BEFORE THE STATE OF FLORIDA PUBLIC SERVICE COMMISSION

ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS

Complainants,

v.

SECOND AMENDED COMPLAINT[1]

UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES, et al.

Docket Number: 120054-EM

Filed: March 18, 2013

Respondents.

and

MONROE COUNTY, a political subdivision of the State of Florida, NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC.

Interveners.

Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, by and through undersigned counsel and pursuant to Florida Rules of Administrative Code §25-22.036, file this Amended Complaint against the Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES and MONROE COUNTY, a political subdivision of the State of Florida, and in support state as follows:

INTRODUCTION/PARTIES

1. Complainants, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS ("Reynolds"), own and maintain real property located at 2160 Bahia Shores Road, No Name

[1] This Second Amended Complaint is being filed to correct a scrivener's error in the foot note located on page six (6) of the Amended Complaint and this Second Amended Complaint which is referenced herein as Footnote Three (3).

Key, Florida 33042 ("Property"). The Property is located on an island in Monroe County, Florida commonly known as No Name Key.

2. Respondent, UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a KEYS ENERGY SERVICES ("KES"), is a Florida electric utility with its principal place of business located at 1001 James Street, Key West, Florida 33040.

3. Intervener, MONROE COUNTY, is a political subdivision of the State of Florida ("Monroe County").

4. Intervener, NO NAME KEY PROPERTY OWNERS ASSOCIATION, INC., is a Florida not for profit corporation ("NNKPOA"). NNKPOA is made up of members who own property on No Name Key, Florida and are desirous of connecting to commercial electrical service.

5. KES' territorial service area includes the island of Key West and extends beyond the City limits for approximately thirty-five (35) miles East through the Lower Florida Keys, terminating at Pigeon Key, Monroe County, Florida.

6. Mr. and Mrs. Reynolds own real property on No Name Key, Florida, located within KES' territorial service area.

7. With this proceeding Mr. and Mrs. Reynolds seek: (1) a Public Service Commission ("PSC") Order declaring KES must connect customers located on No Name Key who request service from KES and meet the electrical safety code requirements of the Florida Building Code for electrical connection; (2) a determination that the PSC has exclusive jurisdiction over KES' territorial agreement, including enforcement of its terms; (3) PSC's jurisdiction over the territorial agreement preempts Monroe County's Ordinance 043-2001 as it pertains to KES and its electric lines; (4) a determination that Monroe County does not have

jurisdiction over No Name Key customers connection to KES and; (5) cannot prohibit KES customers from connecting to the electric utility.

LEGAL AUTHORITY AND JURISDICTION

8. This is a complaint pursuant to §25-22.036, Florida Administrative Code ("F.A.C."), seeking authority from the PSC to engage in an activity subject to PSC jurisdiction and complaining of an act or omission by an entity subject to Florida PSC jurisdiction which affects the complainants' substantial interests and which is in violation of statute enforced by the Commission and Commission order.

9. The PSC is an agency of the State of Florida with regulatory and police powers to regulate public utilities and electric utilities in the State of Florida, including KES. *See* Fla. Stat. §366.01, et. seq. KES was created by legislative enactment Chapter 69-1191 of the Laws of Florida. *See* Chapter 69-1191, Laws of Florida (1969).

10. By statute, KES is defined as an Electric Utility. *See* Fla. Stat. §366.02(2)[2].

11. The Supreme Court has affirmed that the "PSC derives its authority solely from the legislature, which defines the PSC's jurisdiction, duties and powers." *Florida Public Service Commission v. Fred L. Bryson,* 569 So.2d 1253 (Fla. 1990). The Court has specifically held that:

> The Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and services...The jurisdiction conferred upon the commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith, all lawful acts, orders, rules and regulations of the commission shall in each instance prevail. *Id.*

[2] *Electric utility* means any electric municipal utility, investor-owned utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

12. The PSC not only has the authority over enforcing its territorial agreement, the "PSC has the authority to interpret the statutes that empower it, including jurisdictional statutes and to make rules and issue orders accordingly." *Id.* at 1255.

13. Fla. Stat. §366.04 empowers the PSC with exclusive jurisdiction over enforcement of a Territorial Agreement of an Electric Utility, including its terms. Fla. Stat. §366.04; *See also* F.A.C. §25-6.004. In Monroe County v. KES, in the Circuit Court in and for Monroe County, the Public Service Commission filed an amicus brief wherein it successfully maintained the position "that it has the exclusive jurisdiction to interpret and enforce its Order approving the terms of the 1991 territorial agreement, and to determine, whether, to what extent, and under what terms and conditions, the residents of No Name Key are entitled to receive electric service from Keys Energy." *See Motion of the Florida Public Service Commission for Leave to Participate as Amicus Curiae to Inform the Court of its Position Regarding Jurisdiction* filed January 23, 2012, the Circuit of the Sixteenth Judicial Circuit in and for Monroe County, Florida, Case No. 2011-CA-342-K, Order of Dismissal dated January 30, 2012, *supra, affirmed with opinion Roemelle-Putney v. Reynolds*, 38 Fla. L. Weekly D300 (Fla. 3rd DCA 2013).

14. The PSC is now judicially estopped from determining it does not have jurisdiction to hear the instant matter.

FACTUAL BACKGROUND

15. On September 27, 1991, the PSC issued its Order Approving Territorial Agreement, Order No. 25127, approving the Territorial Agreement governing the territorial service of City Electric Service ("CES"), the predecessor in interest to KES. A true and correct copy of the Territorial Agreement is attached to the Verified Complaint previously filed by Reynolds ("Reynolds") and incorporated herein by reference as Exhibit A.

16. The Territorial Agreement provides a Territorial Service Area for which KES has the exclusive right and authority to provide commercial electrical services to customers. Pursuant to the Territorial Agreement, KES is required to extend commercial electrical service to customers within its Territorial Service Area. The Territorial Service Area includes the island of No Name Key.

17. The Territorial Agreement is a PSC Order enforceable solely by the PSC pursuant to the State of Florida's police power. Absent PSC enforcement, the territorial agreement violates state and federal anti-trust statutes.

18. Pursuant to Chapter 366, Florida Statutes, the PSC is empowered to oversee the provision of electric service throughout the State of Florida to approve, supervise and enforce the Territorial Agreement. Moreover, the PSC has exclusive jurisdiction over the planning, development, and maintenance of the coordinated power grid.

19. Since 1969, property owners on No Name Key have sought the extension of commercial electrical service to No Name Key and for decades have been in repeated discussions and negotiations with KES to provide for the extension of commercial electrical service to their properties on No Name Key.

20. The overwhelming majority of No Name Key property owners desire commercial electrical service because of the high costs associated with using alternative energy sources, and the inability to dispose of by-products of alternative energy, including exhausted batteries and damaged or worn propane tanks. More so, the use of large diesel fuel generators produces large amounts of environmental and noise pollutants, affecting all aspects of the ecosystem unique to No Name Key.

21. By connecting to commercial electrical power, the combined use of the existing solar capability together with commercial grade power would result in positive net solar metering producing a net positive impact on the environment. The net positive impact would far exceed the negative impacts which currently exist as a result of the current pollutants emitted to power the homes on No Name Key.

22. Despite the desire of the majority of the property owners on No Name Key, and the environmental benefits commercial electricity could bring to No Name Key, in 2001, an anti-electricity property owner, Alicia Putney, successfully lobbied the Board of County Commissioners for Monroe County to enact an ordinance that prohibits the extension of utility lines to No Name Key. *See* Monroe County Ordinance 043-2001, a copy of which is attached hereto as Exhibit B.[3]

23. On September 26, 2001, the Monroe County Planning Commission, including then-Commission member Alicia Putney, approved a resolution ("Planning Resolution") supporting Ordinance 043-2001. A true and correct copy of the Planning Resolution is attached hereto and incorporated herein as Exhibit C.

24. Monroe County, with the assistance of then-sitting Monroe County Planning Commission member Alicia Putney, who then and still currently resides on No Name Key, drafted Ordinance 043-2001, which prohibits the extension or expansion of public utilities, including electric utilities, through CBRS units. Ordinance 043-2001 amended Monroe County Code Section 9.5-258 by creating an overlay district on all areas, except for Stock Island, within federally designated boundaries of a CBRS Unit. Additionally, Ordinance 043-2001 provides

[3] Notwithstanding the foregoing, Petitioners' have filed an action in circuit court captioned In the Circuit of the Sixteenth Judicial Circuit in and for Monroe County, Florida, Case No. ~~2013-CA-60-K~~ 2013-CA-86-K, requesting the court declare Ordinance 043-2001 *void ab initio* for failure to properly notice the County Commission vote on said ordinance.

that within the overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity; and telephone cable. A true and correct copy of Ordinance 043-2001 is attached hereto and incorporated herein as Exhibit B.

Circuit Court Procedural History

25. On or about April 1, 2011, Monroe County, instituted the case styled as *Monroe County, a political subdivision of the State of Florida v. Utility Board of the City of Key West, Florida d.b.a. Keys Energy Services, et al.*, Case Number 2011-CA-342, in the Circuit Court of the Sixteenth Judicial Circuit, in and for Monroe County, Florida before the Honorable David J. Audlin ("County Law Suit"), on claims of declaratory relief and injunction against KES[4] and all forty-three (43) tax payers which own property located on No Name Key (collectively, "Defendant Owners").

26. Monroe County's factual basis for its lawsuit was predicated on Monroe County's belief that it has jurisdiction to regulate KES' extension of electric services to property owners of No Name Key. In the County Law Suit, Monroe County and KES argued that Monroe County's Land Development Regulations govern the extension of the utility line to the property owners of No Name Key in direct contradiction to their prior position in *Board of County Commissioners of Monroe County v. Department of Community Affairs*. A true and correct copy of Monroe County's Complaint is attached hereto and incorporated herein as Exhibit D.

27. Monroe County has previously taken the position that electrical transmission lines in the right-of-way were not under the regulatory framework of the Comp. Plan as outlined in

[4] Claimants are confounded as to why KES would assist in drafting a complaint which requested the Court enjoin KES from providing commercial power to No Name Key property owners. Claimants believe the PSC may be able to better shed light or answer this question as Claimants cannot find any justification for this action which interferes with KES' contractual obligation to provide power to customers requesting service.

that certain letter dated April 29, 2010 from the Monroe County Attorney to the General Manager of KES. A true and correct copy of the letter from the Monroe County Attorney to the General Manager of KES letter is attached hereto and incorporated herein as Exhibit E. Moreover, in 1998, Monroe County successfully argued to the Third District Court of Appeals that development did not include the extension of utility lines down public right-of-ways based on Fla. Stat. § 380.04. *See Board of County Commissioners of Monroe County v. Department of Community Affairs*, 560 So.2d 240, 240 – 241 and Fla. Stat. § 380.04.

28. Mr. and Mrs. Reynolds filed a Motion to Dismiss in response to the County Law Suit, asserting the circuit court lacked subject matter jurisdiction over the issues brought forth in the County Law Suit and that jurisdiction was vested solely with the PSC.

29. On January 30, 2012, the Court granted the Reynolds' Motion to Dismiss, and dismissed the County Law Suit with prejudice, holding that the PSC had exclusive jurisdiction on issues regarding the interpretation and enforcement of territorial agreements, and that the PSC was the proper forum for hearing the issues presented in the County Law Suit. A true and correct copy of the Court's Order of Dismissal with Prejudice is attached hereto and incorporated herein as Exhibit F.

30. Monroe County and Alicia Roemelle-Putney appealed the County Suit dismissal. The Third District Court of Appeal (3rd DCA) affirmed Judge Audlin's ruling in the County Law Suit. In reaching its opinion, the 3rd DCA found that the legislative authority of Florida Statute Section 366.04(5) grants the PSC jurisdiction over "the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission and distribution facilities." S*ee Alicia*

Roemmele-Putney, et al. v. Robert D. Reynolds, et al., supra, pg. 4. Pursuant to section 366.04(1), the PSC's jurisdiction, when properly invoked, is exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties. *Id.* at 5. Statutory authority granted to the PSC would be eviscerated if initially subject to local governmental regulation and circuit court injunctions of the kind sought by Monroe County. *Id.* A true and correct copy of the opinion by the Third District Court of Appeal is attached hereto and incorporated herein as Exhibit G.

31. On March 17, 2012, KES approved Line Extension #746 ("Line Extension") with the No Name Key Property Owner's Association ("NNKPOA") for the extension of electrical service to No Name Key. On or about July 26, 2012, pursuant to the Territorial Agreement and Line Extension, KES completed and energized the electrical lines installed during the Line Extension.

32. On May 16, 2012 Monroe County, in their continued effort to prevent the majority of the taxpayers owning property on No Name Key from connecting to commercial electricity, once again sued KES alleging the electrical lines were violating the LDR's and Comp. Plan and sought an injunction against KES ("Count Injunction Suit"). In addition, Monroe County claimed a portion of the distribution lines were crossing over lands which are owned by Monroe County for the benefit of the public at large. The Reynolds intervened and filed a Motion to Dismiss alleging the PSC, not the circuit court had the exclusive jurisdiction over the matter.

33. On February 22, 2012, Judge Audlin, once again ruled that the PSC, not the circuit court, was the proper forum and the agency with the exclusive jurisdiction to decide the

merits of the suit. A true and correct copy of Judge Audlin's Order of Dismissal is attached hereto and incorporated herein as Exhibit H.

Homeowners Attempts to Connect to the Coordinated Power Grid

34. After KES installed the electric distribution line on No Name Key, Reynolds applied on December 13, 2012 for an electric permit to install a 200 AMP Electric Service and Subfeed ("Reynolds' Electric Permit Application") to connect to the electric distribution line outside their home located on No Name Key.

35. On January 14, 2013, Monroe County denied Reynolds Electric Permit Application ("Reynolds Denial Letter"). A true and correct copy of the Reynolds Denial Letter is attached hereto and incorporated herein as Exhibit I.

36. In addition to the Reynolds attempt to connect the coordinated power grid, Mr. James Newton and Mrs. Ruth Newton (collectively the "Newtons") attempted to connect to the energized electrical lines on No Name Key. On April 3, 2012, the Newtons applied for an electrical building permit for the installation of 200 AMP Electric Service and Subfeed to their No Name Key property ("Newton Electrical Permit Application"). A true and correct copy of the Electrical Permit Application is attached hereto and incorporated herein as Exhibit J.

37. On May 15, 2012, Monroe County issued the Newtons an electrical permit, bearing permit number 121-1527 ("Newton Electrical Permit") pursuant to the Electrical Permit Application. A true and correct copy of the Newton Electrical Permit is attached hereto and incorporated herein as Exhibit K.

38. On June 12, 2012, Monroe County revoked the Newton Electrical Permit, stating the permit was issued in error ("Newton Revocation Letter"). A true and correct copy of the Newton Revocation Letter is attached hereto and incorporated herein as Exhibit L.

39. The Revocation Letter, in part, alleges that electrical service is not authorized on a property located within a Coastal Barrier Resource System ("CBRS") pursuant to the Coastal Barrier Resource Act ("CBRA").

40. The Newtons and Reynolds' property are not located within a CBRS, and are therefore not subject to the CBRA. A true and correct copy of the nearest CBRS designated area to the Property is attached hereto and incorporated herein as Exhibit M.

41. Pursuant to Monroe County's own admissions, the type of service and work which would have been performed pursuant to the Newton Electrical Permit does not conflict with the Comp. Plan, yet the County denied the Newton Electrical Permit in an attempt to regulate the extension of the coordinated power grid and a customer's connection to said grid. True and correct copies of testimony from Growth Management Director Christine Hurley acknowledging the type of work which would occur pursuant to the Newton Electrical Permit is attached hereto and incorporated herein as Exhibit N.

42. The present dispute arises under the Territorial Agreement's terms of service which require KES to extend and maintain power to all property owners within the Territorial Service Area. Although KES has attempted to provide service to Reynolds' property, to date KES has failed to provide electricity to and connect Reynolds' property to the coordinated power grid due to Monroe County's intentional interference in the jurisdiction of the PSC to plan, develop, and maintain the coordinated power grid.

KES is Required and Authorized Pursuant to the Territorial Agreement to Complete the Extension of Commercial Electricity Lines to All Homeowners on No Name Key, Florida.

43. KES has extended commercial electrical distribution lines to the island of No Name Key and is required to connect customers despite the regulations imposed by Monroe County. To date, KES has failed to connect customers requesting service due to Monroe

County's insistence that it can regulate a property owner's connection to the coordinated power grid.

Monroe County Cannot Prohibit a Customer's Connection to KES

44. Article 6 of the Territorial Agreement, Construction of Agreement, Section 6.1 of the Territorial Agreement expressly provides that:

> It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further the policy of the State of Florida to: **actively regulate and supervise the service territories of electric utilities; supervise the planning, development, and maintenance of a coordinated electric power grid throughout Florida**; avoid uneconomic duplication of generation, transmission and distribution facilities; **and to encourage the installation and maintenance of facilities necessary to fulfill the Parties respective obligations to serve the citizens of the State of Florida within their respective service areas.** (*underline* and emphasis added).

See the Territorial Agreement, Section 6.1, Construction of Agreement.

45. Moreover, KES' obligation to serve the citizens of the State of Florida within its respective service area is expressly stated in the Territorial Agreement's Section 0.2 which states:

> "the Parties are authorized, empowered and obligated to furnish by their corporate charters and the laws of the State of Florida to furnish electric service to persons requesting such service within their respective areas;" ("underline added")

KES enabling legislation under the laws of the State of Florida states that KES has:

> "the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County Florida, the electric public utility owned by said city, including the maintenance, operation, extension, and improvement thereof, and including all lines, poles, wires, mains, and all additions to and extension of the same . . ."

See Chapter 69-1191, Laws of Florida (1969).

46. KES, pursuant to the State of Florida's enabling legislation, its Territorial Agreement and incorporated Territorial Service Area, has an affirmative obligation to extend

electrical lines to any party requesting such an extension when the requesting party supplies the requisite funding for the extension.

47. KES, pursuant to Chapter 163, Florida Statutes, has the authority to install electrical transmission lines in the established rights of way. KES has installed the electrical lines on No Name Key, in the established rights of way.

48. KES, pursuant to the pursuant to Chapter 163, Florida Statues, the State of Florida's enabling legislation, its Territorial Agreement and incorporated Territorial Service Area has properly installed the distribution system to No Name Key and is properly maintaining such system.

48. Monroe County has prohibited the issuance of a building permit to connect No Name Key property owners to the KES distributions lines on No Name Key. Monroe County's refusal to issue building permits for connection to KES' distribution line is based solely on Monroe County's incorrect belief that it has the authority to regulate a customer's ability to be supplied electrical power within KES territory and that pursuant to Ordinance 43-2001 it can prohibit a customer from connecting to KES electrical line.

49. Reynolds asserts that Monroe County has no jurisdiction over KES planning, development and maintenance of the distribution line which would connect Reynolds to the coordinated power grid. Reynolds position is that the PSC has exclusive jurisdiction over the planning, development and maintenance of the coordinated power grid. Moreover, the PSC has the jurisdiction to enforce the terms of its Order approving KES territorial agreement, including the provisions which require KES to provide service to customers upon agreement of reasonable provisions for the providing of service.

50. Notwithstanding the foregoing, the connection of customers to an electrical utility is not within the purview of Ordinance 043-2001. Specifically, on-site electrical systems do not constitute public utility transmission or collection lines under Monroe County Code. *See* Section 19-31, Monroe County Code (Public or private utility includes any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, cable television, transportation, communication or other system by whomsoever owned and operated for **public use**, including, but not limited to, the Florida Keys Aqueduct Authority, BellSouth,[5] Keys Energy System, The Florida Keys Electric Cooperative Association, Inc. and/or their successors, affiliates, subsidiaries or assigns). A private individual's on-site electric system and connection does not fall under Monroe County Ordinance 043-2001 which prohibits the extension of transmission or collection lines by public utilities.

