

ORDINANCE NO. 12-19

AN ORDINANCE OF THE CITY OF KEY WEST AMENDING SECTION 110 OF THE CODE OF ORDINANCE ENTITLED "FLOODPLAIN PROTECTION" BY ADDING SECTION 110-467 PROVIDING THE BASIS FOR ENHANCED PROTECTION OF SPECIFICALLY IDENTIFIED ENDANGERED SPECIES HABITAT AND THE SPECIES FOCUS AREA MAPS AND REAL ESTATE LIST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the National Flood Insurance Program (NFIP) is a Federal program enabling property owners in participating communities to purchase flood insurance at rates whose cost is subsidized by the federal government in exchange for the community's adoption of floodplain management regulations to reduce future flood damages; and

WHEREAS, in 1990 the National Wildlife Federation, Florida Wildlife Federation, and the Defenders of Wildlife filed suit against the Federal Emergency Management Agency (FEMA) claiming FEMA was not consulting with the U.S. Fish and Wildlife Service (Service) as required by the Endangered Species Act in their administration of the National Flood Insurance Program (NFIP) in Monroe County, including the City of Key West, Florida (City); and

WHEREAS, in 1997 the Service completed a Biological Opinion (BO) for the effects of the NFIP on Federally protected species in the Florida Keys; and

WHEREAS, the 1997 BO found the NFIP jeopardized nine species in the Keys, three of which, the Eastern Indigo Snake, the Stock Island Tree Snail, and the Key Tree-Cactus may have suitable habitat; and

WHEREAS, in 2003 the Service re-initiated consultation and amended the 1997 BO and concluded that the effect of the NFIP would result in jeopardy on eight of 10 species evaluated in the BO; and

WHEREAS, in a second amended complaint in 2003 the plaintiffs filed suit against FEMA and the Service pursuant to the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on March 29, 2005 the United States District Court, Southern District of Florida (District Court) granted summary judgment in favor of the Plaintiffs which found that the Service and FEMA violated the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on September 9, 2005, the District Court entered an order enjoining FEMA from issuing flood insurance under the NFIP on

any new residential or commercial developments in suitable habitats of federally listed species in the Keys; and

WHEREAS, the District Court also ordered the Service to submit a new BO by August 9, 2006. The Service issued a new BO on August 8, 2006; and

WHEREAS, on April 1, 2008, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's rulings of March 29, 2005 and September 9, 2005; and

WHEREAS, On February 26, 2009, the District Court ordered the Service to submit a new BO by March 31, 2010 and on March 28, 2010, the Court granted a 30 day extension of this deadline; and

WHEREAS, on April 30, 2010, the Service published the revised BO for FEMA's administration of the NFIP in City of Key West; and

WHEREAS, the BO contains "Reasonable and Prudent Alternatives" (RPA's) that require the City of Key West and other participating communities in the Florida Keys to revise their Flood Damage Prevention Ordinance(s) to reference and use the updated real estate list (referenced in RPA paragraph 1) within 120 days of acceptance of the revised BO by the Court, and;

WHEREAS, on January 11, 2011, the District Court approved a Settlement Agreement between the Plaintiffs and the Federal Defendants in which the Federal Defendants agreed to notify the Court and the parties when City of Key West and the other "participating communities" in the Florida Keys have: 1) revised their Flood Damage Prevention Ordinance(s); and 2) implemented procedures to reference and use the updated real estate list and Species Focus Area Maps (referenced in reasonable and prudent alternative ("RPA") paragraph 1) in compliance with paragraphs 2, 3, 4, and 5 of the RPA; and

WHEREAS, on January 9, 2012, FEMA advised the City of Key West that if the City decides not to implement the RPA's then the City of Key West will be ejected from the National Flood Insurance Program, and that the City concludes such expulsion would wreck economic havoc upon the entire community; and

WHEREAS, The District Court granted the City of Key West an extension to June 30, 2012 for the required ordinance provisions, sand permit process implementation of the Reasonable and Prudent Alternatives(RPAs); and

WHEREAS, the City Attorney, outside counsel, and the Director of Planning advise that the following proposed language meets the spirit and overriding intent of the RPAs, is consistent with Federal law,

and adequately protects City taxpayers against accepting that additional liability;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1. That Section 110-467 shall be added to the city's Code of Ordinances as follows*:

Section 110-467 - FEMA & Wildlife Service Endangered Species Requirements. Inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) Recommendations and Conditions in Final Development Permit Determinations and Implementation Certifications

(a) Purpose and intent. It is the purpose of Section 110-467 to implement regulations that will assure, consistent with the 10th Amendment to the U.S. Constitution, state and city regulations, proper record retention, coordination, and notification of FEMA and FWS regarding permit applications filed with or issued by the City of Key West, inclusive of FEMA/FWS requirements agreed to by the applicant.

*(Coding: Added language for first reading is underlined; language deleted for second reading is ~~struck through~~; language added for second reading is highlighted.)

(b) Lands to which this Section apply. FEMA and FWS have provided the Species Focus Area Maps (SFAMs) and a listing of real estate numbers of parcels (RE list) that are within the SFAMs identified by the Service in accordance with the Biological Opinion, mailed to the City of Key West and dated April 30, 2010, are hereby declared to be a part of these regulations. The SFAMs and RE list are on file at the City of Key West Clerk's office and the City of Key West Planning Department.

(c) Rules for interpreting SFAMs. The boundaries of the flood hazard areas shown on the FEMA SFAMs may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the City Planning Director or his/her designee.

(d) Administration of Development Approval in Species Focus Areas.

1. SFA Review Required. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains only unsuitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is not listed on the RE list, the Planning Director or his/her designee

shall provide for a notation in the development application permit files that indicates:

- i. The name of the official that made the determination;
- ii. The date of the determination;
- iii. The date of the SFAM and RE list used to make the determination.

Once the determination has been made that a parcel or lot contains unsuitable habitat, action may be taken on the permit application by City of Key West staff.

2. *Species Assessment Guides and FWS Comment or, Recommendations or Approval.* The Species Assessment Guides provided by the Service, dated ~~May 20, 2012~~ ~~December 23, 2011~~, for the City of Key West are hereby declared to be a part of this ordinance. The Assessment Guides are on File with the City Clerk and the City Planning Department. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains suitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is listed on the RE list and maps, the Planning Director or his/her designee shall provide the approved applications to the Service for review with a condition clearly stating that in accordance with Florida Statue 166.033 that any applicable FWS permit , recommendations and/or conditions be obtained before a ~~notice to proceed~~ or commencement of

development authorized by the City issued permit. Further, the City permit shall state that the issuance of the City Permit does not in any way create any right on the part of the applicant to obtain a permit from FWS, and does not create any liability on the part of the City of Key West for issuance of the permit if the applicant fails to obtain the requisite FWS approval or fulfill the obligations imposed by FWS or undertakes actions that result in a violation of federal law and shall require the following:

i. Once the property owner has received from the FWS a letter or other written communication stating the results of the FWS review, the letter shall be submitted to the City.

ii. Based on the requirements, recommendations or conditions contained in the FWS letter or communication, the City shall require the owner of the property to sign an acceptance agreement form to the FWS conditions, recommendations or requirements and the City shall maintain the acknowledgement form in the permit file. The acceptance form shall be signed by the permit applicant and the Planning Director or his/her designee.

iii. The City shall, based on the acknowledgement form from the property owner, incorporate the FWS letter conditions, recommendations or requirements into the *notice of commencement*, requirements of a City of Key West Certificate of Occupancy or Final Inspection Certificate issuance to avoid and/or to

minimize possible impacts on federally listed threatened or endangered species and their habitat.

iv. If the property owner does not agree to the FWS conditions, the City shall not provide a Certificate of Occupancy or Certificate of Final Inspection.

3. Enforcement. Violation of this section, including any development constructed not in accordance with the owner acknowledged FWS conditions, are hereby deemed to be violations of the City Code and may be enforced as follows:

i. The City may utilize the administrative enforcement procedures set forth in Chapter 2, Article VI, Code Enforcement, City of Key West Code of Ordinances;

ii. ~~The City's Director of Planning may make a formal complaint to the U.S. FWS Office of Law Enforcement;~~

~~ii.~~ ~~iii.~~ The City may file an action in a court of competent jurisdiction seeking damages as well as injunctive and/or equitable relief; and/or

~~iii.~~ iv. Knowing violations of this section may be prosecuted in the same manner as misdemeanors are prosecuted in the name of the State in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500 and/or imprisonment in the County jail not to exceed 60 days. Each day a violation exists shall constitute a separate offense.

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4. This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held this day of June 19, 2012.

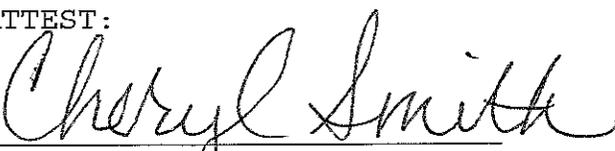
Read and passed on final reading at a regular meeting held this day of July 17, 2012.

Authenticated by the presiding officer and Clerk of the Commission on 18 day of July, 2012.

Filed with the Clerk July 18, 2012.


