Statement

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Testimony Before the Resources Subcommittee on Fisheries Conservation, Wildlife and Oceans

on H.R. 479 and the Coastal Barrier Resources System

April 6, 2006

Chairman Gilchrest, Ranking Member Pallone, members of the Subcommittee, my name is Cynthia Alexander and I am a homeowner in Old Miller Place, a private 6-acre subdivision in Walton County, Florida. I am here today representing myself and my neighbors: all individual families that are the property owners at Old Miller Place. Thank you for inviting me to testify on behalf of Congressman Jeff Miller's legislation, H.R. 479, a bill that would finally address a mistaken inclusion of our subdivision into the Unit FL-95P of Coastal Barrier Resources System. This unit is in Grayton Beach State Park and this technical correction directly affects the Old Miller Place subdivision and my home.

PERSONAL BACKGROUND & INTRODUCTION

To give you a brief synopsis of my personal background, I am a medical illustrator. I was born and raised here, in Silver Spring, MD. I left to attend Colorado State University where I earned my BFA in 1979. From there I attended medical school at the University of Texas Health Science Center in Dallas where I earned my MA in Biomedical Communications in 1982. In 1987, I relocated to the then remote wilderness of the Florida panhandle to buy my first and only home where I still live and work as a self-employed medical illustrator along with my partner husband. My husband and I have spent several years researching and compiling maps and aerial photos of Grayton Beach State Park which we offer the committee today as exhibits (we have prepared these exhibits such as State Park maps and aerial photos from NOAA along with other local and state record offices).[1]

As the committee knows, the Coastal Barrier Resources System (CBRS) was created in 1982 and is designed to discourage development on barrier islands. It works by denying access to federal funds including federal flood insurance, as well as prohibitions on improvement or restoration of property. Although Grayton Beach is not a barrier island, it represents a significant coastal resource.

As a 19-year Florida resident, and one of the founders of our local coastal conservancy, the *Beach to Bay Connection*, I am keenly aware of the dangers and costs associated with

[1] Please see exhibits 1-13

irresponsible coastal development. In 1994, Grayton Beach State Park was bestowed the designation of the most beautiful beach in the continental United States, due precisely to its pristine coastal wilderness, the natural beauty of its sugar sand beaches and dune fields, crystal-clear azure blue and lime green waters, wind-sculpted oaks and magnolias -- and its lack of development. This immediately attracted development interests to the area, and they brought enormous and concentrated pressures to bear to divest this valuable land of its protection and open it to development.

Faced with an immediate threat, our coastal conservancy was founded and organized to block a proposed disposition of the protected lands of Grayton Beach State Park for development of a controversial new town. This battle to convert protected lands to development for public use received national as well as intense state attention. It was covered by the *Wall Street Journal*, the *Philadelphia Enquirer* and other newspapers because many states were experiencing similar pressures on their conservation lands.

In the end, we were successful in maintaining preservation of all the acreage of Grayton Beach State Park. Then to ensure such a travesty could not again happen to protected Florida lands, the *Beach to Bay Connection* spearheaded an amendment to the Florida State Constitution in 1998 to guarantee the perpetual preservation of state-owned conservation lands. This state constitutional amendment was enacted, receiving the strongest voter support in Florida's history with a resounding 80% voter approval.

I have served as the state-appointed delegate in the capacity of local stakeholder, friend of the park, and environmental conservationist for the Grayton Beach State Park state land management reviews held in 1991, 96, 99, and 2005. For all these reasons I have been a strong supporter of the Coastal Barrier Resource Act because it is a proven way to limit the loss of human life and property, save taxpayer dollars and preserve environmentally pristine areas.

HISTORY OF GRAYTON BEACH STATE PARK

Grayton Beach State Park is located in the Florida Panhandle in Walton County, Florida. It was originally a 356-acre tract of "Section 16 land" set aside for schools.[2] The State Board of Education transferred it to the Division of Recreation and Parks under the Department of Environmental Protection in 1964 and it then became Grayton Beach State Park. The Park was 356 acres in size from 1964 -1985. It grew to a total of 2,238 acres with the completion of its land acquisition program in 1985.[3]

In 1990, a layer of Federal protection was overlaid on part of Grayton Beach State Park when Congress expanded the Coastal Barrier Resources System to include areas known as "Otherwise Protected Areas (OPA)." In the case of Unit FL-95P, the otherwise

