

## Seagrass-roots Environmentalism: The Lee County Conservation Association

by Chris Wilhelm

After World War II, Florida crafted a new identity: the Sunshine State. This concept was not solely based on Florida's hot weather and sunny skies although the relationship between sun and water was implicit in the new identity. Tourists enjoyed the sun on boats and beaches, retirees and snowbirds fled northern winters for new sunny coastal cities. The heat of Florida's sunshine was thus balanced by the state's coastal waters. The Sunshine State is a convenient slogan, but Florida is actually defined by its coast. Other states have more sunshine, but none in the continental U.S. have more coastline or coastal waters than Florida.<sup>1</sup>

The state's coast played a key role in Florida's post-World War II economic and demographic transformations and beginning in the 1960s the state's waters became the focus of preservationists<sup>2</sup>

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- 1 Florida has either 1,350 miles (according to nautical charts) or 8,436 miles of coastline (a measurement that includes inlets and bays). By either standard, Florida has more coastline than any other continental state.
- 2 Scholarship on the modernization of the Sun Belt South after World War II include: Carl Abbott, *The New Urban America: Growth and Politics in Sunbelt Cities*, (Chapel Hill: University of North Carolina Press, 1987); Numan V. Bartley, *The New South, 1945-1980* (Baton Rouge: Louisiana State University Press, 1995); Richard M. Bernard and Bradley R. Rice, eds., *Sunbelt Cities: Politics and Growth since World War II* (Austin: University of Texas Press, 2014); James C. Cobb, *Industrialization and Southern Society, 1877-1984* (Lexington, KY: University Press of Kentucky, 1984); James C. Cobb, *The Selling of South: The Southern Crusade for Industrial Development, 1936-90*, (Urbana: University of Illinois Press, 1993); Raymond A. Mohl, ed., *Searching for the Sunbelt: Historical Perspectives on a Region*,

The most successful, important, and earliest marine activism in the state took place in Lee County (the Fort Myers area) and was focused on the protection of Estero Bay. The Lee County Conservation Association (LCCA), led by native Fort Myers resident Bill Mellor, emerged as the leading organization in a larger effort to protect Florida's coastal waters. Mellor was one of the most important environmental activists in post-WWII Florida. He focused exclusively on protecting Florida's coastal waters from dredge and fill projects. Mellor and the LCCA left an immense legacy and impact. They created the state's first aquatic preserve, overturned state policies that gave away the state's submerged lands, prompted the creation of a system of aquatic preserves in the state, and helped create the political, legal, and ecological foundation for wider efforts to protect Florida's waters.

The LCCA represents an early and important strain of environmentalism.<sup>3</sup> Like later modern environmentalist groups, it was democratic, ecologically-informed, and successful in using the law to protect the environment. The LCCA was a home-grown group. Although Florida's post-war population was dominated by recent arrivals to the state, the LCCA was composed of native Floridians, fighting to preserve the coastal waters that had shaped their lives and economies. They fought to protect their local ecosystems, but

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(Knoxville: University of Tennessee Press, 1990); Bruce J. Schulman, *From Cotton Belt to Sunbelt: Federal Policy, Economic Development, and the Transformation of the South 1938–1980* (Durham, NC: Duke University Press, 1994). On Florida's modernization see: Mary E. Adkins, *Making Modern Florida: How the Spirit of Reform Shaped a New State Constitution* (Gainesville, 2016); David R. Colburn, *From Yellow Dog Democrats to Red State Republicans: Florida and Its Politics since 1940* (Gainesville: University Press of Florida, 2007); David R. Colburn and Lance Dehaven-Smith, *Government in the Sunshine State: Florida Since Statehood*, (Gainesville: University Press of Florida, 1999); N. D. B. Connolly, *A World More Concrete: Real Estate and the Remaking of Jim Crow South Florida*, (Urbana: University of Illinois Press, 2016); Michael Gannon, ed., *The New History of Florida* (Gainesville: University Press of Florida, 2012); Gary R. Mormino, *Land of Sunshine, State of Dreams: A Social History of Modern Florida* (Gainesville: University Press of Florida, 2008); Gary R. Mormino and George E. Pozzetta, *The Immigrant World of Ybor City: Italians and Their Latin Neighbors in Tampa, 1885-1985* (Gainesville: University Press of Florida, 1998).

3 On Modern Environmentalism see: Robert Gottlieb, *Forcing the Spring: The Transformation of the American Environmental Movement*, (Washington, DC: Island Press, 2005); Samuel P. Hays, *Beauty, Health, and Permanence: Environmental Politics in the United States, 1955-1985* (Cambridge: Cambridge University Press, 1989); Adam Rome, *The Genius of Earth Day: How a 1970 Teach-In Unexpectedly Made the First Green Generation* (New York: Hill & Wang, 2014); Hal K. Rothman, *The Greening of a Nation?: Environmentalism in the U.S. Since 1945*, (Fort Worth: Wadsworth Publishing, 1997); Philip Shabecoff, *A Fierce Green Fire: The American Environmental Movement*, (Washington, DC: Isl&, 2003).

extended that concern beyond their own backyards. They linked the destruction of their cherished waters to larger problems in the state and fought to protect marine ecosystems throughout Florida.

The LCCA was also distinctive from modern environmentalism in several ways. The LCCA was active beginning in the late 1950s, over a decade before the environmental legislation of the 1970s. More importantly, the LCCA situated their activism in the context of marine ecosystems.<sup>4</sup> They created new legal and ecological rationales for marine preservation that reflected the natural context of these marine environments. The LCCA helped craft novel management regimes and regulatory structures to protect these marine ecosystems. These efforts were some of the first efforts in the world to work out the problems and difficulties inherent in the protection of marine environments.<sup>5</sup>

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4 This article seeks to contribute to burgeoning field of marine environmental history. Major works in this field include: David Armitage, Alison Bashford, and Sujit Sivasundaram, eds., *Oceanic Histories* (Cambridge: Cambridge University Press, 2017); W. Jeffrey Bolster, "Opportunities in Marine Environmental History," *Environmental History* 11, no. 3 (2006): 567–597; W. Jeffrey Bolster, "Putting the Ocean in Atlantic History: Maritime Communities and Marine Ecology in the Northwest Atlantic, 1500-1800," *The American Historical Review* 113, no. 1 (2008): 19–47; Michael Chiarappa and Matthew McKenzie, "New Directions in Marine Environmental History: An Introduction," *Environmental History* 18, no. 1 (2013): 3–11; Jack E. Davis, *The Gulf* (New York: Liveright Publishers, 2018); John R. Gillis, *Islands of the Mind: How the Human Imagination Created the Atlantic World*, (New York: Palgrave Macmillan, 2004); John R. Gillis, *The Human Shore: Seacoasts in History*, (Chicago: University of Chicago Press, 2015); Gary Kroll, *America's Ocean Wilderness: A Cultural History of Twentieth-Century Exploration*, (Lawrence: University Press of Kansas, 2008); John Mack, *The Sea: A Cultural History*, (London, UK: Reaktion Books, 2012); Kathleen Schwedtner Máñez and Bo Poulsen, eds., *Perspectives on Oceans Past*, (New York: Springer, 2016); Helen M. Rozwadowski, *Vast Expanses: A History of the Oceans* (London, UK: Reaktion Books, 2019); Helen M. Rozwadowski and Sylvia Earle, *Fathoming the Ocean: The Discovery and Exploration of the Deep Sea*, (Cambridge, MA: Harvard University Press, 2005); Jason W. Smith, "The Bound[Less] Sea: Wilderness and the United States Exploring Expedition in the Fiji Islands," *Environmental History* 18, no. 4 (2013): 710–737.

5 Although few historians have examined marine preservation or the construction of America's environmental-regulatory state, conservation biologists have written about the challenges inherent in protecting marine environments. See: Bradley Barr, "Conservation of the Sea Using Lessons from the Land," *The George Wright Forum* 17, no. 3 (2000): 77–86; Nathan Bennett et al., "An Appeal for a Code of Conduct for Marine Conservation," *Marine Policy* 81 (2017): 411–18, <https://doi.org/10.1016/j.marpol.2017.03.035>; James T. Carlton, "Apostrophe to the Ocean," *Conservation Biology* 12, no. 6 (1998): 1165–1167, <https://doi.org/10.1046/j.1523-1739.1998.0120061165.x>; Patrick Christie et al., "Toward Developing a Complete Understanding: A Social Science Research Agenda for Marine Protected Areas," *Fisheries* 28 (2003): 22–25; Gary E. Davis, "On the Role of Underwater Parks and Sanctuaries in the Management of

Finally, the LCCA's work coincided with Florida's modernization. After WWII, Florida sought to modernize its small and ineffective government as it sought to build a modern economy based on tourism and other service sectors.<sup>6</sup> Florida's tourism was dependent on outdoor recreation and a healthy environment, and the creation and bolstering of Florida's environmental-regulatory state was a key part of the state's modernization. The LCCA's focus on the state's sovereignty lands furthered these efforts. Sovereignty lands are those below the mean high water line (MHWL) which the state owns by virtue of its sovereignty. Before the 1960s, the state gave these lands away, sold them cheaply, and allowed development that destroyed these waters, in order to encourage economic growth.<sup>7</sup> Due in large part to Mellor and his allies, the state gained full control over these lands in the 1960s and 1970s and bolstered its broader environmental-regulatory powers. Florida sought to protect nature primarily because they saw these waters

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Coastal Resources in the Southeastern United States," *Environmental Conservation* 8, no. 1 (1981): 67–70; Gary E. Davis, "Designing Ocean Parks for the Next Century," 2008, [PDF] Designing Ocean Parks for the Next Century | Semantic Scholar; Erich Hoyt, *Marine Protected Areas for Whales, Dolphins, and Porpoises: A World Handbook for Cetacean Habitat Conservation* (Earthscan, 2012); Jane Lubchenco et al., "Plugging a Hole in the Ocean: The Emerging Science of Marine Reserves," *Ecological Applications* 13, no. 1 (2003): S3–7; Marc Miller, "Marine Wildlife Tourism Management: Mandates and Protected Area Challenges," *Marine Wildlife and Tourism Management: Insights from the Natural and Social Sciences*, 2007, 233–256; Enrique Oracion, Marc Miller, and Patrick Christie, "Marine Protected Areas for Whom? Fisheries, Tourism, and Solidarity in a Philippine Community," *Ocean & Coastal Management* 48 (2005): 393–410, <https://doi.org/10.1016/j.ocecoaman.2005.04.013>; N. A. Sloan, "History and Application of the Wilderness Concept in Marine Conservation," *Conservation Biology* 16, no. 2 (2002): 294–305.