51. More so, Reynolds asserts that prohibiting No Name Key property owners from connecting to commercial power violates the equal protection clause of the Florida Constitution by unfairly discriminating against No Name Key property owners because Monroe County's building code does not prohibit the connection of homes to commercial power. The connection to KES' commercial power grid by a No Name Key property owner does not constitute the extension of public utilities into Coastal Barrier areas as on-site electrical power, including wiring, conduit, and transmission systems existing on each No Name Key property do not fall under the definition of public utilities. Therefore, connection to commercial power can only be prohibited based on health, safety, or welfare concerns already built into the building code. Should No Name Key property owners comply with all building code requirements, No Name

[5] Bellsouth's successor in interest, AT&T, already has high speed internet and phone service extended to No Name Key and the law is clear Monroe County does not have jurisdiction to regulate telephone providers.

Key property owners would be discriminated against if prohibited from connecting to commercial power.

52. Reynolds asserts Monroe County's position unreasonably infringes upon each No Name Key property owners' right under the Territorial Agreement to be furnished with electric service upon request.

RELIEF REQUESTED

WHEREFORE, the Complainant, ROBERT D. REYNOLDS and JULIANNE C. REYNOLDS, respectfully request that this Honorable Commission:

(a) Exercise jurisdiction over this action and the parties hereto;

(b) Issue an Order declaring the PSC's jurisdiction preempts Monroe County's enforcement of Ordinance 043-2001 as it applies to KES, its territorial agreement and enabling legislation;

(c) Issue an Order finding the commercial electrical distribution lines KES extended to each property owner of No Name Key, Florida are legally permissible and properly installed;

(c) Issue an Order finding that Monroe County cannot unreasonably withhold building permits from KES' customers based solely on their property location being on the island of No Name Key and mandate that Monroe County may not prevent the connection of a homeowner on No Name Key to the coordinated power grid;

(e) Award reasonable attorney's fees and costs for the prosecution of this action;

(f) Award such other and supplemental relief as may be just and necessary under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail and Electronic Mail to the attached Service List this 18th day of March, 2013.

Respectfully submitted,

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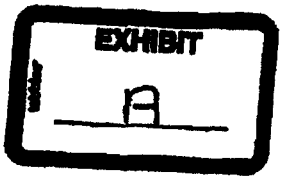
EXHIBIT A



BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition of Florida Keys Electric Cooperative Association, Inc. and the utility board of the City of Key West for approval of a territorial agreement.	DOCKET NO. 910765-EU ORDER NO. 25127 ISSUED: 9-27-91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
MICHAEL McK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On July 10, 1991, Florida Keys Electric Cooperative (FKEC) and City Electric System (CES) filed with this Commission a joint petition seeking approval of a territorial agreement executed by the parties on June 17, 1991. The joint petition was filed pursuant to Rules 25-6.0439 and 25-6.0440, Florida Administrative Code. The territorial agreement including its terms and conditions and the identity of the geographic areas to be served by each utility are shown in Appendix A. There will be no facilities exchanged or customers transferred as a result of the agreement.

The service areas of the parties with the unique typography of the Florida Keys affords a rational for the boundary between the parties. Neither party has any distribution facilities located in the territory of the other party, and neither party will construct, operate, or maintain distribution facilities in the territory of the other party.

The agreement does not, and is not intended to prevent either party from providing bulk power supply to wholesale customers for resale wherever they may be located.

Having reviewed the joint petition, the Commission finds that it satisfies the provisions of Subsection 366.04(2)(d), Florida Statutes and Rule 25-6.0440, Florida Administrative Code. We also find that the agreement satisfies the intent of Subsection 366.04(5), Florida Statutes to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the state. We, therefore, find that the agreement is in the public interest and should be approved.

In consideration of the above, it is

ORDERED by the Florida Public Service Commission that the joint petition for approval of the territorial agreement between Florida Keys Electric Cooperative and City Electric System is granted. It is further

ORDERED that the territorial agreement and attachment are incorporated in this Order as Appendix A. It is further

ORDERED that this Order shall become final unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 27th day of SEPTEMBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

MRC:bmi
910765.bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 10/18/91.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

AGREEMENT

Section 0.1. THIS AGREEMENT, made and entered into this 17th day of JUNE, 1991 by and between the Utility Board of the City of Key West, using the trade name "City Electric System," (referred to in this Agreement as "CES") organized and existing under the laws of the State of Florida and an electric utility as defined in Chapter 366.02(2) Florida Statutes; and Florida Keys Electric Cooperative Association, Inc. (referred to in this Agreement as "FKEC"), a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and Title 7, Chapter 31, United States Code and an electric utility as defined in Chapter 366.02(2), Florida Statutes, each of whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which are collectively referred to in this Agreement as the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, the Parties are authorized, empowered and obligated by their corporate charters and the laws of the State of Florida to furnish electric service to persons requesting such service within their respective service areas; and

Section 0.3: WHEREAS, each of the Parties presently

Section 0.4: WHEREAS, although the respective service areas of the Parties are contiguous, their respective areas have an existing and natural boundary between Knight Key and Little Duck Key, which boundary is intersected by the Seven Mile Bridge, and

Section 0.5: WHEREAS, the unique geographic location of the service areas of the Parties and the unique topography of the Florida Keys affords a rational and non-controversial boundary between the Parties, and

Section 0.6: WHEREAS, the Parties desire to minimize their costs to their respective rate payers by avoiding duplication of generation, transmission, and distribution facilities, and by avoiding the costs of litigation that may result in territorial disputes; and

Section 0.7: WHEREAS, the Parties desire to avoid adverse ecological and environmental consequences that may result when competing utilities attempt to expand their service facilities into areas where other utilities have also constructed service facilities; and

Section 0.8: WHEREAS, The Florida Public Service Commission (referred to in this Agreement as the "Commission"), has previously recognized that duplication of facilities results in needless and wasteful expenditures and may create hazardous situations, detrimental to the public interest; and

Section 0.9: WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to potential duplication of facilities and hazardous situations, and toward that end have established a Territorial Boundary Line to delineate their respective retail Territorial Areas; and

Section 0.10: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, has recognized the wisdom of such agreements, and has held that such agreements, subject to Commission approval, are advisable in proper circumstances, and are in the public interest;

Section 0.11: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used in this Agreement, the term "Territorial Boundary Line" shall mean the boundary line shown on the map attached hereto as Exhibit "A", which differentiates and divides the FKEC Territorial Area and the CES Territorial Area.

Section 1.2: FKEC Territorial Area. As used in this Agreement, the term "FKEC Territorial Area" shall mean the geographic areas of Monroe County shown on Exhibit "A" designated

"FKEC", and the balance of the geographic area of Monroe County not shown on Exhibit "A" which lies North by Northeast of the Territorial Boundary Line.

Section 1.3: CES Territorial Area. As used in this Agreement, the term "CES Territorial Area" shall mean the geographic areas of Monroe County, shown on Exhibit "A", designated "CES", and the balance of the geographic area of Monroe County not shown on Exhibit "A" which lies South by Southwest of the Territorial Boundary Line.

Section 1.4: Transmission Line. As used in this Agreement, the term "Transmission Line" shall mean any Transmission Line of either Party having a rating of 69 kV or greater.

Section 1.5: Distribution Line. As used in this Agreement, the term "Distribution Line" shall mean any Distribution Line of either Party having a rating of up to, but not including 69 kV.

Section 1.6: Person. As used in this Agreement, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7: New Customer. As used in this Agreement, the term "New Customer" shall mean any Person that applies to either FKEC or CES for retail electric service after the effective date of this Agreement.

Section 1.8: Existing Customer. As used in this Agreement, the term "Existing Customer" shall mean any Person receiving retail electric service from either FKEC or CES on the effective date of this Agreement.

Section 1.9: End Use Facilities. As used in this Agreement, the term "end use facilities" means those facilities at a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE 2

AREA ALLOCATIONS AND NEW AND EXISTING CUSTOMERS

Section 2.1: Territorial Allocations. During the term of this Agreement, FKEC shall have the exclusive authority to furnish retail electric service for end use within the FKEC Territorial Area and CES shall have the exclusive authority to furnish retail electric service for end use within the CES Territorial Area.

Section 2.2: Service to New and Existing Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New or Existing Customer whose end-use facilities are or will be located within the Territorial Area of the other Party.

Section 2.3: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes to any other electric utility

regardless of where such other electric utility may be located. Further, no other Section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 2.4: Service Areas of Other Utilities. This Agreement between FKEC and CES does not constitute an agreement on or allocation of any geographic area of Monroe County, that is currently being provided electric service by electric utilities not parties to this Agreement.

Section 2.5: CES Facilities in FKEC Territorial Area. The Parties agree that the location, use, or ownership of transmission facilities by CES (or the use or right to the use of FKEC's transmission facilities) in FKEC's Territorial Area as defined herein, shall not grant CES any right or authority, now or in the future, to serve any consumers whose end-use facilities are, or will be, located in FKEC's Territorial Area.

Section 2.6: Distribution Facilities. Neither Party has any distribution facilities located in the territorial area of the other Party, and neither Party shall construct, operate, or maintain distribution facilities in the Territorial Area of the other Party.

Section 2.7: No Transfer of Customers. Neither Party has any customers located in the Territorial Area of the other Party as of the date of this Agreement, and no customers will be transferred from one Party to the other by virtue of this Agreement.

ARTICLE 3

OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Electric facilities which currently exist or are hereafter constructed or used by a Party in conjunction with its electric utility system, which are directly or indirectly used and useful in service to its customers in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder except as provided in the Transmission Agreement dated February 6, 1985 between the Parties or as provided in any successor agreement; provided, however, that such facilities shall be operated and maintained in such a manner as to minimize interference with the operations of the other Party.

ARTICLE 4

PREREQUISITE APPROVAL

Section 4.1: Commission Approval and Continuing Jurisdiction. The provisions of and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission. Approval by the Commission of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until Commission approval has been obtained, and the date of the Commission's

order granting Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for prior approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement. The Parties recognize that the Commission has continuing jurisdiction to review this Agreement during the term hereof, and the Parties agree to furnish the Commission with such reports and other information as requested by the Commission from time to time.

Section 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this Agreement.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Monroe County.

ARTICLE 5

DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of thirty (30) years from the date of the

Commission's initial Order approving this Agreement, and shall be automatically renewed for additional thirty (30) year periods unless either Party gives written notice to the other of its intent not to renew at least six (6) months prior to the expiration of any period; provided, however, that each such renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and provided for in Article 4 hereof.

ARTICLE 6

CONSTRUCTION OF AGREEMENT

Section 6.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further the policy of the State of Florida to actively regulate and supervise the service territories of electric utilities; supervise the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoid uneconomic duplication of generation, transmission and distribution facilities; and to encourage the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve the citizens of the State of Florida within their respective service areas.

ARTICLE 7
MISCELLANEOUS

Section 7.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article 4, Section 4.1 hereof.

Section 7.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to FKEC if mailed by certified mail, postage prepaid to

General Manager
Florida Keys Electric Cooperative Association, Inc.
91605 Overseas Highway
Tavernier, Florida 33070

and to CES if mailed by certified mail, postage prepaid to:

General Manager
City Electric System
P. O. Box 6100
Key West, Florida 33041-6100

The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

Section 7.4: Petition to Approve Agreement. Upon full execution of this Agreement by the Parties, the Parties agree to jointly file a petition with the Commission seeking approval of this Agreement, and to cooperate with each other and the Commission in the submission of such documents and exhibits as are reasonably required to support the petition.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

ATTEST:

Robert E. Padron,
Secretary

(SEAL)

UTILITY BOARD OF THE CITY OF
KEY WEST, "CITY ELECTRIC SYSTEM"

By: William T. Cates

Title: Chairman

ATTEST:

E. L. Sarpee, Secretary

(SEAL)

FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

By: E. L. Schwartz

Title: President

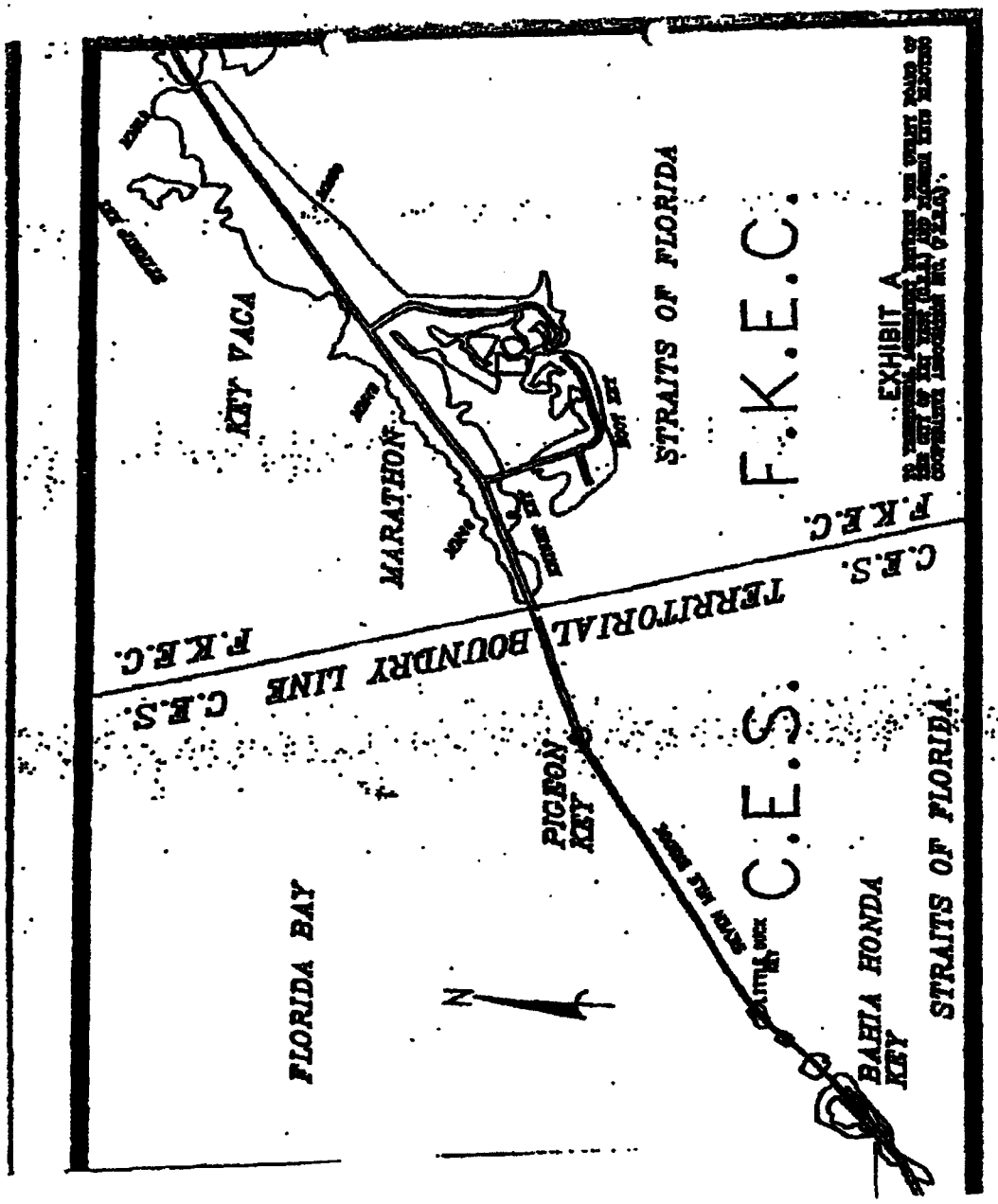


EXHIBIT A
KEY VACA
MARATHON
STRAITS OF FLORIDA
F.K.E.C.
C.E.S.
F.K.E.C.
TERRITORIAL BOUNDARY LINE
C.E.S.
F.K.E.C.
PIGEON KEY
C.E.S.
FLORIDA BAY
BAHIA HONDA KEY
STRAITS OF FLORIDA
N

EXHIBIT B

(2)

ORDINANCE NO. 043 -2001

AN ORDINANCE AMENDING THE MONROE COUNTY CODE BY ADDING SEC. 9.5-258; PROVIDING FOR THE SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR THE INCORPORATION INTO THE MONROE COUNTY CODE; AND DIRECTING THE CLERK OF THE BOARD TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System (CBRS) to restrict the federally subsidized development of coastal barrier areas and specifically prohibited the "construction or purchase of any structure, appurtenance, facility, or related infrastructure" 16 U.S.C. 3504(a)(1) in said areas; and

WHEREAS, Monroe County has 15 designated units of the CBRS which can be found listed in Table 3.21 of the Monroe County Year 2010 Comprehensive Plan Technical Document and illustrated on the Existing Land Use Maps of the Comprehensive Plan Map Atlas; and

WHEREAS, Objective 102.2 of Monroe County Year 2010 Comprehensive Plan states: "Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System [90-S.006(3)(b)4]"; and

WHEREAS, Policy 102.2.5 of Monroe County Year 2010 Comprehensive Plan states: "Upon adoption of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone services to CBRS units"; and

WHEREAS, Current Flood Insurance Rate Maps published for the National Flood Insurance Program by the Federal Emergency Management Agency, indicate there are five developed residential acres (with five structures or less per acre) and one commercial area that fall within the CBRS designation; and

WHEREAS, on Thursday, April 19, 2001 the Growth Management Staff was directed by the Board of County Commissioners to create an overlay district prohibiting the extension of public utilities to certain areas of the county; and

WHEREAS, the Development Review Committee on August 14, 2001, reviewed the legal authority and the proposed text, and recommended approval of the proposed text; and

WHEREAS, during a regular meeting held on September 26, 2001, the Monroe County Planning Commission conducted a public hearing on the proposed text, and recommended approval of the proposed text; and

WHEREAS, The Monroe County Board of County Commissioners was presented with the following information, which by reference is hereby incorporated as part of the record of said hearing:

1. The staff report prepared on September 19, 2001 by K. Marlene Conaway, Director, Planning and Environmental Resources.

2. Proposed changes to the Monroe County Land Development Regulations.

3. The sworn testimony of the Growth Management Staff.

4. Comments by the public; and

WHEREAS, the Monroe County Board of County Commissioners examined the proposed amendments to the Monroe County Code submitted by the Monroe County Planning Department; and

WHEREAS, the Monroe County Board of County Commissioners hereby supports the decision of the Monroe County Planning Commission and the staff of the Monroe County Planning Department; and

WHEREAS, it is the desire of the Monroe County Board of County Commissioners that the following amendment to the County Code be approved, adopted and transmitted to the state land planning agency for approval;

NOW THEREFORE; BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

Section 1. Chapter 9.5, Article VII Division 2 is hereby amended to include the following:

Sec. 9.5-358. Coastal barrier resources system overlay district.

(a) *Purpose:* The purpose of the Coastal Barrier Resources System Overlay District is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the Coastal Barrier Resources System.

(b) *Application:* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current Flood Insurance Rate Maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity; and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of this ordinance and shall not apply to wastewater nutrient reduction cluster systems.

Section 2. If any section, subsection, sentence, clause, item, change, or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.

Initials _____

Section 4. This ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance.

Section 5. This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

Section 6. The Director of Growth Management is hereby directed to forward a copy of this ordinance to the Municipal Code Corporation for the incorporation in the Monroe County Code of Ordinances once this ordinance is in effect.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 19th day of December, A.D., 2001.

