

**COASTAL BARRIER RESOURCES SYSTEM:  
PUMPKIN KEY, FLORIDA**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED FIFTH CONGRESS**

SECOND SESSION

ON

**S. 2470**

A BILL TO DIRECT THE SECRETARY OF THE INTERIOR TO MAKE TECHNICAL CORRECTIONS TO A MAP RELATING TO THE COASTAL BARRIER RESOURCES SYSTEM

SEPTEMBER 22, 1998

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**COASTAL BARRIER RESOURCES SYSTEM:  
PUMPKIN KEY, FLORIDA, S. 2470**

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**TUESDAY, SEPTEMBER 22, 1998**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:19 a.m. in room 406, Senate Dirksen Building, Hon. John H. Chafee (chairman of the committee) presiding.

Present: Senators Chafee, Allard, and Graham.

**OPENING STATEMENT OF HON. JOHN H. CHAFEE,  
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. All right, the committee will come to order. This is a meeting of the full Committee on Environment and Public Works, and we're having a hearing on S. 2470, a bill relating to the Coastal Barrier Resources System.

The purpose of today's hearing is to receive testimony on the removal of Pumpkin Key from Coastal Barrier Unit FL-35. Pumpkin Key is a 25-acre island off the coast of North Key Largo in Florida.

Prior to talking about Pumpkin Key, it might be useful to briefly review the Coastal Barrier System, how we got it, what it does. Congress enacted the Coastal Barrier Resources Act, the so-called CBRA, in 1982, which is really quite a while ago, to address financial and ecological problems associated with the development of coastal barriers. Undeveloped coastal areas along the eastern seaboard were included in the system. This was a success, the 1982 act, and Congress subsequently passed the Coastal Barrier Improvement Act of 1990.

The 1990 Act expanded the definition of "coastal barrier" and added to the system areas in Puerto Rico, the U.S. Virgin Islands, the Great Lakes, and additional areas along the Atlantic and Gulf Coast.

Now, here's the essence of what this bill does. It prohibits Federal flood insurance and other financial assistance for development of areas identified within the system. This prohibition deters development in coastal barriers, which serves three very worthwhile purposes. It promotes public safety by discouraging construction in areas prone to severe weather conditions; it preserves valuable natural resources; and it promotes fiscal responsibility by avoiding Federal subsidies in insurance of inherently risky development.

I would like to stress this last point. What this legislation does is get the Federal Government out of the business of subsidizing high-risk development. Nothing in CBRA—and this is absolutely

important to remember—nothing in this bill prevents property owners from doing what they want on their own land. It only provides that they do so at their own financial risk.

Today we will be hearing from Mr. Jackson, Assistant Director for Ecological Services for the U.S. Fish and Wildlife Service. We will also be hearing from Jackie Savitz, Executive Director of Coast Alliance; Mr. Hayward, President of Terra Cotta Realty; and Mr. DeGennaro.

But first, do you have something you would like to say, Senator Graham?

**OPENING STATEMENT OF HON. BOB GRAHAM,  
U.S. SENATOR FROM THE STATE OF FLORIDA**

Senator GRAHAM. Mr. Chairman, I want to thank you for accommodating my request and that of Senator Mack for a hearing today on this bill. This bill was introduced by Senator Mack and me to make the technical corrections to the maps of the Coastal Barrier System. One of those corrections has already been agreed to, and that is the removal of a parcel on Ocean Reef. The other component of S. 2470 is the subject of this hearing, and that is the removal of Pumpkin Key.

I would like to point out that this action is supported by the Fish and Wildlife Service, and I believe we will have testimony to that effect shortly. Pumpkin Key, as the chairman has said, is a 26-acre island off North Key Largo, Florida. It was added to the Coastal Barrier System in 1990. At that time it included several residential structures and a full complement of infrastructure, constructed to accommodate 11 additional residences.

Mr. Chairman, what I would suggest this meeting is not about is the Federal Flood Insurance Program. Many of us have been involved in the issue of the actuarial soundness of the Federal Flood Insurance Program, whether it adequately relates premiums to risks, and a panoply of issues that are relevant to that subject. The question here is whether this particular piece of property is so distinguished from other properties that are not in the Coastal Barrier System that it should be removed from that system.

I believe that that is, in fact, the case, and that the evidence—as presented particularly by the Fish and Wildlife Service, which is responsible for the implementation of this program—will so indicate.

Mr. Chairman, I have a longer statement that I would like to submit for the record, but I believe we have witnesses today that can fully educate us on this subject.

[The prepared statement of Senator Graham follows:]

PREPARED STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF  
FLORIDA

I would like to begin by thanking the chairman for accommodating my request for a hearing on S. 2470, a bill to modify the Coastal Barrier System to remove Pumpkin Key from this system. Senator Chafee's leadership on this issue has insured that the execution of the Coastal Barrier Resources Act has proceeded as intended by Congress.

The bill that I have introduced with my colleague, Senator Mack, will make a technical correction to the maps in the Coastal Barrier System in the State of Florida.

In 1990, Congress passed an addendum to the Coastal Barrier Resource Act which almost doubled the size of the Coastal Barrier System. Included in this modification was Pumpkin Key, a 25-acre island in upper Key Largo, Florida. At the time of its inclusion into the system, there were several residential structures and a full complement of infrastructure constructed to accommodate 11 additional residences already on the island.

As you know, I am a strong supporter of the Coastal Barrier System as well as development of a rational Federal disaster mitigation program that seeks to minimize the potential Federal liability in disaster prone areas. Frequently, our discussions on the Coastal Barrier System become mired in this debate on the Federal Government's role in Federal flood insurance and disaster mitigation.

This is not a debate for today. Today we are discussing the Fish and Wildlife Service's implementation of the requirements of the Coastal Barrier Resources Act as they pertain to the Pumpkin Key property. We are discussing the content of the regulations that dictate execution of this program. We are comparing those regulations to the actions that have been taken to date, and we will be making a decision as to whether those actions met the terms of the regulations.

I do not believe that the Federal Government should take on unnecessary liability for disaster losses. However, I also believe that where the Federal Government has accepted responsibility for disaster losses as it has with Federal flood insurance, we must fulfill this responsibility and make Federal flood insurance available for all Americans who are eligible under the terms of existing law. In the action that I have proposed with Senator Mack, we are seeking to insure that we meet the terms of existing law and fulfill our responsibility by correcting the mapping error made with the Pumpkin Key property.

As you know, the Fish and Wildlife Service has established guidelines which require that a property meet one of two criteria if it is to be excluded from the Coastal Barrier System. These guidelines were published in the Federal Register in a proposed rule in 1982.

First, a property must have more than one structure per five acres. The Fish and Wildlife Service stated that Pumpkin Key does not meet this criteria.

The second criteria is to identify whether a property has a full complement of infrastructure which the Fish and Wildlife Service defines as, ". . . vehicle access (i.e., improved roads or docks) 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."

The discussion we will be having today focuses on criteria number two and the meaning of the definition of "full complement of infrastructure."

In 1996, the Fish and Wildlife Service reviewed the Pumpkin Key property and determined that it was undeveloped. Over the next 2 years, they worked with my constituents to collect all pertinent information on this property, and after an additional review, concluded in 1998 that Pumpkin Key was in fact misidentified as an undeveloped property. I have with me and would like to see included in the record a letter dated January 28, 1998 from the Fish and Wildlife Service stating this conclusion.

During this second review, the Fish and Wildlife Service reviewed the level of infrastructure present on Pumpkin Key in 1990. Signed, sworn affidavits and as-built engineering drawings were provided that demonstrate the presence of electricity, water, and wastewater disposal capacity for every building on the island.

The major difference between the assessment of Pumpkin Key as undeveloped in 1996 and developed in 1998 is the review of transportation infrastructure and "vehicle access" which the Fish and Wildlife Service defines in its regulations as "improved roads or docks". On this small island, paved golf cart paths are the primary mode of transportation. Vehicle access from the mainland is provided by a 21-slip docking facility that was completed prior to 1990.

The lack of paved roads in the traditional sense led the Fish and Wildlife Service in 1996 to classify Pumpkin Key as undeveloped. Upon review of the docking facility and the geography of Pumpkin Key—an island that has no bridge or ferry access and therefore no automobiles, the Fish and Wildlife Service has revised its initial review, and concurred that Pumpkin Key should be excluded from the Coastal Barrier Resources System.

I understand that the committee is interested in reviewing the Fish and Wildlife Service interpretation of the definition of "vehicle access", and I look forward to today's discussion. I am aware that some of you have concerns on the broader issue of the Federal Government's role in compensating disaster losses, and I look forward to a future comprehensive discussion on this issue.

Senator CHAFEE. Well, thank you, Senator. You're right; this isn't a hearing on flood insurance. We all have views on that, and I think at some time it would be well to review the system. That's not what's before us now. The question is, does Pumpkin Key qualify to be in or out of the Coastal Barrier Resources System?

Senator Allard?

Senator ALLARD. Mr. Chairman, I am just here to find out about this issue and listen to everybody's comments. I don't have anything that I want to contribute to the record at this point in time.

Senator CHAFEE. This isn't a burning issue in Colorado?

[Laughter.]

Senator ALLARD. No. It's been a few thousand years since we've had a coastline in Colorado.

Senator CHAFEE. All right.

Now, Mr. Jackson, who is Assistant Director for Ecological Services for the U.S. Fish and Wildlife Service.

And it is helpful to have the maps so that we know what we're dealing with.

Why don't you proceed, Mr. Jackson? You can keep your testimony within the area of 5 or 7 minutes, but we don't have a great long list of witnesses so we will be able to give you a little slack today.

**STATEMENT OF GERRY JACKSON, ASSISTANT DIRECTOR FOR  
ECOLOGICAL SERVICES, U.S. FISH AND WILDLIFE SERVICE**

Mr. JACKSON. Thank you, Mr. Chairman. Good morning, Senator Graham, Senator Allard. My name is Gerry Jackson. I am the Assistant Director for the Fish and Wildlife Service's Ecological Services Program, and I do appreciate this opportunity to testify before the committee on S. 2470.

This is a bill that directs the Secretary of the Interior to make corrections to a map relating to the Coastal Barrier Resources System.

S. 2470 would modify the boundaries of Unit FL-35 within the Coastal Barrier Resources System in Florida by excluding an area that was incorrectly mapped as "undeveloped." The Coastal Barrier Resources Act of 1982, which established the Coastal Barrier Resources System, was designed to limit federally subsidized development activities within undeveloped coastal barriers.

It is important to note that the Act does not prohibit development, as you said, and landowners are still free to develop their property.

Senator CHAFEE. Perhaps we could explain briefly. Senator Allard wasn't here when we did this and perhaps he is unfamiliar with it.

What the Coastal Barrier Resources Act does—let's take the Atlantic coast. We went along the Atlantic coast and chose those areas that were labeled "undeveloped" under the criteria that we had. I believe "undeveloped" was less than one house per every five acres. And then what we said was, any private person can continue to do whatever he or she wanted to do in development, but the Federal Government wasn't going to pay for it. We weren't going to provide flood insurance, we weren't going to build sewer system, the Federal Government wasn't going to build roads on these par-

ticular areas. But if the private person or the developer wanted to go ahead and have roads at his own expense, that's all right, but the Federal Government wasn't going to pay for it.

That's the essence of what we're dealing with here.

Then you get into considerable discussion and argument over what are the criteria that determine whether this is developed or undeveloped. In other words, if it's considered a developed area, then you can go ahead and have flood insurance, and we will continue to build roads—the Federal Government will—and sewage plants and whatever it might be.

But what usually comes up, and this is a typical situation with Pumpkin Key: did Pumpkin Key fall within the definition of an undeveloped area, and thus is it subject to the legislation? Obviously, the developers weren't very happy about this because they like the Federal benefits, as everybody does. They like the roads, they like the flood insurance, and that's totally understandable.

I'm sorry, I interrupted you, Mr. Jackson, but I thought perhaps that would be helpful. Go ahead.

Mr. JACKSON. OK.

Senator as you said, S. 2470 would remove the 25-acre island of Pumpkin Key from the Coastal Barrier Resources System. Based on information at the time, Pumpkin Key was mapped by the Service as an undeveloped coastal barrier in the 1988 report to Congress and included in the Coastal Barrier Resources System by Congress in 1990 on that basis.

Subsequently, however, in late 1996 and early 1997 the owner of Pumpkin Key provided new information to the Service describing the level of development on Pumpkin Key, including a list of structures and infrastructure and when they were built. The new information was sufficient for us, the Fish and Wildlife Service, to determine that the island met the requirements to be considered as "developed" at the time of passage of the Coastal Barrier Improvement Act in November, 1990.

A full complement of infrastructure is defined to include water supply, wastewater disposal, electricity, and paved roads. The development information supplied by representatives of Pumpkin Key on August 5, 1996, and on February 14, 1997, clearly demonstrates a high level of infrastructure development prior to 1990. Signed and sworn affidavits and "as-built" engineering drawing attest to the presence of electricity, water, and wastewater disposal capacity for every building lot on the island, as well as paved golf cart paths. These paths were paved in 1984, and they provide the transportation infrastructure for the island, which has no bridge or ferry access and no automobiles.