- 6 On tourism in Florida see: Mormino, *Land of Sunshine, State of Dreams*, 76–122; Mark Derr, *Some Kind of Paradise: A Chronicle of Man and the Land in Florida*, (Gainesville: University Press of Florida, 1998), 37–60; Richard E. Foglesong, *Married to the Mouse: Walt Disney World and Orlando* (New Haven: Yale University Press, 2003); Paul S. George, "Passage to the New Eden: Tourism in Miami from Flagler through Everest G. Sewell," *The Florida Historical Quarterly* 59, no. 4 (1981): 440–463; Michael Hoover, "Before Disney Arrived: Florida's Ill-Fated Attempt to Build INTERAMA," *The Florida Historical Quarterly* 86, no. 4 (2008): 445–469; David J. Nelson, *How the New Deal Built Florida Tourism: The Civilian Conservation Corps and State Parks* (Gainesville: University Press of Florida, 2019); Steven Noll, "Steamboats, Cypress, & Tourism: An Ecological History of the Ocklawaha Valley in the Late Nineteenth Century," *The Florida Historical Quarterly* 83, no. 1 (2004): 6–23; Tracy J. Revels, *Sunshine Paradise: A History of Florida Tourism*, (Gainesville: University Press of Florida, 2011).
- 7 Some of the most notorious examples of this type of coastal development were those at Boca Ciega Bay and Marco Island. On Boca Ciega Bay see R. Bruce Stephenson, *Visions of Eden: Environmentalism, Urban Planning and City Building - St. Petersburg, Florida, 1900-95* (Columbus: Ohio State University Press, 1997).

as an important economic asset worth protecting. Control over nature was thus a key element of both Florida's economic and political modernization.

The LCCA was officially formed on January 6, 1961 when over 100 people met at the San Carlos Marina to protest a proposed development in Estero Bay. In 1958, a group of Milwaukee investors represented by Berry Williams purchased 5,500 acres of mangrove forests along an eighteen mile strip of coastline for 1.6 million dollars. They now proposed to develop this piece of land; controversially, they also claimed to own large sections of Estero Bay, where they proposed a massive dredge and fill project. The proposed bulkhead line along an eleven-mile strip of shoreline would extend outward to five feet above the MHWL, which they argued was the extent of their private land. A bulkhead line is the line out to which a land owner may fill. Today, due in part to the LCCA, bulkhead lines are set one foot back from the MHWL, which is the boundary between private lands and public waters. Yet, before the 1970s, counties and the state freely set bulkhead lines, often placing them in the middle of bays and thus allowing private landowners to fill public waters, create new private lands, and develop that land. To fill to the bulkhead line, the Williams group proposed a dredge permit along seventeen miles of shoreline that encompassed 1,100 acres.<sup>8</sup> Fill was granted by the state free of charge until 1969. This proposed dredging permit would allow developers to dredge 1,100 acres of bay bottom, down to a depth of 12 feet, creating 17 million cubic yards of fill.<sup>9</sup> (See Figure 1)

Attendees at the LCCA's first meeting in 1961 were outraged at these plans. They believed it would destroy this section of the Bay and would harm the area's "mangrove islands, bird rookeries, and fish nursery grounds."<sup>10</sup> The local newspaper, *The Fort Myers News-Press*, proclaimed that the county had been "shocked out of their complacency by a preposterous bulkhead petition filed by Berry Williams as trustee for unknown owners."<sup>11</sup> Bill Mellor and

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8 *Fort Myers News Press (FMNP)*, January 10, 1961; Woodburn, "Bulkhead Survey of Northerly Limits of Matanzas Pass and Estero Bay," January 9, 1961, Florida State Board of Conservation Marine Laboratory Maritime Base, St. Petersburg Florida; *FMNP*, January 15, 1961.

9 Interview, Bill Mellor and Pat Mellor, conducted by author, July 2019, hereafter referred to as Interview, BM and PM.

10 *FMNP*, January 7, 1961.

11 *FMNP*, January 7, 1961.

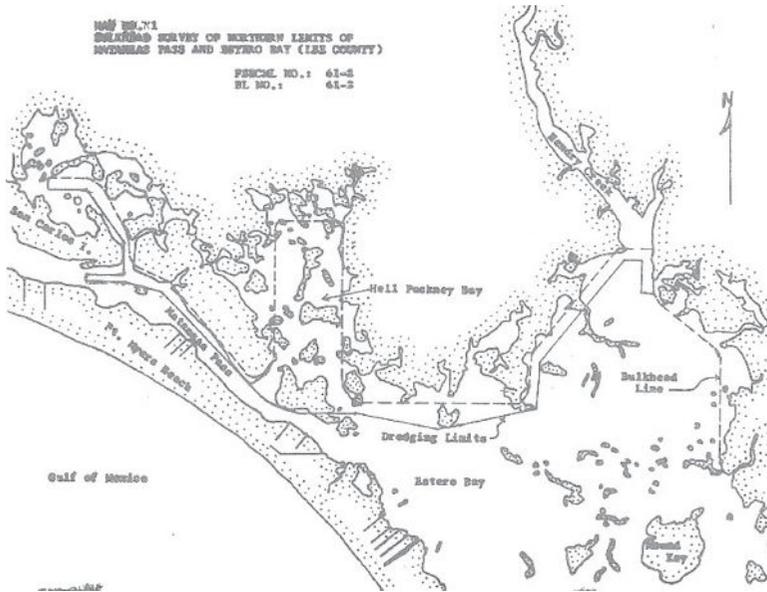


Figure 1: Dredge and fill proposal from 1961. The dotted line is the proposed bulkhead line, while the solid line is the dredge limit. The Williams groups proposed to dredge to a depth of twelve feet out to that line to create fill which would be used to extend the shoreline out to the bulkhead line. (Ken Woodburn, "Bulkhead line survey of northerly limits of Matanzas Pass and Estero Bay," Florida State Board of Conservation Marine Laboratory, St. Petersburg Florida, January 9, 1961)

his circle of friends who formed the core of the LCCA had actually been fighting against this and smaller dredge and fill proposals since 1958. All of these developments threatened the local environment and waters that shaped the lives of these native Floridians.

William Mellor was born in Fort Myers, Florida on December 22, 1924. His father, Fred Mellor, was a native Floridian and a prominent Fort Myers attorney. During the Great Depression, Fred entered a business partnership with Colin English, a Fort Myers lawyer and politician, and acquired real estate throughout the county. As he recalled, Bill's childhood was shaped by the waters of Lee County. Growing up, Bill and his friends spent weekends out on their boats, catching fish, and camping out on islands. Fish were plentiful and the water was clean. Bill served in the Navy during World War II, married fellow Fort Myers native Patricia Humfleet in 1947, and studied electrical engineering at the University of Florida before he returned to Fort Myers and began a career as an independent real-estate developer. He bought land from his father, built houses on that land, and sold them to migrants to the

area. Although he would rail against greedy real-estate developers who sought to steal the state's waters and fill them, Mellor himself was a real-estate developer who responsibly contributed to the county's economic growth. While he physically built Lee County through his business activities, Bill and his family socially built the county through their participation in social clubs, including the Fort Myers Beach Lion's Club and the local American Legion post. All the while, Mellor continued to maintain a close relationship with the environment of Lee County. He knew Estero Bay and other waters in the county like the back of his hand, and fished often, "feeding his family" from the waters of Estero Bay.<sup>12</sup>

Other LCCA members were likewise connected to Lee County's environment, and to its post-World War II growth. Their environmentalism stemmed from a desire to protect the pristine waters and islands of their youth. They saw these waters and Florida's broader environment as the foundation of their own economic success and of the state's modern economy. Vince Honc was born in Bokeelia, on Pine Island, the son of Czech immigrants. With his brother and father, he ran Honc's Nursery, which specialized in tropical fruit trees like avocados, mangos, and grapefruits.<sup>13</sup> Tootsie Barnes was a commercial fisher who reportedly received the first commercial license issued by the state. Barnes and other commercial fishers in Lee County strongly supported the LCCA and understood that these bays were the nursery and breeding grounds of many commercial fish species.<sup>14</sup> Ted Randell was another important LCCA supporter. Like Mellor, Randell was born in Lee County, and his father was a native Florida lawyer. Randell was a fourth-generation Floridian and from 1964 to 1974, served in the Florida House of Representatives.<sup>15</sup> Roland Roberts was the only central LCCA figure who was not a native Floridian. Roberts worked for the Civilian Conservation Corp during the Great Depression, opened an advertising art studio in Chicago, and only moved to Florida in the late 1950s.