CRAIG CATES, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

**FEMA List of
Identified Properties**

FEMA List Properties

Alternate Key	RE #	St. No.	Unit	Street	Owner
1065552	00065030-000000	1213		14TH ST	ISLAND-WEST INVESTMENT CORP
1016055	00015690-000000	0526		ANGELA ST	GARDENS OF KEY WEST LLC THE
1014281	00013900-000000	0110		Angela St.	CITY OF KEY WEST
1014249	00013860-000000	0112		Angela St.	CITY OF KEY WEST
1059293	00058800-000000	1000	Higgs Bch	ATLANTIC BLVD	MONROE COUNTY
1065064	00064630-000400	1328		ATLANTIC BLVD	WILLIAMS JOHN A
1065056	00064630-000300	1330		ATLANTIC BLVD	RYAN TIMOTHY J
1065048	00064630-000200	1332		ATLANTIC BLVD	ONDERDONK GARY R AND DIANE M
1065030	00064630-000100	1334		ATLANTIC BLVD	BURGER ROBERT M & BOLEN LARRY A R/S
8674694	00064640-000301	1500		ATLANTIC BLVD	WILLIAMS TIMOTHY AND AMY
8565437	00064640-000121	1616		ATLANTIC BLVD	CASA CASELLES HOMEOWNERS ASSOCIATION INC
1065021	00064630-000000	1200	block	ATLANTIC BLVD	City of Key West - Rest Beach
8708947	00064640-000401	1500	106	ATLANTIC BLVD	HUNTER BLAKE TRUST
1076104	00072080-001800	5100		COLLEGE RD	CITY OF KEY WEST
1076139	00072080-002000	5200		COLLEGE RD	COUNTY OF MONROE
8757867	00072082-002000	5210		COLLEGE RD	CITY OF KEY WEST
8776659	00072080-000101	5501	Jail	COLLEGE RD	MONROE COUNTY
1075990	00072080-001300	5610		COLLEGE RD	POST 28 AMERICAN LEGION
8757981	00072082-003200	6450		COLLEGE RD	CITY OF KEY WEST
8776632	00066170-000400	3300	Block	DONALD AVE	DIONYSUS GROUP LC
8757816	00072082-001500	1405		DUVAL ST	CITY OF KEY WEST
N/A	N/A			DUVAL ST	Street end/Atlantic City of Key West
1006548	00006320-000000	0600		EATON ST	FIRST UNITED METHODIST CHURCH
1006432	00006210-000000	0616		EATON ST	NEWHOUSE GREGORY L
8929626	00006210-000100	620		EATON ST	TROMBLE RICK A AND MICHELE L
8929628	00006210-000200			EATON ST	NEWHOUSE GREGORY L
9092258	00023171-000100	0719	001	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092260	00023171-000200	0719	002	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092261	00023171-000300	0719	003	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092262	00023171-000400	0719	004	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092264	00023171-000500	0719	005	EISENHOWER DR	INGRAM MICHAEL B
9092265	00023171-000600	0719	006	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092267	00023171-000700	0719	007	EISENHOWER DR	PARADISE HARBOR NUMBER 7 LLC
1006467	00006240-000000	0416		ELIZABETH ST	FAR NIENTE LLC
1009211	00008950-000000	0518		ELIZABETH ST	FORRESTER NANCY
1009237	00008970-000000	0522		ELIZABETH ST	SKOGLUND MICHAEL J
1009288	00009020-000000	0524		ELIZABETH ST	CROCKETT DIANE M
1065609	00065080-000000	2100		Flagler Ave.	BOARD OF PUBLIC INSTRUCTION OF MONROE COUNTY
1068730	00065880-000000	2610		Flagler Ave.	PEACE COVENANT PRESBYTERIAN CHURCH
1065617	00065090-000000	2700		Flagler Ave.	CARROLL COLEMAN F B OF THE DIOC OF MIAMI ROM
8633394	00065090-000100	2800		Flagler Ave.	CHABAD OF KEY WEST INC
8906650	00006260-000101	617	1	FLEMING St.	BOLAK ROBERT ALAN AND JAMIE MARIE
8906668	00006260-000102	617	2	FLEMING St.	GAMBRILL MATTHEW
8906676	00006260-000103	617	3	FLEMING St.	PELTIER MICHAEL JOSEPH
890684	00006260-000104	617	4	FLEMING St.	ARGOUDELIS JAMES
890692	00006260-000105	617	5	FLEMING St.	POLATZ JOHN J AND SUSAN E
8906706	00006260-000106	617	6	FLEMING St.	SCHULTZ ROBERT AND MARY LYNNE
8906714	00006260-000107	617	7	FLEMING St.	SZOT WALTER S AND DAWN
8906722	00006260-000108	617	8	FLEMING St.	SZOT WALTER S AND DAWN
8906731	00006260-000109	617	9	FLEMING St.	MCKENZIE JOHN P
	00006260-000000	617		FLEMING St.	
9038844	00001630-000802		Vacant	Fort St.	UNITED STATES OF AMERICA
1009261	00009000-000000		End	FREE SCHOOL LN	FORRESTER NANCY
8758847	00006700-001001	0015		Front St	BEHMKE JOHN J AND KAY D
8849389	00004590-002157	0103		Front St	RENZULLI RODGER A
8749872	00004590-001402	0201	103	Front St	FOUNDRY DEVELOPMENT CORP
1000078	00000070-000000	0505		FRONT ST	PIER HOUSE JOINT VENTURE ET AL
	00006700-001000			Front St	
	00006700-001003			Front St	
	00006700-001004			Front St	
1014290	00013910-000000	0105		GERALDINE ST	CITY OF KEY WEST
1014257	00013870-000000	0111		GERALDINE ST	CITY OF KEY WEST
8880634	00072081-000441	261		GOLF CLUB DR	BAUCOM BARBARA JOAN
9091134	00001711-000100	0301	A201	GRINNELL ST	LAIRD LEWIS D AND ALISON J
9091135	00001711-000200	0301	A202	GRINNELL ST	SAUNDERS FRED JR
9091136	00001711-000300	0301	A203	GRINNELL ST	IRIZARRY ANTONIO JR AND JUDI LYNN
9091137	00001711-000400	0301	A204	GRINNELL ST	FELSHER ALLYSON M
9091138	00001711-000500	0301	A205	GRINNELL ST	WILD WILLIAM H AND JUDITH A
9091139	00001711-000600	0301	A301	GRINNELL ST	GAMMELL LOU W
9091140	00001711-000700	0301	A302	GRINNELL ST	PAGE JEFFREY B AND CYNTHIA L
9091141	00001711-000800	0301	A303	GRINNELL ST	SILVA EDUARDO M
9091142	00001711-000900	0301	A304	GRINNELL ST	BROWN JULIE N
9091143	00001711-001000	0301	A305	GRINNELL ST	PRITCHARD JESSICA
9091144	00001711-001100	0301	A401	GRINNELL ST	DENNY ANDREA P
9091144	00001711-001200	0301	A402	GRINNELL ST	MUCCINO JANET M
9091146	00001711-001300	0301	A403	GRINNELL ST	COUGHLIN EMILIA C

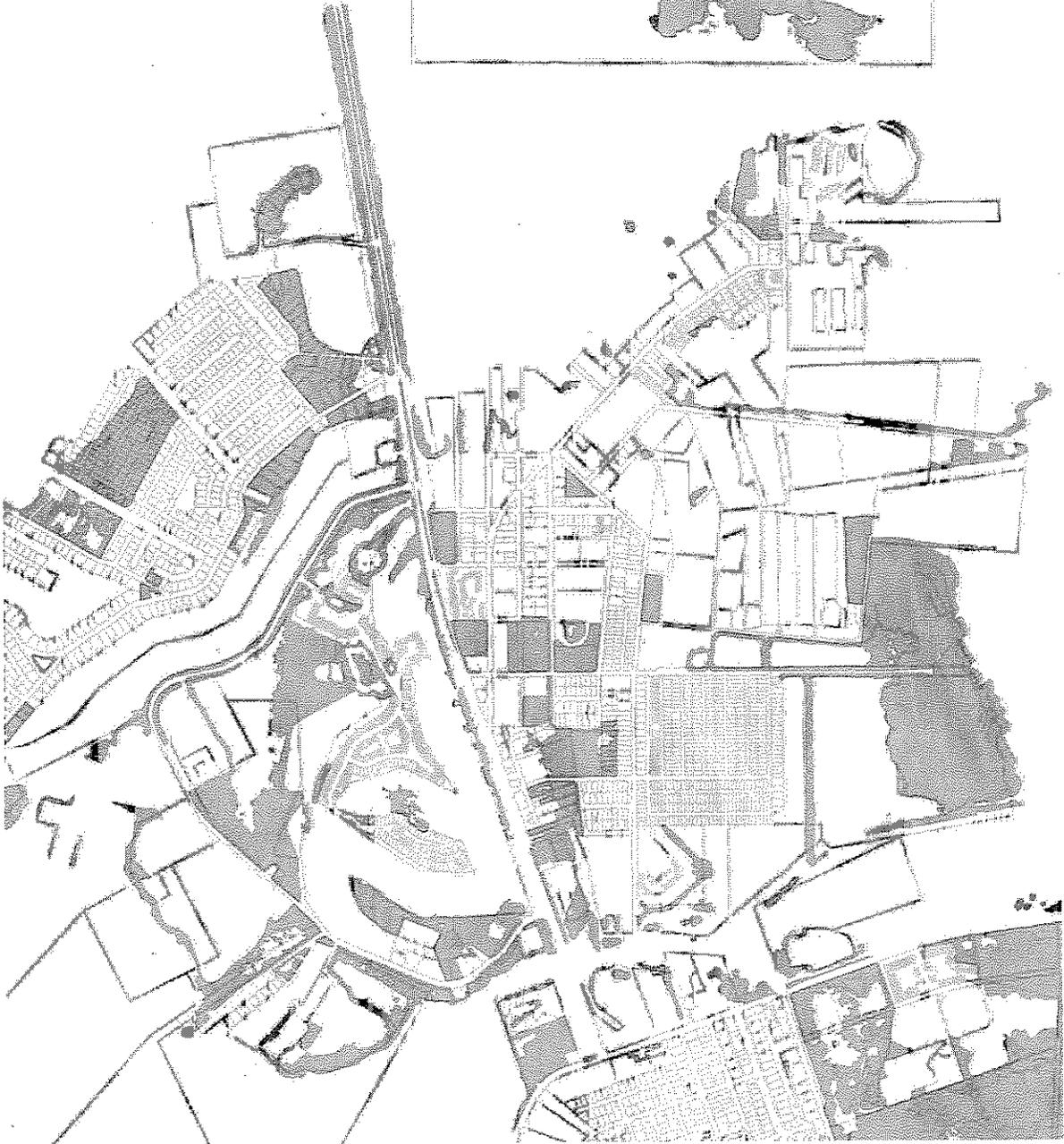
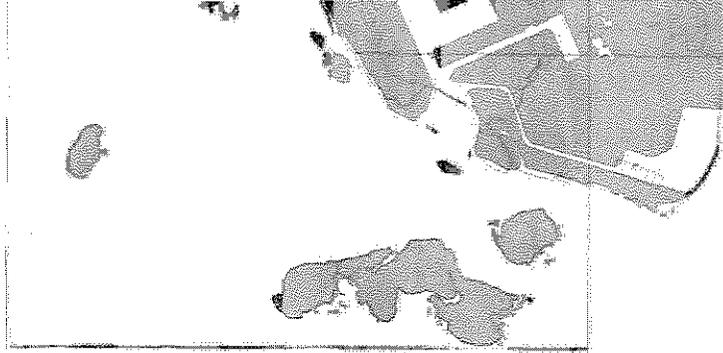
FEMA List Properties

