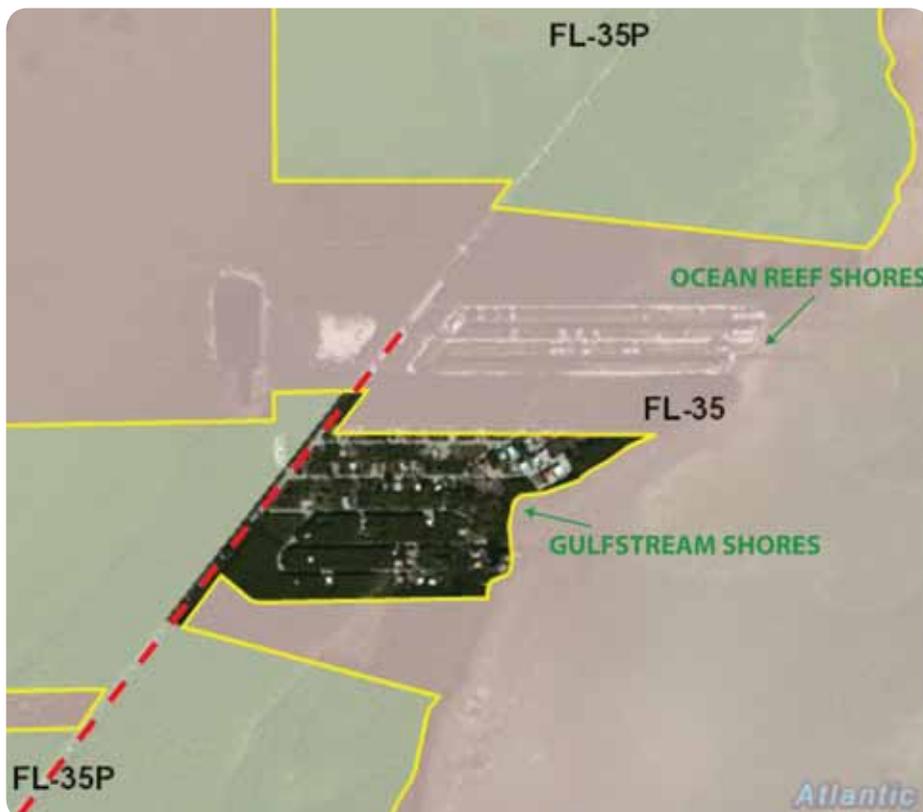
All of Ocean Reef Shores is within CBRS System Unit FL-35 (Figure 3). Most of the property in Ocean Reef Shores is government-owned (Board of Trustees of the Internal Improvement Trust Fund of the State of Florida) for conservation purposes. Of the 156 lots, 135 are government-owned and 21 are privately 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

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.



**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.

# 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 I), 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 <u>one structure per five acres of fastland is used for categorizing a coastal barrier as developed...</u>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 <u>codified in P.L. 106-514 Sec. 2</u>, 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 4.1 I</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 4.1 I</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 4.1 I</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

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>.

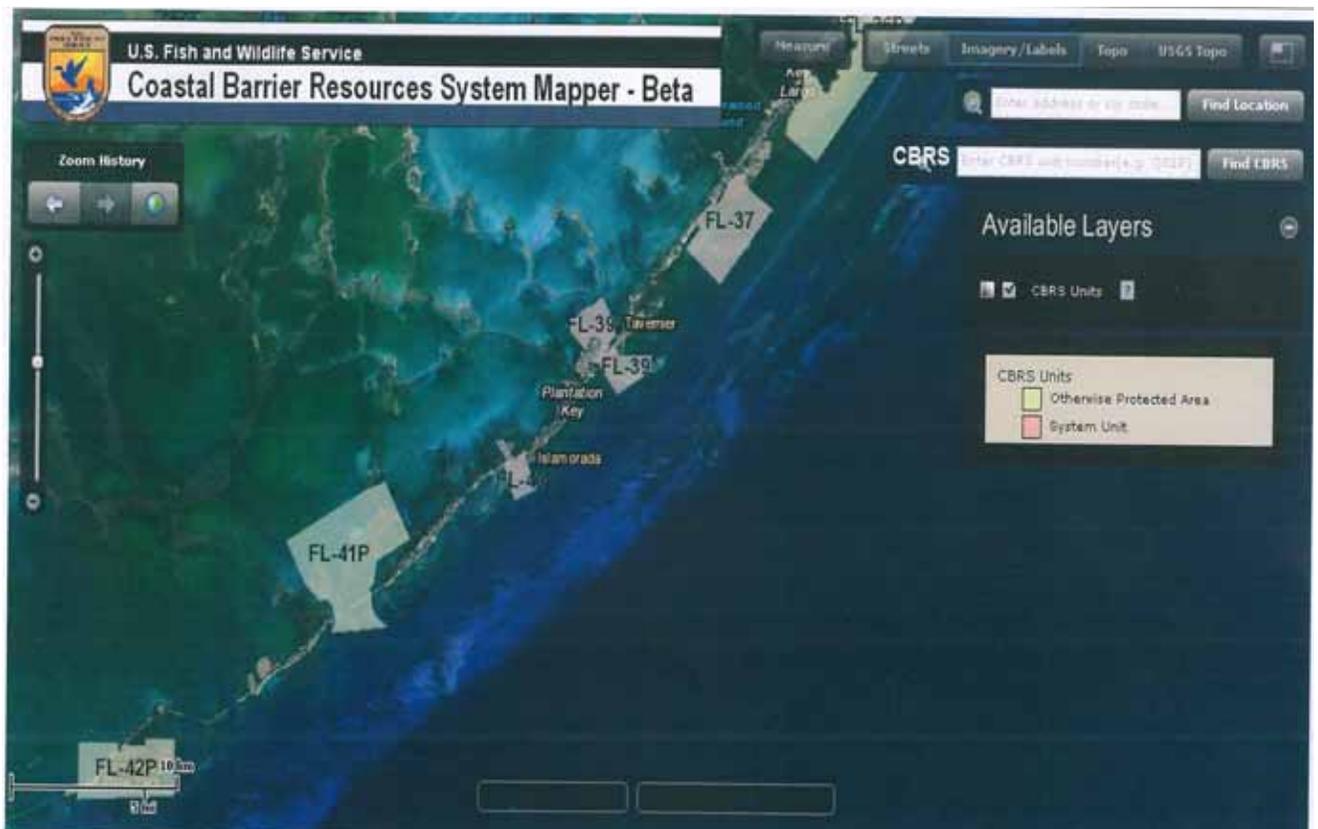
"FEMA's mission is to support our citizens and first responders to ensure that as a nation we work together to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards."



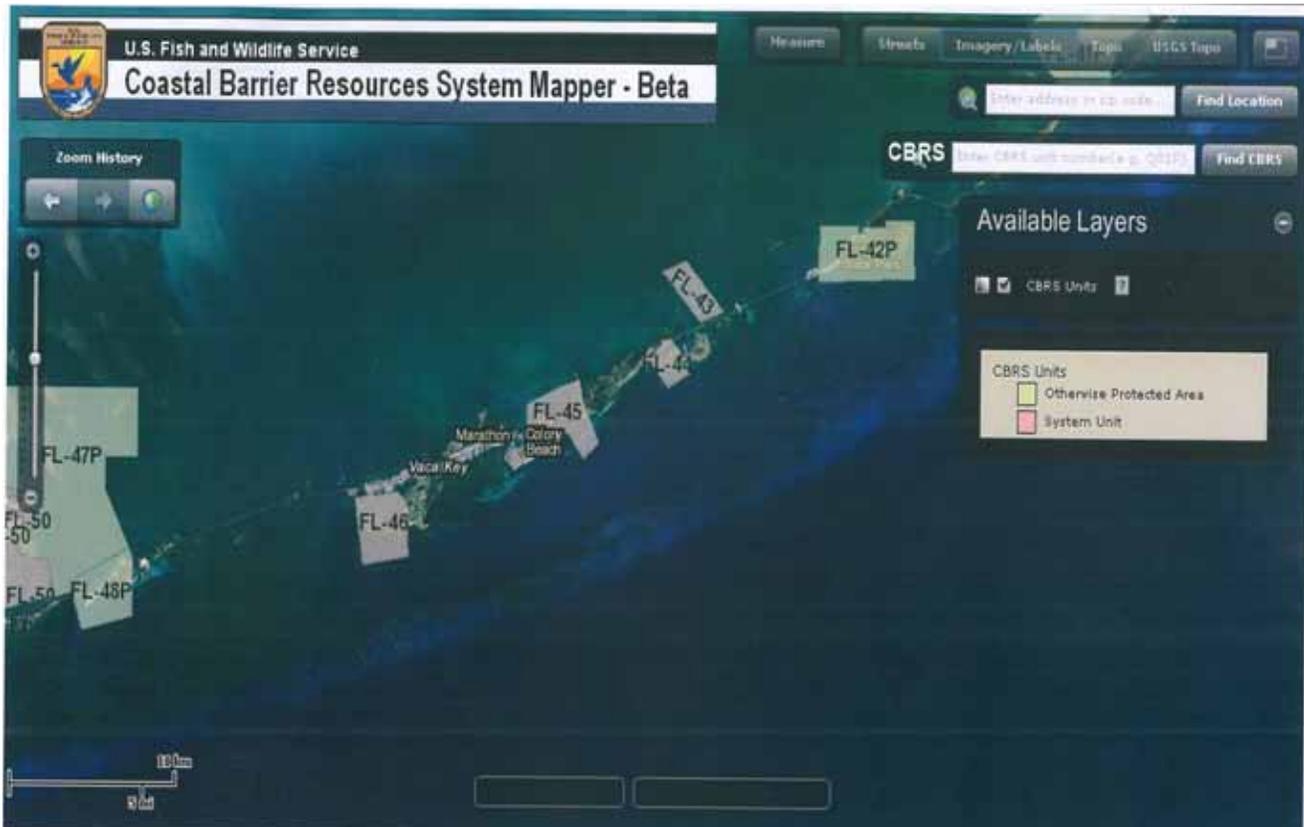
# Analysis of CBRS Policies and Regulations in Monroe County



# Analysis of CBRS Policies and Regulations in Monroe County



# Analysis of CBRS Policies and Regulations in Monroe County



# 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	No	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 020-2008. Thus the original language of MCC Section 9.5-258, which prohibits extension and expansion of utilities within the CBRS units, is currently in effect.

