

Application No. 8

Land Use Element Text Amendment

APPLICATION SUMMARY

Applicant/Representative:	CEMEX Construction Materials Florida, LLC
Location:	Agriculture
Requested Text Changes:	Add language to the Agriculture text to allow the expansion of rockmining activities onto adjacent properties on land designated Agriculture. The text to be amended is on pages I-59 of the Land Use Element in the "Adopted Components of the Comprehensive Development Master Plan for Miami-Dade County, Florida, October 2006 Edition."
Amendment Type:	Standard Text Amendment

RECOMMENDATIONS

Staff:	DENY AND DO NOT TRANSMIT February 25, 2010
Planning Advisory Board (PAB) acting as Local Planning Agency:	TO BE DETERMINED April 5, 2010
Board of County Commissioners:	TO BE DETERMINED May 5, 2010
Final Recommendation of PAB acting as Local Planning Agency:	TO BE DETERMINED September 20, 2010
Final Action of Board of County Commissioners:	TO BE DETERMINED October 6, 2010

STAFF RECOMMENDATION

Staff recommends: **DENY AND DO NOT TRANSMIT** the proposed amendment based on the Staff conclusions summarized below:

Principal Reasons for Recommendations

1. **Approval of this application would be inconsistent with planning objectives outlined in the adopted Miami-Dade County Comprehensive Development Master Plan (CDMP) and the County's Strategic Plan.** These plans emphasize the County's commitment to the protection of agricultural land and support for a viable agriculture industry. Excavation for mining is not a land use that may be considered for approval in land designated Agriculture and would be inconsistent with the adopted CDMP. Interpretive text of the Land Use Element, Agriculture land use designation states, ". . .uses incompatible with agriculture, and uses and facilities that support or encourage urban development are not allowed in this area." Rockmining is incompatible with agriculture. The Land Use Element Interpretive Text explains, ". . . the intent of the CDMP is to contain and prevent the expansion of inconsistent development in the Agriculture area."
2. **There is no need for an amendment to the Miami-Dade County Comprehensive Development Master Plan (CDMP) to allow for rockmining on land designated Agriculture.** The County has specially designated appropriate areas for limestone quarrying and ancillary uses including the "ROZA", Rockmining Overlay Zoning Area. The adopted 2015 and 2025 CDMP establishes Open Land Subareas 1, 2, 3, and 5 as areas where limestone quarrying and ancillary uses may be considered for approval. The County has an Unusual Use approval process in place that allows rockmining interests to apply to establish new rockmining uses in Open Land areas outside of the ROZA boundary.

The applicant has recently received permits allowing significant mining over the next 18 years. Other rockmining companies also have similar permits. These permits provide sufficient material to support the Miami-Dade construction and building industries, even if these industries were to need quantities of aggregate and fill equal to the peak production periods of several years ago. However, current demand for these type materials has been significantly reduced.

3. **As written, the text amendment would allow continual, incremental expansion of mining into agricultural land.** The recently adopted definition of "bona fide rockmining" (limestone quarrying and ancillary uses) combined with the language of this proposed amendment, could result in approvals for new mines in multiple locations throughout the County in land designated Agriculture.

The expansion of mining into agricultural land would have a negative long-term economic impact on the County. It would incrementally displace the sustainable revenue stream and source of employment offered by the agriculture industry. Expanded mining would eliminate land set aside by the County for food production, which is important to supply County residents with fresh food and northern U.S. markets with winter fruits and vegetables.

4. **Approval of this application could be incompatible with the Comprehensive Everglades Restoration Plan (CERP).** Several CDMP policies require CERP goals to be considered and upheld as development activity is permitted in the County. The restoration of the Everglades is a major local, state, and federal initiative that affects the quality and quantity of water available to:
 - 1) Support ecosystems critical to endangered species,
 - 2) Support Miami-Dade's industries (fishing, tourism, agriculture) and
 - 3) Provide drinking water for residents.

