

# Memorandum



**Date:** February 4, 2016  
**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

February 17, 2016  
Agenda Item No. 2B6

**From:** Carlos A. Gimenez  
County Mayor

A handwritten signature in black ink, appearing to read "Carlos A. Gimenez".

**Subject:** Report on a Solicitation, Subject to Legal Restrictions, for the Expedited Development of the South West Corner of PortMiami Consistent with the PortMiami 2035 Master Plan-Directive 152230

In 2011, the Board of County Commissioners adopted both a Comprehensive Development Master Plan and the PortMiami 2035 Master Plan (Master Plan), which incorporated potential commercial development activities on several areas of the Port, including an approximately 11-acre parcel that has become known as the South West Corner (SWC). At the time of the adoption of these plans, the SWC of the Port was studied for potential uses and found to be of limited value for current cruise and cargo operations as this area is physically isolated and lacking deep water access.

Consequently, the 2035 Master Plan recommended commercially developing the SWC to provide a third, strong revenue source for the Port to support its ambitious capital investment program in new cruise and cargo infrastructure. A subsequent planning process, which included a survey of 2,500 businesses associated with the trade and cruise industries (of which 250 companies responded), recommended a potential mix of uses centering on trade offices and facilities, as well as hotels targeted to the cruise industry.

Much has changed since the Board adopted the previously mentioned plans in 2011. First, as various ideas came forward for the SWC, title searches revealed half-century old deed restrictions from both the State of Florida and the City of Miami that impacted the land in question. Second, PortMiami's financial situation is much better today than when the referenced plans were developed and presented to the Board for adoption. Third, cruise and cargo numbers have increased.

Because of these changes, I have directed the Port Director to meet with existing Port stakeholders, including representatives of downtown Miami, to discuss future Port land use, particularly as it relates to the SWC. The outcome of these discussions will be presented in a report to the Board. I have also directed that any uses by the Port of the SWC continue to be consistent with traditional port maritime activities.

### Deed Restrictions

As previously mentioned, title searches performed during the due diligence process for development of the SWC brought to light two (2) deed restrictions on portions of the Port which include the SWC. A title search was not done during earlier planning phases as planning documents and even zoning code changes cannot trigger deed restriction violations. One of the restrictions is with the State of Florida (State) and the second with the City of Miami (City). The deed with the City restricted land use to "seaport purposes" only and contained a reversionary clause.

In October 2015, the Board passed Resolution No. R-885-15 directing the County Attorney's Office (CAO) to engage with the State and City to clarify their view of the deed restrictions. Towards this end, the CAO submitted a memorandum to the Trade and Tourism Committee (TTC) on January 11, 2016, summarizing its conversations with both the State and City. A copy of said memorandum is attached.

PortMiami Financials

PortMiami is in far better financial shape than when the Master Plan was presented to the Board in late 2011. Since that time, cruise traffic has increased by 22 percent and cargo volumes by 11 percent. Combined with a new ferry contract for service to Bimini and a flat lining of operating expenses, these favorable growth numbers have pushed cash reserves from approximately \$18 million to \$48 million; plus an additional \$10 million to the Port's restricted reserves. During this same period, net annual Port revenues available for debt service have increased from \$43 million to \$68 million. Even with the issuance of new Port-backed revenue bonds totaling approximately \$500 million, the Port's current coverage ratio projections exceed those that were used in selling investment grade bonds to the market in 2013 and 2014.

In the fall of last year, the Board adopted Resolution No. R-946-15 directing the Mayor to prepare a solicitation, subject to legal restrictions, for the expedited development of the SWC consistent with the PortMiami 2035 Master Plan. To recap, substantial changes and new information have come to light since the Master Plan was adopted by the Board, thus I have instructed the Port Director to reach out to current Port stakeholders prior to conducting an open-ended solicitation for the utilization of the SWC.

The majority of the stakeholder meetings are scheduled to take place by mid February. The Port stakeholders include the major cruise, and cargo lines, cargo terminal operators, Longshoreman Associations, stevedores, members of freight forwarders and trucking associations, Downtown Development Authority, ground transportation operators, taxi industry and the Harbor Pilots. It is our intention to return to the Board with a summary of our stakeholder outreach findings to further the discussion concerning the best use of the SWC.

Per Ordinance No. 14-65, this memorandum will be placed on the next available Board of County Commissioners meeting agenda.

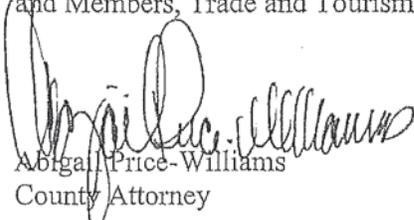
c: Abigail Price-Williams, County Attorney  
Jack Osterholt, Deputy Mayor, Office of the Mayor  
Juan Kuryla, Director, PortMiami  
Jennifer Moon, Director, Office of Management and Budget  
Charles Anderson, Commission Auditor  
Eugene Love, Agenda Coordinator

# Memorandum



**Date:** December 30, 2015

**To:** Honorable Chairman Jose "Pepe" Diaz  
and Members, Trade and Tourism Committee

**From:**   
Abigail Price-Williams  
County Attorney

**Subject:** Report pursuant to Resolution No. R-888-15 regarding Port of Miami Property  
Deed Restrictions, Conditions and Reversionary Clauses

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On October 6, 2015, pursuant to Resolution No. R-888-15, the Board of County Commissioners directed the County Attorney's Office to engage in discussions with attorneys for the State of Florida ("State") and the City of Miami ("City") to clarify the respective understandings and positions of the State and City with respect to the scope of restrictions, conditions and/or reversionary interests arising from prior State and City conveyances to the County of property now operated as the Port of Miami.