Mayor Charles "Sonny" McCoy	yes
Mayor Pro Tem Dixie Spehar	yes
Commissioner Murray Nelson	yes
Commissioner George Neugent	yes
Commissioner Nora Williams	yes

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY _____
Mayor Charles "Sonny" McCoy

ATTEST: DANNY KOLHAGE, CLERK

_____
DEPUTY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

BY _____
Attorney's Office

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EXHIBIT C

PLANNING COMMISSION RESOLUTION NO. P 61-01

A RESOLUTION BY THE MONROE COUNTY PLANNING COMMISSION APPROVING A REQUEST OF THE MONROE COUNTY PLANNING DEPARTMENT TO AMEND THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS BY ADDING SECTION 9.5-258 TO ESTABLISH A NEW LAND USE OVERLAY DISTRICT THAT WILL PROHIBIT THE EXTENSION OR EXPANSION OF TRANSMISSION AND/OR COLLECTION LINES OF THE FOLLOWING TYPES OF PUBLIC UTILITIES WITHIN THE NEW OVERLAY DISTRICT: CENTRAL WASTEWATER TREATMENT COLLECTION SYSTEMS, POTABLE WATER, ELECTRICITY, TELEPHONE, AND CABLE. THIS PROHIBITION SHALL NOT PRECLUDE THE MAINTENANCE AND UPGRADING OF EXISTING PUBLIC UTILITIES AND SHALL NOT APPLY TO WASTEWATER NUTRIENT REDUCTION CLUSTER SYSTEMS.

WHEREAS, the Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System (CBRS) to restrict the federally subsidized development of coastal barrier areas and specifically prohibited the "construction or purchase of any structure, appurtenance, facility, or related infrastructure" 16 U.S.C. 3504(a)(1) in said areas; and

WHEREAS, Monroe County has 15 designated units of the CBRS which can be found listed in table 3.21 of the Monroe County Year 2010 Comprehensive Plan Technical Document and illustrated on the Existing Land. Use Maps of the Comprehensive Plan Map Atlas; and

WHEREAS, Objective 102.8 of Monroe County Year 2010 Comprehensive Plan states: "Monroe County shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resources System [9J-5.006(3)(b)4]"; and

WHEREAS, Policy 102.8.5 of Monroe County Year 2010 Comprehensive Plan states: "Upon adoption of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone services to CBRS units"; and

WHEREAS, Current Flood Insurance Rate Maps published for the National Flood Insurance Program by the Federal Emergency Management Agency, indicates there are five developed residential areas (with five structures or less per acre) and one commercial area that fall within the CBRS designation; and

WHEREAS, on Thursday, April 19, 2001 the Growth Management Staff was directed by the Board of County Commissioners to create an overlay district prohibiting the extension of public utilities to certain areas of the county; and

Initials

WHEREAS, the Development Review Committee on August 14, 2001 reviewed the legal authority and the proposed text, and recommended approval of the proposed text; and

WHEREAS, during a regular meeting held on September 26, 2001, the Monroe County Planning Commission conducted a public hearing on the proposed text; and

WHEREAS, The Planning Commission was presented with the following information, which by reference is hereby incorporated as part of the record of said hearing:

1. The staff report prepared on September 19, 2001 by Robert Will, Planner.
2. Proposed changes to the Monroe County Land Development Regulations.
3. The sworn testimony of the Growth Management Staff.
4. Comments by the public;

NOW THEREFORE, BE IT RESOLVED by the Planning Commission of Monroe County, Florida, that the preceding findings of fact support its decision to recommend **APPROVAL** to the Board of County Commissioners of the addition to the text of the Monroe County Land Development Regulations, Section 9.5-258 "Coastal Barrier Resources System Overlay District" as follows:

9.5-258 Coastal Barrier Resources System Overlay District

(a) *Purpose.* The purpose of the Coastal Barrier Resources System Overlay District is to implement the policies of the comprehensive plan by prohibiting the extension and expansion, of specific types of public utilities to or through lands designated as a unit of the Coastal Barrier Resources System.

(b) *Application.* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current Flood Insurance Rate Maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity; and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of this ordinance and shall not apply to wastewater nutrient reduction cluster systems.

Initials: DCR

PASSED AND ADOPTED By the Planning Commission of Monroe County, Florida, at a regular meeting held on the 26th day of September 2001.

Chair David C. Ritz	absent
Vice Chair Denise Werling	YES
Commissioner P. Morgan Hill	YES
Commissioner Jerry Coleman	YES
Commissioner Alicia Putney	YES

PLANNING COMMISSION OF MONROE COUNTY, FLORIDA

BY _____
David C. Ritz, Chair

Signed this 7th day of Nov., 2001

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY _____
Attorney's Office

Initials ____

EXHIBIT D

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
CIVIL DIVISION

MONROE COUNTY, a political subdivision of the STATE of FLORIDA,

Plaintiff,

vs.

JUDGE:_____
CASE NO.: CA K 11-_____

UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA d.b.a. KEYS ENERGY SERVICES; and,

the owners of 43 lots of developed properties on No Name Key, to-wit: Robert L. Eaken and Ruth E. Eaken; Hallett Douville and Linda S. Douville; Robert D. Barber and Carol C. Barber; Robert G. Brown and Kathryn M. Brown; Michael Press and Anne Press; Thomas B. Witter and Susan H. Witter; Jacob Druckman; Robert D. Reynolds and Julianne C. Reynolds; Bruce Evan Turkel and Gloria Nunez; Anthony C. Harlacher and Elizabeth A. Harlacher; Alida Roemmele Putney; Marginella, LLC; Robert T. Benton; Charles R. Bone and Sabrey P. Bone Trust 6/25/2010; Elbualy Family Limited Partnership; John Bakke and Mary Bakke; Karen Ann Philipp; Jill M. Starcevich and Timothy G. Ebner; Lawrence Zeman; John J. Lentini; Kathryn H. Coleman, Trustee; Hal A. McClelland and Linda McClelland; Marsha D. Fletcher; Herbert E. Craig or Lois M. Craig, Trustees; James B. Newton; Robert M. Scanlon and Janice J. Scanlon; Randall Hochberg; J.A. Wemeen and Cornelia Van Der Linde; Laurence R. Dry; John D. Morris and Linda A.Morris; Tracey John Kamm and Leanne Kamm; Mark Licht and Marjorie Licht; Thomas A. Sinclair and Barbara J. Sinclair; Franklin R. Atwell; Randall A. Raser; Thomas Daniels and Dorothy Daniels; Harold Kimble and Kandy Kimble; Dean O. Thompson; Louja Realty, Inc.; John J. Sandroni; Francisco Pichel; OscarJason Brouillette; William Bradford Vickrey and Beth Vickrey, the owners of 43 lots of developed property on No Name Key,

Defendants.
_____/

COMPLAINT

The Plaintiff Monroe County ("the County"), by and through the Monroe County Attorney's Office and the undersigned Attorney, hereby sue Defendants Utility Board of the City of Key West d/b/a Keys Energy Services ("KES"), and the

owners of 43 lots of developed properties on No Name Key to-wit: Robert L. Eaken and Ruth E. Eaken; Hallett Douville and Linda S. Douville; Robert D. Barber and Carol C. Barber; Robert G. Brown and Kathryn M. Brown; Michael Press and Anne Press; Thomas B. Witter and Susan H. Witter; Jacob Druckman; Robert D. Reynolds and Julianne C. Reynolds; Bruce Evan Turkel and Gloria Nunez; Anthony C. Harlacher and Elizabeth A. Harlacher; Alicia Roemmele Putney; Marginella, LLC; Robert T. Benton; Charles R. Bone and Sabrey P. Bone Trust 6/25/2010; Elbualy Family Limited Partnership; John Bakke and Mary Bakke; Karen Ann Philipp; Jill M. Starcevich and Timothy G. Ebner; Lawrence Zeman; John J. Lentini; Kathryn H. Coleman, Trustee; Hal A. McClelland and Linda McClelland; Marsha D. Fletcher; Herbert E. Craig or Lois M. Craig, Trustees; James B..Newton; Robert M. Scanlon and Janice J. Scanlon; Randall Hochberg; J.A. Wemaen and Cornelia Van Der Linde; Laurence R. Dry; John D. Morris and Linda A.Morris; Tracey John Kamm and Leanne Kamm; Mark Licht and Marjorie Licht; Thomas A. Sinclair and Barbara J. Sinclair; Franklin R. Atwell; Randall A. Raser; Thomas Daniels and Dorothy Daniels; Harold Kimble and Kandy Kimble; Dean O. Thompson; Louja Realty, Inc.; John J. Sandroni; Francisco Pichel; OscarJason Brouillette; William Bradford Vickrey and Beth Vickrey, as more fully described in Exhibit A to this Complaint, which is incorporated by reference herein, and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Monroe County, is a political subdivision of the state of Florida, with an official address of 500 Whitehead Street, Key West, Florida and

administrative offices located at 1100 Simonton Street, Key West, Monroe County, Florida 33040.

2. Defendant KES is a municipal utility duly organized and existing under the laws of the State of Florida with its principal place of business at 1001 James Street, Key West, Florida, which is located in Monroe County, Florida.

3. Defendant KES at all times relevant, has been engaged in the business of providing electricity to customers located south of the Seven Mile Bridge in Monroe County.

4. Under section 11, chapter 69-1191, Laws of Florida, KES has "the full, complete, and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the city of Key West, Florida in Monroe County, Florida, the electric public utility owned by said city including the maintenance, operation, extension and improvement thereof, and including all lines, poles, wires, pipes, mains and all additions to and extension of the same . . . used or intended for use in or in connection with said electric public utility . . . ." (Emphasis supplied). For ease of reference, copy of 69-1191 is attached hereto.

5. The Defendant property owners more fully described in Exhibit A, are listed in public records as the owners of at least one developed parcel of property located on No Name Key, Florida. Each Defendant listed on Exhibit A owns a developed parcel of property with a structure that would be eligible to connect to KES line, assuming all appropriate permits are obtainable and in fact obtained.

6. A number of the Defendant property owners listed in Exhibit A have applied to KES for electric service.

7. KES has indicated that it is in the final design stages for the installation of electrical facilities to various residences on No Name Key.

8. The majority of No Name Key is located within the Coastal Barrier Resources System. *See* CBRS Unit FL-50 map, which is incorporated herein as Exhibit B.

9. The Monroe County Code prohibits the extension of public utilities including electricity within the Coastal Barrier Resources System Overlay District. *See*, M.C.C. § 130-122. That section reads:

> (a) Purpose. The purpose of the coastal barrier resources system overlay district is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the coastal barrier resources system.
>
> (b) The coastal barrier resources system overlay district shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a coastal barrier resources system unit on current flood insurance rate maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of the ordinance from which this section is derived and shall not apply to wastewater nutrient reduction cluster systems. (Emphasis added).

10. Section 6-100 of the Monroe County Code requires the issuance of a building permit "for work in the electrical, mechanical, and plumbing trades."

11. However, the Legislature has exempted the construction of utility lines from the definition of development for purposes of Chapter 380, the Florida Environmental Land and Water Management Act of 1972 and part II of Chapter 163, the Local Government Comprehensive Planning and Land Development Regulation Act. See, F.S. 163.3164(6)[1] and F.S. 380.04(3)(b). F.S. 380.04(3)(b) reads:

> Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on ***established rights-of-way*** any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners. (Emphasis added).

12. Through the operation of F.S. 380.04(3)(b), work by a utility such as KES is exempted from local and state permitting requirements provided that the work is done on "established rights-of-way". *See, Monroe County v. Dept. of Community Affairs*, 560 So.2d 240, 241 (Fla. 3d DCA 1990).

13. The term "established rights of way" is not defined in chapters 163 or 380 nor has that term, as it is used in the context of F.S. 380.04(3)(b), been defined by the Courts or the Attorney General.

14. To be clear, the Legislature has defined the term "right of way" in two different statutes which may be instructive but not necessarily controlling in this context. *See*, F.S. 177.031(16) and F.S. 334.03(22).

15. In part I of chapter 177, entitled "Platting", the term "right of way" is defined to mean: "land dedicated, deeded, used, or to be used for a street, alley,

[1] F.S. 163.3164(6) incorporates the definition of the term "development" as it appears in F.S. 380.04(3)(b).

walkway, boulevard, drainage facility, access for ingress and egress, or other purpose by the public, certain designated individuals, or governing bodies." F.S. 177.031(16).

16. However, the County is uncertain as to whether that definition of the term applies to the instant matter because at least some of the roads at issue are located on a plat which has never been accepted or approved by the County pursuant to chapter 177 or whether this definition is even applicable in the context of F.S. 380.04(3)(b).

17. In the Florida Transportation Code, the term "'[r]ight-of-way' means land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility." F.S. 334.03(22).

18. Once again, the County is uncertain as to whether each of the roads on No Name Key along which KES intends to extend electric service along fall within the definition of the term "right of way" under F.S. 334.03(22) or whether this definition is even applicable in the context of F.S. 380.04(3)(b).

19. Additionally, the County Commission adopted a resolution in 1951 which resolved to grant permission to the City of Key West, the predecessor in interest to KES, "to construct and maintain an electrical system on and over any of the public streets, roads, bridges and/or highways under [the County's] jurisdiction and control within the Florida Keys, Monroe County, Florida, from the City of Key West, Florida up to and including Pigeon Key, Florida." *See* Resolution dated September 4, 1951, which is incorporated herein as Exhibit C.

20. Again, the County is uncertain whether the roads on No Name Key along which KES intends to run its utility line qualify as being under the County's jurisdiction and control in light of the platting issues set forth above.

21. Accordingly, an initial threshold question is whether each of the roads on No Name Key along which KES intends to run electric utility lines constitute an "established right of way", as that term appears in F.S. 380.04(3)(b).

22. A companion question is whether KES has the authority under state law to run electric utility lines across property that is NOT an "established right of way" under F.S. 380.04(3)(b) despite the prohibition set forth in Monroe County Code § 130-122. Stated differently, is M.C.C. § 130-122 pre-empted by chapter 69-1191 and/or some other provision of state law?

23. An additional question is whether the 1951 Resolution vests KES with the authority to extend its utility lines along each of the roads on No Name Key or whether that delegation of authority has been modified through the adoption M.C.C. § 130-122.

24. Another question arises regarding whether the prohibition against the extension of electric utilities to properties within the CBRS overlay district, as set forth in in M.C.C. § 130-122, prohibits the County from issuing building permits to the property owners on No Name Key who desire to connect to electrical service provided by KES. Stated differently, assuming KES has the right to erect the poles and string the lines, do the Defendant property owners have the right to connect their homes to the utility's lines despite the prohibition in

M.C.C. § 130-1227

5334411

COUNT I – DECLARATORY JUDGMENT AS TO KES

1171.76
2066/2168

25. The County re-alleges the factual allegations set forth in paragraphs 1 through 24.

4/14/52

26. The Plaintiff has a bona fide, actual, present practical need for the declaration as to whether the Defendant is required to obtain a development permit for the extension of a power line on No Name Key and if so, under what circumstances.

27. Because the County would be the permitting authority for the issuance of such a permit and the Defendant KES is the only party who would be required to obtain a permit to extend the utility line, all adverse parties involved in this discrete issue are present before the Court.

28. Given the pending application for power by potential KES customers on No Name Key, the dispute satisfies the present controversy requirement for a declaratory judgment action.

29. The declaration is being sought by the County not for mere curiosity or legal advice but to determine the parties' rights under state law and pursuant to Monroe County Code § 130-122.

30. As a result of the foregoing, the Court has jurisdiction under the Florida Constitution and Chapter 86, Florida Statutes to hear this matter.

WHEREFORE, the Plaintiff Monroe County respectfully requests the Court to enter a judgment:

A. Declaring whether the Defendant Utility Board of the City of Key West,

d/b/a Keys Energy Services is exempt from local and state permitting requirements and the extent and scope of any exemption;

B. Awarding the costs of suit; and

C. Granting such other and further relief as the Court deems just and proper.

COUNT II – DECLARATORY JUDGMENT AGAINST NO NAME KEY RESIDENTIAL PROPERTY OWNERS

31. The Plaintiff re-alleges paragraphs 1 through 30.

32. Assuming the question posed in Count I is answered in favor of Defendant KES, the second question posed above will ripen into an immediate question requiring the Court's determination.

33. Assuming KES is authorized by law to run utility lines onto No Name Key, the owners of developed properties on No Name Key are in a present position to pay KES to extend the utility line and then seek permits to connect their homes to that line, therefore, those owners listed in Exhibit A and the County have a present and immediate need for a judicial determination regarding whether those owners will be able to lawfully connect to KES service line in light of the prohibition on the extension of utility lines set forth in M.C.C. § 130-122.

34. The need for this determination is immediate and present for if the law prohibits the connection of the homeowners to the utility line, any expenditure towards running the utility lines onto No Name Key in the first place would be a waste of resources, regardless of their source.

35. Since the 43 property owners named as Defendants are the only property owners with constructed residences on No Name Key, all parties with a present need for the declaration are present before the Court.

36. In light of the prohibitory language set forth in M.C.C. § 130-122, the interests of the property owners desiring electrical service are adverse to those of Plaintiff Monroe County, which would be obligated to deny any permit that would seek to connect the residence to the line extended by KES.

37. The Plaintiff has a bona fide, actual, present practical need for the declaration as to whether the Defendants desiring to connect to KES line would be eligible to obtain building permits in order to receive electric service from KES or whether those permits would be prohibited under M.C.C. § 130-122 or whether that ordinance is pre-empted by state law.

WHEREFORE, the Plaintiff Monroe County respectfully requests the Court to enter a judgment:

A. Declaring whether Monroe County Code § 130-122 prohibits the issuance of building permits to any of the Defendant property owners on No Name Key for the extension of electrical service by the Utility Board of the City of Key West, d/b/a Keys Energy Services to the Defendants' respective properties or whether that ordinance is pre-empted by State law.

B. Awarding the costs of suit; and

C. Granting such other and further relief as the Court deems just and proper.

COUNT III – INJUNCTIVE RELIEF

38. The County re-alleges paragraphs 1 through 37.

39. The Plaintiff Monroe County is the local government with regulatory authority for land use on No Name Key. F.S. 163.3171(2).

40. Land use regulation falls within the County's police powers. *See, e.g., Town of Bay Harbor Islands v. Driggs*, 522 So.2d 912 (Fla. 3d DCA 1988).

40. Section 130-122 of the Monroe County Code is an exercise of the County's police powers.

41. Because the County is seeking an injunction in order to enforce its police powers, specifically those conferred by M.C.C. § 130-122, any alternative legal remedy is ignored and irreparable harm is presumed. *Metro-Dade County v. O'Brien*, 660 So.2d 364, 365 (Fla. 3d DCA 1995); and *Ware v. Polk County*, 918 So.2d 977, 979 (Fla. 2d DCA 2005).

42. The County's interest in having its land development code obeyed would nevertheless be irreparably harmed if Defendant KES and/or the Defendant property owners started erecting utility poles and taking further steps towards the provision of electrical utility service on No Name Key.

43. Any knowing violation of the County's land development code, including § 130-122, would vest the County with a clear legal right to relief in the form of an injunction. See, *O'Brien*, 660 So.2d at 365 and *Ware*, 918 So.2d at 980.

44. A temporary injunction would serve the public interest by preserving the *status quo* and prevent the unnecessary waste of public and private assets during the pendency of this litigation.

45. A permanent injunction relief would serve the public interest by providing a mechanism for enforcing the declaratory judgments issued in Counts I and II.

