



April 4, 2014

**OFFICE OF
COUNTY
ATTORNEY**

Terrell K. Arline
County Attorney

tarline@baycountyfl.gov

Donald J. Banks
Assistant County Attorney
dbanks@baycountyfl.gov

Jennifer W. Shuler
Assistant County Attorney
jshuler@baycountyfl.gov

840 West 11th Street
Panama City, FL 32401

Telephone (850) 248-8175
Telefax (850) 248-8189

Honorable, John Fleming, M.D., Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular
Affairs
U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Re: H.R. 2057- CBRS Bay County OPA Unit P-31P

Dear Chairman Fleming:

As the County Attorney Bay County, Florida I am proud to speak in favor of HB 2057, proposed by Representative Steve Southerland. The bill deletes Bay County OPA Unit P-31P from the John H. Chafee Coastal Barrier Resources Act (CBRA) maps. The following facts support the bill:

1. The OPA map includes residential subdivisions developed with a full complement of public infrastructure.
2. These areas were mistakenly included in an OPA containing St. Andrews State Park in 1990.
3. These areas have never flooded and the risk to taxpayers is low.
4. The homeowners there are unnecessarily suffering serious financial hardships from an inability to obtain federal flood insurance.

Let me explain this in more detail.

In 1990, when the CBRA maps were done for Bay County, an Otherwise Protected Area (OPA) map was created to include St. Andrews State Recreation Area. This State Park includes several miles of undeveloped beachfront on the Gulf of Mexico.

The mapper used section lines to create the western and northern boundaries of the OPA map. This imprecise method incorrectly included private property developed with homes and public infrastructure in the OPA map.

Under CBRA this OPA map should have been limited to undeveloped conservation areas such as national wildlife refuges, national parks and seashores, State parks, military bases, and conservation lands owned by private organizations.ⁱ Copies of Bay County Unit P-31P are attached.

Because of this mapping error, while Bay County Unit P-31P correctly includes St. Andrews State Park to the south on the Gulf of Mexico, it incorrectly contains portions of an existing mobile home and RV subdivision called "Venture Out" on the west, and an approximate 80 acre upland parcel located on the north that is over 1 mile away from the beach and developed for residential use. These areas are not a coastal barrier island. Attached are current aerial maps prepared by Bay County GIS showing these areas with the OPA boundaries.

The 80 acre residential area contains three subdivisions. Bonefish Pointe is approved for 18 lots, Finisteere subdivision is approved for 73 lots, and Martinique subdivision is approved for 138 lots. There are currently about 77 homes constructed there. Each home is on paved roads with public water and sewer utilities, and police and fire services are provided by the City of Panama City Beach. A map showing how these subdivisions are included in the ORA map is attached.

There were single homes constructed on Grand Lagoon in this area as far back as 1955. The area of the Finisteere subdivision was subject to an Agreement between adjacent landowners to connect roads, water and sewer services to a large, 1,321 unit Development of Regional Impact called Bay Point in 1976. See Agreement dated July 1976.

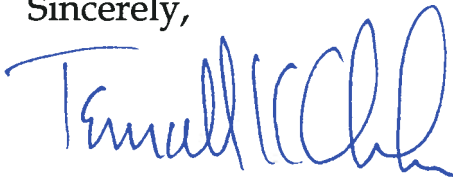
Bay County designated this area in its Comprehensive Plan for residential use at a density of 15 units an acre in 1990. A copy of the 1990 Bay County Future Land Use Map for the area is attached. The current Land Use Map

designates this area for commercial and residential use. See attached current FLUM-Bay Point Area.

Longtime residents will tell you that this area has never flooded during a hurricane. Therefore, the legislation poses little risk to taxpayers. You should know that when the subdivisions were originally approved they were not included in the 1996 FEMA flood zones. However, in 2002 and again in 2009, FEMA modified the flood maps. At that time, most of the residential lots were included in a flood zone. At that point, banks started demanding flood insurance. Because the area was in an OPA area, owners of homes and vacant lots that previously did not need flood insurance were compelled to get it and federal flood insurance was not available. Private insurance can cost upwards to \$50,000.00 a year. This makes financing new construction and refinancing existing development extremely difficult and expensive. It adversely affects not only people's lives, but the local real estate market and the local tax base. Attached is a report of a typical middle class family who struggle to keep their home precisely because of the map error on Map P-31P.

