CBRA Background
(From Government fact sheets and internet research)

CBRA (Coastal Barrier Resources Act) was passed in 1982. Through implementation of the Act, Congress sought to “minimize the potential loss of human life, reduce wasteful expenditures of federal revenues, and protect fish and wildlife and their habitats.”

The Act identified 585 “units” of undeveloped properties (1.3 million acres of land and associated aquatic habitat---wet lands, etc). An additional 1.8 million acres were identified in 1990 (CBRA Reauthorization Act of 1990) as 271 “otherwise protected areas,” made up of lands held for conservation or recreation, such as national wildlife refuges, etc.

The Act prohibits most new federal expenditures that tend to encourage development or modification of coastal barrier islands. The Act does not restrict development --- the intention of Congress was to facilitate a “free market approach to coastal protection.” The Act sought to “remove federal subsidies for new construction in hazard-prone and environmentally sensitive areas that were not yet developed, but not to penalize existing communities where significant investments had already been made.” The intent of CBRA was not to “regulate how people can develop their land. Instead it removes federal subsidies for development by limiting federal spending for flood insurance, roads, water, and other types of infrastructure on coastal barriers within CBRA zones.” Therefore, “individuals who choose to build and invest in these hazard-prone areas will incur the full cost of that risk (free market approach), rather than passing the cost on to the American taxpayer.”

CBRA is administered by the US Fish and Wildlife Service.

CBRA is a map-driven law and Congress has been aware for years about the significant problems that individuals, insurance brokers, developers, etc. have encountered when trying to interpret the exact boundaries of CBRS (Coastal Barrier System) zones.
Because only “imprecise mapping tools were available when CBRA was enacted,” Congress has several times tried to fix the mapping problems. In 2000, Congress funded a map modernization pilot test --- results are not yet known. In addition, in 2000, Congress requested an economic assessment of CBRA --- that study estimated that “CBRA will save American taxpayers approximately $1.3 billion from 1983 to 2010.” Only Congress has the authority to modify boundaries of the CBRS zones. However, if a mapping error has occurred, Congress permits The Fish & Wildlife Service to amend the map as appropriate (through a lengthy and laborious process) typically conducted every five years.

Modifications of the CBRS boundaries have been made through Congressional legislation over the years (some with the full support of USF&WS; others without their support.)

A few examples of justifications communities have used to become excluded from CBRA:

A community in Texas was removed from CBRA when they showed that there was a “full compliment of infrastructure – roads, wastewater disposal, electricity, water --- available in the location that later became their subdivision. The infrastructure existed before congress adopted CBRA in 1982.” The community was able to prove that the development “exceeded the infrastructure criterion used to designate undeveloped coastal barriers as part of the system.”

In Cedar Keys, Florida, three property owners had earlier determinations that they were outside the boundaries of CBRS. When higher precision mapping tools were used, it was determined that the three properties were, indeed, inside the CBRS zone. The affected landowners appealed that decision based on an argument that the inclusion went against “the original intent” of the CBRS unit (since inclusion would create hardship for owners and boundaries were unclear at the time of property purchase – and boundaries cut through the middle of a subdivision). Congress ultimately agreed and removed the three properties as well as other properties in Cedar Keys.
In 1998, Representative Tillie Fowler (Florida) attached a rider to Omnibus Appropriations bill, which was passed and then signed by the President ---- removing 75 acres from CBRS units in Florida. (No justification for this action could be found)

CBRA enjoys broad bipartisan support in Congress, particularly since policies related to federal flood insurance have come under scrutiny in the past two years with calls to substantially limit the National Flood Insurance Program.

The stated intent of Congress is to discourage development and the vast majority of CBRS units remain undeveloped. Yet, the lack of development may be due to factors other than CBRA. For example, most CBRS units are remote and relatively inaccessible by automobile. Others consist primarily of wetlands and would be difficult to develop.

Recent (2003) testimony before the House Committee on Resources, Subcommittee on Fisheries, Conservation, Wildlife, and Oceans stated that “In some places, such as North Topsail Beach, the Fort Morgan Peninsula, and Litchfield Beach, the CBRS units have undergone so much development that they are virtually indistinguishable from adjacent areas that are not part of CBRS. Strong land markets, a full complement of infrastructure, the availability of private flood insurance, and a cooperative if not strongly pro-development town council or county commission enabled development to occur. These three CBRS units are some of the most extensively developed of the entire CBRS system.” The Fort Morgan Peninsula may be an anomaly among CBRS units --- since it is “heavily developed, wider, higher in elevation, and its beaches are far more attractive” than most other units in the system.
CBRS does not establish regulatory oversight mechanisms. In fact, “there are no regulations to enforce.” USF&W is not authorized to investigate possible violations of CBRA’s limitations on federal spending, nor is it authorized to enforce the law.” In addition, no federal agency feels responsible for outreach about CBRA.

As a result, many realtors, buyers and developers are in the dark about CBRA. Also as a result, insurance agents routinely and erroneously issue federal flood insurance policies in CBRS areas. (In its evaluation of CBRA, the General Accounting Office found that 17% of the residences it sampled in five CBRS units had purchased federal flood insurance.)

Additional Thoughts:

Particularly in an area such as the Fort Morgan Peninsula where extensive development has occurred ---- and even more particularly in neighborhoods such as Morgantown where some of the properties are excluded from the CBRS unit, the boundaries are unclear even to realtors and homeowners, and some of the homeowners have been sold federal flood insurance --- original Congressional intent has been sublimated in application and, instead of encouraging a free market approach, the Act has created unfair market forces.

When CBRA was enacted, Congress was very specific that the intent was not to punish property owners. It was expected that private flood insurance would be available to homeowners in CBRS zones at actuarially sound market rates. (This was pretty much the case as recently as 2002) Since this is no longer the case, homeowners in CBRS zones are now clearly being punished. Homeowners in AE flood zones, with no risk at all of experiencing wave damage, and with extremely minimal risk of experiencing storm surge damage or flooded interiors (because the houses are on pilings) still face premiums that can exceed $10,000 per year, if they can get private flood insurance at all.
Areas such as the Fort Morgan Peninsula that are critical to tourism and growth in Coastal Alabama are beginning to suffer economically. (Houses that would have recently sold in Morgantown have been pulled off the market because prospective buyers could not get flood insurance --- the potential this has to significantly reduce the tax base has strong consequences for the city of Gulf Shores, Baldwin County, and the State of Alabama).

Given the fact that no outreach to the public, realtors, or developers has ever been funded by Congress (in the almost twenty five year history of the existence of CBRS units) ---- and given the fact that map modernization has been extraordinarily slow ---- many homeowners in Morgantown bought into the CBRS zone without full knowledge or easily available information. They now face exorbitant flood insurance premiums, if they can get flood insurance at all.

The designation of CBRS units was not based on risk or vulnerability. Many homeowners within CBRS zones (particularly in Morgantown where the elevation is higher and dryer than most other CBRS zones) face insurance premiums that are as much as twenty five to forty times higher than the insurance premiums for thousands of extremely high risk, vulnerable properties that are eligible for federal flood insurance simply because their properties are outside of CBRS zones. If the system seems unfair and arbitrary, that’s because it is.