[2] Please see Exhibit 8 & 9 (Map showing Old Miller Place Plat and 1964-1985 Grayton Beach State Park Boundary)

[3] Please see Exhibit 12 (Map showing 1985 Boundary after Land Acquisition)

protected area is Grayton Beach State Park. At the time of its creation in 1990, OPA Unit FL-95P included only about half of the 2,238 acres of Grayton Beach State Park and the entire 6.4 acre private-property subdivision known as the Old Miller Place. [4]

HISTORY OF OLD MILLER PLACE

The Old Miller Place was platted and developed in 1979, ***6 years before*** the State of Florida's land acquisition program joined Grayton Beach State Park with the southern and eastern boundaries of Old Miller Place in 1985.[5] The Old Miller Place is also bounded by Scenic County Highway 30-A and Western Lake. It is located one half mile north of the Gulf of Mexico and consists of live oak hammocks, magnolias and slash pine. It is located in **Zone X** on the FIRM[6] maps, "the areas determined to be outside the 500-year flood-plain", and **therefore is fully eligible for federal flood insurance**.

In 1990, there were 4 homes in place on these 6.4 acres. Old Miller Place has been privately owned since the 1890s. The Miller family homesteaded it in 1903. They sustained themselves by a garden, free-ranging cattle and by fishing Western Lake, a coastal dune estuarine lake that communicates with the Gulf of Mexico. With the savvy of early settlers, they selected this property for its attributes of high ground in a protected cove, safe from the storms.

In 1979, the life estate on the homestead was purchased. The property was subdivided into 10 lots, and platted with the name by which it has been known historically for nearly a century: "The Old Miller Place." The maximum growth is restricted by recorded covenants to 10 single-family homes.[7] The first residence was built in 1981 and the fourth was completed in 1985. 6 lots remained un-built by 1990 because they were purchased for future retirement homes by their respective owners. In 2006, they lay fallow as they await restoration of their right to build.

Level of Development

These lands were substantially developed and met established Fish and Wildlife Service criteria for exclusion.

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[4] Please see Exhibit 10 (Map showing OPA Boundary overlaid to Grayton Beach State Park Boundary)

[5] Please see Exhibit 8 & 9 (Map showing Old Miller Place Plat and 1964-1985 Grayton Beach State Park Boundary)

[6] Flood Insurance Rate Maps issued by Federal Emergency Management Agency

[7] Agreement and Restrictive Covenants for Old Miller Place Subdivision, filed in 1980 at the Walton County Courthouse in Book 193, Page 226, Rev. 4/13/00, filed and recorded 8/16/00, FL 645397 B 2269 P 397 Co: Walton St: FL

Density: In determining whether an area is developed, USFWS applies a density standard of one unit per five acres. H.R. 479 would remove 4 homes and 6 undeveloped lots on 6.4 acres from Unit FL-95P. The property owners have provided information to this Committee and to USFWS that 4 houses were in place on these 6.4 acres at the time of inclusion in 1990, which meets the USFWS standard of one structure per 5 acres. [8]

Using USFWS past actions to measure the density of development on private property included in a CBRS as one structure per 5 acres, it would be inappropriate to deny infrastructure on that basis. [9]

Infrastructure: The secondary criteria USFWS uses to determine whether an area is developed to the point it should be excluded from the CBRS is the level of infrastructure present at the time of inclusion. A full complement of infrastructure includes paved roads, utilities, water and sewer.

(1) **Roads:** While the standard criteria is "paved roads," the Fish and Wildlife Service has made exceptions in instances where paved roads are not the norm, as for example, in the case of **Unit FL-35P on Pumpkin Key in Florida** and **Unit P-19P on Upper Captiva Island in Florida** and, of course, most recently on Congressman Mike McIntyre's bill, H.R. 2501, a bill to clarify the boundaries of **Unit NC-07P on Cape Fear, North Carolina**. Using USFWS past actions, it would be inappropriate to deny infrastructure on that basis.