Chairman Fleming, I truly believe the inclusion of these residential areas in the Bay County OPA Unit P-31P was a mistake. It was caused by a mapping error and the unauthorized application of an OPA to existing residential lands. The map error has real life impacts on local homeowners, it complicates the efficient provision of public utilities, and it depresses local markets. For these reasons, Bay County humbly requests you and the members of the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs vote to support H.R. 2057.

Sincerely,



Terrell K. Arline

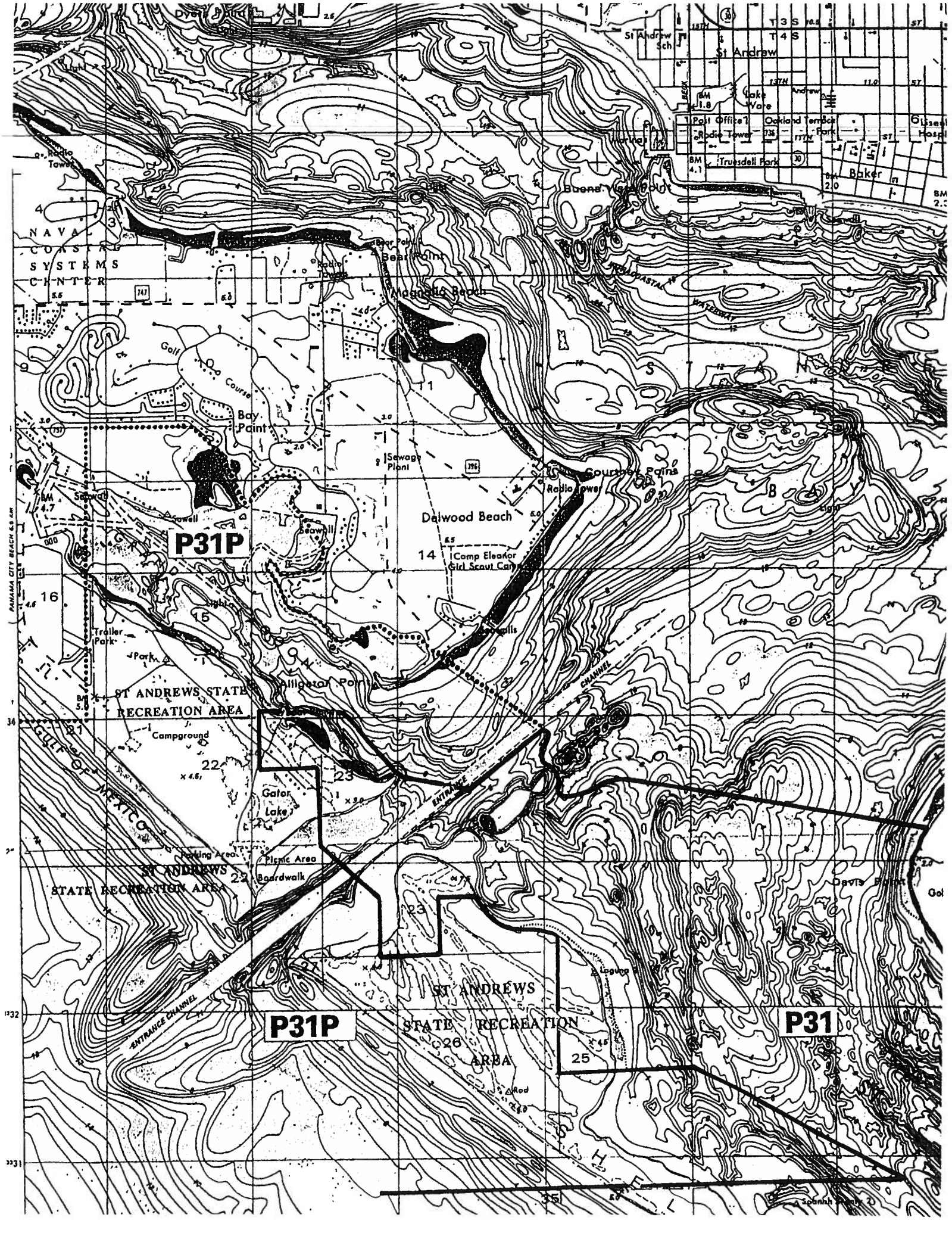
Cc: Representative Steve Southerland
Bay County Board of County Commissioners

