

**~Parcels Located Within Federally Protected Species Focus Areas~  
~An Ordinance to Implement the Permit Referral Process~**

**Frequently Asked Questions**

**1. What is ORDINANCE 015-2012?**

The Monroe County BOCC adopted **ORDINANCE** 015-2012 amending Chapter 122 Floodplain Regulations of the Monroe County Code, by creating Section 122-8 to provide for the inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) requirements. This **ORDINANCE** creates and implements a “**Permit Referral Process**” for the review of all development that occurs within areas designated as “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)” within unincorporated Monroe County.

**Ordinance 015-2012 (Adopted June 20, 2102 BOCC): Amending Chapter 122 Floodplain Regulations, Creating Section 122-8 Species Focus Area**

Note, the County sent a notice letter to property owners with parcels located within federally protected SFAs or SBAs, as identified by the U.S. Fish and Wildlife Service, that the BOCC was conducting a public hearing to consider the adoption of the **ORDINANCE** on June 20, 2012, at the Marathon Government Center.

**2. Why did the County adopt this ORDINANCE?**

In 1990, the National Wildlife Federation (NWF) and the Defenders of Wildlife (DOW) filed suit against the Federal Emergency Management Agency (FEMA) claiming that FEMA, while administering the National Flood Insurance Program (NFIP) in the Keys, was not consulting with the U.S. Fish and Wildlife Service (FWS) as required by the **Endangered Species Act**. In 2005, the court entered an injunction that prohibited FEMA from issuing flood insurance on over 50,000 parcels of land in Monroe County (for information on the FEMA injunction, please visit: <http://www.monroecounty-fl.gov/index.aspx?nid=329>).

On April 30, 2010 the FWS issued a Biological Opinion (BO), amended on December 3, 2010, that settled the lawsuit between NWF/DOW and FEMA. This BO and settlement between the parties, requires Monroe County to adopt an ordinance that implements a “Permit Referral Process” for review of all development that occurs within areas designated as “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)”.

**3. What is the purpose of the ORDINANCE?**

The purpose of this **ORDINANCE** is to create the “**Permit Referral Process**” (creating Section 122-8 of the Monroe County Code). The **Permit Referral Process** is a new layer of review for properties located within the SFAs or SBAs, which are being proposed for development, to ensure compliance with the Federal Endangered Species Act (ESA). Property owners are already required

to comply with the ESA. The Permit Referral Process is a streamlined method to ensure compliance with the federal law.

The ORDINANCE will eliminate the Federal Emergency Management Agency (FEMA) injunction, which prohibited FEMA from issuing flood insurance on over 50,000 parcels of land in Monroe County.

**4. Where can I review a copy of the ORDINANCE?**

Please visit <http://www.monroecounty-fl.gov/index.aspx?NID=555> to review a copy of the ORDINANCE.

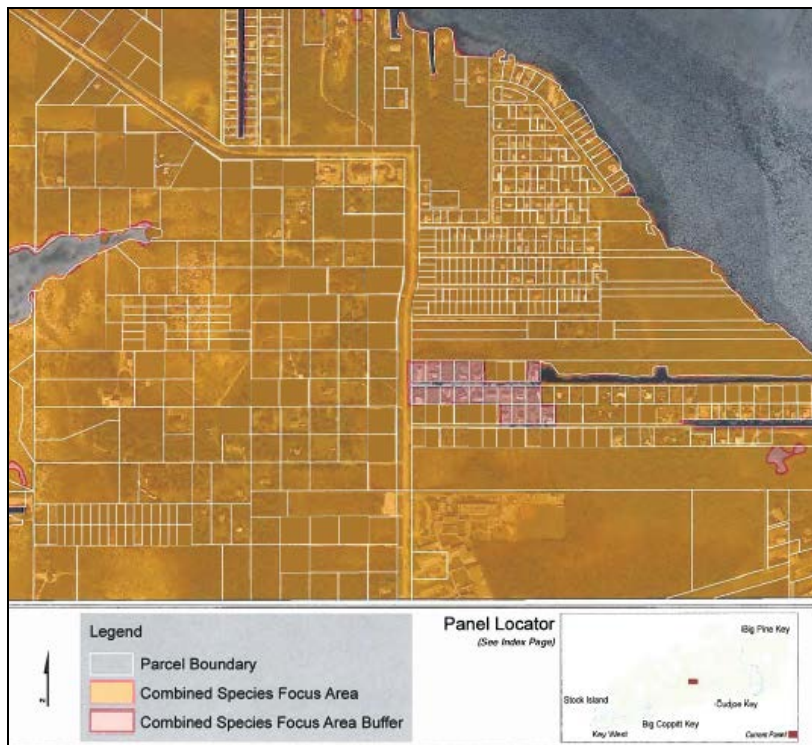
Once effective, the provisions of this ORDINANCE will be included and incorporated into the Monroe County Code.