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12 1910 US Census, Florida, Escambia County, Sheet 4B, Ancestry.com; 1930 US Census, Florida, Lee County, 10<sup>th</sup> Precinct, Sheet 10B, Ancestry.com; "People of Influence: J. Colin English," *FMNP*, 7 Nov 2014, BM and PM Interview; *FMNP*, July 20, 1947; BM and PM Interview.

13 1940 US Census, Florida, Lee County, Precinct 10, Sheet 1A, Ancestry.com; Vincent Honc Obituary, *FMNP*, February 19, 2012; Honc's Avocado Nursery Catalog, 1927, Biodiversity Heritage Library.

14 *FMNP* June 18, 2000.

15 1930 US Census, Florida, Lee County, Precinct 8, Sheet 13A, Ancestry.com; Mitchell Randell Obituary, March 2, 2000; Mitchell Randell Draft Card, US Draft Cards, Young Men, 1940-1947, Ancestry.com.

Roberts was an avid sailor who fell in love with the area's waters. He served on the Lee County Commission from 1977 to 1985.<sup>16</sup>

All these individuals were shaped by Lee County's natural beauty. Before the 20<sup>th</sup> century, most of the county's upland was dominated by Florida pine flatwoods and scattered with cypress forests and fresh water marshes. Yet much of the county, over 35 percent, is comprised of water. The county's most noticeable feature is the Caloosahatchee River, a 67-mile-long river that broadens into a massive estuary over its last 25 miles before merging with the Gulf of Mexico.<sup>17</sup> The county's coastal waters are a boating paradise, with multiple inlets, bays, estuaries, passes, and sounds. These shallow coastal waters were dominated by seagrass, and full of all kinds of fish and sea life. The inland coasts were fringed with mangrove forests, while the outer coastlines along the Gulf sported beautiful white sand beaches. Major barrier islands include Gasparilla, Cayo Costa, Pine Island (the largest island on Florida's west coast), North Captiva, Captiva, Sanibel, Estero, Lover's Key, Big Hickory, and Little Hickory islands. Over one hundred smaller islands dot these waters.<sup>18</sup>

The natural beauty of these waters, beaches, and islands drew booming numbers of transplants to Lee County after World War II. The County was formed in 1887, and by 1920 it had fewer than 10,000 residents. In 1940, the county's population was only 17,488, but it grew to 23,404 by 1950, and then more than doubled to 54,539 in 1960. That growth continued. In 1970, the County's population was 105,216. By 2010, the county contained 618,754 residents.<sup>19</sup> The LCCA's activism was partially a response to this

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16 "People of Influence: Roland Roberts," FMNP, September 10, 2014; Roland Roberts Obituary, FMNP, January 6, 1995.

17 The river originated from a mile-long series of rapid at Lake Flirt to the Gulf, which was in turn fed by a series of lakes and wetlands. Massive engineering project straightened this meandering river and connected it via canal to Lake Okeechobee beginning in 1887. In the process, this estuary was flooded with fresh water and channelized, and now largely exists as a conduit for agricultural runoff. The river today is opaque; Bill Mellor remembered it as being clear with a white sand bottom when he was a child.

18 Population of State and Counties of the United States: 1790-1990, U.S. Bureau of the Census, U.S. Government Printing Office, 1996; 2010 Census, State and County Quick Facts; Missimmer and Scott, "Geology and Hydrology of Lee County, Florida," Florida Geological Survey Special Publication 49, 2001; Antonini, Fann and Roat, *A Historical Geography of Southwest Florida Waterways*, v. 1 and 2.

19 Population of State and Counties of the United States: 1790-1990, U.S. Bureau of the Census, U.S. Government Printing Office, 1996; 2010 Census, State and County Quick Facts.

population increase. Individuals like Bill Mellor and Vince Honc contributed to this growth through their business enterprises, but also advocated for responsible development that would preserve and protect the area's natural beauty and bounty. Their preservationist goals were widely supported, both by Lee County's natives, and by its recent transplants; these natural values were often what attracted resident to the county in the first place.

The LCCA grew incredibly quickly and garnered support at the grass-roots level in Lee County. By March 1961, the group already had 4,000 members, and held meetings that year with up to 300 members in attendance. Early in the 1960s, a majority of Lee County taxpayers were dues-paying members of the group.<sup>20</sup> Despite the group's strength, the County Commission approved a revised bulkhead line proposal in Estero Bay on March 16, 1961. This line conformed to that proposed by the Williams group, but did curtail dredging beyond the bulkhead line. The LCCA opposed this action and argued that this bulkhead line should be drawn in accordance with the MHWL, which had never been determined in Florida.<sup>21</sup> The LCCA found that the Williams group's bulkhead line was in some cases a mile out from the supposed MHWL and "in water as deep as 12 feet."<sup>22</sup>

The drawing of bulkhead lines became central to the LCCA's protests. They argued that all lands below the MHWL were the property of the state, and that the state government needed to manage these submerged lands for the public. This principle was enshrined in state and federal law, but before the 1960s, Florida largely ignored its responsibility over these submerged lands. Sovereignty lands, like all state lands, were controlled by the Trustees of the Internal Improvement Fund (IIF), which had the authority to approve or deny land sales and dredge and fill permits, and to set bulkhead lines. The trustees were composed of the governor and the cabinet. Before 2003, the cabinet included the attorney general, the comptroller, the secretary of state, the treasurer, and the commissioners of agriculture and education. All these positions were independently elected by the voters of Florida rather than appointed by the Governor. Cabinet members often had their own political goals and aspirations, and were not always in agreement with the governor's agenda.

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20 Interview, BM and PM.

21 *FMNP*, May 5, 1962.

22 *FMNP*, May 16, 1962

Because the IIF had so much power over sovereignty lands, the LCCA often tried to influence its actions. After Lee County approved the Bay's development in 1961, the LCCA worked to stop this proposal at the IIF. They succeeded on May 15, 1962, when the IIF withheld approval of the Williams group's bulkhead line. The trustees noted that the bulkhead line was not one foot offshore, but rather took in an "inordinately large area for private use and profit." Furthermore, there had been discussion within the state about creating a "marine park" in the area, which this development would invalidate.<sup>23</sup> The IIF requested that the state investigate the Williams proposal and the LCCA's objections in more detail, a move that effectively killed this project.

The idea of a state park in the bay originated with the LCCA as a way to prevent this dredge and fill project. After the IIF's ruling, the LCCA continued to push this idea, and proposed to the State Board of Conservation that they expand the newly created Koreshan State Park into the bay. Several state agencies and conservation groups endorsed this proposal, but the LCCA soon backed away from this position.<sup>24</sup> State parks had restrictive regulations like bans on hunting and fishing. Most LCCA members were avid boaters and fishers, and commercial fishers were strong supporters of the group's activities.<sup>25</sup> They wanted to protect the bay because it was an important nursery and breeding ground for fish species. The LCCA advocated for the protection of marine habitats, but they had no desire to restrict other economic and recreational activities. A state park would not work, but Mellor and his allies had no other precedents to draw upon to protect these waters. There were few marine protected areas in the early 1960s, and no good models for marine preservation. The LCCA instead had to create an entirely new management regime to protect these marine environments. Yet, there was no urgency to formally protect the Bay, as the Berry Williams bulkhead proposal was dead at the state level. Although determining a management regime for the bay remained important, the LCCA had plenty of other fights on their hands throughout the 1960s.

By the mid-1960s, the LCCA emerged as the most important group in the state fighting dredge and fill projects. Mellor and his

23 Internal Improvement Fund (IIF) Minutes, 1960-1962, 525-526, May 15, 1962.

24 Bill Mellor (BM) to Friday, March 4, 1964, Lee County Conservation Association (LCCA) Papers, IMAG Library, Ft. Myers FL, hereafter referred to as LCCA Papers; LCCA mailing, February 18, 1963, LCCA Papers.

25 Interview, BM and PM.

allies centered their activism in Estero Bay, but understood that all of Florida's coastal waters were threatened by development. Mellor created ecological and legal rationales for the protection of these waters and a political strategy centered on grass-roots activism aimed at influencing government action. Mellor worked to export these ideas and practices throughout the state. The LCCA fought dozens of small and large dredging projects throughout Lee County, were tangentially involved in three other major marine environmental campaigns in Florida, and helped create and support other groups concerned with the same issues throughout the state. Through the course of their activism, Mellor and LCCA accrued substantial political power at the county level, built strong relationships with state politicians and bureaucrats, and helped build Florida's environmental-regulatory state through legislation, administrative action, and case law.

Bill Mellor's legal arguments pertaining to sovereignty lands were the central ingredient in the LCCA's formula for fighting marine development. Using his father's law library, Bill researched the legal issues surrounding sovereignty lands. Mellor's knowledge of sovereignty law astounded allies and enemies; he could often quote relevant law line for line from memory.<sup>26</sup> Central to his thinking was the *Illinois Central Railway vs State of Illinois* case, a Supreme Court case from 1892 that reaffirmed the state's ownership of all sovereignty lands and mandated that states hold those lands for the public trust. Using this case, Mellor argued that all state waters below the MHWL were state property and could only be sold when it served the public interest.

Mellor's use of sovereignty law was novel in Florida in the 1960s. Although the state owned thousands of square miles of sovereignty land, the body of law related to sovereignty lands was relatively unknown in the state's legal community. This ignorance was consistent with the state's liberal dispensation of these lands and its lack of regulation concerning marine resources before the 1960s. In general, the state's legal community ignored water before serious droughts impacted southern Florida in the 1960s. Through his focus on water law, Mellor became friends with Frank E. Maloney, the Dean of the University of Florida law school.<sup>27</sup> In the 1950s, Maloney began studying issues related to Florida water law and soon became the leading authority on the topic. In 1968, Maloney

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26 BM and PM Interview.