ⁱ During the 109th Congress, H. R. 479 modified CBRA maps just to the west of Bay County in Walton County. The Report accompanying the legislation stated:

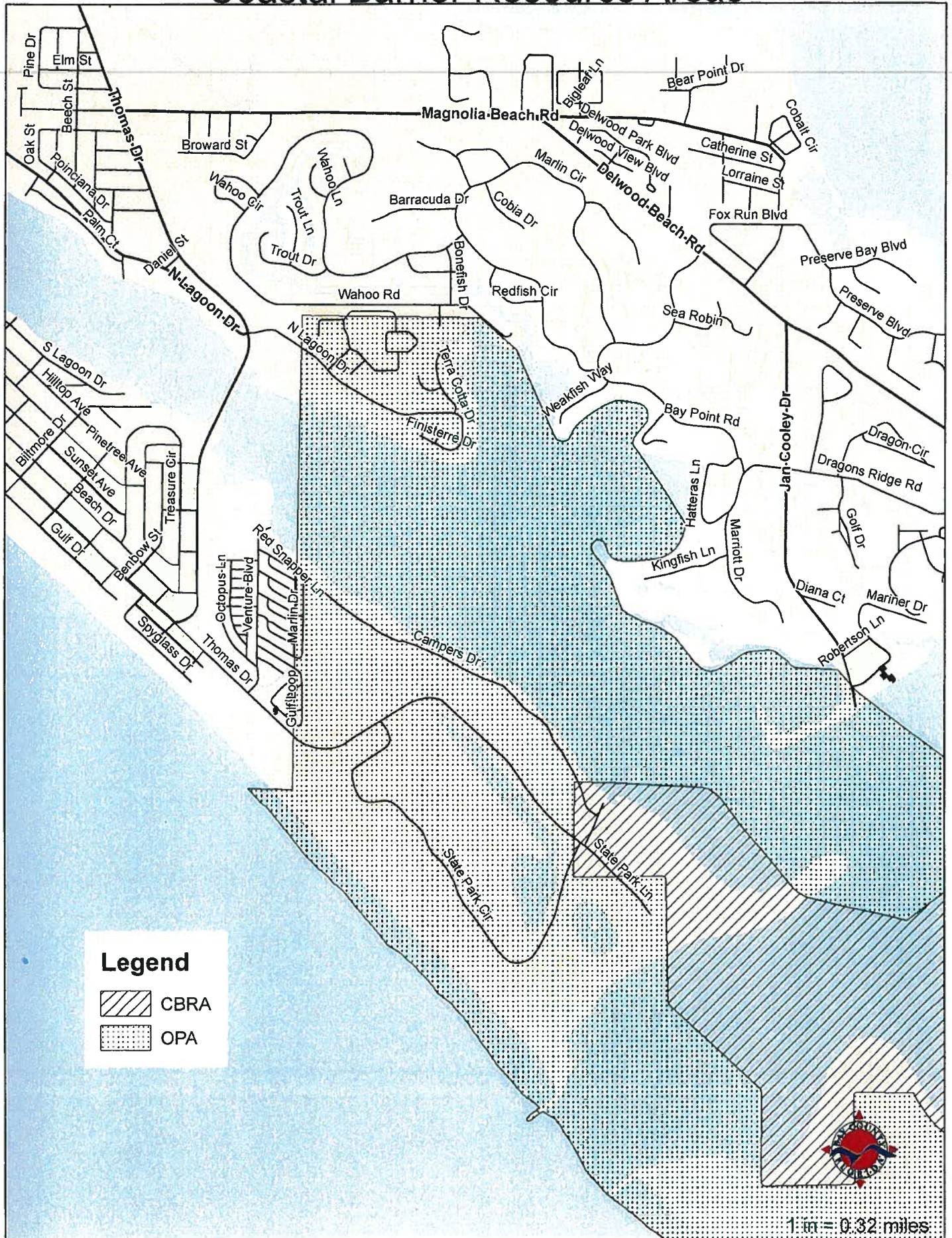
When OPAs were included in the System, they were delineated with rudimentary mapping tools based upon preexisting boundary data. As a result of technological advancements in geographic information systems, databases and digital mapping techniques, OPA boundaries have been shown to have embedded flaws and inaccuracies.