This information, which was not available to the Service when it prepared the 1988 report nor to Congress when it included Pumpkin Key in the system in 1990, provides the basis—

Senator CHAFEE. The existence of the golf cart paths was not known?

Mr. JACKSON. That's correct, Senator, nor the full extent of the other infrastructure.

Essentially, this information which was provided was the basis for the Service's current finding that the island was developed prior to its inclusion in the system. Therefore, Senator, we do support



modification of the boundary of Unit FL-35 to exclude Pumpkin Key, as proposed in this bill, as a valid technical correction of a mapping error.

Senator that concludes my oral statement. I would be more than happy to answer any questions that you may have.

Senator CHAFEE. So the criteria was that even though the area didn't have the prescribed number of houses—in other words, this is, what, 26 acres?

Mr. JACKSON. Between 25 and 26 acres, that's right.

Senator CHAFEE. OK, let's call it 25 acres, and I think there were only a couple of houses on it, is that right?

Mr. JACKSON. We have indicated that there are three insurable houses.

Senator CHAFEE. OK. Let's say that there are three houses. So therefore it doesn't meet the criteria to be excluded, of one house for every five acres?

Mr. JACKSON. Right.

Senator CHAFEE. However, what they are saying is that they qualify under another criteria, namely, that it is developed. They have sewage and electricity and roads—not roads for automobiles because they don't have any automobiles on the island; it's roads for golf carts, and I presume that's the way they get around.

Mr. JACKSON. That is correct.

Senator CHAFEE. So if you have before you, Fish and Wildlife Service, an area that doesn't meet it on population grounds but meets it on these other criteria, then that would be excluded, is that what you're telling us?

Mr. JACKSON. That's correct, Senator. It's a two-stage screening process that we go through.

Senator CHAFEE. Have you ever considered golf carts paths to be the equivalent of paved roads before?

Mr. JACKSON. Actually, Senator, this is the first time that we've had paved golf cart paths come to us.

If I could, I went back and looked at the Federal Register notice that was published on August 16, 1982, and I think it's relevant here. I'll just quote from that.

It says, "A full complement of infrastructure requires that there be vehicle access, that is, improved roads or docks, to each lot or building site, plus reasonable availability of a water supply, a wastewater disposal system"—

Senator CHAFEE. These are the criteria?

Mr. JACKSON. These are the criteria.

Senator CHAFEE. As of what date?

Mr. JACKSON. This was published August 16, 1982, in the Federal Register.

Senator I think the key words there are "vehicle access." On an island of this size, 25 or 26 acres, we feel that that sort of makes sense from a practical standpoint, that golf carts would be the appropriate mode of transportation.

Senator CHAFEE. Senator Graham?

Senator GRAHAM. Mr. Chairman, I don't have much to add to that. The language that is in the regulation is "vehicle access (i.e., improved roads or docks)".

There is a dock serving this island, is that correct?

Mr. JACKSON. That's correct.

Senator GRAHAM. So under the strictest of definitions you would say that it would meet the test of having a dock. But as you say, the words "vehicular access" are not necessarily defined as a 20-foot-wide asphalt road. It is in the context of what is appropriate for this island. Is that correct?

Mr. JACKSON. That's correct.

Senator GRAHAM. Am I correct also that the local government with jurisdiction over this island waived its normal public works requirements relative to the scale of roads, given the nature of this island community?

Mr. JACKSON. Senator, I don't know the answer to that.

Senator GRAHAM. Maybe one of our other witnesses can comment on that, but it's my understanding that the local government, recognizing the character of this island, waived its normal public works requirements and accepted these golf cart paths as being an appropriate vehicular access for Pumpkin Key.

Mr. JACKSON. I think that would make sense, given the 25-acre size of the island.

Senator GRAHAM. And is there any question that the other factors under the second criteria—that is, water supply, wastewater disposal system, electric service to each lot or building site—have been met?

Mr. JACKSON. Sir, our understanding is that all those criteria are fully met on the island.

Senator GRAHAM. So we're down to the narrow question of whether vehicular access on Pumpkin Key can be met by a combination of a dock and golf cart paths?

Mr. JACKSON. Yes, sir, that seems to be the issue.

Senator GRAHAM. Thank you.

Senator CHAFEE. Senator Allard?

Senator ALLARD. I don't have any questions at this point, Mr. Chairman, thank you.

Senator CHAFEE. Mr. Jackson, I saw the photo here, and there is quite extensive dockage. Was that there when we were doing this back in 1982?

Mr. JACKSON. I believe that is correct, Senator.

Senator CHAFEE. Now, am I correct in saying that the criteria that you talk about, Mr. Jackson, were proposed in 1982 but later withdrawn, so that there are no formal regulations? In other words, what you read as being the criteria—and you said it was published in the Federal Register—that may be so, but it was later withdrawn?

Mr. JACKSON. That's correct, Senator. It was withdrawn because of the passage of the Coastal Barrier Resources Act, because areas were delineated on maps during that process. So we didn't feel at that point in time that we needed to go forward with any formal regulations.

Senator CHAFEE. Yes, Senator Graham?

Senator GRAHAM. In that context, as I recall in the consideration of the 1990 Coastal Barriers Act, your agency was very active in developing the basic staff work and maps which then were presented to Congress for enactment.

In developing those maps, was it your intention to utilize the two criteria of your 1982 proposed rule?

Mr. JACKSON. The two criteria, meaning the number of structures—

Senator GRAHAM. The five acres.

Mr. JACKSON.—and the infrastructure? Yes, sir.

Senator GRAHAM. So it was your intention that the standards of the “one structure per five acres” being the first criteria, and second being the full complement of infrastructure as defined, would be the basis upon which the maps which you drew for presentation to Congress in 1990 would be predicated, is that correct?

Mr. JACKSON. That’s correct, and we based those on the information that was made available to us at that time. Since 1982 we have, on occasion, had information brought to us that indicated that we made mapping errors, or we just didn’t have the appropriate information in front of us when we made those decisions at that time.

Senator GRAHAM. How many corrections to the 1990 Act have been made to date?

Mr. JACKSON. Let me check with my technical staff person and see if he knows that number. I don’t know that number right off.

We’re estimating, Senator, a couple dozen units.

Senator CHAFEE. In other words, in answer to Senator Graham’s question, the areas that we originally included within the definition of what qualifies for the coastal barriers, there have been about a couple dozen where there have been appeals and subsequently the decision was that a mistake was made and that they should have been excluded? Is that what you’re saying?

Mr. JACKSON. Yes, Senator, technical corrections were required.

Senator CHAFEE. I see.

I’m sorry, go ahead.

Senator GRAHAM. And I understand that—in fact, I believe tomorrow we’re going to have a markup on a bill which contains at least two additional corrections, or maybe four. Is that correct?

Mr. JACKSON. That’s correct.

Senator GRAHAM. Thank you, Mr. Chairman.

Senator CHAFEE. Any other questions?

Senator ALLARD. Mr. Chairman?

Senator CHAFEE. Senator Allard?

Senator ALLARD. Everything on the island is private property, privately owned?

Mr. JACKSON. That’s correct.

Senator CHAFEE. Mr. Jackson, thank you very much for testifying.

Mr. JACKSON. Thank you, Senator.

Senator CHAFEE. Now we have a panel consisting of Ms. Savitz, Executive Director, Coast Alliance; Mr. Hayward, President, Terra Cotta Realty; and Mr. DeGennaro.

I have a call that I’ve just got to take. Take your seats, please, and I’ll be right back.

Senator GRAHAM. Mr. Chairman, could I ask if Mr. Jackson could stay, if there are some questions that are raised that he might answer?

Senator CHAFEE. Fine.

Mr. Jackson, can you stay?

Mr. JACKSON. Yes, sir.

[Recess.]

Senator CHAFEE. All right, would you all step up to the table, please, Ms. Savitz and Mr. Hayward and Mr. DeGennaro.

We will start with Ms. Savitz, Executive Director of the Coast Alliance. Why don't you proceed?

**STATEMENT OF JACQUELINE SAVITZ, EXECUTIVE DIRECTOR,  
COAST ALLIANCE**

Ms. SAVITZ. Thank you, Mr. Chairman, good morning. Good morning, Senators. My name is Jacqueline Savitz and I am the Executive Director of the Coast Alliance. We are a national environmental coalition that works to preserve the Nation's priceless coastal resources. I greatly appreciate the opportunity to be here today to testify regarding S. 2470, a bill to delete a barrier island from the Coastal Barrier Resources System.

Today I am speaking on behalf of 23 conservation organizations from Florida and across the Nation.

The Alliance has a long track record with the Coastal Barrier Resources System, which I'll refer to as "the System." We resolutely supported its creation in 1982. We worked hard to ensure its expansion in 1990, and we have continued to educate the public as to its value. We recently won a lawsuit preventing illegal changes to the system.

I am here today to oppose S. 2470 because the bill would undermine the integrity of the Coastal Barrier Resources System.

In 1982, Congress decided that taxpayers should not subsidize private development of undeveloped barrier islands. The ultimate question raised by this bill is whether Pumpkin Key was inappropriately included in the System back in 1990.

The Alliance and the 23 groups we represent argue that Pumpkin Key was rightly included in the System at that time. Its exclusion would run counter to Congressional intent, putting human life and property at risk, and the removal of Pumpkin Key undermines the integrity of the system itself.

For these reasons we recommend an unfavorable committee report.

Beside the many technical arguments for including the island, one could merely look at the island—if it was a little closer, you could probably see this picture; Pumpkin Key is in the upper lefthand corner, a little tree-lined area—one could merely look at it and see that it's undeveloped. Common sense and the application of statutory criteria demonstrate that this is not a valid technical correction. Coast Alliance understands that there are three other bills currently before this committee that are valid technical corrections, but this one is not. And we do need to verify that Pumpkin Key is not included in any of these other bills.

As the chairman said, the Coastal Barrier Resources Act of 1982 was set up for three very important goals: to minimize the loss of human life; to protect fragile natural resources; and to reduce wasteful Federal expenditures. The System does not regulate development. Undeveloped coastal barriers included in the System are prohibited from receiving nearly 50 Federal subsidies for new pri-

vate construction. The developer is still free to develop his land, but without financial support from the U.S. Treasury.

Pumpkin Key is a barrier island near Key Largo, Florida. In 1990 it was added through the Coastal Barrier Improvements Act, among other undeveloped parcels, to the System. The island is part of a unique ecosystem. This critical habitat is being continuously eaten up by development.

The following observations made in this report from the Fish and Wildlife Service, Department of the Interior, shed light on the valuable, sensitive nature of Pumpkin Key and its surroundings.

Mangrove communities along the Keys are productive ecosystems which support a diversity of fish, birds, and other wildlife. This includes birds with special status, including Kirtland's warbler, white-crowned pigeon, great white heron, magnificent frigatebird, bald eagle, and peregrine falcon, and others. Even wading birds like the great blue heron and roseate spoonbill, and shorebirds such as the snowy plover, American oystercatcher, and sooty tern—in fact, the only known nesting sites for the magnificent frigatebird, sooty terns, and brown noddies in the continental United States are located in the Keys. And as I said, these habitats are dwindling.

Major storms have assaulted the Keys on many occasions, and their impacts are well documented. In 1935, one of the most violent hurricanes in U.S. history destroyed virtually all of the human-made structures in the Matecumbe area and killed 400 people. Deleting Pumpkin Key from the System will encourage risky development on this island and shift the risk of development from the developer to the taxpayer. Deleting it from the System is inconsistent with the statutory definition, it runs counter to the intent of the law, it is a stretch of existing Fish and Wildlife Service criteria, and it undermines the integrity of the System.

Therefore we urge this committee to exercise its independent judgment and reject the bill.

Specifically, in 1990 the island met the test that no more than one structure per five acres may be present in order to be classified as undeveloped, and it still meets that criterion today. According to the Fish and Wildlife Service observations, Pumpkin Key meets the statutory definition of an undeveloped barrier island because it is subject to wave, tidal, and wind energies, and there are only three houses on this small island. With the exception of these few structures on the 25.5 acre island, the natural ecological processes are not significantly impeded.

The island does not have sufficient infrastructure that would define it as developed. The Fish and Wildlife Service stated, as recently as August 11, that "the island's lack of paved roads kept Pumpkin Key from meeting the full compliment of infrastructure criterion." The Service then categorizes Pumpkin Key as developed based on the presence of a golf cart path.

We ask that the Congress reject this dilution of the criteria.

Since there is no automobile access to the island, fleeing it in case of a hurricane could be perilous. Removal of Pumpkin Key contradicts Congressional intent to minimize a loss of human life and actually encourages more people to move into harm's way.

If Congress labels Pumpkin Key as “developed,” other coastal barriers will become easy targets for developers who would have Uncle Sam subsidize risky development.