Alternate Key	RE #	St. No.	Unit	Street	Owner
9091147	00001711-001400	0301	A404	GRINNELL ST	BARROSO JULIO J
9091148	00001711-001500	0301	B201	GRINNELL ST	MAKRIS MARGARET L REV TR
9091149	00001711-001600	0301	B202	GRINNELL ST	NELSON AARON B
9091150	00001711-001700	0301	B203	GRINNELL ST	CURRY GAY M
9091151	00001711-001800	0301	B204	GRINNELL ST	MILLER WAYNE H
9091152	00001711-001900	0301	B205	GRINNELL ST	FALCONER MARY A
9091153	00001711-002000	0301	B301	GRINNELL ST	BARILLAS DAVID H
9091154	00001711-002100	0301	B302	GRINNELL ST	MELLOR LYNN B
9091155	00001711-002200	0301	B303	GRINNELL ST	PIERCE MEAGAN M
9091156	00001711-002300	0301	B304	GRINNELL ST	CARRICO CHRISTOPHER L
9091157	00001711-002400	0301	B305	GRINNELL ST	COX PAULA
9091158	00001711-002500	0301	B306	GRINNELL ST	BRAGHERI ADELE
9091159	00001711-002600	0301	B402	GRINNELL ST	DEEGAN KEVIN G
9091160	00001711-002700	0301	B403	GRINNELL ST	FINIGAN ROBIN S
9091161	00001711-002800	0301	B404	GRINNELL ST	BRAMHAM HEATHER
9091162	00001711-002900	0301	B405	GRINNELL ST	ROY GARY P
	00001711-000000	0301		GRINNELL ST	
8695578	00002430-000100	---		GULFVIEW DR	ROOSEVELT ANNEX HOMEOWNERS' ASSOCIATION
1002801	00002700-000000	0916		JAMES ST	MORRIS DONAL SR
8681135	00072080-000801	5860		JUNIOR COLLEGE RD	LOWER FL KEYS HOSPITAL
8929610	00029650-000104	1223	004	MARGARET ST	BARBER ROBERT R JR AND GAYLE M
8757760	00072082-001000	2315	Yacht	N ROOSEVELT BLVD	CITY OF KEY WEST
1002097	00001990-000000	2401		N ROOSEVELT BLVD	KW26 LLC
1002372	00002270-000000	2405		N ROOSEVELT BLVD	KEY WEST LIONS CLUB
8890613	00022280-0001000	2407		N ROOSEVELT BLVD	WALKER RICHARD C
1065536	00065010-000000	2600		N ROOSEVELT BLVD	SILVER EAGLE DISTRIBUTORS LTD
1002526	00002430-000000	2661	-2693	N ROOSEVELT BLVD	KW HOUSING AUTHORITY
8609892	00002410-000400	2801		N ROOSEVELT BLVD	PARROT KEY ASSOCIATES INC
1002496	00002410-000000	2811	Hm. Depot	N ROOSEVELT BLVD	KEY HOME INVESTORS LLC
1002500	00002410-000100	3029		N ROOSEVELT BLVD	KEY COVE HOMEOWNER'S ASSOC INC
Multi	00064881-000000	3841		N ROOSEVELT BLVD	Multi condos
1065587	00065060-000000	3852		N ROOSEVELT BLVD	JLW KEY WEST 1 LLC
8861737	00066170-000401	3330		NORTHSIDE DR	MARINERS COVE APARTMENTS
1068683	00065820-000100	3420		NORTHSIDE DR	COOKE COMMUNICATIONS LLC
8925255	00064900-000100	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
8929734	00064900-000200	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
8929746	00064900-000300	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
8965793	00064900-000400	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
9085050	00023641-000500	1501	005	PETRONIA ST	SPECIAL ACQUISITIONS VII INC
9085046	00023641-000100	1502	001	PETRONIA ST	MCGRATH JAMES F AND SHEILA A
9085051	00023641-000600	1505	006	PETRONIA ST	HENTHORNE JASON F
9085047	00023641-000200	1506	002	PETRONIA ST	SEAL DAVID VENNEN
9085052	00023641-000700	1509	007	PETRONIA ST	SPECIAL ACQUISITIONS VII INC
9085048	00023641-000300	1510	003	PETRONIA ST	GEORGE DANIEL C
9085053	00023641-000800	1513	008	PETRONIA ST	ALLEN DALE REV TRUST
9085049	00023641-000400	1514	004	PETRONIA ST	CULLEN THOMAS AND MONICA
8735677	00037160-000100	1500		REYNOLDS ST	CASA MARINA OWNER LLC
8922540	00064680-000101	1445		S ROOSEVELT BLVD	KEY WEST COCONUT MALLORY RESORT
1065331	00064840-000000	3501		S ROOSEVELT BLVD	COUNTY OF MONROE
1054968	00054350-000000	3591		S ROOSEVELT BLVD	HYATT AND HYATT INC
9013390	00054360-000100	3675		S ROOSEVELT BLVD	WINDWARD POINTE II LLC
1054984	00054370-000000	3755		S ROOSEVELT BLVD	KEY AMBASSADOR COMPANY
8749996	00066180-000200	3900		S ROOSEVELT BLVD	CRICO OF OCEAN WALK
8786841	00066180-000700	3990		S ROOSEVELT BLVD	KEY HOPITALITY AND HEALTHCARE
8960898	00066180-035100	3635	-3675	SEASIDE DR	SALTPODS CONDOMINIUM
1037150	00036310-000000	1420		SIMONTON ST	SOUTHERNMOST BEACH RESORTS
1037117	00036270-000000	1435		SIMONTON ST	KEY WEST REACH OWNER LLC
1006556	00006330-000000	0417		SIMONTON ST	CARLOUGH WILLIAM ARTHUR REV TR
1006564	00006340-000000	0419		SIMONTON ST	MORTIMER RAYMOND MICHAEL
1000060	00000060-000000	END		SIMONTON ST	CITY OF KEY WEST
1037249	00036400-000000	0402		SOUTH ST	MORGAN HUGH J
1037257	00036410-000000	0404		SOUTH ST	MORGAN HUGH J
1012459	00012120-000000	0610		SOUTHARD ST	CARTER LINDA LIVING TRUST
1012408	00012070-000000	0620		SOUTHARD ST	WOODRUFF THOMAS S
1009202	00008940-000000	0631		SOUTHARD ST	631 SOUTHARD LLC
8952714	00000200-000700	Vacant		SUNSET KEY	SUNSET ACQUISITIONS CORPORATION
8885075	00000200-000406	0000		SUNSET KEY DR	SUNSET KEY RESTAURANT CORP
8885229	00000200-000501	0001		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
9042617	00000200-000502	0002		SUNSET KEY DR	SAPPERSTEIN MARK C AND STACY L
9042155	00000200-000503	0003		SUNSET KEY DR	ARBURUA MARTIN
8885237	00000200-000519	0019		SUNSET KEY DR	DRETTMANN HENRY A
9013214	00000200-000527	0027		SUNSET KEY DR	HASLINGER SANDRA L
8885334	00000200-000537	0039		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
9085898	00000200-000538	0040		SUNSET KEY DR	MCCULLOUGH FRANCIS H III AND KATHY L
9006614	00000200-000540	0041	A	SUNSET KEY DR	ARNOLD L MORGAN AND PHYLLIS S
9081646	00000200-000402	0054		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP

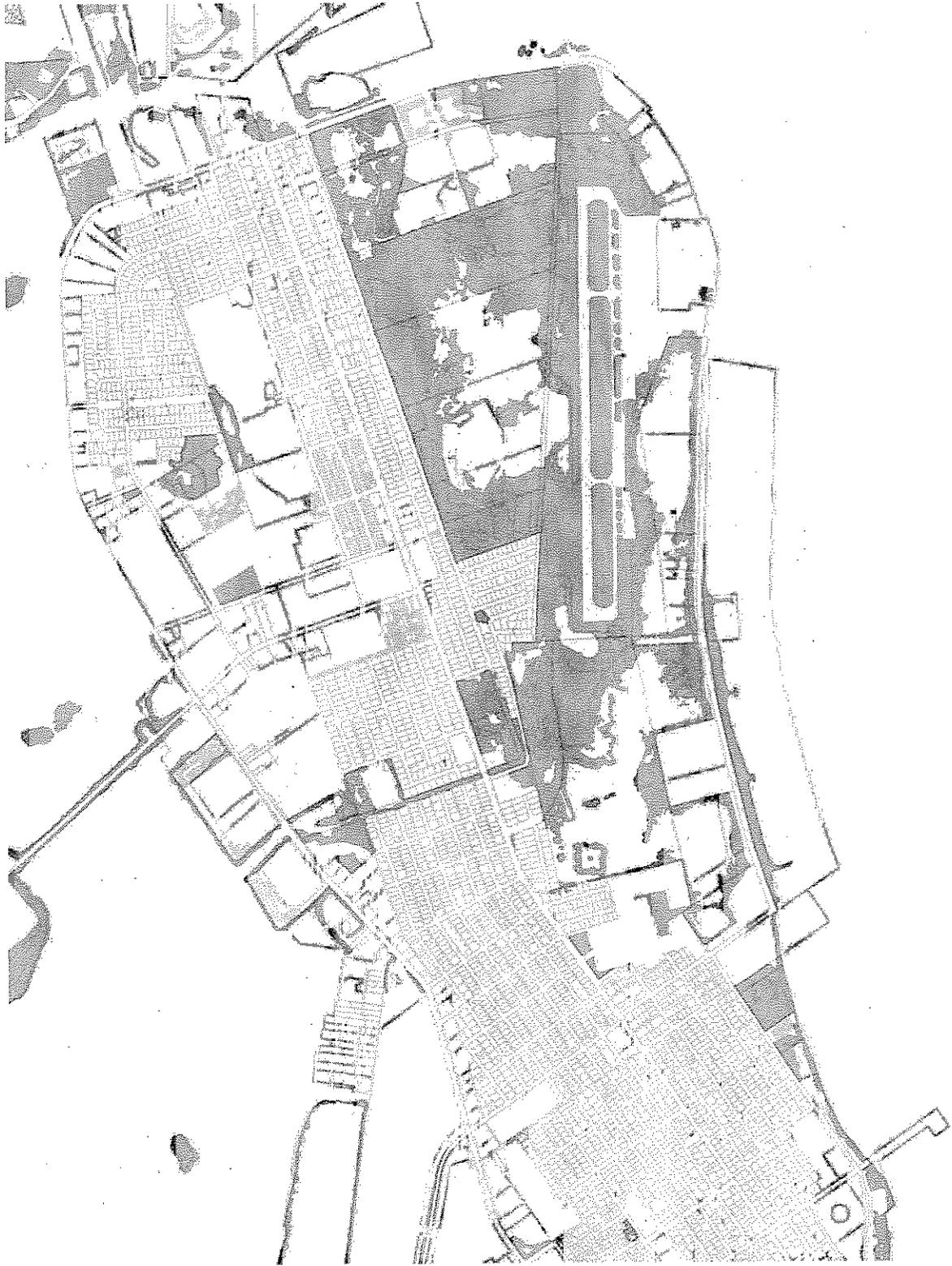
FEMA List Properties

Alternate Key	RE #	St. No.	Unit	Street	Owner
	00000200-000554	0054		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
8885121	00000200-000411	0055		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
8980643	00000200-000557	0057		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
8868511	00000200-000403	3200-0208		SUNSET KEY DR	PARCEL L ISLAND DEVELOPMENT CORP
8885083	00000200-000407	3281-0283		SUNSET KEY DR	SUNSET ACQUISITIONS CORPORATION
8885091	00000200-000408	0292		SUNSET KEY DR	SUNSET ACQUISITIONS CORPORATION
9080984	00000200-002903	0293		SUNSET KEY DR	HASLINGER HOLDING COMPANY
8885172	00000200-000416	Vacant	Roads	SUNSET KEY DR	SUNSET ISLAND HOMEOWNERS ASSOCIATION INC
8846746	00000200-000401	Vacant		SUNSET KEY DR	SUNSET KEY PB CORPORATION
8868537	00000200-000401	Vacant		SUNSET KEY DR	PARCEL G ISLAND DEVELOPMENT CORP
8885211	00000200-000420	Vacant		SUNSET KEY DR	SUNSET ISLAND HOMEOWNERS ASSOCIATION INC
8885270	00000200-000528	Vacant		SUNSET KEY DR	JKEY LLC
1068292	00065560-000102	930		TOPPINO DR	FIRST STATE BANK OF THE FLORIDA KEYS
9038855	00001630-001000	Vacant		Truman Annex	CITY OF KEY WEST
1015768	00015390-000000	0105		Truman Ave.	HOUSING AUTHORITY OF THE CITY OF KEY WEST
1001805	00001720-000200	0250		TRUMBO RD	CITY OF KEY WEST
9093943	00001741-000500	0281	005	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093944	00001741-000600	0281	006	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093945	00001741-000700	0281	007	TRUMBO RD	CLEMENTS THOMAS III
9093946	00001741-000800	0281	008	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093947	00001741-000900	0281	009	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093948	00001741-001000	0281	010	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093949	00001741-001100	0281	011	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093951	00001741-001200	0281	012	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093952	00001741-001300	0281	013	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093953	00001741-001400	0281	014	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093954	00001741-001500	0281	015	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093939	00001741-000100	0281		TRUMBO RD	BUCKLEY CAROL A
9093941	00001741-000300	0281		TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093942	00001741-000400	0281		TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
	00001741-000000	0281		TRUMBO RD	
1036536	00035670-000000	1401		United St	EATON MELVIN H II
1036579	00035710-000000	1407		United St	SCHOONER EXPLORATION ASSOCIATES LTD INC
1036609	00035740-000000	1409		United St	SCHOONER EXPLORATION ASSOCIATES LTD INC
9082150	00065870-001100	Vacant		Vacant land	MARQUESA COURT HOMEOWNER'S ASSOCIATION INC
1074829	00070990-000000	2801		VENETIAN DR	SOUTHERNMOST HOMES INC
1074837	00071000-000000	2825		VENETIAN DR	SAFE HARBOR ENTERPRISES
1074632	00070800-000000	3001		VENETIAN DR	SCHROEDER JOSEPH J
8574215	00037410-000100	1502		VERNON AVE	HONORARY CONCH INC
N/A	N/A	1500	block	Vernon St.	Street end/beach City of Key West
1038121	00037370-000000	0700	Rear	WADDELL ST	SPOTTSWOOD JOHN M JR & SPOTTSWOOD WILLIAM B &
8773811	00037350-000600	700	block	WADDELL ST	COCONUT BEACH DEVELOPMENT CORP
8965342	00006730-000100	0710		White St.	City of Key West - Peary Ct. Cem.
1018392	00017930-000000	0907		WHITEHEAD ST	907 WHITEHEAD STREET CORP
	00009050-000000				
	00009050-000101				
	00009220-000000				
	00009250-000000				
	00012120-000200				
	00012150-000100				
	00035650-000000				
	00035670-000000				
	00035690-000000				
	00063560-000000				
1	00066180-000000				
	00064820-000000				
	00065100-000000				
	00065900-000000				
	00072080-000900				
	00072080-000500				
	Dog Beach				
	Duval St. - Atl. end				
	00072080-001400				
	00072080-000700				
	00072080-000901				

Species Focus Area Maps







**STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY**

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY THE CITY OF KEY WEST,
FLORIDA, ORDINANCE NO. 12-19

2012 JUL 25 AM 11:05
CITY OF KEY WEST
FLORIDA

FINAL ORDER

The Department of Economic Opportunity (“Department”) hereby issues its Final Order, pursuant to §§ 380.05(6) and (11), Fla. Stat. (2012), approving land development regulations adopted by the City of Key West, Florida, Ordinance No. 12-19 (the “Ordinance”).