27 BM and PM Interview; Maloney to BM February 7, 1974, LCCA Papers; "Proceedings on Bayfills and Bulkhead lines," May 21, 1965, LCCA Papers.

and his colleagues published *Water Law and Administration: The Florida Experience*. In 1972 they wrote *A Model Water Code*, which proposed a new comprehensive set of laws and regulations pertaining to water, and became the basis of Florida's Water Resources Act of 1972, which modernized the state's water law.<sup>28</sup> In 1974, Maloney held a Water Law Seminar at Estero Bay that examined the legal issues related to sovereignty lands.

Mellor's legal arguments were accompanied by ecological ones that emphasized the economic value of these marine ecosystems. In today's parlance, Mellor touted the ecosystem services these waters provided to humans. Art Marshall and Ken Woodburn provided the scientific expertise that undergirded these ideas. Art Marshall is best known as an Everglades advocate who was active in the 1970s and '80s when he wrote a blueprint for the region's preservation called "The Marshall Plan." Yet Marshall was politically active in environmental issues well before that period. From 1955 to 1969 Marshall worked for the US Fish and Wildlife Service and with Mellor became an important critic of Florida's dredge and fill activities. Marshall and Mellor were close friends and together were the glue that held together an informal network of marine environmental activists in Florida.

Ken Woodburn was another important ally of the LCCA. Woodburn was a state-employed marine biologist who conducted countless biological surveys pertaining to dredge and fill and bulk-head line permits for the IIF throughout the 1960s. These reports contained a wealth of biological data which activists like Mellor used to fight these proposals. Mellor, Marshall, and Woodburn argued that these marine ecosystems were vital for fish and marine life. They were the nursery, breeding, and feeding grounds for valuable commercial fish species, and were popular sport fishing and boating sites as well. Their natural beauty drew tourists, retirees, snowbirds, and other residents to the state.

These legal and ecological arguments were central to the LCCA's wider efforts to protect Florida's waters. Perhaps their most important fight other than that over Estero Bay, involved the development of Little Pine Island in Lee County, which today is a 4,700-acre wetland preserve owned by the state. In 1962, Julius Wetstone,

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28 Maloney, et al *Water Law and Administration: The Florida Experience* (Gainesville, 1968) and Maloney et al, *A Model Water Code* (Gainesville, 1972); Christine A. Klein, Mary Jane Angelo & Richard Hamann, Modernizing Water Law: The Example of Florida, 61 *Fla. L. Rev.* 403 (2009), available at <http://scholarship.law.ufl.edu/facultypub/7>.

a Connecticut agricultural magnate who owned the island, secured a favorable bulkhead line that would allow him to fill hundreds of acres of waters around the island. In 1964 he filed an application to buy an additional 433 acres of submerged lands. Mellor insisted that due to conflicting surveys, this acreage was actually closer to 2,250 acres, and that Wetstone was pulling a fast one over on the IIF.<sup>29</sup> The LCCA had been fighting Wetstone since 1961, and due to their continued efforts in 1964 the IIF both rejected this sale and referred the bulkhead line back to Lee County for redrawing. This effectively killed Wetstone's development. The LCCA worked with the Izaak Walton League, the Southwest Florida Audubon Society, the Fort Myers Garden Club, the Southern Fisheries Association, and Pine Island Grange no. 192 to oppose this 1964 land sale. Lee County's State Senator Elmer Friday and State Representative Ted Randall, both reliable LCCA supporters, likewise opposed the sale.<sup>30</sup>

In 1969, Wetstone sued the IIF over the boundary between his private land and the state's submerged land. Legally, that boundary is the MHWL, however that line had never been determined and Wetstone's lawyers instead argued that the meander line (an imprecise line that corresponded to the shore line which was used to create townships and section corners) should be used.<sup>31</sup> Bill Mellor noted that the meander recorded in a 19<sup>th</sup>-century survey was widely known to be erroneous. He joked it was drawn by "Drunken Jenkins," in a rowboat who measured "so many strokes were in a mile," and drew the line accordingly.<sup>32</sup> The court, however, ruled in favor of Wetstone, and allowed him to use the meander line as the boundary between his and the state's land. Ultimately, this development went nowhere, but the Wetstone case, which was widely seen as incorrectly decided and was later overturned, became important to events in the 1970s in Estero Bay.<sup>33</sup>

Another major fight involved Tierra Verde, a development on a series of islands just south of St. Petersburg at the mouth of Tampa Bay. In 1957 several of the upper islands had already been

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29 BM to Chuck, January 4, 1965, LCCA Papers; BM to Art Marshall et al, December 22, 1964, LCCA Papers.

30 IFF Minutes 1964-1966, January 12, 1965, 146-147

31 *Trustees of Internal Improvement Fund v. Wetstone*, March 26, 1969, 222 So. 2d 10 (1969)

32 Interview, BM and PM.

33 Lee County ENFO, "The Estero Bay Fiasco: An Inherited Bucket of Worms," January 1976, LCCA Papers.

enhanced and combined using fill from the Bay and then developed. The lower islands were slated for development, which the LCCA opposed. The IIF approved an initial bulkhead line in 1960, and then an additional line in 1964.<sup>34</sup> This second permit also included the sale of 280 acres of submerged land in the southern part of Cabbage and Pine keys. Pinellas County had also approved a 1,120-acre dredge permit in the area. However, by the end of the year the company had not received an additional required permit from the Army Corp of Engineers and had not begun dredging. They requested an extension of their original permit, which the County Commission denied. Mellor and Art Marshall worked with Pinellas county residents in 1965 who created an organization called The Committee to Save our Bays that continued this work.<sup>35</sup> They adopted rhetoric and tactics similar to the LCCA and continued to successfully fight the Tierra Verde development.<sup>36</sup> The company could never again secure that permit from the Commission and today these islands are protected as Shell Key Preserve.<sup>37</sup>

The LCCA also worked to protect Sanibel Island and the island's newly created Ding Darling National Wildlife Refuge. Between 1961 and 1962, the LCCA protested a planned solid-fill causeway to Sanibel. They argued this causeway would "reduce the outflow from the Caloosahatchee River," causing a drop in salinity. Art Marshall argued the causeway would "produce conditions favorable for a bloom of red tide." The required dredging for the causeway's construction would destroy bay bottoms and seagrass and the entire plan would destroy fish and scallop populations in the bay.<sup>38</sup> The LCCA's criticisms resulted in changes to the bridge's design. These included the addition of twelve spans of bridge to the causeway which allowed for water flow, reduced dredging in the bay, and a smaller right-of-way.<sup>39</sup>

The LCCA fought other dredging projects in and around Ding Darling Wildlife Refuge.<sup>40</sup> One such project was actually initiated by the Fish and Wildlife Service who sought to dredge a large portion of the refuge's saltwater bays and mangrove forests to create

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34 IIF minutes 1962-1964, 28 January 28, 1964, 401.

35 *Tampa Bay Tribune (TBT)*, December 11, 1964, January 12, 1965, January 15, 1965.

36 Petition, February 10, 1965, LCCA Papers.

37 The founders of the company died in a plane crash in 1965, *TBT*, January 23, 1965.

38 *FMNP*, October 23, 1961.

39 IIF Minutes 1960-1962, November 28, 1961, 401; *FMNP*, November 16, 1961.

40 *FMNP*, October 23, 1961; BM to AM, June 15, 1964, LCCA Papers.

habitat for freshwater ducks. Mellor despaired to Art Marshall that the LCCA was facing “a situation where the mangroves, bays, and feeding grounds are being destroyed under the direction of an agency we thought was interested in the preservation of these areas.”<sup>41</sup>

The LCCA fought a plethora of other smaller developments as well. These included: the construction of the Estero Island/Bonita causeway in 1961, a commercial pier permit along the Caloosahatchee in 1963, a Captiva Island bulkhead line sought by a chemical company in 1963, dredging at the Deltona development at Marco Island in 1964, and a 1966 Gulf American proposal to dredge and fill portions of Matlacha Pass. More broadly, the LCCA acted as a watchdog over the county’s waters and investigated developments to ensure they were legally approved. The organization alerted the county commission to numerous illegal dredge activities in the county throughout the 1960s.

The LCCA’s activism was centered on Lee County, but Mellor and the group exported their ideas and strategies throughout the state. They found fertile ground for their activism, as a groundswell of public outrage at destructive dredge projects throughout Florida became more pronounced in the 1960s. Mellor, along with Art Marshall, helped turn this outcry into activism. The two created a network of marine activists in Florida and spread their legal and ecological arguments among these groups. Organizations Mellor advised and gave research materials to included: the West Palm Beach IWL, the Sebastian River Inlet Conservation Club, St. Lucie-Indian River Restoration League, and Greater Pine Island Chamber of Commerce. With the Nature Conservancy he fought Army Corp of Engineer dredge permits at Deltona, and he worked with activists at Naples and St. Pete to help form organizations to fight dredging. In 1965, Mellor helped formed an organization called the Southwest Florida Conservation Clearinghouse, which disseminated environmental information and worked to keep all regional environmentalists in contact. This group operated until at least 1976.<sup>42</sup> The LCCA worked closely with local Audubon societies, and Mellor was a long-time member of the Caloosahatchee chapter of the Izaak Walton League and served on League’s state board.<sup>43</sup>

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41 BM to AM, June 15, 1964, LCCA Papers.