The bottom line is that the plain language of the statute controls and overrides the inconsistent application of U.S. Fish and Wildlife Service criteria. Therefore, Congress should apply its statutory standard, which would keep Pumpkin Key within the System, and maintain the System’s integrity.

In conclusion, the wisdom of the Coastal Barrier Resources System to minimize loss of life, to protect fragile coastal resources, and to reduce wasteful Federal expenditures could be lost if this bill takes us down the slippery slope leading to continued deletions from the System.

The act’s wise goals and the System’s continued integrity should be more important than the political pressure to allow taxpayer giveaways for this specific development project.

Thank you, Mr. Chairman, for your leadership on this issue and for giving Coast Alliance the opportunity to testify here today.

Senator CHAFEE. Thank you, Ms. Savitz.

We will hear from each of the witnesses and then we will have questions of the panel.

Now, Mr. Hayward, President of Terra Cotta Realty, Inc.

Mr. Hayward, won’t you proceed, please?

**STATEMENT OF THOMAS Z. HAYWARD, JR., CHAIRMAN, TERRA COTTA REALTY (FLORIDA), INC.**

Mr. HAYWARD. Thank you, Mr. Chairman, Senator Graham, Senator Allard, for the opportunity to be here this morning.

My name is Thomas Z. Hayward, Jr., and I am chairman of Terra Cotta Realty (Florida), the owner of the property known as Pumpkin Key, near North Key Largo, Florida. I am here to testify on behalf of George Berry, who is the founder of TCR and resides on Pumpkin Key. I am also here representing the Berry family and Robert F. Berry, who is seated behind me today.

Specifically, we want to express our strong support for the legislation, S. 2470, introduced by Senator Bob Graham and cosponsored by Senator Connie Mack. Senator Graham, of course, is a member of this distinguished committee. The bill reflects the findings of the United States Fish and Wildlife Service that Pumpkin Key was mistakenly included in the System when Congress passed the 1990 amendments to the Coastal Barrier Resources Act.

Allow me to provide the committee with some background on the timeframe and physical development of Pumpkin Key.

Mr. Berry personally bought Pumpkin Key in 1973 as a retirement residence for himself and his family. By 1976, it was quite obvious that to secure the necessary permits at the Federal, State, and county level, it was going to take considerably more time and expense than Mr. Berry originally contemplated, so at that time he sold one-half of the property to Terra Cotta Realty, which is a private real estate investment company owned by the Berry family.

In 1980 we received the last of our permits and started construction of the subaqueous utility line, as well as the private residential 20-slip concrete dock.

At this point, to provide the committee with a brief chronological outline documenting the development of Pumpkin Key, I would like to give you a brief recitation.

From 1974 to 1978, we negotiated all necessary easements for crossing across Card Sound from Key Largo.

From 1980 to 1981, the subaqueous utility crossing, bringing water, electric power, and telephones to Pumpkin Key, was completed.

From 1981 to 1982, the construction of the cart paths, the vehicular access paths, around the island and the distribution of the utilities to each of the 16 residential lots approved by Monroe County was completed.

And by 1983, the completion of the caretaker's residences, the dockhouse, the principal residence, the beach area, and three breakwaters were also completed.

The subaqueous utility line provides almost 14,000-volt primary electric power, the voltage of which is stepped down via 10 transformers spread throughout the island. Water and telephone service has been extended to each lot, and the entire grid was fully operational by 1983.

Access to Pumpkin Key is provided from a private marine facility located at the Ocean Reef Club, located approximately 1,300 feet across the water, and I refer you to the exhibits attached to my testimony.

In 1986, Monroe County was rezoned, and the island was rezoned "offshore island." In light of this rezoning in 1986, we immediately filed for a vested rights hearing in Monroe County. The hearing officer found, as a matter of both law and fact, that the site plan was grandfathered and our right to develop 15 additional residential lots was a vested right.

Due to the fact that the State of Florida, Department of Community Affairs, had put Monroe County under its control as an area of critical State concern and had frozen all zoning, Pumpkin Key was and still is zoned an offshore island. So to protect our vested rights for 16 residential lots on Pumpkin Key, we started negotiations in 1993 with Monroe County and the State of Florida, Department of Community Affairs.

The result of these negotiations was to reduce our 16 lots to 12, with the balance of the 11 to be built out, placing some 8 additional acres at the center of Pumpkin Key in a private conservation area that can never be developed. This development agreement was approved by the Monroe County Commission in January, 1995.

We had no more completed our development agreement than we were advised by the FEMA representative from Monroe County that the new CBRS map and FEMA map showed Pumpkin Key in the CBRS, which means that a homeowner cannot secure, among other things, flood insurance for a residence on Pumpkin Key, and without flood insurance, it is just about impossible to secure mortgage money. This notification was the first knowledge we, Monroe County, or the State of Florida Department of Community Affairs had of this inclusion.

Mr. Chairman, you are right. The debate here today is not about the National Flood Insurance Program. We have to comply with Federal and State regulations as they currently exist, which man-

date insurance to qualify for lending approval, and also the issuance of private insurance, such as windstorm insurance, by private insurance companies.

Hurricane Andrew had no effect on Pumpkin Key. There was no flooding. It is protected, as indicated on the map on the easel, by Key Largo and all the development at Ocean Reef.

We then requested the Fish and Wildlife Service to undertake a comprehensive review of the Pumpkin Key situation, and on July 28 of this year, the Director of the Fish and Wildlife Service wrote to Congressman Deutsch, indicating Pumpkin Key met the requirements to be considered developed at the time of the passage of the CBRS in 1990.

More specifically, the Fish and Wildlife Service states that Pumpkin Key had a full complement of infrastructure prior to 1990. A "full complement of infrastructure" is defined under Fish and Wildlife guidelines to include water supply, waste disposal, electricity, paved roads, or docks.

The guidance, Mr. Chairman, that you referred to and asked Mr. Jackson about was established in 1982. I refer you to the establishment of the CBRS in 1985, which incorporated those same guidelines by reference. So essentially, for the past 16 years those guidelines have been what has been followed by the Fish and Wildlife Service.

Since the island is only 25.6 acres in size, there is no need for roads or automobiles on Pumpkin Key. In fact, on an island the size of Pumpkin Key, a road or more expansive street system would be environmentally intrusive. And in fact, Mr. Chairman, to answer your question to Senator Graham, the local governmental authorities did waive the requirement for any extensive roads.

Under the guidelines applied by FWS, the extensive docking facilities provide the necessary transportation access to and from the island.

Mr. Chairman, before concluding there is one other item that I would like to discuss quickly.

Some have alleged that Pumpkin Key is a mangrove island, but the fact is that Pumpkin Key is an elevated island of limestone base which is covered primarily by tropical hardwood hammock. Only a small portion of Pumpkin Key has mangrove, approximately 1.6 acres, and we protected that through a voluntary private covenant in 1980. We subsequently set aside an additional 8 acres which we also have protected through a private conservation covenant.

Under the statute, only undeveloped coastal barriers were and are to be included in the System. The facts show—and upon review, the Fish and Wildlife Service agrees—that at the time Pumpkin Key was added to the System, it was already developed. Consequently, we are not asking for any kind of special exception. Rather, we are asking for the law to be applied appropriately in our case. The enactment of S. 2470 would be fully consistent with both the spirit and letter of the Coastal Barrier Resources Act.

In all due respect, Mr. Chairman, it is a simple fact that Pumpkin Key is not a barrier island. It is never flooded. It has been improved with over \$5 million of infrastructure, totally paid for by Terra Cotta Realty Company and not by public funds, has never



taken advantage nor applied for any of the 50 subsidies cited by Ms. Savitz this morning. It meets to the letter the FWS guidelines. It is protected by private insurance, which mandates Federal flood insurance. It has no endangered or protected species on the island. And when Hurricane Andrew impacted the State of Florida a few years ago, there was no flooding. We removed the families from Pumpkin Key; they securitized the island; they removed themselves all the way to Tampa, which is two-thirds of the way up the State of Florida, to avoid the hurricane, and there was no loss of life.

Mr. Chairman and Senators, thank you for your time. We ask your support in enacting S. 2470, introduced by Senator Graham, which would implement that recommendation. Thank you again for the opportunity to be here this morning and to answer any questions.

Senator CHAFEE. Thank you, Mr. Hayward.

Mr. DeGennaro, who is the Executive Director, Taxpayers for Common Sense.

Mr. DeGennaro?

**STATEMENT OF RALPH DE GENNARO, EXECUTIVE DIRECTOR,  
TAXPAYERS FOR COMMON SENSE**

Mr. DEGENNARO. Thank you, Mr. Chairman. My name is Ralph DeGennaro. I am Executive Director of Taxpayers for Common Sense, which I co-founded in 1995. Taxpayers for Common Sense opposes S. 2470.

Taxpayers for Common Sense is a 501(c)(3) nonprofit organization dedicated to cutting Government waste and maintaining a balanced Federal budget. We are politically independent. We seek to reach out to taxpayers of all political persuasions, to build support for common sense reform. Our goal is a Government that costs less, makes more sense, and inspires more trust.

I would like to thank you for the opportunity to testify today and for your leadership on this issue over the years. Also I would like to thank Senator Graham for adhering to the process by introducing S. 2470 as a free-standing bill instead of seeking to attach it as a rider on unrelated legislation.

I would like to make three key points here.

First, by undermining personal responsibility, S. 2470 mocks taxpayer compassion displayed in times of disaster. Fundamentally, Taxpayers for Common Sense believes that Americans want their Government to be softhearted in times of disaster and hardheaded before disaster strikes. In 1993, Hurricane Andrew decimated South Florida and parts of the Keys, causing \$25 billion worth of damage. But taxpayers from across the Nation were there for their fellow Americans. Hundreds of millions of taxpayer dollars were spent on an emergency basis to ameliorate the State's immediate suffering and give the State what it needed to get back on its feet.

Inevitably, Florida and other States will suffer such disasters again. When they do, Taxpayers for Common Sense believes most Americans want Congress to open its heart and open its wallet for its fellow stricken citizens.

But when the storm has passed and there is time to think clearly, American taxpayers demand that their fellow citizens use com-

mon sense. People should take responsibility for their own actions and avoid living in harm's way to reduce the likelihood of needless deaths and disaster payments. That is why Taxpayers for Common Sense opposes S. 2470. This bill forces Federal taxpayers to buy front-row tickets to a hurricane. And we just heard that when Hurricane Andrew hit, no big deal, didn't affect at all. In that case, why do you need a Federal subsidy to develop there?

The bill mocks the compassion that Americans showed in 1993 and that we will be asked to show again. We want to help, but it's fair that we ask something in return.

Second, S. 2470 forces hardworking taxpayers to subsidize luxury homes. Read the promotional materials. Even if subsidizing certain coastal developments made sense, Pumpkin Key does not belong on the list. Anyone who can afford to buy a home there does not need taxpayer handouts. Read the promotional brochures. The bill asks Federal taxpayers to subsidize the development of a dozen luxury homes on a secluded island. Reportedly, some homeowners will arrive by helicopters; I don't know that for a fact, but it would be interesting to find out.

Third, S. 2470 further dismantles the Coastal Barrier Resources System that protects against developers who gamble with taxpayer money. We heard earlier that this hearing is not about the National Flood Insurance Program. Well, it's all about subsidy. What this bill would do is permit Federal subsidies to be given here, and we need to recognize that.

President Reagan signed the Coastal Barrier Resources Act in 1982 in part in order to reduce taxpayer bailouts of resort developers up and down the eastern seaboard. Since 1996, Congress has slowly begun dismantling this law, piece by piece, via special interest exemptions. This bill is no exception. It is exactly the kind of property that the Coastal Barrier Resources System is meant to cover, and no amount of haggling over definitions will change that. This is the wrong message for Congress to send. Only in Washington, D.C. is the absence of a Federal subsidy considered an unfair imposition. I think what everybody needs to understand is that nobody is preventing Mr. Hayward and his colleagues from doing exactly what they want; they just can't do it with our money.

We have also heard about Monroe County. Monroe County is not putting up the money here. The subsidies that would be enacted are Federal; they are not county subsidies. If Monroe County wants to pay for the 50 subsidies that this property would be eligible for, fine.

Finally, Mr. Chairman, I think we need to get back to reality. These are clips from yesterday and today. Turn on your television; watch Hurricane George as it rages across the Caribbean; five are dead; billions in damages will be done. Puerto Rico was declared a disaster area today.

No law of man can repeal the laws of nature. No piece of paper voted by this Congress in all its majesty under the dome across the street can change the trail of terror and destruction to be wrought by Hurricane George and other storms. Our Nation is only two centuries old, but the hurricanes are millions of years old and have immense power. Why would Congress ask taxpayers to stand in harm's way and put their money at risk for something that the

gentleman sitting next to me is not willing to put his own money at risk for?

Thank you.

Senator CHAFEE. Thank you, Mr. DeGennaro.

