



ZONING MEETING
Board of County Commissioners
March 22, 2007

Prepared by: Nelson Diaz

EXHIBITS LIST

NO.	DATE	ITEM #	DESCRIPTION
1	5/22/2007		KITS- Listing of Zoning Hearings
2	5/22/2007	A-1	Binder Booklet titled " <u>KENDALL PROPERITIES & INVESTMENTS</u> " submitted by Holland & Knight.
3	5/22/2007		Zoning Action Sheets
4	5/22/2007		Exhibits List – of exhibits received by the Clerk's office.
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KITS

2-23-2007 Version # 2



**BOARD OF COUNTY COMMISSIONERS
ZONING HEARINGS**

**COUNTY COMMISSIONERS CHAMBERS OF THE STEPHEN P. CLARK
CENTER - 2ND FLOOR**

111 NW 1 Street, Miami

Thursday, March 22, 2007 at 9:30 a.m.

PREVIOUSLY DEFERRED

DISTRICT

A. 07-2-CC-2	KENDALL PROPERTIES & INVESTMENTS		06-274	24-54-38	N	11
B. 05-10-CZ14-1	CORAL REEF DRIVE LAND DEVELOPMENT, LLC F/K/A: IRWIN POTASH, ET AL	(DIC/APPEAL)	04-255	20/21-55-40	N	8

CURRENT

DISTRICT

1. 07-3-CC-3	DIRECTOR OF THE DEPARTMENT OF PLANNING & ZONING	(DIC)	06-333	07-56-40	N	8 9
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RECEIVED BY CLERK

