

U.S. Fish & Wildlife Service

John H. Chafee Coastal Barrier Resources System (CBRS) Unit P32, Moreno Point, Florida Summary of Proposed Changes

Type of Unit: System Unit
County: Walton, Okaloosa
Congressional District: 1

Existing Map:

The existing CBRS map depicting this unit is:

- [12-021A](#) dated January 11, 2016

Notice of Availability:

The U.S. Fish & Wildlife Service (Service) opened a public comment period on the proposed changes to Unit P32 via Federal Register notice. The Federal Register notice and the proposed boundary (accessible through the CBRS Projects Mapper) are available on the Service's website at www.fws.gov/cbra.

Establishment of Unit:

The Coastal Barrier Resources Act (Pub. L. 97-348), enacted on October 18, 1982 (47 FR 52388), originally established Unit P32

Historical Changes:

The CBRS map for this unit has been modified by the following legislative and/or administrative actions:

- Coastal Barrier Improvement Act (Pub. L. 101-591) enacted on November 16, 1990 (56 FR 26304)
- Pub. L. 104-333 enacted on November 12, 1996 (62 FR 28891). The maps revised by this law were later invalidated by a court order on March 5, 1998 (Coastal Alliance v. Babbitt, Civil Action No. 97-1344 (D. D.C.)).
- Pub. L. 105-277 enacted on October 21, 1998 (64 FR 41940). This law reinstated the maps revised by Pub. L. 104-333 (including the map for Unit P32) that were previously invalidated by court order.
- *Federal Register* notice (81 FR 13407) published on March 14, 2016, in accordance with Section 3 of Pub. L. 101-591

For additional information on historical legislative and administrative actions that have affected the CBRS, see: <https://www.fws.gov/cbra/Historical-Changes-to-CBRA.html>

Proposed Changes:

The proposed changes to Unit P32 are described below.

Proposed Removals:

- Twenty-five structures along Terra Cotta Way in the Terra Cotta Terrace subdivision
- One condominium building and adjacent fastland in the Chateau La Mer II condominium complex, located to the north of Scenic Highway 98
- Four structures along Walton Way, one structure along Forest Shore Drive, and adjacent undeveloped fastland, located in the Holiday Shores Estates subdivision

Proposed Additions:

- A small area of wetlands and undeveloped fastland to the east of Indian Bayou Drive
- Associated aquatic habitat along Indian Bayou

Unit P32 Summary of Proposed Changes (continued)

Proposed Reclassifications:

- From System Unit P32 to Otherwise Protected Area (OPA) Unit P32P: The eastern portion of Henderson Beach State Park
- From OPA Unit P32P to System Unit P32: An area of privately owned fastland, including a Gulf Power Company facility, located to the north of Henderson Beach State Park and to the south of the Emerald Coast Parkway

Other Modifications/Information:

- A minor area owned by Okaloosa County and held for conservation and/or recreation known as James Lee Park is currently located within System Unit P32. This area is not proposed for reclassification to an OPA.
- A minor portion of the Miramar Regional Public Beach Access (owned by Walton County and held for conservation and/or recreation) is currently located within System Unit P32. This area is not proposed for reclassification to an OPA.

For information about the Service's guiding principles and criteria for assessing CBRS boundary modifications, visit www.fws.gov/cbra/maps/Boundary-Modifications.html.

Technical Corrections Assessment:

A technical correction is a correction to a CBRS map to fix a legitimate mapping error. The Service receives numerous requests from property owners and other interested parties who seek to remove areas from the CBRS based on an alleged "technical mapping error." The Service considers a technical mapping error to be a mistake in the delineation of the CBRS boundaries that was made as a result of incorrect, outdated, or incomplete information (often stemming from inaccuracies on the original base maps). The Service generally does not recommend removal of areas from the CBRS unless there is clear and compelling evidence that a technical mapping error led to their inclusion within the CBRS. In order to determine whether a technical mapping error exists, the Service conducts a comprehensive review of the history of the CBRS unit in question which generally includes an assessment of the Service's background records for the unit, the controlling and historical CBRS maps of the area, the historical development status of the area, aerial imagery, and any materials submitted by interested parties. When the Service determines that a technical correction to a map is warranted, we prepare a new comprehensively modernized map for the area. The updated map becomes effective only if adopted through legislation enacted by Congress.