WHEREFORE, the Plaintiff respectfully requests the Court to:

A. Enter a temporary injunction prohibiting the Defendants from expending any funds or taking any steps towards the extension of electrical service to No Name Key during the pendency of this action; and

B. Grant such further injunctive relief, temporary and/or permanent, as this Court deems just and proper.

Respectfully submitted,

MONROE COUNTY ATTORNEY'S OFFICE
1111 12th Street, Suite 408
Key West, Florida 33040
(305) 292-3470
(305) 292-3516 facsimile

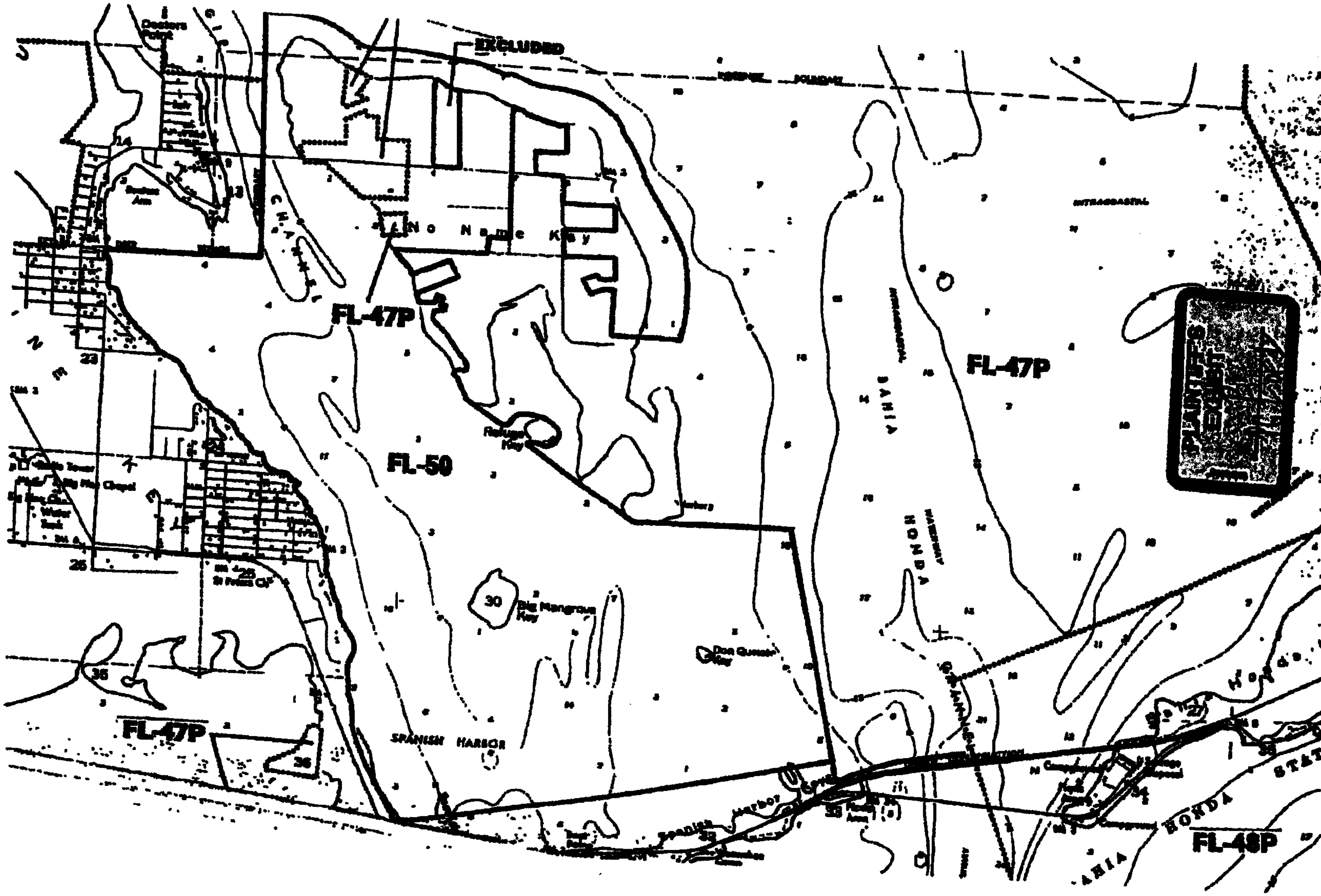
By: _____
Suzanne A. Hutton
County Attorney
FBN: 336122

Robert B. Shillinger
Chief Assistant County Attorney
FBN: 58262

Exhibit A to Plaintiff's Complaint

Name of Property Owner	No Name Key Address	RE Number
Eaken, Robert L. & Ruth E.	32844 Bimini Lane	00108120-000800
Douville, Hallett & Linda S.	32940 Cat Lane	00108050-000306
Barber, Robert D. & Carol C.	1984 No Name Drive	00819492-004000
Brown, Robert G. & Kathryn M.	32781 Tortuga Lane	00108130-002000
Press, Michael & Anne	2159 Spanish Channel Drive	00819491-000800
Witter, Thomas B. & Susan	2046 Bahia Shores Road	00819491-009800
Druckman, Jacob	32860 Bimini Lane	00108120-000100
Reynolds, Robert D. & Julianne C.	2160 Bahia Shores Road	00819491-004700
Turisi, Bruce Evan & Gloria Nunez, H/W	32734 Bimini Lane	00108120-001800
Hertscher, Anthony C. & Elizabeth A.	1921 Bahia Shores Road	00819492-000400
Putney, Alicia Rosemeale	2150 No Name Drive	00819492-002900
Marginella, LLC	32029 Marginella Drive	00819489-000400
Benton, Robert T.	2148 Bahia Shores Road	00819491-004600
Bose, Charles R. & Sabrey P. TR 6/25/10	2011 Bahia Shores Road	00819492-001100
Elbusty Family Limited Partnership	31548 Old St. Rd. 4A (Vacant)	00108480-000200
Bahle, John & Mary	32768 Bimini Lane	00108120-000800
Philipp, Karen Ann	32857 Tortuga Lane	00108130-008100
Starcevich, Jill M. & Timothy G. Ebner, H&W	32865 Tortuga Lane	00108130-008200
Jensen, Lawrence, I/E	1933 Bahia Shores Road	00819492-000900
Lentini, John J.	32896 Bimini Lane	00108120-000600
Coleman, Kathryn H., Trustee	2123 Spanish Channel Drive	00819491-000500
McClelland, Hal A. & Linda	32723 Tortuga Lane	00108130-001900
Fletcher, Marsha D.	32763 Tortuga Lane	00108130-002400
Craig, Herbert E. or Lois M., Trustees	2060 No Name Drive	00819492-003900
Newton, James B.	2047 Bahia Shores Road	00819491-009900
Scanlon, Robert M. & Janice J.	1845 No Name Drive	00108050-000108
Hochberg, Randall	32780 Bimini Lane	00108120-001200
Wernsen, J.A. & Van Der Linde, Cornelia, T/C	1910 No Name Drive	00819492-004200
Dry, Laurence R.	1898 No Name Drive	00819492-004400
Morris, John D. & Linda A.	Tortuga Ln. (Part of Lot 5)	00108130-002500
Ramm, Tracey John & Leanne	32840 Bimini Lane	00108120-000500
Licht, Mark & Marjorie	2089 Bahia Shores Road	00819492-001700
Sinclair, Thomas A. & Barbara J.	2024 No Name Drive	00819492-003900
Atwell, Franklin R.	2187 Bahia Shores Road	00819492-002100
Rasar, Randall A.	No Name Drive	00819492-002500
Daniels, Thomas & Dorothy	1981 Spanish Channel Drive	00819491-002000
Kimble, Harold & Randy	1909 Bahia Shores Road	00819492-000800
Thompson, Dean O. I/E	714 Tortuga Lane	00108130-002700
Louis Realty, Inc.	1857 Bahia Shores Road	00819489-000700
Sandrord, John J.	2084 No Name Drive	00819492-002800
Pickel, Francisco	2081 Spanish Channel Drive	00819491-000800
Brouillette, Oscar Jason	1843 Bahia Shores Road	00108040-000500
Vickrey, William Bradford & Beth	2085 Bahia Shores road	00819492-001900

PLAINTIFF'S EXHIBIT


FL-47P
FL-50
FL-47P
FL-47P
FL-48P
EXCLUDED
No Name Key
Refuge Key
Big Mangrove Key
SPANISH HARBOR
BAHIA HONDA
PLAINTIFF'S EXHIBIT

RESOLUTION GRANTING THE CITY OF KEY WEST, FLORIDA PERMISSION TO USE THE RIGHTS-OF-WAY OF CERTAIN PUBLIC STREETS, ROADS, BRIDGES AND/OR HIGHWAYS IN MONROE COUNTY, FLORIDA.

WHEREAS, the City of Key West, Florida, desires to run electrical line from the City of Key West, Florida to Pigeon Key, Florida for the purpose of furnishing electricity to the residents of the Florida Keys residing in said area, and,

WHEREAS, the City of Key West, Florida has requested the Board of County Commissioners of Monroe County, Florida to grant easements on and over the public streets, roads, bridges and/or highways under said Board's jurisdiction and control, and,

WHEREAS, the said City of Key West, Florida has agreed not to charge any higher rates to residents of the above areas than it charges within the boundaries of the City of Key West, Florida, and that in furnishing service to residents not residing on a public street, road and/or highway not to charge any higher rate for the extension of the pole lines than that which is charged by the Florida Keys Electrical Cooperative Association, which is now operating in another area in Monroe County, Florida, and

WHEREAS, the City of Key West, Florida has agreed to furnish service under the conditions set forth in the above paragraphs to any and all subscribers who may apply for same, now, therefore,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, that permission be and the same is hereby granted to the City of Key West, Florida to construct and maintain an electrical system on and over any of the public streets, roads, bridges and/or highways under said Board's jurisdiction and control within the Florida Keys, Monroe County, Florida, from the City of Key West, Florida up to and including Pigeon Key, Florida, provided that the City of Key West, Florida charges the agreed rates and costs to consumers for extension as set forth in the introductory paragraphs of this Resolution.

Dated this 4th day of September, A.D. 1951.

PLAINTIFF'S EXHIBIT

EXHIBIT E

COUNTY of MONROE
KEY WEST FLORIDA 33040
(305) 294-4641

Suzanne A. Hutton, County Attorney**
Robert B. Shillinger, Chief Assistant County Attorney **
Pedro J. Mercado, Assistant County Attorney **
Susan M. Grimsley, Assistant County Attorney **
Nathleene W. Cassel, Assistant County Attorney
Cynthia L. Hall, Assistant County Attorney
Christine Limbert-Barrows, Assistant County Attorney
Derek V. Howard, Assistant County Attorney
Lisa Granger, Assistant County Attorney

** Board Certified in City, County & Local Govt. Law

Office of the County Attorney
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470 – Phone
(305) 292-3516 – Fax

April 29, 2010

Lynne Tejeda
Keys Energy Services
1001 James Street
PO Box 6100
Key West, Fl. 33040-6100

RE: No Name Key

Dear Ms. Tejeda:

On March 11, 2010, you emailed me that KES had opened bids on the No Name Key project, and was analyzing the bids as well as the FWS letter [of January 20, 2010]. You asked if the County was reviewing the issue raised by FWS in Comment #6 of that letter, particularly the last sentence, i.e. "Based on our preliminary review, we believe the extension of electrical service to No Name Key is inconsistent with the Monroe County Comprehensive Land Use Plan." You asked the following two questions:

a) Does the County interpret "discourages the extension of utilities" as "prohibits the extension of utilities?" and
b) Who determines a project's consistency with the plan and what is the process for such a determination?

The short answers to those questions are: (a) no, with respect to the Monroe County Comprehensive Land Use Plan [hereinafter "Comp Plan"], although there is a land development code provision , Sec. 130-122, MCC, which prohibits extension or expansion of utilities in a CBRS overlay district, which raises a question re permitting of individual homes, discussed later in this letter; and (b) the County has no authority for determining consistency of placement of utilities in or on established rights-of-way with the Comp Plan as the County does not issue development permits within a right-of-way [hereafter "ROW"]. Further explanations of the answers follow.

There remains for the County additional questions regarding the permitting of connections of individual properties to the utilities, in light of a separate land use regulation, which questions are still under review and being researched. However, it has been over a month since you raised the issues re the Comp Plan, and the legal and Growth Management administrative staffs have concluded that review and discussion.

Comp Plan Policy 102.8.5 states:

"Monroe County shall initiate efforts to discourage the extension of facilities and services by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS units. These efforts shall include providing each of the utility providers with:

1. a map of the areas of Monroe County which are included in the CBRS units;
2. a copy of the Executive Summary in Report to Congress: Coastal Barrier Resources System published by the U.S. Department of the Interior, Coastal Barriers Study Group, which specifies restrictions to federally subsidized development in CBRS units;
3. Monroe County policies regarding local efforts to discourage both private and public investment in CBRS units."

Attempts in 2008 to amend that policy to reduce the scope of the policy to undeveloped properties within the CBRS and to clarify the related land use regulation failed upon a DCA appeal of the County Commission action.

Accordingly, the County is still dealing with provisions which were in place in the late 1990's when various County officials wrote letters about the inconsistency between the Comp Plan and extension of utilities to No Name Key, a great deal, but not all, of which is in the CBRS. However, none of those letters address the definition in Section 380.04(3)(b) excluding from the term "development:"

"Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

Electricity was added to the sub-section by Ch. 2002-20, S. 94, Laws of Florida., as well as Ch. 2002-296, S. 29. Under this statute, the County clearly has no authority to issue permits for, or otherwise regulate, the installation or construction of electric utility lines on the established ROWs. Accordingly, notwithstanding prior interpretations of the Comp Plan Policy 102.8.5, it is clear that the County acts solely as a messenger with respect to public or private utilities and can do no more than "discourage" activity by informing utilities as to the boundaries of CBRS units, federal policies against subsidizing development in CBRS units, and the County's discouragement of public or private investment in CBRS units. The County has no regulatory authority under Ch. 380, F.S., over the placement of utilities in the ROW. Any County regulatory authority over the ROWs exists pursuant to Ch. 316 (re traffic control) and Ch. 336, F.S. (re construction & improvements, maintenance, closing and abandoning of county roads). Since the installation of utility lines in or on the ROW is not deemed development by state statute, the County's Comp Plan Policy 102.8.5 cannot be deemed to be a prohibition, but only that which it specifies – discouragement.

This conclusion then moots out the question as to who determines consistency with respect to the issue of installing the utility lines in the right-of-way.

You may find it useful to review the various orders in the case of Taxpayers for the Electrification of No Name Key, Inc. et al. v. Monroe County et al., Case No. 99-819-CA-18. They are somewhat difficult to follow due to amendments and vacations, but it appears that the July 12, 2002 order and findings therein were resurrected by the 6/13/03 vacation of the Amended Order Granting Summary Judgment (entered 6/11/2003 nunc pro tunc 6/11/2002 & which had amended the 2002 order) and the entries of the 6/13/2003 order vacating the amended order and the Final Summary Judgment. The case of *City of Oviedo v. Clark, 699 So.2d 316 (Fla. 1st DCA 1997)* seems to be right on point in holding the PSC had to consider the Comp Plan but was not bound by it.

Since the County does not have authority to regulate as development the installation of utilities in the ROW, and since, as the January 20, 2010 letter from FWS notes, the Big Pine Key Habitat Conservation Plan (HCP) excludes extension of utilities to No Name Key and the associated Incidental Take Permit (ITP), if the proposed extension has any impact to the silver rice rat, Stock Island tree snail, or Garber's spurge, the County believes that would have to be addressed through a separate ITP issued to KES, as determined by FWS. Similarly, any mitigation required as a result of the proposed electric installation would not be the County's responsibility.

As previously mentioned, there still remains a question as to the effect of the regulation in Monroe County Code section 130-122 and whether that will require that the County deny permits for the connections to the individual buildings on private property otherwise covered by the land use regulations. As soon as we reach a definitive conclusion, I will advise you.

Sincerely,

Suzanne A. Hutton
County Attorney

Cc:
County Commissioners
Roman Gastesi
Christine Hurley
Susan Grimsley
Derek Howard
Bob Shillinger
Townsley Schwab
Dale Finigan
Paul Souza
Anne Morkill
Jim Reynolds
Rebecca Jetton

EXHIBIT F

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2011-CA-342-K

MONROE COUNTY, a political
Subdivision of the State of Florida,

Plaintiff

Vs.

UTILITY BOARD OF THE CITY OF
KEY WEST, FLORIDA, d/b/a
KEYS ENERGY SERVICES, et al.,

Defendants

_____/

ORDER OF DISMISSAL WITH PREJUDICE

THIS MATTER came before the Court upon the Motion to Dismiss of Defendants herein, and the Court, having reviewed the Motion, the Response thereto, and the motion of the Florida Public Service Commission for leave to participate as Amicus Curiae regarding subject matter jurisdiction, having conducted oral argument in this matter on January 26, 2012, and being otherwise fully informed in the premises, hereby finds and Orders as follows:

1. This action is a lawsuit by Plaintiff MONROE COUNTY, a political subdivision of the State of Florida, against Defendants UTILITY BOARD OF THE CITY OF KEY WEST, and 43 property owners of properties located on No Name Key, Florida. The Complaint seeks declaratory relief as to KEYS ENERGY SERVICE, (Count I), Declaratory Relief against the No Name Residential Property Owners (Count

II), and injunctive relief to enforce any declaratory judgment entered by the Court in Counts I and II (Count III).

2. The Complaint seeks a declaration from this Court as to whether the Defendant UTILITY BOARD OF THE CITY OF KEY WEST is required to obtain a development permit from Monroe County, for the extension of a power line to No Name Key, or whether the issue of the provision of electrical service to residents of No Name Key is an issue vested by law in the Public Service Commission, as suggested by Defendants and the Florida Public Service Commission itself, through its Motion for Leave to Participate as amicus curiae. Second, the lawsuit seeks to determine whether the portion of the Monroe County Code which prohibits the extension of public utilities, including electricity within the Coastal Barrier Resources System Overlay District (M.C.C. Section 130-122) prohibits the extension of utility lines to the Defendant residents, or whether that ordinance has been preempted by state law, to wit, the authority granted to the Public Service Commission in Chapter 366, Florida Statutes.

3. The Court has carefully reviewed pertinent portions of Chapter 366, Florida Statutes, as well as the Territorial Agreement between the municipal utility of the City of Key West (Keys Energy) and the Florida Keys Rural Electric Cooperative, approved by the Public Service Commission on September 27, 1991, and has determined that issues regarding interpretation and enforcement of territorial agreements of this sort are exclusively vested in the Florida Public Services Commission ("PSC"), and therefore the PSC is the proper forum for hearing the issues presented in this case. Accordingly, the questions posed by Plaintiff

MONROE COUNTY regarding the extension of electrical power line to No Name Key residents, which would constitute providing service pursuant to the Territorial Agreement, as well as any question regarding whether owners of property on No Name Key may lawfully connect to Keys Energy Service service lines, pursuant to the Territorial Agreement, despite the provisions set forth in Monroe County Code Section 130-122, are all properly presented to the PSC for resolution.

4. Section 366.04(1), Florida Statutes expressly confers jurisdiction on the PSC to regulate and supervise each public utility with respect to its rates and service. This jurisdiction is "exclusive and superior to that of all . . . municipalities . . . or counties, and, in case of conflict therewith, all lawful acts, orders, rules and regulations of the Commission shall in each instance prevail." (Section 366.04(1), Florida Statutes).