EXHIBIT

MAR 22 2007

**BEFORE THE MIAMI-DADE COUNTY
BOARD OF COUNTY
COMMISSIONERS**

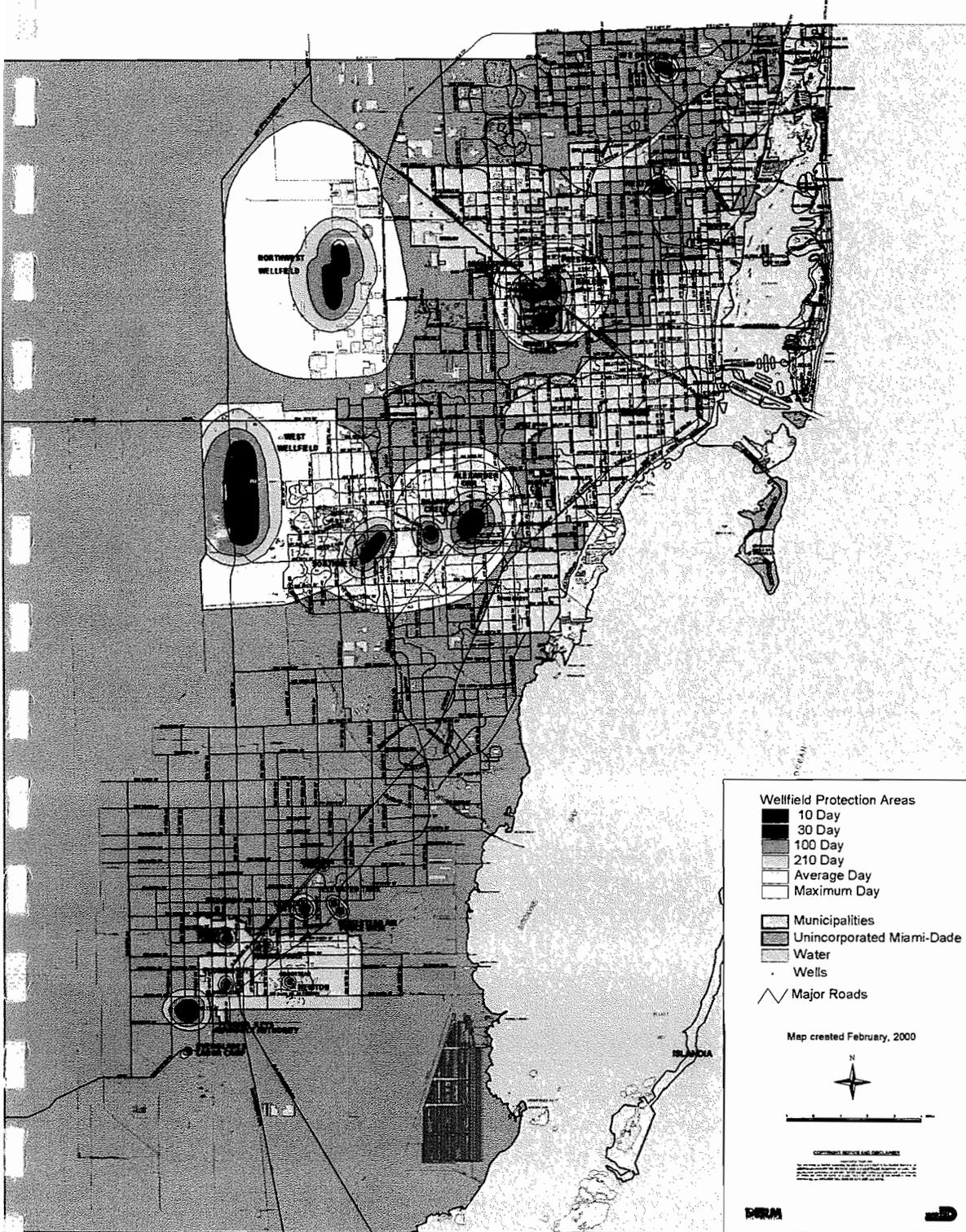
**KENDALL PROPERTIES &
INVESTMENTS**

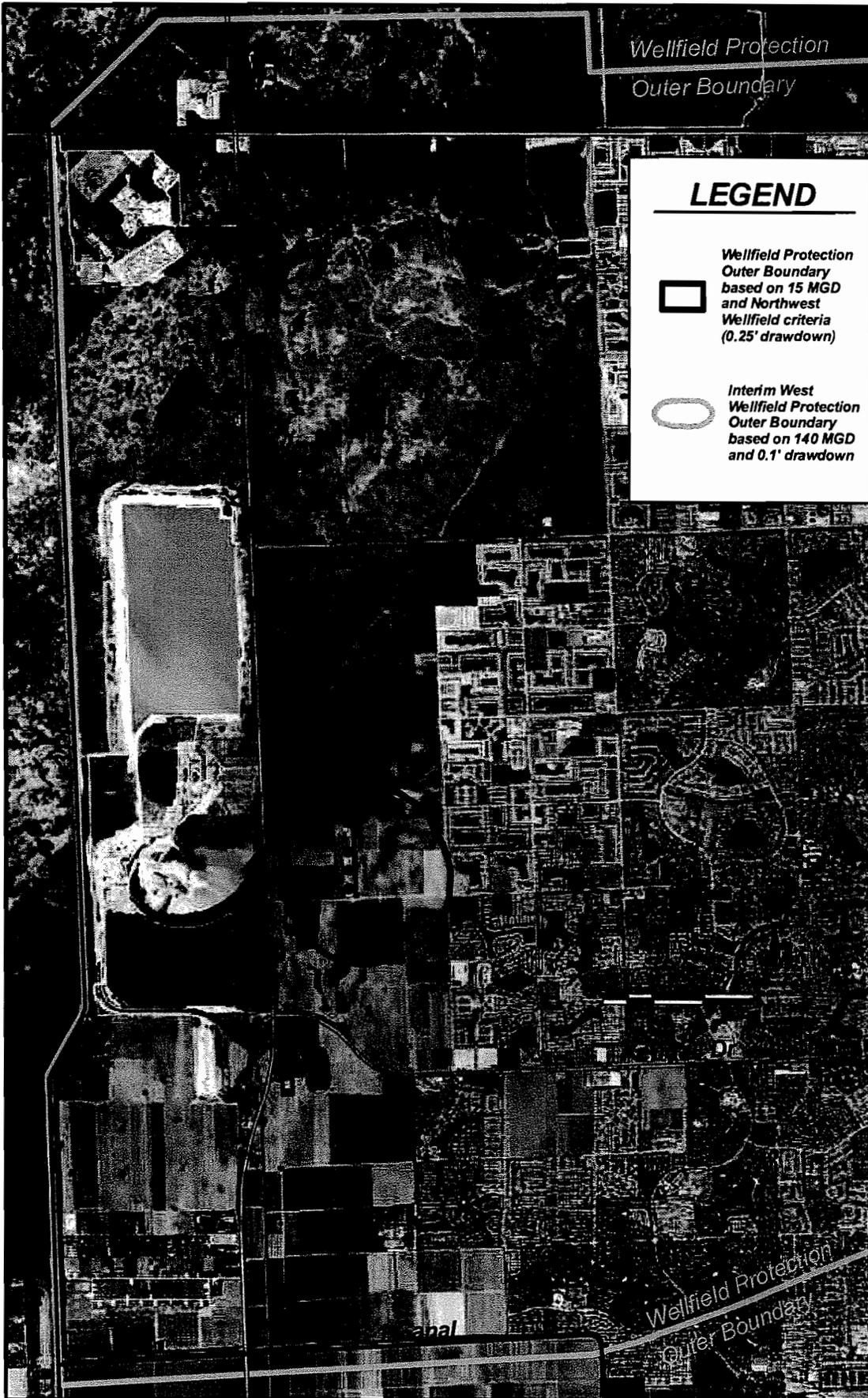
**Public Hearing No. 2006-274
March 22, 2007**

Holland+Knight

701 Brickell Avenue
Suite 3000
Miami, Florida 33131
(305) 374-8500 Phone
(305) 789-7799 Fax

Wellfield Protection Areas





Production Zone Drawdown
15 MGD - Steady State - Dry (1989) Conditions

Miami-Dade County
Resolution Z-114-75

BE IT FURTHER RESOLVED that the requested unusual use to permit the continued uses including but not limited to lake excavations, manufacturing of cement, lime and related materials and products, excavation and processing of the raw materials necessary in the operation of such plant, asphalt plant, concrete batching plant, concrete block plant, prestressed and precast concrete products plant, rock crushing and screening plant ancillary thereto or in connection therewith be and the same are hereby approved

RESOLUTION NO. 2-114-75

The following resolution was offered by Commissioner Beverly B. Phillips, seconded by Commissioner Clara Oesterle, and upon poll of members present, the vote was as follows:

Harry P. Cain	aye	James F. Radford, Jr.	aye
Edward T. Graham	aye	Harvey Buvlin	absent
Mrs. Stanley (Joyce) Goldberg	aye	Edward T. Stephenson	aye
Clara Oesterle	aye	Stephen P. Clark	aye
Beverly B. Phillips	aye		

WHEREAS, the Directors of the Dade County Building and Zoning Department and the Planning Department have applied for a district boundary change from 1U-3 to 6U and for an Unusual Use to permit continued and additional uses including but not limited to lake excavations, manufacturing of cement, lime and related materials and products, excavation and processing of the raw materials necessary in the operation of such plant, asphalt plant, concrete batching plant, concrete block plant, prestressed and precast concrete products plant, rock crushing and screening plant ancillary thereto or in connection therewith.

SUBJECT PROPERTY: On all of Sections 24, 25 and 36, and Section 35 less the East 600' thereof, all in Township 54 South, Range 38 East of Dade County, Florida, lying between S.W. 177th Avenue (Krome Avenue) and S.W. 197th Avenue, between S.W. 36th Street and the extension of S.W. 38th Street.

WHEREAS, General Portland Inc., has applied for a Modification of Resolution 9522 adopted by the Board of County Commissioners, Dade County, Florida, on March 22, 1956, to permit operations essential for the manufacturing of cements, limes and/or kindred products (commonly referred to as a cement manufacturing plant) to be located in either Section 24, or 25, or 36 of Township 54 South, Range 38 East, said plant to be a replacement for the plant now located in Section 25, Township 54 South, Range 38 East; and to eliminate the quarrying setback requirement of 150' from the North Section line of Section 35, Township 54 South, Range 38 East (as required under item 3c of said Resolution 9522 hereinbefore referred to).

WHEREAS, General Portland Inc., has applied for an Unusual Use to permit an excavation in Section 26, Township 54 South, Range 38 East, said excavation to be for the purpose of providing aggregate materials to be utilized in connection with the cement manufacturing processes.

WHEREAS, public hearings of the Board of County Commissioners, Dade County, Florida, were advertised and held, as required by law, and all interested parties concerned in the matter were heard, and upon due and proper consideration having been given to the matter, it is the opinion of this Board that the requested district boundary change, on a modified basis, would be compatible with the neighborhood and area concerned and would not be in conflict with the principles and intent of the plan for the development of Dade County, Florida; and that the requested unusual use and modification of Resolution, with certain restrictions, would be compatible with the area and its development and would conform with the requirements and intent of the Zoning Procedure Ordinance;

NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners, Dade County, Florida, that the North 1600' and the East 1600' of Section 24, Township 54 South, Range 38 East, and the East 1600' of Section 25, Township 54 South, Range 38 East, and the East 1600' and the South 1600' of Section 36, Township 54 South, Range 38 East, and the entire Section 35, Township 54 South, Range 38 East, be and the same are hereby zoned R3.