This legislation modified the OPA for Grayton Beach Unit FL-95P and Draper Lake Unit FL-96, to exclude four homes and six undeveloped lots, finding in part:

When this unit was established as an "otherwise protected area" in 1990, each of the four homes were already fully constructed by 1983, there were hard packed roads within the community and all ten lots were plotted.



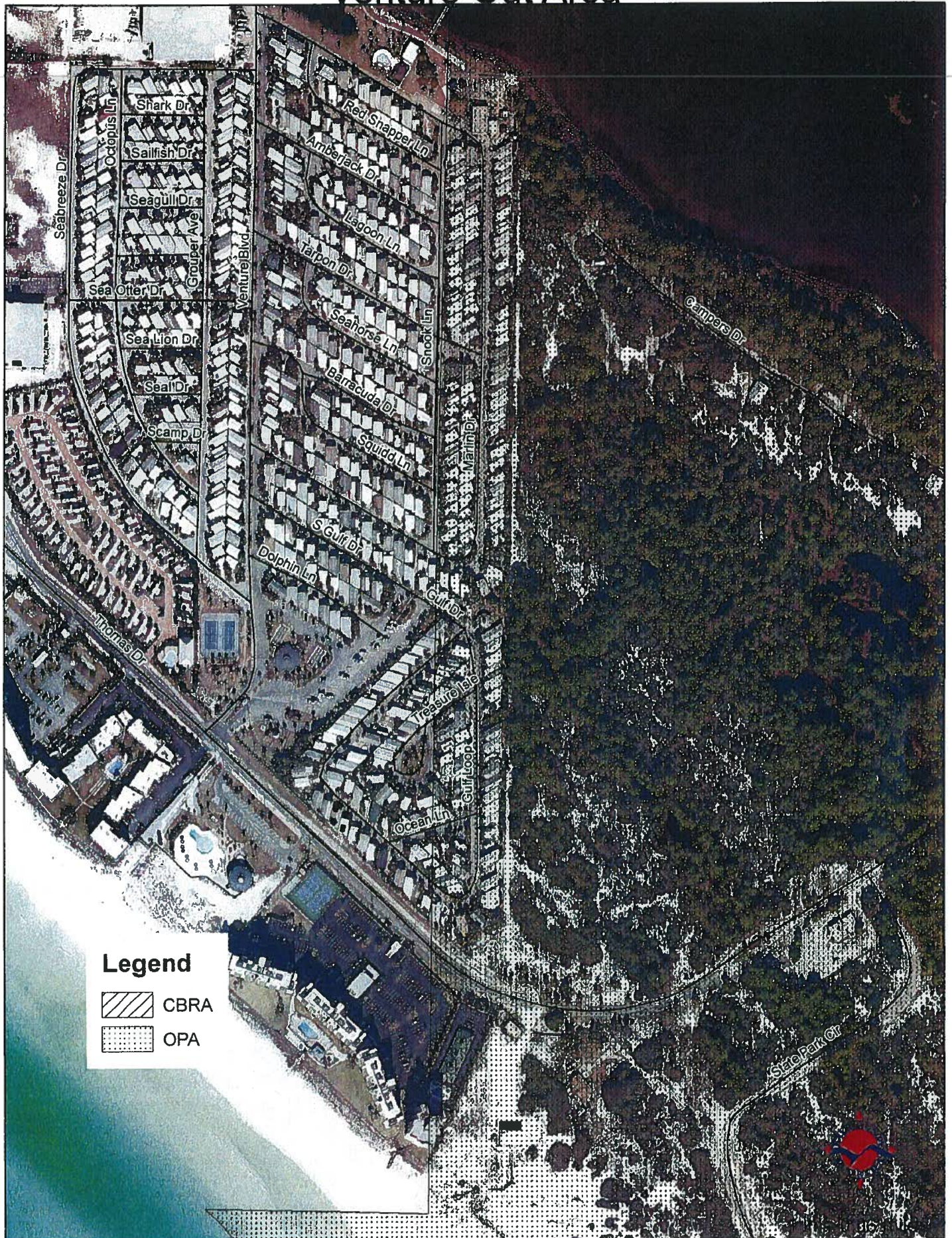
Coastal Barrier Resource Areas



Bay Point Area



Venture Out Area





BAY POINT SUBDIVISION

CBRA AREA

**Existing Homes
w/ Year Constructed**

FINISTERRE

GRAND LAGOON

CBRA AREA

**St. ANDREWS
ST. PARK**

**Weakfish
Island**

BAY POINT

	Parcels
	Land
	Saltwater

This map was prepared by the City of Chesapeake, Maryland, for the purpose of illustrating the location of the proposed development. The map is not intended to be used for any other purpose. The City of Chesapeake is not responsible for any errors or omissions on this map.

AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of July, 1976, by and between THE GRAND INDIAN COMPANY, a Florida corporation and its subsidiaries, being owners and operators of Bay Point Resorts; a sewer and water system; and roads at Bay Point, Florida (hereinafter called the "Company"), and E. IMAR BAILEY, or assigns, (hereinafter called "Bailey"), and this Agreement shall supersede that certain Agreement entered into by and between the parties hereto dated the 19th day of April, 1976, and pertaining to the real property, the legal description of which is attached hereto.

WITNESSETH:

WHEREAS, Bailey owns thirty-seven (37) acres, in fee simple adjacent to Bay Point (legal description attached), and is desirous of utilizing the sewer and water system owned by the Company, and underground electric cables presently under Wahoo Road; and

WHEREAS, the Company is desirous of a high standard of development adjacent to Bay Point Resorts in order to enhance the property value of Bay Point.

NOW, THEREFORE, the parties agree as follows:

1. If Bailey develops said thirty-seven (37) acres, he shall not sub-divide said acreage into not more than forty-nine (49) individual lots.
2. The Company shall permit Bailey to tap-on to the Company's sewer and water systems and electrical hook-ups and outlets presently located on Wahoo Road abutting Bailey's property. Sewer taps and mains shall be compatible to Company's system.
3. The Company agrees that Bailey may tap its sewer and water lines at Wahoo Road, at no charge to Bailey and may extend underground electric lines from existing Bay Point juncture points. Bailey agrees that he shall pay the costs of such taps and mains to supply services within his thirty-seven (37) acres. Bailey agrees that he shall cause the buyers of said forty-nine (49) lots to agree to pay the Company a sewer and water tap-on fee in accordance with the Company's published charges, and to use and pay for individually metered electric power.
4. It is agreed that Bailey shall cause the purchasers of said forty-nine (49) lots and subsequent owners to contract to pay such fees for usage of the sewer and water systems as may be published by the Company from time to time.
5. The Company agrees that Bailey shall permanently tie his development to

Agreement made in 1976.
Recorded in Bay County, FL.

Allows connection between Bay Point and the
37 acres parcel now know as Finisterre.

Bay Point by a main road to be connected to Wahoo Road. All costs of said connection shall be paid by Bailey. Additionally, Bailey, at his expense may cure any drainage problems along Wahoo Road that may affect his property.

6. (a) The Company reserves the right to approve all plans and specifications for the tie in and/or connection of electric, road, sewer and water. Said approval will not be unreasonably withheld, Bailey and his contractors shall warrant all work in connection with this Agreement to be of highest quality and will conform to all governmental regulations in reference thereof.

(b) Bailey agrees that he shall and cause all buyers of his lots to conform to the architectural criteria which Bailey shall pre-establish and obtain approval of the same in writing from the Company. Said architectural criteria shall be such that it will harmoniously blend and conform with the architectural criteria used in the development of Bay Point and Bay Point lots.

7. (a) Bailey agrees to hold Company harmless from any damages, claims, liabilities or breaches of contract resulting from this Agreement or growing out of any actions authorized or permitted by this Agreement.

(b) Bailey shall conduct all work in regard to the connections and tie-ins referred to above as are called for by this Agreement, on land belonging to Company or which has been dedicated to public use by Company.

8. As further consideration, the parties hereto agree to enter into a separate addendum hereto specifying that the purchasers of said forty-nine (49) individual lots will be afforded the same rights, privileges and obligations as buyers at Bay Point homesites with regard to all Company amenities.

9. The Company agrees that to its knowledge there is no conflict between the form and substance of this Agreement and any other contract which Company or any of its subsidiaries or affiliates may have with the purchasers of lots or condominiums in the Company's development (Bay Point) or with any of the contracts or agreements between Company and the banks or financial institutions with which Company does business or with any Statute, Ordinance, rule or regulation by any Governmental body controlling or governing the subject matters of this Contract.

10. In the event that any portion or any provision of this Agreement is held invalid by any Court of competent jurisdiction, such invalidity shall not effect the remainder of such provisions, any other provision thereof, all of which shall remain in full force and effect.

11. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

12. This Agreement shall be binding upon and enure to the benefit of the parties hereto, their successors, assigns, heirs, or personal representatives.

13. Nothing contained in this Agreement shall be construed to make the parties, agents, partners or joint venturers of the other, or to render any party hereto liable for the debts, duties or obligations of any other party hereto except as may be expressly provided in this Agreement.

IN WITNESS WHEREOF, the parties have placed their hands and seals the day and year first above written.

WITNESS:

Thomas P. Molloy
Secretary

THE GRAND LAGOON COMPANY, a Florida corporation

By *Cliff M. Averett, Jr.*
President

"Company"

E. Lamar Bailey
E. Lamar Bailey

WITNESSES:

Cliff M. Averett, Jr.
Thomas P. Molloy

STATE OF FLORIDA
COUNTY OF BAY

BEFORE ME, the undersigned authority, appeared Cliff M. Averett, Jr. and Thomas P. Molloy, President and Secretary respectively of The Grand Lagoon Company, to me well known to be the persons described in and who executed the foregoing instrument and acknowledged before me that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid this 9th day of July, 1976.

Davis L. Havatis
Notary Public

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPTEMBER 1, 1978
BONDED BY U. S. FIDELITY & GUARANTY CO.

STATE OF FLORIDA
COUNTY OF BAY

BEFORE ME, the undersigned authority, appeared E. Lamar Bailey, to me well known to be the person described in and who executed the foregoing instrument and acknowledged before me that he executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid this 9th day of July, 1976.

Davis L. Havatis
Notary Public

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPTEMBER 1, 1978
BONDED BY U. S. FIDELITY & GUARANTY CO.