**MINUTES  
OF THE MONROE COUNTY  
BOARD OF COUNTY COMMISSIONERS**

Unofficial until approved  
by the BOCC

Regular Meeting  
Board of County Commissioners  
Wednesday, May 15, 2013  
Key Largo, Florida

A Regular Meeting of the Monroe County Board of County Commissioners convened at 9:00 A.M., at the Murray Nelson Government Center. Present and answering to roll call were Commissioner Heather Carruthers, Commissioner Danny Kolhage, Commissioner Sylvia Murphy, Commissioner David P. Rice and Mayor George Neugent. Also present at the meeting were Roman Gastesi, County Administrator; Bob Shillinger, County Attorney; Pamela Hancock, Deputy Clerk; County Staff, members of the press and radio; and the general public.

**ADDITIONS, CORRECTIONS, DELETIONS**

Item A Motion was made by Commissioner Rice and seconded by Commissioner Carruthers granting approval of the Additions, Corrections and Deletions to the Agenda. Motion carried unanimously.

**PRESENTATION OF AWARDS**

Item B1 Presentation of Mayor's Proclamation declaring the 17th of May, 2013 Domingo Rosillo del Toro Day.

Item B2 Presentation of Mayor's Proclamation declaring May 19 through May 23, 2013 as Emergency Medical Services Week.

Item B3 Presentation of Mayor's Proclamation declaring May 13 through May 17, 2013 as Law Enforcement Memorial Week.

**MISCELLANOUES**

Representative Holly Raschien addressed the Board concerning the legislative session. Ms. Raschien announced that Florida Keys Days will be held on March 25, 2014; and that in July she is planning a major summit for wastewater; and that in September there will be several legislative leaders coming down and that she would like to give them a county-wide tour.

**BULK APPROVALS**

Motion was made by Commissioner Murphy and seconded by Commissioner Carruthers granting approval of the following items by unanimous consent:

Item C4 Board granted approval of a Memorandum of Agreement between the American Humane Association and Monroe County Board of County Commissioners to provide animal sheltering assistance, to help with care for animal victims of disasters both natural and manmade, and to provide preparedness training to first responders and animal care agencies, at no cost to the county; and authorization for the County Administrator to execute any other required documentation in relation to the application process.

Item C6 Board granted approval of the Issuance (renewal) of a Class A Certificate of Public Convenience and Necessity (COPCN) to Ocean Reef Volunteer Fire Department, Inc. d/b/a Ocean Reef Public Safety Department for the operation of an ALS transport ambulance service for the period June 1, 2013 through May 31, 2015.

Item C7 Board granted approval of Assignment of Rights to Tax Refund.

Item C8 Board granted approval of Consent to Assignment of Lease from Keren Adlen and Dani Tobaly, dba Jet Lag Accessories, LLC to Alexandria Eaton Pierobon.

Item C9 Board granted approval of Lease Renewal Agreement for retail rental space with Keren Adlen and Dani Tobaly, dba Jet Lag Accessories, LLC at the Key West International Airport.

Item C10 Board granted approval of Lease Extension Agreement with Greyhound Lines for space at the Key West International Airport.

Item C11 Board granted approval of Task Order #2013-001 with CDM Smith for Project Design and Permitting Services (the "Project") for the Florida Keys Marathon Airport Terminal Sewer Laterals.

Item C12 Board granted approval of Change Order No.2, D.L. Porter Constructors, Inc., Baggage Claim Hall Renovations Project, Key West International Airport.

Item C13 Board granted approval of Amendment 004 of the Alliance for Aging, Inc. Standard Contract, Older Americans Act (OAA) Contract AA-1329 between the Alliance For Aging Inc. (AAA) and the Monroe County Board of County Commissioners (Social Services/In Home and Nutrition Programs) for the current contract period of January 1, 2013 to December 31, 2013.

Item C14 Board granted approval of State of Florida Department of Economic Opportunity Federally-Funded Weatherization Assistance Program Agreement, Contract# 13WX-0G-11-54-01-039 between Monroe County Board of County Commissioners (Community Services/Social Services) and the State of Florida, Department of Economic Opportunity.

Item C15 Board granted approval of Amendment 003 to the Community Care for the Elderly (CCE) Contract KC-1271 between the Alliance for Aging, Inc. (Area Agency on Aging) and the Monroe County Board of Commissioners (Social Services/In-Home Services) for Fiscal

Year July 1, 2012 to June 30, 2013 to decrease funding by \$12,119.00, due to loss of clients and approaching contract end date.

Item C16 Board adopted the following Resolutions for the Transfer of Funds and for the Receipt of Unanticipated Funds:

Receipt of Unanticipated Funds (OMB Schedule Item No. 1).

**RESOLUTION NO. 135-2013**

Said Resolution is incorporated herein by reference.

Receipt of Unanticipated Funds (OMB Schedule Item No. 2).

**RESOLUTION NO. 136-2013**

Said Resolution is incorporated herein by reference.

Receipt of Unanticipated Funds (OMB Schedule Item No. 3).

**RESOLUTION NO. 137-2013**

Said Resolution is incorporated herein by reference.

Receipt of Unanticipated Funds (OMB Schedule Item No. 4).

**RESOLUTION NO. 138-2013**

Said Resolution is incorporated herein by reference.

Receipt of Unanticipated Funds (OMB Schedule Item No. 5).

**RESOLUTION NO. 139-2013**

Said Resolution is incorporated herein by reference.

Transfer of Funds (OMB Schedule Item No. 6).

**RESOLUTION NO. 140-2013**

Said Resolution is incorporated herein by reference.

Receipt of Unanticipated Funds (OMB Schedule Item No. 7).

**RESOLUTION NO. 141-2013**

Said Resolution is incorporated herein by reference.

Transfer of Funds (OMB Schedule Item No. 8).

**RESOLUTION NO. 142-2013**

Said Resolution is incorporated herein by reference.

Receipt of Unanticipated Funds (OMB Schedule Item No. 9).

**RESOLUTION NO. 143-2013**

Said Resolution is incorporated herein by reference.

Transfer of Funds (OMB Schedule Item No. 10).

**RESOLUTION NO. 144-2013**

Said Resolution is incorporated herein by reference.

Transfer of Funds (OMB Schedule Item No. 11).

**RESOLUTION NO. 145-2013**

Said Resolution is incorporated herein by reference.

Item C17 Board adopted the following Resolution to repeal Resolution No. 224-2008 and revise policy for compensation for public emergency response work for essential personnel.

**RESOLUTION NO. 146-2013**

Said Resolution is incorporated herein by reference.

Item C18 Board granted approval to pay \$344,715 renewal premium to Citizens Property Insurance Corporation for Windstorm Insurance policy.

Item C19 Board adopted the following Resolution to allow the Benefits office staff to purchase healthy food items for participants who attend and complete educational lunch and learn activities coordinated and scheduled by the Benefits staff.

**RESOLUTION NO. 147-2013**

Said Resolution is incorporated herein by reference.

Item C20 Board granted approval to execute Amendment 1 to the Task Order with CH2M Hill Engineers, Inc. to clarify consultant's services during construction and to extend the date of completion. This project is funded by Florida Department of Transportation (FDOT) Local Agency Program (LAP) Agreement.

Item C21 Board granted approval of Amendment 2 to the Contract with Metric Engineering, Inc. for Engineering Design and Permitting Services for the US 1 Bayside Shared Use Path Project to extend the expiration date of the contract until December 1, 2013. This project is funded by the District Three Transportation Impact Fees.

Item C22 Board granted approval to negotiate with Parsons Brinckerhoff, the highest ranked respondent, for the Construction Engineering and Inspection Services (CEI), for the Old SR 940 Leg A Watson Bridge (# 904310) Repair Project. This project is funded by Florida Department of Transportation (FDOT) through a Local Agency Program (LAP) Agreement. If an agreement cannot be reached with the highest ranked respondent, request approval to negotiate with the next highest ranked respondent and to continue until a satisfactory negotiation is achieved.

Item C23 Board granted approval of Amendment 1 to the Interlocal Agreement (ILA) with the City of Marathon to provide another year of funding at 7.5% of the contract amount or \$18,750, whichever is less, to fund the Pigeon Key Ferry for the annual term commencing on July 1, 2013.

Item C24 Board granted approval of a second Agreement with Comcast for internet services for the Duck Key Security System Installation and Maintenance project.

Item C25 Board granted approval to advertise a Request for Qualifications (RFQ) for On Call Engineering Services.

Item C26 Board granted approval to execute a Contract with Kisinger Campo and Associates (KCA), the highest ranked RFQ respondent, for engineering design and permitting services for the Card Sound Bridge Repair project. The engineering design and permitting services will be funded by Florida Department of Transportation (FDOT) through a Local Agency Program (LAP) Agreement.

Item C27 Board granted approval of a Contract with Advanced Roofing for the Lancelot Lester Justice Building Roof Replacement. This project will be funded by ad valorem.