**5. What are the Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)”?**

The “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)” are areas of potentially suitable habitat for nine federally protected species including: Eastern Indigo Snake, Key Deer, Key Largo Cotton Mouse, Key Largo Woodrat, Key Tree Cactus, Lower Keys Marsh Rabbit, Schaus Swallowtail Butterfly, Silver Rice Rat, and Stock Island Tree Snail.

The SFAs and SBAs were identified by the U.S. Fish and Wildlife Service.

Please visit <http://www.monroecounty-fl.gov/index.aspx?NID=555> to review maps of these areas.



Example:

6. What properties are within the “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)”?

Please visit <http://www.monroecounty-fl.gov/index.aspx?NID=555> to review the “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs).” On the identified webpage there are links to maps as well as a list of real estate numbers of the affected properties within unincorporated Monroe County.

The U.S. Fish and Wildlife Service’s (Service) FEMA Biological Opinion (BO) dated April 30, 2010, and modified on December 14, 2010, identified the following at-risk parcels in unincorporated Monroe County:

**Eastern Indigo Snake:** 10,921 acres and 10,711 parcels. The BO also identified an additional 8,580 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Stock Island Tree Snail:** 1,725 acres and 4,101 parcels. The BO also identified an additional 436 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Key Deer:** 6,746 acres and 8,205 parcels. The BO also identified an additional 3,510 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Key Tree-Cactus:** 1,725 acres and 4,101 parcels. The BO also identified an additional 436 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Silver Rice Rat:** 3,985 at-risk parcels, representing 4,134 acres, intersecting habitats that may occasionally be used by the endangered silver rice rat in Monroe County. The BO also identified an additional 3,358 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Lower Keys Marsh Rabbit:** 3,710 at-risk parcels, representing 4,331 acres, intersecting habitats that may occasionally be used by the endangered Lower Keys marsh rabbit in Monroe County. The BO also identified an additional 1,427 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Schaus Swallowtail Butterfly:** 4,312 at-risk parcels representing 1,414 acres, intersecting habitats that may be used by the Schaus swallowtail butterfly in Monroe County (in unincorporated Monroe County and in the Village of Islamorada). There are 411 parcels with potential habitat representing 247 acres, in North Key Largo; and 2,846 parcels, representing 725 acres, in South Key Largo. The BO also identified an additional 349 acres of at-risk lands outside of Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**Key Largo Woodrat and Key Largo Cotton Mouse:** 3,261 at-risk parcels, representing 977 acres, intersecting habitats that may occasionally be used by the Key Largo woodrat and/or the Key Largo cotton mouse, all within unincorporated Monroe County. The BO also identified an additional 287 acres of at-risk lands outside Monroe County’s parcel layer not subject to the Rate of Growth Ordinance program.

**7. Can a property be removed from the “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)” lists?**

No. These areas were determined by the U.S. Fish and Wildlife Service.

**8. How will this ORDINANCE benefit the County?**

After adoption by the Monroe County Board of County Commissioners and, if the Federal Government agrees that this satisfies the Endangered Species Act, then the FEMA injunction, which prohibited FEMA from issuing flood insurance on over 50,000 parcels of land in Monroe County, will be eliminated.

This ORDINANCE creates a streamlined methodology to ensure compliance with the federal Endangered Species Act for the property owners of affected parcels within unincorporated Monroe County.