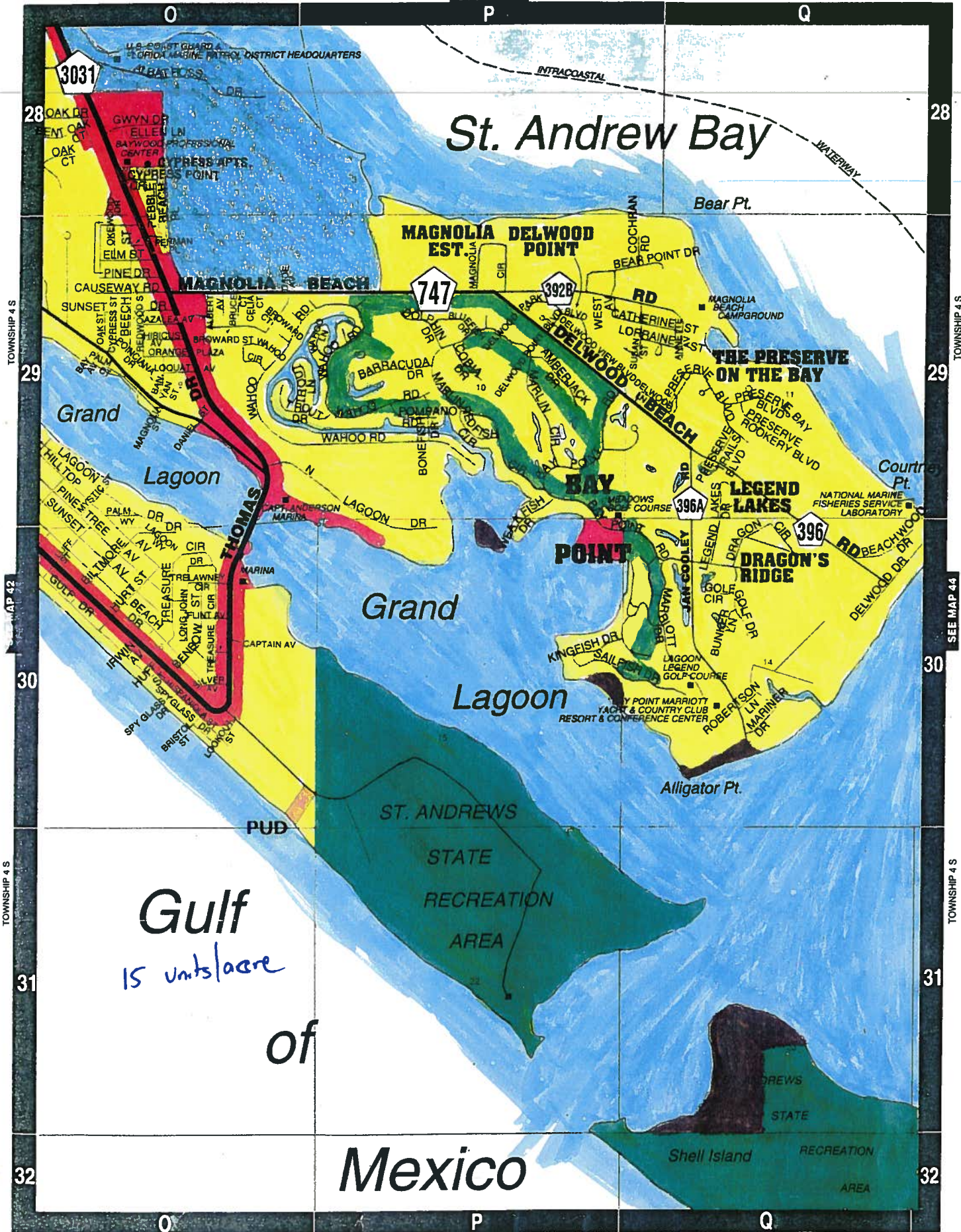
Tract 26

GRAND LAGOON, BAY POINT, ST. ANDREWS STATE REC. AREA

RANGE 15 W

SEE MAP 35

RANGE 15 W



Gulf
15 units/acre
of

Mexico

RANGE 15 W

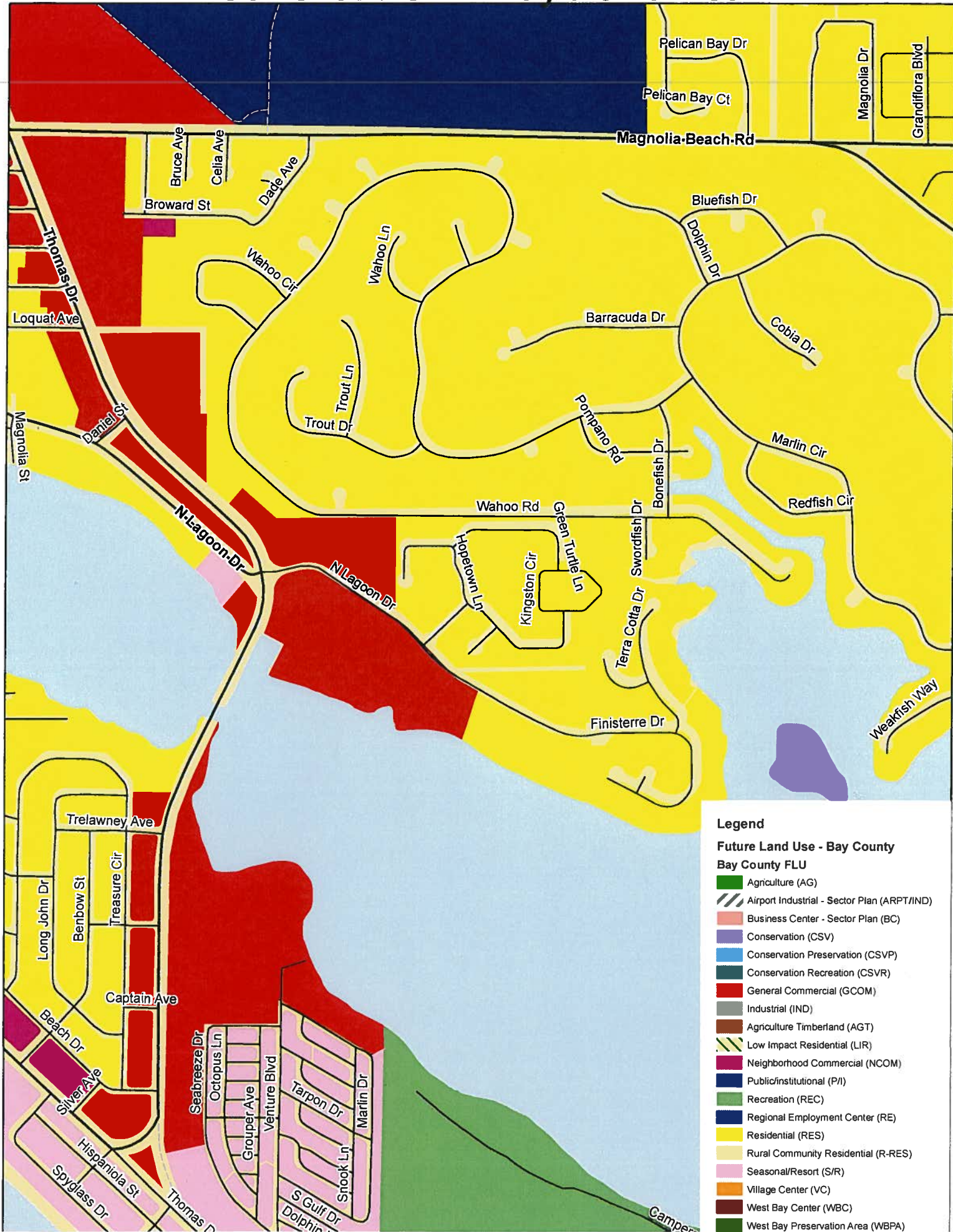
SEE MAP 49

RANGE 15 W

©1994 MAPSource, St. Petersburg, FL

MAP 43

Current FLUM - Bay Point Area



Sal Albano and his wife Allison moved into their home in Bay County's Martinique subdivision about four years ago. It was a great place, they thought, to raise their two daughters, Luca, now three-and-six-year-old Bijou, who has been diagnosed with autism. Sal, a maintenance engineer at a local condominium, and Allison, a real estate agent, are not wealthy people, and in fact, live at least block off the coastline.

"We had no doubt in our minds this was the last place we ever wanted to live," Sal Albano said. "We have so many friends here and we love our home. It's a great community for a family with a child with autism."

But in the last two years, their dream home has become an almost unbearable burden.

The Albanos financed their home when they bought it four years ago through the now-defunct Peoples First Bank, bought out by Hancock Bank when it folded in 2012. And that's when their problems began.

Six months after Hancock Bank took over the \$90,000 remaining on their home's mortgage the Albanos received a letter stating that they needed proof of flood insurance. People's had not required flood insurance, as Bay County puts the property at more than 5.5 feet above the flood level, and the home itself is built 3.5 feet above that.

The Albanos complied and bought a minimal policy through their carrier, only to receive a refund and notice that they were not insured a couple months later. Hancock responded by force-placing insurance on the family, doubling their mortgage payment to \$3,900 and mandating that they make back payments to 2012.

"My problem is that nobody can write insurance for a home that's in CBRA. The government won't recognize it and the insurance companies can't write it. So how are you going to force place it on us?"

In the last eight weeks, the insurance companies, the bank and the Albanos have been trying to reach a consensus.

