

FILE COPY

RESOLUTION APPROVING RECOMMENDATION OF
STATUS REPORT NO. CR 92-29/E3
TO **AMEND** CONDITIONS OF APPROVAL OF RESOLUTION NO. R-93-558
WHICH APPROVED THE SPECIAL EXCEPTION OF
GARY SMIGIEL
PETITION NO. 92-29

WHEREAS, the Board of County Commissioners, as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, systematic monitoring and review of approved zoning actions help implement the goals and objectives of the Comprehensive Plan.

WHEREAS, the notice and hearing requirements as provided for in Section 5.8 of the Palm Beach County Land Development Code have been satisfied; and

WHEREAS, pursuant to Section 5.8, Status Report CR 92-29/E3 was presented to the Board of County Commissioners of Palm Beach County at a public hearing conducted on March 27, 1997; and

WHEREAS, the Board of County Commissioners has reviewed Status Report CR 92-29/E3 and considered testimony, and the recommendations of the various county review agencies; and

WHEREAS, Section 5.8 of the Palm Beach County Land Development Code authorizes the Board of County Commissioners to add or modify conditions of approval; and

WHEREAS the Board of County Commissioners made the following findings of fact:

1. The recommended action is consistent with the Palm Beach County Comprehensive Plan and the Unified Land Development Code (ULDC).
2. The amendment to conditions of approval reflects the amended site plan and applicable requirements of the ULDC.
3. The amendment of the site plan resolved violations of the ULDC and conditions of approval.
4. The amendment will allow the property owner and Palm Beach County to work together in the planning of the alignment of Coral Ridge Drive.

WHEREAS, Section 5.3 of the Palm Beach County Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that the recommendation of Status Report No. CR 92-29/E3, to amend Conditions of Approval of Resolution No. R-93-558, the Special Exception of Gary Smigiel, Petition No. 92-29, which approved a Class A Conditional Use allowing an Excavation, Type III on property legally described in Exhibit A, being located approximately two miles east of the Loxahatchee Wildlife Preserve, three miles west of S.R. #7 on the south side of Lox Road and the Hillsboro Canal, north of the Broward County line, and directly south of the SWA Site One in the SA-Special Agricultural Zoning

District, is approved, as amended, subject to the following conditions:

A. PREVIOUS APPROVAL

1. Petition Number 88-27, Resolution Number 89-945, is hereby repealed.
2. All previous conditions of approval applicable to the subject property, as contained in Resolution R-93-558, are contained herein. The property owner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the ULDC and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING - Zoning)

B. MASTER CONSTRUCTION AND PHASING PLAN

1. Condition B.1. of Resolution R-93-558, which currently states:

Prior to July 1, 1993, or the commencement of phases three (3) thru eleven (11), whichever occurs first, the applicant shall submit to the Development Review Committee for approval a detailed Master Construction Plan. This Master Construction Plan shall be consistent with Section 7.6.G.4.b(3)(a) (Notice of Intent to Construct) and shall indicate the phasing order of the lake construction.

Is hereby amended to state:

Prior to July 1, 1993, or the commencement of phases three (3) thru five (5), whichever occurs first, the applicant shall submit to the Development Review Committee for approval a detailed Master Construction Plan. This Master Construction Plan shall be consistent with Section 7.6.G.4.b(3)(a) (Notice of Intent to Construct) and shall indicate the phasing order of the lake construction. (DATE: MONITORING - Zoning)

2. Condition B.2 of Resolution R-93-558, which currently states:

Prior to commencement of construction of each phase the applicant must receive Development Review Committee approval for the following requirements:

- a. A Detailed Upland Reclamation Plan as described in condition C.3; and,
- b. A Detailed Littoral Planting Plan as described in condition D.3. (ZONING/ERM)

Is hereby amended to state:

Prior to construction of each phase, the property owner shall provide The Palm Beach County Zoning Division (the Division) with a notice of commencement in a manner and form acceptable to the Division. At a minimum, the notice of commencement shall contain the following:

- a. A survey or other acceptable graphic representation that clearly denotes the following:
 - i. The extent of area excavated;
 - ii. Total volume of extracted material; and,
 - iii. The depth of all excavated areas.