**9. What happens if the ORDINANCE is not adopted?**

If the ORDINANCE is not adopted, property owners proposing development would need to consult with the U.S. Fish and Wildlife Service and possibly need to apply for and receive individual Incidental Take Permits (ITP). (<http://www.fws.gov/Endangered/permits/index.html>). Further, FEMA may remove Monroe County from the National Flood Insurance Program.

**10. When will the ORDINANCE become effective?**

This ORDINANCE will be filed in the Office of the Secretary of State of the State of Florida and transmitted to the State Land Planning Agency but shall not become effective until a notice is issued by the State Land Planning Agency or Administrative Commission approving the ordinance pursuant to Chapter 380 Florida Statutes and after any appeal period has expired and the injunction has been lifted in the case of *Florida Key Deer et. al., v. Fugate et. al., 90-10037-CIV Moore.*

**11. What if the property is not located within unincorporated Monroe County?**

The ORDINANCE only affects property within areas designated as “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)” within unincorporated Monroe County.

Property owners should contact his or her local government (City or Village) for information on how this item is being addressed within their community.

**12. Does this ORDINANCE affect a property owner already in the permitting process?**

No, if the property owner is actively proceeding with construction.

Yes, if development has not commenced by the effective date of the ORDINANCE. New development that occurs within areas designated as “Species Focus Areas” or “Species Buffer

Areas” will be subject to the **Permit Referral Process** (new layer of review during permitting), to ensure compliance with the Federal Endangered Species Act.

Also, after the ORDINANCE is adopted and effective, in order to receive a building permit from Monroe County, a property owner will be required to be processed through the **Permit Referral Process**.

### 13. Will this add more time to the permitting process?

It depends, the **Permit Referral Process** will be property-specific and will depend on the potential habitat and associated endangered species identified on the affected property as well as the proposed development.

Monroe County staff will use **Species Assessment Guides (SAGs)** prepared by U.S. Fish and Wildlife Service (FWS) to determine whether the development you are proposing through permitting will cause any incidental take of the federally protected species.

Then Monroe County will use the SAGs to determine whether a development permit application requires **NO CONDITIONS; CONDITIONS; or COORDINATION WITH FWS FOR TECHNICAL ASSISTANCE** as follows:

- **NO CONDITIONS:** County may issue permit; or
- **CONDITIONS:** County may issue the permit, pursuant to owner agreement\*\* to conditions and all applicable codes; or
- **COORDINATION WITH FWS FOR TECHNICAL ASSISTANCE:**  
County shall issue the permit with a condition that:
  - the applicant seek and obtain technical assistance from the Service\*; and
  - the permit shall expire after 180 days; and
  - the applicant obtain all applicable state or federal permits or approvals prior to commencement of development. If the permit expires after 180 days, prior to the applicant receiving applicable state or federal permits or approvals, the applicant shall be required to reapply.

\*For a floodplain development permit application that requires the Services’ technical assistance, based on the Service’s technical assistance, the applicant shall submit the Service’s written recommendations to the County. If the applicant agrees\*\* to the Service’s recommendations, in writing, Monroe County may then issue a NOTICE TO PROCEED that includes the technical assistance recommendations provided by the Service to avoid possible impacts on federally-protected listed species.

\*\*If the property owner does not agree to the FWS conditions, the County shall not issue the notice to proceed.

### 14. What are SAGs?

**Species Assessment Guides (SAGs)** are documents prepared by U.S. Fish and Wildlife Service (FWS) for Monroe County staff to use to determine whether the development being proposed will cause any incidental take of the nine federally protected species including: Eastern Indigo Snake,

Key Deer, Key Largo Cotton Mouse, Key Largo Woodrat, Key Tree Cactus, Lower Keys Marsh Rabbit, Schaus Swallowtail Butterfly, Silver Rice Rat, and Stock Island Tree Snail.