"I got a letter from Hancock saying you don't need insurance, but in the same pile of mail, there was another letter from them saying you have until April 1 to get flood insurance."

Albano said the ordeal has taken a toll on him and his family.

"My wife is so frustrated," he said. "We're thinking about putting it up for sale."

Sal Albano can be reached at (850) 625-5350.

Allison Albano can be reached at (850) 258-0123.



April 4th, 2014

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Dear Sirs,

As President of the Finisterre homeowners association, I am requesting assistance in removing Finisterre from the CBRA. Based on extensive research and conversations with various government agencies, we feel Finisterre was erroneously placed in the CBRA. Our current neighborhood is labeled an OPA (Otherwise Protected Area) and definitely does not meet the OPA definition.

Due to the CBRA designation and the inability to acquire flood insurance, it has placed hardships on existing home owners. As homeowners attempt to refinance their homes due to financial hardship or get a lower interest rate, financial institutions are discovering the home is in a designated flood zone. When the homeowner originally purchased the home, the area was not in a flood zone. Some lenders are force placing flood insurance at astronomical rates, forcing some homeowners to sell or allow the foreclosure of their home. Most will foreclose as finding a buyer is almost impossible due to the inability to acquire flood insurance. Since the first home was constructed in our neighborhood, it has never flooded. Homes constructed between 1947-1975 that were in and just outside the current boundary of our neighborhood have never flooded.

Since our neighborhood was mistakenly placed in the CBRA, the area has never flooded and the chances of a flood claim ever being paid are minimal, we are asking the Committee and Congress to please pass this bill so most of us can continue to pay for and live in our homes.

Respectfully

Jay Quave

President, Finisterre Home Owners Association

•Finisterre Home Owner's Association•
11212 Front Beach Road, Panama City Beach, FL 32407
(850) 563-1015