FINDINGS OF FACT

1. The City of Key West is designated pursuant to § 380.05(1), Fla. Stat. (2012), and Chapter 28-36, Florida Administrative Code, as an area of critical state concern. Land development regulations adopted by the City of Key West do not become effective until approved by the Department by final order. §§ 380.05(6) and (11), Fla. Stat. (2012).

2. The Ordinance was adopted by the City of Key West on July 17, 2012, and rendered to the Department on July 18, 2012.

3. The Ordinance amends Section 110 of the City Code, entitled “Floodplain Protection,” by adding Section 110-467 to provide the basis for enhanced protection of specifically identified endangered species habitat and the species focus area maps and real estate list. The Ordinance is intended to be consistent with the U.S. Fish and Wildlife Service’s April 30, 2010, Biological Opinion for the Federal Emergency Management Agency’s administration of the national flood insurance program in the Florida Keys. The regulations implement a court-approved settlement agreement to ensure the City of Key West’s participation in the federal flood insurance program.

CONCLUSIONS OF LAW

4. The Department is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. §§ 380.05(6) and (11), Fla. Stat. (2012).

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. § 380.031(8), Fla. Stat. (2012). The regulations adopted by the Ordinance are land development regulations.

6. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. §§ 380.05(6) and (11), Fla. Stat. (2012). The Principles for Guiding Development for the City of Key West Area of Critical State Concern are set forth in Rule 28-36/003(1), Florida Administrative Code.

7. The Ordinance is consistent with the Principles for Guiding Development as a whole, and specifically furthers the following Principles:

(a) To strengthen local government capabilities for managing land use and development.

(c) Protection of tidal mangroves and associated shoreline and marine resources and wildlife.

(h) Protection of the public health, safety, welfare and economy of the City of Key West, and the maintenance of Key West as a unique Florida resource.

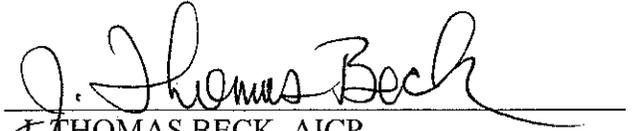
8. The Ordinance is consistent with Objective 1-3.6 and Policies 1-3.6.1 and 1-3.6.3 of the City of Key West Comprehensive Plan.

WHEREFORE, IT IS ORDERED that City of Key West Ordinance No. 12-19 is found to be consistent with the Principles for Guiding Development for the City of Key West Area of

Critical State Concern and is hereby APPROVED.

This Order becomes effective 21 days after publication in the Florida Administrative Weekly unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.


J. THOMAS BECK, AICP
Director, Division of Community Development
Department of Economic Opportunity

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES, REGARDING THE AGENCY'S ACTION. DEPENDING UPON WHETHER YOU ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT IN YOUR PETITION REQUESTING AN ADMINISTRATIVE PROCEEDING, YOU ARE ENTITLED TO EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING.

IF YOUR PETITION FOR HEARING DOES NOT ALLEGE ANY DISPUTED ISSUE OF MATERIAL FACT CONTAINED IN THE DEPARTMENT'S ACTION, THEN THE ADMINISTRATIVE PROCEEDING WILL BE AN INFORMAL ONE, CONDUCTED PURSUANT TO SECTIONS 120.569 AND 120.57(2) FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND III, FLORIDA ADMINISTRATIVE CODE. IN AN INFORMAL ADMINISTRATIVE PROCEEDING, YOU MAY BE REPRESENTED BY COUNSEL OR BY A QUALIFIED REPRESENTATIVE, AND YOU MAY PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION OR REFUSAL TO ACT; OR YOU MAY EXERCISE THE OPTION TO PRESENT A WRITTEN STATEMENT CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT HAS CHOSEN TO JUSTIFY ITS ACTION OR INACTION.

IF YOU DISPUTE ANY ISSUE OF MATERIAL FACT STATED IN THE AGENCY ACTION, THEN YOU MAY FILE A PETITION REQUESTING A FORMAL ADMINISTRATIVE HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE OF THE DIVISION OF ADMINISTRATIVE HEARINGS, PURSUANT TO SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, AND CHAPTER 28-106, PARTS I AND II, FLORIDA

ADMINISTRATIVE CODE. AT A FORMAL ADMINISTRATIVE HEARING, YOU MAY BE REPRESENTED BY COUNSEL OR OTHER QUALIFIED REPRESENTATIVE, AND YOU WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT ON ALL THE ISSUES INVOLVED, CONDUCT CROSS-EXAMINATION AND SUBMIT REBUTTAL EVIDENCE, SUBMIT PROPOSED FINDINGS OF FACT AND ORDERS, AND FILE EXCEPTIONS TO ANY RECOMMENDED ORDER.

IF YOU DESIRE EITHER AN INFORMAL PROCEEDING OR A FORMAL HEARING, YOU MUST FILE WITH THE AGENCY CLERK OF THE DEPARTMENT OF ECONOMIC OPPORTUNITY A WRITTEN PLEADING ENTITLED, "PETITION FOR ADMINISTRATIVE PROCEEDINGS" WITHIN 21 CALENDAR DAYS OF PUBLICATION OF THIS NOTICE. A PETITION IS FILED WHEN IT IS **RECEIVED** BY:

AGENCY CLERK
DEPARTMENT OF ECONOMIC OPPORTUNITY
OFFICE OF GENERAL COUNSEL
107 EAST MADISON STREET, MSC 110
TALLAHASSEE, FLORIDA 32399-4128.

THE PETITION MUST MEET THE FILING REQUIREMENTS IN RULE 28-106.104(2), FLORIDA ADMINISTRATIVE CODE. IF AN INFORMAL PROCEEDING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.301, FLORIDA ADMINISTRATIVE CODE. IF A FORMAL HEARING IS REQUESTED, THEN THE PETITION SHALL BE SUBMITTED IN ACCORDANCE WITH RULE 28-106.201(2), FLORIDA ADMINISTRATIVE CODE.

A PERSON WHO HAS FILED A PETITION MAY REQUEST MEDIATION. A REQUEST FOR MEDIATION MUST INCLUDE THE INFORMATION REQUIRED BY RULE 28-106.402, FLORIDA ADMINISTRATIVE CODE. CHOOSING MEDIATION DOES NOT AFFECT THE RIGHT TO AN ADMINISTRATIVE HEARING.

YOU WAIVE THE RIGHT TO AN INFORMAL ADMINISTRATIVE PROCEEDING OR A FORMAL HEARING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 DAYS OF PUBLICATION OF THIS FINAL ORDER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the persons listed below by the method indicated this ^{23rd} day of July, 2012.



Miriam Snipes, Agency Clerk
Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Craig Cates
Mayor, City of Key West
3216 Flagler Avenue
Key West, FL 33040

Cheryl Smith, City Clerk
3216 Flagler Avenue
Key West, FL 33040

Donald Leland Craig, AICP
City Planner
3140 Flagler Avenue
Key West, FL 33040

By Hand Delivery or Interagency Mail:

Rebecca Jetton, ACSC Administrator, DEO Tallahassee
Sherry A. Spiers, Assistant General Counsel, DEO Tallahassee



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Donald Leland Craig, AICP Planning Director

From: Brendon Cunningham, Senior Planner

Date: June 19, 2012

RE: An ordinance of the City of Key West amending Chapter 110, of the Code of Ordinances entitled "Floodplain Protection" of Article VII, by adding Section 110-467 of the City of Key West Land Development Regulations of the City of Key West, to provide additional protections for endangered species and their habitats; providing for severability; providing for the repeal of inconsistent provisions; providing for an effective date.

ACTION STATEMENT:

Request: To support the Planning Board's recommendation for an amendment to Section 110 Land Development Regulations adding Section 110-467 to provide additional protections for endangered species and their habitats.

Location: City wide

BACKGROUND:

In 1990, environmental advocacy groups filed suit against Federal Emergency Management Act (FEMA) and the U.S. Fish & Wildlife Service (USFWS). FEMA issuance of flood insurance for new construction was thought to be potentially destructive to habitats of endangered species. A court ruling was found in favor of the plaintiffs. Agreements between the various entities provided a list of properties that contained habitats that would support endangered species. The species likely to be found in Key West are the Stock Island Tree Snail, Eastern Indigo Snake and the Key Tree-Cactus.

The property list created as a result of the litigation included 49,000 properties in Monroe County, 257 are found in Key West. FEMA then produced the Species Focus Area Maps (SFAMS). These maps further identify properties adjacent to those on the existing FEMA list. Therefore, if a property is identified on the list or as being adjacent to such a property on the maps, all are on the "list." To develop a property that is on the list, it must be determined that there is no endangered species present or the habitat has been compromised to the extent that it is not habitable by that species.

The proposed ordinance developed by staff is based upon a "model" ordinance developed by the USFWS called the "Reasonable and Prudent Alternatives" (RPA) ordinance which

is supported by a series of "Species Assessment Guides" (SAG) which provide guidance to City of Key West staff to determine whether the parcels on the list and the maps contain suitable habitat or not. It is highly likely that in the built up portions of Key West and even the open areas of the City many mapped areas would not qualify as habitat. Further, USFWS has indicated orally that it would also support a large scale review and analysis of multiple parcels by City staff with the aid of an expert biologist to eliminate from further consideration those without habitat value.

By the City acknowledging and adopting these requirements, the residents will continue to be eligible for flood insurance through the National Flood Insurance Program (NFIP). Further, the City and its residents will both be eligible for Federal disaster assistance following any storm event.

Options / Advantages / Disadvantages:

Option 1. Approval of the Ordinance as recommended by the Planning Board.

1. **Consistency with the City's Comprehensive Plan, Strategic Plan, Vision and Mission:** The adoption of this ordinance amendment will enable the City to improve its ability to protect environmental resources.
2. **Financial Impact:** By following FEMA's mandate to adopt this amendment, the City and its citizens will continue to be eligible for the National Flood Insurance Program and Federal Disaster Assistance.

Option 2. Deny the Resolution.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** Denial of the ordinance amendment would not improve the City's ability to protect environmental resources
2. **Financial Impact:** By not following FEMA's mandate to adopt this amendment, will jeopardize the City and its citizen's eligibility for the National Flood Insurance Program and Federal Disaster Assistance.

RECOMMENDATION

Option 1. The Planning Board recommends the City Commission adopt the proposed ordinance amendment.