42 Naas to SWFLCC members, January 1976, LCCA Papers.

43 BM to Green June 21, 1963, LCCA Papers; BM and PM Interview.

The fight over Estero Bay was the most important of four major bulkhead fights in 1960's Florida. Mellor and Art Marshall were at least tangentially involved in fighting development at: Rookery Bay in Collier County just south of Fort Myers; Biscayne Bay, off the coast of Miami; and the waters around Pelican Island National Wildlife Refuge between Melbourne and Vero Beach. Mellor had only a minimal impact on the fight at Rookery Bay. Beginning in 1965, wealthy snowbirds simply purchased those lands and waters that were slated for developed. Two aquatic preserves were created at the site in 1969, and in 1977 the area was protected as the Rookery Bay National Marine Estuarine Research Reserve. Mellor kept in close contact with activists fighting to protect Biscayne Bay in Miami, particularly *Miami Herald* reporter Juanita Greene and fellow Izaak Walton League member Lloyd Miller. Due to their efforts, the Bay was protected as a national monument in 1968, and then made a national park in 1980. Art Marshall played a large role in opposing the development around Pelican Island, which contained the nation's first wildlife refuge. The waters surrounding the island were slated for development, but in 1963 local activists convinced the IIF to halt pending land sales and instead use those lands to expand the refuge.<sup>44</sup>

Another essential ingredient to the LCCA's activism was political power. This grass-roots group held meetings, signed petitions, attended public hearings, and wrote letters, but also transformed their grass-roots activism into substantial power over local and state politics. The LCCA ensured that Lee County politicians supported their agenda. In 1964 they supported own of their own members, Ted Randell, in his campaign to win a seat in Florida's House. Randell served from 1965 to 1974 and proved to be an important and loyal ally.<sup>45</sup> That same year, the LCCA opposed the reelection of Herman Hastings, their fiercest opponent on the Lee County Commission and threw their support behind LCCA board member Roland Roberts. Although Roberts lost this election, the Commission took notice, and many members began cooperating with the

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44 The author is currently working on a comparative history of these four environmental fights. On Biscayne Bay see: Burrus, E. Carter Jr., "A History of the Island and Waters of the Biscayne National Park", PhD Dissertation, University of Miami, 1984; Lloyd Miller, *Biscayne National Parks: It Almost Wasn't* (Redland, FL: Autores Editores, 2012). On Pelican Island Wildlife Refuge see: IIF Minutes, July 16, 1963, December 10, 1963, May 21, 1968.

45 Interview, BM and PM; *FMNP*, March 3, 1964; Randell obit, *FMNP*, March 2, 2008.

LCCA for fear of being opposed. Bill Mellor remembered that “gradually things turned around with the County Commission” as they realized the LCCA’s power. Roberts later served on the County Commission from 1977 to 1985.<sup>46</sup> Lee County’s State Senators likewise supported the LCCA. Travis Gresham who served from 1958 until the late 1960s and State Senator Elmer Friday were both reliable allies. Friday served from 1961 to 1970 and was a powerful Senator who chaired the Rules Committee and served as the Senate Secretary.<sup>47</sup>

Mellor and other LCCA members had connections with other important state politicians like J. Colin English, Florida’s Secretary of Education from 1936 to 1948; and W.D. Childers, a powerful state Senator from Pensacola. Joel Kuperberg, the IIF’s director under Governor Askew, became an important ally as well.<sup>48</sup> Two other key figures that supported and further the LCCA’s work were Ney Landrum and W. Randolph Hodges. Landrum had a 30-year career in state conservation and ran the state park system in the 1970s. Hodges had been a powerful state senator from 1953 to 1961. After retiring from the senate he was Florida’s conservation director from 1961 to 1969 and then served as the first Director of the Department of Natural Resources from 1969 to 1974.

Landrum and Hodges were central to a growing impulse in Florida’s government to better manage the state’s natural resources and to provide recreational opportunities for residents and tourists. This was a key element of the state’s modernization and growth after World War II. Florida’s pre-war government had been ineffective, weak, and small; after the war the government grew in size and power, and bureaucratized. Before the 1960s, the state had a mish-mash of sometimes overlapping and always underfunded agencies dedicated to natural resources and environmental protection. The early 1960s saw a dizzying flurry of reorganization within the state’s parks and natural resource agencies and saw the creation of new agencies and committees examining these issues.<sup>49</sup>

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46 Lee County, “Lee Board of County Commissioners, 1887-2018”

47 Gresham Obituary, *FMNP*, February 23, 2003; Gresham to Taylor, March 21, 1962, LCCA Papers; Gresham letter on reelection 1963, LCCA Papers; Obituary, *Tallahassee Democrat*, January 25, 2006; BM to Friday, March 4, 1964, LCCA Papers.

48 Interview, BM and PM.

49 Gresham to Taylor, March 21, 1962, LCCA Papers; Landrum, *A Legacy of Green* (Florida Park Service Alumni Association, 2013).

These efforts began in 1961 when Governor Farris Bryant created the Governor's Committee on Recreation Development.<sup>50</sup> The committee mostly examined outdoor recreation (an important issue for Florida's tourism industry), and inventoried state-owned lands. In 1963, it published a pamphlet entitled "Florida Outdoor Recreation—At the Crossroads," which prompted the legislature to pass the Outdoor Recreation and Conservation Act of 1963. This law created a trust fund for land acquisition and created the Outdoor Recreation Planning Committee (ORPC) which replaced Governor's Committee on Recreation Development. The Outdoor Recreational Development Council (ORDC), which had the same membership of the ORPC, was also created. While the ORPC was an advisory board charged with making plans for development, the ORDC was a decision-making body controlled by the cabinet.<sup>51</sup>

When Ney Landrum, the director of the ORPC, visited Fort Myers in 1965, he was deluged with questions about the status of Estero Bay. Upon returning to Tallahassee he brought the matter before the ORPC and other state agencies, all of which were in favor of protecting the Bay.<sup>52</sup> Landrum continued to push this issue in Tallahassee and by October 1965 after a biological study, the Florida Game and Fresh Water Fish Commission proposed that 10,400 acres in the Bay be protected as a "Sanctuary and Recreation Site."<sup>53</sup> In November that agency held a wider meeting in the capital to discuss setting up the area "as a marine management area," that would "prohibit dredging of any kind."<sup>54</sup> The ORDC

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50 This was an interagency commission that consisted of the heads of seven state agencies: the Department of Conservation, the Florida Development Commission, the Florida Forest Service, the Florida Park Service, the Game and Fresh Water Fish Commission, the State Road Department, and the Trustees of the IIF.

51 Landrum, *A Legacy of Green*; Governors Committee on Recreational Development, *Florida Outdoor Recreation: At the Crossroads* (1963). These efforts were furthered by a new state constitution approved in 1969 which completely reorganized Florida's environmental regulatory state. That year, in compliance with the new constitution, the legislature created the Department of Natural Resources and named W. Randolph Hodges its first director. This new Department absorbed the ORDC, the Florida Park Service, the State Board of Conservation, and five other disparate agencies. Ney Landrum continued to play a pivotal role in the ORPC and became the director of the Florida Park Service in 1970.

52 Transcript of Public Hearing, February 10, 1966, LCCA Papers.

53 Estero Bay Sanctuary and Recreation Site Proposal, Florida Game and Fresh Water Fish Commission, October 1965, LCCA Papers; Shanks to Frye, October 13, 1965.

54 Shanks to BM and Hedwig Michel, November 5, 1965, LCCA Papers.

approved this idea at its December 1965 meeting and forwarded the recommendation to the Trustees of the IIF. In response, the IIF held a public meeting in Fort Myers on February 10, 1966 to discuss the Bay's preservation.<sup>55</sup>

The response to this meeting was "overwhelming positive." Approximately 250 citizens attended and several attendees requested that additional aquatic areas be protected. Ted Randell explained to the IIF that "he had discussed this matter with hundreds of people in his county and could not find one objector." The Lee County Commission, the County's legislative delegation, the US Fish and Wildlife Service, a multitude of local conservationist organizations, and all the state's conservation agencies endorsed the proposal.<sup>56</sup> Ney Landrum explained that this proposal was "a prototype or the pilot of what we later hope will result in a statewide system of offshore preserves for the purpose of preserving" these aquatic areas.<sup>57</sup> A few months later, on April 5<sup>th</sup> 1966, the ORDC formally endorsed the proposal, and the IIF dedicated those lands to the ORDC and created Estero Bay Offshore Preserve.<sup>58</sup> After the preserve's creation, Jack Buford, chief of the IIF's bulkhead section, thanked Bill Mellor for his effort, noting that he was "unequaled as an uncompromising crusader for conservation. It is my opinion that Lee County and the State of Florida are indebted to you."<sup>59</sup>

This aquatic preserve was an entirely novel form of preservation. The LCCA had initially suggested making the area of state park, but Bill Mellor noted that no one had "ever heard of a water state park."<sup>60</sup> A state park was problematic for other reasons: parks restricted activities like hunting and fishing, while the goal of this preserve was strictly to prevent dredging and filling in the bay. No precedents existed for this form of marine preservation, and questions like what would be protected (the top of the water, the water column, or the bay bottom), and what regulations would govern the preserve were entirely new. Through the creation of this aquatic preserve, the LCCA and the state of Florida broke new ground and set new precedents for the preservation of marine areas.

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55 Transcript of Public Hearing, February, 10 1966, LCCA Papers.