By way of background, the Port of Miami currently occupies over 500 upland acres and numerous additional acres of submerged lands in central Biscayne Bay ("Port Land"). The State and the City conveyed portions of the Port Land to the County at various times and pursuant to different deeds and conveyance documents dated from 1925 through 1980, which purport to contain various restrictions, conditions, and/or reversionary interests. Although the State deeds and conveyance documents each differ, the principal restrictions can be summarized as municipal and/or public purpose use restrictions. The principal restrictions in the City deeds can be summarized as municipal, port, and/or seaport uses. In accordance with this Board's directive, the County Attorney's Office has engaged in separate discussions with attorneys for the State and the City seeking to clarify their respective understanding of restrictions.

## **Summary of Communications with the State**

We have contacted the attorneys for the State, who elected to include their Senior Program Analyst in the discussions. Preliminary indications based on this exchange appear to be favorable. We explained the Board's directive to the State's attorneys, and discussed potential clarification of the documents in order to avoid future uncertainty as to the remaining effect of the provisions, if any. We also discussed several Florida statutes that have been enacted since the dates of many of the subject conveyance documents, broadly defining "port facilities" (Fla. Stat. Section 315.02(6)), and defining port leases for maritime or port purposes or operations as serving a governmental, municipal or public purpose (Fla. Stat. Section 196.012(6)). The State's attorneys concurred that these statutes reflect that current Florida law and policy favors port development and broadly empowers governmental units, including counties, to finance, construct, and otherwise develop port facilities, and to lease port facilities to private entities for port purposes and operations.

While the State's attorneys could not specifically commit on behalf of the State to what particular uses would or would not constitute port or public purposes, they did express a willingness to clarify the State deeds in accordance with Florida law and policy, and to assist in removing any potential uncertainty in connection with development of the Port Land. Along these lines, potential language was discussed to clarify that the development, construction, financing, operation and/or lease of port facilities (as that term is defined in Florida Statute Section 315.02) or other structures on the Port Land that enhance, support, complement, or financially contribute to the port, port users, or port facilities would constitute a public, municipal, and port purpose that would not be restricted by such documents or deeds.

The State's attorneys advised that in order to formally clarify this language, the County would be required to request a "Modification of Original Restrictions" (even if the revision is only a clarification and not a modification), which would have to be approved by the Governor and Cabinet. The State personnel advised that they would continue to engage in discussion with the Division Director, Deputy Secretary, Secretary, and cabinet aides to further explore this option, and should be able to follow up with us in mid-January. In the event that this Board wishes to pursue this route, the County must make a formal written request to the State setting forth the particular modification sought, pursuant to a Board resolution. Such request by the County, if made, would then be considered at a subsequent Cabinet meeting. The document approved by the Cabinet would be recorded in the public records of Miami-Dade County after execution by the State.

#### **Summary of Communications with the City**

We also have engaged in several conferences with the City Attorney and her staff. We forwarded summary pages from the County's 2035 Port Master Plan to the City in order to provide a framework for discussion. While the City Attorney indicated she did not have authority to bind the City to any particular position, we nonetheless explained the Board's directive and engaged in a good faith dialogue seeking to clarify the position of the City attorneys regarding the scope of the restrictions in the City deeds to the County. Preliminary indications based on this dialogue indicate that the City attorneys appear to view the scope of what is permitted under the City deed restrictions -- generally, for municipal, port or seaport and associated uses -- in a narrow light, and commented that numerous uses set forth in the County's 2035 Port Master Plan were not permitted. For example, City attorneys identified a list of uses they deem objectionable or precluded by City deed restrictions, including trade exposition centers, maritime museums, and a mega yacht marina complex. The City attorneys also objected to advertising signage -- unless the advertising was limited to the Port and its users, and the County's use of Port land for warehouse/industrial uses, other than marine industrial uses and minor repair operations for maintenance of ships. Additionally, the City attorneys preliminarily advised that a hotel use, a waterfront promenade with retail, a restaurant use, and office use would be acceptable *only if* such uses were directly ancillary to port use, and only as an

Honorable Chairman Jose "Pepe" Diaz  
and Members, Trade and Tourism Committee  
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accompaniment or support use for port users. They also raised several uses not contemplated in the Port's 2035 Master Plan, such as condominium development, residential uses, casinos, stadium uses, and adult entertainment, and advised that they considered such uses to be objectionable. The City Attorney did acknowledge that cruise and ferry uses are considered permitted port uses not restricted by existing City deed restrictions. The preliminary narrow view of the City attorneys appears to be inconsistent with the broad definition of "port facilities" under Florida Statutes Section 315.02(6), and inconsistent with other Florida Statutes promoting port development and deeming same to constitute public or municipal uses.

The City attorneys requested that the respective County and City administrations meet to further discuss the scope of permitted port and seaport uses. Next steps could include negotiation between the respective County and City administrations. Any negotiated agreement would need to be memorialized in a written agreement properly authorized and executed by both parties and recorded in the public records of Miami-Dade County pursuant to resolutions from the County and City Commissions.

c: Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners  
Honorable Carlos A. Gimenez, Mayor  
Charles Anderson, Commission Auditor  
Jack Osterholt, Deputy Mayor  
Juan Kuryla, Director, Seaport (Port of Miami)  
Christopher Agrippa, Director, Clerk of the Board Division