The road to access Old Miller Place is the paved County Highway 30-A. The privately owned and maintained 800' drive inside Old Miller Place that leads to each home and lot was a packed sand/dolomite surface reinforced roadbed from 1979-1995 by choice of the property owners. It has been paved with asphalt since 1995 by choice of the property owners. [10] Dolomite and crushed shell roadbeds are customary in this area. Most secondary roads in the adjacent town of Grayton Beach were dolomite, and later crushed rock, until paved with asphalt in the mid 90s. Grayton Trails, an expensive private subdivision on the eastern edge of Grayton Beach remains an unpaved sand road today. The exclusive Lakeplace development a few hundred yards away is a privately owned and maintained road by Lakeplace property owners, and has been paved with crushed shell since it was installed in 1994. Most county-maintained roads in residential areas throughout South Walton County are unpaved even today.

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[8] Please see Exhibits 2-7 (Old Miller Place Property Owners' deeds, proof of utility service, etc.)

[9] H.R. 34, a technical correction to Unit P-19P on Upper Captiva Island, Florida as well as NC-01P, NC-05P, VA-60P, VA-62P, FL-05P, FL-36P, P-18P, FL-72P, P-31P, FL-95P, AL-01P, NY-59P, P-32P, FL-35P, DE-03P, NC-03P, P-19P,VA-60P.

[10] Please see Exhibit 11 (Photographs of Scenic County Highway 30-A and Old Miller Place private drive entrance).

(2) **Utilities:** According to the Choctawhatchee Electric Cooperative, electrical lines were first permitted in the 1950s at the Old Miller Place.

(3) **Water/Sewer:** According to USFWS regulations, the "ability to use on-site wells and/or septic systems on each later building site in a development, when legally authorized and the normal practice in the vicinity, will constitute water supply and sewage infrastructure since they can be drilled and/or installed concurrently with the construction of the structure (47 FR 35696 *35712). Since all private properties south of Choctawhatchee Bay in Walton County were serviced by well water and septic tanks until 1992, these 6.4 acres meet the USFWS criteria.

After numerous discussions with the Fish and Wildlife Service, I have yet to find any rational justification for the unilateral inclusion of the adjacent Old Miller Place private property subdivision and the exclusion of other adjacent and inheld private properties. Neither does USFWS have a satisfactory explanation to account for the exclusion of approximately 1,000 acres of state park land from the OPA unit, including 1/2 mile of pristine sugar sand shoreline and dune fields.

"INHOLDING" STATUS

The Old Miller Place is not an "inholding" - **at no time does one cross State Park lands to gain access to the Old Miller Place.** It is bounded by County Highway 30-A on the North, Western Lake on the West, and shares two land boundaries with Grayton Beach State Park on the South and East.

The 1984 land acquisition map for the expansion of Grayton Beach State Park carefully identified the boundaries of Old Miller Place[11], including an inset of our platted subdivision, on page 4, Parcel 4, noting the page record in the Walton County Plat Book.[12] The finalized map of Grayton Beach State Park[13], valid from 1985 to present, is identical[14] to the 1984 planned acquisition map. All county and state maps have consistently identified the Old Miller Place subdivision and County Highway C-30A as

[11] Located in the NW 1/4 of the SW 1/4 of Section 9, T3S, R19W, Walton County, Florida, February 27, 1980, 542

[12] GRAYTON BEACH LAND ACQUISITION SURVEY for the Florida Department of Natural Resources by Buchanan & Harper, Inc., certified to and for the benefit of Chicago Title Insurance Company and the Florida Department of Natural Resources, page 4, Parcel 4.

[13] Please see Exhibit 13 (1985 BASE MAP – GRAYTON BEACH STATE PARK, Florida Department of Environmental Protection, Division of Recreations and Parks, Office of Park Planning)

[14] With the exception of the additional purchase by the State of Florida of two private property inholdings, Lots 122 and 123, in the failed Forest Dune Estates subdivision. This completed acquisition has subsequently been developed by the Division of Recreation and Parks as the Grayton Beach State Park Cabin Area. GRAYTON BEACH LAND ACQUISITION SURVEY, page 1, Parcel 1.

non-parkland. All were available through County and State public records to USFWS at the time of their OPA designation.

It remains unclear what data USFWS used to draw the FL-95P OPA boundary since it was Congressional intent for "OPA boundaries to follow state park boundaries."

