

**STATEMENT
OF
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BOCA GRANDE, FLORIDA
TO THE
SUBCOMMITTEE ON WILDLIFE, FISHERIES, OCEANS AND INSULAR AFFAIRS,
COMMITTEE ON NATURAL RESOURCES
IN SUPPORT OF H.R. 1810**

April 8, 2014

Mr. Chairman: My name is Jacqueline Nicholson. I have come to Washington to appear today on behalf of myself and the other homeowners in the South Bay Homeowners Association of Boca Grande, Florida. On behalf of my neighbors and friends, we appreciate the opportunity to testify today in strong support of H.R. 1810. This simple but important measure will correct a very plain and evident boundary mistake in unit FL 70P of the Coastal Barrier Resources System (CBRS). Contrary to statutory eligibility standards and Congressional intent, our 23 homes on 5.2 acres of long developed, private lands are erroneously part of this CBRS “Otherwise Protected Area” (OPA) – FL 70P. (*See Exhibit 1*). The new map referenced in H.R. 1810 corrects this error and takes our homes out of the CBRS OPA unit consistent with the law and intent.

All relevant parties recognize this mapping error: U.S. Fish and Wildlife Service (U.S. Fish and Wildlife), Florida State Parks, and Lee County, FL. This Committee also acknowledged the error – and the need for corrective action – when it reported favorably last Congress an identical bill, HR 2154.

Correcting this mistake is critical, because this government error impedes what we can do with our own homes. Everyday homeowner decisions like flood insurance, refinancing, adding an addition, and even selling our homes are rendered difficult or impossible because of this mapping

error. And getting the government to correct its mistake has proven more difficult, costly, and time-consuming than we could ever have imagined.

Four years ago, when the 20-year-old error was first discovered, U.S. Fish and Wildlife was unwilling to review our case. Fortunately this Committee pressed the agency to act and U.S. Fish and Wildlife then did verify the error. However, the agency went far beyond verifying the mistake and chose – unasked by us or you – to review the status of unit FL 70P more broadly. The result was wholly new recommendations to you to add thousands of acres to FL 70P, create a completely new FL 70 unit, and fix our five acre problem. We were deeply disappointed that U.S. Fish and Wildlife wants to use its 1990 map error as leverage to greatly enlarge FL 70P and create a new FL 70.

Despite our disappointment, we worked with Florida Parks, Lee County and others to secure support for the U.S. Fish and Wildlife unit expansion. However, one landowner would not agree to have eight acres of their long developed property added to a new FL 70 unit. Florida Power and Light (FPL) holds the old phosphate facilities near the tip of Gasparilla Island (see Exhibits 2 and 3). The small parcel was part of the decades-old industrial facility as demonstrated by these photos from the 1960's and 1990's. FPL recently demolished the old tanks and other industrial buildings for environmental liability purposes. Now U.S. Fish and Wildlife has decided that this action renders the site “undeveloped” to be made part of a wholly new CBRS unit – FL 70. FPL has objected.

As far as we homeowners are concerned, U.S. Fish and Wildlife and FPL can fight this out, and Congress can decide what should be done as far as the FPL property. It does not – and should not – involve the unrelated homeowners who are caught in this mapping error. Unfortunately, U.S. Fish and Wildlife and the Administration have indicated they will oppose fixing their mistake

and solving our problem – and they will oppose adding thousands of acres to FL 70P – unless the correction bill also adds the FPL parcel to the CBRS. We object strongly to being held hostage like this. We implore the Members of this Committee, and the House of Representatives, to act favorably on HR 1810 and resolve the U.S. Fish and Wildlife/FPL dispute separately.

To ensure that this Committee has a full record demonstrating the need for corrective action per HR 1810, the following outlines the legal and factual background regarding FL 70P.

When Congress designated this unit in 1990, it was intended to encompass only those lands “otherwise protected” within the Gasparilla Island State Park (*see* Exhibit 4), which is adjacent to our South Bay community. In fact, the “P” designation indicates this CBRS unit is an “Otherwise Protected Area” (OPA) in which privately owned, developed lands are not eligible for inclusion as a matter of law. The 1990 CBRS Expansion Act specifies that “the term ‘otherwise protected area’ means an undeveloped coastal barrier *within the boundaries* of an area established under Federal, State, or local law . . . primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes.” (Emphasis added). P.L. 101-591, 104 Stat. 2931, § 3(c)(6). In implementing the law, the U.S. Fish and Wildlife Service (U.S. Fish and Wildlife) explains that CBRS OPA unit boundaries are to “coincide with the boundaries of conservation or recreation areas such as State Parks and National Wildlife Refuges.” *Report to Congress” John H. Chafee Coastal Barrier Resources System Digital Mapping Pilot Project, U.S. Fish and Wildlife Service (2008) at ix.*

Even though our homes are not legally eligible to be part of this CBRS OPA, federal courts have decided that congressionally approved maps control what lands are in or out of these units. So if the congressionally approved map contradicts the legal definition of an OPA, the map – even if erroneous – controls. This is why we need this Committee to pass this corrective legislation.