- b. The date of commencement of the subject phase of the notification;
- c. Evidence that all required performance bonds are current and remain in full force and effect; and,
- d. Evidence that the face value of the required bonds are remain sufficient to ensure all bonded improvements.
- e. An updated cost estimate for all required buffers, upland vegetation and littoral planting; and
- f. a signed and sealed survey of each individual reclamation area within the previously approved phase of the excavation.

In no event shall the property owner commence any excavation activity within any new phases without written confirmation from the Division that the requirements of this condition have been satisfied. (NOTICE OF COMMENCEMENT: ZONING/ERM)

C. UPLAND RECLAMATION

- 1. Prior to July 1, 1993, or the Department of ERM issuing written approval for the Littoral Zone Master Planting Plan, whichever occurs first, the applicant must receive Development Review Committee Certification of a Master Upland Reclamation Plan. This plan at a minimum shall include the following:
 - a. An overall plan that reflects the entire excavation site and the minimum code requirements for a Type III Excavation, including but not limited to: a typical excavation cross section; minimum buffering details; erosion control methods; all proposed access points; internal hauling roads; areas to be used for agricultural production; staging areas; storage areas (with typical cross sections); weigh stations; other structures and improvements on site; and, compliance with all conditions of approval;
 - b. A Phasing Plan that provides tabular data for all phases, including: acreages for each phase; total number of trees, shrubs, seedling and groundcover to be provided; minimum number of species to be provided for the required trees, seedlings, shrubs, and ground cover; minimum sizes of material of all trees, shrubs seedling, and ground covers to be used; and cut and fill tabular data;
 - c. A Management Plan that, at a minimum, describes the methodologies to be utilized for: installation; maintenance; survivability of plant materials; establishment of plant communities; plant replacement; temporary irrigation and or nourishment; and, eradication of prohibited or invasive plant material; and,
 - d. An Erosion Control Plan that at a minimum describes all temporary and permanent erosion control methods. All permanent erosion controls must be compromise of natural organic material or native plants and/or ground cover. (MONITORING/ZONING - ERM) Previously Condition C.1. of Resolution R-93-558. (DATE/PERMIT; MONITORING - ZONING)

2. Prior to commencement of construction of phase Three, or any other future phase, or August 1, 1993, whichever shall occurs first, the applicant shall receive approval for a Detailed Upland Reclamation plan for Phases One and Two consistent with the Master Reclamation Plan, the requirements of Palm Beach County Land Development Code, and all conditions of approval of this petition. (MONITORING/ZONING - ERM)
(Previously Condition C.2. of Resolution R-93-558) (DATE: MONITORING - ZONING)
3. Prior to commencement of construct any phase of this excavation the applicant shall receive DRC approval for a detailed Upland Reclamation Plan. This Upland Reclamation Plan shall be consistent with the approved Master Reclamation Plan, the Palm Beach County Land Development Code, and the Condition of approval for this petition. Previously Condition C.3. of Resolution R-93-558. (NOTICE OF COMMENCEMENT: ZONING/ERM)
4. Minimum upland reclamation requirements are as follows:
 - a. Minimum total acreage is twenty one (21.0) acres (914,760 Square Feet);
 - b. Minimum reclamation area for each upland reclamation phase is one (1.0) contiguous acre (43,560 square feet). Phase IV and areas which are contiguous to future reclamation areas may be excluded from this requirement;
 - c. Minimum width of any reclamation area shall not be less than twenty five (25) feet;
 - d. Minimum Planting Requirements for upland areas:
 - 1) One (1) eight (8) foot tall native tree with a minimum three and one half (3.5) feet of canopy width per three hundred fifty (350) square feet of required reclamation area;
 - 2) One (1) twenty four (24) inch native shrub per one hundred twenty five (125) square feet of required reclamation area;
 - 3) One (1) eighteen (18) inch native tree seedling per one hundred (100) square feet of required reclamation area; and,
 - 4) One (1) native understory plant per seventy five (75) square feet of required reclamation area (Turf Grasses shall not be credited to this requirement)
 - e. A minimum of two (2) inches of mulch shall be used to cover the entire required reclamation areas to prevent invasive plant species growth; Native ground cover, turf grasses, or wild flowers may be seeded or planted to meet this requirement provided that a minimum of eighty (80%) percent coverage is obtained prior to the Zoning Division release of the Upland Reclamation bond for that phase of upland reclamation.
 - f. Minimum number of species to be used in reclamation planting plan are as follows:

- 1) A minimum of six (6) native species of trees and tree seedlings;
 - 2) A minimum of three (3) species of shade or canopy trees;.
 - 3) A minimum of eight (8) species of native shrubs; and,
 - 4) A minimum of eight (8) species of native groundcover plants;
- g. Minimum specifications for plant material are as follows:
- 1) A minimum fifty (50%) percent of the required trees shall be shade or canopy trees;
 - 2) All plant material used must have a minimum of a drought tolerant rating by the South Florida Water Management District Xeriscape Guide;
 - 3) A minimum of one hundred (100%) percent of all required plant material shall be South Florida native; and,
- h. The performance guarantee for each phase this performance guarantee shall meet the minimum requirement pursuant to Section 7.6.F.13. (Additional Surety Requirements For Type III Excavations...). Previously Condition C.4. of Resolution R-93-558. (ZONING)

5. Condition C.5. of Resolution R-93-588 which currently states:

Prior to Development Review Committee certification of the next upland reclamation phase the petitioner shall required to submit a signed and sealed survey of each individual reclamation area within the previously approved phase of the excavation. (ZONING)

Is hereby deleted.

6. The Boundaries of each upland reclamation area shall be marked with physical survey monument markers indicating the area as a "Preserve Area - Do Not Encroach". These survey monument markers shall be installed around the perimeter one hundred (100) feet on center. Previously Condition C.6. of Resolution R-93-558. (ZONING)

7. Condition C.7. of Resolution R-93-558, which currently states:

For each reclamation area within each upland reclamation phase shall:

- a. Record a deed restriction that:
- 1) limits the use of the reclaimed area to a passive trail with a maximum width of eight (8) feet;
 - 2) Prohibits the removal of native vegetation from the reclaimed upland area; and,
 - 3) Prohibits the construction or placement of structures, or utilities within the reclaimed upland areas; and,

- b. **Receive platting approval from the County Engineer and shall be recorded with the County Clerk of Palm Beach County prior to the Zoning Division Releasing the required Upland Bound for the individual phase. (ZONING)**

Is hereby amended to state:

For each reclamation area within each upland reclamation phase shall:

- a. Record a deed restriction prior to the Zoning Division releasing any portion of the reclamation bond, that:
 - 1) limits the use of the reclaimed area to a passive trail with a maximum width of eight (8) feet;
 - 2) Prohibits the removal of native vegetation from the reclaimed upland area; and,
 - 3) Prohibits the construction or placement of structures, or utilities within the reclaimed upland areas (RECLAMATION BOND: ZONING); and,
- b. Prior to receiving platting approval from the County Engineer all deed restrictions recorded with the County Clerk of Palm Beach County shall be clearly delineated on the plat and shall be recorded with the County Clerk of Palm Beach County prior to the Zoning Division releasing any portion of any required Bond. (PLAT: ENG)

D. ENVIRONMENTAL RESOURCES MANAGEMENT

1. The Petitioner shall pay any outstanding vegetation removal fees to the Department of Environmental Resources Management prior to certification of the Master Construction Plan by the DRC. Previously Condition D.1. of Resolution R-93-558. (ERM)
2. A Master Littoral Zone Planting Plan for the total project (phases one (1) thru eleven (11)) shall be submitted to and receive written approval from the Department of Environmental Resources Management prior to the commencement of construction of Phase three (3). Previously Condition D.2. of Resolution R-93-558. (Em)
3. For each phase:
 - a. Prior to the initiation of construction of each phase of the excavation, the applicant shall submit and receive written approval from ERM a Detailed Littoral Planting Plan. Each Detailed Littoral Planting Plan shall include the following:
 - 1) The required performance guarantee pursuant to Section 7.6.F.12 (Surety Requirements for Littoral Plantings) for each phase;
 - 2) The specific littoral planting plan meeting the requirement of section 7.6.F.4. (Littoral Zones) required for that phase as indicated on the approved Master Littoral Planting Plan. Previously Condition D.3. of Resolution R-93-558. (ERM)
4. At the completion of each littoral planting for each phase the applicant shall notify ERM in writing that the

littoral planting is completed. Previously Condition D.4. of Resolution R-93-558. (ERM)

E. ENGINEERING

1. The Property owner shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exist or as it may from time to time be amended. Previously Condition E.1. of Resolution R-93-558. (LAND DEVELOPMENT)
2. Prior to December 15, 1994, or prior to the issuance of the first Building Permit, whichever shall first occur, the property owner shall convey to Palm Beach County Land Development Division by road right-of-way warranty deed for:
 - a) Lox Road, 80 feet south of and parallel to this project's north property line.