BE IT FURTHER RESOLVED that the requested unusual use to permit the continued uses including but not limited to lake excavations, manufacturing of cement, lime and related materials and products, excavation and processing of the raw materials necessary in the operation of such plant, asphalt plant, concrete batching plant, concrete block plant, prestressed and precast concrete products plant, rock crushing and screening plant ancillary thereto or in connection therewith, in Sections 24, 25, 35 and 36, Township 54 South, Range 38 East, be and the same are hereby approved, subject to the following condition:

1. That a minimum setback of 350' for quarrying shall be provided from the East section lines of Sections 24, 25 and 36, and a minimum setback of 150' for quarrying be provided from the North section line of Section 24, and a minimum setback of 150' for quarrying from the South section line of Sections 35 and 36, and a minimum setback of 150' be provided from the West section line of Section 35; the setbacks from the dikes designated as L-31 running along and through said property shall be as designated by the Central and South Florida Flood Control District; and such setbacks shall be maintained solely in connection with any excavation within the above named sections, all of which are in Township 54 South, Range 38 East.

BE IT FURTHER RESOLVED that the request of General Portland, Inc., for an Unusual Use to permit uses including but not limited to lake excavations, excavation and processing of the raw materials necessary in the operation of a cement plant, asphalt plant, concrete batching plant, concrete block plant, prestressed and precast concrete products plant, rock crushing and screening plant ancillary thereto or in connection therewith in Section 26, Township 54 South, Range 38 East, be and the same is hereby approved, subject to the following condition:

1. That a minimum setback of 150' for quarrying shall be provided from the North and West section lines of Section 26, Township 54 South, Range 38 East; the setback from the dike designated as L-31 running along and through said property shall be as designated by the Central and South Florida Flood Control District; and such setback shall be maintained solely in connection with any excavation within the above named Section 26, Township 54 South, Range 38 East.

BE IT FURTHER RESOLVED that the request of General Portland, Inc., for Modification of Resolution 9522 be and the same is hereby approved, subject to the following conditions:

1. That a new cement plant or new cement manufacturing facilities may be located anywhere in either Section 24, 25 or 36, provided that the same is located in that portion of said Section that is zoned RU-3.
2. That the method of cement manufacturing shall comply with the then existing requirements of the Department of Pollution Control for Bada County and the State of Florida, or the successor agencies.
3. That a plot use plan be submitted to and meet with the approval of the Planning and Zoning Directors; said plan to include, but be not limited to, location of various plant structures and uses, excavation boundaries and areas, entrances and exit drives, drainage, material storage areas and tanks, fences, walls, and hedges, railroad tracks and facilities, type and location of signs.
 - a. That the plant site and the perimeter adjacent to the excavated areas shall be raised to a minimum elevation to meet with the approval of the Public Works Director and the Director of the Bada County Building and Zoning Department; the perimeters adjacent to the excavated area shall be filled on a progressive basis as the excavation proceeds; a slope of one foot vertical shall be provided for each seven feet horizontal from the perimeter (setback area) into a minimum depth of five feet of water at low water elevation, and if sand is encountered during excavation, the vertical cut shall be modified in such a manner that the required one to seven (1:7) slope will be sustained and maintained.
4. That the use shall be established, operated and maintained in accordance with the approved plan.
5. As the areas are excavated, and concurrently with such excavation, fences will be erected and a planting of pine hedges shall be installed around the area being excavated, to serve as a screen and a protection.

6. That the use of dynamite shall be subject to the approval of the Gadsden County Public Works Director so that the same shall not be objectionable or cause damage to any adjacent areas; annual permits shall be secured from the office of the Gadsden County Public Works Department.
7. That within 2 years after completion of the new cement plant, or any related facilities, and the commencement of operation, steps shall be taken for the demolition and removal of the unused portions of the old plant in Section 25. No facility that is retained at the old plant will be duplicated at the new plant, except for new silos which may be erected at the new plant to supplement any silos retained at the old plant site. This is not to be construed as limiting or otherwise restricting renovation or enlargement of the existing plant, but shall only apply at such time as a new plant or facilities related to a completely new plant at a new location are constructed.

BE IT FURTHER RESOLVED that anything to the contrary notwithstanding in this Resolution all ancillary uses permitted under the Unusual Use approved by this Resolution, may be constructed anywhere on any of the properties described in this Resolution provided that the same are no closer than the setback lines prescribed for the excavation (quarrying operation) from any section lines or L-31, as set forth in Paragraph 1 of the Second Resolution on Page 3 hereof.

The Zoning Director is hereby directed to make the necessary changes and notations upon the maps and records of the Gadsden County Building and Zoning Department, and to issue all permits in accordance with the terms and conditions of this Resolution.

PASSED AND ADOPTED this 23rd day of April, 1975.

GADSDEN COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

Richard P. Brinker, Clerk

By EDWARD D. PHILLAN
Deputy Clerk

Text of Resolution	Interpretation
<p>Permitted uses include but are not limited to the following:</p> <ul style="list-style-type: none"> • lake excavations, • manufacturing of cement, lime and related materials and products, • excavation and processing of the raw materials necessary in the operation of such plant, • asphalt plant, • concrete batching plant, • concrete block plant, • prestressed and precast concrete products plant, • rock crushing and screening plant ancillary thereto or in connection therewith 	<p>Permitted uses include but are not limited to <u>only</u> the following:</p> <ul style="list-style-type: none"> • lake excavations, • manufacturing of cement, lime and related materials and products, <u>but only if all of the material used in such operation derives from the site,</u> • excavation and processing of the raw materials necessary in the operation of such plant, • asphalt plant, <u>but only if all of the material used in such operation derives from the site,</u> • concrete batching plant, <u>but only if all of the material used in such operation derives from the site,</u> • concrete block plant, <u>but only if all of the material used in such operation derives from the site,</u> • prestressed and precast concrete products plant, <u>but only if all of the material used in such operation derives from the site,</u> • rock crushing and screening plant ancillary thereto or in connection therewith, <u>but only if all of the material used in such operation derives from the site,</u>

Department of Planning and Zoning Interpretations

- Please be advised that the MicroCarb operation is an allowable use under the resource based activities allowed by the 1975 Resolution provided the use is restricted to the grinding of on-site excavated materials. (June 30, 2006 letter from Department to Miguel De Grandy)
- Regarding the duration of the use, since Agro Soils would be considered ancillary to the rock mining and cement manufacturing operations on the site it would be required to cease its operations on the site if the rock mining and cement manufacturing operations on the site were to cease. (March 14, 2005 letter from Department to Michael Mann)

Department of Planning and Zoning
Stephen P. Clark Center
111 NW 1st Street • Suite 1210
Miami, Florida 33128-1902
T 305-375-2800

