



May 9th, 2014

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Editor: Ana Lima

Honorable Mayor Carlos A. Gimenez
Stephen P. Clark Government Center
111 NW 1st Street, Suite 220
Miami, Florida 33128

RE: Protecting Biscayne Bay for the Public Interest

Dear Mayor Gimenez,

The Florida Legislature afforded the Biscayne Bay Aquatic Preserves, along with a handful of other ecologically and economically important waterbodies, the highest protection in the state in 1974 and 1975, respectively. Forty years ago this year, the Legislature set aside nearly 70,000 acres of submerged lands in Biscayne Bay for its biological and aesthetic values. Per 258.397 F.S., the Biscayne Bay Aquatic Preserves were “designated and established as an aquatic preserve with the intent that Biscayne Bay be preserved in an essentially natural condition so that its biological and aesthetic values may endure for the enjoyment of future generations.” The Biscayne Bay Aquatic Preserve Act came about in large part as a response to the rampant dredging and filling that occurred from the 1930s through the 1970s, destroying thousands of acres of seagrass, hardbottom, and mangrove communities that we now know support Miami’s economic engine. The people of the state of Florida by way of the Florida Legislature sought to put an end to this destruction and they were successful. Biscayne Bay Aquatic Preserves are held in such high esteem that a rule and statute are dedicated just to these two preserves, extending from Miami-Dade and Monroe counties. Today we regretfully find ourselves defending the utility and function of this regionally and nationally significant resource against the very activities the Legislature sought to seek an end to forty years ago.

The rules that govern aquatic preserves and the Public Trust Doctrine discuss the quality and utility of preserves resting in the water dependent uses that make them unique, such as the ability to swim, boat, and fish in the waters of the state. Filling in Biscayne Bay Aquatic Preserves not only negates the intent of the preserve but eliminates the utility of the preserve by disallowing the very uses it is intended to provide—public access to the water dependent uses of Biscayne Bay.

As a matter of record, the FEC Slip is in fact the most natural western boundary of Biscayne Bay in this part of the city per aerial photos from 1924.

While we have not had the opportunity to obtain and review language for any deeds that may or may not be tied to the submerged lands in the FEC Slip, we understand that it is likely the deed language places restrictions on how the submerged lands can be conveyed or used.



The following management criteria are excerpted from the Biscayne Bay Aquatic Preserves Rule (18-18 F.A.C) and Statute (258.397 F.S.). We have included these criteria for your information.

18-18.005 General Management Criteria.

Before the Board approves the sale, lease of transfer of interest in state lands or severance of materials therefrom, or the Secretary comments favorably concerning activities on private lands within the preserve, an applicant must affirmatively demonstrate, where applicable, that:

(1) Proposed dredging is the minimum necessary to accomplish the stated purpose and that the activity is designed to minimize the need for maintenance dredging;

(2) No new lands will be created by filling or spoiling unless no other alternative exists to accomplish the stated purposes, and project is designed to require the minimum filling to accomplish the stated purpose of the activity consistent with the protection of the preserve;

(3) Marina facilities over water are restricted to those water dependent activities necessary to service boats and allow for fishing or fish cleaning activities and are designed to allow the unimpeded flow of water and minimize bottom shading;

(4) Docks and piers are designed to allow the unimpeded flow of water and minimize bottom shading;

(5) Utility cables are placed within the bottom or laid on the bottom and located along a route in a manner which will cause minimum disturbance to the marine habitats;

(6) Dredged spoil materials are disposed of outside of the preserve unless the applicant affirmatively demonstrates that the spoil will not be harmful to or will benefit the quality or utility of the preserve.

258.397 Biscayne Bay Aquatic Preserve.

(3) **AUTHORITY OF TRUSTEES.**—The Board of Trustees of the Internal Improvement Trust Fund is authorized and directed to maintain the aquatic preserve hereby created pursuant and subject to the following provisions:

(a) No further sale, transfer, or lease of sovereignty submerged lands in the preserve shall be approved or consummated by the board of trustees, except upon a showing of extreme hardship on the part of the applicant and a determination by the board of trustees that such sale, transfer, or lease is in the public interest.

(b) No further dredging or filling of submerged lands of the preserve shall be approved or tolerated by the board of trustees except:

1. Such minimum dredging and spoiling as may be authorized for public navigation projects or for such minimum dredging and spoiling as may be constituted as a public necessity or for preservation of the bay according to the expressed intent of this section.

2. Such other alteration of physical conditions, including the placement of riprap, as may be necessary to enhance the quality and utility of the preserve.

3. Such minimum dredging and filling as may be authorized for the creation and maintenance of marinas, piers, and docks and their attendant navigation channels and access roads. Such projects may only be authorized upon a specific finding by the board of trustees that there is assurance that the project will be constructed and operated in a manner that will not adversely affect the water quality and utility of the preserve. This subparagraph shall not authorize the connection of upland canals to the



waters of the preserve.

4. Such dredging as is necessary for the purpose of eliminating conditions hazardous to the public health or for the purpose of eliminating stagnant waters, islands, and spoil banks, the dredging of which would enhance the aesthetic and environmental quality and utility of the preserve and be clearly in the public interest as determined by the board of trustees.

In summary, the proposed action to fill in the Biscayne Bay Aquatic Preserves, not only eliminates the utility of the preserve and the traditional uses intended by the Legislature, but effectively eliminate a portion of the preserve. Its utility in recent years, for example, as a staging areas for sailing regattas—a water dependent use of the preserve and economic engine for Miami-Dade County. A soccer stadium is clearly not a water dependent use worthy of destroying more acreage of a state aquatic preserve.

You stated in your letter to Mr. Alschuler that the “FEC Slip will...expand the amount of publicly accessible waterfront open space, turning this underutilized lands into a shared public space...and join the ranks of great urban parks.” We contend that the people of Florida, Miami-Dade County, and the Florida Legislature intended for Biscayne Bay to be held in the public trust to enjoy water dependent activities for ours and future generations. We contend that Biscayne Bay, despite all the destruction it has endured and ecological resilience it has demonstrated, continues to provide jobs, supply the food we eat, make possible the water dependent recreation we enjoy. We contend that Biscayne Bay Aquatic Preserves is Miami’s great urban park.

It would be my pleasure to discuss this matter with you further at your convenience. You may reach me at director@tropicalaudubon.org or via cell at 786-543-1926

Sincerely,

A handwritten signature in green ink that reads "Laura Reynolds".

Laura Reynolds
Executive Director

CC: Miami-Dade Board of County Commissioners

CC: Deputy Mayor Jack Osterholt

CC: DEP Secretary Herschel T. Vinyard Jr.

CC: FIND Commissioner Spencer Crowley

CC: SFWMD Executive Director Blake C. Guillory