56 IIF Minutes, 1964-1966, April 5, 1966, 471-473.

57 Transcript of Public Hearing, February 10, 1966, LCCA Papers.

58 ORDC meeting minutes, April 5, 1966; IIF Minutes, 1964-1966, April 5, 1966, 471-473.

59 Buford to BM, May 25, 1965, LCCA Papers.

60 Interview, BM and PM.

The preserve included all the sovereignty lands owned by the state in this section of Estero Bay. (See Figures 2 and 3). Those lands were dedicated to the ORDC; the preserve would be jointly managed by the Conservation Department, the Game and Fresh Water Fish Commission, the State Park Service, and the ORDC.<sup>61</sup> No single entity existed in the state government to oversee this preserve. The IIF mandated that a bulkhead line be established around the perimeter of entire preserve one foot off the MHWL. This would ensure that no dredging or filling of any kind could take place in the preserve and would ensure that the IIF could not sell any lands in the preserve.<sup>62</sup> Hunting and fishing would be allowed and would only be restricted by other state regulations. Likewise, boating and other uses were unrestricted as well. The only intent of the preserve was to protect marine habitats from destruction.<sup>63</sup>

Bill Mellor and the LCCA, as well as state officials like Ney Landrum and W. Randolph Hodges, had won a tremendous victory in creating the state's first aquatic preserve. Mellor was already at work though on the next major fight: a wholesale change to the way the state dispensed its sovereignty lands and issued bulkhead line and dredge and fill permits. These efforts to protect the state's resources coincided with the modernization of Florida's government and were championed and furthered by state conservation officials.

When it became a state in 1845, Florida gained title to all submerged lands out to federal waters, yet it had never exerted complete control over these lands until the mid-20<sup>th</sup> century. It was not until the passage of the Bulkhead Act in 1957 that the IIF became the "sole proprietor" of the state's submerged lands.<sup>64</sup> The Bulkhead Act also gave the IIF the authority to approve all bulkhead lines and the authority to regulate all dredge and fill activities in submerged lands and navigable waters. Yet the Bulkhead Act had major flaws and loopholes, and the state still failed to exert control

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61 *FMNP* April 8, 1966.

62 IIF Minutes, 1964-1966, April 5, 1966, 471-473.

63 *FMNP*, March 24, 1966. The only exceptions concerned the traditional riparian rights of upland owners which included: a right to a view of the water, the right to access the water, and the same rights to use the water as the public possessed. This second right could potentially include the right to dredge a navigation channel in the preserve. Subsequently, most preserves were limited to one navigation channel.

64 Glenn J. MacGrady, "Florida's Sovereignty Submerged Lands: What are They, Who Owns Them, and Where is the Boundary?," *Florida State University Law Review* (Fall 1973): 604.

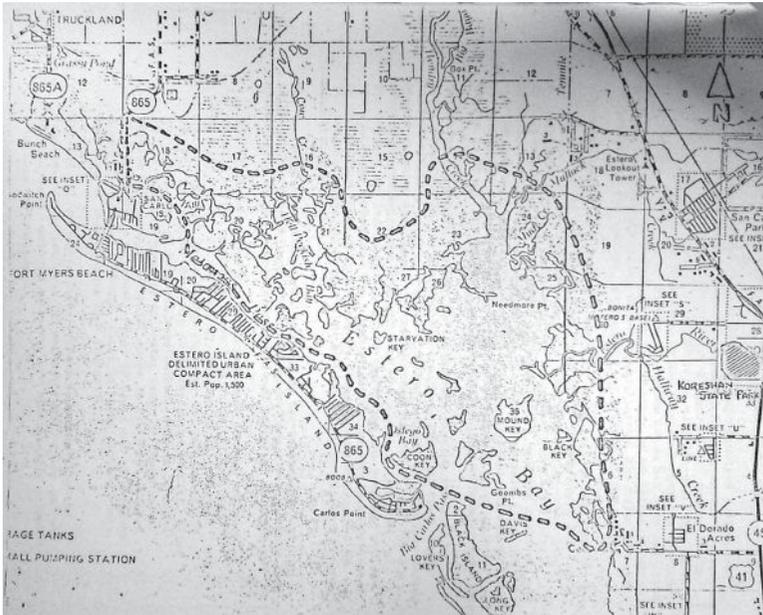


Figure 2: Estimated boundary of Estero Bay Aquatic Preserve upon its creation in 1966. Outdoor Recreation Boundary Council, 5 April 1966, LCCA Papers.

over the state's waters. The IIF continued to give away free fill, it freely and cheaply sold its submerged lands, it liberally set bulk-head lines, and it encouraged coastal developments that filled and dredged submerged lands. These actions were consistent with the frontier ethos of unrestrained development that Florida embraced before World War II. As Florida modernized after the war, it sought to place reasonable limits on that growth, it sought to protect its environment, and it sought to exert its sovereignty over its borders.<sup>65</sup>

In 1967, Florida passed the Randell Act, which solidified the state's control over its waters. The law was a landmark piece of environmental legislation that protected marine ecosystems. The law was named for its sponsor, Ted Randell, Lee County's state representative and a strong LCCA ally. The bill itself was written at Mellor's dining room table by Mellor and the LCCA's inner circle of Tootsie Barnes, Vince Honc, and Roland Roberts. The group gave the bill to Randell, who secured its passage, mostly as written. The LCCA kept tabs on the bill throughout the legislative process

<sup>65</sup> MacGrady, "Florida's Sovereignty Submerged Lands"; Luther Carter, *The Florida Experience: Land and Water Policy in a Growth State* (Baltimore, MD: Johns Hopkins University Press, 1974); Sara Warner, *Down to the Waterline: Boundaries, Nature, and the Law in Florida* (Athens: University of Georgia Press, 2005).

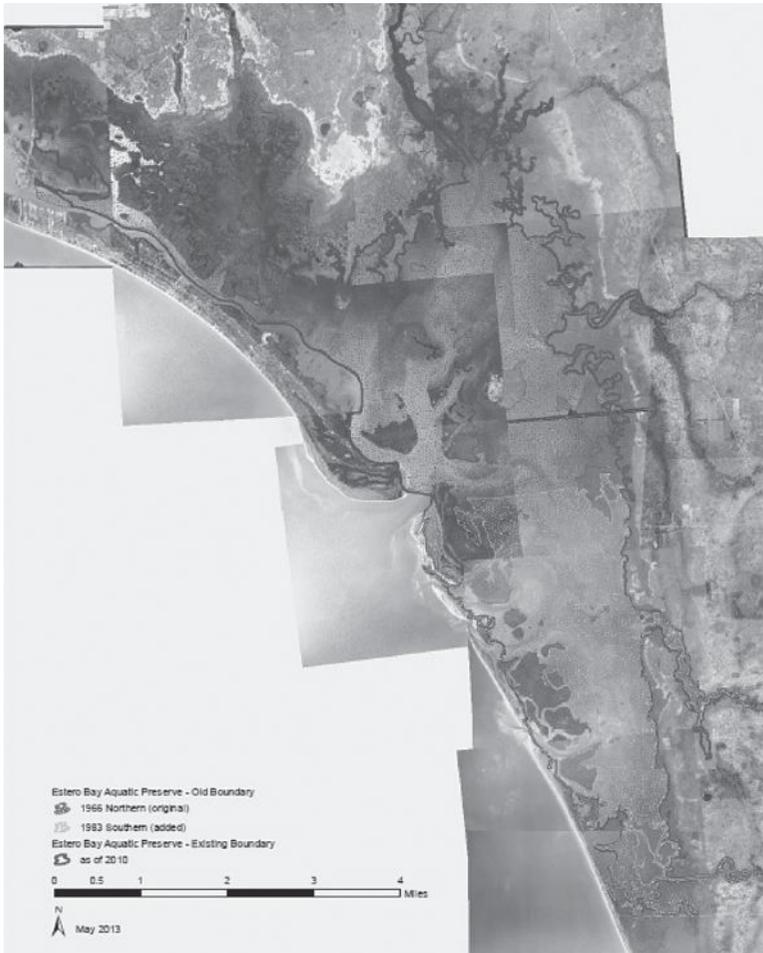


Figure 3: Current Boundary of Estero Bay Aquatic Preserve. The northern half of the preserve was established in 1966; while the southern parcel was added in 1983. Estero Bay Aquatic Preserve Management Plan, 2014

through Randell, Senator Elmer Friday, and Attorney General Earl Faircloth. Lobbyists for developers tried to alter the bill with at least 29 different amendments, but the LCCA maintained the bill's integrity.<sup>66</sup>

The Randell Act mandated that a biological and ecological survey be conducted before submerged lands were sold or bulk-head lines set. The IIF's actions could not "interfere with the

<sup>66</sup> BM and PM Interview; Faircloth to BM, May 7, 1967, LCCA Papers; May 13, 1967 BM and Friday meeting notes, LCCA Papers; *FMNP*, May 19, 1967.

conservation of fish, beaches and shores.” Neither could they “result in the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life.” The law also democratized and brought transparency to the IIF’s practices. Now, before it issued permits, sold submerged lands, or set bulkhead lines, the IIF had to advertise and publicize these actions and notify nearby owners. If there were objections, the IIF had to hold a public hearing. Additionally, all bulkhead lines set by counties had to be approved by the IIF, and counties had to hold public hearings when setting bulkhead lines.<sup>67</sup> This law represented a complete revolution for how the IIF dealt with submerged lands. Gone were the days when the IIF issued permits, sold lands, and set bulkheads on the say-so of buyers and applicants.