5. By order issued May 12, 2003, in re: Petition by City of Parker for Declaratory Statement, etc., Docket No: 030159-EU, Order numbered FPSC-03-0598-DS-EU, the PSC denied a motion to dismiss which had been predicated on the argument presented by Monroe County in the instant case, that the PSC did not have authority to resolve the issues of statutory analysis and balancing of state supremacy claims as against local or regional land use plans. In that order, the PSC specifically found that its subject matter jurisdiction reached the question of whether the jurisdiction of the Florida Public Service Commission preempted the City of Parker's application of its comprehensive plan, land development regulations, and city codes and ordinances to Gulf Power Company's proposed aerial power transmission line.

6. That order of the Public Service Commission determined that the PSC has subject matter jurisdiction, and is also the appropriate forum, in cases of this sort, because it describes and denotes jurisdiction which is exclusive pursuant to Section 366.04(2)(c) and (2)(d), Florida Statutes.

7. This legal conclusion is reinforced by the holding of the Florida Supreme Court in Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989). In Fuller, the City of Homestead filed an action in the Dade County Circuit Court seeking a declaration of rights and a construction of a Territorial Agreement, regarding rights and obligations of the parties thereto. Although Fuller deals with an attempt to terminate the Territorial Agreement by the City, not enforcement or interpretation or limitation of the agreement with regard to the provision of electrical services to persons who claim to be eligible for such services under the agreement, the logic of Fuller applies to the instant case. The narrow interpretation suggested by Plaintiff MONROE COUNTY, which would limit the exclusive statutory jurisdiction of the PSC to disputes regarding the boundary created by the agreement, and related issues, is clearly at odds with the broad grant of legislative authority set forth in Florida Statutes, and the language used by the Florida Supreme Court in Fuller, supra.

8. The service agreement grants to the UTILITY BOARD OF THE CITY OF KEY WEST

> "the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, improve, finance and re-finance the electric public utility now owned by the said city, . . . "

Furthermore, pursuant to Section 11 of the Agreement, the UTILITY BOARD has "the full, complete and exclusive power and right to manage, operate, maintain, control, extend, extend beyond the limits of the City of Key West, Florida, in Monroe County, Florida, the electric public utility owned by said city, including the maintenance, operation, extension and improvement thereof, and including all lines, poles, wires, pipes, mains, and all additions to and extensions of the same, and all buildings, stations, sub-stations, machinery, appliances, land and property, real, personal and mixed, used or intended for use in or in connection with said electric public utility. . ." This Court specifically finds that the purpose of the action brought by MONROE COUNTY before this Court is to interpret and/or modify the territorial agreement set forth above, by seeking to interpret, modify or limit the service agreement and authority of the UTILITY BOARD OF THE CITY OF KEY WEST thereunder.

Accordingly, pursuant to the clear mandate of Public Service Commission v. Fuller, 551 So.2d 1210 (Fla. 1989), this Court finds that exclusive subject matter jurisdiction is vested in the Florida Public Service Commission, and that the PSC is the correct forum for hearing the issues herein, and this action is accordingly DISMISSED WITH PREJUDICE.

DONE and ORDERED at Key West, Monroe County, Florida, this 30th day of January, 2012.

CONFORMED COPY
JAN 30 2012

DAVID J. AUDEN JR.
CIRCUIT JUDGE
CHIEF JUDGE

cc: Robert B. Shillinger, Esq.
Robert Hartsell, Esq.
Lawrence R. Dry, Pro Se
Nathan E. Eden, Esq.
Andrew M. Tobin, Esq.

Barton W. Smith, Esq.
Martha C. Brown, Esq.

EXHIBIT G

Third District Court of Appeal

State of Florida, January Term, A.D. 2013

Opinion filed February 6, 2013.
Not final until disposition of timely filed motion for rehearing.

No. 3D12-333
Lower Tribunal No. 11-342

Alicia Roemmele-Putney, et al.,
Appellants,

vs.

Robert D. Reynolds, et al.,
Appellees.

An Appeal from the Circuit Court for Monroe County, David J. Audlin, Jr., Judge.

Robert N. Hartsell (Fort Lauderdale); Robert Wright (Tallahassee); Richard Grosso (Ft. Lauderdale); Derek V. Howard, Assistant County Attorney, Monroe County Attorney's Office (Key West); Andrew M. Tobin (Tavernier), for appellants.

Barton W. Smith and Gregory S. Oropeza (Key West), for appellees.

S. Curtis Kiser, General Counsel, and Martha C. Brown, Senior Attorney, and Pamela H. Page, Attorney (Tallahassee), as Amicus Curiae for the Florida Public Service Commission.

Before SUAREZ, LAGOA and SALTER, JJ.

SALTER, J.

The appellants are certain individual property owners on No Name Key in Monroe County, and the County itself. Other No Name Key property owners and the Utility Board of the City of Key West (doing business as "Keys Energy Services") are the appellees. The legal issue presented to the circuit court and here is whether the County and private landowners may obtain judicial (declaratory and injunctive) relief establishing that the prospective electrification of No Name Key is regulated—or even precluded—by the Coastal Barrier Resources Act[1] and the County's policies and regulations adopted pursuant to that Act. Concluding that the Florida Public Service Commission has exclusive jurisdiction to decide the issues raised by the appellants, we affirm the circuit court judgment dismissing the complaint with prejudice for lack of jurisdiction.

The Complaint and Motion to Dismiss

In the complaint, Monroe County sued Keys Energy Services (KES) and the individual owners of forty-three developed properties on No Name Key. The County alleged that KES had the exclusive power and authority to extend electric service to the residences on No Name Key owned by the individual defendants, and that a number of the property owners and KES were nearly ready to move

[1] 16 U.S.C. §§ 3501-3510.

from the design stage to actual installation. The County asked the circuit court to determine whether KES has the authority to extend the utility lines to the residences on No Name Key (Count I), and whether the property owners have the right to connect their homes to the KES lines despite an express prohibition in the Monroe County Code (Count II).[2] In Count III of its complaint, the County sought temporary and permanent injunctive relief prohibiting KES and the property owners from "expending any funds or taking any steps toward the extension of electric service to No Name Key," in furtherance of the declaratory judgments sought in Counts I and II.

The individual appellees, homeowners on No Name Key, were among the defendant property owners who applied to KES for electrical service. These appellees moved for the dismissal of Monroe County's complaint on grounds that the Florida Public Service Commission (PSC) has exclusive jurisdiction to enforce, regulate, and resolve the issues raised by the County. The motion was briefed,[3] argued, and ultimately granted (with prejudice) by the circuit court. This appeal followed.

---

[2] Monroe County Code § 130-122 (purporting to prohibit the extension of electric utilities to properties within the Coastal Barrier Resources System overlay).

[3] The PSC was allowed to participate as amicus curiae in the circuit court and here.

Analysis

Although KES is not a "public utility" within the definition of section 366.02(1), Florida Statutes (2011), it is an "electric utility" under the subsection which follows, section 366.02(2). Section 366.04, "Jurisdiction of commission," in subsection (5), grants the PSC jurisdiction over "the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities." To that end, the homeowner appellees filed an administrative complaint with the PSC seeking the extension of electrical transmission lines to the No Name Key property owners.[4]

As a threshold matter, and as the State entity charged by law with planning and regulating the generation and transmission of electrical power throughout Florida, the PSC is to determine its own jurisdiction. Fla. Pub. Serv. Comm'n v. Bryson, 569 So. 2d 1253 (Fla. 1990). Although Bryson involved a public utility, the case holds that "the PSC must be allowed to act when it has at least a colorable claim that the matter under its consideration falls within its exclusive jurisdiction as defined by statute." Id. at 1255. Any claim by the County or by the appellant

[4] In re: Complaint of Reynolds v. Utility Bd. of the City of Key West, Fla., etc., PSC Docket No. 1210054-EI.

homeowners that the PSC does not have jurisdiction may be raised before the PSC and, if unsuccessful there, by direct appeal to the Florida Supreme Court. Art. V, § 3(b)(2), Fla. Const.

The appellees and the PSC also have argued, and we agree, that KES's existing service and territorial agreement (approved by the PSC in 1991) relating to new customers and "end use facilities" is subject to the PSC's statutory power over all "electric utilities" and any territorial disputes over service areas, pursuant to section 366.04(2)(e), Florida Statutes (2011). The PSC's jurisdiction, when properly invoked (as here), is "exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties." § 366.04(1). Section 4.1 of the 1991 KES territorial agreement approved by the PSC expressly acknowledges the PSC's continuing jurisdiction to review in advance for approval or disapproval any proposed modification to the agreement.

Conclusion

The Florida Legislature has recognized the need for central supervision and coordination of electrical utility transmission and distribution systems. The statutory authority granted to the PSC would be eviscerated if initially subject to local governmental regulation and circuit court injunctions of the kind sought by Monroe County in the case at hand. The appellants do retain, however, the right to

seek relief before the PSC, and we express no opinion as to the merits of any such claims by the appellants in that forum.

The circuit court's order dismissing the County's complaint with prejudice is affirmed.

EXHIBIT H

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2012-CA-549-K

MONROE COUNTY, a political subdivision of the State of Florida,
Plaintiff

v.

UTILITY BOARD OF THE CITY OF KEY WEST, FLORIDA, d/b/a KEYS ENERGY SERVICES,

Defendant

ALICIA ROEMMELE-PUTNEY, NO NAME KEY PROPERTY OWNERS' ASSOCIATION, INC., ROBERT REYNOLDS And JULIANNE REYNOLDS,

Intervenors

_____/

ORDER GRANTING MOTIONS TO DISMISS THE COMPLAINT, WITHOUT PREJUDICE

Intervenors Robert Reynolds and Julianne Reynolds, and No Name Key Property Owners Association, Inc. (NNKPOA), having moved, in separate motions, for dismissal of the first amended complaint in this action, the Court, having examined the record, the applicable law, and being otherwise informed in the premises, finds as follows:

This action is the most recent of a series of actions generated by a dispute over bringing electric service to certain property owners on No Name Key in Monroe County. As expressed by the Third District Court of Appeal after this Court dismissed a previous action, "[t]he legal issue presented to the circuit court and here is whether the County and private landowners may obtain judicial (declaratory and injunctive) relief establishing that the prospective electrification of No Name Key is regulated-or even precluded-by the Coastal Barrier Resources Act, and the County's policies and regulations adopted pursuant to that Act." [1] This Court had dismissed the complaint, with prejudice, because it had determined that the Florida Public Service Commission (PSC) had exclusive jurisdiction to decide the issues. The Third DCA affirmed this Court's order.

Monroe County has brought a second action seeking a declaratory judgment to determine its rights pursuant to 1995 Grant of Easement and 1973 Quit Claim Deed to exclude the construction of an electric transmission line over land it owns. A second count in the amended complaint sought injunctive relief, and the third count alleged a cause of action for aerial trespass due to the presence of power lines suspended over its land.

Though at first blush the issues raised by the parties on this motion to dismiss appear complex, because of the guidance given in the opinion by the Third

[1] Roemmele-Putney v. Reynolds, et al., (3D12-333) (Fla. 3rd DCA 2013).

DCA in the previous case, the complexities fall away. Citing *Fla. Pub. Serv. Comm'n v. Bryson*, 569 So. 2d 1253 (Fla. 1990), the DCA observed that "[a]s the State entity charged by law with planning and regulating the generation and transmission of electrical power throughout Florida, the PSC is to determine its own jurisdiction." The District Court further found that the jurisdiction of the PSC is extensive, as the PSC, under §366.05(1) of Chapter 366 of the Florida Statutes, the PSC has the power "to exercise all judicial powers, issue all writs and do all things, necessary or convenient to the full and complete exercise of its jurisdiction and to enforcement of its orders and requirements."

Though jurisdiction of the PSC is extensive, it is not all encompassing, and matters not within the jurisdiction of the PSC (the County claims that this Count can presently rule on the issues it has presented) *can* be heard by this Court but not by the avenue the County has chosen. "Where the Public Service Commission, or this Court (Florida Supreme Court) on review, has disposed and completed a matter coming within the Commission's jurisdiction, subsequent unresolved claims or causes arising against the affected regulated carrier or utility which are not statutorily remediable by the Commission and lie outside its jurisdiction may be litigated in the appropriate civil courts." *State v. Willis*, 310 So.2d 1 (Fla. 1975).

The court finds that the issues in this case are sufficiently related to the regulation and planning of electrical generation and transmission lines, that the

302 Southard St., Suite 205B
Key West FL 33040

Robert N. Hartsell, Esq.
1451 West Cypress Creek Road,
Suite 300
Fort Lauderdale, FL 33205

Robert B. Shillinger, Esq.
Derek v. Howard, Esq.
Monroe County Attorney's Office
1111 12th St., Suite 408
Key West, FL 33040

Lawrence Harris, Esq.
Martha C. Brown, Esq.
Office of the General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

EXHIBIT I

County of Monroe
Growth Management Division

Planning & Environmental Resources Department
2798 Overseas Highway, Suite 410
Marathon, FL 33050
Voice: (305) 289-2500
FAX: (305) 289-2536

CERTIFIED MAIL 7002 2410 0000 9899 8412

January 14, 2013

Randall Mearns
Marathon Electric Sign & Light
10690 Aviation Blvd
Marathon, Florida 33050

RE: Building Permit Application #121-5168 – Real Estate No. 00319491.004700

The Planning & Environmental Resources Department is in receipt of your building permit application for new electrical service to a single family residence at 2160 Bahia Shores Road, No Name Key, FL.

After careful review of your application, our Department is unable to approve the application at this time for the following inconsistencies with the adopted Comprehensive Plan and Land Development Code:

1. Permit Application #121-5168 is requesting new electrical service for a single family residential dwelling unit on No Name Key, specifically requesting, "Install electrical service to residence."

2. No Name Key is almost entirely within a unit of the Coastal Barrier Resources System (CBRS). The subject property is located within an area surrounded by the Coastal Barrier Resources System (CBRS) overlay district, established by Code Section 130-122 (attached as Exhibit A).

3. The Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System. The CBRA legislation is specifically designed to restrict Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers to minimize the loss of human life, reduce the wasteful expenditure of Federal revenue, and reduce damage to habitat and other valuable natural resources of coastal barriers.

4. Permit Application #121-5168 is inconsistent with goals, objectives and policies of the Monroe County Comprehensive Plan, including, but not limited to: 1) Policy 102.8.5, which seeks to discourage the extension of facilities and services, including electricity, to Coastal Barrier Resources System units, and to protect the environmental and community character of local communities, such as No Name Key; and 2) Objective 101.11, which directs future growth away from environmentally sensitive land and towards established development areas served by existing public facilities.

5. According to Monroe County Code Section 130-122, the purpose of the CBRS overlay district is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities *to or through* lands designated as a unit of the coastal barrier resources system. Within this overlay district, the transmission and/or collection lines of the

following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable.

6. This permit application (#121-5168) is for a subject property located within an area surrounded by CBRS land and would depend on the electrical lines recently installed by Keys Energy to No Name Key which *extend to* and *pass through* lands designated as a unit of the CBRS. The electrical lines violate Monroe County Code and are inconsistent with the Monroe County Comprehensive Plan, as described above. Connection of the subject property to these lines would further violate the Monroe County Code and be inconsistent with the Monroe County Comprehensive Plan.

7. Connection of the subject property to electric service would require the extension of electricity *through* surrounding lands designated as a unit of the CBRS. Therefore, connection of the subject property to electric service is not allowed by Monroe County Code Section 130-122.

Please note, the Planning & Environmental Resources Department previously determined the issue of whether No Name Key may be electrified in a May 13, 1998, letter of understanding by Timothy J. McGarry, AICP (then Planning Director). The Department's position against the electrification of No Name Key was affirmed by the Planning Commission in Resolution No. P17-99, which was in turn affirmed by the 16th Judicial Circuit in Taxpayers for the Electrification of No Name Key, Inc., et. al. v. Monroe County (Case No. 99-819-CA-19). The letter of understanding and Resolution No. P17-99 are attached hereto, as Exhibits B and C.

In addition, James Newton has appealed the revocation of a similar building permit to the Planning Commission, which upheld the Department's position at their October 18, 2012 meeting.

Note, the current, adopted 2010 Comprehensive Plan Goals, Objectives and Policies are provided in Exhibit D. This is provided as an update to the policies cited in the May 13, 1998, letter of understanding by Timothy J. McGarry, AICP (then Planning Director), which provides the Planning Department's position against the electrification of No Name Key which was affirmed as noted above.

The Planning & Environmental Resources Department has failed the assigned building permit application #121-5168.

You may appeal the decision made in this letter. Appeal applications to the Planning Commission may be found on the Planning and Environmental Resources portion of the Monroe County website, or by calling the Growth Management Division at (305) 289-2500. The appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within thirty (30) calendar days from the date of this letter. In addition, please submit a copy of your application to the Planning Commission Coordinator, Monroe County Planning & Environmental Resources Department, 2798 Overseas Highway, Suite 410, Marathon, FL 33050.

Townsley Schwab
Sr. Director of Planning & Environmental Resources

Exhibits

cc: rmmthelectric@aol.com
Permit File 121-5168

EXHIBIT J

Attachment 2

MONROE COUNTY BUILDING DEPARTMENT – Permit File Cover Sheet

Date: 4/4/12 Permit #: 121-1527

Permit Type: Elect. Owner: Newton

☐ Revision ☐ ROGO/NROGO ☐ Private Provider: ____Plan Rev and/or ____Insp

PLAN REVIEWERS (Plan Review Stop Code)	Check Req'd Stops	Action: Corrections Req'd	Action: Approved
CODE COMPLIANCE (CODE) (Parcel Flagged)			
PLANNING (PLAN) (Historic Parcel Flagged)			
ENV. RESOURCES (BIO)			
COUNTY ENGINEER Stormwater (STORM Added by BIO) Right-of-Way (ROW Added by Planning) Wastewater Assess.Fee (WASTE) (Parcel Flagged)			
STRUCTURAL/ROOF (EXAM)			
MECHANICAL/GAS (MECH)			
PLUMBING (PLUMB)			
ELECTRICAL (ELEC)	✓		AK 4/5/12
FLOODPLAIN (FLOOD)			
FIRE MARSHAL (FIRE)			
FINAL REVIEW (FINAL)	✓		4/5/12
BO/ABO (OFFICIAL)	✓		4/5/12

ISSUANCE: ☐ Key Largo ☒ Marathon ☐ Stock Island

☐ READY TO ISSUE ☐ ROGO/NROGO READY

FINAL INSPECTIONS

________ FINAL BUILDING

________ FINAL ELECTRIC

________ FINAL ENCLOSURE (no PP)

________ FINAL BIO (no PP)

________ FINAL FIRE MARSHAL (no PP)

________ FINAL MECHANICAL/GAS

________ FINAL PLANNING (no PP)

________ FINAL PLUMBING

________ FINAL ROOF

FOR CERTIFICATE OF OCCUPANCY

FINAL HEALTH DEPT INSPECTION ________

FINISH ELEVATION CERTIFICATE ________

HURRICANE/IMPACT GLASS ________

IMPACT FEES DUE ________

OVERALL HEIGHT ________

SOLID WASTE ________

TERMITE CERTIFICATION ________

TRUSS PLANS ________

C.O. # ________

Rev 9/1/2011

BUILDING PERMIT APPLICATION
MONROE COUNTY GROWTH MANAGEMENT DIVISION

4/3/12

INTERNAL USE ONLY	DATE:	Received by:	PERMIT #: 12-1527		
	Complete if applicable: ☐	☐	☐	☐	☐ ATF
	☐ YES ☐ NO				
	LU District:	FLUM District:		Flood Panel:	Tier:

JOB SITE INFORMATION

RE #: (Tax Folio #)	00319492-001400	Job Address:	2047 Bahia Shores, Rd, Big Pine
Legal Description	Lot 14 Block/Unit N/A	Location Information	Key: No Name MM ___ Subdiv Dolphin Harbor Amd

OWNER INFORMATION Note: ALL OWNER BUILDERS MUST APPLY IN PERSON - F.S.489.103(7) **OWNER BUILDER** ☐Yes ☐No

Name	James Newton	Phone: (393-3024
Address (mailing) City,State,Zip	2047 Bahia Shores Rd, Big Pine Key, FL 33043	
Fee Simple Titleholder's (if applicable - other than owner), Address, City,State,Zip		Phone: ( )
Mortgage Lender's Name and Address		

Email Address Preference: ☒Yes ☐No If YES, please provide email address that communication, including correction requests, should be sent: [illegible]

CONTRACTOR INFORMATION (if applicable)		SUB & Other CONTRACTOR (if applicable)	
Construction Business Name	MARATHON ELECTRIC SIGN & LIGHT, INC	Other / AGENT	
Contact	RANDALL MEARNS	Electrical	
License #	EC [illegible]	Elevator	
Mailing Address	[illegible] AVIATION BLVD MARATHON, FL 33050	Mechanical	
		Plumbing	
Email	[illegible]electric@aol.com	Pool	
Phone	743-[illegible]	Roofing	
Bonding Company Name, Address City, State		Architect/ Engineer Name Address City, State	
Private Provider		Type of Private Provider	☐ Plan Review & Inspections ☐ Plan Review Only ☐ Inspection Only (application)

SCOPE OF WORK – Describe Job/Project

Install [illegible] service and [illegible] to house.