Item C28 Board granted approval of a Contract with MBI/K2M Architecture Inc. to provide professional services as required to prepare construction drawings to route the sanitary sewer from the Marathon Courthouse, Marathon Sheriff's Sub-station, and the Marathon Library, to U.S. Highway 1 and connect to the City of Marathon's sewer system. This contract is funded by the one-cent infrastructure tax.

Item C30 Board granted approval of a Contract with Pedro Falcon Electrical Contractors Inc. for the ADA Compliance Segment #4 project. This ADA Segment is funded by a Community Development Block Grant (CDBG).

Item C31 Board granted approval of a Contract with William P. Horn Architect, P.A. for Professional Services for the Design through Construction Administration of a Fitness Trail at Higgs Beach. Funding will be from the one-cent infrastructure tax.

Item C32 Board granted approval of the monthly report on Change Orders reviewed by the County Administrator's Office. Said report is incorporated herein by reference.

Item C33 Board granted approval to amend Exhibit II, Solid Waste rates, approved by the BOCC on September 21, 2012, concerning solid waste collection, disposal, and recycling service rates for residential properties for Fiscal Year 2012/2013, to correct scrivener's errors. These corrections do not impact the current cost of services to residents; however, some businesses will see an increase in their monthly maintenance fees, roll-off collection rate, and compactor collection fees. Contractor will not make increase retroactive but will charge correct rate starting May 1, 2013.

Item C34 Board granted approval to enter into a one-year Residential Lease Agreement commencing June 1, 2013, with a County Employee for Location E.

Item C35 Board granted approval to enter into a one-year Residential Lease Agreement commencing June 1, 2013, with a County Employee for Location F.

Item C36 Board granted approval of second option to renew with U. S. Water Services Corporation for the operation and maintenance of wastewater treatment plant for the Roth Building, Monroe County.

Item C37 Board granted approval to advertise for bids for the inspection, testing, maintenance and repairs of Fire Protection Systems per NFPA 25 for the following buildings for an initial Term of (2) two years with (3) three, 1 year renewal options. Buildings included are: Monroe County Detention Center, Harvey Government Center, Lester Building, Monroe County Courthouse Annex/Old Jail, Marathon Government Annex, Marathon Jail, Plantation Key Jail, Monroe County Main Courthouse, Monroe County Sheriff Administration Building, Department of Juvenile Justice Building, Bayshore Manor and Freeman Justice Building.

Item C38 Board granted approval of second Renewal Agreement with Best Janitorial & Supplies, Inc. for janitorial services at the Big Pine Key Library.

Item C39 Board granted approval of second Renewal Agreement with Best Janitorial & Supplies, Inc. for janitorial services at the George Dolezal Marathon Library.

Item C40 Board granted approval of second Renewal Agreement with Best Janitorial & Supplies, Inc. for janitorial services at the Islamorada Library.

Item C41 Board granted approval of second Renewal Agreement with Best Janitorial & Supplies, Inc. for janitorial services at the Key Largo Library.

#### **TOURIST DEVELOPMENT COUNCIL**

Item D1 Board granted approval of an Amendment to Agreement with Key West Burlesque to revise Exhibit C outlining the named schedule of events.

#### **DIVISION OF GROWTH MANAGEMENT**

Item H1 Board granted approval of the re-appointment of Mr. Gary Centonze to one (1) three (3) year term to the Contractors' Examining Board beginning May 15, 2013 and ending May 14, 2016.

Item H2 Board granted approval of the re-appointment of Mr. Steve Henson to one (1) three (3) year term to the Contractors' Examining Board beginning May 15, 2013 and ending May 14, 2016.

Item H3 Board granted approval of a Contract with Metric Engineering, Inc. for the project management of a habitat restoration project with Dagny Johnson Key Largo Hammock Botanical State Park as mitigation for the construction of the Key Largo Wastewater Treatment District wastewater treatment plant.

Item H4 Board granted approval of Third Amendment to Occupancy Agreement and Ground Lease between Monroe County and Habitat for Humanity of the Upper Keys, Inc. to allow Lessee to plat the leased property for the construction of seven single family homes and act as agent for Monroe County, Lessor and Owner.

Item H5 Board adopted the following Resolution acknowledging the existence and proposed execution of the Multi-Party Agreement Under Section 380.032 Florida Statutes, between Ocean Reef Community Association, Inc., the Florida Department of Economic Opportunity (DEO) and Terra Cotta Realty (Florida), Inc., a Florida corporation and owner of Pumpkin Key.

**RESOLUTION NO. 148-2013**

Said Resolution is incorporated herein by reference.

**MONROE COUNTY SHERIFF DEPARTMENT**

Item K1 Board granted approval of the request for the following expenditure from the Law Enforcement Trust Fund:

\$25,000.00 *Take Stock in Children*: to support “scholarships, mentors, projects and events” and to provide state-matching scholarships for low-income families and support the leadership camp experience at the Sheriff’s Youth Ranch.

**MONROE COUNTY HEALTH DEPARTMENT**

Item L1 Board granted approval of First Amendment to the Core Contract between Monroe County Board of County Commissioners and the State of Florida, Department of Health for operation of the Monroe County Health Department – Contract Year 2012-2013.

**COMMISSIONERS’ ITEMS**

Item O2 Board granted approval of Commissioner Kolhage’s appointment of Tim Root to the Affordable Housing Advisory Committee representing the Residential Home Building Industry, replacing Sherry Phillips.

Item O3 Board granted approval of Commissioner Kolhage’s appointment of Joe Pais to the Community Development Block Grant Citizens Advisory Task Force, replacing John Hernandez, with a term expiring May 17, 2017.

**COUNTY CLERK**

Item P2 Board granted official approval of the Board of County Commissioners minutes from the March 20, 2013, Regular Meeting previously distributed).

Item P3 Board granted approval of the following Warrants for the month of April 2013: **General Fund (001)**, in the amount of \$3,312,855.55; **Fine & Forfeiture Fund (101)**, in the amount of \$3,249,925.11; **Road and Bridge Fund (102)**, in the amount of \$164,669.57; **TDC District Two Penny (115)**, in the amount of \$257,401.32; **TDC Admin. & Promo 2 Cent (116)**, in the amount of \$813,625.26; **TDC District 1,3 Cent (117)**, in the amount of \$735,183.77; **TDC District 2,3 Cent (118)**, in the amount of \$25,802.11; **TDC District 3,3 Cent (119)**, in the amount of \$161,419.94; **TDC District 4,3 Cent (120)**, in the amount of

\$102,489.38; **TDC District 5,3 Cent (121)**, in the amount of \$211,103.02; **Gov. Fund Type Grants (125)**, in the amount of \$306,032.14; **Impact Fees Roadways (130)**, in the amount of \$75,106.80; **Impact Fees Parks & Rec (131)**, in the amount of \$23,730.00; **Fire & Amb District 1 L&M Keys (141)**, in the amount of \$188,813.55; **Upper Keys Health Care (144)**, in the amount of \$3,324.56; **Uninc Svc Dist Parks & Rec (147)**, in the amount of \$84,188.55; **Plan, Build, Zoning (148)**, in the amount of \$60,149.50; **Municipal Policing (149)**, in the amount of \$515,234.64; **911 Enhancement Fee (150)**, in the amount of \$76,079.33; **Duck Key Security (152)**, in the amount of \$7,756.52; **Boating Improvement Fund (157)**, in the amount of \$11,623.86; **Misc. Special Revenue Fund (158)**, in the amount of \$115,939.35; **Environmental Restoration (160)**, in the amount of \$4,205.33; **Court Facilities Fees-602 (163)**, in the amount of \$88,224.27; **Stock Island Wastewater (171)**, in the amount of \$1,000.00; **Building Fund (180)**, in the amount of \$24,184.22; **Cent Infra Surtax (304)**, in the amount of \$16,444.09; **INFR Sls Srtx Rev Bds2007 (308)**, in the amount of \$273,903.83; **Big Coppitt Wastewater Pr (310)**, in the amount of \$1,000.00; **Duck Key Wastewater (311)**, in the amount of \$1,000.00; **Cudjoe Regional (312)**, in the amount of \$28,104.56; **Card Sound Bridge (401)**, in the amount of \$9,670.06; **Marathon Airport (403)**, in the amount of \$40,801.73; **Key West Intl. Airport (404)**, in the amount of \$289,524.73; **KW AIP Series 2006 Bonds (405)**, in the amount of \$31,690.64; **MSD Solid Waste (414)**, in the amount of \$1,263,564.44; **Worker's Compensation (501)**, in the amount of \$11,689.69; **Group Insurance Fund (502)**, in the amount of \$839,866.43; **Risk Management Fund (503)**, in the amount of \$43,903.57; **Fleet Management Fund (504)**, in the amount of \$88,911.77; **Fire&EMS LOSAP Trust Fund (610)**, in the amount of \$2,325.00.

Item P4 Board granted approval of Tourist Development Council Expenditures for the month of April 2013: **Advertising**, in the amount of \$1,413,507.54; **Bricks & Mortar Projects/Interlocal**, in the amount of \$242,625.38; **Visitor Information Services**, in the amount \$66,794.33; **Events**, in the amount of \$149,217.57; **Office Supplies & Oper Costs**, in the amount of \$26,373.72; **Personnel Services**, in the amount of \$189,873.56; **Public Relations**, in the amount of \$36,695.54; **Sales & Marketing**, in the amount of \$158,952.83; **Telephone & Utilities**, in the amount of \$18,043.56; **Travel**, in the amount of \$10,564.77.

Item P5 Board granted approval to remove surplus equipment from inventory via disposal or advertise for bid.

### COUNTY ADMINISTRATOR

Item Q2 Board granted approval of the re-appointment of Rick Freeburg to the Health Council of South Florida for a two year term in the category of Provider.