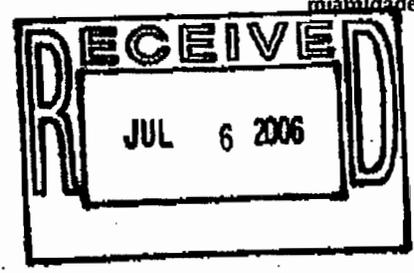


miamidade.gov

- ADA Coordination
- Agenda Coordination
- Animal Services
- Art in Public Places
- Audit and Management Services
- Aviation
- Building
- Building Code Compliance
- Business Development
- Capital Improvements Construction Coordination
- Citizens' Independent Transportation Trust
- Commission on Ethics and Public Trust
- Communications
- Community Action Agency
- Community & Economic Development
- Community Relations
- Consumer Services
- Corrections & Rehabilitation
- Cultural Affairs
- Elections
- Emergency Management
- Employee Relations
- Empowerment Trust
- Enterprise Technology Services
- Environmental Resources Management
- Fair Employment Practices
- Finance
- Fire Rescue
- General Services Administration
- Historic Preservation
- Homeless Trust
- Housing Agency
- Housing Finance Authority
- Human Services
- Independent Review Panel
- International Trade Consortium
- Juvenile Assessment Center
- Medical Examiner
- Metro-Miami Action Plan
- Metropolitan Planning Organization
- Park and Recreation
- Planning and Zoning
- Police
- Procurement Management
- Property Appraiser
- Public Library System
- Public Works
- Safe Neighborhood Parks
- Seaport
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Transit
- Task Force on Urban Economic Revitalization
- Vizcaya Museum And Gardens
- Water & Sewer

June 30, 2006

Miguel De Grandy, P.A.
Douglas Entrance
800 Douglas Road, Suite 850
Coral Gables, Florida 33134



Re: Kendall Properties and Investment

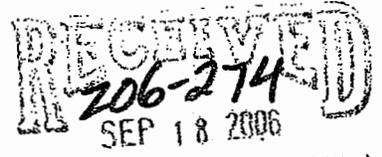
Dear Mr. De Grandy:

This is in response to your letter regarding the status of the property owned by Kendall Properties & Investment (the Owner) located in Sections 24, 25, and 36, Township 54 South, Range 38 East, Miami-Dade County, Florida (the Property).

Staff has conducted a considerable amount of research of the zoning history of the Property including examining the record of Resolution No. Z-114-75, passed and adopted by the Board of County Commissioners (BCC) on April 23, 1975. Based upon the research we find that the uses permitted on the property in accordance with the 1975 Resolution are restricted to the following resource based activities:

- Lake excavations
- Manufacturing of cement
- Lime and related materials and products
- Excavation and processing of the raw materials necessary in the operation of a cement plant, asphalt plant, concrete batching plant, concrete block plant, prestressed and precast concrete products plant, rock crushing and screening plant ancillary thereto or in connection therewith.

Please be further advised that we maintain that, in accordance with the 1975 Department's recommendation to the BCC, the rollback of the zoning classifications of certain areas of approximately four sections of land west of Krome Avenue from IU-3 to GU was intended to contain the cement plant operations and its ancillary resource based activities within the portion of the Property zoned IU-3. Additionally, we maintain that the IU-3 zoning of the Property was conditioned upon the resource-based activities listed above. All other industrial uses typically permitted in the IU-3 district are not permitted on the Property.



ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY JSA



ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY W

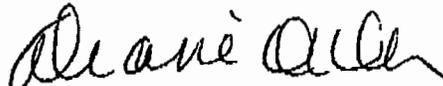
Miguel De Grandy, P.A.
June 30, 2006
Page 2

I wish to also take this opportunity to advise you that staff has processed an inquiry by Richard Perez, Esq., regarding MicroCarb; which proposes an excavated materials grinding operation on the Property. It is our understanding based upon the description of the use provided by Mr. Perez that MicroCarb will be taking off-site and on-site limestone and grinding it onto sand.

Please be advised that the MicroCarb operation is an allowable use under the resource based activities allowed by the 1975 Resolution provided the use is restricted to the grinding of on-site excavated materials. Off-site materials are not within the scope of the 1975 Resolution. We note that the deposit and grinding of off-site excavated materials may be processed on other sites located throughout Miami-Dade County that are zoned IU-2 or IU-3 and where rock and sand yards, for example, are a permitted use.

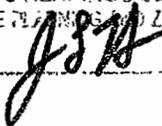
If I may be of further assistance to you regarding this matter please contact me again at (305) 375-2840.

Sincerely,


Diane O'Quinn Williams
Director

DO'QW/AJT/ajt

c: Alberto J. Torres, Assistant Director for Zoning, DP&Z
James Byers, Zoning Permitting Division Chief, DP&Z
Sydney Vincent, Zoning Permits Section Supervisor, DP&Z

RECEIVED
206-274
SEP 18 2006
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY 

RECEIVED
206-232
AUG 10 2006
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY 

LEXSEE 286 SO. 2D 552

**RINKER MATERIALS CORPORATION, a Florida corporation, Petitioner, v.
CITY OF NORTH MIAMI, a Florida Municipal corporation, Respondent**

No. 43645

Supreme Court of Florida

286 So. 2d 552; 1973 Fla. LEXIS 4165

December 6, 1973

LexisNexis(R) Headnotes

of statutory construction. Such misapplication is a clear basis of conflict. n1

COUNSEL: [**1]

Anne C. Booth of Booth & Booth, Tallahassee, and Toby Prince Brigham, Miami, for Petitioner.

Arthur J. Wolfson and John G. Fletcher, Miami, for Respondent.

n1 *Nielsen v. City of Sarasota*, 117 So.2d 731 (Fla.1960); Fla.Const., Article V, § 3(b)(3).

JUDGES:

Carlton, C.J., and Roberts, Ervin, Adkins and Dekle, JJ., concur.

[**2]

Further conflict is demonstrated with *City of Miami Beach v. Royal Castle System, Inc.*, 126 So.2d 595, 597 (Fla.App.3d 1961) holding a Board of Adjustment for the City to be bound by the "ordinary and usual meaning of the term" in the statute unless differently defined in its own provision and applying a reasonable dictionary definition. n2

OPINIONBY:

PER CURIAM

n2 *Godson v. Town of Surfside*, 150 Fla. 614, 8 So.2d 497 (1942); and *Southern Bell Telephone and Telegraph Co. v. D'Alemberte*, 39 Fla. 25, 21 So. 570 (1897).

OPINION:

[*553] We review on certiorari the Third District's opinion of February 14, 1973, reported at 273 So.2d 436, rehearing denied March 13, 1973, which upheld the Dade Circuit Court's affirmance of the City's denial of a building permit to the petitioner upon its property in the City's industrial zone.