[illegible]	GROSS SQUARE FT:	ESTIMATED TOTAL COST: $ [illegible]
[illegible] ☐ YES ☐ NO	Check Roofing Permit: ☐ NEW ☐ RE-ROOF ☐ RE-COVER	
[illegible] ☐ YES ☒ NO		
Construction debris will be removed by: ☐ Applicant ☐ Specialty Contractor (Name):		

WARNING TO OWNER:

- A Notice of Commencement **must** be recorded & posted on the job site **before** the first inspection, and copy to the Building Dept.
- Failure to post the Notice of Commencement at the job site will result in the inability of our inspectors to offer an approved inspection.
- Your failure to record a Notice of Commencement may result in your paying twice for improvements to your property
- If you intend to obtain financing, consult with your lender or an attorney before commencing work or recording your Notice of Commencement.

ASBESTOS AGREEMENT: (Initial If Applicable: ____________)
As owner/contractor/agent of record for the construction applied for in this application, I agree that I will comply with the provisions of the Florida Statute 469.003 and to notify the DEP of my intent to demolish/remove a structure at the above address and remove asbestos, when applicable, in accordance with state and federal law.

SOLID WASTE ASSESSMENT:
Upon completion of the project for which I have made application for a Building Permit, I must pay the pro-rated residential solid waste assessment, or show proof of commercial service with a franchised commercial collector prior to a Certificate of Occupancy being issued.

OWNER'S AFFIDAVIT:

- Application is hereby made to obtain a permit to do the work and installations as indicated.
- I certify that no work or installation has commenced prior to the issuance of a permit and that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction.

"Notice: In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as water management districts, state agencies or federal agencies."
I understand that a separate permit (sub on a permit) must be secured for Electrical Work, Plumbing, Signs, A/C, etc as appropriate.
I hereby certify that all the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

Owner (print): James B. Newton
Signature: James B. Newton
Date: April 2, 2012

Qualifier (print): Randall Meadows
Signature: R Meadows
Date: 4/3/12

NOTARY as to Owner
Sworn to & subscribed to before me this 2nd day of April, 2012 he/she is personally known to me or has produced FL DL [illegible]
Identification and who did (did not) take an oath.
My Commission Expires: [illegible]

NOTARY as to Qualifier
Sworn to & subscribed to before me this 3rd day of April, 2012, he/she is personally known to me or has produced
Identification and who did (did not) take an oath.
My Commission Expires:

Notary Public State of Florida [illegible] Peterson My Commission [illegible]

[illegible]

Check codes that exist on the GROUND floor of the site proposed for permit:

CODES→	FLZ	[illegible]	LLF	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]
If ANY [illegible] code to the left is checked > Route to Floodplain FIRST
[illegible]
If ANY of the codes to the left are checked then
>Check if SOLD after [illegible] > Route to Floodplain
>Check if current owner had the [illegible]

PLAN & ENVIR	Bd Fee	$		[illegible] $	+ $	= $		[illegible]	[illegible]	$
	Site Rev	$		[illegible] $	A/C [illegible]	= $50		$2	[illegible]	$
	Plan Rev	$		[illegible] $	+ $	= $		$	[illegible]	[illegible]
[illegible]	Plan Rev	$		Mech $	+ $	= $		$	[illegible]	$ 11 —
	Admin.	$		Roof $	+ $	= $		$	[illegible]	52.07
	Site Inspctn	$		[illegible] $	+ $	= $		$	DBPR ED	$ .23
	[illegible]	$		[illegible] $	N/A	= $		$	[illegible]	$ 3.03
	[illegible]	$		[illegible] $		[illegible]	$		DCA ED	$ .23
FIRE	Plan Rev	$		[illegible]		[illegible]			[illegible]	[illegible]
	Admin.	$								

BUILDING OFFICIAL / ASSISTANT BUILDING OFFICIAL

APPROVED FOR ISSUANCE ____________ on DATE 4/5/12

MONROE COUNTY, FL

8 ITEMS OF 8 PERMIT RECEIPT OPERATOR: benderd
COPY # : 1

Sec:18 Twp:66 Rng:30 Sub: Blk: Lot:
RE: .....: 00319492001400

DATE ISSUED.....: 05/15/2012
RECEIPT #.....: 02000008131
REFERENCE ID # ...: 12101527
NOTES .....:

SITE ADDRESS .....: 2047 BAHIA SHORES RD
SUBDIVISION .....:
CITY .....: NO NAME KEY
IMPACT AREA .....:

OWNER .....: NEWTON JAMES B
ADDRESS .....:
CITY/STATE/ZIP ...: ARCHER, FL 32618

RECEIVED FROM ....: MARATHON ELECT
CONTRACTOR .....: MEARNS, FRANK RANDALL LIC # 00502
COMPANY .....: MARATHON ELEC SIGN & LIGHT INC
ADDRESS .....: 10690 AVIATION BLVD
CITY/STATE/ZIP ...: MARATHON, FL 33050
TELEPHONE .....: (305) 743-5805

FEE ID	UNIT	QUANTITY	AMOUNT	PD-TO-DT	THIS REC	NEW BAL
CONT-INVES	FLAT RATE	1.00	11.00	0.00	11.00	0.00
DBPR	UNITS	150.00	2.03	0.00	2.03	0.00
DBPR RE ED	UNITS	150.00	0.23	0.00	0.23	0.00
DCA	UNITS	150.00	2.03	0.00	2.03	0.00
DCA RE ED	UNITS	150.00	0.23	0.00	0.23	0.00
E- 4J SUB	SERVICES	1.00	50.00	0.00	50.00	0.00
E- E PLAN	UNITS	1.00	50.00	0.00	50.00	0.00
T- 1	FLAT RATE	1.00	3.00	0.00	3.00	0.00
TOTAL PERMIT :			118.52	0.00	118.52	0.00

NOTE: THIS RECEIPT HAS FEE CREDITS TOTALING: 52.00

METHOD OF PAYMENT	AMOUNT	REFERENCE NUMBER
CHECK	118.52	17120
TOTAL RECEIPT :	118.52	

MONROE COUNTY, FL

2 ITEMS OF 2 PERMIT RECEIPT OPERATOR: banderd
COPY # : 1

Sec:18 Twp:66 Rng:30 Sub: Blk: Lot:
RE: .....: 00319492001400

DATE ISSUED.....: 04/06/2012
RECEIPT #.....: 02000007614
REFERENCE ID # ...: 12101527
NOTES .....:

SITE ADDRESS .....: 2047 BAHIA SHORES RD
SUBDIVISION .....:
CITY .....: NO NAME KEY
IMPACT AREA .....:

OWNER .....: NEWTON JAMES B
ADDRESS .....:
CITY/STATE/ZIP ...: ARCHER, FL 32618

RECEIVED FROM ....: MARATHON ELECT.
CONTRACTOR .....: MEARNS, FRANK RANDALL LIC # 00502
COMPANY .....: MARATHON ELEC SIGN & LIGHT INC
ADDRESS .....: 10690 AVIATION BLVD
CITY/STATE/ZIP ...: MARATHON, FL 33050
TELEPHONE .....: (305) 743-5805

FEE ID	UNIT	QUANTITY	AMOUNT	PD-TO-DT	THIS REC	NEW BAL
B- 01 APED	FLAT RATE	1.00	2.00	0.00	2.00	0.00
B- 1B APPL	FLAT RATE	1.00	50.00	0.00	50.00	0.00
TOTAL PERMIT :			52.00	0.00	52.00	0.00

METHOD OF PAYMENT	AMOUNT	REFERENCE NUMBER
CHECK	52.00	17034
TOTAL RECEIPT :	52.00	

File 121-1527

Marathon Electric Sign & Light, Inc.
10690 Aviation Blvd.
Marathon, FL 33050
305-743-5805 Fax 305-743-0922

JOB Newton

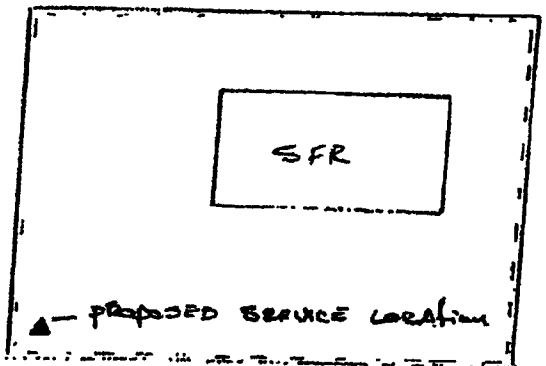
SHEET NO. _____ OF _____

CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

SCALE _____

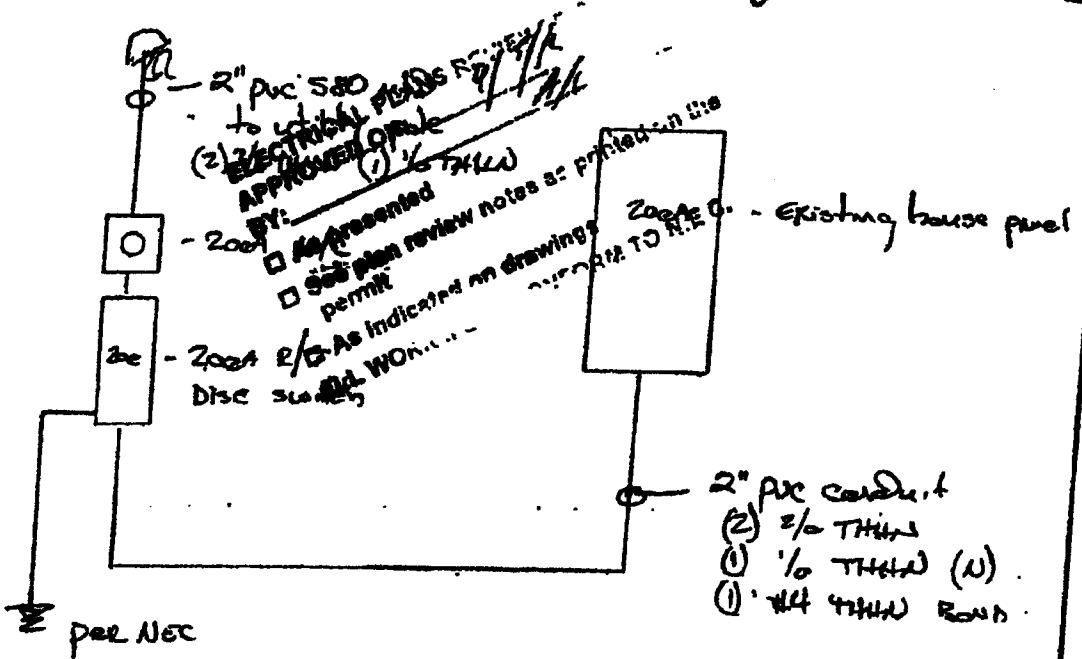
SITE PLAN



2047 BAHIA SHORES RD

Disconnect near by NEC 225.32

Detail



MONROE COUNTY
BUILDING PERMIT

APPLY OPERATOR: benderd	ISSUE OPERATOR: benderd
APPLICATION / PERMIT NUMBER: 12101527	PERMIT DATE: 05/15/2012
APPLICATION DATE: 04/03/2012	DCA DATE: -
PARCEL ID: 00319492001400	

LEGAL DESCRIP: BK LT 14 AMENDED PLAT OF DOLPHIN
H
ARBOUR NO NAME KEY
PB6-116 OR469-999-1000 OR582-105/107 OR1
070-514(JB)

APPLIED VALUE: $600

PERMIT TYPE: 51
PERMIT TYPE NAME: ELECTRIC

OWNER'S NAME/ADDRESS/PHONE	GENERAL CONTRACTOR
NEWTON JAMES B	MARATHON ELEC SIGN & LIGHT INC
	F:305.743.0922
	MARATHON, FL 33050
ARCHER, FL 32618	(305) 743-5805
3053933024	

SUBCONTRACTORS:

TYPE	ID	NAME
NO SUBCONTRACTORS ASSIGNED		

CONST ADDRESS/ CONDITIONS OF PERMIT:
2047 BAHIA SHORES RD DOLPHIN HARB. NO NAME
NEW SERVICE
****NOTICE OF COMMENCEMENT NOT REQUIRED*****
PERMIT APPROVAL TO INSTAL NEW 200 AMP ELECTRIC SERVICE AND SUBFEED TO HOUSE PER APPROVED PLANS IN FILE.
****
PLANNING DEPARTMENT DID NOT REVIEW THIS APPLICATION.
THERE MAY BE DEVELOPMENT AND/OR LAND USE ISSUES ON THE SITE THAT ARE NO LONGER IN COMPLIANCE WITH A COUNTY REGULATION(S) OR ESTABLISHED UNLAWFULLY WITHOUT THE BENEFIT OF PROPER APPROVALS.
APPROVAL OF THIS PERMIT DOES NOT DEEM ALL

MONROE COUNTY
BUILDING PERMIT

DEVELOPMENT AS CONFORMING OR DEEM UN-LAWFUL DEVELOPMENT AS LAWFUL. THE GROWTH MANAGEMENT DIVISION RESERVES THE RIGHT TO REQUIRE THAT SUCH DEVELOPMENT BE BROUGHT INTO COMPLIANCE THROUGH THE PROPER APPROVAL PROCESS OR TERMINATED UPON FUTURE DISCOVERY.

****

NO OTHER WORK THIS PERMIT.
ALL TRASH AND DEBRIS TO BE REMOVED TO A LEGAL DUMP SITE.
DEEMED NON-DEVELOPMENT
DCA EXEMPT

PLANS REVIEW NOTES:

OFFICIAL		* NO NOTES *
MAR-BLDG	04/04/2012 benderd	L * NO NOTES *
MAR-BLDG	04/05/2012 benderd	L * NO NOTES *
ELECT	04/05/2012 kasprzaa	P * NO NOTES *
FINAL	04/09/2012 maldonam	L * NO NOTES *

In consideration of the granting of this permit, it is agreed that in all respects the work will be performed and completed in accordance with the permitted plans and the applicable Building, Zoning and Environmental codes Monroe County, State of Florida and Federal agencies.
This permit may be revoked at any time upon the violation of any of the provisions of said laws, ordinances or rules and regulations or upon any change in the plans and specifications unauthorized by this department.

In addition to the requirements of this permit, there may be additional restrictions applicable to this property that may be found in the public records of this county, and there may be additional permits required from other governmental entities such as Water Management Districts, State Agencies, and/or Federal Agencies.

Permits shall expire and become null and void if work, as defined in this permit, is not commenced within 180 days from the date of issuance date or 180 days from the DCA date and does not meet 180 day inspections thereafter unless extended by the Building Official.

R Mentes
OWNER/CONTRACTOR/CONTRACTOR AGENT

5/15/12
BUILDING DEPARTMENT

Karl D. Borglum
Property Appraiser
Monroe County, Florida

office (305) 292-342
fax (305) 292-350
Website tested on Internet Explore

GIS Mapping requires Adobe Flash 10.3 or higher.

Property Record View

Alternate Key: 1393657 Parcel ID: 00319492-001400

Ownership Details

Mailing Address:
NEWTON JAMES B
2047 BAHIA SHORES RD
BIG PINE KEY, FL 33043

Property Details

PC Code: 01 - SINGLE FAMILY
Millage Group: 110H
Affordable Housing: No
Section-Township-Range: 18-66-30
Property Location: 2047 BAHIA SHORES RD NO NAME KEY
Subdivision: DOLPHIN HARBOR AMD
Legal Description: LT 14 AMENDED PLAT OF DOLPHIN HARBOUR NO NAME KEY PB6-116 OR469-999-1000 OR552-105/107 OR1070-514

Show Parcel Map - Must have Adobe Flash Player 10.3 or higher

Exemptions

Exemption	Amount
44 - ADDL HOMESTEAD	25,000.00
39 - 25000 HOMESTEAD	25,000.00

Land Details

Land Use Code	Frontage	Depth	Land Area
010C - RESIDENTIAL CANAL	70	110	7,700.00 SF

Building Summary

Number of Buildings: 1
Number of Commercial Buildings: 0
Total Living Area: 1404
Year Built: 1997

Building 1 Details

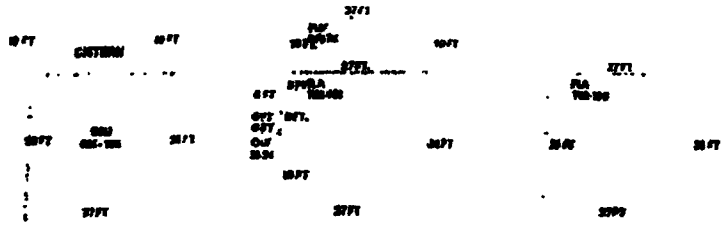
Building Type R1	Condition A	Quality Grade 450
Effective Age 14	Perimeter 212	Depreciation % 15
Year Built 1997	Special Arch 0	Grnd Floor Area 1,404
Functional Obs 0	Economic Obs 0	

Inclusions: R1 includes 1 3-fixture bath and 1 kitchen.

Roof Type GABLE/HIP	Roof Cover ASPHALT SHINGL	Foundation CONC PILINGS
Heat 1 NONE	Heat 2 NONE	Bedrooms 3
Heat Src 1 NONE	Heat Src 2 NONE	

Extra Features:

2 Fix Bath	0	Vacuum	0
3 Fix Bath	1	Garbage Disposal	0
4 Fix Bath	0	Compactor	0
5 Fix Bath	0	Security	0
6 Fix Bath	0	Intercom	0
7 Fix Bath	0	Fireplaces	0
Extra Fix	0	Dishwasher	0



Sections:

Nbr	Type	Ext Wall	# Stories	Year Built	Attic A/C	Basement %	Finished Basement %	Area
0	OUF		1	1997				36
0	SBU	1:WD FRAME	1	1997				885
0	PUF		1	1997	N	0.00	0.00	270
0	FLA	1:WD FRAME	1	1997	Y	0.00	0.00	702
0	FLA	1:WD FRAME	1	1997	Y	0.00	0.00	702

Misc Improvement Details

Nbr	Type	# Units	Length	Width	Year Built	Roll Year	Grade	Life
1	FN2:FENCES	1,080 SF	270	4	1996	1997	2	30
2	CI3:CISTERNS	10,000 GA	0	0	1996	1997	3	60
3	DK3:CONCRETE DOCK	70 SF	70	1	2000	2001	1	60

Appraiser Notes

91 10003929 RENEWAL OF BUILDING PERMIT 7/2/97.