At the urging of Attorney General Earl Faircloth, the IIF formed a committee to create a plan for compliance with the new law.<sup>68</sup> The Interagency Commission on Submerged Land Management, formed on February 27, 1968, furthered Bill Mellor’s efforts to protect state waters. This committee, led W. Randolph Hodges, was part of a larger state effort at protecting the state’s natural resources, providing opportunities for recreation and tourism, and modernizing the state government.

The Commission’s goals included: a review of all bulkhead lines in the state, the creation of recommendations on the use of submerged lands, the creation of “a statewide systems of aquatic preserves” based on the Estero Bay Preserve, and the creation of “a master planning effort with respect to the preservation and utilization of our State submerged lands.”<sup>69</sup> The Commission also immediately agreed to sell submerged lands for at least their assessed value and to charge at least five cents a cubic yard for fill until a study could be conducted to determine its fair value. The give-away of free fill, had been a long-time IIF policy set in 1927 and reaffirmed in 1959. Upon studying the issue, the IIF immediately raised this price to ten cents per cubic yard and imposed additional

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67 Florida Statutes, Ch 67-393.

68 Faircloth to IIF, 27 February 1968, LCCA Papers.

69 IIF Minutes, September 3, 1968, 48-59; IIF Minutes, May 21, 1968, 553-556.

regulations on fill permits.<sup>70</sup> Next, the Commission mandated that all counties review their bulkhead lines, set these lines at the mean high-water line except in cases where it was in the public interest to locate the lines further offshore, and submit these revised lines to the IIF for approval. This meant major adjustments to the bulkhead line in coastal counties that had been subjected to development. This action alone likely saved thousands of acres of coastal waters from development.<sup>71</sup>

The Commission also created a system of 26 aquatic preserves. This process included the creation of a set of rationales and criteria for these preserves, and regulations that governed their management. These regulations were based directly on those set in Estero Bay. They allowed “no alteration of physical conditions,” in the preserves except for some minimal dredging for required navigation projects. No bulkhead lines would be set in these preserves. Recreational activities, such as “fishing (both sport and commercial), hunting, boating, swimming, and like” were permitted and “subject to reasonable rules and regulations.”<sup>72</sup> The creation of these aquatic preserves was consistent with the democratic values of the environmental movement. Before their creation, the IIF held eight public hearings throughout the state to give stakeholders a chance to provide input. According to Hodges “hundreds attended” these hearings, and “there was widespread approval of the preserve concept.”<sup>73</sup> This system of preserves continued to expand. Today, 42 preserves protect 2.6 million acres of state waters. (See Figure 4)

Throughout the rest of the 1960s the LCCA continued their fight against dredging and filling, but after the Randell Act’s passage in 1967, the group’s activities slackened. The LCCA continued to keep tabs on various marine developments - a bulkhead line proposal at Matlacha Pass remained particularly controversial - but the group had accomplished much of its agenda. With the creation of the Estero Bay Aquatic Preserve and the passage of the Randell Act, the LCCA completely revolutionized the protection and management of Florida’s submerged lands.

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70 IIF Minutes, May 14, 1968, 540-542; IIF Minutes, September 3, 1968, 48-59.

71 IIF Minutes 1968-1970, September 3, 1968, 48-59; IIF Minutes 1968-1970, December 31, 1968, 165-169.

72 IIF Minutes, November 12, 1968, 127-137.

73 IIF Minutes, October 29, 1969, 477-479, 482-484

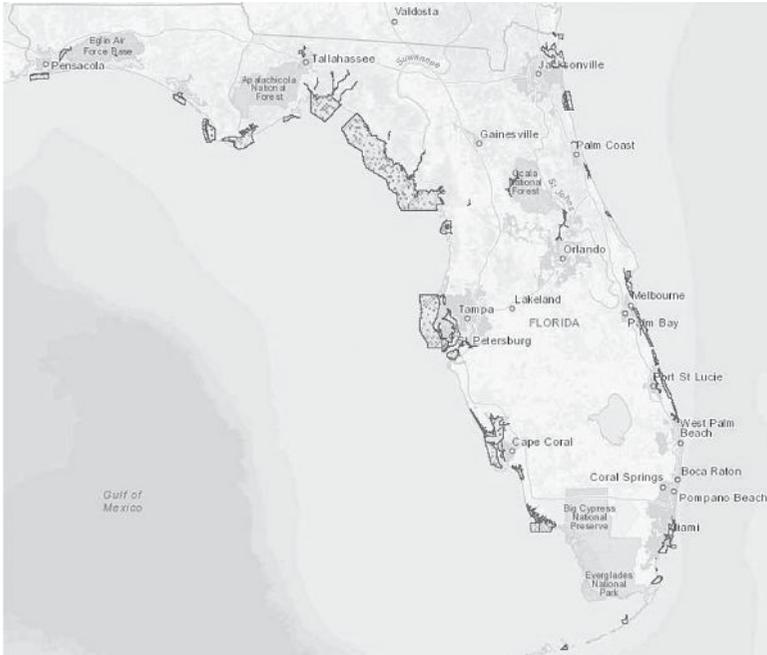


Figure 4: Current System of Aquatic Preserves, as of May 2020. In June 2020 Florida created the 400,000-acre Nature Coast Aquatic Preserve on the west coast, north of Tampa. Florida Department of Environmental Protection Geospatial Open Data.

The group's satisfied sense of accomplishment was shattered the morning of November 11, 1972 when Bill Mellor opened his copy of the *Fort Myers News-Press* and discovered that a massive investment group had purchased the lands previously owned by the Berry Williams group and was moving forward with plans to develop the area. The Williams group had sold their lands to the Windsor Trust, which in turn was in the process of selling those lands to an investment group led by Robert Troutman, an Atlanta millionaire who had financial backing from the Kennedy and Rockefeller fortunes and Chase Manhattan Bank. Troutman's plans were incredibly ambitious. They entailed a 500-million-dollar condominium development composed of three villages that would house 20,000 residents along 5,240 acres of mangrove and marshlands.<sup>74</sup> This development appeared to encompass much of the Estero Bay Aquatic Preserve.

<sup>74</sup> *FMNP*, November 26, 1972.

Shocked, Mellor immediately began investigating this development. He called Ted Randell, who in turn went to the IIF's office and requested the file on Estero Bay. He made copies of the entire file and put it on a bus to Ft. Myers.<sup>75</sup> In December, the LLCA sent one of the members to Tallahassee to chase down further leads and documents.<sup>76</sup> At the end of December, Mellor, Vince Honc and Roland Roberts met with Florida's Attorney General Robert Shevin in Miami.<sup>77</sup> By early 1973, the LCCA had pieced together an accurate account of the Troutman development, replete with secret back-dealings, forged signatures on deeds, and fraudulent land surveys. Florida history is full of such dramatic and corrupt real estate deals, but in this case, the LCCA was able to blow the whistle on the scheme.

The LCCA found that in 1970 the Windsor Trust had entered a lawsuit against the IIF concerning the boundary of their lands abutting the Estero Bay Preserve. Rather than defending this lawsuit, the IIF opted to agree to a settlement boundary line.<sup>78</sup> This settlement line was determined using a survey paid for by the Windsor Trust. The LCCA argued that this survey was fraudulent and gave the Windsor Trust thousands of additional acres of lands in the bay. Additionally, they charged that the Windsor Trust shifted its use of conflicting surveys during negotiations with the state.<sup>79</sup> After more investigation, the LCCA announced at the end of January 1973 that they had found "new facts which we believe prove fraud." After examining additional state documents and surveys, Mellor claimed the Windsor Trust "obtained between 2,000 and 3,000 acres of sovereignty lands in exchange for other, mostly sovereignty lands," to which the Windsor did not own title.<sup>80</sup>

Mellor further explained that the initial Windsor lawsuit was based on the Wetstone case, wherein the Florida Supreme Court allowed Julius Wetstone to use the meander line as the boundary between his private lands and the state's waters rather than the MHWL. As previously noted, the MHWL had never been established in Florida; the Windsor Trust argued it was impossible to determine this line and the IIF, in turn, allowed the Windsor Trust

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75 BM and PM Interview.

76 Patton Memo, LCCA Papers.

77 LCCA mailing, December 28, 1972, LCCA Papers.

78 IIF Minutes 1970-1972, December 8, 1970, 151.

79 Facts about EBAP, January 8, 1973, LCCA Papers; Facts about EBAP draft, c. December 1972, LCCA Papers.

80 BM, LCCA Report, January 25, 1973, LCCA Papers; BM and PM Interview.

to use the meander line in their boundary dispute. They then commissioned a map showing their property in reference to the meander line. Upon reviewing this map, Bill Mellor found it showed “section lines grossly distorted,” and in some sections “over two miles long” in the wrong direction. This map was likely intentionally drawn to give the Windsor Trust immense sections of land they did not own.<sup>81</sup>

State-wide elections in 1970 further complicated this dispute between the Windsor Trust and the state. The outgoing cabinet under Governor Claude Kirk negotiated with the Windsor Trust rather than pursuing a lawsuit, and agreed in principal to a land swap with the Trust while the IIF’s unelected staff worked out the specific terms of the settlement. However, before the terms of the swap could be agreed upon, elections altered the make-up of the Trustees of the IIF. Four new cabinet officials out of a total of seven members were sworn in, including Governor Reuben Askew, the attorney general, the secretary of state, and the treasurer. This new cabinet only approved the land swap to tie up old loose ends and members were not made aware of the agreement’s details. Additionally, these deed swaps were performed without a public notice or public hearing, as the Randell Act had only mandated public input in the case of land sales. This new cabinet also replaced the IIF’s executive director. Joel Kuperberg, a biologist, took over the organization and explained that the Windsor settlement was a “fait accompli except for the ‘ministerial function’ of signing the deeds” when he took over at the IIF in 1971.<sup>82</sup>

In fact, Kuperberg had refused to sign the new deed, both because he had not actually negotiated the agreement and because he thought “biologically this is an abomination.” Instead, the state surveyor, Fred Vidzes, signed the document. Later Kuperberg’s signature was added to the document via a rubber stamp. The LCCA also learned that Attorney General Robert Shevin’s signature was possibly a fraud.<sup>83</sup> Mellor, Honc, and Roberts met with Shevin in December 1972. Upon presenting him the deed he had signed, Shevin declared it was not his signature; his aid concurred and said it was “pretty clear that we’ve been hoodwinked.”<sup>84</sup> In fact, several cabinet members had their signatures rubber stamped onto the

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81 BM, LCCA Report, January 25, 1973, LCCA Papers; BM and PM Interview.