The opinion under review, like the trial court's ruling, applied statutory construction which is in conflict with established principles in the decisional law of Florida in at least the following respects:

Conflict appears from failure to follow established decisional rules of statutory construction in the consideration of the legislative intent applying to the law in question, contrary to the holdings which set forth such rules and are hereinafter footnoted. In failing to apply the plain and ordinary meaning and common usage of the language of the ordinance in determining intent, the district court misapplied the established decisional rules

(a) In statutory construction, statutes must be given their plain and obvious meaning and it must be assumed that the legislative body knew the plain and ordinary meanings of the words. n3

n3 *Rose v. Town of Hillsboro Beach*, 216 So.2d 258 (Fla.App.4th 1968); *Brooks v. Anastasia Mosquito Control Dist.*, 148 So.2d 64

(*Fla.App.1st 1963*); *Maryland Casualty Co. v. Sutherland*, 125 Fla. 282, 169 So. 679 (1936); *Marion County Hospital District v. Namer*, 225 So.2d 442 (*Fla.App.1st 1969*), citing *Maryland Casualty, supra*; *Godson v. Town of Surfside*, 150 Fla. 614, 8 So.2d 497 (*Fla.1942*); *Gay v. City of Coral Gables*, 47 So.2d 529 (*Fla.1950*); *Union Trust Co. v. Lucas*, 125 So.2d 582 (*Fla.App.2d 1960*); and *State ex rel. Lacedonia v. Harvey*, 68 So.2d 817 (*Fla.1953*).

[**3]

(b) Statutes or ordinances should be given that interpretation which renders the ordinance valid and constitutional. n4

n4 *Owen v. Cheney*, 238 So.2d 650 (*Fla.App.2d 1970*); *Rotenberg v. City of Fort Pierce*, 202 So.2d 782 (*Fla.App.4th 1967*); *City of Eau Gallie v. Holland*, 98 So.2d 786 (*Fla.1957*).

(c) Since zoning regulations are in derogation of private rights of ownership, words used in a zoning ordinance should be given their broadest meaning when there is no definition or clear intent to the contrary and the ordinance should be interpreted in favor of the property owner. n5

n5 See footnote 3.

Municipal ordinances are subject to the same rules of construction as are state statutes. *Rose v. Town of Hillsboro Beach*, 216 So.2d 258 (*Fla.App.4th 1968*); *Jacksonville v. Ledwith*, 26 Fla. 163, 7 So. 885 (*Fla.1890*). *Rose* also stands for [**4] the substantive proposition that courts generally may not insert words or phrases in municipal ordinances in order to express intentions which do not appear, unless it is clear that the omission was inadvertent, and must give to a statute (or ordinance) [*554] the plain and ordinary meaning of the words employed by the legislative body (here the City Council). *Brooks v. Anastasia Mosquito Control District*, 148 So.2d 64 (*Fla.App.1st 1963*).

In *Maryland Casualty Co. v. Sutherland*, 125 Fla. 282, 169 So. 679 (1936), dealing with judicial construction of the Workmen's Compensation Act, the Court states the first rule of statutory construction in a like manner:

"The legislative history of an act is important to courts *only when there is doubt* as to what is meant by the language employed."

Where words used in an act, when considered in their ordinary and grammatical sense, clearly express the legislative intent, other rules of construction and interpretation are unnecessary and unwarranted. The intent of the North Miami City Commission in its enactment of the zoning ordinance in issue is to be determined primarily from the language of the ordinance itself [**5] and not from conjecture *aliunde*. A statute or ordinance must be given its plain and obvious meaning. See *Marion County Hospital District v. Namer*, 225 So.2d 442 (*Fla.App.1st 1969*), citing *Maryland Casualty, supra*.

This Court in *Gay v. City of Coral Gables*, 47 So.2d 529 (*Fla.1950*), stated the rule that must be followed in determining intent of an ordinance:

"When the legislative intent is clear from words used in the enactment, courts are bound thereby and may not seek a meaning different from ordinary or common usage connotation of such words unless, upon a consideration of the act as a whole and the subject matter to which it relates, the court is necessarily lead to a determination that the legislature intended a different meaning to be ascribed to the language adopted by it."

Petitioner's property is within the principal industrial area of the City of North Miami, bound on all sides by industrial plants such as the Panelfab Manufacturing Plant and the Lehigh Concrete Batching Plant, and is within the last undeveloped part of this industrially zoned area which is not developed.

The fact that another company has a concrete batching plant already in [**6] operation right across the street from petitioner's proposed site is not mentioned below.

The only non-industrial use in the area is really one which has recently intruded into the previously heavily industrialized neighborhood. This is property of the principal objector who erected apartment buildings in a portion of this industrial center which was expressly

rezoned from its previous industrial zoning classification to one for multiple family residential use, and thereupon this objector and developer proceeded to erect his apartment houses there.

Petitioner made its purchase in 1970 after a meticulous search for an appropriate site location which was compatible with its spacing of concrete batching plants to serve the needs of the areas served by the petitioner. The then officials of the City of North Miami Beach were expressly asked whether the intended use of the concrete batching plant by petitioner met the zoning requirements and gave an affirmative response which led to petitioner's purchase; only to have petitioner learn upon a change of administration that it was to be denied the building permit, the very purpose for which it had made the purchase. We do not hold that [**7] such inquiry gave petitioner a vested guarantee in the issuance of its permit, for times and conditions change. But it does reflect petitioner's good faith and reliance; it also shows what the true "intent" of the legislative body in question was as to the zoning use intended for the area, which is the principal point raised by petitioner as being violated [*555] by the "interpretation" of the ordinance to arrive at a contrary intent.

The ordinance in question is § 29-42 of the City's zoning code setting forth the uses permitted in the zone in question, namely "industrial zoning district 3-A". (Ordinance 380.244) The code proceeds to set forth specifically 43 delineated zoning usages which cover the gamut of typical industrial use from "automobile wreckage service, storage yards . . .", blacksmith shops, storage of gasoline, dredging machinery storage areas, fertilizer sales, power or steam laundries, stone cutting, welding, leather goods manufacture, and the category under which petitioner claims to fall:

"(29) Contractor's plants and/or storage yards, providing the area used is enclosed by a building or by a wall not less than 6 feet in height."

Application [**8] of the maxim *expressio unius est exclusio alterius* would demonstrate the consistency of petitioner's use with that of the 42 other uses set forth in this industrial grouping.

The doctrine of *noscitur a sociis* will similarly apply in not excluding the "batching" or mixing of ingredients for ready mix concrete in truck cylinders, from the type of products otherwise set forth in the ordinance. *Carraway v. Armour and Co.*, 156 So.2d 494, 495 (Fla.1963); and *Rose v. Town of Hillsboro Beach*, *supra*.