The applicant has not acknowledged or addressed problems related to seepage; the problematic draining of federally protected wetlands to the west of the L-31N canal that is exacerbated by the creation of large lakes.

5. **It is unclear whether expanded rockmining operations and the resulting lakes would affect the quality of public well water in the West Wellfield Interim Protection Area.** If the proposed text amendment is approved, it would facilitate expansion of mines from Kendall Properties & Investments and Krome Mining Partners land east toward the West Wellfield. Mining activity in the Lake Belt area has resulted in mitigation to upgrade the treatment system of a water plant that treats water coming from the Northwest Wellfield.
6. **To protect and preserve the integrity of the agricultural industry in the areas surrounding Krome Avenue, adopted CDMP policy LU-3F will require a super majority vote to approve this text amendment.** Policy LU-3F states, "Any zoning action or amendment to the CDMP that would approve any use other than direct production and permitted residential uses of property, in an area designated as Agriculture . . . or action that would liberalize standards or allowances governing such other uses on land that is, a) outside the Urban Development Boundary (UDB), and b) within one mile of the right-of-way line of any portions of Krome Avenue designated in this Plan for improvement to 4-lanes, shall require an affirmative vote of not less than . . . two-thirds of the Board of County Commissioners then in office." (pages I-9 to I-10) This proposed text amendment would affect land that falls within one mile of Krome Avenue and would approve a land use that is not direct agricultural production, therefore Policy LU-3F applies to this proposed legislative action.

REQUESTED TEXT AMENDMENT

The following are the modifications to the 'Agriculture' text of the CDMP's Land Use Element as proposed by the applicant.

Agriculture

The area designated as "Agriculture" contains the best agricultural land remaining in Miami-Dade County. As stated in the Miami-Dade County Strategic Plan, approved in 2003 by the Board of County Commissioners, protection of viable agriculture is a priority. The principal uses in this area should be agriculture, uses ancillary to and directly supportive of agriculture and farm residences. Uses ancillary to and directly supportive of agriculture are defined as those uses related to preserving, processing, packaging or selling of agricultural products from Florida, and farm supplies, as well as sale and service of farm machinery and implements,

subject to the requirements of Chapter 24 of the County Code. Uses ancillary to, and necessary to support the rural residential community of the agricultural area may also be approved, including houses of worship. However, schools shall not be approved in Agriculture areas but should be located inside the UDB in accordance with Policy EDU-2.A.

In order to protect the agricultural industry, uses incompatible with agriculture, and uses and facilities that support or encourage urban development are not allowed in this area. Residential development that occurs in this area is allowed at a density of no more than one unit per five acres. Creation of new parcels smaller than five acres for residential use may be approved in the Agriculture area only if the immediate area surrounding the subject parcel on three or more contiguous sides is predominately and lawfully parcelized in a similar manner, and if a division of the subject parcel would not precipitate additional land division in the area. No business or industrial use should be approved in the area designated Agriculture unless the use is directly supportive of local agricultural production, and is located on an existing arterial roadway, and has adequate water supply and sewage disposal in accordance with Chapter 24 of the County Code, and the development order specifies the approved use(s); however, agricultural processing facilities for produce grown in Florida are not restricted to locating on an existing arterial roadway. Other uses, including utility uses compatible with agriculture and with the rural residential character may be approved in the Agriculture area only if deemed to be a public necessity or if deemed to be in the public interest and the applicant demonstrates that no suitable site for the use exists outside the Agriculture area.

Existing quarrying and ancillary uses in the Agriculture area may continue operation and be considered for approval of expansion (by ordinance or zoning application), including the expansion of *bona fide* quarrying and ancillary uses onto property adjacent to existing quarrying operations.

A Bed and Breakfast establishment that is owner-occupied, owner-operated, and located on a parcel with a current agricultural classification, as determined by the Property Appraiser's Office, may be allowed. A designated historic structure that is owner-occupied and owner-operated may be converted to a Bed and Breakfast use. An agricultural classification is not needed for a Bed and Breakfast use designated as a historic structure.