Mr. DeGennaro, I do want to stress that while many of us have misgivings about the whole Flood Insurance Program, and you've set forth your views on it, that's not the subject of why we're here today. It may well be that we think it's an outrage, that Federal flood insurance is provided for these very, very wealthy homes. Forget here—other places that are outside the act, outside the coverage of the Coastal Barrier Resources legislation. But that's for another day. That's something that we should take up and look at.

I think it's extraordinary that in 1982 and 1990 we were able to exclude as much as we did. I was the leader of that at the time, and I guess every developer in Florida and Texas came to see me. It wasn't just there; it was right up the whole east coast.

But that's a separate subject. It may well be, as you say, that you're absolutely right, but that's for another day.

Mr. DEGENNARO. Mr. Chairman, I take your point.

The point is, though, subsidies—the bill would make this property eligible for subsidies.

Senator CHAFEE. There's no question about it, but that's the way we did the legislation. And the question is, does this Pumpkin Key fall into the exclusion group that we had, or is it covered? That's the question before us. It is clear that these are presumably very wealthy people; if we say they're not covered—the reason they're here is that they're seeking Federal flood insurance. That's no secret. I think Mr. Hayward himself testified to that, that without the Federal flood insurance, getting mortgages is extremely difficult.

Just out of curiosity, not that this is determinative, is private flood insurance available? Or is that just not done?

Mr. HAYWARD. Mr. Chairman, if it was, we would have purchased it. We have private insurance. When we went to get our windstorm coverage, we were mandated by Chubb & Sons that to issue our private windstorm insurance coverage, that we also had to take out and pay for the Federal flood insurance before they would issue the private insurance policy, which is the only one in our entire 28-year ownership of Pumpkin Key that we've ever applied for.

Senator CHAFEE. Ms. Savitz, you were quoting the statute there and saying that it was in conflict with the criteria language. In your testimony I didn't quite see that. Where were you quoting from? Do you have that page?

Ms. SAVITZ. Yes, I do, sir. I think what it is in conflict with is an ever-changing set of criteria that have never been codified or set to actual regulations that have evolved in the Fish and Wildlife Service process.

The statute I'm talking about is in the U.S. Code under definitions. I can read it to you, if you like.

Senator CHAFEE. Sure.

Ms. SAVITZ. I'm not sure whether we included it specifically in our testimony or not. It says, "The term, 'undeveloped coastal barrier,' means a depositional geologic feature, such as a barrier tom-

bolo, barrier spit, or barrier island, that, one, is subject to wave, tidal, and wind energies; two, protects landward aquatic habitats from direct wave attack; and, three, all associated aquatic habitats, including adjacent wetlands, marshlands, estuaries, inlets, and nearshore waters; but only if such features and associated habitats contain few manmade structures, and these structures and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological process."

And as I said——

Senator CHAFEE. Is there a section for that?

Ms. SAVITZ. Yes, I'm sorry, Section 3502.

Senator CHAFEE. Of what?

Ms. SAVITZ. I'm sorry, I'm not an attorney. It says, United States Code, Annotated, Title 16, Conservation, Chapter 55, Coastal Barrier Resources.

Senator CHAFEE. We'll take a look at that.

Senator GRAHAM. Was that the 1990 act?

Ms. SAVITZ. Yes, I think so. It says, "Current through Public Law 105-165, approved 3/20/98." So I think it is from the 1990 law.

Senator CHAFEE. Mr. Hayward——

Mr. HAYWARD. Yes, sir?

Senator CHAFEE.——what is the binding significance of the two properties that the Berrys are going to set aside—that is, your company or the Berrys, which I guess is the same because the Berrys own Terra Cotta, don't they?

Mr. HAYWARD. Yes. We own the entire island, including the conservation areas.

Senator CHAFEE. I mean, the family owns Terra Cotta Realty, don't they?

Mr. HAYWARD. Yes, sir, they do, the Berrys.

Senator CHAFEE. So what is the binding significance of the—I believe you had set aside an acre and a half for mangrove, and then something like——

Mr. HAYWARD. Yes, sir, eight acres.

Senator CHAFEE.——eight more acres. Is that a binding setup?

Mr. HAYWARD. That's a binding covenant, Mr. Chairman, to use a legal term. It runs with the land. It's in perpetuity. We made that commitment to Monroe County, to the State of Florida, Department of Public Affairs. It's part of all the record of the proceedings of the local authorities. That is a commitment, and it's irrevocable on the part of Terra Cotta Realty of Florida.

Senator CHAFEE. In other words, you can't get out of it?

Mr. HAYWARD. That is correct, Mr. Chairman.

Senator CHAFEE. You can't put a couple houses in that area?

Mr. HAYWARD. No, sir, nor would we want to. We have been very sensitive, we believe, in our development of this parcel of real estate since we purchased it in 1970.

Senator CHAFEE. Senator Graham?

Senator GRAHAM. Mr. Chairman, as you have said, our purpose here today is not to debate the desirability or the wisdom of a public policy that has the Federal Government providing flood insurance or other activities that can be seen as encouraging development. Under your wise leadership we've had a policy at the Federal level that says that there will be areas of the Nation, generally de-

fined as “undeveloped barrier islands,” which will be prohibited from receiving that package of benefits. I am pleased to say that the State of Florida has a similar policy relative to State assistance.

I will further state that the State of Florida has recognized the special qualities of the Florida Keys. In 1972, Florida passed what was called the Environmental Land and Water Management Act of 1972, or Chapter 380, which set up a procedure called an “Area of Critical State Concern,” where the State would join into a superior partnership with a local government to assure the appropriate land management of a portion of the State. The Florida Keys was one of the first areas to be given that Area of Critical State Concern designation.

Senator CHAFEE. Florida must have had a series of extraordinary Governors in that period, do you think?

[Laughter.]

Senator GRAHAM. Modesty precludes me from answering that question.

But for a period now of some 20 years, the Florida Keys have been, both under the traditional local land use policy of Monroe County—since this is not in a municipality—and also with State control, administered by the Florida Department of Community Affairs.

I say all that to give the background that in terms of issues of safety, appropriateness of development, those matters do not have to depend upon Federal intervention through the grant or withholding of Federal programs, such as flood insurance. There is a panoply of State and local agencies which have taken intense interest in the Florida Keys, and specifically in this area of Key Largo.

The issue before us today is whether, under the Federal laws of 1982 and 1990, Pumpkin Key constitutes an “undeveloped barrier island” for purposes of inclusion in the Coastal Barrier Resources System, which has the effect of excluding it from eligibility for a variety of Federal programs. The Fish and Wildlife Service has testified that the standard that they used in developing the maps that were used by Congress in 1990, and prior to those maps that were adopted in 1990 in administering the program, were twofold: one, a standard of residences per acre, and the second criteria was the comprehensiveness of development infrastructure.

In their opinion, Pumpkin Key fails to meet the first test but does meet the second test of comprehensiveness of infrastructure.

I would like to ask each of the witnesses, if those are the criteria that the Fish and Wildlife Service have been applying, why do you feel that Pumpkin Key either does or does not meet, particularly, the criteria of comprehensive infrastructure?

Ms. SAVITZ. I think I’ll start, if that’s OK.

I think that the statement made by Mr. Hayward is a little bit misleading when he said that the Fish and Wildlife Service has followed the same guidelines for 16 years. Our research shows that over about the past 16 years, the actual criteria and how they are applied has changed a number of times. Between impact statements, statements to Congress, and guidelines, the actual definition of infrastructure has varied.

Senator GRAHAM. Specifically, in what ways do you feel the criteria that the Fish and Wildlife Service indicates that they used between 1982 and 1990, and then used in developing the maps that were adopted by Congress in 1990, are not met by Pumpkin Key?

Ms. SAVITZ. Well, I think that if you are going to focus on a Fish and Wildlife Service criterion, then paved roads were clearly expressed as recently as in the testimony of Mr. Taylor of the Fish and Wildlife Service to the House on this bill, where he said that "the full complement of infrastructure consists of paved roads, water, electric, and sewer." That's even what the Fish and Wildlife Service said in their August, 1997 letter, but then they changed their minds and said that a golf cart path counts as a paved road. And I think that's really where there's a divergence here, which is why I've suggested the use of statutory criteria.

Senator GRAHAM. So the whole issue is whether this island would be considered undeveloped because it does not have paved roads?

Ms. SAVITZ. Well, I think the issue is actually what the Coastal Barrier Resources System intended and what Congress intended when it set up the System. The Fish and Wildlife Service criteria, in the sense that they have evolved and changed, don't really provide a good standard for determining whether something should be included or not. The issue is whether Pumpkin Key was undeveloped at the time that it was included in the System, and based on the statute, we believe that it was not.

Senator GRAHAM. But the standards that were used in the statute in 1990 to develop these maps were the standards that were published in the Federal Register in 1982, according to the testimony that we had. If that is the case, is there any way in which, in your judgment, the criteria failed to be met in terms of a complement of infrastructure other than the failure to have paved roads?

Ms. SAVITZ. I think that the full complement of infrastructure criterion is not a statutory criterion, and I do think the failure to have paved roads is the reason why that—if you call it "guidance"—is not met.

Senator GRAHAM. I don't want to put words in your mouth, but are you saying that the reason that you're here testifying against this today is because of the failure to have paved roads, and therefore in your opinion, because of that, the failure to meet the criteria for a complement of infrastructure?

Ms. SAVITZ. No, sir. The reason I'm here to testify today is because the Coastal Barrier Resources System preserves areas like Pumpkin Key, and we're concerned that the movement from a paved road to a paved golf cart path is the beginning of a slippery slope that could erode the entire System, and we're very concerned about that. That's why we're here today.

Mr. DEGENNARO. Senator Graham, I'd like to echo Ms. Savitz' comments.

I would like to research for the record, and provide to the committee, a more detailed response to the question you're asking. I think we need to get at what's the law, what are the regulations, what governed at the time.

We are not here because of anything the Fish and Wildlife Service said.

I would also like to address another fundamental part of Mr. Hayward's argument, and that is that Monroe County or the State of Florida gave some approvals or allowed things to go forward. Again, I think we need to be clear. It's not up to Monroe County or the State of Florida to decide this; it's up to the Federal Government.

Senator GRAHAM. You think the Federal Government has responsibility for land use management in Monroe County, Florida?

Mr. DEGENNARO. No, sir. I think the Federal Government has the right to decide what it will provide subsidies for under Federal law.

Senator GRAHAM. And it has done so, has it not?

Mr. DEGENNARO. You mean, the Fish and Wildlife Service testimony today?

Senator GRAHAM. No, I mean the statutes that were passed in 1982 and 1990.

Mr. DEGENNARO. Correct, but those are interpreted by Federal agencies. We believe that the Federal Government should have a role in interpreting—we believe that the Federal Government should not turn over the interpretation of those laws to county and State governments, who will not pay the consequences.

Senator GRAHAM. Well, in 1990, when the Congress adopted a series of detailed maps that indicated what properties were in or out of the Coastal Barrier System, the testimony that we've had today was that those maps were developed based on these two criteria. Properties were in or out because they either had one structure per five acres, or if they didn't meet that standard, they were in or out because they had a complement of infrastructure which included these specific items.

Was that your understanding of how the 1990 maps were developed?

Mr. DEGENNARO. I would like to go back and give you a really substantive and clear answer for the record. One of the reasons we are here—

Senator GRAHAM. Is it your opinion today that those were not the criteria?

Mr. DEGENNARO. Senator, you would want me to give you the best answer I could, and that's what I'll do.

Senator GRAHAM. I just wondered, what is your current state of mind? Do you think those were or were not the criteria that were used in 1990?

Mr. DEGENNARO. What I'd like to do is really research the whole thing, give you a really good, clear, short answer for the record.

One of the reasons we're here, though, is because we disagree with the Fish and Wildlife Service's position as testified today.

Ms. SAVITZ. Senator Graham, if I could, I think that you're right, that the Fish and Wildlife Service does use those criteria to determine what their recommendations to Congress would be. But those are recommendations; they don't necessarily dictate what will ultimately end up in the maps. Those are actually designated by Congress.

So I think the Fish and Wildlife Service uses their criteria to the best of their abilities to draw the maps and make recommendations to the Congress, but it's ultimately the decision of the Congress on which areas get included or which areas don't. And for that, they have a statutory definition to guide them.

Senator CHAFEE. Senator Allard?

Senator ALLARD. Let me get this straight. You don't have Federal flood insurance now, is that correct?

Mr. HAYWARD. We do, sir.

Senator ALLARD. How long have you had Federal flood insurance on the residences on the island?

Mr. HAYWARD. Since 1984, since we constructed it.

Senator ALLARD. So what has happened is, the Federal Government up to this point has recognized—or the insurance companies have always recognized the insurability of properties on here?

Mr. HAYWARD. Yes, sir. From private insurance, windstorm, general liability coverage, that is correct.

Senator ALLARD. OK. So these three structures, just to make sure we're clear on this, these three structures that you had on the island, if they had been subject to a hurricane and had been destroyed in 1986 or 1989, just hypothetically, then the Federal Government would have come in like the rest of the area and help subsidize that insurance, is that correct?