EXEMPTED BY STATUTE IN 1983

Three of the four existing homes in Old Miller Place are statutorily excluded based on Section 11 of the Coastal Barrier Resources Act (Pub. L. 97–348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591), as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

Construction of 3 of the 4 residences predate the deadline for construction imposed by the October 1982 designation of the area as a System unit, meeting the statutory exemption of Part 71, §71.2, (2)(i). [15]

NO PUBLIC NOTICE

USFWS has told me that the OPA "maps and recommendations were the subject of extensive public review." However, neither USFWS, the state, nor the county ever contacted me or my neighbors to participate in any public review or proceeding. Nor were we ever notified by USFWS when the OPA designation was misapplied to our properties in 1990 or assimilated into the CBRS in 1992. I was the first property owner in the Old Miller Place "notified" many years later, in 1998, when my flood insurance was canceled by State Farm.[16]

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[15] PART 71—IMPLEMENTATION OF COASTAL BARRIER LEGISLATION
§71.2 Definitions.
(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.
(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is "new construction" unless it meets the following criteria:
(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and
(ii) The start of construction (see part 59) took place prior to October 18, 1982; or
(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and

[16] Please see Exhibit 1 (April 24, 1998 Letter from State Farm Insurance Companies Re: Flood Policy 10 5400890) This letter notified me that my property had been included in an OPA in 1990, and was therefore ineligible for flood insurance due to federal prohibitions. "Buildings may be eligible for federal flood insurance even if they are located within these areas. To be eligible, federal law (44 C.F.R. 71.4) mandates the following requirements be met:

- A legally valid building permit for the construction of the building was issued prior to November 16, 1991: and
- The building was built (walled and roofed) no later than November 16, 1991: and
- The building was not substantially improved or substantially damaged after November 16, 1991."

Thus began a long odyssey seeking information about what a Federal Otherwise Protected Area means and how it could possibly have been applied to private property and to my home. I soon learned that the OPA designation is intended for otherwise protected land that **has already been set aside for conservation purposes** like national wildlife refuges, national parks and seashores, state parks, and lands held by private organizations for conservation purposes, **but if misapplied**, the OPA designation deprives private property owners from the exercise and enjoyment of their full property rights by restricting improvements and prohibiting restoration from a catastrophe of any cause.

I expected a swift resolution to such an obvious and harmful error. Unfortunately, this has not been the case.

When I asked USFWS for proof of notice, they informed me that after an extensive search in their Washington and local offices, no record of a public notice or any public proceedings could be located. However, USFWS affirmed that I was nonetheless sufficiently noticed by publication in the Federal Register in 1985. It speaks to further evidence that no one knew what was going on: in 1985 I wasn't even a Florida resident. When I purchased my home in 1987 the mortgage and title companies did not know that this property could be assimilated into an "otherwise protected area" subject to federal prohibitions. The property owners were not even notified until one was notified ***8 years*** after the OPA was enacted in 1990. People were missing key information that would have solved this. Congress was simply not aware of our existence and development.

Setting aside the unreasonable assertion that U.S. citizens should monitor the Federal Register as sole notification to determine whether and how their present or future property might be affected by new Federal government restrictions, even if I *had* read the Federal Register notice, I wouldn't have been duly notified that my property was going to suffer OPA constraints. Neither my property nor my subdivision *qualifies under the Section 12(2)* OPA definition of the 1990 Act:

> "an **undeveloped** coastal barrier **within the boundaries** of an area established under Federal State or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes."

Nor are the Old Miller Place homes or lots eligible for inclusion in an OPA unit, because they do not meet ***any*** of the 7 enumerated criteria published in the 1985 Federal Register Notice[17]:

> (1) Areas established under a Federal, State, or local law which stipulates the purpose(s) of protection: or

[17] Federal Register / Vol. 50, No. 42 / Monday, March 4, 1985 / Notices

(2) Areas established by a Presidential proclamation under the Antiquities Act of 1906, or under a Federal, State or local executive directive which has its basis in the law; or
(3) Areas subject to deed restriction or a conservation easement which withdraws it from the normal development cycle and establishes the purposes of protection; or
(4) Areas administered by an Agency of the Federal, State, or local government under a lease which stipulates the purposes of protection; or
(5) Areas held by an organization within the scope of section 170(h)(3) of the Internal Revenue Code of 1954, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes; or
(6) Areas where the owner has established the intent to protect the area through a master plan or similar document establishing the purpose of the area: or
(7) Areas where the owner has provided a written statement documenting the intention to protect the area.