Gasparilla Island is on Florida's Southwest coast in Lee County near Ft. Myers. The Island was a commercial fishing center in the late 1800's and its south end, Boca Grande, became a phosphate export port in the early 20th century. Rail lines were built down the east side of the Island starting in 1905 to ship phosphate to the port (the railroad ran adjacent to and through the lands where our homes sit today). (*See Exhibit 5*). The railroad was abandoned in the 1970's when the phosphate port closed and the lands slated for planned residential development by CSX Corporation. Between 1986 and 1990, CSX obtained the necessary approvals from the Florida Department of Environmental Regulation and Lee County to develop and build "Boca Bay", including our South Bay community of 23 homes, and commenced construction. (*See Exhibits 6, 7 and 8*). Our homes are situated between Buttonwood Bay Drive on the west and Boca Bay Drive on the east and the Gasparilla Island State Park, created in the 1980's, is immediately west of Buttonwood Bay Drive. (*See Exhibit 9*).

For 20 years, all affected parties and interests including my neighbors, CSX, Lee County, State Park officials, other Florida agencies, U.S. Fish and Wildlife, and the Federal Emergency Management Agency (FEMA) all believed that the FL 70P boundary was drawn legally and correctly and coincident with the State Park boundary (i.e., to the west of Buttonwood Bay Drive).

In early 2010, however, the large scale congressionally approved FL 70P map – hand drawn in 1990 (Exhibit 10) – was digitized by U.S. Fish and Wildlife and FEMA. It revealed the eastern boundary was not along the State Park boundary, but was in fact drawn approximately 100 feet too far to the east bisecting 23 privately owned homes in the South Bay community. The result of this error was to inadvertently include our 23 homes, and approximately 5.2 acres, within FL 70P. (*See Exhibit 10*). One of the adverse consequences of this error is that FEMA has declared all of the homes ineligible to participate in the National Flood Insurance Program even though all

of the homeowners had been routinely purchasing such coverage for approximately 20 years. As a result, the assessed values of all our homes have decreased substantially, county tax revenues are diminished, mortgages – that require flood insurance – are imperiled, and the ability to sell our homes severely compromised – all because of this line drawing error.

To correct this evident mistake, H.R. 1810 would adopt a corrected FL 70P map that places the eastern OPA boundary where it was intended – along the eastern edge of Gasparilla Island State Park and adopt ALL of the other proposed U.S. Fish and Wildlife additions except the FPL parcel. These changes have been incorporated in a map provided by U.S. Fish and Wildlife to the Subcommittee last Congress. The Committee reported favorably a bill adopting that map, and H.R. 1810 adopts this map in the same fashion.

When errors like this have been previously discovered, Congress acted to adopt new CBRS maps to correct the mistakes. In 2008 Congress fixed a boundary error for unit FL 64P, also in Lee County, FL, to remove 48 acres of private lands incorrectly included within the original 1990. In 1994, a similar error was discovered regarding unit P 18P just to the south of us. There, a number of homes built within the Caloosa Shores community were erroneously included within that OPA. Congress adopted a new map excising the homes from the unit. Overall, Congress has enacted over 50 CBRS map changes since the program was expanded in 1990. Accordingly, there is more than ample precedent to enact H.R. 1810.

We note, too, that U.S. Fish and Wildlife has taken the time to review the proposed CBRS OPA corrections set forth in H.R. 277: RI 04P and RI 05P. In each case, U.S. Fish and Wildlife presented the following testimony to Congress in 2010 (and will likely offer the same at this hearing): “The existing OPA boundaries do not precisely follow the underlying public lands boundaries and inappropriately capture adjacent private land that is not held for conservation or

recreation; is not an inholding, and was not intended to be part of the OPA.” On the basis of these facts, U.S. Fish and Wildlife supported boundary corrections to exclude these lands from the two RI CBRS units. Since the facts regarding FL 70P are essentially identical, corrective action for FL 70P is also warranted.

For the record, we approached U.S. Fish and Wildlife immediately after we were informed, for the first time, of the FL 70P mapping error. We carefully assembled and presented the uncontroverted plain evidence, referenced above, from CSX, Lee County, and Gasparilla State Park that the existing FL 70P boundary does “not precisely follow the underlying land boundary and inappropriately captures adjacent private land [our homes and lots] that is not held for conservation or recreation.” (U.S. Fish and Wildlife 2010 Testimony on RI 04P and RI 05P) Despite this clear and convincing evidence, U.S. Fish and Wildlife told us their agency did not have the time to review the situation and suggest corrective action; that it might take years to review our evidence. But as noted above, this Committee found this unacceptable and pressed U.S. Fish and Wildlife to review our case and present its conclusions. Thank you again for that action.

In any event, since Congress adopted the erroneous 1990 map, and only Congress can adopt a boundary correction, we submitted all of our information to the Subcommittee in 2011 and do so again today. We urge you to make an independent judgment based on these facts.

Thank you for your attention to our plight last Congress and again today. It was disconcerting, to say the least, to find that my neighbors and I live within a designated federal land unit by virtue of a mapping error undiscovered for 20 years – a plain error for which we bear no responsibility but must suffer the consequences. Please act quickly to correct this mistake. Pass

H.R. 1810, so we and our homes are no longer held hostage by this government mistake. Thank you.