Building Permits

Bldg	Number	Date Issued	Date Completed	Amount	Description	Notes
	10105722	10/08/2010		1,500		PAVED WALKWAY ALONG BACK OF PROPERTY ON CANAL WITH RAILINGS
	91-2352	10/01/1994	11/01/1997	74,966		SFR
	92-3929	03/01/1992	11/01/1997	40,000		RENEWAL
	95-553	05/01/1995	11/01/1997	200		FENCE
	04-0946	02/09/2004	06/22/2004	800		RESIDENTIAL

Parcel Value History

Certified Roll Values.

View Taxes for this Parcel.

Roll Year	Total Bldg Value	Total Misc Improvement Value	Total Land Value	Total Just (Market) Value	Total Assessed Value	School Exempt Value	School Taxable Value
2011	152,703	10,269	130,961	293,933	254,846	25,000	229,846
2010	152,084	9,956	134,750	296,789	251,080	25,000	226,080
2009	172,810	12,809	173,250	358,868	244,479	25,000	219,479
2008	174,610	12,906	177,100	364,616	244,235	25,000	219,235
2007	219,253	12,990	177,100	409,369	237,121	25,000	212,121
2006	221,490	13,340	219,450	454,280	231,336	25,000	206,336
2005	210,416	13,730	219,450	443,596	224,600	25,000	199,600
2004	165,481	14,077	38,500	218,058	218,058	25,000	193,058
2003	165,481	14,467	38,500	218,448	218,448	25,000	193,448
2002	71,412	14,856	38,500	124,768	124,768	0	124,768
2001	71,412	10,921	30,800	113,133	113,133	0	113,133
2000	71,412	6,034	30,800	108,246	108,246	0	108,246
1999	71,412	6,177	21,252	98,841	98,841	0	98,841
1998	71,412	6,267	21,252	98,931	98,931	0	98,931
1997	0	0	21,252	21,252	21,252	0	21,252
1996	0	0	21,252	21,252	21,252	0	21,252
1995	0	0	21,252	21,252	21,252	0	21,252
1994	0	0	21,252	21,252	21,252	0	21,252

1993	0	0	21,252	21,252	21,252	0	21,252
1992	0	0	21,252	21,252	21,252	0	21,252
1991	0	0	21,252	21,252	21,252	0	21,252
1990	0	0	21,252	21,252	21,252	0	21,252
1989	0	0	18,095	18,095	18,095	0	18,095
1988	0	0	16,170	16,170	16,170	0	16,170
1987	0	0	16,170	16,170	16,170	0	16,170
1986	0	0	16,170	16,170	16,170	0	16,170
1985	0	0	16,066	16,066	16,066	0	16,066
1984	0	0	16,066	16,066	16,066	0	16,066
1983	0	0	16,066	16,066	16,066	0	16,066
1982	0	0	16,066	16,066	16,066	0	16,066

Parcel Sales History

NOTE: Sales do not generally show up in our computer system until about two to three months after the date of sale. If a recent sale does not show up in this list, please allow more time for the sale record to be processed. Thank you for your patience and understanding.

Sale Date	Official Records Book/Page	Price	Instrument	Qualification
10/1/1968	1070 / 514	22,000	WD	Q

Monroe County Property Appraiser
Karl D. Borglum
P.O. Box 1176
Key West, FL 33041-1176

EXHIBIT K

DISPLAY THIS CARD ON JOB SITE VISIBLE FROM THE STREET

MONROE COUNTY

BUILDING PERMIT

(COMPLETE PERMIT ON FILE AT LOCAL BUILDING OFFICE)

PERMIT NUMBER	12101527
DATE ISSUED	05/15/2012
DEO DATE	EXEMPT
PURPOSE	NEW SERVICE
OWNER	NEWTON JAMES B
CONTRACTOR	MARATHON ELEC SIGN & LIGHT INC
SITE ADDRESS	2047 BAHIA SHORES RD
LEGAL DESCRIPTION	BK LT 14 AMENDED PLAT OF DOLPHIN
ZONING	-
FLOOD ZONE	-

WARNING TO OWNER:

YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

ATTENTION

1. "Owner Builder" must be available for all inspections.
2. No inspections will be made unless permit card is displayed and approved plans are readily available.
3. This permit shall become null and void unless the work authorized is commenced (and receives an approved inspection on this card) within one-hundred and eighty (180) days after the effective date of the permit.
4. Once commenced, (with an approved inspection) this permit will remain active as long as there is an approved inspection within one-hundred and eighty (180) days of the last approved inspection.
5. No "partial" inspections of any sort will count toward satisfying the 180 day requirement.
6. Certificate of Occupancy must be secured before this building can be used or inhabited for any purpose.
7. Do not remove this card until issuance of a Certificate of Occupancy.
8. For inspections call or e-mail your local Building Department Office:
   UPPER KEYS: (305) 453-8725
   E-MAIL: upperkeysinspections@monroecounty-fl.gov
   MIDDLE & LOWER KEYS: (305) 289-2542 OR (305)743-5405
   E-MAIL: lowerkeysinspections@monroecounty-fl.gov

Site 12-1527

Marathon Electric Sign & Light, Inc.
10690 Aviation Blvd.
Marathon, FL 33050
305-743-5805 Fax 305-743-0922

JOB Newton

SHEET NO. _____ OF _____

CALCULATED BY _____ DATE _____

CHECKED BY _____ DATE _____

SCALE _____

Site plan

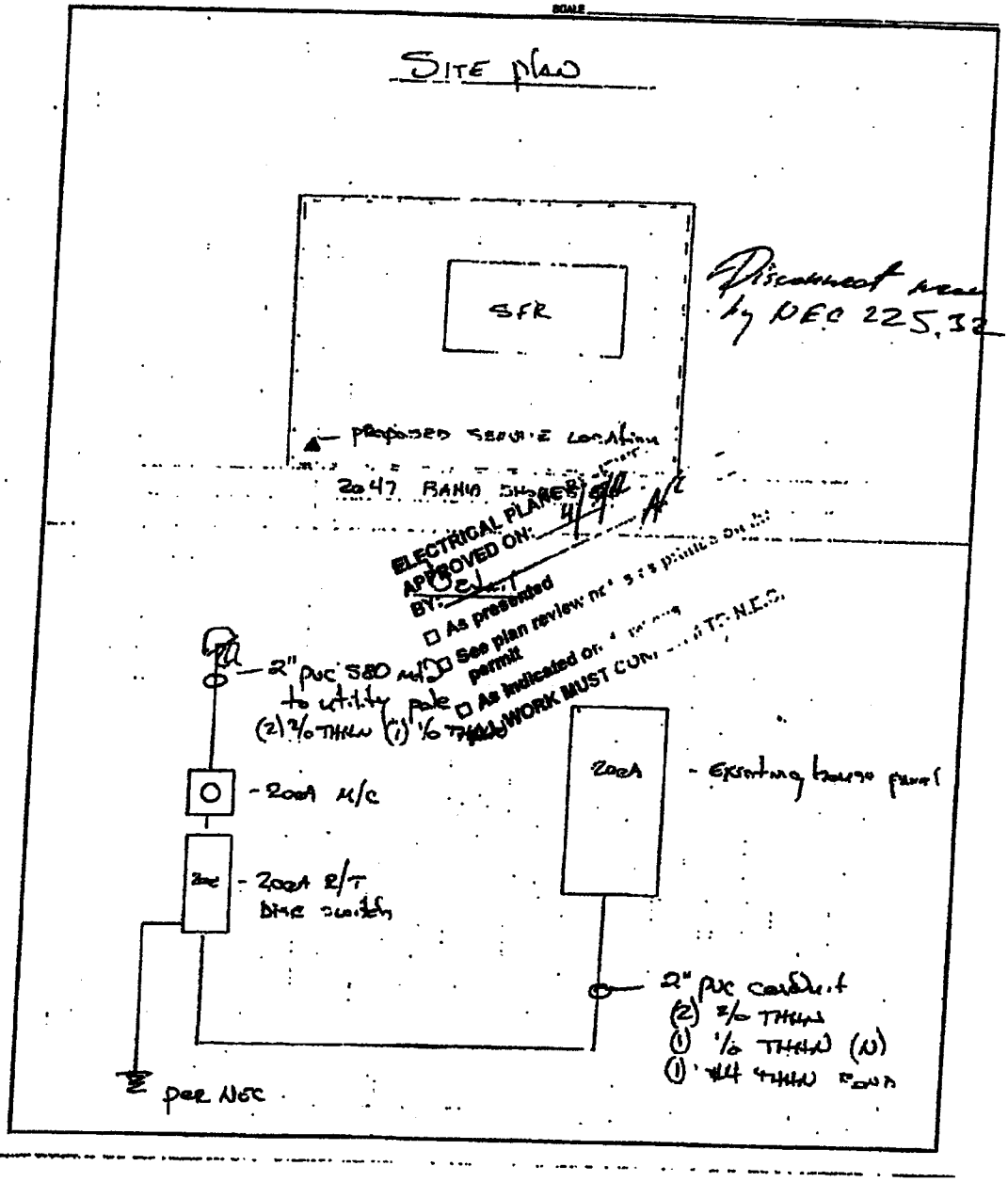


EXHIBIT L

County of Monroe
Growth Management Division

Office of the Director
2798 Overseas Highway
Suite #400
Marathon, FL 33050
Voice: (305) 289-2517
FAX: (305) 289-2854

We strive to be caring, professional and fair

Certified Mail: 7006 0810 0006 5051 9381
June 12, 2012

Mr. James Newton
2047 Bahia Shores Rd.
Big Pine Key, FL 33034

RE: MONROE COUNTY BUILDING PERMIT # 121-1527

Dear Mr. Newton:

The Monroe County Growth Management Division has determined permit # 121-1527 was issued in error due to the fact that the permit was not reviewed by the Department of Planning & Environmental Resources for consistency with the adopted Comprehensive Plan and the Land Development Regulations.

Permit #121-1527 is inconsistent with goals, objectives and policies of the Monroe County Comprehensive Plan, including, but not limited to: 1) Policy 102.8.5, that seeks to discourage the extension of facilities and services, including electricity, to Coastal Barrier Resources System units, and to protect the environmental and community character of local communities, such as No Name Key; and 2) Objective 101.11, which directs future growth away from environmentally sensitive land and towards established development areas served by existing public facilities.

Permit # 121-1527 authorizes the installation of new 200 amp electrical service and subfeed to a residential dwelling unit on No Name Key. No Name Key is almost entirely within a unit of the Coastal Barrier Resources System (CBRS). The Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier Resources System. The CBRA legislation is specifically designed to restrict Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers. More specifically the intent of the CBRA legislation is to minimize the loss of human life, reduce the wasteful expenditure of Federal revenues, and reduce damage to habitat and other valuable natural resources of coastal barriers.

Additionally, the service authorized by Permit # 121-1527 would depend on the extension of an electrical line to No Name Key that would pass to or through lands designated as a unit of the CBRS. There is currently no electrical line for the subject property to connect to. Permit # 121-1527 would;

therefore, invite a violation of Section 130-122 of the County Code (attached as Exhibit A) that prohibits the extension of specific types of public utilities, including electricity, to or through lands designated as a unit of the CBRS.

The Planning Department notes that it previously determined the issue of whether No Name Key may be electrified in a May 13, 1998, letter of understanding by Timothy J. McGarry, AICP (then Planning Director). The Planning Department's position against the electrification of No Name Key was affirmed by the Planning Commission in Resolution No. P17-99, which was in turn affirmed by the 16th Judicial Circuit in *Taxpayers for the Electrification of No Name Key, Inc., et. al. v. Monroe County* (Case No. 99-819-CA-19). The letter of understanding and Resolution No. P17-99 are attached hereto, as Exhibits B and C.

Note, the current, adopted 2010 Comprehensive Plan Goals, Objectives and Policies are provided in Exhibit D. This is provided as an update to the policies cited in the May 13, 1998, letter of understanding by Timothy J. McGarry, AICP (then Planning Director), which provides the Planning Department's position against the electrification of No Name Key which was affirmed as noted above.

Your permit is hereby revoked based on the aforementioned and pursuant to MCC Section 6-101 Building permit application process, and Section 6-104 Revocation of Permits, which read as follows:

Sec. 6-101. - Building permit application process.

(c) *Permit issuance.* A building permit shall only be issued if the building official finds that it is consistent with the Florida Building Code and this chapter and is compliant with part II of this Code, as determined by the planning director.

Sec. 6-104. - Revocation of permits

The building official may suspend or revoke any building permit under any one of the following circumstances:

(3) The permit was issued in error and, in the opinion of the planning director, the building official, or the fire marshal, the error would result in a threat to the health, safety or welfare of the public.

The Planning Director has determined that Permit # 121-1527 was issued in error and; therefore, revoke Permit # 121-1527.

You may appeal decisions made in this letter. Appeal applications to the Planning Commission may be found on the Planning and Environmental Resources portion of the Monroe County website, or by calling the Growth Management Division at (305) 289-2500. The appeal must be filed with the County Administrator, 1100 Simonton Street, Gato Building, Key West, FL 33040, within thirty (30) calendar days from the date of this letter. In addition, please submit a copy of your application to the Planning Commission Coordinator, Monroe County Planning & Environmental Resources Department, 2798 Overseas Highway, Suite 410, Marathon, FL 33050.

Townsley Schwab
Sr. Director of Planning & Environmental Resources

Jerry Smith
Building Official

Attachments: Exhibits A,B,C,D

Exhibit A

Monroe County Land Development Regulation

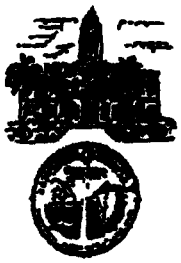
Sec. 130-122. - Coastal barrier resources system overlay district.

(a) Purpose. The purpose of the coastal barrier resources system overlay district is to implement the policies of the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the coastal barrier resources system.

(b) Application. The coastal barrier resources system overlay district shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a coastal barrier resources system unit on current flood insurance rate maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: central wastewater treatment collection systems; potable water; electricity, and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of the ordinance from which this section is derived and shall not apply to wastewater nutrient reduction cluster systems.

(Code 1979, § 9.5-258; Ord. No. 43-2001, § 1)

COUNTY of MONROE
KEY WEST FLORIDA 33040



Monroe County Planning
2798 Overseas Hwy
Suite 410
Marathon, Florida 33050

May 13, 1998

Franklin Greenman
Greenman & Manz
Gulfside Village, Suite 40
5800 Overseas Highway
Marathon, FL 33050

RE: Letter of understanding for the electrification of No Name Key

Dear Frank:

Pursuant to Sec. 9.5-43 of the Monroe County Code, Amended, this document shall constitute a letter of understanding. On March 25, 1998, a pre-application conference regarding the above-referenced project was held in the Marathon Planning Department office.

Attendees of the meeting included Franklin Greenman, Richard Malahi, Ernest and Barbara Damon, Tracy Bockenhauer, Terry and Pam Morrison, Joe and Dira Juhasz, Aldona and Bernard Sicsek, Harry and Janet Wallis and Francisco Pichel (hereafter referred to as "the applicant"), Elizabeth Trotter, Court Reporter, and Antonia Garli, Development Review Coordinator (hereafter referred to as "the Planning staff").

The applicant is proposing to provide electricity to the residents of No Name Key.

The Planning Department finds that the proposal is inconsistent with both chapters 163 and 380 of the Florida Statutes and the Monroe County Year 2010 Comprehensive Plan. Pertinent facts related to this issue are listed below:

The intent of chapter 163 of the Florida Statutes is, in part, to cause local governments to encourage appropriate use of land, water, and resources, consistent with the public interest; and deal effectively with future problems that may result from the use and development of land within their jurisdictions.

Exhibit B
PLAINTIFF'S EXHIBIT
A
9-22-01 C.M.

Through the process of comprehensive planning, it is intended that units of local government can preserve, promote, protect and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare; prevent overcrowding of land and avoid undue concentration of population... and conserve, develop, utilize, and protect natural resources within their jurisdictions.

Chapter 380 of the Florida Statutes designates the Florida Keys as an area of critical state concern in part in order to protect the natural resources and environment, conserve and promote the community character, and establish a land use management system that promotes orderly and balanced growth in accordance with the capacity of available and planned public utilities and services.

Chapter 380 lists twelve principles for guiding development with which all local regulations and programs in the Florida Keys must be consistent. Relevant to your proposal are the following principles:

To protect shoreline and marine resources, including mangroves, coral reef formations, wetlands, fish and wildlife and their habitats;

To protect upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation, dune ridges and beaches, wildlife and their habitat;

To ensure maximum well-being of the Florida Keys and its citizens through sound economic development;

To limit adverse impacts of development on the quality of water throughout the Florida Keys;

To enhance natural scenic resources, promote the aesthetic benefits of the natural environment and ensure that development is compatible with the unique historic character of the Florid Keys;

To protect the value, efficiency, cost-effectiveness, and amortized life of existing and proposed major public investments including City Electric service;

To protect the public health, safety and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource.

The Monroe County Year 2010 Comprehensive Plan has been found to be consistent with both Chapters 163 and 380 of the Florida Statutes. As you know, the thrust of both state planning law and the Monroe county Year 2010 comprehensive plan is to direct growth toward existing developed areas and to discourage growth in areas that are environmentally sensitive and/or areas that continue to be in their natural state.

PRHOWARE/TXTDR

The majority of the acreage on No Name Key remains undeveloped in its native state. No commercial development exists on the island and the limited industrial uses are in the process of being phased out in accordance with settlement agreements with the Florida Department of Community Affairs. Residential development is sparse with the concentration of homes being located within three subdivisions.

No Name Key is unique, not only because it lacks electrical connections, but also because it is remote from US 1, is located entirely within a National Wildlife Refuge and almost entirely within the Coastal Barrier Resource System (CBRS). Refuge and CBRS status were necessitated by the need to reduce the exposure of residents to natural hazards and to reduce adverse impacts on endangered species.

The proposed project is inconsistent with the following goals, objectives and policies of the comprehensive plan:

GOAL 101 Monroe County shall manage future growth to enhance the quality of life, ensure the safety of County residents and visitors and protect valuable natural resources.

Objective 101.11 Monroe County shall implement measures to direct future growth away from environmentally sensitive land and toward established development areas served by existing public facilities.

GOAL 102 Monroe County shall direct future growth to lands which are intrinsically most suitable for development and shall encourage conservation and protection of environmentally sensitive lands.

Objective 102.8.X Monroe county shall take actions to discourage private development in areas designated as units of the Coastal Barrier Resource System.

Policy 102.8.1 Monroe County shall discourage developments which are proposed in units of the Coastal Barrier Resource System (CBRS) by methods including, but not limited to, negative points in the permit allocations and point system.

Policy 102.8.5 Upon adoption of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS units....

Objective 102.9 Monroe County shall complete and implement a cooperative land management program for private and county-owned lands located within and adjacent to parks and conser-

vation lands which are owned by the state and federal governments in the Florida Keys.

Policy 102.9.1 Monroe County shall discourage developments which are proposed within Conservation Land Protection Areas by methods including, but not limited to, negative points in the permit allocation and point system.