CONGRESSIONAL INTENT

When it added OPAs to the system in 1990, Congress relied on maps created two years earlier. In 1988, the Department of Interior provided maps that showed the "approximate boundaries of an undeveloped coastal barrier island that is 'otherwise protected'. . ." The boundaries of the OPA were not verified for this map because at the time, OPAs were not part of the CBRS.

As you know, the failure to use precise maps, or even obtain the existing certified maps of the otherwise protected areas, has resulted in many mapping errors. This became clear shortly after the 1990 act added OPAs to the system. In the 102nd Congress, on November 16, 1991, then Chairman Walter Jones of the Merchant Marine and Fisheries Committee introduced H.R. 3972, which directed the Secretary of Interior to make minor and technical corrections to coastal barrier maps "to ensure the accurate depiction . . . of the boundaries of 'otherwise protected areas' (as the term is used in the Act), as those areas existed on the date of the enactment of the Coastal Barrier Improvement Act of 1990." **Clearly, it was not the intent of Congress to include areas outside the existing OPA boundaries in the CBRS.**

It is implausible to argue that Congress intended to include lands in OPA units that were privately held and under development. While there are, indeed, OPA units that contain privately held land, those lands must be held for conservation purposes, as outlined in the 1990 law. Since the sole purpose of FL-95P is to incorporate an "otherwise protected area" in the CBRS, **the appropriate boundary for Unit FL-95P is the boundary of the Grayton Beach State Park.**

Gary Frazer, Acting Assistant Director for Ecological Services, Fish and Wildlife Service, Department of the Interior, testified in 1999 that Congress intended to include

only public lands, and to follow a State Park boundary when establishing the OPA boundary.[18]

> "With regard to the provision in Section 5 directing a study to verify the accuracy of OPA boundaries, the Service is supportive of identifying and correcting all errors in the mapping. We believe that it is appropriate to remove any areas that were incorrectly included in the System and to add lands that were incorrectly omitted.
>
> . . . the Department is of the opinion that the intent of Congress was to follow the State Park boundary when establishing the OPA boundary."

In discussing specific private lands that were included in an OPA Unit Mr. Frazer says:

> "The 14 acres in question are outside the boundary of the State Park, are not inholdings, and are not held for conservation purposes . . . We [denied recommendation to remove and] did so based on the degree of development on these 14 acres in 1990, applying the criteria we use to determine whether an area of private land was already so sufficiently developed that a mistake was made when it and other lands were added to the Coastal Barrier Resources System…."
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> Mr. Frazer also added, "**We now believe that is the wrong question to ask. In the case of private lands adjacent to a State Park that were included in an OPA along with the State Park, we believe the controlling question is whether Congress intended to include these private lands within the OPA . . .** all evidence we can find, both from the map itself and from the legislative history of the 1990 law, suggests that **Congress intended only to include the public lands, not these adjacent private lands, in the OPA."**

Clint Riley, Special assistant to the Director, U.S. Fish and Wildlife Service also testified to the same effect in September 25, 2003.[19]

When Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, USFWS, DOI, testified before the House Resources Committee, on November 20, 2003[20] he stated:

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[18] Testimony of Gary Frazer, Before the House Committee on Resources, Subcommittee on Fisheries Conservation, Wildlife and Oceans, Oversight Hearing on the Coastal Barrier Resources System. May 6, 1999.

[19] "In the case of private lands adjacent to a conservation area that were included in an OPA, we believe the controlling question is whether Congress intended to include these private lands within the OPA. In this case, all evidence we can find, both from the map itself, and from the legislative history of the 1990 law, suggests that Congress intended only to include the public lands, not these adjacent private lands, in the OPA." Written testimony of Clint Riley, Special Assistant to the Director, U.S. Fish and Wildlife Service, Department of the Interior, Before the House Resources Committee, Subcommittee on Fisheries Conservation, Wildlife and Oceans, Regarding H.R. 154, H.R. 2501, H.R. 2619, H.R. 2623, and H.R. 3056.

"The Service often agrees that changes to OPAs are appropriate because almost every one of the OPAs is mapped inaccurately… We believe Congress intended OPAs to follow protected area boundaries… We regularly uncover cases where OPA boundaries do not coincide with the actual protected area boundaries we believe they were meant to follow. OPAs sometimes include adjacent private lands that are not in holdings. Because of the OPA designation, the owners of these lands cannot obtain federal flood insurance for their homes. We believe that Congress did not intend to include such adjacent private lands within the OPAs. When these cases come to our attention, we work closely with interested land owners, local and state officials, and protected area managers to correctly map the protected area boundaries with the high quality mapping tools now available. All of the changes that have been made to the CBRA areas since 1999 were supported by the Service, and nearly all of these changes were to OPAs."