**PLANNING BOARD
RESOLUTION No. 2012-23**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
RECOMMENDING APPROVAL OF AN ORDINANCE OF
THE CITY OF KEY WEST, FLORIDA, AMENDING
CHAPTER 110 OF THE CODE OF ORDINANCES
ENTITLED "FLOODPLAIN PROTECTION" BY ADDING
SECTION 110-467 TO PROVIDE ADDITIONAL
PROTECTIONS FOR ENDANGERED SPECIES AND
THEIR HABITAT; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Planning Department initiated the proposed amendments to the ordinance as a result of changes requested by the City Manager; and

WHEREAS, the Planning Board held a noticed public hearing on May 31, 2012, where based on the consideration of recommendations by the City Planner, Building Official and City Attorney, the Planning Board recommended approval of the proposed amendment; and

WHEREAS, the Planning Board determined that the proposed amendment is consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional public demand on public facilities; will have no impact on the built environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and is in the public interest.



Chairman



Planning Director

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key

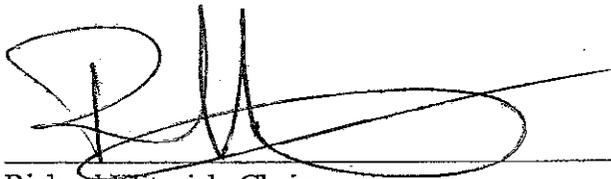
West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. Amending Chapter 110 of the Code of Ordinances entitled "Floodplain Protection" by adding Section 110-467 is hereby recommended for approval; a copy of the recommended modifications to the Code is attached.

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.
Read and passed on first reading at a special meeting held this 31st day of May, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director;



Richard Klitenick, Chairman
Key West Planning Board

6/6/2012
Date

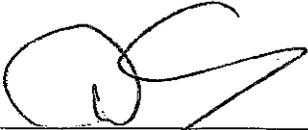
Attest:



Chairman



Planning Director



Donald Leland Craig, AICP
Planning Director

6.1.12

Date

Filed with the Clerk:



Cheryl Smith, City Clerk

6-6-12

Date



Chairman



Planning Director

**Draft
Ordinance**

ORDINANCE NO. 2012-_____

AN ORDINANCE OF THE CITY OF KEY WEST AMENDING SECTION 110 OF THE CODE OF ORDINANCES ENTITLED FLOODPLAIN PROTECTION BY ADDING SECTION 110-467 PROVIDING THE BASIS FOR ENHANCED PROTECTION OF SPECIFICALLY IDENTIFIED ENDANGERED SPECIES HABITAT AND THE SPECIES FOCUS AREA MAPS AND REAL ESTATE LIST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA:

WHEREAS, the National Flood Insurance Program (NFIP) is a Federal program enabling property owners in participating communities to purchase flood insurance at rates whose cost is subsidized by the federal government in exchange for the community's adoption of floodplain management regulations to reduce future flood damages; and

WHEREAS, in 1990 the National Wildlife Federation, Florida Wildlife Federation, and the Defenders of Wildlife filed suit against the Federal Emergency Management Agency (FEMA) claiming FEMA was not consulting with the U.S. Fish and Wildlife Service (Service) as required by the Endangered Species Act in their administration of the National Flood Insurance Program (NFIP) in Monroe County, including the City of Key West, Florida (City); and

WHEREAS, in 1997 the Service completed a Biological Opinion (BO) for the effects of the NFIP on Federally protected species in the Florida Keys; and

WHEREAS, the 1997 BO found the NFIP jeopardized nine species in the Keys, three of which, the Eastern Indigo Snake, the Stock Island Tree Snail, and the Key Tree-Cactus may have suitable habitat; and

WHEREAS, in 2003 the Service re-initiated consultation and amended the 1997 BO and concluded that the effect of the NFIP would result in jeopardy on eight of 10 species evaluated in the BO; and

WHEREAS, in a second amended complaint in 2003 the plaintiffs filed suit against FEMA and the Service pursuant to the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on March 29, 2005 the United States District Court, Southern District of Florida (District Court) granted summary judgment in favor of the Plaintiffs which found that the Service and

FEMA violated the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on September 9, 2005, the District Court entered an order enjoining FEMA from issuing flood insurance under the NFIP on any new residential or commercial developments in suitable habitats of federally listed species in the Keys; and

WHEREAS, the District Court also ordered the Service to submit a new BO by August 9, 2006. The Service issued a new BO on August 8, 2006; and

WHEREAS, on April 1, 2008, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's rulings of March 29, 2005 and September 9, 2005; and

WHEREAS, On February 26, 2009, the District Court ordered the Service to submit a new BO by March 31, 2010 and on March 28, 2010, the Court granted a 30 day extension of this deadline; and

WHEREAS, on April 30, 2010, the Service published the revised BO for FEMA's administration of the NFIP in City of Key West; and

WHEREAS, the BO contains "Reasonable and Prudent Alternatives" (RPA's) that require the City of Key West and other participating communities in the Florida Keys to revise their Flood Damage Prevention Ordinance(s) to reference and use the updated real estate list (referenced in RPA paragraph 1) within 120 days of acceptance of the revised BO by the Court, and;

WHEREAS, on January 11, 2011, the District Court approved a Settlement Agreement between the Plaintiffs and the Federal Defendants in which the Federal Defendants agreed to notify the Court and the parties when City of Key West and the other "participating communities" in the Florida Keys have: 1) revised their Flood Damage Prevention Ordinance(s); and 2) implemented procedures to reference and use the updated real estate list and Species Focus Area Maps (referenced in reasonable and prudent alternative ("RPA") paragraph 1) in compliance with paragraphs 2, 3, 4, and 5 of the RPA; and

WHEREAS, on January 9, 2012, FEMA advised the City of Key West that if the City decides not to implement the RPA's then the City of Key West will be ejected from the National Flood Insurance Program, and that the City concludes such expulsion would wreck economic havoc upon the entire community; and

WHEREAS, The District Court granted the City of Key West an extension to June 30 , 2012 for the required ordinance provisions , sand permit process implementation of the Reasonable and Prudent Alternatives (RPAs); and

WHEREAS, the City Attorney, outside counsel, and the Director of Planning advise that the following proposed language meets the spirit and overriding intent of the RPAs, is consistent with Federal law, and adequately protects City taxpayers against accepting that additional liability;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1.

Section 110-467. The city's Code of Ordinances shall be created as follows:

Section 110-467 FEMA & Wildlife Service Endangered Species Requirements. Inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) Recommendations and Conditions in Final Development Permit Determinations and Implementation Certifications

(a) Purpose and intent. It is the purpose of Section 467 to implement regulations that will assure, consistent with the 10th Amendment to the U.S. Constitution, state and city regulations, proper record retention, coordination, and notification of FEMA and FWS regarding permit applications filed with or issued by the City of Key West, inclusive of FEMA/FWS requirements agreed to by the applicant.

(b) Lands to which this Section apply. FEMA and FWS have provided the Species Focus Area Maps (SFAMs) and a listing of real estate numbers of parcels (RE list) that are within the SFAMs identified by the Service in accordance with the Biological Opinion, mailed to the City of Key West and dated April 30, 2010, are hereby declared to be a part of these regulations. The SFAMs and RE list are on file at the City of Key West Clerk's office and the City of Key West Planning Department.

(c) Rules for interpreting SFAMs. The boundaries of the flood hazard areas shown on the FEMA SFAMs may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the City Planning Director or his/her designee.

(d) Administration of Development Approval in Species Focus Areas.

1. SFA Review Required. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains only unsuitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is not listed on the RE list, the Planning Director or his/her designee shall provide for a notation in the development application permit files that indicates:

- i. The name of the official that made the determination;
- ii. The date of the determination;
- iii. The date of the SFAM and RE list used to make the determination.

Once the determination has been made that a parcel or lot contains unsuitable habitat, action may be taken on the permit application by City of Key West staff.

2. Species Assessment Guides and FWS Comment or, Recommendations or Approval. The Species Assessment Guides provided by the Service, dated December 23, 2011 for the City of Key West are hereby declared to be a part of this ordinance. The Assessment Guides are on File with the City Clerk and the City Planning Department. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains suitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is listed on the RE list and maps, the Planning Director or his/her designee shall provide the approved applications to the Service for review with a condition clearly stating that in accordance with Florida Statue 166.033 that any applicable FWS permit, recommendations and/or conditions be obtained before commencement of development authorized by the City issued permit. Further, the City permit shall state that the issuance of the City Permit does not in any way create any right on the part of the applicant to obtain a permit from FWS, and does not create any liability on the part of the City of key West for issuance of the permit if the applicant fails to obtain the requisite FWS approval or fulfill the obligations imposed by FWS or undertakes actions that result in a violation of federal law and shall require the following:

- i. Once the property owner has received from the FWS a letter or other written communication stating the results of the FWS review, the letter shall be submitted to the City.

ii. Based on the requirements, recommendations or conditions contained in the FWS letter or communication, the City shall require the owner of the property to sign an acceptance agreement form to the FWS conditions, recommendations or requirements and the City shall maintain the acknowledgement form in the permit file. The acceptance form shall be signed by the permit applicant and the Planning Director or his/her designee.

iii. The City shall, based on the acknowledgement form from the property owner, incorporate the FWS letter conditions, recommendations or requirements into the requirements of a City of Key West Certificate of Occupancy or Final Inspection Certificate issuance to avoid and/or to minimize possible impacts on federally listed threatened or endangered species and their habitat..

iv. If the property owner does not agree to the FWS conditions, the City shall not provide a Certificate of Occupancy or Certificate of Final Inspection.

3. **Enforcement.** Violation of this section, including any development constructed not in accordance with the owner acknowledged FWS conditions, are hereby deemed to be violations of the City Code and may be enforced as follows:

i. The City may utilize the administrative enforcement procedures set forth in Chapter 2, Article VI, Code Enforcement, City of Key West Code of Ordinances;

ii. The City's Director of Planning may make a formal complaint to the U.S. FWS Office of Law Enforcement;

iii. The City may file an action in a court of competent jurisdiction seeking damages as well as injunctive and/or equitable relief; and/or

iv. Knowing violations of this section may be prosecuted in the same manner as misdemeanors are prosecuted in the name of the State in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500 and/or imprisonment in the County jail not to exceed 60 days. Each day a violation exists shall constitute a separate offense.

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of

this Ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of the city in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4. **EFFECTIVE DATE.** This ordinance shall take effect immediately upon its final passage and adoption and authentication by signature of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting of the City of Key West city Commission on the _____ day of _____, 2012

Mayor Craig Cates _____ Date
Key West City Commission

Filed with the Clerk:

Cheryl Smith, City Clerk _____ Date



**THE CITY OF KEY WEST
PLANNING BOARD
Staff Report**

To: Chairman and Planning Board members

From: Brendon Cunningham, Senior Planner

Through: Don Craig, AICP, Planning Director

Sponsor: Jim Scholl, City Manager

Meeting Date: May 31, 2012

Agenda Item: Fish and Wildlife Ordinance – Consideration of an ordinance of the City of Key West amending Section 110, of the Code of Ordinances entitled "Floodplain Protection" by adding Section 110-467 providing the basis for enhanced protection of specifically identified endangered species habitat and the species focus area maps and real estate list; providing for severability; providing for the repeal of inconsistent provisions; providing for an effective date.

Request

To adopt FEMA generated species focus area maps and real estate list for the enhanced protection of endangered species and their habitat.

Background

In 1990, environmental advocacy groups filed suit against Federal Emergency Management Act (FEMA) and the U.S. Fish & Wildlife Service (USFWS). FEMA issuance of flood insurance for new construction was thought to be potentially destructive to habitats of endangered species. A court ruling was found in favor of the plaintiffs. Agreements between the various entities provided a list of properties that contained habitats that would support endangered species. The species likely to be found in Key West are the Stock Island Tree Snail, Eastern Indigo Snake and the Key Tree-Cactus.