Petitioner seeks to install his "contractor's plant and storage yard" for a concrete mixing or "batching" plant

where the ingredients of sand, rock and portland cement mix are "batched" into the revolving turrets of the typical concrete delivery truck which proceeds to the job while these ingredients are mixed as the turret (or drum) turns during the trip to its destination. The plant area is fully paved with a built-in wash down system; the aggregate is stored in enclosed silos and carried by an enclosed conveyor system, the entire operation being automated and enclosed.

There is no manufacture of heavy cement products. This is significant because the principal contention [**9] of the City and of the holdings below is that when Ordinance 380.244 was adopted in 1966, it deleted a phrase "cement products such as concrete blocks, pipe, etc."

The reasoning of the zoning director which is the basis for the rulings below, is that this quoted deletion meant that, "it also eliminated the manufacture of concrete as a permitted use." This is, of course, an interpretation completely at odds with the approval of a competitive "cement batching plant" already in operation across the street. The director put it that in his view "concrete was a product of *cement* and it made no difference in his opinion in what form it set up in." Of course concrete is the "set up" or end result of a "cement" mixture. The exception in the deletion from the ordinance which was pointed to by the director as direction for the intended meaning of the permitted use, only included *cement products* "SUCH AS concrete, pipe, etc." and there are no products, particularly no "such as" products involved in petitioner's use, nor contained in the permitted uses for a "contractor's plant and storage yard" in item 29. To inject such additional meaning into such words violates the statutory interpretation [**10] earlier pointed out in this opinion as the basis for conflict.

The distinction between "cement" and "concrete" is clear. The dictionary definitions of the two words draws the distinction: "Cement" is "a substance used in a soft state to join stones in building, to cover floors, etc., and which afterwards becomes hard like stone; any substance used for making bodies adhere to each other . . .". On the other hand, "concrete" is defined as: "A concrete form or *object* . . .; a mass formed by concretion or coalescence of separate particles of matter in one body; artificial stone made by [*556] *mixing cement* and sand with gravel, broken stone, or other aggregate." n6

n6 Webster's Dictionary, Fifth Edition.

This distinction between the two substances was apparently overlooked by the zoning director and City

and may have been the cause of the fallacious reasoning that the deletion from item 29 of "concrete pipe, etc." was also a deletion of "cement" which, of course, is not the case.

As we understand [**11] the district court's reasoning, it founded its decision upon the fact that the language in the ordinance, "contractor's plants and/or storage yards" is not explicit enough to include a "concrete batching plant" which is this contractor's business, within the meaning of that language. The district court opinion does not suggest what the statutory "contractor's plants and/or storage yards" might mean, but simply stated that whatever it means, a concrete batching plant is not included in that meaning. The trouble with this position is that it leads to one of two contradictory results:

(1) either the permitted item 29 "contractor's plants . . ." is meaningless because it does not specify a particular type of contractor as to *any* type of plant within the general industrial purport of the 43 items of industrial uses (since any contractor at all would meet with the same difficulty in that his particular business was not specified); or

(2) item 29 as to "contractor's plants . . ." is open to whatever determination the zoning director and City of North Miami might from time to time choose to give to it, resulting in an arbitrary discretion and an inevitable resort to the courts in [**12] each instance. Such an unconstitutional result is not permitted where such contractors are not given equal treatment. The present case bears this out wherein it is clear from the record that the City has permitted all sorts of contractor's plants, some of which are identical and others of which are heavier industrial usage in the same area, one even being a Lehigh Concrete Batching Plant, yet has rejected the petitioner's batching plant.

The legislative intent with regard to item 29 in particular is clarified in the record from the statements of the City Council members who passed the ordinance and eliminated from number 29 any "cement products such as concrete blocks, pipe, etc.". One Commissioner and former Mayor stated:

"This action was directed at the Florida Litho-Bar Manufacturing Plant which manufactured pre-stressed concrete beams; culvert pipe; blocks and so forth. It was not a ready-mix batching plant. It was very noisy, very unsightly and was expanding even beyond the large size it had.

"The action of the Council in eliminating the manufacture of cement products such as 'concrete blocks, pipe, etc.' in no way was meant to include elimination of the contractors [**13] plant and storage yard such as a cement batching plant where cement and aggregates are stored in silos; mixed together and placed in trucks for delivery to job sites."

Seldom do we have such evidence of the clear legislative intent of the change (deletion) upon which to rely and it should not be ignored.

The petition for certiorari is accordingly granted; the opinion of the district court is quashed with directions that the order of the circuit court denying relief be set aside and an order entered directing that the City of North Miami forthwith issue the building permit sought by petitioner.

It is so ordered.

CARLTON, C.J., and ROBERTS, ERVIN, ADKINS and DEKLE, JJ., concur.



Department of Planning and Zoning
 Stephen P. Clark Center
 111 NW 1st Street • Suite 1210
 Miami, Florida 33128-1902
 T 305-375-2800

miamidade.gov

March 14, 2005

Mr. Michael Mann, VP
 Agro Soils
 5800 Krome Avenue, Suite 103
 Miami, Florida 33296

Re: Agro Soils Warehouse – 5800 Krome Avenue, Miami-Dade
 County, Florida.

Dear Mr. Mann:

After a considerable amount of research I am pleased to provide you this response to your letter dated December 23rd, 2004, to Ronald Szep and Vicente Arrebola concerning the above referenced subject matter. In accordance with your letter, you have requested this Department's determination on whether Agro Soils and its requisite Certificate of Use must be tied to the duration of the rock mining or cement processing activities in operation at the site, and whether the overnight parking of Agro Soils' fleet of trucks is allowed on the site.

Our records show that you have submitted an application for a Certificate of Use (CU) (U2005003274) for a soil mixing and manufacturing and distribution facility on the site. Staff informs me that the Fire Department has placed a "hold" on the issuance of the CU although you did mention during our conversation this afternoon that your organization was looking into that matter. Please be advised that the issuance of the CU will be subject to the conditions of Zoning Resolution Nos. 9522, and Z-114-75, which do contain conditions that are more restrictive than the IU-3 zoning regulations as prescribed by the Code of Miami-Dade County. Copies of the aforementioned Resolutions are attached hereto for your reference.

pk.

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 206-274
 SEP 18 2006

ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.

BY

JSA

RECEIVED
 306-232
 AUG 10 2006

ZONING HEARINGS SECTION
 MIAMI-DADE PLANNING AND ZONING DEPT.

