

DIVISION OF PLANNING

MEMORANDUM



LEE COUNTY

SOUTHWEST FLORIDA

to: Walter McCarthy, Director of Development Services
from: Paul O'Connor, AICP
subject: Two Year Extension for Corkscrew Ranch – D.O. #89-12-018.00D
date: February 5, 1999

I have reviewed the request for the two year extension for Corkscrew Ranch Development Order, D.O. #89-12-018.00D. In accordance with Chapter 13 of the Lee Plan and Land Development Code Sec. 10-123(a)(4), this extension cannot be extended. Lee Plan Chapter XIII, Procedures and Administration, paragraph a.B. establishes the criteria for determining whether a final development order shall be deemed consistent. The language is reproduced below:

B. A final development order, not otherwise vested, shall be deemed consistent with the amended plan for a period of five years from the date of issuance of the development order, only as to:

- 1. terms specifically approved in writing; or*
- 2. accompanying plans expressly approved as to matters requested to be in said plans and requested to be approved as part of the development order process.*

To be deemed consistent, such preliminary development orders shall also meet all applicable public health, safety, and welfare standards.

The subject D.O. was the topic of an Administrative Appeal over a denial of a Preliminary Development Order issued April 11, 1990. The appeal centered on the application of the Board of County Commissioner's invocation of the Smith v. Clearwater doctrine. The result of the appeal was that the application "be processed, evaluated and considered under density criteria of one dwelling unit per acre" rather than the pending density for the Density Reduction/Groundwater Resource of one dwelling unit per ten acres.

The application was so reviewed and a Preliminary Development Order was subsequently issued. A Final Development Order was issued on February 22, 1994. That D.O. was valid for a period five years, expiring on February 22, 1999. The Density Reduction/Groundwater Resource future land use category was placed on the subject property with the adoption of the 1990 Lee Plan in September of 1990. This change in allowable land use made the preliminary and final development orders

inconsistent with the density provision of the Lee Plan. In accordance with the above referenced Lee Plan language, a final development order, not otherwise vested, is only deemed consistent for a period of five years. Therefore, the time period that this inconsistent final development order can be deemed consistent has passed. As such, this proposed development is inconsistent with the Lee Plan and no longer is afforded protection by Chapter XIII. It is Planning Staff's opinion that criteria for extending a development order contained in Sec. 10-123(a)(4) of the LDC cannot be met by this project.

Planning Staff also refers you to Sec. 10-115 of the LDC which, among other things, requires that "for a development order to remain valid and active, significant construction activity must commence within the duration of the development order and the construction of the project to build-out must be actively pursued." The lack of significant construction activity on this project may have already rendered this development order invalid.

cc: *Mary Gibbs, Director of Community Development*
Paul Ehrnfelt, Development Review Technician
Tim Jones, Assistant County Attorney