In an effort to enable compatible diversification of the economy of Agriculture areas and provide additional land use options for owners of properties that surround structures having historical significance, after such time as the County adopts procedures for the establishment of Thematic Resource Districts (TRDs) pursuant to Policy LU-6L, and a TRD including architectural and landscape design guidelines is established in an area designated Agriculture, additional uses may be authorized in such TRDs established in Agriculture areas. Such additional uses must be designed and developed in accordance with TRD standards, must promote ecotourism activities in the Agriculture area, and must not be incompatible with nearby agricultural activities.

Also included in the Agriculture area are enclaves of estate density residential use approved and grandfathered by zoning, ownership patterns and platting activities which predate this Plan. The grandfather provisions of the Miami-Dade County Zoning Code shall continue to apply in this area except that lots smaller than 15,000 square feet in area are not grandfathered hereby. Moreover, all existing lawful uses and zoning are deemed to be consistent with this Plan unless such a use or zoning: (a) is found through a subsequent planning study, as provided in Policy LU-4E, to be inconsistent with the foregoing grandfather provisions or with the CDMP as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map". This paragraph does not, however, authorize the approval or expansion of any use

inconsistent with this plan. To the contrary, it is the intent of this Plan to contain and prevent the expansion of inconsistent development in the Agriculture area.

STAFF ANALYSIS

CDMP Agriculture Text and Policies

Text and policies in the adopted Miami-Dade County Comprehensive Development Master Plan (CDMP) emphasize the importance of protection for the agriculture industry. Language on page I-58 reinforces this emphasis, “As stated in the Miami-Dade County Strategic Plan, approved in 2003 by the Board of County Commissioners, protection of viable agriculture is a priority.”

The “Agriculture” section of the CDMP explains that agricultural uses and uses ancillary to and directly supportive of agriculture, such as farm residences and packing houses, are appropriate for land designated Agriculture. On page I-58 of the CDMP, the text explicitly states, “In order to protect the agricultural industry, uses incompatible with agriculture, and uses and facilities that support or encourage urban development are not allowed in this area.”. The text also specifies that industrial and business uses that are not *directly supportive* of local agricultural production shall not be approved for land designated Agriculture. Rockmining is an industrial use that does not support and is not compatible with agriculture.

Similar to other sections of the CDMP (See “Uses and Zoning Not Specifically Depicted”, pages I-41 and I-43), the Agriculture section also includes text that acknowledges the existence of some land uses that predate the adoption of the CDMP. Some of these uses are not compatible with, or consistent with, land designated Agriculture. Planning professionals identify these uses as ‘legal non-conforming uses’. These are uses that were approved legally, but no longer conform to planning law. In the 1980s, the Florida Legislature adopted laws to require comprehensive master plans that assist cities and regions to anticipate long-term needs and to manage growth. In most comprehensive plans, including the Miami-Dade County CDMP, readers will find language that acknowledges legal non-conforming uses. Existing quarries located in land designated Agriculture are legal non-conforming uses and were recognized as such in 1988 in the CDMP.

Text in the Agriculture section states, “Existing quarrying and ancillary uses in the Agriculture area may continue operation and be considered for approval of expansion.” The intent of this statement was to acknowledge existing quarries in the agricultural area and to allow these uses to expand within their property boundaries. The statement does not imply that this incompatible use may expand onto adjacent properties designated Agriculture. The Agriculture section further clarifies this concept and states that legal nonconforming uses are deemed to be consistent with the CDMP but reminds the reader that the CDMP does not authorize the approval or expansion of uses inconsistent with the plan. The text states, “To the contrary, it is the intent of this Plan to contain and prevent the expansion of inconsistent development in the Agriculture area.” (page I-59)

The preceding paragraphs explain that the intent of the Agriculture section of the CDMP is to support agriculture and disallow uses that conflict with agriculture. The text explicitly discusses that incompatible uses such as rockmining are not appropriate for land designated Agriculture in Miami-Dade County. Amending the text in the manner that has been suggested by this applicant would cause this section of the CDMP to be internally inconsistent.