Mr. HAYWARD. No, sir, only if there was any surge or water. If it was windstorm, it was all private insurance, and that's in fact what it has been and continues to be, not only with respect to us but with respect to Ocean Reef to our east.

Senator ALLARD. What I'm trying to get to is that if we don't extend this to you because of a change in policy, it sounds to me like you lose what you have been relying on all along, to get Federal flood insurance. You lose that, is that correct?

Mr. HAYWARD. That is correct, and then we lose the ability to obtain our private insurance.

Senator ALLARD. See, Mr. Chairman, I guess that's what I'm looking at. If you've sort of allowed a right for them to have the Federal insurance, we've changed that now in existing properties—in a way I think we do kind of affect property values and whatnot there, and I think that does have an impact.

If we had been expanding this—if they hadn't had Federal flood insurance prior to this, then in my view we are expanding a Government program, a Government subsidy, and we shouldn't be doing it. This is a gray area, but to me that's the important issue.

You've been receiving it all along; there's been a change in policy here that has impacted an existing situation that you've had on the island. You apparently do meet the definition under the utilities that go to the island.

So I guess you come right back again to the definition of how a coastal reef area was defined, and obviously you fall out of that definition.

So that's the thing that was of interest to me, was whether we were actually expanding eligibility for a Federal program, in which case Mr. DeGennaro's arguments would have been very valid. But up to this point—and I agree with the chairman, by the way, that we need to look at floodplain areas and we need to look at coastal



areas. I do think that we need to change our flood insurance, and we should not be encouraging people to take on high-risk development and then have the taxpayers subsidize it. But in this case, where you've already been receiving it, it seems to me that you're an exception.

Senator CHAFEE. Senator, I would make this point. Let's just discuss the three houses that were there.

Mr. HAYWARD. Yes, sir?

Senator CHAFEE. In those three houses, if he had Federal flood insurance on them, he can continue to have Federal flood insurance, except if it exceeds—I think it's 50 percent—

Mr. HAYWARD. That's correct.

Senator CHAFEE.—50 percent damage. In other words, you get one big bite out of the apple. You don't get a second one. However, if it's relatively minor—not minor, but up to 40 percent damage, say, to the home—then you can continue to have that.

So that's the way we did the Act when we did it in 1982, and we continued that in 1990.

All right. Let me just say, for the sake of everybody here, I think we want to determine this and make a decision here as rapidly as possible. So we will get to this as soon as we can, one way or the other. I think in fairness to the owners of the island, they're entitled to an answer.

Yes, Senator?

Senator GRAHAM. Yes, Mr. Chairman. Could I ask a question of Mr. Jackson?

Senator CHAFEE. Sure.

Senator GRAHAM. Mr. Jackson, you indicated that since 1990 there have been approximately two dozen corrections to the maps, is that correct?

Mr. JACKSON. That's correct.

Senator GRAHAM. Have those corrections utilized the two criteria that we are discussing here today, that is, the one residence for five acres or the complement of infrastructure?

Mr. JACKSON. I think, Senator, that basically that is correct. Oftentimes we find that there was information that was not available to us during some of those initial determinations, so when that information is provided, we go back and we basically go back and we go through that two-phase process.

Senator GRAHAM. So is the analysis that you have given on Pumpkin Key consistent with the analysis that you have given on those two dozen previous projects?

Mr. JACKSON. I believe that's correct, Senator. We had never really faced a situation like this before, with golf cart paths. I'm not sure that anybody even contemplated that back in the early 1980's, 1990. So essentially we went back and looked at our criteria to make sure that they still fit, and based on that pattern, we made that call, that we felt that it did in fact constitute appropriate infrastructure as pathways were concerned.

Senator GRAHAM. It seems to me that the verbatim language in your standard is, "vehicle access (i.e., improved roads or docks) to each lot or building site"—it seems to me that under that definition of vehicular access, meaning improved roads or docks, that you might not

even have to get to the question of paved roads because you've met the docks requirement.

But I would further say that a reasonable definition of what constitutes vehicular access in this context, particularly one that has been sanctioned by both the local government and the State of Florida as being appropriate, would indicate that that standard has been met.

Mr. JACKSON. I agree. We really didn't—and usually don't—look at docks per se, standalone. However, I think at least by our definition and by most folks' definition of a vehicle, I think a golf cart meets that standard, particularly when you're looking at a 25-acre island. Personally, I would hate to see roads and cars in a small area like that because I think some of the impacts associated with that would be, from an environmental standpoint, even more damaging.

Senator CHAFEE. Mr. Hayward, what is the difference between subaqueous and underwater? Is that just a big word for underwater?

Mr. HAYWARD. That's a big word, Mr. Chairman. It is underwater. It crosses from the Ocean Reef Club to Pumpkin Key, and it's pursuant to easements that were granted by the State of Florida, Department of Public Affairs, and we pay a lease to the State of Florida for that.

Senator CHAFEE. I see.

Just out of curiosity, what is the depth, roughly?

Mr. HAYWARD. It starts from the mainland at very shallow. At that point it is probably 15 or 20 feet, and then it rises back, and then the intercoastal is in between Pumpkin Key and the mainland, so it drops off again. But generally, Card Sound is a very shallow, flat area.

Senator CHAFEE. All right. Any other questions?

[No response.]

Senator CHAFEE. I want to thank you all for coming. Some of you have come from considerable distances, and we appreciate that. We appreciate the testimony that everybody has given. As I said before, I'd like to get an answer one way or the other on this fairly soon, so therefore we'll be considering it rather soon at the committee, hopefully.

Thank you all very much.

[Whereupon, at 10:30 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

[Text of S. 2470 and statements submitted for the record follow:]

STATEMENT OF GERRY JACKSON, ASSISTANT DIRECTOR FOR ECOLOGICAL SERVICES,  
U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Good Morning. I am Gerry Jackson, Assistant Director for Ecological Services of the U.S. Fish and Wildlife Service. I appreciate this opportunity to testify on S. 2470, a bill to direct the Secretary of the Interior to make corrections to a map relating to the Coastal Barrier Resources System.

The Administration supports enactment of S. 2470. This bill would modify boundaries of unit FL-35 within the Coastal Barrier Resources System in Florida by excluding an area that was incorrectly mapped as undeveloped.

The Coastal Barrier Resources Act of 1982, which established the Coastal Barrier Resources System, was designed to limit federally subsidized development activities within undeveloped coastal barriers. It is important to note that the Act does not prohibit development. Landowners are still free to develop their property.

However, Congress determined that taxpayers should not subsidize development activities in these high-risk, damage-prone coastal areas. By restricting all new Federal expenditures and financial assistance in such areas, Congress sought to minimize the loss of human life, wasteful expenditure of Federal revenues, and damage to fish, wildlife, and other natural resources associated with coastal barriers.

Section 10 of the original Coastal Barrier Resources Act mandated a study of coastal barriers and required the Department of the Interior to provide Congress with recommended changes to the System. An extensive public review period was conducted from 1983 up to the completion of the Department's 1988 Report to Congress. This Report included final recommendations for additions and deletions to the System. Using this report and its maps, the Congress in 1990 enacted the Coastal Barrier Improvement Act, which both added and removed areas from the System.

S. 2470 would remove the 25-acre island of Pumpkin Key from the Coastal Barrier Resources System. Based on information available at the time, Pumpkin Key was mapped by the Service as an undeveloped coastal barrier, so designated in its 1988 Report to Congress, and included in the Coastal Barrier Resources System by Congress on that basis.

Subsequently, in late 1996 and early 1997, the owner of Pumpkin Key provided new information to the Service describing the level of development on Pumpkin Key, including a list of structures and infrastructure and when they were built. This new information was sufficient for us to determine that the island met the requirements to be considered as "developed" at the time of passage of the Coastal Barrier Improvement Act in November 1990.

According to Departmental criteria, the first step in analyzing development status is to examine the number of structures in place at the time of inclusion in the System. The Service received evidence that three insurable structures on the Pumpkin Key were built by November 1990. Since there were not sufficient structures for the island to be considered as developed, the Service then examined the level of infrastructure present.

A full complement of infrastructure is defined to include water supply, wastewater disposal, electricity, and paved roads. The development information supplied by the representatives of Pumpkin Key on August 5, 1996, and February 14, 1997, clearly demonstrates a high level of infrastructure development prior to 1990. Signed, sworn affidavits and as-built engineering drawings attest to the presence of electricity, water, and wastewater disposal capacity for every building lot on the island, as well as paved golf cart paths. These paths, paved in 1984, provide the transportation infrastructure for the island, which has no bridge or ferry access and no automobiles.

This information, which was not available to the Service when it prepared the 1988 Report, nor to Congress when it included Pumpkin Key in the System in 1990, provided the basis for the Service's current finding that the island was developed prior to its inclusion in the System. We therefore support modification of the boundary of Unit FL-35 to exclude Pumpkin Key, as proposed in S. 2470, as a valid technical correction of a mapping error.

This concludes my formal statement. I would be happy to answer any questions you may have.

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STATEMENT OF JACQUELINE SAVITZ, EXECUTIVE DIRECTOR, COAST ALLIANCE

#### *Introduction*

Good morning. My name is Jacqueline Savitz and I am the Executive Director of the Coast Alliance, a national environmental coalition that works to protect the resources of the nation's four coasts: Atlantic, Pacific, Great Lakes, and Gulf of Mexico. I greatly appreciate the opportunity to offer testimony regarding S. 2470, a bill to delete a barrier island from the Coastal Barrier Resources System (CBRS). I am speaking today on behalf of the Coast Alliance and twenty-three local and national conservation and citizen organizations.

The Coast Alliance has a long track record with the CBRS. We resolutely supported its creation in the 1980's and worked hard to ensure its expansion in 1990. More recently we have worked to educate the public about the value of the Coastal Barrier Resources System (CBRS) and have won a lawsuit preventing the U.S. Fish and Wildlife Service from making illegal changes to the CBRS maps. I am here today to oppose S. 2470 and discuss why the passage of this bill would undermine the integrity of the CBRS.

In 1982, Congress decided that taxpayers should not subsidize private development of undeveloped barrier islands. The ultimate question raised by this bill is: Whether Pumpkin Key was inappropriately included in the CBRS?

The Coast Alliance and the twenty-three groups that we represent today argue that: (1) Pumpkin Key was rightly included in the CBRS in 1990; (2) its exclusion from the CBRS runs counter to Congressional intent, putting human life and property at risk; and (3) the removal of Pumpkin Key undermines the integrity of the CBRS itself. For these reasons, which are explained in more detail below, we strongly recommend an unfavorable committee report on S. 2470.

Besides the many legal arguments for including the island, any lay person could merely look at a photo of it and determine that Pumpkin Key is not developed. Common sense and the application of statutory criteria should move Congress to the obvious truth that this bill is not a valid technical correction.

### *Background*

#### *The Law*

The Coastal Barrier Resources Act of 1982 (CBRA), 16 U.S.C. Section 3501 et seq. (1994) (Pub. L. 97-348), established the Coastal Barrier Resources System in order to achieve three goals: to minimize the loss of human life by discouraging development in high-hazard areas, to protect fragile natural resources along the coast, and to reduce wasteful Federal expenditures. Undeveloped coastal barriers included in the CBRS are prohibited from receiving Federal subsidies for new, private construction. The CBRS does not prevent development from occurring, it prevents the distribution of Federal funds, such as Federal flood insurance, for construction. The developer is free to obtain private insurance for new development inside the System.

In 1990, Congress passed the Coastal Barrier Improvements Act (CBIA) as an amendment to the CBRA. The CBIA added Pumpkin Key (unit FL-35), among other undeveloped parcels to the CBRS. Section 3503 of the statute deemed "undeveloped coastal barrier" to mean:

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that—(i) is subject to wave, tidal, and wind energies, and (ii) protects landward aquatic habitats from direct wave attack; and (B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters; but only if such features and associated habitats contain few manmade structures and these structures, and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological process.

Under the CBRA, the United States Fish and Wildlife Service (F&WS) is authorized to consider, and make recommendations as to whether parcels of property should be considered undeveloped, and therefore included in the CBRS. To this end, the F&WS may consider whether there are fewer than one structure per five acres of fastland. 50 Fed. Reg. 8700 (March 4, 1985). The Secretary of Interior defined "structure" to mean a legally authorized building larger than 200 square feet in area, regardless of the number or size of housing units it contains. H. R. Rep. No. 101-657(I), p.6. See also 44 CFR 71 (Oct. 1, 1996). The F&WS also currently considers whether there was a full complement of infrastructure on the parcel prior to its inclusion in the System. According to the F&WS, a full complement of infrastructure includes electric lines, water lines, sewer pipes/septic systems and paved roads.

#### *Florida Keys Environment*

In 1988, the United States Department of the Interior described the natural environments of the Florida Keys in its "Final Supplemental Legislative Environmental Impact Statement on the Proposed Changes to the Coastal Barrier Resources System." At that time, Interior made the following observations (pages III-3—III-6):

The Florida Keys are a narrow, elongated chain of 97 low-lying islands extending in an arc from south and west of Miami to the Dry Tortugas about 235 miles away.