The property list created as a result of the litigation included 49,000 properties in Monroe County, 257 are found in Key West. FEMA then produced the Species Focus Area Maps (SFAMS). These maps further identify properties adjacent to those on the existing FEMA list. Therefore, if a property is identified on the list or as being adjacent to such a property on the maps, all are on the "list." To develop a property that is on the list, it must be determined that there is no endangered species present or the habitat has been compromised to the extent that it is not habitable by that species.

The proposed ordinance developed by staff is based upon a "model" ordinance developed by the USFWS called the "Reasonable and Prudent Alternatives" (RPA) ordinance which is supported

by a series of "Species Assessment Guides" (SAG) which provide guidance to City of Key West staff to determine whether the parcels on the list and the maps contain suitable habitat or not. It is highly likely that in the built up portions of Key West and even the open areas of the City many mapped areas would not qualify as habitat. Further, USFWS has indicated orally that it would also support a large scale review and analysis of multiple parcels by City staff with the aid of an expert biologist to eliminate from further consideration those without habitat value.

By the City acknowledging and adopting these requirements, the residents will continue to be eligible for flood insurance through the National Flood Insurance Program (NFIP). Further, the City and its residents will both be eligible for Federal disaster assistance following any storm event.

Analysis

Participating in this effort provides an additional level of oversight to protect environmental resources from further degradation. The Florida Keys are an environmentally sensitive habitat and has development restrictions that need to be enhanced and strengthened. When a property is located in a Special Hazard Flood Area, flood insurance is required for any FDIC backed mortgage. Additional compliance with FEMA guidelines ensures Key West's continued participation within the NFIP.

Review Criteria

Section 90-522 of the Code outlines key review criteria for any changes to the Land Development Regulations. A review of the proposed ordinance relative to the criteria is provided below.

Sec. 90-522. Planning board review of proposed changes in land development regulations.
(a) The planning board, regardless of the source of the proposed change in the land development regulations, shall hold a public hearing thereon with due public notice. The planning board shall consider recommendations of the city planner, city attorney, building official and other information submitted at the scheduled public hearing. The planning board shall transmit a written report and recommendation concerning the proposed change of zoning to the city commission for official action. In its deliberations the planning board shall consider the criteria stated in section 90-521.

The City Attorney's Office, Building Official and City Planner have worked together to review guideline modifications proposed and to recommend changes to the Land Development Regulations. The Planning Department report dated May 31, 2012 was prepared in support of procedural review criteria in the code and in support of Planning Board consideration.

Sec. 90-521. Criteria for approving amendments to official zoning map.

In evaluating proposed changes to the official zoning map, the city shall consider the following criteria:

(1) *Consistency with plan.* Whether the proposal is consistent with the comprehensive plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Because the proposed amendment does not impact density or intensity, it will have no impact on minimum levels of service or concurrency determinations as established by the Comprehensive Plan.

(2) *Conformance with requirements.* Whether the proposal is in conformance with all applicable requirements of the Code of Ordinances.

The proposed amendment is in conformance with the Code and the procedures for amending the Land Development Regulations will be followed and are supported by this report.

(3) *Changed conditions.* Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed rezoning.

This is not an attempt to rezone any particular zoning district but rather will be effective city wide. This amendment is intended to provide an additional level of review to necessary environmental protections.

(4) *Land use compatibility.* Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved.

This amendment is meant to add an additional level of review for the development of environmentally sensitive habitat and the potential displacement of endangered species.

(5) *Adequate public facilities.* Whether, and the extent to which, the proposal would result in demands on public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services. Rezoning does not constitute a concurrency determination, and the applicant will be required to obtain a concurrency determination pursuant to chapter 94.

No zoning designation changes are proposed with the amendment. Excessive demands on public facilities will not result in these amendments.

(6) *Natural environment.* Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetlands protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

This is not a zoning district amendment. This amendment is an effort to further protect the natural environment.

(7) *Economic effects.* Whether, and the extent to which, the proposal would adversely affect the property values in the area or the general welfare.

This proposed amendment is not expected to have an adverse effect on the property values in the area or the general welfare. If the land is found to be critical habitat, the property may be used as a "land bank" for development elsewhere. More likely however, if a property is found to support habitat value, development permits would be conditioned by the City to minimize habitat loss, by avoiding such areas, by replacing habitat elsewhere in mitigation, paying a mitigation fee which is available under the existing tree ordinance, or by relying upon the degradation of habitat already calculated by USFWS in mapping the SFAMS resulting from the legal actions which created the SFAM and RPA procedure.

(8) *Orderly development.* Whether the proposal would result in an orderly and compatible land use pattern. Any negative effects on such pattern shall be identified.

The proposed amendments will not have a negative effect on the existing land use pattern.

(9) *Public interest; enabling act.* Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the land development regulations in this subpart B and the enabling legislation.

The proposed amendments do not appear to be in conflict with the public interest. They will enhance the public welfare by providing additional review of environmentally sensitive habitat for endangered species.

(10) *Other matters.* Other matters which the Planning Board and the City Commission may deem appropriate.

Other matters have not been identified at this time.

Recommendation

Planning Staff recommends the Planning Board forward a recommendation of **approval** of the ordinance to the City Commission amending Section 110 by adding Section 110-467 of the LDRs of the City of Key West.

**Draft
Resolution**

**PLANNING BOARD
RESOLUTION NO. 2012-**

**A RESOLUTION OF THE KEY WEST PLANNING BOARD
RECOMMENDING APPROVAL OF AN ORDINANCE OF
THE CITY OF KEY WEST, FLORIDA, AMENDING
CHAPTER 110 OF THE CODE OF ORDINANCES
ENTITLED "FLOODPLAIN PROTECTION" BY ADDING
SECTION 110-467 TO PROVIDE ADDITIONAL
PROTECTIONS FOR ENDANGERED SPECIES AND
THEIR HABITAT; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF INCONSISTENT
PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Planning Department initiated the proposed amendments to the ordinance as a result of changes requested by the City Manager; and

WHEREAS, the Planning Board held a noticed public hearing on May 31, 2012, where based on the consideration of recommendations by the City Planner, Building Official and City Attorney, the Planning Board recommended approval of the proposed amendment; and

WHEREAS, the Planning Board determined that the proposed amendment is consistent with the Comprehensive Plan; in conformance with all applicable requirements of the Code of Ordinances; are stimulated by changed conditions after the effective date of the existing regulation; will promote land use compatibility; will not result in additional public demand on public facilities; will have no impact on the built environment; will not negatively impact property values or the general welfare; will result in more orderly and compatible land use patterns; and are in the public interest.

_____ Chairman

_____ Planning Director

NOW THEREFORE BE IT RESOLVED by the Planning Board of the City of Key

West, Florida:

Section 1. That the above recitals are incorporated by reference as if fully set forth herein.

Section 2. Amending Chapter 110 of the Code of Ordinances entitled "Floodplain Protection" by adding Section 110-467 is hereby recommended for approval; a copy of the recommended modifications to the Code is attached.

Section 3. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a special meeting held this 31st day of May, 2012.

Authenticated by the Chairman of the Planning Board and the Planning Director;

Richard Klitenick, Chairman
Key West Planning Board

Date

Attest:

_____ Chairman

_____ Planning Director

Donald Leland Craig, AICP
Planning Director

Date

Filed with the Clerk:

Cheryl Smith, City Clerk

Date

Draft

Chairman

Planning Director

**Draft
Ordinance**

ORDINANCE NO. 2012-_____

AN ORDINANCE OF THE CITY OF KEY WEST AMENDING SECTION 110 OF THE CODE OF ORDINANCES ENTITLED FLOODPLAIN PROTECTION BY ADDING SECTION 110-467 PROVIDING THE BASIS FOR ENHANCED PROTECTION OF SPECIFICALLY IDENTIFIED ENDANGERED SPECIES HABITAT AND THE SPECIES FOCUS AREA MAPS AND REAL ESTATE LIST; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

BE IT ORDAINED BY THE PLANNING BOARD OF THE CITY OF KEY WEST, FLORIDA:

WHEREAS, the National Flood Insurance Program (NFIP) is a Federal program enabling property owners in participating communities to purchase flood insurance at rates whose cost is subsidized by the federal government in exchange for the community's adoption of floodplain management regulations to reduce future flood damages; and

WHEREAS, in 1990 the National Wildlife Federation, Florida Wildlife Federation, and the Defenders of Wildlife filed suit against the Federal Emergency Management Agency (FEMA) claiming FEMA was not consulting with the U.S. Fish and Wildlife Service (Service) as required by the Endangered Species Act in their administration of the National Flood Insurance Program (NFIP) in Monroe County, including the City of Key West, Florida (City); and

WHEREAS, in 1997 the Service completed a Biological Opinion (BO) for the effects of the NFIP on Federally protected species in the Florida Keys; and

WHEREAS, the 1997 BO found the NFIP jeopardized nine species in the Keys, three of which, the Eastern Indigo Snake, the Stock Island Tree Snail, and the Key Tree-Cactus may have suitable habitat; and

WHEREAS, in 2003 the Service re-initiated consultation and amended the 1997 BO and concluded that the effect of the NFIP would result in jeopardy on eight of 10 species evaluated in the BO; and

WHEREAS, in a second amended complaint in 2003 the plaintiffs filed suit against FEMA and the Service pursuant to the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on March 29, 2005 the United States District Court, Southern District of Florida (District Court) granted summary judgment in favor of the Plaintiffs which found that the Service and

FEMA violated the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on September 9, 2005, the District Court entered an order enjoining FEMA from issuing flood insurance under the NFIP on any new residential or commercial developments in suitable habitats of federally listed species in the Keys; and

WHEREAS, the District Court also ordered the Service to submit a new BO by August 9, 2006. The Service issued a new BO on August 8, 2006; and

WHEREAS, on April 1, 2008, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's rulings of March 29, 2005 and September 9, 2005; and

WHEREAS, On February 26, 2009, the District Court ordered the Service to submit a new BO by March 31, 2010 and on March 28, 2010, the Court granted a 30 day extension of this deadline; and

WHEREAS, on April 30, 2010, the Service published the revised BO for FEMA's administration of the NFIP in City of Key West; and

WHEREAS, the BO contains "Reasonable and Prudent Alternatives" (RPA's) that require the City of Key West and other participating communities in the Florida Keys to revise their Flood Damage Prevention Ordinance(s) to reference and use the updated real estate list (referenced in RPA paragraph 1) within 120 days of acceptance of the revised BO by the Court, and;

WHEREAS, on January 11, 2011, the District Court approved a Settlement Agreement between the Plaintiffs and the Federal Defendants in which the Federal Defendants agreed to notify the Court and the parties when City of Key West and the other "participating communities" in the Florida Keys have: 1) revised their Flood Damage Prevention Ordinance(s); and 2) implemented procedures to reference and use the updated real estate list and Species Focus Area Maps (referenced in reasonable and prudent alternative ("RPA") paragraph 1) in compliance with paragraphs 2, 3, 4, and 5 of the RPA; and

WHEREAS, on January 9, 2012, FEMA advised the City of Key West that if the City decides not to implement the RPA's then the City of Key West will be ejected from the National Flood Insurance Program, and that the City concludes such expulsion would wreck economic havoc upon the entire community; and

WHEREAS, The District Court granted the City of Key West an extension to June 30 , 2012 for the required ordinance provisions , sand permit process implementation of the Reasonable and Prudent Alternatives (RPAs); and

WHEREAS, the City Attorney, outside counsel, and the Director of Planning advise that the following proposed language meets the spirit and overriding intent of the RPAs, is consistent with Federal law, and adequately protects City taxpayers against accepting that additional liability;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1.