All free of encumbrances and encroachments. The property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Becton to ensure that the property is free of all encumbrances and encroachments. Right-of-way conveyances shall also include "Safe Sight Corners" where appropriate at intersections as determined by the County Engineer (Previously Condition E.2. of Resolution R-93-558) (DATE: MONITORING - Eng)

3. Prior to December 15, 1994, the property owner shall construct a left turn lane, east approach on Lox Road at the project's entrance road including guardrail subject to approval by the County Engineer. (Previously Condition E.3. of Resolution R-93-558) (DATE: MONITORING - ENGINEERING)
4. Within sixty (60) days of a request by the County Engineer, the property owner shall convey to Palm Beach County adequate road drainage easement through the project's internal surface water management system to provide legal positive outfall for all runoff from those segments of Lox Road and University Drive along the property frontage and for a maximum 400 feet. distance each side of the property boundary lines along Lox Road and University Drive. Said easements shall be no less than 20 feet in width. The drainage system within the project shall have sufficient retention/detention capacity to meet the storm water discharge and treatment requirements of the applicable County Water Control District and South Florida Water Management for the combined runoff from the project and District the ultimate Thoroughfare Plan Road Section(s) of the included segment. If required and approved by the County Engineer the property owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures. Elevation and location of all construction shall be approved by the County Engineer. Any and all excess fill material from excavation by Palm Beach County within said easements shall become the property of Palm Beach County which at its discretion may use this fill material. Previously Condition E.4. of Resolution R-93-558. (ENG).
5. The Property owner shall furnish, prior to DRC Certification of the Master Upland Reclamation Plan, a road restoration bond to the office of the County

Engineer, based on the approved haul route.

(Previously Condition E.5. of Resolution R-93-558) (DRC: ENGINEERING/ZONING)

6. The property owner shall work with and participate with the County Engineer to develop an alignment of Coral Ridge Drive from LOX Road to the property's west property line. The property owner shall provide monthly status reports, beginning May 1, 1997, to the county Engineer, showing areas of excavation. These status reports will be required until the final alignment for Coral ridge Drive is accepted by the property owner and approved by the County.

F. LANDSCAPE AND BUFFERING

1. The applicant shall provide at a minimum a fifteen (15) foot landscape buffer around the perimeter of the site. The perimeter buffer may be waived for phases one, and two, if upland reclamation is provided around the perimeter of phases one, and two. The landscape buffer shall meet the minimum standards for compatibility buffers as described in the Palm Beach County Land Development Code Section 7.3. and 7.6. and shall, be provided prior to the commencement of construction within any phase. The applicant may submit to the Zoning Division a Alternative Landscape Betterment Plan that integrates the required landscape buffer with the required reclamation. This Alternative Landscape Betterment Plan shall be required to utilize 100% native vegetation. Required landscaping and buffering shall not be credited towards the minimum required Upland Reclamation.

(Previously Condition F.1. of Resolution R-93-558) (DRC: ZONING)

2. All landscape buffers that are provided at the minimum width of fifteen (15) that are not contiguous with an upland reclamation area shall be planted pursuant to the following standards:
 - a. A continuous native hedge planted at a minimum of four (4) feet in height and spaced at a minimum of thirty (30) inches on center;
 - b. Two (2) rows of trees fourteen (14) feet in height with a minimum crown spread of seven (7) feet, in width planted in an offset pattern spaced fifteen (15) feet on center;
 - c. Native Palms trees with eight (8) feet of clear trunk planted thirty (30) feet on center.