Item Q3 Board adopted the following Resolution authorizing the temporary closing of the Northbound Lanes of US1 from mile marker 98.2 to mile marker 100 from 10:00 a.m. to 11:30 a.m. for the annual 4th of July Parade sponsored by The Reporter Newspaper.

### RESOLUTION NO. 149-2013

Said Resolution is incorporated herein by reference.

Item Q6 Notice of upcoming meetings related to RESTORE Act activities.

**COUNTY ATTORNEY**

Item R3 Board granted approval to advertise a Public Hearing to consider adoption of an Ordinance amending Section 2-59(a) and (b) and creating 2-59 (d) Monroe County Code authorizing the County Attorney and Assistant County Attorneys to accept service of process on behalf of the County in limited circumstances.

Item R4 Board granted approval of Third Amendment to Lease Agreement extending the lease for office space for the County Attorney's Office for one (1) year to expire August 31, 2014.

Item R5 Board adopted the following Resolution granting approval of amendment to Board of County Commissioners Administrative Procedures Section 1.03(i) allowing ex-parte communication pursuant to Ordinances No. 035-2010 and No. 012-2013.

**RESOLUTION NO. 150-2013**

Said Resolution is incorporated herein by reference.

Motion carried unanimously.

**COUNTY ADMINISTRATOR**

Item Q5 Wendy Blondin, Project Manager representing AMEC and Rhonda Haag, Sustainability Program Manager addressed the Board concerning approval of a Contract with AMEC Environment & Infrastructure, Inc. in the amount of \$37,725; to perform an extensive analysis of the existing canal documentation, conduct field visits to the estimated 502 canals in the County, recommend the top 15 proposed demonstration sites, and in coordination with the County and the Canal Restoration Subcommittee recommend the final estimated five (5) demonstration projects to be designed and constructed. After discussion, motion was made by Commissioner Rice and seconded by Commissioner Murphy granting approval of the item. Motion carried unanimously.

The Board of County Commissioners meeting adjourned for the Board of Governors for the Fire and Ambulance District I meeting.

**FIRE & AMBULANCE DISTRICT 1  
BOARD OF GOVERNORS**

The Board of Governors for the Fire and Ambulance District I convened. Present and answering to roll call were Commissioner Danny Kolhage, Mayor George Neugent, Commissioner David P. Rice, Councilman Clark Snow and Mayor Norman Anderson.

James Callahan, Fire Chief advised the Board that the Conch Key Fire Station should be ready later this month or the first of next month; and that Stock Island Fire Station is ahead of schedule.

Item G2 James Callahan, Fire Chief addressed the Board concerning approval of the First Renewal Agreement between the Board of County Commissioners, Board of Governors of Fire and Ambulance District 1 of Monroe County, and Advanced Data Processing, Inc. (d.b.a. ADPI-Intermedix), effective from June 1, 2013 through May 31, 2014, for ground and air rescue transport billing and related professional services. After discussion, motion was made by Commissioner Rice and seconded by Councilman Snow granting approval of the item. Motion carried unanimously.

Item G3 James Callahan, Fire Chief addressed the Board concerning a request to issue a Request for Proposal (RFP) for maintenance of Monroe County fire rescue vehicles. After discussion, motion was made by Commissioner Kolhage and seconded by Councilman Snow granting approval of the item. Motion carried unanimously.

There being no further business, the meeting of Board of Governors for the Fire and Ambulance District I was adjourned.

\* \* \* \* \*

The Board of County Commissioners meeting reconvened with all Commissioners present.

### **MISCELLANEOUS BULK APPROVALS**

Item C1 Bob Ward, Information Technology Director and Bob Shillinger, County Attorney addressed the Board concerning approval of a Comcast Enterprise Services Master Services Agreement FL-278919-dkeen for sixty (60) months with Comcast Cable Communications Management, LLC, and associated First Amendment to Comcast Enterprise Services Master Services Agreement No. FL-278919-dkeen outlining the terms and conditions under which the BOCC will purchase offered services from Comcast. After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner Murphy granting approval of the item. Motion carried unanimously.

Item C2 Motion was made by Commissioner Kolhage and seconded by Commissioner Murphy granting approval of a Comcast Enterprise Services Sales Order Form # FL-278919-dkeen-240376 as an addendum to Comcast Enterprise Services Master Services Agreement FL-278919-dkeen with associated First Amendment to Comcast Enterprise Services Master Services Agreement No. FL-278919-dkeen to provide Comcast wide area Ethernet services at the Monroe County Attorney's Office at 1111 12th Street Key West FL 33040 at speed of 50 Mb/s and wide area Ethernet services at the Harvey Government Center at 1200 Truman Ave Key West FL 33040 at a speed of 100 Mb/s. Total cost for 36 month term is \$58,464. Motion carried unanimously.

## **ENGINEERING**

Item N1 Kevin Wilson, Public Works & Engineering Director introduced James Bobat, representing the Duck Key Property Owners Association. Mr. Bobat addressed the Board concerning the appeal by the Duck Key Property Owners Association (DKPOA) of denial of a right of way permit to landscape on county rights-of-way near various wastewater lift stations. Bob Shillinger, County Attorney addressed the Board.

After discussion, motion was made by Commissioner Rice and seconded by Commissioner Murphy directing staff to do an Ordinance change and amend it with the appropriate restrictions. Motion carried unanimously.

Bob Shillinger, County Attorney advised the Board that this is the one type of quasi-judicial hearing, in which they are engaged, that is not covered by the ex parte disclosure Ordinance that is in place for land use issues. Mr. Shillinger asked if anyone had discussions with anyone outside of the record here today, to disclose what they are and if they've affected their decision here today. Commissioner Rice advised that he discussed it with Kevin Wilson and staff; and Commissioner Carruthers advised that she had discussions with Mr. Hunter about the general concept regarding the lift stations. Both Commissioners indicated that those conversations did not affect their decisions here today. Mr. Shillinger also advised that if any person wished to appeal this decision, they would have to make a transcript and have it prepared by a certified court reporter at their own expense. It would be made part of the record on appeal, and that the transcript from recordings does not provide sufficiently accurate records.

After further discussion, Item N1 was continued to the June meeting in Marathon, with direction to staff to develop an agreement with the Duck Key Property Owner's Association.

## **COMMISSIONERS' ITEMS**

Item O1 Dr. Aaron Adams made a presentation of the Economic Study, with the results of the Bonefish Tarpon foundation value of the fishery to Monroe County, partially funded by the Board of County Commissioners.

## **MISCELLANEOUS BULK APPROVALS**

Item C3 Motion was made by Commissioner Kolhage and seconded by Commissioner Rice granting approval of the First Renewal Agreement between the Board of County Commissioners of Monroe County and the Board of Governors of Fire and Ambulance District 1 with Advanced Data Processing, Inc. (d.b.a. ADPI-Intermedix), effective from June 1, 2013 through May 31, 2014, for ground and air rescue transport billing and related professional services. Motion carried unanimously.

Item C42 Kevin Wilson, Public Works & Engineering Director addressed the Board concerning approval of sale of County property to Islamorada, Village of Islands, legally described as Lot 1, 2, and 24, Block 11 of Key Heights Section Two, (RE#00417340-000000), located at 103 Key Heights Drive, Islamorada, at the NW corner of the intersection of US-1 and

Key Heights Drive for use as a sewer pump station by the Village; and adopted the following Resolution authorizing the sale as prescribed by statute, the purchase and sale contract with the Village, and execution of deed, seller's affidavit, and other documents as required for completion of the transaction as approved by the County Attorney. The proposed net sales price including transfer of the eight (8) Transient Residential Units (TRU) that are legally established on the property is \$510,000. After discussion, motion was made by Commissioner Kolhage and seconded by Commissioner Carruthers to accept staff recommendations with a reduction of 10%, the selling price will be \$477,000 with the \$20,000 allowance for cleanup to be taken at closing and correcting all of the documents with the adjusted price. Ted Blackburn, Vice Mayor, Islamorada Village of Islands addressed the Board. Roll call vote was taken with the following results:

Commissioner Carruthers	Yes
Commissioner Kolhage	Yes
Commissioner Murphy	No
Commissioner Rice	Yes
Mayor Neugent	No

Motion carried.

#### **RESOLUTION NO. 151-2013**

Said Resolution is incorporated herein by reference.

Item C5 James Callahan, Fire Chief addressed the Board concerning approval of the Renewal Agreement between the Board of County Commissioners of Monroe County and J. A. LaRocco Enterprises, Inc. for the installation of fire hydrants in unincorporated Monroe County using Ad Valorem taxes, Impact Fees, and other funding sources such as grants, private donations, etc. After discussion, the item was withdrawn and staff was directed to go out for bid.

#### **STAFF REPORTS**

Item E7 Intergovernmental Affairs - Lisa Tennyson, Director Legislative Affairs & Grants Acquisition updated the Board on important amendments made to legislation pertaining to the Growth Management Division; and advised the Board on late legislation pertaining to the RESTORE Act.

#### **COUNTY ADMINISTRATOR**

Item Q7 Elizabeth Young, Executive Director of Florida Keys Council of the Arts addressed the Board concerning approval of policy and procedure under which gifts or loans of Art may be donated to Monroe County. After discussion, motion was made by Commissioner Murphy and seconded by Commissioner Rice to adopt the following Resolution. Motion carried unanimously.

#### **RESOLUTION NO. 152-2013**

Said Resolution is incorporated herein by reference.