The Service was first contacted about Unit P32 in 2006 by a private property owner who sought to remove properties along Scenic Highway 98 (also known as old U.S. Highway 98) from the CBRS. Following that first request, the Service received additional requests from other property owners who also sought the removal of certain properties from Unit P32. The developments included in these requests are The Inn at Crystal Beach condominiums, The Henderson Park Inn, Henderson Beach Resort (a planned multi-phase resort development that will include a resort hotel, convention center, water park, and multiple multi-density residential units), and the Destiny Shores, Shores of Crystal Beach, Emerald Bay, and Kelly Plantation subdivisions. The City of Destin also contacted the Service seeking to remove all properties along Scenic Highway 98 and requesting the elimination of the entire unit from the CBRS. The interested parties assert that (1) all properties along Scenic Highway 98 had full infrastructure when the area was first included in 1982 within the CBRS and therefore should be removed from the CBRS, and (2) Unit P32 never met the "environmental criteria" of a CBRS unit and therefore the unit should be eliminated in its entirety.

Service Findings

The Service has carefully assessed the information submitted over the years by the private property owners and the City of Destin as well as the materials that are typically reviewed as part of a technical correction assessment. The Service found that the area within Unit P32 met the CBRA criteria for an undeveloped coastal barrier when it was first included in 1982 within the CBRS. Therefore, the Service does not recommend remapping the unit to remove from the CBRS the properties fronting Scenic Highway 98, or removing Unit P32 in its entirety from the CBRS. The Service did identify three mapping errors affecting Terra Cotta Terrace, Chateau La Mer II, and Holiday Shores Estates. CBRA's development criteria and the Service's findings related to this technical correction

Unit P32 Summary of Proposed Changes (continued)

assessment are explained in further detail below.

CBRA Development Criteria

CBRA requires that the Service consider the following criteria in determining whether a coastal barrier was undeveloped at the time of inclusion within the CBRS: (A) the density of development was less than one structure per five acres of land above mean high tide; and (B) there was existing infrastructure consisting of (i) a road, with a reinforced road bed, to each lot or building site in the area; (ii) a wastewater disposal system sufficient to serve each lot or building site in the area; (iii) electric service for each lot or building site in the area; and (iv) a fresh water supply for each lot or building site in the area (16 U.S.C. 3503(g)(1)).

Density of Development: The Service's review of Unit P32 considered the density of development that existed on-the-ground when the unit was designated in 1982. Our records indicated that Unit P32 was comprised of 2723 acres of fastland (i.e., land above mean high tide) and contained 12 structures in 1982. Therefore, the density of development on-the-ground was about one structure per 227 acres of fastland, well below the statutory density threshold to be considered "undeveloped" under CBRA.

Level of Infrastructure: The Service's review of Unit P32 also considered the level of infrastructure that was on-the-ground and available to each lot or building site as of March 15, 1982 (which was the cutoff date for analysis of on-the-ground conditions as specified in a notice published in the *Federal Register* (47 FR 35696) on August 16, 1982). In 1982, what is now known as Scenic Highway 98 spanned the entire length of the coast in Unit P32 and had a main trunk line of infrastructure along it. Along the highway, three areas with clusters of development already on-the-ground prior to 1982 were excluded from the CBRS. The definitions and delineation criteria that were originally published by the Department of the Interior (Department) in the *Federal Register* on August 16, 1982, state that, "The presence on a coastal barrier of a single road, or even a through highway, plus associated electric transmission and water and sewer lines in this highway corridor does not constitute the necessary full complement of infrastructure necessary to support development." This is essentially the level of infrastructure that existed within Unit P32 when it was originally designated (with the exception of the three areas noted above that were excluded from the unit). Congress did not intend to include within the CBRS those areas that were clearly being developed or capitalized on-the-ground; however, a general availability of utilities along a through highway does not meet this requirement.

Additionally, the Department's 1982 definitions and delineation criteria state that, "The existence of intensive private capitalization on-the-ground within a coastal barrier area is the most significant indicator of its development status." The maps adopted by Congress sought to exclude intensively capitalized, privately financed subdivisions with many lots where a full complement of infrastructure was available to each lot. The rationale in excluding such subdivisions was that when private funds were used to provide a full complement of infrastructure throughout the subdivision, it was expected the structures would be built in the near future. Lands without this intensive level of infrastructure were included in the CBRS.