In order to provide assistance in assessing threats to the nine federally protected species from a given development project, the U.S. Fish and Wildlife Service (Service) has developed guidance and recommendations that, if implemented, will minimize adverse effects to the nine federally protected species. If the use of this guide results in a determination of “no effect” for a particular project, the Service supports this determination. If the use of this guide results in a determination of “not likely to adversely affect” (NLAA), the Service concurs with this determination and no additional correspondence is necessary. If the use of this guide results in a “may affect” determination, then additional coordination with the Service is necessary prior to permit issuance. For projects that result in a “may affect” determination, if, after reviewing the specific project and assessing its potential effects to federally listed species, the Service determines that the project will result in take, the Service will notify FEMA and the acreage of impacts will be subtracted from the take limits provided in the BO.

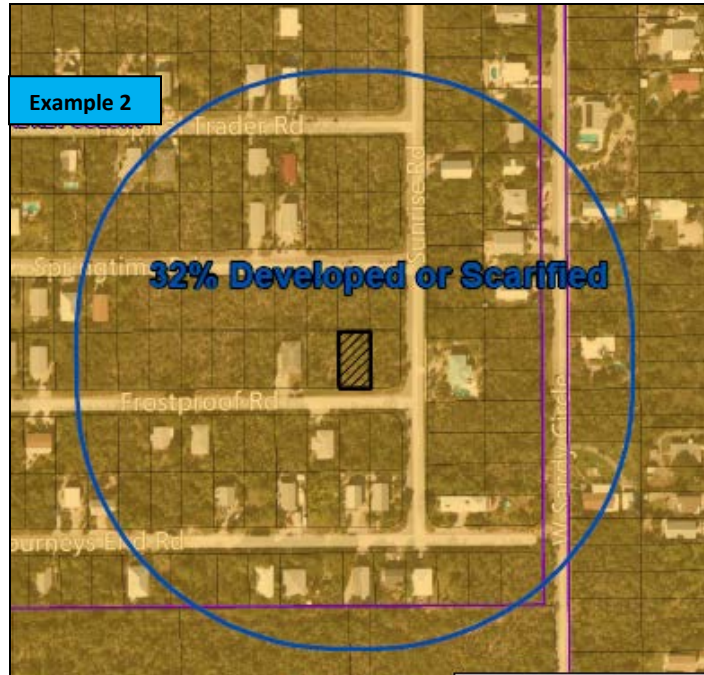
Please visit <http://www.monroecounty-fl.gov/index.aspx?NID=555> to review the SAGs.

15. In the SAGs, a provision is included which states, “The property is within a developed subdivision or canal subdivision and adjacent lots and properties within 500 feet are greater than 60 percent developed or scarified.....“not likely to adversely affect.” How does this work?

In the first example below, the area within the red circle indicates that the subject property is within a developed subdivision or canal subdivision and adjacent properties within 500 feet of the subject property are  $\geq 60\%$  developed or scarified. Under this example, the SAG indicates the proposed development project results in a determination of “not likely to adversely affect” (NLAA) and no additional correspondence with FWS is necessary.



In the second example below, the area within the blue circle indicates that the subject property is within a developed subdivision or canal subdivision and the adjacent properties within 500 feet of the subject property are **NOT**  $\geq 60\%$  developed or scarified. Under this example, additional steps must be completed in the SAG to determine the result.



**16. What if a property owner previously tolled a ROGO/NROGO allocation or building permit – does the ORDINANCE affect them?**

Yes, in order for those persons whose ROGO/NROGO allocations or whose building permits were tolled to be eligible for Federal flood insurance and meet their obligations under the Federal Endangered Species Act, the following is required:

- a. Owners with tolled allocations who do not need coordination with FWS after they are processed through Permit Referral Process:
  - 1. Have 180 days, from the date of a County issued written notice, to pick up their building permits; or
  - 2. Have 300 days, from the date of a County issued written notice, if there is a need to re-design an on-site wastewater treatment system, to receive a permit from Department of Health (DOH), and pick up their building permits.
  
- b. Owners who tolled building permits who do not need coordination with FWS after they are processed through the Permit Referral Process:
  - 1. Have 180 days, from the date of a County issued written notice to recommence development and receive a passed inspection; or
  - 2. Have 300 days, from the date of a County issued written notice, if there is a need to re-design their on-site wastewater treatment system, to receive a permit from

Department of Health (DOH), recommence development and receive a passed inspection.