## **MONROE COUNTY SHERIFF DEPARTMENT**

Item K2 Lisa Tennyson, Director Legislative Affairs & Grants Acquisition addressed the Board concerning approval of the Fiscal Year 2013 recommendations of the Monroe County Shared Asset Forfeiture Fund Advisory Board. Said recommendations are incorporated herein by reference. After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner Murphy that they be funded as recommended, except no more than their funding request. Motion carried unanimously.

### **COUNTY ADMINISTRATOR**

Item Q1 Roman Gastesi, County Administrator introduced Wanda Reina, Senior Code Compliance Inspector, Upper Keys. Mr. Gastesi referred the Board to his written report dated April 30, 2013. Kevin Wilson, Public Works & Engineering Director and Christine Hurley, Growth Management Director addressed the Board. Board discussed the timetable on creating the prioritization list of projects.

### **COUNTY ATTORNEY**

Item R6 Bob Shillinger, County Attorney addressed the Board concerning direction regarding Florida Power and Light Company Turkey Point Units 6 and 7 Power Plant siting hearings. Mr. Shillinger advised that there are some public hearings coming up regarding the on-going regulatory litigation over the siting of the nuclear power plants at Turkey Point, starting around July 8<sup>th</sup> and continuing through to August 9<sup>th</sup>. Mr. Shillinger wanted to alert the public to the public hearings in the event that they may testify before the Administrative Hearing Officer on July 17<sup>th</sup>, 23<sup>rd</sup> and 25<sup>th</sup>. Steven D. Scroggs, Senior Director Project Development, Florida Power & Light gave a short presentation on what their project is. Board directed the County Attorney's Office to participate in the hearings.

### **COUNTY ADMINISTRATOR**

Item Q4 Roman Gastesi, County Administrator and Rhonda Haag, Sustainability Program Manager addressed the Board concerning approval for Monroe County Board of County Commissioners to execute Amendment No. 1 to a Contract with the Redman Consulting Group, Inc. for consulting services related to the waste management and recycling contracts to provide additional funding in the amount of \$5,000. After discussion, motion was made by Commissioner Rice and seconded by Commissioner Kolhage granting approval of the item. Motion carried unanimously.

### **WASTEWATER ISSUES**

Item J1 Kevin Wilson, Public Works & Engineering Director addressed the Board concerning adoption of a Resolution approving the form of a Clean Water State Revolving Fund Construction Loan Agreement with the Florida Department of Environmental Protection (FDEP); authorizing execution and delivery of such agreement; and authorizing the institution of

a bond validation proceeding with respect to the debt obligation to be incurred in connection with the loan agreement to finance the Cudjoe Regional Wastewater Treatment project as described in the Facilities Plan. The following individual addressed the Board: Steve Gibbs. After discussion, motion was made by Commissioner Rice and seconded by Commissioner Murphy to adopt the following Resolution. Motion carried unanimously.

**RESOLUTION NO. 153-2013**

Said Resolution is incorporated herein by reference.

Item J2 A Public Hearing was held to consider adoption of the Cudjoe Regional Wastewater Supplemental Assessment Program Initial Assessment Resolution describing the method of assessment for the Inner Island expansion areas and properties developed subsequent to adoption of the Inner Island assessment resolution on July 18, 2012 based on permits issued by Monroe County Building Department. Kevin Wilson, Public Works & Engineering Director; Roman Gastesi, County Administrator; and Bob Shillinger, County Attorney addressed the Board. There was no public input. After discussion, motion was made by Commissioner Murphy and seconded by Commissioner Carruthers to adopt the following Resolution. Motion carried unanimously.

**RESOLUTION NO. 154-2013**

Said Resolution is incorporated herein by reference.

Kevin Wilson, Public Works & Engineering Director advised that the Final Assessment Resolution Hearing will be held on June 19, 2013, at 3:00 p.m.

Item J3 A Public Hearing was held to consider adoption of the Cudjoe Regional Wastewater Supplemental Assessment Program Initial Assessment Resolution describing the method of assessment for the Outer Island expansion areas and properties developed subsequent to adoption of the Outer Island assessment resolution on July 18, 2012 based on permits issued by Monroe County Building Department. There was no public input. Motion was made by Commissioner Murphy and seconded by Commissioner Rice to adopt the following Resolution. Motion carried unanimously.

**RESOLUTION NO. 155-2013**

Said Resolution is incorporated herein by reference.

Item J4 A Public Hearing was held to consider adoption of the Cudjoe Regional Wastewater Supplemental Assessment Program Initial Assessment Resolution describing the method of assessment for the Venture Out parcels that were coded as vacant properties and, therefore, not included in Resolution 197-2012 for the Inner Islands of the Cudjoe Regional Centralized Wastewater Treatment System adopted on July 18, 2012. F.S. 718-120 states that each condominium parcel should be separately assessed. A separate billing was mailed to these properties in November 2012. There was no public input. Motion was made by Commissioner Murphy and seconded by Commissioner Rice to adopt the following Resolution. Motion carried unanimously.

### **RESOLUTION NO. 156-2013**

Said Resolution is incorporated herein by reference.

Item J5 A Public Hearing was held to consider adoption of the Big Coppitt/Duck Key Supplemental Assessment Program Initial Assessment Resolution describing the method of assessment for the Big Coppitt/Duck Key properties developed subsequent to adoption of Resolution 302-2007 in 2007 for the Big Coppitt and Duck Key Municipal Service Taxing Units based on permits issued by Monroe County Building Department. There was no public input. Motion was made by Commissioner Murphy and seconded by Commissioner Kolhage to adopt the following Resolution. Motion carried unanimously.

### **RESOLUTION NO. 157-2013**

Said Resolution is incorporated herein by reference.

Item J6 Motion was made by Commissioner Rice and seconded by Commissioner Murphy granting approval to execute Amendment 4 with Government Services Group, Inc. (GSG) for the development and administration of the Non-Ad Valorem Assessment Program for Centralized Cudjoe Regional Supplemental Services (Vacant Venture Out with Water Service, Expanded Areas as of 16 January 2013, and Pre-Capacity Fee Development). Kevin Wilson, Public Works & Engineering Director addressed the Board. After discussion, the motion carried unanimously.

### **EMPLOYEE SERVICES**

Item M1 Sid Webber, Insurance Consultant with Interisk gave an update on additional insurance coverage with Citizens Property Insurance and request to rescind Board action of August 15, 2012 granting approval to purchase increased Primary Wind coverage based on recent appraisal. After discussion, motion was made by Commissioner Carruthers and seconded by Commissioner Kolhage granting approval of the item. Motion carried unanimously.

### **DIVISION OF GROWTH MANAGEMENT**

Item II Christine Hurley, Growth Management Director; and Michael Davis and John Abbott, representing Keith & Schnars addressed the Board concerning the results of the "Analysis of Coastal Barrier Resources System Policies and Regulations in Monroe County, Florida", the data and analysis, prepared by Keith and Schnars, P.A., regarding the Coastal Barrier Resources System (CBRS) and the County's CBRS Comprehensive Plan policies and Land Development Code (LDC). The following individuals addressed the Board: Hallett Douville, Anne Press, representing Solar's Smart Company; Alicia Putney, representing the Solar Community of No Name Key; Kandy Kimble, Kathy Brown, representing the No Name Key Property Owner's Association, Inc.; Beth Ramsey-Vickrey, Andrew Tobin, and Deb Curlee, representing Last Stand. Bob Shillinger, County Attorney addressed the Board. After discussion, motion was made by Commissioner Rice and seconded by Commissioner Kolhage directing staff to implement the Keith & Schnars report and phased recommendations. Roll call vote was taken with the following results:

Commissioner Carruthers	Yes
Commissioner Kolhage	Yes
Commissioner Murphy	No
Commissioner Rice	Yes
Mayor Neugent	Yes

Motion carried.

## PUBLIC HEARINGS

Item S1 A Public Hearing was held to consider adoption of a Resolution by the Board of County Commissioners to amend Resolution No. 332-2012, the Planning & Environmental Resources Fee Schedule to establish a new fee for a letter of understanding related only to identifying the status of a nonconforming use in that such a letter requires less staff time to prepare than a typical letter of understanding; and repeal any other fees schedules inconsistent herewith. There was no public input. Motion was made by Commissioner Murphy and seconded by Commissioner Kolhage to adopt the following Resolution. Motion carried unanimously.

### RESOLUTION NO. 158-2013

Said Resolution is incorporated herein by reference.

Item S2 A Public Hearing was held to consider adoption of an Ordinance amending Monroe County Code Chapter 23, Article III, Section 23-78, Forms, etc. and Section 23-111, Vending machines, in order to eliminate the issuance of paper business tax receipts and stickers and decals, as well as remove the requirements that the aforementioned receipts be displayed at the place of business or on the vending machines. There was no public input. After discussion, motion was made by Commissioner Murphy and seconded by Commissioner Rice to adopt the following Ordinance. Motion carried unanimously. Bob Shillinger, County Attorney addressed the Board.

### ORDINANCE NO. 021-2013

Said Resolution is incorporated herein by reference.

## DIVISION OF GROWTH MANAGEMENT

Item I2 Christine Hurley, Growth Management Director addressed the Board concerning the Key Largo Wastewater Treatment District CR-905 improvement project relative to the Coastal Barrier Resources System (CBRS) Unit #FL-35 and the expenditure of federal funds. After discussion, motion was made by Commissioner Murphy and seconded by Commissioner Rice directing staff to prepare a revised letter to send to the Executive Director of the Key Largo Wastewater Treatment District that explains that the current policies do not permit us to issue the permits, but that the Board has directed staff to move forward with the Code amendment related to that and to include those timelines. Motion carried unanimously.