> . . . The act did not seek to apply its disincentives to existing communities where significant investments had already been made."
>
> . . . The purpose of the infrastructure criterion was to exclude subdivisions where a significant amount of private capital had been spent prior to Congressional designation."

There is further evidence documenting Congressional intent in *"The Coastal Barrier Resources Act: Harnessing the Power of Market Forces to Conserve America's Coasts and Save Taxpayers' Money"* published by the Division of Federal Program Activities, U.S. Fish and Wildlife Service, August 2002, on pg. 3:

> "President Ronald Reagan may have best articulated the Act's approach when he said . . . 'The "undeveloped" criterion is an important underpinning of the Act. Areas where significant development was already in place were not included in the System. The idea was to help steer new construction away from risky, environmentally sensitive places where development was not yet found**, not to hurt existing communities where serious commitments of time and money had already been made.**' "

and on p.45

> **"Clearly, the Federal government cannot turn its back on development in place today."**

There are 274 OPA units nationwide. 37 have been revised by technical correction bills ***to exclude private property, whether within park boundaries or adjacent,*** and/or include

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[20] Written Testimony of Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, U.S. Fish and Wildlife Service, Department of the Interior, before the House Resources Committee, Subcommittee on Fisheries Conservation, Wildlife and Oceans, regarding the John H. Chafee Coastal Barrier Resources System, November 20, 2003

overlooked conservation land. All were revised to make OPA boundaries coincide with the actual protected area boundaries they were meant to follow.

HARDSHIPS CREATED BY THIS OPA DESIGNATION

Prohibition on Flood Insurance Coverage

Because the Old Miller Place is in the 500-year flood plain, the owners are eligible for Federal flood insurance.[21] In 1990, Old Miller Place was incorrectly identified as an OPA. In 1992, the mistake was compounded when the CBRA Act of 1992 included all OPA lands into CBRA units. All areas included under the CBRA designation as OPA are denied Federal Flood Insurance. Although I have been temporarily successful in getting my insurance reinstated pending a technical revision, in the event of a loss, FEMA can interpret the area to be in the CBRA Zone, deny my claim, and tell me that the insurance company erred in writing the policy, leaving me unprotected. Revision of FL-95P is imperative as hurricanes are a constant coastal threat along the Gulf and Atlantic coasts, with the potential to leave Old Miller Place property owners uniquely unprotected in all of Walton County in the event of a catastrophic storm.

Cannot Build Home on Lot

Buildings constructed in this area after November 16, 1991 are not eligible for federal flood insurance as stated in item j. of Article 6, pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq., and the Coastal Barrier Improvement Act of 1990, Pub. L. 101-591, 16 U.S.C. 3501 et seq.[22]

Cannot Improve or Rebuild Homes

Committee Report – House Report 104-452, Associated Bill HR2106 reads:

> "If the property is damaged, it cannot be rebuilt if the cost of rebuilding is more than 50% of the value of the property."

The "damage" definition does not distinguish between fire, tornado, flood, hurricane or other event.

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[21] Please see Exhibit 9 (Timeline Map of Errors)

[22] Please see Exhibit 1 (April 24, 1998 Letter from State Farm Insurance Companies Re: Flood Policy 10 5400890)

Old Miller Place residents are uniquely prohibited from restoring their homes if more than 50% damaged by any cause, unlike hundreds of nearby homes, which are located ***south and seaward*** of Old Miller Place.

Coverage can be **denied** if more than 50% damaged.
Coverage will be **non-renewed** if the property is more than 50% damaged
Coverage will be **non-renewed** if the property is more than 50% improved.
This prohibition has prevented two Old Miller Place property owners from building an in-law suite to allow for care of family members.

These restrictions are also affirmed in writing by State Farm Insurance, in the September 16, 1998 letter[23] reinstating my flood insurance after I proved qualification under the mandates of Federal Law (44 C.F.R. 71.4):

> "Please be aware that if your building is ever substantially damaged[24] or substantially improved[25], the property will become ineligible for federal flood insurance, and your policy will have to be non-renewed."