82 Lee County ENFO, The Estero Bay Fiasco, c January 1976, LCCA Papers.

83 Lee County ENFO, The Estero Bay Fiasco, c January 1976, LCCA Papers

84 LCCA mailing, December 28, 1972, LCCA Papers; BM and PM Interview.

deed exchange. Kuperberg explained that “‘rubber stamping’ the names of agency heads was another old Florida custom which was prevalent” in the state and particularly within the IIF.<sup>85</sup> The IIF had given away free fill, freely sold state lands for a song, and approved any dredge and fill project. They figuratively rubber-stamped all these actions; it is not surprising they that literally rubber-stamped the documents that accompanied these actions.

Mellor and the LCCA hammered on this issue throughout 1973 and 1974, using their extensive set of contacts to bring the issue to light. He summarized this confusing and complicated scheme as a “give-away by the state of a major portion of the Estero Bay Aquatic Preserve. Thousands of acres of almost pristine estuarine lands have been obtained by means of a fraudulent survey, fraudulent deeds, an unethical lawsuit, and [a] lack of state defense on all three scores.”<sup>86</sup> The LCCA made serious accusations of fraud and unethical behavior and repeatedly asked for a state investigation into the matter. They even sued the state at one point, but the lawsuit was thrown out for lack of standing. Due to the LCCA’s effort, Attorney General Robert Shevin initiated an investigation in December 1972.<sup>87</sup> Individuals in Florida’s Department of Natural Resources started investigating this matter, as did Senator William Childers, the Chair of the State Senate’s Natural Resources and Conservation Committee.<sup>88</sup>

Childers’ Senate hearing on the Estero Bay controversy, held in Fort Myers on November 15, 1973, produced an official report in March of 1974 that largely validated the LCCA’s views on the controversy, attacked the IIF’s actions, and questioned the legality of the entire agreement. Childers found that the IIF entered into an agreement with the Windsor Trust whereby the Windsor Trust would receive 3,750 acres of state submerged lands, which were inside the Estero Bay Aquatic Preserve. In exchange, the IIF would receive an equal amount of land which was below the MHWL, and therefore “already owned by the state.” The senate committee found that “from the beginning to the end of this transaction” the IIF’s staff work “was bungled and marred by poor judgement and gross mistakes.” The staff gave misinformation to the trustees and violated state law by allowing the Windsor Trust to prepare deeds

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85 Lee County ENFO, *The Estero Bay Fiasco*, c January 1976, LCCA Papers

86 BM to Hemphill, February 26, 1973, LCCA Papers.

87 Lee County ENFO, *The Estero Bay Fiasco*, c January 1976, LCCA Papers; *FMNP* December 22, 1972.

88 BM to Childers, September 16, 1973, LCCA Papers

rather than the IIF. The committee also attacked staff for being evasive in their testimony before the senate committee and found discrepancies between their testimony and the written record.<sup>89</sup>

The committee also examined the surveys created by the Windsor Trust. They found significant errors with section lines distorted by as much as one and half miles off the original US government survey, which itself was erroneous. This was done to push the meander line "considerably bayward of its real location." The committee agreed with the LCCA that the meander line was inadequate and the MHWL needed to be determined in the area. The Windsor Trust and the Wetstone case both argued the MHWL could not be determined, yet the LCCA and the committee insisted that determining the MHWL was essential to the protection of Estero Bay Aquatic preserve. For Florida to fully protect its sovereignty lands, it needed to know where those lands began and where private ownership ended.<sup>90</sup>

Childers and his committee recommended further investigation and recommended major reforms within the IIF. They also recommended that the deeds in this land exchange be voided by the Attorney General, and advocated for additional legislation that would prevent a repeat of this scandal. These laws included passage of the Coastal Mapping Act, a law to require public hearings for any exchanges of sovereignty lands, and a law banning the practice of rubber-stamped signatures from the Trustees.<sup>91</sup> These laws were passed in 1974, according to Childers, as "a direct result of these hearings."<sup>92</sup> The most important of these laws was the Coastal Mapping Act of 1974, which created a set of guidelines to determine the MHWL in Florida and built momentum within the state to survey and delineate the states' public waters. This was an essential prerequisite to the protection of Florida's waters. The Attorney General also voided the state's land swap with the Windsor Trust, throwing the Troutman development into limbo.

Troutman continued to push forward with his planned development, yet he soon ran into financial troubles, and had to repeatedly scale back his plans and renegotiate with state and local governments. In January 1974, Lee County, which had adopted the LCCA's position on the Bay's development, rejected Troutman's

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89 Preliminary Staff Report to Senate Natural Resources and Conservation Committee on Estero Bay Land Exchange, 19 March 19, 1974.

90 Ibid.

91 Ibid.

92 Childers to Shirey, August 26, 1974, LCCA Papers.

development plans. Troutman turned to the IIF asking for assurances that the development could move forward as a way to placate his nervous investors, yet the IIF refused to comply with his request, despite the IIF's staff's recommendation that they approve the project. The next month, Troutman's group missed its mortgage payment, and started to renegotiate the terms of the purchase of the Windsor Trust's lands.<sup>93</sup>

Troutman also scaled back the development, and worked to integrate features into the plan to satisfy the objections of environmentalists. He hired biologists to survey the Bay, and environmental engineers to plan features to mitigate the development's impact. The core feature was "a 7-mile-long interceptor waterway to be dredged between Estero Bay and the condominium city."<sup>94</sup> This canal would retain any pollution from the development, but failed to satisfy environmentalists, primarily because it entirely missed of the point of their criticisms. This waterway would further the Bay's destruction. It would separate the bay from the upland area, cutting off the region's flow of water, and would itself require massive dredging and filling. Troutman also pledged to donate 2,801 acres of bay bottoms and mangrove forest to a public conservation organization that would protect these waters alongside his development. This concession satisfied no one.

Troutman presented these revised plans to the Southwest Florida Regional Planning Council and to the Lee County Commission in mid-1976, but both bodies rejected his plans. Troutman appealed these rejections to the IIF, which likewise rejected his plans in August 1976. Finally, Troutman sued the state, county, and the regional planning council, claiming that their rejection of his development amounted to a taking of his property without compensation. Troutman demanded that these governments either allow his development to move forward, or that they purchase his property and compensate him for his losses.<sup>95</sup>

In 1979, an appellate court ruled in favor of Troutman, but the Florida Supreme Court reversed the lower court's ruling in April 1981. The court determined that Lee County could prevent development to protect mangroves without compensating the owner of the land. This ruling was roundly praised as a landmark case which

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93 IIF Minutes, 1972-1974, February 2, 1974, 760-762; Troutman to IIF, 20 February 20, 1974, LCCA Papers; *FMNP*, January 31, 1974.

94 *FMNP*, April 17, 1981.

95 *FMNP* June 19, 1975; *FMNP* August 23, 1977.

validated “environmental protection as a goal in the use of local government.”<sup>96</sup> In July of 1981, title to the lands abutting the Bay reverted to the Windsor Trust and the saga of Estero Bay’s development ended. Troutman never shoveled an ounce of dirt at his site. Eventually, Windsor’s lands were bought by the state, which protected them as Estero Bay Preserve State Park.

The LCCA protected Estero Bay and created the groundwork for Florida’s state-wide preserve system. This organization was the central hub of a larger network of marine activism in Florida. Through their wider state-wide connections, the LCCA built an ecological, intellectual, legal, and organizational foundation for marine preservation that other activists throughout Florida used to protect marine ecosystems. The LCCA’s sea-grass roots environmentalism represents an enormously successful and early strain of modern environmentalism. Their activism was home-grown, yet far-reaching. It was a citizen’s movement, but exercised vast political power. The LCCA’s work was situated in the contexts of marine ecosystems. They created arguments that reflected the legal status of sovereignty lands and the ecological importance of these marine ecosystems. Finally, they fashioned a new preservation regime that protected these marine resources and reflected the difficulties and novelty of marine preservation.

The LCCA’s work prefigured the modern environmental movement, which by the early 1970s, had grown in strength. In that decade dozens of environmental laws were passed by the U.S. Congress, strengthening the federal environmental regulatory state. Several of these addressed marine resources. Florida, though, was already leading the nation, and perhaps the world, in marine preservation before federal laws like the Coastal Zone Management Act and the Marine Protection, Research, and Sanctuaries Act were passed in 1972. Because of groups like the LCCA, by 1970 Florida had already built a foundation of marine protected areas upon which later federal and state efforts stood.

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96 *FMNP*, April 17, 1981; *Graham v. Estuary Properties, Inc.*, 399 So.2d 1374 (Fla. 1981); Di Resta, “*Graham v. Estuary Properties Case Notes*,” *Florida State University Law Review*, (Summer 1981).