Section 110-467. The city's Code of Ordinances shall be created as follows:

Section 110-467 FEMA & Wildlife Service Endangered Species Requirements. Inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) Recommendations and Conditions in Final Development Permit Determinations and Implementation Certifications

(a) Purpose and intent. It is the purpose of Section 467 to implement regulations that will assure, consistent with the 10th Amendment to the U.S. Constitution, state and city regulations, proper record retention, coordination, and notification of FEMA and FWS regarding permit applications filed with or issued by the City of Key West, inclusive of FEMA/FWS requirements agreed to by the applicant.

(b) Lands to which this Section apply. FEMA and FWS have provided the Species Focus Area Maps (SFAMS) and a listing of real estate numbers of parcels (RE list) that are within the SFAMS identified by the Service in accordance with the Biological Opinion, mailed to the City of Key West and dated April 30, 2010, are hereby declared to be a part of these regulations. The SFAMS and RE list are on file at the City of Key West Clerk's office and the City of Key West Planning Department.

(c) Rules for interpreting SFAMS. The boundaries of the flood hazard areas shown on the FEMA SFAMS may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the City Planning Director or his/her designee.

(d) Administration of Development Approval in Species Focus Areas.

1. SFA Review Required. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains only unsuitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is not listed on the RE list, the Planning Director or his/her designee shall provide for a notation in the development application permit files that indicates:

- i. The name of the official that made the determination;
- ii. The date of the determination;
- iii. The date of the SFAM and RE list used to make the determination.

Once the determination has been made that a parcel or lot contains unsuitable habitat, action may be taken on the permit application by City of Key West staff.

2. Species Assessment Guides and FWS Comment or, Recommendations or Approval. The Species Assessment Guides provided by the Service, dated December 23, 2011 for the City of Key West are hereby declared to be a part of this ordinance. The Assessment Guides are on File with the City Clerk and the City Planning Department. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains suitable habitat for any of the following species: Key Tree-Cactus, Eastern Indigo Snake, and Stock Island Tree Snail, and the parcel or lot is listed on the RE list and maps, the Planning Director or his/her designee shall provide the approved applications to the Service for review with a condition clearly stating that in accordance with Florida Statue 166.033 that any applicable FWS permit, recommendations and/or conditions be obtained before commencement of development authorized by the City issued permit. Further, the City permit shall state that the issuance of the City Permit does not in any way create any right on the part of the applicant to obtain a permit from FWS, and does not create any liability on the part of the City of key West for issuance of the permit if the applicant fails to obtain the requisite FWS approval or fulfill the obligations imposed by FWS or undertakes actions that result in a violation of federal law and shall require the following:

- i. Once the property owner has received from the FWS a letter or other written communication stating the results of the FWS review, the letter shall be submitted to the City.

ii. Based on the requirements, recommendations or conditions contained in the FWS letter or communication, the City shall require the owner of the property to sign an acceptance agreement form to the FWS conditions, recommendations or requirements and the City shall maintain the acknowledgement form in the permit file. The acceptance form shall be signed by the permit applicant and the Planning Director or his/her designee.

iii. The City shall, based on the acknowledgement form from the property owner, incorporate the FWS letter conditions, recommendations or requirements into the requirements of a City of Key West Certificate of Occupancy or Final Inspection Certificate issuance to avoid and/or to minimize possible impacts on federally listed threatened or endangered species and their habitat..

iv. If the property owner does not agree to the FWS conditions, the City shall not provide a Certificate of Occupancy or Certificate of Final Inspection.

3. **Enforcement.** Violation of this section, including any development constructed not in accordance with the owner acknowledged FWS conditions, are hereby deemed to be violations of the City Code and may be enforced as follows:

i. The City may utilize the administrative enforcement procedures set forth in Chapter 2, Article VI, Code Enforcement, City of Key West Code of Ordinances;

ii. The City's Director of Planning may make a formal complaint to the U.S. FWS Office of Law Enforcement;

iii. The City may file an action in a court of competent jurisdiction seeking damages as well as injunctive and/or equitable relief; and/or

iv. Knowing violations of this section may be prosecuted in the same manner as misdemeanors are prosecuted in the name of the State in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and upon conviction shall be punished by a fine not to exceed \$500 and/or imprisonment in the County jail not to exceed 60 days. Each day a violation exists shall constitute a separate offense.

Section 2. If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of

this Ordinance shall be deemed severable there from and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 3. All Ordinances or parts of Ordinances of the city in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 4. **EFFECTIVE DATE.** This ordinance shall take effect immediately upon its final passage and adoption and authentication by signature of the presiding officer and the Clerk of the Commission.

Read and passed at a regular meeting of the City of Key West city Commission on the _____ day of _____, 2012

Mayor Craig Cates _____ Date
Key West City Commission

Filed with the Clerk:

Cheryl Smith, City Clerk _____ Date

**FEMA List of
Identified Properties**

FEMA List Properties

Alternate Key	RE #	St. No.	Unit	Street	Owner
1065552	00065030-000000	1213		14TH ST	ISLAND-WEST INVESTMENT CORP
1016055	00015690-000000	0526		ANGELA ST	GARDENS OF KEY WEST LLC THE
1014281	00013900-000000	0110		Angela St.	CITY OF KEY WEST
1014249	00013860-000000	0112		Angela St.	CITY OF KEY WEST
1059293	00058800-000000	1000	Higgs Bch	ATLANTIC BLVD	MONROE COUNTY
1065064	00064630-000400	1328		ATLANTIC BLVD	WILLIAMS JOHN A
1065056	00064630-000300	1330		ATLANTIC BLVD	RYAN TIMOTHY J
1065048	00064630-000200	1332		ATLANTIC BLVD	ONDERDONK GARY R AND DIANE M
1065030	00064630-000100	1334		ATLANTIC BLVD	BURGER ROBERT M & BOLEN LARRY A R/S
8674694	00064640-000301	1500		ATLANTIC BLVD	WILLIAMS TIMOTHY AND AMY
8565437	00064640-000121	1616		ATLANTIC BLVD	CASA CASELLES HOMEOWNERS ASSOCIATION INC
1065021	00064630-000000	1200	block	ATLANTIC BLVD	City of Key West - Rest Beach
8708947	00064640-000401	1500	106	ATLANTIC BLVD	HUNTER BLAKE TRUST
1076104	00072080-001800	5100		COLLEGE RD	CITY OF KEY WEST
1076139	00072080-002000	5200		COLLEGE RD	COUNTY OF MONROE
8757867	00072082-002000	5210		COLLEGE RD	CITY OF KEY WEST
8776659	00072080-000101	5501	Jail	COLLEGE RD	MONROE COUNTY
1075990	00072080-001300	5610		COLLEGE RD	POST 28 AMERICAN LEGION
8757981	00072082-003200	6450		COLLEGE RD	CITY OF KEY WEST
8776632	00066170-000400	3300	Block	DONALD AVE	DIONYSUS GROUP LC
8757816	00072082-001500	1405		DUVAL ST	CITY OF KEY WEST
N/A	N/A			DUVAL ST	Street end/Atlantic City of Key West
1006548	00006320-000000	0600		EATON ST	FIRST UNITED METHODIST CHURCH
1006432	00006210-000000	0616		EATON ST	NEWHOUSE GREGORY L
8929628	00006210-000100	620		EATON ST	TROMBLE RICK A AND MICHELE L
8929628	00006210-000200		VALKWAY	EATON ST	NEWHOUSE GREGORY L
9092258	00023171-000100	0719	001	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092260	00023171-000200	0719	002	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092261	00023171-000300	0719	003	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092262	00023171-000400	0719	004	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092264	00023171-000500	0719	005	EISENHOWER DR	INGRAM MICHAEL B
9092265	00023171-000600	0719	006	EISENHOWER DR	PARADISE HARBOR CONDOMINIUM
9092267	00023171-000700	0719	007	EISENHOWER DR	PARADISE HARBOR NUMBER 7 LLC
1006467	00006240-000000	0416		ELIZABETH ST	FAR NIENTE LLC
1009211	00008950-000000	0518		ELIZABETH ST	FORRESTER NANCY
1009237	00008970-000000	0522		ELIZABETH ST	SKOGLUND MICHAEL J
1009288	00009020-000000	0524		ELIZABETH ST	CROCKETT DIANE M
1065609	00065080-000000	2100		Flagler Ave.	BOARD OF PUBLIC INSTRUCTION OF MONROE COUNTY
1068730	00065880-000000	2610		Flagler Ave.	PEACE COVENANT PRESBYTERIAN CHURCH
1065617	00065090-000000	2700		Flagler Ave.	CARROLL COLEMAN F B OF THE DIOC OF MIAMI ROM
8633394	00065090-000100	2800		Flagler Ave.	CHABAD OF KEY WEST INC
8906650	00006260-000101	617	1	FLEMING St.	BOLAK ROBERT ALAN AND JAMIE MARIE
8906668	00006260-000102	617	2	FLEMING St.	GAMBRILL MATTHEW
8906676	00006260-000103	617	3	FLEMING St.	PELTIER MICHAEL JOSEPH
890684	00006260-000104	617	4	FLEMING St.	ARGOUEDELIS JAMES
890692	00006260-000105	617	5	FLEMING St.	POLATZ JOHN J AND SUSAN E
8906706	00006260-000106	617	6	FLEMING St.	SCHULTZ ROBERT AND MARY LYNNE
8906714	00006260-000107	617	7	FLEMING St.	SZOT WALTER S AND DAWN
8906722	00006260-000108	617	8	FLEMING St.	SZOT WALTER S AND DAWN
8906731	00006260-000109	617	9	FLEMING St.	MCKENZIE JOHN P
	00006260-000000	617		FLEMING St.	
9038844	00001630-000802		Vacant	Fort St.	UNITED STATES OF AMERICA
1009261	00009000-000000		End	FREE SCHOOL LN	FORRESTER NANCY
8758847	00006700-001001	0015		Front St	BEHMKE JOHN J AND KAY D
8849389	00004590-002157	0103		Front St	RENZULLI RODGER A
8749872	00004590-001402	0201	103	Front St	FOUNDRY DEVELOPMENT CORP
1000078	00000070-000000	0505		FRONT ST	PIER HOUSE JOINT VENTURE ET AL
	00006700-001000			Front St	
	00006700-001003			Front St	
	00006700-001004			Front St	
1014290	00013910-000000	0105		GERALDINE ST	CITY OF KEY WEST
1014257	00013870-000000	0111		GERALDINE ST	CITY OF KEY WEST
8880634	00072081-000441	261		GOLF CLUB DR	BAUCOM BARBARA JOAN
9091134	00001711-000100	0301	A201	GRINNELL ST	LAIRD LEWIS D AND ALISON J
9091135	00001711-000200	0301	A202	GRINNELL ST	SAUNDERS FRED JR
9091136	00001711-000300	0301	A203	GRINNELL ST	IRIZARRY ANTONIO JR AND JUDI LYNN
9091137	00001711-000400	0301	A204	GRINNELL ST	FELSHER ALLYSON M
9091138	00001711-000500	0301	A205	GRINNELL ST	WILD WILLIAM H AND JUDITH A
9091139	00001711-000600	0301	A301	GRINNELL ST	GAMMELL LOU W
9091140	00001711-000700	0301	A302	GRINNELL ST	PAGE JEFFREY B AND CYNTHIA L
9091141	00001711-000800	0301	A303	GRINNELL ST	SILVA EDUARDO M
9091142	00001711-000900	0301	A304	GRINNELL ST	BROWN JULIE N
9091143	00001711-001000	0301	A305	GRINNELL ST	PRITCHARD JESSICA
9091144	00001711-001100	0301	A401	GRINNELL ST	DENNY ANDREA P
9091144	00001711-001200	0301	A402	GRINNELL ST	MUCCINO JANET M
9091146	00001711-001300	0301	A403	GRINNELL ST	COUGHLIN EMILIA C