Private Flood Insurance Availability --- Not an Option

Without flood insurance, a bank won't issue a building loan, a mortgage, refinance an existing loan or issue an equity line of credit. Private flood insurance is unaffordable to middle class homeowners, if you can even find a company willing to write the coverage. Most private flood insurance in Florida has been canceled since Katrina since underwriters will no longer support it. ***To the best of my knowledge, private flood insurance in an OPA is simply not written because of the federal prohibitions, entanglements and confusion surrounding this federally-protected designation applied to private property.***

Members of this Committee if my home or my neighbors' homes were to burn down or be hit by a tornado today while I'm here talking to you, I, along with my neighbors, would become permanently homeless.

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[23] September 16, 1998 Letter from State Farm Insurance, reinstating coverage subject to these exclusions.

[24] National Flood Insurance Program Definitions June 1, 1997: Substantial Damage – Damage of ***any origin*** sustained by a building whereby the cost of restoring the building to its before-damaged condition would equal or exceed 50 percent of the market value of the building before the damage occurred.

[25] National Flood Insurance Program Definitions June 1, 1997: Substantial Improvement – Any reconstruction, rehabilitation, addition, or other improvements of a building, the cost of which equals or exceeds 50 percent of the market value of the building before the "start of construction" of the improvement. Substantial improvement includes buildings that have incurred "substantial damage," regardless of the actual repair work performed.

Without a technical map correction, I am at risk of losing my home and life investment. A ***catastrophe of any origin*** that damages my home greater than 50% means I must forfeit my entire investment and equity in my home and property. I would still be encumbered with a mortgage on a ruined home that the Federal government would prohibit me from restoring, on land that cannot be sold. Neither I nor my neighbors would qualify for further debt to start anew somewhere else, putting me and my neighbors at risk for being homeless.

I do not believe it was Congress' intent to treat private citizens like this. It seems clear that Congress was not aware of our existence in 1990 when this OPA was enacted.

CONCLUSION

The 6.4 acres H.R. 479 proposes to remove from the OPA unit meet all the USFWS criteria for exclusion. More importantly, the initial inclusion of this area was in error since the boundaries of the OPA unit are not conterminous with the otherwise protected area of Grayton Beach State Park for which the unit was created.

I am hopeful the committee will agree that the change proposed in H.R. 479 is a technical correction that should be made expeditiously. We have sought a correction since we discovered this Federal map error in 1998. We have repeatedly proved that our private property is deserving of a technical correction and full restoration of property rights. We have lived with this worry and threat for far too long for what amounts to simple error on the part of the Federal government. We are hard-working American citizens that bought our homes and land in good faith, following all local, county, state and Federal laws but now find ourselves deprived of the right to enjoy, use, or dispose, or pass our property to heirs. This legislation is necessary because only Congress can make any boundary adjustments within the Coastal Barrier Resources System.

Mapping otherwise protected areas accurately and precisely will provide the OPAs with lasting integrity and ensure the viability of the legislative intent of CBRA. Old Miller Place and Grayton Beach State Park have been the best of neighbors for many years. We have been neighbors in the purest sense of the personal meaning, and we have been neighbors in a deeper sense of community, cooperating in a common vision of the appropriate stewardship and land management of this unique, beloved and valuable natural resource.

Section 4 of the 1990 Act authorizes modifications to OPA map boundaries. We therefore request a revision to modify the OPA boundary of FL-95P to make the boundary of the unit and the park conterminous on the two borders of the Old Miller Place to restore our private property rights, and allow the Old Miller Place to co-exist with Grayton Beach State Park.

Mr. Chairman, I know that you and members of this Subcommittee, are concerned about maintaining the integrity of the Coastal Barrier System and approach proposed changes

with great care. I share that concern and I fully recognize the potential for mischief. However, the proposed change under consideration represents a clear mapping error. I think maintaining the integrity of the system goes both ways -- not only do we have to guard against the removal of lands that rightly should be in the system, but we should also remove lands that have been erroneously included (failure to do so is unfair to the affected landowners). I believe that failing to make legitimate technical corrections erodes the credibility of the system itself.

The residents and property owners of the Old Miller Place subdivision urge the Committee to support this common sense correction, and we thank the committee for the opportunity to finally provide you with the clear picture and existence of our beloved subdivision.