BY

W

- ADA Coordination
- Agenda Coordination
- Animal Services
- Art in Public Places
- Audit and Management Services
- Aviation
- Building
- Building Code Compliance
- Business Development
- Capital Improvements Construction Coordination
- Citizens' Independent Transportation Trust
- Commission on Ethics and Public Trust
- Communications
- Community Action Agency
- Community & Economic Development
- Community Relations
- Consumer Services
- Corrections & Rehabilitation
- Cultural Affairs
- Elections
- Emergency Management
- Employee Relations
- Empowerment Trust
- Enterprise Technology Services
- Environmental Resources Management
- Fair Employment Practices
- Finance
- Fire Rescue
- General Services Administration
- Historic Preservation
- Homeless Trust
- Housing Agency
- Housing Finance Authority
- Human Services
- Independent Review Panel
- International Trade Consortium
- Juvenile Assessment Center
- Medical Examiner
- Metro-Miami Action Plan
- Metropolitan Planning Organization
- Park and Recreation
- Planning and Zoning
- Police
- Procurement Management
- Property Appraiser
- Public Library System
- Public Works
- Safe Neighborhood Parks
- Seaport
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Transit
- Task Force on Urban Economic Revitalization
- Vizcaya Museum And Gardens
- Water & Sewer

Mr. Michael Mann, VP
Agro Soils
March 14, 2005
Page 2

Regarding the duration of the use, since Agro Soils would be considered ancillary to the rock mining and cement manufacturing operations on the site it would be required to cease its operations on the site if the rock mining and cement manufacturing operations on the site were to cease. As to your second question pertaining to overnight parking of the trucks, from a zoning standpoint, the overnight parking of the trucks that are owned or leased and also operated by Agro Soils as an integral part of its business is an allowable use on the site subject, of course, to all of the applicable permitting requirements.

I trust this letter addresses your concerns. If you should need further assistance regarding this matter, please feel free to contact my office at (305) 375-2600.

Sincerely,



Alberto J. Torres
Assistant Director for Zoning

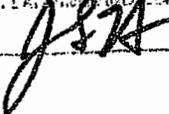
AJT/ajt
Enclosures

C: Robert I. Claire, Agro Soils
Diane O'Quinn Williams, Director, DP&Z
Ronald Szep, Division Director, Building Department
James Byers, Zoning Permitting Division Chief, DP&Z
Vicente Arrebola, Chief Office of Plan Review, DERM

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MIAMI-DADE PLANNING AND ZONING DEPT.

BY



53



December 23, 2004

Via Hand Delivery

Miami-Dade County
Dept. of Building and Zoning
Attention: Ron Zep, Director
11805 S.W. 26th Street
Miami, Florida 33175

RECEIVED
DEC 30 2004

MIAMI-DADE COUNTY
BUILDING DEPARTMENT
DIVISION DIRECTOR'S FOR LEGAL AFFAIRS
BY _____

Miami-Dade County
DERM
Attention: Vicente Arrebola, Chief
11805 S.W. 26th Street
Miami, Florida 33175

Re: **Agro Soils Warehouse Lease with Kendall Properties
5800 Krome Avenue, Miami, Florida**

Gentlemen:

Last week, representatives of DERM's enforcement office paid a visit to our facility to determine our compliance with the EQCB Order obtained by our predecessor LPS Acquisition Corp. in 2000. Bob Claire met with them on our behalf and indicated to me that two significant issues were discussed.

First, DERM is of the opinion that the County Code prohibits parking of our delivery trucks overnight. We mistakenly believed that this issue was resolved at the beginning of this year when the landlord sought approval for Pavers USA as a tenant. While there is nothing in our lease, or the DERM Order expressly prohibiting us from parking overnight at the site, we have been advised that because our original DERM application did not request permission for parking our trucks, we therefore lack the affirmative approval to do so. Whether the DERM Operating plan requested such approval or not, based on the nature of our bulk distribution business it is inconceivable that DERM would not have considered overnight parking in its Order. I have read the hearing transcript and there is nothing on the record addressing this issue. To have to park our trucks and trailers off site at night will not only cause a serious delay in our ability to deliver our orders timely and to operate our plant efficiently, it will result in additional fuel cost and driver time and put additional miles on our trucks which were not contemplated when we negotiated our long term fleet lease with Gator Leasing. We are not clear as to whether this parking prohibition is a building and zoning matter or a DERM restriction. We would therefore appreciate a written explanation as to exactly why we are prohibiting from parking our trucks overnight, and what steps, if any, we need to take to cure this problem.



5800 KROME AVENUE, SUITE 103, MIAMI, FLORIDA 33296
(305) 383-4600 (800) 433-5552 FAX: (305) 383-0805 EMAIL: AGROSOILS@AOL.COM

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JAN 04 2005

ZONING SERVICES DIVISION, DADE COUNTY
DEPT. OF PLANNING & ZONING
BY _____

54

The second issue is even more troubling. It has been brought to our attention that our operating and use permit may be somehow tied to the duration of the rock mining or cement processing activities which have been in operation at this site for many years (i.e. that our use is ancillary to, or conditioned upon, continued rock mining/cement processing activities). We therefore request a written explanation as to whether or not our use permit would automatically terminate in the event the rock mining/cement processing activities should one day cease, either through abandonment of the activity or through the involuntary loss or expiration of their permit, and what steps, if any, we need to take to assure our ability to operate at this site for the duration of our lease. This is extremely important to us because we signed a 25 year lease.

Your prompt written clarification of these two issues is deeply appreciated.

Very truly yours,

Michael Mann, VP

Cc: Moses Moore
Harry Stampler
Roy Bresky
Franklyn Weichselbaum
Robert I. Claire

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DEC 30 2004

MIAMI-DADE COUNTY
BUILDING DEPARTMENT
DIVISION DIRECTOR'S FOR LEGAL AFFAIRS
BY _____

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JAN 04 2005

ZONING SERVICES DIVISION MIAMI-DADE COUNTY
DEPT. OF PLANNING & ZONING
BY _____

AGRO
SOILS

BILZIN SUMBERG DUNN BAENA PRICE & AXELROD LLP

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

2500 FIRST UNION FINANCIAL CENTER

200 SOUTH BISCAYNE BOULEVARD • MIAMI, FLORIDA 33131-2336

TELEPHONE: (305) 374-7580 • FAX: (305) 374-7593

E-MAIL: INFO@BILZIN.COM • WWW.BILZIN.COM

BROWARD: (954) 366-0030

September 18, 2000

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AUG 18 2006
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY _____

Mrs. Diane O'Quinn Williams
Miami-Dade County
111 N.W. First Street, 11th Floor
Miami, FL 33128

RECEIVED
206-274
SEP 18 2006
ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY JRH

Re: Lantana Peat and Soil - Use Description

Dear Diane:

The following information is being forwarded to you at the request of Lantana Peat and Soil and in connection with their proposed use of the property west of Krome Avenue. The information provided to you is based upon the information adduced before the Miami-Dade County Environmental Quality Control Board concerning Lantana Peat and Soil's variance request.