## COUNTY ADMINISTRATOR

Item Q8 Lisa Tennyson, Director Legislative Affairs & Grants Acquisition addressed the Board concerning approval of RESTORE Act Local Committee and project award process titled *Monroe County RESTORE Act Discussion of Guiding Principles and Ranking Criteria for "Local Pot"*, prepared by the Office of Management & Budget, dated May 15, 2013. Ms. Tennyson advised the Board that first meeting of the RESTORE Act Local Committee will meet tomorrow in Marathon at 11:00 a.m. After discussion, motion was made by Commissioner Rice and seconded by Commissioner Carruthers to use the Guiding Principles and Ranking Criteria as a starting point for discussion with the advisory panel and that staff will bring them back for final approval after they have that input. Motion carried unanimously.

## COUNTY ATTORNEY

Item R7 Bob Shillinger, County Attorney gave the Board a Report on the May 14, 2013 hearing before the Public Service Commission in the matter of Reynolds v. Utility Bd. of the City of KW d/b/a Keys Energy Services, PSC Docket No. 120054-EM. The following individuals addressed the Board: Alicia Putney, representing the Solar Community of No Name Key; John Lentini, Deb Curlee, representing Last Stand; Bart Smith, representing Robert & Juli Reynolds; and Andrew Tobin, representing No Name Property Owners Association. After discussion, motion was made by Commissioner Rice and seconded by Commissioner Kolhage that the County 1) not appeal the decision of the Public Service Commission to the extent that it represents the staff recommendation of the Public Service Commission; 2) to the extent possible by law treat the PSC decision as a final decision in the matter; 3) in the event that a Writ of Mandamus is sought to provide permits for electrical service on No Name Key by the Reynolds the Newtons or any other similarly situated property owners that the county staff is directed to not oppose the entry of Writ with the following conditions; a) that any Writs seek no relief beyond the findings and orders of the PSC that as enunciated by the PSC staff recommendation and that any Writ seek no relief beyond the granting of electrical connection permits to private residences on No Name Key; and 4) we institute no further appeals of any existing litigation and not oppose any person currently appealing any county decisions denying electrical service to persons on No Name Key. Roll call vote was taken with the following results:

Commissioner Carruthers	No
Commissioner Kolhage	Yes
Commissioner Murphy	No
Commissioner Rice	Yes
Mayor Rice	Yes

Motion carried.

## PUBLIC HEARINGS

Item T1 The second of two Public Hearings was held to consider adoption of an Ordinance by the Monroe County Board of County Commissioners amending the Monroe County Code by

establishing 2 Commercial Districts; amending Section 130-2, Land Use Districts Established; creating Section 130-51, Purpose of the Commercial 1 District (C1); creating Section 130-52, Purpose of the Commercial 2 District (C2); creating, within Article III Permitted and Conditional uses, Section 130-102, Commercial 1 District (C1), and Section 130-103, Commercial 2 District (C2); and amending Section 130-164, Maximum Nonresidential Land Use Intensities and District Open Space. There was no public input. Motion was made by Commissioner Carruthers and seconded by Commissioner Kolhage to adopt the following Ordinance. Motion carried unanimously.

**ORDINANCE NO. 022-2013**

Said Resolution is incorporated herein by reference.

Item T2 A Public Hearing was held to consider adoption of an Ordinance by the Monroe County Board of County Commissioners amending the Monroe County Code to include the Commercial 1 (C1) and Commercial 2 (C2) land use districts within the following sections: Section 114-20 Fences; Section 114-99 Required Landscaping; Section 114-126 District Boundary Buffers; Section 114-127 Required Scenic Corridor and Major Street Buffers; Section 130-186 Minimum Yards; Section 142-4 Signs Requiring a Permit and Specific Standards; Chapter 146, entitled "Wireless Communications Facilities," Section 146-3 Applicability, Section 146-4 Uses by Land Use District, and Section 146-5 Development Standards; Referencing C1 and C2 land use districts where appropriate. There was no public input. Motion was made by Commissioner Kolhage and seconded by Commissioner Rice to adopt the following Ordinance. Motion carried unanimously.

**ORDINANCE NO. 023-2013**

Said Resolution is incorporated herein by reference.

**COUNTY ATTORNEY**

Item R1 Bob Shillinger, County Attorney discussed the redacted inspection report from the Florida Department of Transportation on the Old Seven Mile Bridge. Motion was made by Commissioner Kolhage and seconded by Commissioner Rice to authorize the County Attorney's Office to file an action in the Circuit Court seeking a court order authorizing the County to release unredacted copies to the Department of Transportation inspection reports of the Old Seven Mile Bridge for a showing of good cause. Motion carried unanimously. Kevin Wilson, Public Works & Engineering Director addressed the Board.

Item R2 Bob Shillinger, County Attorney read the required language into the record requesting approval to hold an Attorney-Client Closed Session in the matter of KW Resort Utilities Corp. v. Monroe County, PSC Docket No. 130086-SU at the June 19, 2013 BOCC meeting in Marathon, FL at 1:30 p.m. or as soon thereafter as may be heard. Motion was made by Commissioner Kolhage and seconded by Commissioner Carruthers granting approval of the item. Motion carried unanimously. Kevin Wilson, Public Works & Engineering Director addressed the Board.

There being no further business, the meeting of the Board of County Commissioners was adjourned.

Amy Heavilin, CPA, Clerk  
and ex-officio Clerk to the  
Board of County Commissioners  
Monroe County, Florida

*Pamela J. Hancock, D. C.*



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**MONROE COUNTY, FLORIDA  
DEVELOPMENT REVIEW COMMITTEE  
RESOLUTION NO. DRC 06-13**

A RESOLUTION BY THE SENIOR DIRECTOR OF PLANNING & ENVIRONMENTAL RESOURCES AND CHAIR OF THE DEVELOPMENT REVIEW COMMITTEE RECOMMENDING APPROVAL OF THE REQUEST BY THE PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT FOR AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, TO REVISE THE DEFINITION OF COASTAL BARRIER RESOURCES SYSTEM (CBRS) TO BE CONSISTENT WITH THE FEDERAL COASTAL BARRIER RESOURCES ACT; AMENDING SECTION 130-122, COASTAL BARRIER RESOURCES SYSTEM OVERLAY DISTRICT, TO DISTINGUISH BETWEEN FEDERAL AND COUNTY PURPOSES; REVISING THE APPLICATION OF THE CBRS OVERLAY DISTRICT TO BE CONSISTENT WITH CBRS OBJECTIVES AND POLICIES OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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**WHEREAS**, during a regularly scheduled meeting held on June 25, 2013, the Development Review Committee of Monroe County conducted a review and consideration of a request filed by the Planning & Environmental Resources Department for text amendments to §101-1 and §130-122 of the Monroe County Code; and

**WHEREAS**, the Planning & Environmental Resources Department is proposing an amendment to the text of the Monroe County Code amending Monroe County Code §101-1, Definitions, to revise the definition of Coastal Barrier Resources System (CBRS) to be consistent with the federal Coastal Barrier Resources Act; amending §130-122, Coastal Barrier Resources

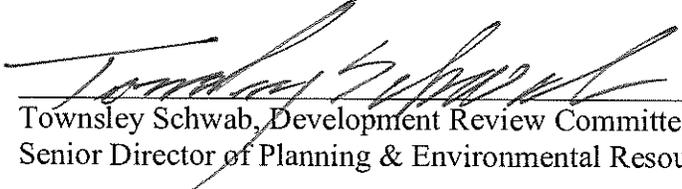
1 System Overlay District, to distinguish between Federal and County purposes; revising the  
2 application of the CBRS Overlay District to be consistent with CBRS objectives and policies of  
3 the Monroe County Year 2010 Comprehensive Plan; and  
4

5 **WHEREAS**, based upon the information and documentation submitted, the  
6 Development Review Committee Chair and Senior Director of Planning & Environmental  
7 Resources found:  
8

- 9 1. The proposed amendment is consistent with the provisions and intent of the Monroe  
10 County Comprehensive Plan; and
- 11 2. The proposed amendment is consistent with the provisions and intent of the Monroe  
12 County Code; and
- 13 3. The proposed amendment is necessary due to new issues and recognition of a need  
14 for additional detail or comprehensiveness as required by §102-158 of the Monroe  
15 County Code; and
- 16 4. The proposed amendment is consistent with the Principles for Guiding Development  
17 for the Florida Keys Area of Critical State Concern, Section 380.0552(7), Florida  
18 Statutes.