- b. Permit applications processed through the Permit Referral Process that result in a “may affect determination” for the proposed development through the application of the Species Assessment Guides which require the permittee to coordinate with FWS shall have a total of 360 days, from the date of a County issued written notice to conclude the required coordination with FWS, pick up the building permit, and receive a Notice to Proceed from Monroe County. This timeframe may be extended by the Planning Director if the applicant can affirmatively demonstrate that he has timely and actively sought coordination.
  
- d. Properties for which a permit has been issued for which development has not commenced will be required to be processed through the Permit Referral Process. Permit reviews that result in a “may affect determination” for the proposed development through the application of the Species Assessment Guides which require the permittee to coordinate with FWS shall have a total of 360 days from the date of a County issued written notice to conclude the required coordination with FWS, commence development and receive a passed inspection from Monroe County. This timeframe may be extended by the Planning Director if the applicant can affirmatively demonstrate that he has timely and actively sought coordination.

*Note, allocations awarded on or after the June 27, 2012, Planning Commission meeting may not be eligible for tolling, unless the applicant applies prior to the FEMA injunction being lifted.*

**17. Once the FEMA injunction is lifted and tolling is discontinued, can a property owner apply for the Legislative 2-year extension for their allocation or building permit?**

Allocations are not eligible for the additional extension. Allocations are not a development order.

Property owners with a valid building permit, which have an expiration date from January 1, 2012, through January 1, 2014, are eligible for the 2-year extension but must apply in writing to the Building Department by December 31, 2012. This extension is in addition to a previous Legislative 2-year permit extension. The total of any extensions granted may not exceed a total of 4 years.

Please visit: <http://www.monroecounty-fl.gov/DocumentCenter/Home/View/41> for an application.

**18. What if the property is already developed?**

If the property is developed, it is unlikely that the ORDINANCE will affect the parcel.

The ORDINANCE should have no effect on developed property, unless the property owners are proposing expanding the structure; and/or proposing additional clearing of habitat; and/or proposing fencing into key deer habitat. If this is the case, the development application will need to go through the **Permit Referral Process**.



**19. Will the ORDINANCE affect my Tier designation?**

No, the Tier designations and ORDINANCE (permit referral process) are two separate and distinct items.

Note: All development applications (complete building permit applications) for parcels within areas designated as “Species Focus Areas” or “Species Buffer Areas” within unincorporated Monroe County will be reviewed pursuant to the Permit Referral Process, to ensure compliance with the Federal Endangered Species Act, regardless of the Tier designation.

**20. How does this ORDINANCE affect property located on Big Pine Key and No Name Key?**

Development proposed on Big Pine Key and No Name Key will be subject to the existing Livable CommuniKeys Plan, Habitat Conservation Plan and Incidental Take Permit.

The U.S. Fish and Wildlife Service (Service) issued a Section 10(a)(1)(B) Incidental Take Permit (ITP) to Monroe County, Florida Department of Transportation, and Florida Department of Community Affairs (applicants) in June 2006 for adverse effects from development on Big Pine and No Name Keys. The Service issued the ITP to the applicants based upon their development of a Habitat Conservation Plan (HCP) that sets guidelines for development activities on Big Pine and No Name Keys to occur progressively over the permit period (20 years). The HCP provides avoidance, minimization, and mitigation measures to offset impacts to covered species. Mitigation includes the protection of three mitigation units for each development unit of suitable habitat within the plan area.

**21. What are the KEY DEER fencing guidelines?**

Fencing guidelines are included within the Key Deer Species Assessment Guide (SAG).

Fencing of private property throughout the range of the Key deer is currently regulated by the Monroe County Comprehensive Plan and Land Development Regulation (Section 114-20), with more stringent rules in effect for Big Pine and No Name Keys (Section 114-20(3)).

Within the Key Deer SAG, the fencing guidelines in Land Development Regulations for Big Pine Key are applied, in its entirety, to Big Pine and No Name Keys. For other islands with parcels that fall within the Key deer focus area but are located outside of Big Pine and No Name Keys, only items c. through f. of Section 114-20(3) apply (see below). Note, only a minor segment of the Key deer population (about 10%) occurs outside of Big Pine and No Name Keys, and there are no prior records of negative fencing effects on Key deer on other islands where habitat occurs in large, native patches and is less likely to be fragmented by fencing.