FEMA List Properties

Alternate Key	RE #	St. No.	Unit	Street	Owner
9091147	00001711-001400	0301	A404	GRINNELL ST	BARROSO JULIO J
9091148	00001711-001500	0301	B201	GRINNELL ST	MAKRIS MARGARET L REV TR
9091149	00001711-001600	0301	B202	GRINNELL ST	NELSON AARON B
9091150	00001711-001700	0301	B203	GRINNELL ST	CURRY GAY M
9091151	00001711-001800	0301	B204	GRINNELL ST	MILLER WAYNE H
9091152	00001711-001900	0301	B205	GRINNELL ST	FALCONER MARY A
9091153	00001711-002000	0301	B301	GRINNELL ST	BARILLAS DAVID H
9091154	00001711-002100	0301	B302	GRINNELL ST	MELLOR LYNN B
9091155	00001711-002200	0301	B303	GRINNELL ST	PIERCE MEAGAN M
9091156	00001711-002300	0301	B304	GRINNELL ST	CARRICO CHRISTOPHER L
9091157	00001711-002400	0301	B305	GRINNELL ST	COX PAULA
9091158	00001711-002500	0301	B306	GRINNELL ST	BRAGHIERI ADELE
9091159	00001711-002600	0301	B402	GRINNELL ST	DEEGAN KEVIN G
9091160	00001711-002700	0301	B403	GRINNELL ST	FINIGAN ROBIN S
9091161	00001711-002800	0301	B404	GRINNELL ST	BRAHAM HEATHER
9091162	00001711-002900	0301	B405	GRINNELL ST	ROY GARY P
	00001711-000000	0301		GRINNELL ST	
8895578	00002430-000100	—		GULFVIEW DR	ROOSEVELT ANNEX HOMEOWNERS' ASSOCIATION
1002801	00002700-000000	0916		JAMES ST	MORRIS DONAL SR
8681135	00072080-000801	5860		JUNIOR COLLEGE RD	LOWER FL KEYS HOSPITAL
8929610	00029650-000104	1223	004	MARGARET ST	BARBER ROBERT R JR AND GAYLE M
8757760	00072082-001000	2315	Yacht	N ROOSEVELT BLVD	CITY OF KEY WEST
1002097	00001990-000000	2401		N ROOSEVELT BLVD	KW26 LLC
1002372	00002270-000000	2405		N ROOSEVELT BLVD	KEY WEST LIONS CLUB
8890613	0002280-0001000	2407		N ROOSEVELT BLVD	WALKER RICHARD C
1065536	00065010-000000	2600		N ROOSEVELT BLVD	SILVER EAGLE DISTRIBUTORS LTD
1002526	00002430-000000	2661	-2893	N ROOSEVELT BLVD	KW HOUSING AUTHORITY
8609892	00002410-000400	2801		N ROOSEVELT BLVD	PARROT KEY ASSOCIATES INC
1002496	00002410-000000	2811	Hm. Depot	N ROOSEVELT BLVD	KEY HOME INVESTORS LLC
1002500	00002410-000100	3029		N ROOSEVELT BLVD	KEY COVE HOMEOWNER'S ASSOC INC
	Multi 00064881-000000	3841		N ROOSEVELT BLVD	Multi condos
1065587	00065060-000000	3852		N ROOSEVELT BLVD	JLW KEY WEST 1 LLC
8861737	00066170-000401	3330		NORTHSIDE DR	MARINERS COVE APARTMENTS
1068683	00065820-000100	3420		NORTHSIDE DR	COOKE COMMUNICATIONS LLC
8925255	00064900-000100	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
8929734	00064900-000200	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
8929746	00064900-000300	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
8965793	00064900-000400	5051		OVERSEAS HWY	HYATT VACATION MANAGEMENT CO
9085050	00023641-000500	1501	005	PETRONIA ST	SPECIAL ACQUISITIONS VII INC
9085046	00023641-000100	1502	001	PETRONIA ST	MCGRATH JAMES F AND SHEILA A
9085051	00023641-000600	1505	006	PETRONIA ST	HENTHORNE JASON F
9085047	00023641-000200	1506	002	PETRONIA ST	SEAL DAVID VENNER
9085052	00023641-000700	1509	007	PETRONIA ST	SPECIAL ACQUISITIONS VII INC
9085048	00023641-000300	1510	003	PETRONIA ST	GEORGE DANIEL C
9085053	00023641-000800	1513	008	PETRONIA ST	ALLEN DALE REV TRUST
9085049	00023641-000400	1514	004	PETRONIA ST	CULLEN THOMAS AND MONICA
8735677	00037160-000100	1500		REYNOLDS ST	CASA MARINA OWNER LLC
8922540	00064680-000101	1445		S ROOSEVELT BLVD	KEY WEST COCONUT MALLORY RESORT
1065331	00064840-000000	3501		S ROOSEVELT BLVD	COUNTY OF MONROE
1054968	00054350-000000	3591		S ROOSEVELT BLVD	HYATT AND HYATT INC
9013390	00054360-000100	3675		S ROOSEVELT BLVD	WINDWARD POINTE II LLC
1054984	00054370-000000	3755		S ROOSEVELT BLVD	KEY AMBASSADOR COMPANY
8749996	00066180-000200	3900		S ROOSEVELT BLVD	CRICO OF OCEAN WALK
8786841	00066180-000700	3990		S ROOSEVELT BLVD	KEY HOPITALITY AND HEALTHCARE
8960898	00066180-035100	3635	-3675	SEASIDE DR	SALTPOONDS CONDOMINIUM
1037150	00036310-000000	1420		SIMONTON ST	SOUTHERNMOST BEACH RESORTS
1037117	00036270-000000	1435		SIMONTON ST	KEY WEST REACH OWNER LLC
1006556	00006330-000000	0417		SIMONTON ST	CARLOUGH WILLIAM ARTHUR REV TR
1006564	00006340-000000	0419		SIMONTON ST	MORTIMER RAYMOND MICHAEL
1000060	00000060-000000	END		SIMONTON ST	CITY OF KEY WEST
1037249	00036400-000000	0402		SOUTH ST	MORGAN HUGH J
1037257	00036410-000000	0404		SOUTH ST	MORGAN HUGH J
1012459	00012120-000000	0610		SOUTHARD ST	CARTER LINDA LIVING TRUST
1012408	00012070-000000	0620		SOUTHARD ST	WOODRUFF THOMAS S
1009202	00008940-000000	0631		SOUTHARD ST	631 SOUTHARD LLC
8952714	00000200-000700	Vacant		SUNSET KEY	SUNSET ACQUISITIONS CORPORATION
8885075	00000200-000406	0000		SUNSET KEY DR	SUNSET KEY RESTAURANT CORP
8885229	00000200-000501	0001		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
9042617	00000200-000502	0002		SUNSET KEY DR	SAPPERSTEIN MARK C AND STACY L
9042155	00000200-000503	0003		SUNSET KEY DR	ARBURUA MARTIN
8885237	00000200-000519	0019		SUNSET KEY DR	DRETTMANN HENRY A
9013214	00000200-000527	0027		SUNSET KEY DR	HASLINGER SANDRA L
8885334	00000200-000537	0039		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
9085898	00000200-000538	0040		SUNSET KEY DR	MCCULLOUGH FRANCIS H III AND KATHY L
9006614	00000200-000540	0041	A	SUNSET KEY DR	ARNOLD L MORGAN AND PHYLLIS S
9081646	00000200-000402	0054		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP

FEMA List Properties

Alternate Key	RE #	St. No.	Unit	Street	Owner
	0000200-00054	0054		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
8885121	0000200-000411	0055		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
8980643	0000200-000557	0057		SUNSET KEY DR	PARCEL K ISLAND DEVELOPMENT CORP
888511	0000200-000403	2200-0208		SUNSET KEY DR	PARCEL L ISLAND DEVELOPMENT CORP
8885083	0000200-000407	2281-0283		SUNSET KEY DR	SUNSET ACQUISITIONS CORPORATION
8885091	0000200-000408	0292		SUNSET KEY DR	SUNSET ACQUISITIONS CORPORATION
9080984	0000200-002903	0293		SUNSET KEY DR	HASLINGER HOLDING COMPANY
8885172	0000200-000416	Vacant	Roads	SUNSET KEY DR	SUNSET ISLAND HOMEOWNERS ASSOCIATION INC
8848746	0000200-000401	Vacant		SUNSET KEY DR	SUNSET KEY PB CORPORATION
8868537	0000200-000405	Vacant		SUNSET KEY DR	PARCEL G ISLAND DEVELOPMENT CORP
8885211	0000200-000420	Vacant		SUNSET KEY DR	SUNSET ISLAND HOMEOWNERS ASSOCIATION INC
8885270	0000200-000528	Vacant		SUNSET KEY DR	JKEY LLC
1068292	00065560-000102	930		TOPPINO DR	FIRST STATE BANK OF THE FLORIDA KEYS
9038855	00001630-001000	Vacant		Truman Annex	CITY OF KEY WEST
1015768	00015390-000000	0105		Truman Ave.	HOUSING AUTHORITY OF THE CITY OF KEY WEST
1001805	00001720-000200	0250		TRUMBO RD	CITY OF KEY WEST
9093943	00001741-000500	0281	005	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093944	00001741-000600	0281	006	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093945	00001741-000700	0281	007	TRUMBO RD	CLEMENTS THOMAS III
9093946	00001741-000800	0281	008	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093947	00001741-000900	0281	009	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093948	00001741-001000	0281	010	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093949	00001741-001100	0281	011	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093951	00001741-001200	0281	012	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093952	00001741-001300	0281	013	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093953	00001741-001400	0281	014	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093954	00001741-001500	0281	015	TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093939	00001741-000100	0281		TRUMBO RD	BUCKLEY CAROL A
9093941	00001741-000300	0281		TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
9093942	00001741-000400	0281		TRUMBO RD	STEAMPLANT CONDOMINIUMS LLC
	00001741-000000	0281		TRUMBO RD	
1036536	00035670-000000	1401		United St	EATON MELVIN H II
1036579	00035710-000000	1407		United St	SCHOONER EXPLORATION ASSOCIATES LTD INC
1036609	00035740-000000	1409		United St	SCHOONER EXPLORATION ASSOCIATES LTD INC
9082150	00065870-001100	Vacant		Vacant land	MARQUESA COURT HOMEOWNER'S ASSOCIATION INC
1074829	00070990-000000	2801		VENETIAN DR	SOUTHERNMOST HOMES INC
1074837	00071000-000000	2825		VENETIAN DR	SAFE HARBOR ENTERPRISES
1074632	00070800-000000	3001		VENETIAN DR	SCHROEDER JOSEPH J
8574215	00037410-000100	1502		VERNON AVE	HONORARY CONCH INC
N/A	N/A	1500	block	Vernon St.	Street end/beach City of Key West
1038121	00037370-000000	0700	Rear	WADDELL ST	SPOTTSWOOD JOHN M JR & SPOTTWOOD WILLIAM B &
8773811	00037350-000600	700	block	WADDELL ST	COCONUT BEACH DEVELOPMENT CORP
8965342	00006730-000100	0710		White St.	City of Key West - Peary Ct. Cem.
1018392	00017930-000000	0907		WHITEHEAD ST	907 WHITEHEAD STREET CORP
	00009050-000000				
	00009050-000101				
	00009220-000000				
	00009250-000000				
	00012120-000200				
	00012150-000100				
	00035650-000000				
	00035670-000000				
	00035690-000000				
	00063560-000000				
1	00066180-000000				
	00064820-000000				
	00065100-000000				
	00065900-000000				
	00072080-000900				
	00072080-000500				
	Dog Beach				
	Duval St. - All. end				
	00072080-001400				
	00072080-000700				
	00072080-000901				

Species Focus Area Maps