19  
20 **NOW, THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT REVIEW**  
21 **COMMITTEE OF MONROE COUNTY, FLORIDA** that the information provided in the  
22 staff report and discussed at the June 25, 2013 meeting supports the Chair's decision to  
23 recommend approval to the Planning Commission and Board of County Commissioners with  
24 revisions as discussed at the meeting.  
25

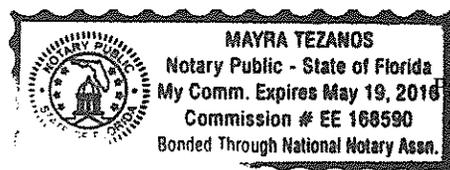
26  
27 Date 7.3.13

  
\_\_\_\_\_  
Townsley Schwab, Development Review Committee Chair and  
Senior Director of Planning & Environmental Resources

31 **I HEREBY CERTIFY** that on this day before me, an officer duly authorized in the State  
32 aforesaid and in the County aforesaid to take acknowledgments, personally appeared Townsley  
33 Schwab, to me known to be the person described in and who executed the foregoing instrument  
34 and he acknowledged before me that he executed the same.  
35

36 WITNESS my hand and official seal in the County and State last aforesaid this 3<sup>rd</sup> day of  
37 July, 2013.  
38

39  
40   
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA  
41





MONROE COUNTY, FLORIDA  
PLANNING COMMISSION RESOLUTION NO. P\_\_-13

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION RECOMMENDING APPROVAL OF AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, TO REVISE THE DEFINITION OF COASTAL BARRIER RESOURCES SYSTEM (CBRS) TO BE CONSISTENT WITH THE FEDERAL COASTAL BARRIER RESOURCES ACT; AMENDING SECTION 130-122, COASTAL BARRIER RESOURCES SYSTEM OVERLAY DISTRICT TO DISTINGUISH BETWEEN FEDERAL AND COUNTY PURPOSES; REVISING THE APPLICATION OF THE CBRS OVERLAY DISTRICT TO BE CONSISTENT WITH CBRS OBJECTIVES AND POLICIES OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

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WHEREAS, the Planning & Environmental Resources Department is proposing an amendment to the Monroe County Code to revise the definition of Coastal Barrier Resources System (CBRS) to be consistent with the federal Coastal Barrier Resources Act, to revise the purpose of the coastal barrier resources system overlay district to distinguish between federal and county purposes, and to be consistent with CBRS objectives and policies of the Monroe County Comprehensive Plan; and

WHEREAS, the Monroe County Development Review Committee considered the proposed amendment at a regularly scheduled meeting held on the 25th day of June, 2013; and

WHEREAS, at a regularly scheduled meeting held on the 31<sup>st</sup> day of July, 2013, the Monroe County Planning Commission held a public hearing to consider, review and receive public comment for a proposed amendment to the Monroe County Code and to make its recommendation to the Board of County Commissioners; and

1           **WHEREAS**, the Monroe County Planning Commission makes the following findings of  
2 fact and conclusions of law:  
3

- 4           1. The County has adopted Comprehensive Plan Policies and Land Development Code  
5 (LDC) regulations which both discourage and prohibit the extension of utilities to or  
6 through areas designated as units of the Coastal Barrier Resources System; and
- 7           2. On February 26, 2013, the BOCC approved a contract amendment for professional  
8 services with Keith and Schnars (K&S), P.A., for additional services to evaluate the  
9 CBRS Comprehensive Plan policies to determine whether they add any additional  
10 protection to land over and above Comprehensive Plan and LDC provisions that  
11 govern the Tier System, including an analysis of the percentage of land and number  
12 of parcels within the CBRS units by tier designation; whether infrastructure extension  
13 to outlying neighborhoods or other platted areas increases a parcel's likelihood of  
14 being able to obtain a favorable recommendation, based on tier criteria, to change a  
15 tier classification from Tier I to Tier II, III, or III-A; and additional analysis based on  
16 suggestions from the public; and
- 17           3. At a regularly scheduled meeting held on the 15<sup>th</sup> day of May, 2013, the BOCC  
18 discussed the results of the "Analysis of Coastal Barrier Resources System Policies  
19 and Regulations in Monroe County, Florida," data and analysis, prepared for the  
20 BOCC by K&S, regarding the CBRS and the County's CBRS Comprehensive Plan  
21 policies and LDC; and
- 22           4. The K&S report found if the CBRS overlay ordinance was eliminated, CBRS system  
23 units would still be protected from development by the County's tier system; and
- 24           5. The K&S report recommended the County amend the LDC and Comprehensive Plan  
25 through a phased approach to continue to ensure that development in the CBRS is  
26 discouraged (maintain the Comprehensive Plan's "discourage" policy); and
- 27           6. At the May 15, 2013 meeting the BOCC directed Growth Management staff to  
28 proceed with the recommendations of the report, including phase 1 and phase 2  
29 amendments to the Comprehensive Plan and the LDC; and
- 30           7. The proposed amendment is consistent with the provisions and intent of the Monroe  
31 County Comprehensive Plan; and
- 32           8. The proposed amendment is consistent with the provisions and intent of the Monroe  
33 County Code; and
- 34           9. The proposed amendment is necessary due to new issues and recognition of a need  
35 for additional detail or comprehensiveness as required by Section 102-158 of the  
36 Monroe County Code; and

1 10. The proposed amendment is consistent with the Principles for Guiding Development  
2 for the Florida Keys Area of Critical State Concern, Section 380.0552(7), Florida  
3 Statutes.

4 **NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF**  
5 **MONROE COUNTY, FLORIDA:**

6  
7 **Section 1.** The following amendment to the Monroe County Code is recommended for  
8 transmittal to the State Land Planning Agency and adoption by the Board of County  
9 Commissioners as follows (deletions are ~~stricken through~~ and additions are  
10 underlined):

11  
12 **Sec. 101-1. – Definitions.**

13 \* \* \*

14 Coastal Barrier Resources System (CBRS) means those 15 (CBRS) system units in the County,  
15 except for the improved port property along the Safe Harbor entrance channel within system unit  
16 FL-57, designated under the federal Coastal Barrier Resources Act (CBRA) of 1982, comprising  
17 relatively undeveloped coastal barriers and all associated aquatic habitats including wetlands,  
18 marshes, estuaries, inlets and near shore waters. System units are generally comprised of lands  
19 that were relatively undeveloped at the time of their designation within the CBRS. The  
20 boundaries of these units are designated by the U.S. Department of the Interior and the  
21 boundaries are generally intended to follow geomorphic, development, or cultural features. Most  
22 new federal expenditures and financial assistance, including flood insurance, are prohibited  
23 within system units. System units are identified and depicted on the current flood insurance rate  
24 maps approved by the Federal Emergency Management Agency. Only the United States  
25 Congress can revise CBRS boundaries.

26  
27 \* \* \* \* \*

28 **Sec. 130-122. – Coastal barrier resources system overlay district (CBRS).**

29  
30 (a) **Federal Purpose.** The purpose of the federal Coastal Barrier Resources Act (CBRA) is to  
31 discourage further development in certain undeveloped portions of coastal barriers and remove  
32 the federal incentive to develop these areas. The federal law limits new federal expenditures and  
33 financial assistance, including flood insurance. These limitations have the effect of discouraging  
34 development in areas the U. S. Department of the Interior designates as coastal barriers within  
35 the Coastal Barrier Resources System (CBRS). The CBRS protects coastal areas that serve as  
36 barriers against wind and tidal forces caused by coastal storms, and serve as habitat for aquatic  
37 species.

38  
39 (b) **County Purpose.** The County has included the federal CBRS system units located within  
40 unincorporated Monroe County, except for the improved port property along the Safe Harbor  
41 entrance channel within system unit FL-57, on the Land Use District Map as an overlay district.  
42 The purpose of the County's coastal barrier resources system overlay district is to implement the  
43 policies of the comprehensive plan by discouraging~~prohibiting~~ the extension and expansion of  
44 specific types of public utilities facilities and services to or through lands designated as a system  
45 unit of the coastal barrier resources system CBRS.

1 ~~(b)~~(c) **Application.** The coastal barrier resources system overlay district shall be overlaid on all  
2 areas, except for the improved port property along the Safe Harbor entrance channel within  
3 system unit FL-57 Stock Island, within federally designated boundaries of a ~~coastal barrier~~  
4 ~~resources system~~ CBRS system unit on current flood insurance rate maps approved by the  
5 Federal Emergency Management Agency, which are hereby adopted by reference and declared  
6 part of this chapter.

7 Within this overlay district, the transmission and/or collection lines of the following types of  
8 ~~public utilities facilities and services~~ shall be ~~discouraged~~ prohibited from extension or expansion:  
9 ~~central wastewater treatment collection systems; potable water; electricity, and telephone and~~  
10 ~~eable.~~ This ~~prohibition~~ shall not preclude the maintenance and upgrading of existing ~~public~~  
11 ~~utilities facilities and services.~~ in place on the effective date of the ordinance from which this  
12 ~~section is derived and~~ This discouragement shall not apply to wastewater nutrient reduction  
13 cluster systems or central wastewater treatment collection systems.

14  
15 For vacant property within the CBRS overlay district, it is presumed that non-CBRS lands are  
16 available for development and that development within CBRS system units can be avoided. This  
17 presumption may be rebutted only if the owner(s) of the vacant CBRS property obtains approval  
18 through the County's ROGO/NROGO/Tier system.

19 (d) County Public Improvements. Except for wastewater systems, within the CBRS overlay  
20 district, public tax dollars should not be used for new improvements and/or financial assistance,  
21 unless those new improvements and/or the financial assistance are consistent with the federal  
22 restrictions pursuant to section 5 and section 6 of the CBRA.

23  
24 **PASSED AND RECOMMENDED FOR ADOPTION** by the Monroe County Planning  
25 Commission at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2013.