Please be advised that Lantana Peat and Soil's proposed operation involves the mixing and blending of custom soils for horticultural facilities located throughout western Dade County and the larger South Florida area. As such, Lantana Peat and Soil's operation uses many of the quarrying bi-products including sand, mulch, top soil, lime, and muck. All these materials are produced at the adjoining rock mining facility. It is Lantana Peat and Soil's intent to utilize on-site materials to the extent allowable in a custom soil order.

Additionally, certain materials are added to the custom soil blending process which are not readily available. These materials would be trucked on to site and will be stored and utilized in conformance with the EQCB Board Order, a copy of which was sent to your office under separate

Mrs. Diane O'Quinn Williams
September 18, 2000
Page 2

cover. Please advise me if you require any additional information or clarification of the matters contained herein. Thank you in advance for your diligent attention to this matter.

Sincerely,



Howard E. Nelson

HEN/mp

cc: Eric Deckinger
Stanley B. Price, Esq.

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MIAMI-DADE PLANNING AND ZONING DEPT.

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MIAMI-DADE PLANNING AND ZONING DEPT.

BY 

**Miami-Dade County Board
Of County Commissioners**

In the Matter of:

Appeal of Administrative Decision

Hearing No. 06-274

Kendall Properties, LP

AFFIDAVIT OF GEORGE WILLIAMSON

STATE OF FLORIDA }

COUNTY OF MIAMI-DADE }

I, George Williamson, a United States citizen, hereby declare that the following is true and correct to the best of my knowledge and belief:

1. I am an employee of Rinker Materials Corporation and I have knowledge regarding the process by which cement is manufactured.

2. The materials needed to manufacture cement include the following:

- (i) Calcium,
- (ii) Aluminum ---- bottom ash, fly ash, bauxite
- (iii) Silica,---- sand, clean soil
- (iv) Iron.---- mill scale

3. The calcium needed to manufacture cement derives from limestone rock and aggregate, which is mined from on-site quarries in Miami-Dade County, including the property owned by Kendall Properties, LP ("Kendall Properties").

The foregoing instrument was acknowledged before me this 23rd day of January, 2007 by George Williamson, who is personally known to me or has produced _____ (n/a) _____ as Identification.



Sheryl M. Tyson
Sheryl M. Tyson
Notary Public-State of Florida

Commission Number: DD247177

4. The bottom ash needed to manufacture cement is a coarse material which is a by-product from a coal power plant that is sourced and imported domestically and internationally, but is not produced on-site at Kendall Properties.

5. The fly ash needed to manufacture cement is a fine material which is also a by-product of a coal power plant, which is sourced and imported domestically and internationally, but is not produced on-site at Kendall Properties.

6. The bauxite needed to manufacture cement is mined in Guyana and is sourced internationally. It is not produced on-site at Kendall Properties

7. The silica needed to manufacture cement derives from sand and clean soil, which may be mined and sourced from sources in Florida.

8. Mill Scale, is a by-product of steel manufacturing that is sourced domestically and internationally, but is not produced on-site quarries at Kendall Properties.

9. Therefore, any manufacturing of cement at the Kendall Properties site must necessarily have included (implicitly or explicitly) authorization to use significant quantities of the off-site materials referenced above.

FURTHER AFFIANT SAYETH NAUGHT

I, George Williamson, swear and affirm, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.


George Williamson

1-23-2007
Date

ZONING ACTION

MEMORANDUM

Harvey Ruvin
 Clerk of the Circuit and County Courts
 Clerk of the Board of County Commissioners
 (305) 375-5126
 (305) 375-2484 FAX
 www.miami-dadeclerk.com



DATE: March 22, 2007

#Z-04-07

ITEM: A

APPLICANT: KENDALL PROPERTIES & INVESTMENTS

MOTION: APPROVED APPEAL

ROLL CALL	M/S	YES	NO	ABSENT
Diaz		X		
Edmonson		X		
Gimenez		X		
Heyman	S	X		
Martinez	M	X		
Moss				X
Rolle		X		
Seijas		X		
Sorenson			X	
Sosa				X
Souto				X
Vice Chairwoman Jordan		X		
Chairman Barreiro		X		
TOTAL		9	1	3

DATE: March 22, 2007

#Z-05-07

ITEM: 1

APPLICANT: DIRECTOR OF THE DEPARTMENT OF PLANNING & ZONING

MOTION: APPROVED APPLICATION AS RECOMMENDED BY THE DIC.

ROLL CALL	M/S	YES	NO	ABSENT
Diaz		X		
Edmonson		X		
Gimenez				X
Heyman		X		
Martinez			X	
Moss	S	X		
Rolle		X		
Seijas				X
Sorenson	M	X		
Sosa		X		
Souto		X		
Vice Chairwoman Jordan		X		
Chairman Barreiro		X		
TOTAL		10	1	2

DATE: March 22, 2007

#Z-

ITEM: B

APPLICANT: CORAL REEF DRIVE LAND DEVELOPMENT, LLC F/K/A: IRWIN POTASH, ET AL

MOTION: DEFERRED TO MAY 10, 2007

ROLL CALL	M/S	YES	NO	ABSENT
Diaz		X		
Edmonson		X		
Gimenez		X		
Heyman	M	X		
Martinez	S	X		
Moss				X
Rolle		X		
Seijas		X		
Sorenson		X		
Sosa				X
Souto		X		
Vice Chairwoman Jordan		X		
Chairman Barreiro		X		
TOTAL		11	0	2

DATE:

#Z-

ITEM:

APPLICANT:

MOTION:

ROLL CALL	M/S	YES	NO	ABSENT
Diaz				
Edmonson				
Gimenez				
Heyman				
Martinez				
Moss				
Rolle				
Seijas				
Sorenson				
Sosa				
Souto				
Vice Chairwoman Jordan				
Chairman Barreiro				
TOTAL				

Miami-Dade County Commission
Zoning Agenda of March 22, 2007
EXHIBITS SUBMITTED FOR THE RECORD

KENDALL PROPERTIES & INVESTMENTS (07-2-CC-2/06-274)

EXHIBIT **A-1:** Binder booklet titles, "KENDALL PROPERTIES & INVESTMENTS submitted by Holland & Knight.

Submitted for the record this 23 day of MARCH, 2007.

ATTEST:



HARVEY RUVIN, Clerk
Clerk of Circuit and County Courts

By _____

A handwritten signature in black ink, appearing to read "Harvey Ruvin", is written over a horizontal line. Below the line, the text "Deputy Clerk" is printed.

**TRANSFERRED TO THE CARE, CUSTODY AND CONTROL OF THE
DEPARTMENT OF PLANNING AND ZONING.**

RECEIVED BY: _____

(SIGN)

(DATE)

(PRINT)

(DATE)

Milra Jaquin 3/23/07