**Section 114-20(3). Big Pine and No Name Key.**

The purpose of this section is to recognize and provide for the particular habitat needs of the Florida Key Deer (*Odocoileus virginianus clavium*) on Big Pine Key and No Name Key so that deer movement throughout Big Pine Key and No Name Key is not hindered while allowing for reasonable use of minimal fencing for the purposes of safety and protection of property. In addition

to all other standards set forth in this section, all fences located on Big Pine Key and No Name Key shall meet the standards of this subsection as listed below:

- a. In the improved subdivision (IS) land use district, fences shall be set back as follows:
  1. On canal lots, fences shall be set back at least 15 feet from the edge of abutting street rights-of-way; and built to the edge of all other property lines or as approved through a U.S. Fish and Wildlife Service coordination letter; and
  2. On all other lots, fences shall be set back at least 15 feet from the edge of abutting street rights-of-way, at least five feet from side property lines and at least ten feet from the rear property line, or as approved through a U.S. Fish and Wildlife Service coordination letter.
- b. In all other land use districts, fences may enclose up to a maximum of and not to exceed the net buildable area of the parcel only.
- c. Enclosure of the freshwater wetlands by fences is prohibited.
- d. All fences shall be designed and located such that Key Deer access to native habitat, including pinelands, hammocks, beach berms, salt marshes, buttonwoods and mangroves is maintained wherever possible.
- e. All fences shall be designed and located such that Key Deer corridors, as identified by the U.S. Fish and Wildlife Service, shall be maintained.
- f. Fences shall not be permitted without a principal use except where the enclosed area consists of disturbed lands or disturbed land with exotics.

*Note, pursuant to the Key Deer SAG, for parcels that fall within the Key deer focus area but are located outside of Big Pine and No Name Keys, only items c. through f. of Section 114-20(3) apply.*

**22. Will the ORDINANCE impact a ROGO score on a parcel located on Big Pine Key, if the new Species Focus Area Maps indicate potential suitable habitat for the Lower Keys marsh rabbit on the parcel?**

No, the negative scores relative to the Lower Keys marsh rabbit for the residential Permit Allocation and Point System, pursuant to Policy 101.5.4, are designated and depicted within the Big Pine Key and No Name Key Habitat Conservation Plan and the Livable CommuniKeys Community Master Plan. The “Species Focus Areas (SFAs)” or “Species Buffer Areas (SBAs)” do not correspond to the HCP and are not incorporated in the ROGO System.

**23. Will there be separate applications or additional fees based upon the ORDINANCE?**

No, a separate application will not be required. Development applications (a complete building permit application) for parcels within areas designated as “Species Focus Areas” or “Species Buffer Areas” within unincorporated Monroe County will be reviewed by the Planning/Biologist as part of a building permit application, pursuant to the Permit Referral Process, as established by the ORDINANCE.

At the moment, no fees have been established. In the future, fees may or may not change depending on and commensurate with the amount of time needed to process the development application through the Permit Referral Process.

Note: In the future, Monroe County may develop a separate application and fee for a “preliminary review” for vacant parcels within areas designated as “Species Focus Areas” or “Species Buffer Areas” within unincorporated Monroe County, to provide the property owner with guidance on the potential result of a “no effect,” “not likely to adversely affect” or “may affect” determination.

#### **24. Which Department will handle the “Permit Referral Process?”**

The Monroe County Planning & Environmental Resources Department, specifically the reviewing Biologists, will review development applications pursuant to the Permit Referral Process and the Species Assessment Guides for the nine federally protected species including: Eastern Indigo Snake, Key Deer, Key Largo Cotton Mouse, Key Largo Woodrat, Key Tree Cactus, Lower Keys Marsh Rabbit, Schaus Swallowtail Butterfly, Silver Rice Rat, and Stock Island Tree Snail.

#### **25. What if I have more questions?**

If you have any further questions regarding the information above, please contact Mr. Michael Roberts, Senior Administrator of Environmental Resources at (305) 289-2500.