26  
27 William Wiatt, Chair \_\_\_\_\_  
28 Denise Werling, Commissioner \_\_\_\_\_  
29 Jeb Hale, Commissioner \_\_\_\_\_  
30 Elizabeth Lustburg, Commissioner \_\_\_\_\_  
31 Ron Miller, Commissioner \_\_\_\_\_  
32

33 **PLANNING COMMISSION OF MONROE COUNTY, FLORIDA**

34 By \_\_\_\_\_  
35 William Wiatt, Chair

36  
37 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

38  
39 Monroe County Planning Commission Attorney  
40 Approved As To Form

41  
42 \_\_\_\_\_  
43 Date: \_\_\_\_\_



**ORDINANCE NO. - 2013**

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING MONROE COUNTY CODE SECTION 101-1, DEFINITIONS, TO REVISE THE DEFINITION OF COASTAL BARRIER RESOURCES SYSTEM (CBRS) TO BE CONSISTENT WITH THE FEDERAL COASTAL BARRIER RESOURCES ACT; AMENDING SECTION 130-122, COASTAL BARRIER RESOURCES SYSTEM OVERLAY DISTRICT TO DISTINGUISH BETWEEN FEDERAL AND COUNTY PURPOSES; REVISING THE APPLICATION OF THE CBRS OVERLAY DISTRICT TO BE CONSISTENT WITH CBRS OBJECTIVES AND POLICIES OF THE MONROE COUNTY YEAR 2010 COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

---

**WHEREAS**, the County has adopted Comprehensive Plan Policies and Land Development Code (LDC) regulations which both discourage and prohibit the extension of utilities to or through areas designated as units of the Coastal Barrier Resources System; and

**WHEREAS**, on February 26, 2013, the BOCC approved a contract amendment for professional services with Keith and Schnars (K&S), P.A., for additional services to evaluate the CBRS Comprehensive Plan policies to determine whether they add any additional protection to land over and above Comprehensive Plan and LDC provisions that govern the Tier System, including an analysis of the percentage of land and number of parcels within the CBRS units by tier designation; whether infrastructure extension to outlying neighborhoods or other platted areas increases a parcel's likelihood of being able to obtain a favorable recommendation, based on tier criteria, to change a tier classification from Tier I to Tier II, III, or III-A; and additional analysis based on suggestions from the public; and

**WHEREAS**, at a regularly scheduled meeting held on the 15<sup>th</sup> day of May, 2013, the BOCC discussed the results of the "Analysis of Coastal Barrier Resources System Policies and

1 Regulations in Monroe County, Florida,” data and analysis, prepared for the BOCC by K&S,  
2 regarding the CBRS and the County’s CBRS Comprehensive Plan policies and LDC; and  
3

4 **WHEREAS**, in summary, the K&S report found if the CBRS overlay ordinance was  
5 eliminated, CBRS system units would still be protected from development by the County’s tier  
6 system; and  
7

8 **WHEREAS**, the K&S report recommended the County amend the LDC and  
9 Comprehensive Plan through a phased approach to continue to ensure that development in the  
10 CBRS is discouraged (maintain the Comprehensive Plan’s “discourage” policy); and  
11

12 **WHEREAS**, at the May 15, 2013 meeting the BOCC directed Growth Management staff  
13 to proceed with the recommendations of the report, including phase 1 and phase 2 amendments  
14 to the Comprehensive Plan and the LDC; and  
15

16 **WHEREAS**, the Monroe County Development Review Committee considered the  
17 proposed amendment at a regularly scheduled meeting held on the 25<sup>th</sup> day of June, 2013 and  
18 recommended approval; and  
19

20 **WHEREAS**, at a regularly scheduled meeting held on the 31<sup>st</sup> day of July, 2013, the  
21 Monroe County Planning Commission held a public hearing to consider, review and receive  
22 public comment for the proposed amendment to the Monroe County Code and recommended  
23 approval of the amendment; and  
24

25 **WHEREAS**, at a regularly scheduled meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2013,  
26 the BOCC held a public hearing to consider, review and receive public comment for a proposed  
27 amendment to the Monroe County Code; and  
28

29 **WHEREAS**, the proposed amendment is consistent with the provisions and intent of the  
30 Monroe County Comprehensive Plan; and  
31

32 **WHEREAS**, the proposed amendment is consistent with the provisions and intent of the  
33 Monroe County Code; and  
34

35 **WHEREAS**, the proposed amendment is necessary due to new issues and recognition of  
36 a need for additional detail or comprehensiveness as required by Section 102-158 of the Monroe  
37 County Code; and  
38

39 **WHEREAS**, the proposed amendment is consistent with the Principles for Guiding  
40 Development for the Florida Keys Area of Critical State Concern, Section 380.0552(7), Florida  
41 Statutes;  
42

43 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
44 **COMMISSIONERS OF MONROE COUNTY, FLORIDA:**  
45

1 **Section 1.** The Monroe County Code is amended as follows: (Deletions are ~~stricken through~~ and  
2 additions are underlined.)  
3

4 **Sec. 101-1. – Definitions.**

5 \* \* \*

6  
7  
8 *Coastal Barrier Resources System (CBRS)* means those 15 ~~(CBRS)~~ system units in the County,  
9 except for the improved port property along the Safe Harbor entrance channel within system unit  
10 FL-57, designated under the federal Coastal Barrier Resources Act (CBRA) of 1982, comprising  
11 relatively undeveloped coastal barriers and all associated aquatic habitats including wetlands,  
12 marshes, estuaries, inlets and near shore waters. System units are generally comprised of lands  
13 that were relatively undeveloped at the time of their designation within the CBRS. The  
14 boundaries of these units are designated by the U.S. Department of the Interior and the  
15 boundaries are generally intended to follow geomorphic, development, or cultural features. Most  
16 new federal expenditures and financial assistance, including flood insurance, are prohibited  
17 within system units. System units are identified and depicted on the current flood insurance rate  
18 maps approved by the Federal Emergency Management Agency. Only the United States  
19 Congress can revise CBRS boundaries.

20 \* \* \* \* \*

21  
22  
23 **Sec. 130-122. – Coastal barrier resources system overlay district (CBRS).**

24  
25 (a) **Federal Purpose.** The purpose of the federal Coastal Barrier Resources Act (CBRA) is to  
26 discourage further development in certain undeveloped portions of coastal barriers and remove  
27 the federal incentive to develop these areas. The federal law limits new federal expenditures and  
28 financial assistance, including flood insurance. These limitations have the effect of discouraging  
29 development in areas the U. S. Department of the Interior designates as coastal barriers within  
30 the Coastal Barrier Resources System (CBRS). The CBRS protects coastal areas that serve as  
31 barriers against wind and tidal forces caused by coastal storms, and serve as habitat for aquatic  
32 species.

33  
34 (b) **County Purpose.** The County has included the federal CBRS system units located within  
35 unincorporated Monroe County, except for the improved port property along the Safe Harbor  
36 entrance channel within system unit FL-57, on the Land Use District Map as an overlay district.  
37 The purpose of the County's coastal barrier resources system overlay district is to implement the  
38 policies of the comprehensive plan by discouraging~~prohibiting~~  
39 specific types of public utilities facilities and services to or through lands designated as a system  
40 unit of the coastal barrier resources system~~CBRS.~~

41  
42 ~~(b)(c)~~ **Application.** The coastal barrier resources system overlay district shall be overlaid on all  
43 areas, except for the improved port property along the Safe Harbor entrance channel within  
44 system unit FL-57~~Stoek Island,~~ within federally designated boundaries of a coastal barrier  
45 resources system~~CBRS system~~ unit on current flood insurance rate maps approved by the

1 Federal Emergency Management Agency, which are hereby adopted by reference and declared  
2 part of this chapter.

3 Within this overlay district, the transmission and/or collection lines of the following types of  
4 ~~public utilities facilities and services~~ shall be ~~discouraged prohibited~~ from extension or expansion:  
5 ~~central wastewater treatment collection systems; potable water,; electricity, and telephone and~~  
6 ~~eable. This prohibition shall not preclude the maintenance and upgrading of existing public~~  
7 ~~utilities facilities and services. in place on the effective date of the ordinance from which this~~  
8 ~~section is derived and~~This discouragement shall not apply to wastewater nutrient reduction  
9 cluster systems or central wastewater treatment collection systems.

10  
11 For vacant property within the CBRS overlay district, it is presumed that non-CBRS lands are  
12 available for development and that development within CBRS system units can be avoided. This  
13 presumption may be rebutted only if the owner(s) of the vacant CBRS property obtains approval  
14 through the County's ROGO/NROGO/Tier system.

15 (d) County Public Improvements. Except for wastewater systems, within the CBRS overlay  
16 district, public tax dollars should not be used for new improvements and/or financial assistance,  
17 unless those new improvements and/or the financial assistance are consistent with the federal  
18 restrictions pursuant to section 5 and section 6 of the CBRA.

19  
20  
21 **Section 2. Severability.** If any section, paragraph, subdivision, clause, sentence or provision of  
22 this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such  
23 judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the  
24 effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or  
25 provision immediately involved in the controversy in which such judgment or decree shall be  
26 rendered.

27  
28 **Section 3. Conflicting Provisions.** In the case of direct conflict between any provision of this  
29 ordinance and a portion or provision of any appropriate federal, state, or County law, rule code  
30 or regulation, the more restrictive shall apply.

31  
32 **Section 4. Transmittal.** This ordinance shall be transmitted to the Florida State Land Planning  
33 Agency as required by F.S. 380.05(11) and F.S. 380.0552(9).

34  
35 **Section 5. Filing.** This ordinance shall be filed in the Office of the Secretary of the State of  
36 Florida but shall not become effective until a notice is issued by the Florida State Land Planning  
37 Agency or Administration Commission approving the ordinance.

38  
39 **Section 6. Inclusion in the Monroe County Code.** The provisions of this Ordinance shall be  
40 included and incorporated in the Code of Ordinances of the County of Monroe, Florida, as an  
41 addition to amendment thereto, and shall be appropriately renumbered to conform to the uniform  
42 marking system of the Code.

1 **Section 7. Effective Date.** This ordinance shall become effective as provided by law and stated  
2 above. This ordinance applies to any permit, and/or other development approval application  
3 submitted after the effective date.  
4

5 **PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County,  
6 Florida, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.  
7

8  
9 Mayor George Neugent \_\_\_\_\_  
10 Mayor *pro tem* Heather Carruthers \_\_\_\_\_  
11 Commissioner Danny L. Kolhage \_\_\_\_\_  
12 Commissioner David Rice \_\_\_\_\_  
13 Commissioner Sylvia Murphy \_\_\_\_\_  
14

15 **MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**  
16

17 Attest: AMY HEAVILIN, CLERK  
18

19 By \_\_\_\_\_  
20 Deputy Clerk

By \_\_\_\_\_  
Mayor George Neugent