Previously Condition F.2. of Resolution R-93-558, (DRC: ZONING)

G. HEALTH

1. The application and engineering plans to construct a limited use commercial drinking water supply system must be submitted to the Health Unit prior to site plan approval by the Development Review Committee.
(Previously Condition G.1. of Resolution R-93-558) (DRC: HEALTH)
2. The application and engineering plans to construct an on-site wastewater disposal system must be submitted to the Health Unit prior to site plan approval by the Development Review Committee.
(Previously Condition G.2. of Resolution R-93-558) (DRC: HEALTH)

H. OTHER STANDARDS

1. Stockpiles of excavated materials shall be limited to a maximum height of forty (40) feet in height measured from grade to the highest point of the excavated material stockpile. Previously Condition H.1. of Resolution R-93-558. (ONGOING; CODE ENFORCEMENT)
2. The hauling of excavated materials off site shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday, and 10:00 a.m. to 7:00 p.m. on Sunday. Previously Condition H.2. of Resolution R-93-558. (ONGOING; CODE ENFORCEMENT)
3. Excavation activities shall be limited by a covenant of restrictions recorded in the public record, subject to the approval of the County Attorney, which provides that all excavation activities with the exception of site reclamation shall cease within ten (10) years of the date of the adoption of the resolution for this petition. Previously Condition H.3. of Resolution R-93-558. (DRC: ZONING)
4. All required slopes and littoral shelves shall extend to minus (-3) feet OHW. Previously Condition H.4. of Resolution R-93-558. (DRC: ERM)
5. The property owners shall eradicate all prohibited plant species in perpetuity for all disturbed excavation and reclamation areas. Previously Condition H.5. of Resolution R-93-558. (NOTICE OF COMMENCEMENT: ZONING/ERM)
6. The Excavation shall be limited to the creation of a total of one hundred forty seven (147.0) acres of mined lake. Previously Condition H.6. of Resolution R-93-558. (ONGOING: CODE ENFORCEMENT - ZONING)

I. CONTAINMENT AND DISPENSING OF REGULATED SUBSTANCES

1. Prior to the Master Site Plan being certification by the DRC, the applicant shall provide a list of all regulated substances to be used or stored on site to the Department of Environmental Resources Management. The Department of Environmental Resources Management (ERM) staff are willing to provide guidance on the appropriate protective measures. Previously Condition 1.1. of Resolution R-93-558. (DRC: ERM)
2. Secondary containment for all regulated substances is required. The Department of Environmental Resources Management (ERM) staff are willing to provide guidance on the appropriate protective measures. All secondary containment structures, dispensing areas, and containment material storage areas shall be clearly depicted on the Master Site Plan. Previously Condition 1.2. of Resolution R-93-558. (DRC: ERM)
3. Prior to DRC certification of the master site plan the applicant shall submit for approval from ERM, a Contingency Plan for immediate action in the event of a fuel or regulated substance spill. Containment materials and other emergency equipment shall be checked on quarterly basis (four (4) times a year) to assess usability. The applicant shall submit to Department of Environmental Resources (ERM) an annual report assessing the usability of the emergency equipment. Annual reports

shall be submitted starting August 1, 1993. Previously Condition 1.3. of Resolution R-93-558. (DATE/DRC: MONITORING/ERM)

4. All regulated substance dispensing areas shall have an impervious surface or other protective measures approved by the Department of Environmental Resource Management. All fuel lines shall be secondarily contained. Adequate numbers of absorbent materials, pads, clays, containment booms etc. must be stored on-site to contain spills. Previously Condition 1.4. of Resolution R-93-558. (ONGOING: HEALTH/ERM)
5. Any spill of any regulated substance shall be reported to the Palm Beach County Health Department within one (1) hour and to the Department of Environmental Resources Management (ERM) within twenty four (24) hours. Previously Condition 1.5. of Resolution R-93-558. (ONGOING: HEALTH/ERM)

J. Compliance

1. Failure to comply with any of the conditions of approval for the subject property at any time may result in:
 - a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; and/or
 - b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
 - c. A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
 - d. Referral to code enforcement; and/or
 - e. Imposition of entitlement density or intensity.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County

Commission decision shall be **by** petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING)

Commissioner Foster moved for approval of the Resolution.

The motion was seconded by Commissioner Roberts and, upon being put to a vote, the vote was as follows:

BURT AARONSON, CHAIRMAN	---	Aye
MAUDE FORD LEE, VICE CHAIR	---	Absent
KEN FOSTER	---	Aye
KAREN T. MARCUS	---	Absent
MARY MCCARTY	---	Aye
WARREN H. NEWELL	---	Aye
CAROL ROBERTS	---	Aye

The Chair thereupon declared the resolution was duly passed and adopted this 24 day of April, 1997.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY: 

DOROTHY H. WILKEN, CLERK

BY: 
DEPUTY CLERK