Additional Considerations

Another issue raised by the interested parties is that Unit P32 never met the "environmental criteria" of a CBRS unit and should be eliminated in its entirety. The "environmental criteria" referred to correspond to a section on the Service's CBRA website that describes the value of coastal barriers: they contain habitats that support a variety of fish and wildlife, protect mainland communities from severe storms, serve as popular vacation destinations and support local economies. However, these are not the criteria that are used in determining whether an area may be appropriate for removal from the CBRS. Instead, when the Service assesses potential modifications to the CBRS, we consider the following guiding principles and criteria: (1) whether the area may reasonably be considered a coastal barrier feature or related to a coastal barrier ecosystem, (2) whether inclusion of the area is rationally related to the purposes of the CBRA, (3) whether the number of structures or complement of infrastructure on-the-ground exceeded the threshold for the area to be considered undeveloped (as described above), and (4) whether the CBRS boundary lines on the maps precisely follow the underlying features they were intended to follow on-the-ground.

Unit P32 Summary of Proposed Changes (continued)

The Department developed the original CBRS maps in 1982 following a lengthy process involving reviews of aerial photography, on-the-ground inspections, several public information sessions, and two lengthy comment periods. There were 12 structures and a main road on the ground when the area was included within Unit P32. The unit was reviewed again in the mid-1980s and additional comment periods were held in 1985 and 1987. Congress reaffirmed the unit through the Coastal Barrier Improvement Act in 1990. The Service has reviewed this area yet again, and found that the designation of Unit P32 as an undeveloped coastal barrier in 1982 was appropriate (with minor modifications to correct the errors described below). The CBRA legislative history (House Report 97-841 Part 1) states that “it is the intent of this legislation that those who choose to develop within the Coastal Barrier Resources System after enactment do so at their own risk. Recommending changes to such units for this purpose would obviously not be consistent with the intent of this legislation.”

Terra Cotta Terrace, Chateau La Mer II, and Holiday Shores Estates

During the Service’s comprehensive review of Unit P32, three mapping errors were identified affecting 31 total structures in the Terra Cotta Terrace subdivision, the Chateau La Mer II condominium complex, and the Holiday Shores Estates subdivision. For the Terra Cotta Terrace subdivision, the Service’s assessment (based on the level of development on-the-ground in 1996 and the statutory CBRA development criteria) indicates the portion of the subdivision that was added to the CBRS in the 1996/1998 revision is appropriate for removal from Unit P32. For the Chateau La Mer II condominium complex, the Service found clear and compelling evidence that an error was made on the north side of the complex in the transcription of the CBRS boundary from the draft map that was reviewed and approved by Congress to the official map dated October 24, 1990. This property, which had structures on-the-ground in 1982, was originally intended to be excluded from Unit P32. Similarly, for the Holiday Shores Estates subdivision, the Service found clear and compelling evidence that a transcription error was made along the portion of the boundary that was intended to follow the east side of Walton Way, and an area containing structures that were on-the-ground at the time was inadvertently added to the CBRS.

Unit P32 Summary of Proposed Changes (continued)

Acreage, Shoreline, and Structure Information:

The table below includes the acreage, shoreline, and structure changes associated with the proposed boundary of Unit P32.

	<i>Total Acres</i>	<i>Fastland Acres*</i>	<i>Associated Aquatic Habitat Acres**</i>	<i>Shoreline Miles</i>	<i>Structures***</i>
Existing Unit	4,136	2,285	1,851	1.0	
Added to the CBRS	54	4	50	0.0	0
Removed from the CBRS	7	4	3	0.0	31
Reclassified Area****	(8)	(8)	0	0.0	1
Proposed Unit	4,175	2,277	1,898	0.9	
Net Change	39	(8)	47	(0.1)	(30)

*Land above mean high tide.

**Associated aquatic habitat includes wetlands, marshes, estuaries, inlets, and open water landward of the coastal barrier, but does not include open water seaward of the shoreline. This information is derived from National Wetlands Inventory data.

***Approximate structure count derived from base map imagery. Gas and liquid storage tanks, structures without walls and a roof (e.g., picnic shelters), structures with fewer than 200 square feet, structures that are not affixed to a permanent site (e.g., recreational vehicles), and structures that are not located principally above ground are not included in this structure count because they do not meet the statutory definition of a "structure" (16 U.S.C. 3503(g)(2)).

****Reclassification means to change either all or a portion of a System Unit to an Otherwise Protected Area, or vice-versa.

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