The shallow Florida Bay, filled with carbonate mudflats, seagrass beds, and small mangrove islands, separates the Keys from the south Florida mainland. Fringing mangroves typically front the Keys where beaches are absent.

[T]he Keys . . . function as coastal barriers[,] . . . are subject to wind, wave, and tidal energies and to severe flooding and damage by hurricanes, and protect landward aquatic habitats.

The abundant coral reefs and seagrass beds in the Florida Keys support a great variety of recreationally and commercially important shellfish resources. Among these are spiny lobsters, stone crabs, and pink shrimp. These habitats also support large numbers of fish.... Many of the fish, particularly members of the snapper and grouper families, provide important recreational and commercial fisheries.

[M]angrove communities along the keys . . . are productive ecosystems which support a high diversity of fish, birds, and other wildlife. The mangrove food web, based largely on leaf detritus, also supports nearshore fisheries.

Upland vegetation is found on some keys where elevations are sufficient. On the northern keys and Big Pine Key, hardwood hammocks, unique assemblages of tropical and semitropical trees and shrubs, are found.

Major storms have assaulted the Keys on many occasions and their impacts are well documented. The most dramatic of these was a hurricane that hit the Keys in 1935. This hurricane was one of the most violent in U.S. history .... That hurricane destroyed virtually all human-made structures in the Matecumbe area ... and killed 400 people.... The level topography of the Keys makes human-made structures on them as vulnerable to destruction by hurricanes as those on the lowest profile, mostly wash over prone sandy coastal barriers.

Hurricane landfall frequencies are very high in the Keys (Figure 3 [attached]). The mean annual offshore wave energy, however, is the lowest of any sector along the United States' coast. This combination of generally peaceful waters with occasional hurricanes carries great potential danger because the human inhabitants—many of whom have not resided in the Keys for long—and the visitors are not generally prepared for the potential devastation of storm hazards there.

In 1988, the Department of Interior released its "Report to Congress: Coastal Barrier Resources System, with Recommendations," as required by Section 10 of the CBRA. In Volume I, page 55 of this document, Interior found that:

A number of birds with special status are found in the Florida Keys. These include Kirtland's warbler, white-crowned pigeon, great white heron, magnificent frigatebird, roseate tern, brown pelican, bald eagle, and peregrine falcon. Numerous wading birds, including the great blue heron, snowy egret, and roseate spoonbill, and shorebirds such as the snowy plover, American oystercatcher, sooty tern, and laughing gull are also present. The Keys also serve as temporary stopping sites for many migrating land birds that arrive in early spring and fall each year. While land bird distribution in the Keys is limited by availability of habitat, the region is a virtual haven for coastal aerial feeding birds such as terns and gulls because of the abundant marine life and relatively shallow waters.... The only known nesting sites for the magnificent frigatebirds, sooty terns, and brown noddies in the continental United States are located in the Keys.

#### *Findings*

Pumpkin Key is a barrier island near Key Largo, Florida. Pumpkin Key is clearly undeveloped. Congress was right to include Pumpkin Key in the System in 1990 and it is the decision of the Congress, not the F&WS to determine whether a parcel should be remain within the CBRS.

Development on barrier islands is risky because of their vulnerability to storms. In fact, such development leads to property damage and potential loss of life. S. 2470 asks Congress to reverse its prior decision and call this island "developed" and delete it from the CBRS, thereby allowing it to receive some of the fifty Federal development subsidies available.

If Congress chooses to delete Pumpkin Key from the System, it will encourage risky development on this barrier island. S. 2470 would shift the risk of development from the developer to the American taxpayer. If the owner of Pumpkin Key wishes to develop a hazard prone island, he is free to do so. He is also free to get private insurance for the project. However, the 11 sites that will become homes will be damaged in the next major hurricane, and if Uncle Sam subsidizes this development, the owners will seek payment from the American taxpayer. Once damages are repaired, there will be another storm, it is just a matter of when. Remarkably in recent correspondence, the Fish and Wildlife Service has changed its position and opted to call this island developed. We feel that this policy decision: (1) is inconsistent with the statutory definition, (2) runs counter to the intent of the law, (3) is a stretch of existing F&WS criteria, (4) and undermines the integrity of the System. We urge this committee to exercise its independent judgment and reject S. 2470.

Specifically, the Coast Alliance and citizen groups across Florida and the Nation support Pumpkin Key's continued inclusion in the System for the following reasons:

(1) Pumpkin Key was rightly included in the System as it was clearly undeveloped in 1990.

In 1990, Pumpkin Key satisfied the statutory definition of an undeveloped barrier island.

The CBIA defined "undeveloped coastal barrier" to include barrier islands that are subject to wave, tidal, and wind energies—if these barriers contain few manmade structures and if the natural ecological processes are not significantly impeded. Here, the F&WS has documented that the Florida Keys are subject to wave, tidal, and wind energies and that there are only three houses on this small barrier island. Furthermore, with the exception of the few structures on the 25.56 acre island, the natural ecological processes are not significantly impeded.

In 1990, the island met the F&WS test that no more than one structure per five acres may be present in order to be classified as an undeveloped CARS unit, and it still does today.

According to the F&WS, there are only three valid "structures" on Pumpkin Key. Additionally, there are more than 3600 fastland acres in Unit FL-35. There is no evidence that the unit exceeds the "more than one structure per five acres" criterion.

The island does not have sufficient infrastructure that would define it as "developed" and would keep it out of the CBRS.

Pumpkin Key does not meet the F&WS "full complement of infrastructure" criterion because it does not have paved roads. The F&WS stated in an August 11, 1997, letter that "[a]t the time of its inclusion in the System, based on the best information available at the time, Pumpkin Key was correctly mapped as an undeveloped coastal barrier." F&WS went on to state that the island's lack of paved roads kept Pumpkin Key from meeting the full complement of infrastructure criterion. These criteria should not be diluted or compromised. Now, however, the F&WS is willing to consider the island developed despite the fact that there are no paved roads. This constitutes a dilution of the criteria for exclusion. Allowing the removal of a barrier island because it has a golf cart path and a subaqueous utility line runs counter to Congressional intent to preserve undeveloped coastal barriers.

The infrastructure criterion was designed to allow exclusion in cases where construction was ongoing. However, in this case, there was no ongoing development at the time of inclusion in the System. While the developers may have made a financial investment, they are still free to capitalize on that venture. Additionally, in the Feb. 20, 1996 letter from F&WS to Sen. Graham, the Service said, "Intensive capitalization is a consideration only when geomorphic ecological processes are altered to the extent that the long-term perpetuation of the coastal barrier is threatened. The development and potential development of Pumpkin Key at the time of its inclusion in the System did not significantly impede geomorphic and ecological processes; therefore intensive capitalization was not a consideration for excluding Pumpkin Key from the System."

Now, the F&WS is choosing to create a policy exemption for Pumpkin Key by essentially waiving the paved roads guideline from its "full complement of infrastructure" criterion. If Congress approves this, it will set a dangerous precedent and undermine the System's integrity. The bottom line is that the plain language of the statute controls and overrides the inconsistent application of F&WS criteria. Therefore, Congress should apply its statutory standard of "undeveloped coastal barriers" and keep Pumpkin Key within the System.

"Plans" to develop an island do not trigger removal from the CBRS.

Developers argue that they had plans to develop Pumpkin Key prior to its inclusion in the CBRS. However, plans do not equal development. In fact, CBRS criteria reject the concept of phased development and the F&WS stated that, "[p]reparing plans to develop or acquiring permits to build do not constitute development as defined by the delineation and mapping criteria." Feb. 20, 1996 letter to Sen. Graham. The undeveloped barrier island was properly included in the CBRS. The developer is still free to build on this property, but at its own risk, not the taxpayers'.

Information that Pumpkin Key was being added to the CBRS was available to all interested parties for review and action at the time of inclusion.

Lack of knowledge of inclusion is not a criterion for removal and the burden was on the developer to make an argument for exclusion at that time. Pumpkin Key representatives did not oppose its inclusion within the CBRS, despite opportunity to do so. The F&WS notified Monroe County about Pumpkin Key's inclusion in the CBRS, and received comments regarding the 1990 Coastal Barrier Improvements Act from individuals and organizations throughout the Florida Keys, but none regarding Pumpkin Key specifically. Pumpkin Key's developers should have known about its inclusion.

(2) Exclusion of Pumpkin Key from the fiscally prudent and environmentally sound Coastal Barrier Resources System runs counter to Congressional intent.

Removing this unit from the CBRS would be a taxpayer rip-off, allowing the developers access to Federal subsidies for their risky venture.

Coastal areas not in the CBRS cost the Federal taxpayer roughly \$82,000 per developed acre. Some of these costs come from the National Flood Insurance Program (NFIP). The NFIP is one of the largest domestic liabilities behind the Social Security System and it has required major taxpayer bail-outs in the past. Extension of additional Federal flood insurance for high risk development farther impacts the fund, places an unfair burden on taxpayers, destroys critical habitat, and invites human tragedy.

Encouraging development on Pumpkin Key puts Americans in harm's way and does so at the expense of the U.S. Treasury.

One of the System's three objectives is the protection of human lives. Therefore, the System was designed with human safety clearly in mind. Since there are no roads or automobile access to the island, fleeing it in case of a hurricane would be perilous and extremely difficult. Removal of Pumpkin Key from the CBRS would create an exception for isolated coastal barriers, a precedent that contradicts Congressional intent to minimize the loss of human life by discouraging development in high-hazard areas. Government support of such projects would convey a false sense of security and make the Federal Government vulnerable to repetitive payouts for flood and storm-related damages. It would also encourage future development on this and other barrier islands.

(3) Removal of Pumpkin Key undermines the integrity of the Coastal Barrier Resources System.

The Coast Alliance and citizen groups across Florida and the Nation are gravely concerned about the policy implications of creating an exemption from the existing criteria for Pumpkin Key's developers.

Federal flood insurance is a major Federal subsidy, which encourages coastal development. In many places such development is effectively contingent upon Federal flood insurance. If Congress removes this parcel despite the fact that aerial photos at the time of inclusion clearly showed the lack of development in this unit, other coastal barriers will become easy targets for removal by developers, who would have Uncle Sam subsidize risky development.

Coastal barriers, such as Pumpkin Key, are important to fisheries and wildlife. Coastal wetlands support more than 75 percent of the nation's commercial fish and shellfish at some point during their life cycles. Barrier areas also provide critical habitat for a variety of wildlife—including 18 federally endangered species. Development usurps important habitats for threatened and endangered sea turtles, shore birds, and other wildlife and can destroy food sources for coast-dependent species. The Federal Government should not encourage such destruction.

#### *Conclusion*

The Coast Alliance is dedicated to educating the public and reminding Congress of the value of the System and the costs associated with its piecemeal destruction. Despite the Service's recent change in position, it is important to note that in 1996 the F&WS stated that, "Pumpkin Key was included in the System because it met the definition of less than one structure per five acres of fastland for Unit FL-35; it was not intensively capitalized; and its shoreline had not been intensely manipulated. Also, it was not a cluster of development. Therefore, it was correctly placed in the System."

In conclusion, Congress should not remove Pumpkin Key from the System because it satisfies the statutory criteria, and we argue that it satisfies the density and infrastructure criteria for undeveloped coastal barriers. First, there were no paved roads, and the mere existence of a subaqueous utility line does not fulfill the criterion of a "full complement of infrastructure." Furthermore, the argument that a 25.6 acre island, having only three houses in a unit of greater than 3600 acres, is "developed" does not pass the straight face test. Second, the goals of the CBRS—to minimize the loss of human life by discouraging development in high-hazard areas, to protect fragile natural resources along the coast, and to reduce wasteful Federal expenditures—should outweigh any political pressure to allow taxpayer giveaways for unwise development. Third, deleting Pumpkin Key from the CBRS would undermine the integrity of the System.

Thank you Mr. Chairman for the opportunity to testify here today.

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#### EXAMPLES OF FEDERAL SUBSIDIES AVAILABLE TO PROPERTY NOT IN THE COASTAL BARRIER RESOURCES SYSTEM (CBRS) (NOT AN EXHAUSTIVE LIST)

According to the Department of the Interior Federal financial assistance is precluded from CBRS lands, and is defined as "any form of loan, grant, guaranty, insurance, payment, rebate, subsidy or any other form of direct or indirect Federal assistance" 43 CFR Subtitle A, October S. 1983, (as announced in 48 FR 45664.)

Subsidies include but are not limited to:

- 1) Construction or purchase of any structure, appurtenance, facility or related infrastructure;
- 2) Construction or purchase of any road, airport, boat landing facility on, or bridge or causeway to any System unit.
- 3) Assistance for erosion control or other stabilization of any inlet, shoreline, or inshore area, except in certain emergencies.