Policy 102.9.3 ... Conservation lands for which a Conservation Protection Area shall be designated include the following:

1. Fort Jefferson National Monument
2. National Key Deer Refuge....

GOAL 103 Monroe County shall implement regulations and programs to address the special environmental protection and/or traffic circulation needs of those areas of Big Pine Key....

Objective 103.1 Monroe County shall regulate future development and coordinate the provision of public facilities on Big Pine Key and No Name Key, consistent with the Goals, Objectives and Policies of this Comprehensive Plan, in order to:

(a) protect the Key deer;
(b) preserve and enhance the habitat of the Key deer;
(c) limit the number of additional vehicular trips from other islands to Big Pine Key;
(d) maintain the rural, suburban, and open space character of Big Pine Key;
(e) prevent and reduce adverse secondary and cumulative impacts on Key deer.

Policy 103.1.1 The purpose of this policy is to insure the long-term viability of the Key deer by directing development away from those areas necessary to protect the Key deer habitat from the impacts of development. it is recognized that the viability of the endangered Key deer depends on the control of both direct (primary) and indirect (secondary) impacts resulting from development....

Policy 103.1.10 Upon adoption of the Comprehensive Plan, Monroe County shall require that the following analyses be undertaken prior to finalizing plans for the siting of any new public facilities or the significant expansion of existing public facilities required to support development on Big Pine Key and No Name Key:

1. assessment of needs;
2. evaluation of alternative sites and design alternatives for the selected site; and

3. assessment of impacts on surrounding land uses and natural resources.

The assessment of impacts on surrounding land uses and natural resources will evaluate the extent to which the proposed public facility involves public expenditures in the coastal high hazard area and within environmentally sensitive areas, including disturbed salt marsh and buttonwood wetlands, undisturbed beach/ berm areas, units of the Coastal barrier resource System, undisturbed uplands, habitats of species considered to be threatened or endangered by the state and/or federal governments, offshore islands, and Conservation Land Protection Areas. Monroe County shall require that public facilities be developed consistent with the criteria described in Policy 101.1.1 and shall support whenever possible the location of public facilities off of Big pine Key and No Name Key.

GOAL 207 Monroe County shall protect and conserve existing wildlife and wildlife habitats.

Objective 207.7 Monroe County shall implement activities to prohibit the destruction of the federally-designated Key deer and to protect its habitat.

Policy 207.7.1 Monroe County shall regulate future development and coordinate the provision of public facilities on Big Pine Key and No Name Key, consistent with the goals, objectives and policies of this Comprehensive Plan and in order to:

1) protect the Key deer;
2) preserve and enhance the habitat of the Key Deer; and
3) maintain the rural, suburban, and open space characteristics of Big Pine Key.

GOAL 209 Monroe County shall discourage private land uses on its mainland, offshore islands and undeveloped coastal barriers, and shall protect existing conservation lands from adverse impacts associated with private land uses on adjoining lands.

Objective 209.3 Monroe County shall take immediate actions to discourage private development in areas designated as units of the Coastal Barrier Resource System.

GOAL 215 Monroe County shall provide the necessary services and infrastructure to support existing and new development proposed by the Future land Use Element while limiting public expenditures which result in the loss of or adverse impacts to environmental resources in the Coastal Zone.

Objective 218.2 By January 4, 1997, Monroe County shall initiate programs which require exploration of feasible alternatives to funding of public facilities and infrastructure which will result in the loss of or damage to significant coastal or natural resources, including, but not limited to wilderness areas, wildlife habitats, and natural vegetative communities.

Policy 218.2.1 By January 4, 1997, Monroe County shall adopt Land Development regulations which require consideration of feasible design alternatives for new public facilities and infrastructure proposed within the coastal zone in order to minimize adverse impacts to natural resources.

GOAL 1301 Monroe County shall promote and encourage intergovernmental coordination between the County, the municipalities of Key West, Key Colony Beach and Layton; the Counties of Dade and Collier; regional, state and federal governments and private entities in order to anticipate and resolve present and future concerns and conflicts.

Objective 1301.7 Monroe County shall implement mechanisms to identify and resolve intergovernmental coordination needs pertaining to environmental issues and natural resource protection.

Policy 1301.7.12 By January 4, 1997, Monroe County shall initiate discussions with the FKAA and providers of electricity and telephone service to assess the measures which could be taken to discourage or prohibit extension of facilities and services to Coastal Barrier Resource Systems units.

Taken collectively, the goals, objectives and policies of the Monroe County year 2010 comprehensive plan attest to the County's position that all development, including electrification, must be discouraged on No Name Key. In support of this position, the County, as well as state and federal authorities, have expended (and continue to expend) considerable funds on the purchase of lands on No Name Key in an effort to ensure that the primary and secondary impacts of development will not occur on the island.

Pursuant to Sec. 9.5-41 of the Monroe County Land Development Regulations, you are entitled to rely upon the representations set forth in this letter of understanding as accurate under the regulations currently in effect. However, the Planning Department acknowledges that all items required as part of the application for development approval may not have been addressed at the March 25, 1998, meeting, and consequently reserves the right for additional departmental comment.

We trust that this information is of assistance. If you have any questions regarding the contents of this letter, or if we may further assist you with your project, please feel free to contact our offices (305) 289-2500.

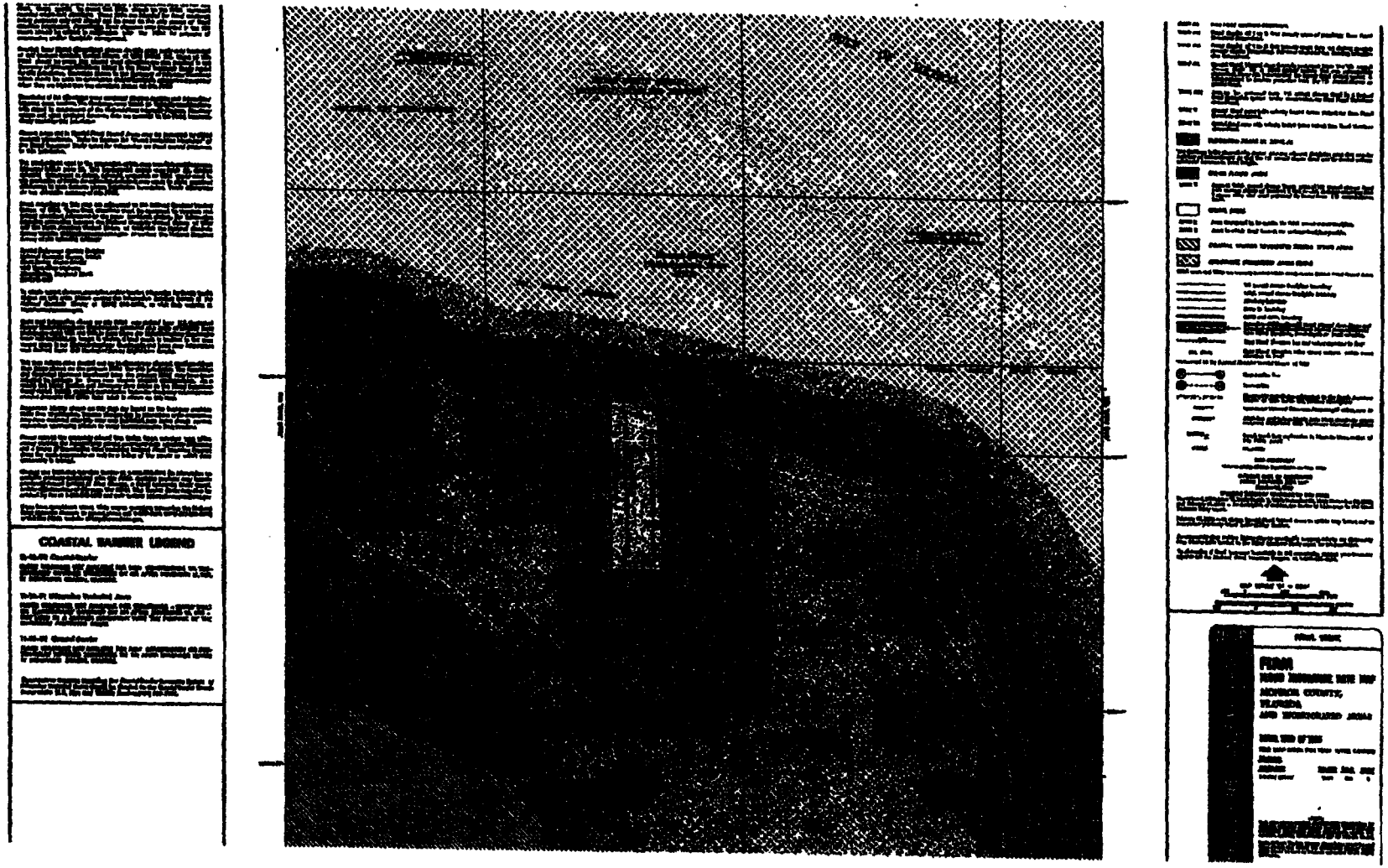
Very truly yours,

Timothy J. McGarry, AICP
Planning Director

TJM/ag

cc: James Roberts, County Administrator
Larry Thompson, General Manager, City Electric System
Richard Grosso
Robert L. Harman, Director of Growth Management
Antonia Gerli, AICP, Development Review Coordinator

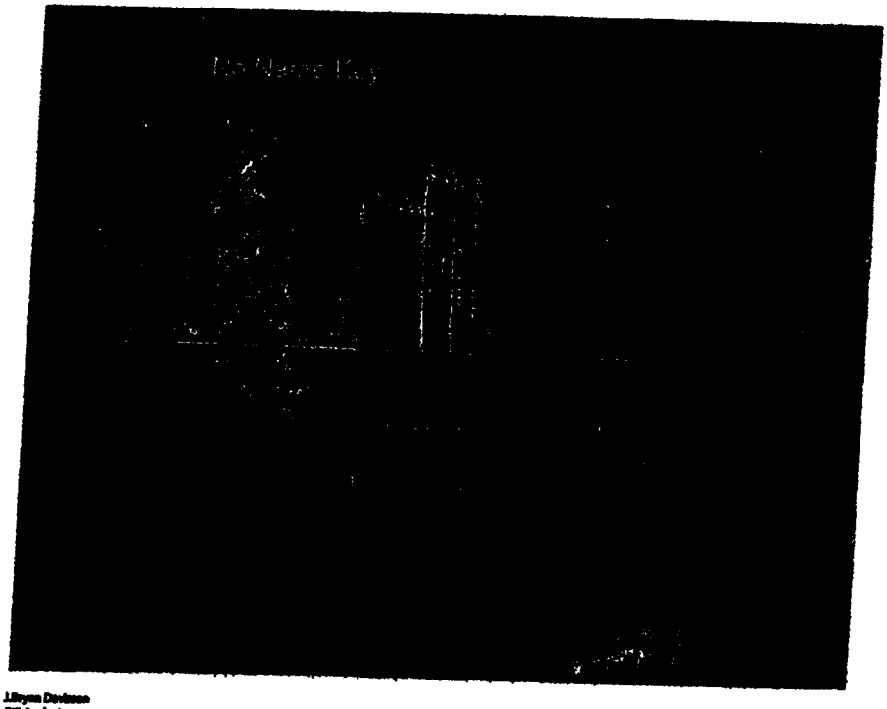
EXHIBIT M



COASTAL BARRIER LEGEND

From: [redacted]
Date: [redacted]
To: [redacted]
Subject: RE: No Name Key - CIRS
Thank you!

From: Davisson-Bryan
Sent: Wednesday, June 06, 2012 11:04 AM
To: Steinmetz-Hoyle
Subject: No Name Key - CIRS



J.Bryan Davisson
GIS Analyst
Monroe County - Growth Management - Geographic Information Systems
2798 Overseas Highway, Suite 410
Marathon, FL 33050

Phone: 305-289-2533
Fax: 305-289-2536

EXHIBIT N

A This permit, I agree, does not provide new development or a new structure.

Q So we're in agreement that this permit solely deals with a subfeed on site?

A Yes.

Just make sure that I clarify what I just said. It is development based on the code. It's not a new housing unit.

Q A new ROGO allocation --

A Right.

Q -- or residential unit?

A Right.

Q So you agree this permit does not invoke the ROGO or residential allocation system?

A That's right.

Q And it's simply your contention is that although it's development, it's development solely for a property that already has an existing home?

A Yes.

Q If you could turn to the slides that starts with the policies. The first slide, you've discussed in detail Policy 102.8 that states that Monroe County shall take action to discourage private development in areas designated as units of the CBRS. I paraphrased the end. I apologize.

You would agree, again, Mr. Newton is not in the CBRS?

A Yes.

Q And you would agree that Mr. Newton's -- well, let me withdraw or rephrase that. You would agree that the -- that discouragement in this instance is not a prohibition of private development in the CBRS?

A Yes.

Q All right. If you look at Policy 102.8.5, you stated that was one of the other justifications for the denial of the permit?

A I stated that in reading all of the policies together, it's the County's position that it's the intent of the policies combined with the code that electrification should not be made to the No Name Key area that's in a CBRS, to or through.

Q Well, is Mr. Newton in a CBRS? I think we've established he's not.

A I said to or through.

Q Okay. Aren't there other areas in the County that are located or surrounded by CBRS areas?

A I haven't verified that, but I assume there would be.

Q And do you know if there's been development in other CBRS areas?

A What kind of development?

Q Well, specifically if there's been electric permits pulled for properties located in a CBRS?

A I stated that earlier, yes.

Q There has been?

A Mm-hmm.

Q And has it been these permits pulled since the adoption of 043-2001?

A Help me out with what that is.

Q 0423, that's the Section 130-122 of the land development regulations.

A I have never evaluated the date when that was adopted compared to the date of the permits that were issued. I don't know.

Q In Policy 102.8.5, which is part of the contention of why the totality of the circumstances you believe require the revocation of the permit, it states, "Monroe County shall take efforts to discourage extension of facilities and services provided by the Florida Keys Aqueduct Authority and private providers of electricity and telephone service to CBRS units."

You would agree that Mr. Newton's permit is not going to be located in a CBRS unit?

A Yes.

Q And that by a private provider of electricity

providing electricity to his property, that is not in conflict with this section?

A With 102.8.5?

Q Yes.

A Yes.

Q Okay. So you agree that this section does not conflict with the permit's issuance?

A This section alone does not conflict.

Q Well, let's go to the next line then. You would agree that this permit does not involve the siting or extension or planning of a public facilities?

I apologize.

A That's okay. Say it again.

Q You would agree that this permit that's subject to this appeal does not invoke the siting, assessment or siting of public facilities?

A Yes.

Q You can switch to the next slide, please.

All right. Policy 103.2.10 states, "Monroe County shall take immediate actions to discourage private development in areas designated as units of the Coastal Barrier Resources System." You would agree that this permit does not invoke this section?

A No, I would not agree to that.

Q Does his application for an electric permit

encourage development in other areas?

A That's not what this policy says.

Q Well, he's not located in the CBRS district, correct?

A Yes.

Q And this permit, you already testified, only deals with his property?

A Yes.

Q So how can it deal with properties outside of his area?

A Okay, I see. Yes, you're right.

Q All right. Let's go to Objective 209.3. "Monroe County shall take immediate actions to discourage private development in areas designated as units of the Coastal Barrier Resources System." Same question as the last policy.

A Same answer.

Q Okay. Next line. Policy 215.2.3. This policy I'm not going to paraphrase, but it deals with public expenditures for facilities in areas of Coastal Barrier Resources Systems. You would agree that this permit does not involve the expenditure of public funds?

A I don't know what is funding the permit.

Q Well, would you believe Mr. Newton when he testifies that he will be paying for the installation of

this permit?

A Then I would believe it.

Q And you would agree that it would not --

A Yes.

Q -- invoke this section?

Again, Public Policy 217.4.2, "No public expenditures shall be made for new or expanded facilities in areas designated as units of the Coastal Barrier Resources System." You would agree that this permit does not involve Mr. Newton applying to expand or add new facilities in areas of the Coastal Barrier Resource System?

A Yes.

Q Okay. Next slide, please.

All right. Policy 1301.7.12, "By January 4, 1998, Monroe County shall initiate discussions with the FKAA and providers of electricity and telephone service to assess the measures which could be taken to discourage or prohibit extension of facilities and services to Coastal Barrier Resource Systems units." You would agree Mr. Newton is not the FKAA?

A Yes.

Q And they are not providers of electricity or telephone service?

A And he is not, you mean?

Q Yes.
A Yes.
Q I apologize. Technically Mrs. Newton, Jim's wife, is also part of this appeal. So I may sometimes state that.
A Okay.
Q So in essence this section is inapplicable to the permit at issue?
A Yes.
Q Next section, Policy 1401.2.2, again this goes to the public expenditures in Coastal Barrier Resources Systems. Based on the premise that Mr. Newton will testify that he will be using his private funds to pay for this permit, will you agree that this section does not apply to the permit?
A Yes.
Q Next slide.
All right. We're at the land development regulations.
Next slide, please.
Stop. Go back one.
We're in agreement that in order to revoke the permit, the permit must be, in the opinion of the Planning Director, the Building Official or the Fire Marshal, the error would result in a threat to the health, safety and

welfare of the public? We're in agreement on that, correct?

A Yes.

Q Next slide, please.

Next slide, please.

All right. We're in agreement that this building permit was issued pursuant to Chapter 6, correct?

A Originally?

Q Yes.

A Yes.

Q All right. Next slide, please.

This is important. You would agree that under the County Code the definition of a Coastal Barrier Resource System is defined by the Federal Coastal Barrier Resource Act and identified by -- the CBRS overlay areas are identified by the Federal Government?

A Say it again.

Q You would agree that it's not the County that determines who should be in CBRS --

A Oh, yes.

Q -- and who should not?

A Yes.

Q And so the County has no ability to conflate onto an area that it is a CBRS overlay?

A The County has no ability what?

Q To conflate, to interpose onto an area the standards of the CBRS?

A I'm not following you. The standards of the CBRS?

Q For instance, later in your testimony you discussed what the CBRS defines as developed and undeveloped, and you made an analysis of Mr. Newton's area as to its similarities to the CBRS. What I want to understand is are you stating that the County makes a determination of who is in the CBRS or is it the Federal Government?

A The Federal Government.

Q And the County Code specifically identifies only those areas that the Federal Government has identified as CBRS areas, correct?

A True.

Q Okay. Next slide, please.

All right. This slide is important. This is I think where all of this has been surrounding. Section 130-122, Coastal Barrier Resource System Overlay District. Can you read the purpose?

A Me?

Q Yes.

A "The purpose of the Coastal Barrier Resources System Overlay District is to implement the policies of

the comprehensive plan by prohibiting the extension and expansion of specific types of public utilities to or through lands designated as a unit of the Coastal Barrier Resource System."

Q Now, you highlighted the word "prohibit" referring to the extension, expansion of specific types of public utilities. Isn't it true that we've already determined Mr. Newton is not a public utility?

A I highlighted the word "prohibit" what?

Q My question is isn't it true we've determined that Mr. Newton is not a public utility?

A Yes.

Q Okay. Isn't it true that you've already admitted that Mr. Newton's permit does not expand, extend the lines of public utilities?

A I said that his permit does not do that.

Q And that's the permit that's subject to this appeal that was revoked, correct?

A Mm-hmm.

Q And if you look in Section 2 it states, "Within this overlay district the transmission or collection lines of the following types of public utilities shall be prohibited from extension or expansion: Central wastewater treatment, collection systems, potable water, electricity and telephone and cable." Now, you would