*Examples*

Department of Agriculture Loans For Rural Disaster Relief Loans For Water Systems Loans For Wastewater Systems Loans For Commercial Development Loans For Community Services Loans For Subdivision Development

Department of Commerce Grants For Planning And Administering Local Economic Development Programs Grants For The Coastal Energy Improvement Program

Rural Electrification Administration Loans for expanded Electrical Systems

Army Corps to Engineers Construction And Financial Assistance For Beach Erosion Control Construction And Financial Assistance For Hurricane Protection Construction And Financial Assistance For Flood Control Construction And Financial Assistance For New Or Expanded Navigation Projects

Department of Energy Energy Development Programs

Housing and Urban Development Block Grants For Community Development Mortgage Insurance Housing Assistance Rehabilitation Subsidy Programs Urban Development Action Grants

Department of Interior-National Park Service Grants To States For Historic Preservation Survey And Planning Grants To States For Land Acquisition And Development Of Protected Areas Grants To States For Prep. Of State Comprehensive Outdoor Rec. Plans (LWCF)

Department of Transportation Grants For Airport Planning And Development Federal Assistance To States For Highway Construction Capital Improvement And Operating Grants

Environmental Protection Agency Grants For Wastewater Treatment Construction Grants For Water Quality Management Planning

Federal Emergency Management Administration Federal National Insurance Program Disaster Assistance Program

Federal Home Loan Administration Guaranteed Housing Loans

General Services Administration Construction or Reconstruction of Federal Property Exchange or Sale of Federal Property For Development Purposes

Small Business Administration Loans To Small Businesses for Disaster Relief Loans To Small Businesses for Upgrading of Water Treatment Systems Loans To Small Businesses for Other Purposes Disaster Assistance To Homeowners

Veterans Administration Guaranteed Housing Loans From Veterans Administration

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American Littoral Society, Highlands, NJ	Ocean Advocates, Dickerson, MD
Big Pine Key Civic Association, Inc. Big Pine Key, FL	Natural Resources Defense Council, New York, NY & Washington, DC
Center for Marine Conservation, Washington, DC	North Beach Neighborhood Ass'n, Inc., New Smyrna Beach, FL
Clean Ocean Action, Highlands, NJ	North Carolina Coastal Federation, Newport, NC
Florida Keys Citizens Coalition, Key Colony Beach, FL	Reef Relief, Key West, FL
Florida Keys Environmental Fund, Islamorada, FL	Sea Turtle Survival League, Caribbean Conservation Corporation, Gainesville, FL
Gulf Restoration Network, New Orleans, LA	Sierra Club National Marine Wildlife and Habitat Committee
Key Deer Protection Alliance, Inc., Big Pine Key, FL	Sierra Club, Midwest, Madison WI
Lake Pontchartrain Basin Foundation, Metairie, LA	South Carolina Coastal Conservation League, Charleston, SC
Long Island Sierra Club, Huntington Station, NY	Upper Keys Citizens Association, Key Largo, FL
ManaSota-88, Inc., Palmetto, FL	Volusia-Flagler Environmental Action Committee, Inc., New Smyrna Beach, FL
New Jersey Environmental Lobby, Trenton, NJ	

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STATEMENT OF THOMAS Z. HAYWARD, JR., TERRA COTTA REALTY (FLORIDA), INC.

Thank you, Mr. Chairman and members of the committee. My name is Thomas Z. Hayward, Jr. and I am the chairman of Terra Cotta Realty Florida (TCR), the owner of the property known as Pumpkin Key near North Key Largo Florida. I am here today to testify on behalf of George A. Berry III, who is the founder of TCR



and resides on Pumpkin Key. I am also here representing the Berry family and Robert F. Berry is here with me today.

Specifically, we want to express our strong support for legislation (S. 2470) introduced by Senator Bob Graham and co-sponsored by Senator Connie Mack. Senator Graham, of course, is a member of this distinguished committee. The legislation would correct the Coastal Barrier Resources System (CBRS) map, so as to exclude Pumpkin Key from "FL-35". The bill reflects the findings of the United States Fish and Wildlife Service that Pumpkin Key was mistakenly included in the System when Congress passed the 1990 amendments to the Coastal Barrier Resources Act. Identical legislation (ELR 3647) has been introduced in the U.S. House of Representatives by Representative Peter Deutsch, whose Congressional District includes Pumpkin Key.

Allow me to provide the committee with some background on the timeframe and physical development of Pumpkin Key. Mr. Berry personally bought Pumpkin Key in 1973 as a retirement residence for himself and his family. In 1974, he hired the Miami engineering firm of Connell, Metcalf & Eddy to start the planning, engineering and permitting of Pumpkin Key. At the time of the purchase, Pumpkin Key was zoned GU-1, one residence per acre or 25 residences for the property. By 1976 it was quite obvious that, to secure the necessary permits at the Federal, State, and County level it was going to take considerably more time and expense than Mr. Berry originally contemplated. So, at that time, he sold one half of the property to Terra Cotta Realty Florida, which is a private real estate investment company owned by the Berry family.

In 1980, we received the last of our permits and started construction of the subaqueous utility line as well as on a private residential 20 slip concrete dock. Those permits were from: (1) at the Federal level, the U.S. Corps of Engineers, Jacksonville, Florida; (2) at the State level, the Florida Department of Natural Resources and the Florida Department of Environmental Regulation; and (3) at the local government level, the Monroe County Department of Building and Zoning, the Monroe County Department of Growth Management, and the Monroe County Commission.

In 1981, again because construction costs far exceeded the original estimates, Mr. Berry sold the balance of Pumpkin Key to Terra Cotta Realty Florida. The site plan that had been approved called for 16 lots of one acre or more and three caretaker apartments. The first caretaker moved onto Pumpkin Key in June 1983. On March 7, 1984, Mr. Berry and his wife moved into their residence on Pumpkin Key—a full 10 years after the original purchase of the property.

At this point, I would like to provide the committee with a brief chronological outline documenting the development of Pumpkin Key.

1974-1978 Negotiations were held with the Ocean Reef Club, Inc. for the purchase of a right of way on their new development of Snapper Point to install underground power, telephone cable, and a four (4) inch private water line to serve Pumpkin Key. At that time, The Ocean Reef Club was the only source of potable water on North Key Largo (See Exhibits A & B).

1980-1981 The subaqueous utility crossing was constructed bringing water, electric power and telephones to Pumpkin Key from Ocean Reef Club property on Snapper Point. This comprised of two four (4") inch water mains, two (2) 13,800 volt electric lines and a one hundred (100) pair telephone cable. An additional four inch (4") line was installed to handle future wastewater disposal in the event public sewers became available in North Key Largo. During this period the 20 slip double "L" private residential concrete dock was installed (See Exhibits A & B).

1981-1982 Construction of cart paths and distribution of utilities to each of the 16 residential lots (See Exhibit C).

1982-1984 Construction of caretaker's residences, dock house, the residence and two tennis courts, beach area, and three breakwaters (See Exhibit D). The two tennis courts, constructed in 1983, are not just designed for recreational purposes; they are also designed to function as a heliport for emergency medical evacuation.

The subaqueous line provides 13,800 volt primary electric power, the voltage of which is stepped down via ten transformers spread throughout the island. The step-down transformers provide 440, 220, and 110 volt electrical service to all of the original 16 permitted lots. Water and telephone service has also been extended to each lot. The utility system and island-wide electrical grid were fully operational by 1983, well before Pumpkin Key was added to the CBRS in 1990. Also in 1978, Terra Cotta received county, state, and Federal approval to construct a beach area, a 20 slip multi-residential docking facility, and breakwaters to protect the dock and beach area. The dock facility provides dock space for each of the 16 lots and building sites. Access to Pumpkin Key is provided from a private marine basin facility located at Ocean Reef Club, North Key Largo, Florida. The basin, located 1,300 feet across the water from Pumpkin Key includes docking facilities, a garage for cars

and golf carts, and a guest house for Pumpkin Key. Here again, these facilities were completed and fully operational before Pumpkin Key was added to the CBRS.

In 1986 Monroe County was rezoned and although the approved plat filed and accepted in 1980 by the county was in full force and effect, the Island was rezoned O.S. (offshore island)—one residence per 10 acres when there were already four residences on the property existing from 1983. In light of this rezoning in 1986 we immediately filed for a vested rights hearing in Monroe County. The hearing was held in 1989, in Key West, Monroe County, Florida. The hearing of record found as a matter of both law and fact that the site plan was grandfathered and our right to develop 15 additional residential lots was a vested right. This finding of the hearing officer was upheld and approved by the Monroe County Commission in January 1990.

Due to the fact that the State of Florida, Department of Community Affairs, had put Monroe County under its control as an area of critical State concern and had frozen all zoning, Pumpkin Key was and still is zoned as an offshore island. So, to protect our vested rights for 16 residential lots on Pumpkin Key, we started negotiations in 1993 with Monroe County and the Florida Department of Community Affairs. We sought a development agreement to provide us with ten (10) years to build on the remaining 15 (15) residential lots. The results of these negotiations were that we gave up 20.5 percent of the vested rights to the 16 (16) residential lots, leaving 12 (12) with a balance of 11 (11) to be built out and placing some eight (8) acres of Pumpkin Key in a private conservation area that can never be developed. This development agreement was signed by all parties on January 13, 1995, and approved by the Monroe County Commission by unanimous vote in January 1995.

We had no more than completed our development agreement than we were advised by the FEMA representative for Monroe County that the new CBRS map and the FEMA map showed Pumpkin Key in the CBRS, which means that a homeowner cannot secure flood insurance for a residence on Pumpkin Key and without flood insurance it is just about impossible to secure mortgage money. This notification was the first knowledge we, or Monroe County, or the State of Florida Department of Community Affairs had of this inclusion. Mr. Chairman, the debate here today is not about the National Flood Insurance Program. We have to comply with the Federal and State regulations as they currently exist, which mandate insurance to qualify for lending approval.

In 1996, after being contacted by representatives of our company, the Fish and Wildlife Service undertook a comprehensive review of the Pumpkin Key situation. On January 28 of this year, the Director of the Fish and Wildlife Service wrote to Congressman Deutsch indicating that "Pumpkin Key met the requirements to be considered developed at the time of the passage of the Coastal Barrier Improvement Act in November 1990." What this means is that Pumpkin Key should not have been included in the Coastal Barrier Resources System to begin with and the Service admits that had they known then what they know now, Pumpkin Key would not have been included in the CBRS FL-35. The bill introduced by Senators Graham and Mack would correct that error.

More specifically, the Fish and Wildlife Service letter states that Pumpkin Key had a "full complement of infrastructure" prior to 1990. A full complement of infrastructure is defined under Fish and Wildlife Service guidelines to include water supply, waste water disposal, electricity, and paved roads or docks. The Fish and Wildlife Service states that their review "clearly demonstrates a high level of infrastructure development prior to 1990." They noted the presence of electricity, water, and waste disposal capacity for every building lot on the island, as well as the paved cart paths and docking facilities. The paved cart path exceeds two miles in length. Since the island is only 25.6 acres in size, there is no need for roads or automobiles on Pumpkin Key. In fact, on an island the size of Pumpkin Key, a road or more expansive street system would be environmentally intrusive. Under the guidelines applied by the FWS the extensive docking facilities provide the necessary transportation access to and from the island.

Earlier this year, on May 19, the Subcommittee on Fisheries, Wildlife and Oceans of the House Resources Committee held a hearing on Congressman Deutsch's counterpart bill—H.R. 3647. We were very pleased with the positive reception that we received from the House Committee at that time. Subsequently, along with two other non-controversial FWS-supported properties, the Pumpkin Key correction was included in the Department of Interior fiscal year 1999 Appropriations bill (H.R. 4193) which passed the House on July 23.

Mr. Chairman, before concluding, there is one other item I would like to quickly discuss. Some have alleged that Pumpkin Key is a "mangrove island". But the fact is that Pumpkin Key is an elevated island of limestone base which is covered primarily by tropical hardwood hammock. Only a small portion of Pumpkin Key has

mangrove (approximately 1.6 acres), which we preserved through a voluntary, but binding covenant on the approved site plan in 1980. Subsequently we further set aside an additional 8 acres in a private conservation area as part of our development agreement entered into between Terra Cotta Realty, Monroe County, and the Florida Department of Community Affairs in 1995.

CONCLUSION

So, prior to 1990, Terra Cotta Realty had undertaken extensive capital investment in Pumpkin Key, totaling more than \$5 million in development funds. We believe that all of the above facts clearly demonstrate that Pumpkin Key was, in fact, developed prior to its mistaken inclusion in CBRs in 1990.

Under the statute, only undeveloped coastal barriers were and are to be included in the System. The facts show, and upon review the Fish and Wildlife Service agrees, that at the time that Pumpkin Key was added to the System it was already developed. Consequently, we are not asking for any kind of special exception; rather, we are asking for the law to be applied appropriately in our case. The enactment of S.2470 would be fully consistent with both the spirit and the letter of the Coastal Barrier Resources Act.

Mr. Chairman and members of the committee, we greatly appreciate the opportunity to provide the committee with the facts in this case. We believe that these facts reflect that Pumpkin Key's inclusion in CBRs was an error. This position is supported by the Fish and Wildlife Service which, after an exhaustive review of the facts in this matter, concluded that the addition of Pumpkin Key to the System was not correct. Director Rogers' letter to Congressman Deutsch states that the removal of Pumpkin Key from the System is a "valid technical correction that the Service and Department can support." We ask your support in enacting the legislation (S.2470) introduced by Senator Graham, which would implement that recommendation. Thank you, again, for this opportunity to testify here today.

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STATEMENT OF RALPH DEGENNARO, EXECUTIVE DIRECTOR, TAXPAYERS FOR COMMON SENSE

Good morning Mr. Chairman and members of the committee. My name is Ralph DeGennaro and I am Executive Director of Taxpayers for Common Sense, which I co-founded in 1995. Taxpayers for Common Sense opposes S. 2470.

TCS is 501-C3, non-profit organization dedicated to cutting wasteful government spending and subsidies and maintaining a balanced budget. We are a politically independent organization that seeks to reach out to taxpayers of all political beliefs in working toward a government that costs less, makes more sense and inspires more trust. Taxpayers for Common Sense receives no government grants or contracts.

Mr. Chairman, I would like to thank you for the opportunity to testify today. Also, I would like to thank Senator Graham for adhering to the process by introducing S. 2470 as a free-standing bill instead of seeking to attach it as a rider on unrelated legislation.

By undermining personal responsibility, S. 2470 mocks taxpayer compassion displayed in times of disaster

Fundamentally, Taxpayers for Common Sense believes that Americans want their government to be soft-hearted in times of disaster and hard-headed before disaster strikes. In 1993, Hurricane Andrew decimated South Florida and parts of the Florida Keys, causing \$25 billion in damage. But taxpayers from across the Nation were there for their fellow Americans in Florida. Hundreds of millions of taxpayer dollars were spent on an emergency basis to ameliorate Florida's immediate suffering and to give its people the means to get their state back on its feet as quickly as possible. Inevitably, Florida and other states will suffer such disasters again. When they do, TCS believes most Americans want Congress to open its heart and wallet to aid stricken citizens.

But when the storm has passed and there is time to think clearly, American taxpayers demand that their fellow citizens use common sense. People should take responsibility for their own actions and avoid living in harm's way to reduce the likelihood of needless deaths and disaster payments. That is why Taxpayers for Common Sense opposes S. 2470. This bill forces Federal taxpayers to buy front-row tickets to a hurricane. Worst of all, S. 2470 makes it more likely that unsuspecting homeowners will die, lulled by the good housekeeping seal of approval symbolized by Federal subsidies. This bill mocks the compassion that Americans showed in 1993.

*S. 2470 forces hardworking taxpayers to subsidize luxury homes*

Even if subsidizing certain coastal developments made sense, Pumpkin Key would not be on the list. Anyone who can afford to buy a home there does not need taxpayer handouts. Read the promotional brochures. The bill asks Federal taxpayers to subsidize the development of a dozen luxury homes on a secluded island. Reportedly, some homeowners will arrive by helicopters landing on the tennis courts.

*S. 2470 further dismantles the Coastal Barrier Resources System that protects against developers who gamble with taxpayer money*

President Reagan signed the Coastal Barrier Resources Act (CBRA) in 1982, in part in order to reduce taxpayer bailouts of resort developers up and down the Eastern seaboard. Since 1996, Congress has slowly begun dismantling the CBRA piece by piece via special interest exemptions. S. 2470, designed to exempt Pumpkin Key, is no exception. It would simply continue the dismantling of a law that protects taxpayers and encourage further exemptions. That is the wrong message for Congress to send.

The CBRA authorized the establishment of the Coastal Barrier Resources System (CBRS)—a designation that does not allow the taxpayer subsidized development of undeveloped coastline as defined by the CBRA. Before the establishment of the CBRS, taxpayers paid millions each year to bail out private developers that invested in risky coastline development. The CBRA was passed in an effort to curtail the spiraling costs to taxpayers. The CBRS does not prohibit private development—it simply states that developers are prohibited from receiving Federal subsidies for new, private construction on undeveloped coastal barriers. In other words, the System prevents the distribution of Federal funds, such as those in the National Flood Insurance Program (NFIP), to support construction.

Developers are then free to choose not to build in risky areas, or to pay market rates for private insurance if they choose to gamble and develop vulnerable areas within the system. TCS understands that obtaining private insurance for development on coastal flood plains and barrier systems is difficult since the risk for insurers is so high. But, if private developers are unwilling to risk their own money, should they be allowed to risk taxpayers' money instead? Why should taxpayers be forced to pay for others' risky investments?

The exemption of Pumpkin Key, and other coastal areas like it, undermines the very reason the CBRS was established. It has been proven that the availability of flood insurance under the National Flood Insurance Program (NFIP), along with other Federal subsidies, encourages development along vulnerable areas of America's coasts. The U.S. GAO concluded in 1982 that the NFIP acts as a "financial safety net" for developers. In 1988, the Department of the Interior (DOI) concluded that Federal subsidies are one of the key reasons why coasts have become so heavily developed since World War II. Additionally, a report prepared for the DOI concluded that every developed acre of coast costs \$82,000 in Federal subsidies.

The biggest taxpayer gamble on the coast is the NFIP, which risks hundreds of million in taxpayer dollars every year, depending on the damage caused by natural disasters over that year.

The NFIP has a terrible financial track record with a debt of over \$900 million to the U.S. Treasury. In 1993, the NFIP had to borrow money from the treasury in order to pay claims from the Midwest Floods and Hurricane Andrew. In 1996, the NFIP had to borrow \$680 million from taxpayers in order to pay insurance claims prior to Hurricane Fran. This hurricane then caused another \$4 billion in damage, part of it on flood insurance claims. The reason for the taxpayer bailouts is simple—the dollar amount the Program collects on policies is far below the dollar amount these policies are actually worth. In other words, the NFIP has over \$325 billion worth of policies in effect, yet has only about \$500 million in the Flood Insurance Fund for payment of claims. When no flooding or natural disasters occur in a given year, the Program has about \$500 million in reserve. When there is flooding, however, the Program immediately goes into the red.

Taxpayers for Common Sense urges the committee to protect unsuspecting homebuyers and taxpayers by rejecting S. 2470. Thank you very much.

105TH CONGRESS  
2D SESSION

# S. 2470

To direct the Secretary of the Interior to make technical corrections to a map relating to the Coastal Barrier Resources System.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 1998

Mr. GRAHAM (for himself and Mr. MACK) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To direct the Secretary of the Interior to make technical corrections to a map relating to the Coastal Barrier Resources System.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REVISION OF COASTAL BARRIER RESOURCE**  
4 **SYSTEM MAP.**

5 (a) FINDINGS.—Congress finds that—

6 (1) the Department of the Interior published a  
7 notice in the Federal Register on March 4, 1985,  
8 specifying the criteria for including undeveloped

1 property in the Coastal Barrier Resources System  
2 (referred to in this Act as the “System”);

3 (2) the notice—

4 (A) expands and elaborates on the criteria  
5 used to delineate coastal barriers originally pub-  
6 lished in the Federal Register on August 16,  
7 1982; and

8 (B) specifies that candidate properties are  
9 to be excluded from the System if the prop-  
10 erties are developed with a full complement of  
11 infrastructure servicing each lot or building  
12 site;

13 (3) the Coastal Barrier Improvement Act of  
14 1990 (Public Law 101–591) designated unit FL–35  
15 in North Key Largo, Florida, as part of the Coastal  
16 Barrier Resources System;

17 (4) Unit FL–35 included Pumpkin Key, a 25-  
18 acre island that, at the time of its inclusion in the  
19 System, was developed with a full complement of in-  
20 frastructure, many structures, and a 20-slip multi-  
21 residential docking facility;

22 (5) the United States Fish and Wildlife Service  
23 has reviewed signed, sworn affidavits and as-built  
24 engineering drawings attesting to the presence on  
25 Pumpkin Key of electricity, water, and wastewater

1 disposal capacity for every building lot on the island,  
2 and a paved intra-island cart path network exceed-  
3 ing 2 miles in length;

4 (6) the utilities are provided to Pumpkin Key  
5 by a subaqueous utility line emanating from the  
6 Ocean Reef development in North Key Largo;

7 (7) the United States Fish and Wildlife Service  
8 has stated that the information referred to in para-  
9 graph (5) was not available to the Service when the  
10 Service recommended Pumpkin Key for inclusion in  
11 the System in a 1988 report to Congress; and

12 (8) based on its review of the information re-  
13 ferred to in paragraph (5), the United States Fish  
14 and Wildlife Service has affirmed that Pumpkin Key  
15 had a full complement of infrastructure at the time  
16 of its inclusion in the System and that exclusion of  
17 Pumpkin Key from the System constitutes a valid  
18 technical correction that the Service and the Depart-  
19 ment of the Interior can support.

20 (b) CORRECTION OF MAP.—Not later than 30 days  
21 after the date of enactment of this Act, the Secretary of  
22 the Interior shall revise the map depicting unit FL-35 of  
23 the Coastal Barrier Resources System to exclude Pumpkin  
24 Key from the System.

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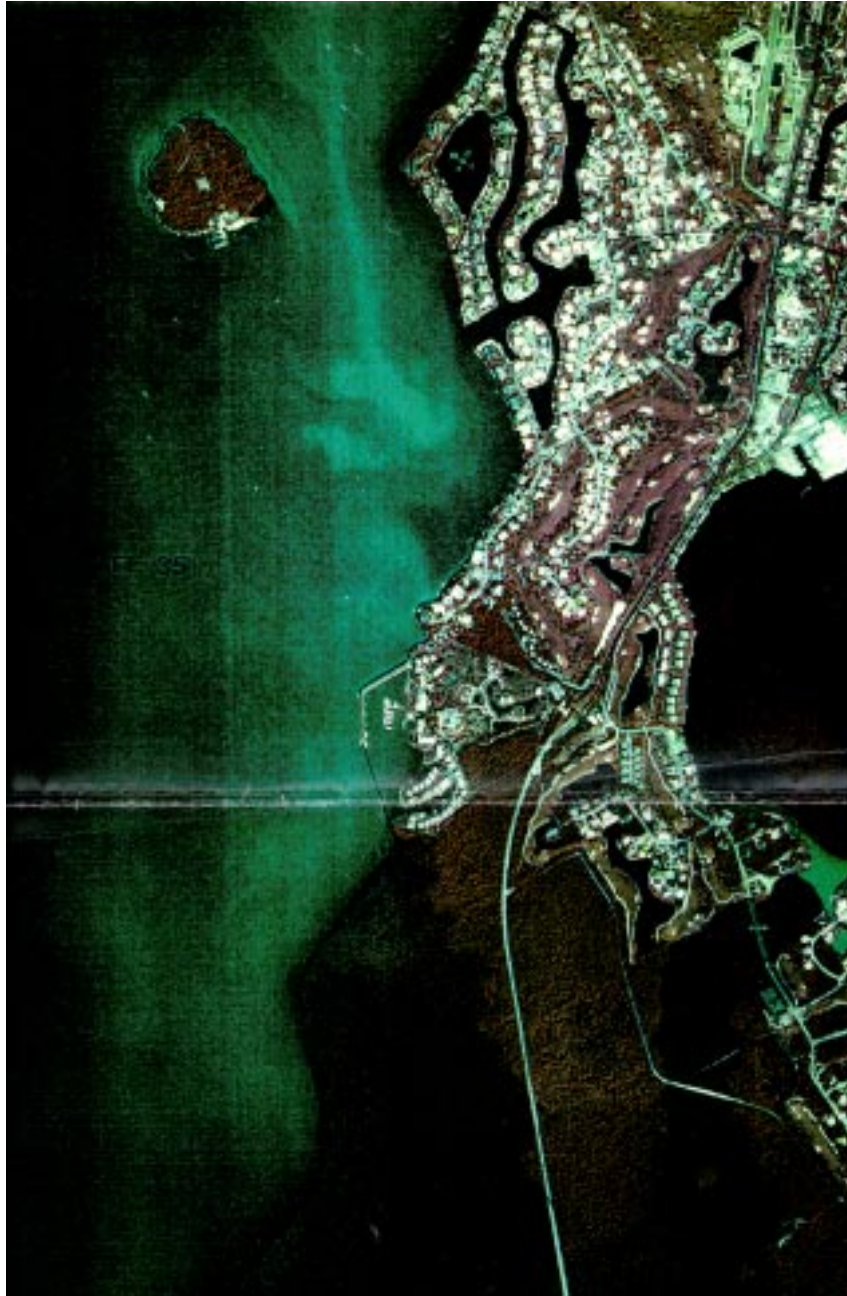






EXHIBIT A



EXHIBIT B



**Pumpkin Key: Building Improvements**



**EXHIBIT D**