This proposed text amendment also conflicts with numerous County land use policies, including a policy that reflects a larger County goal that the CDMP support and be consistent with the adopted Miami-Dade County Strategic Plan. Policy LU-1S states, “Key outcomes of the Strategic Plan that are relevant to the Land Use element of the CDMP include . . . protection of viable agriculture and environmentally sensitive land.” The proposed text amendment is not consistent with this adopted County Strategic Plan key outcome.

Areas Affected by Proposed Text Amendment

An amendment that changes the text of a land use category or designation, such as Agriculture, applies to all property having that land designation. Unlike a map amendment, these changes are far reaching in terms of the acreage of land that may be affected by the new language. Text amendments are not intended to be location-specific.

This text amendment is currently written such that it will facilitate the incremental expansion of “*bona fide* quarrying and ancillary uses” in land designated Agriculture. Section 33-422 of the Miami-Dade County Code was recently amended to include the following definition of “*bona fide rockmining*”. Rockmining is defined as,

“ . . . the commercial extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.”

The proposed text amendment language as defined is broad and may have unintentional consequences, as discussed in the following paragraphs.

The text proposed for adoption by the applicant does not clarify which agency’s permit determines the boundary of a bona fide quarrying use. Depending on its location, a mine in Miami-Dade County may have permits from multiple agencies including the Florida Department of Environmental Protection (FDEP), the United States Army Corps of Engineers (USACE), the County or a municipality. If a mine is proposed in the unincorporated portion of the County, applicants must attain an ‘Unusual Use’ approval through a public hearing process¹ and then must comply with County criteria to receive an excavation permit through the Department of Planning and Zoning (DP&Z). Additionally, the County’s Department of Environmental Resources Management (DERM) permits any new mines that contain jurisdictional wetlands (Class IV Wetland Permits). Often the boundaries of Unusual Use approvals do not coincide with the permit boundaries of DERM permits or the permits of the agencies mentioned above.

Other unintended opportunities for mine expansion may stem from open-ended Unusual Use approvals and excavation permits. When a resolution is adopted by the Board of County Commissioners (BCC) to authorize an Unusual Use approval for a lake excavation, the BCC may choose to apply a condition that imposes a date by which excavation must be completed. However, some resolutions do not contain time limitations, and if they do, those deadlines may be extended through additional hearings. Once the legal boundary of an Unusual Use has been determined through a public hearing process, excavation permits may be reissued. As written, the proposed text amendment may allow sites with inactive excavation permits to be considered for expansion.

¹ Unless in the Rockmining Overlay Zoning Area. This area is discussed later in the analysis.

The language of this proposed amendment is also unclear with respect to property ownership and the concept of adjacent property. As written, this amendment would allow mining companies to expand into agricultural land owned by other parties. The Code definition of bona fide rockmining allows that, “any person or company primarily engaged in the commercial mining of any such natural resources” may apply for expansion of rockmining uses. This text amendment may be interpreted to allow a property owner with an excavated lake (of any size) to lease their land to a rockmining interest to pursue a mine expansion in land designated Agriculture. (The applicant plans to pursue such an opportunity with property owned by Santa Fe Haciendas, as described below.) It may also be interpreted that “adjacent” property may include land across streets or highways from existing quarries.

The maps entitled, “Application No. 8: Proposed Rockmining Expansion Near Lake Belt” and “Application No. 8: Example of Potential Additional Rockmining Expansion” illustrate agricultural areas where mining may expand if this text amendment is approved.

- Krome Mining Partners has a mine located in land designated Agriculture just east of Everglades National Park and adjacent to a Comprehensive Everglades Restoration Plan (CERP) pilot project. The mine property’s northern boundary is theoretical SW 82nd Street, the southern boundary is theoretical SW 90th Street, and the eastern boundary is Krome Avenue. This mine is located immediately to the north of approximately 400 acres owned by Santa Fe Haciendas LLC.

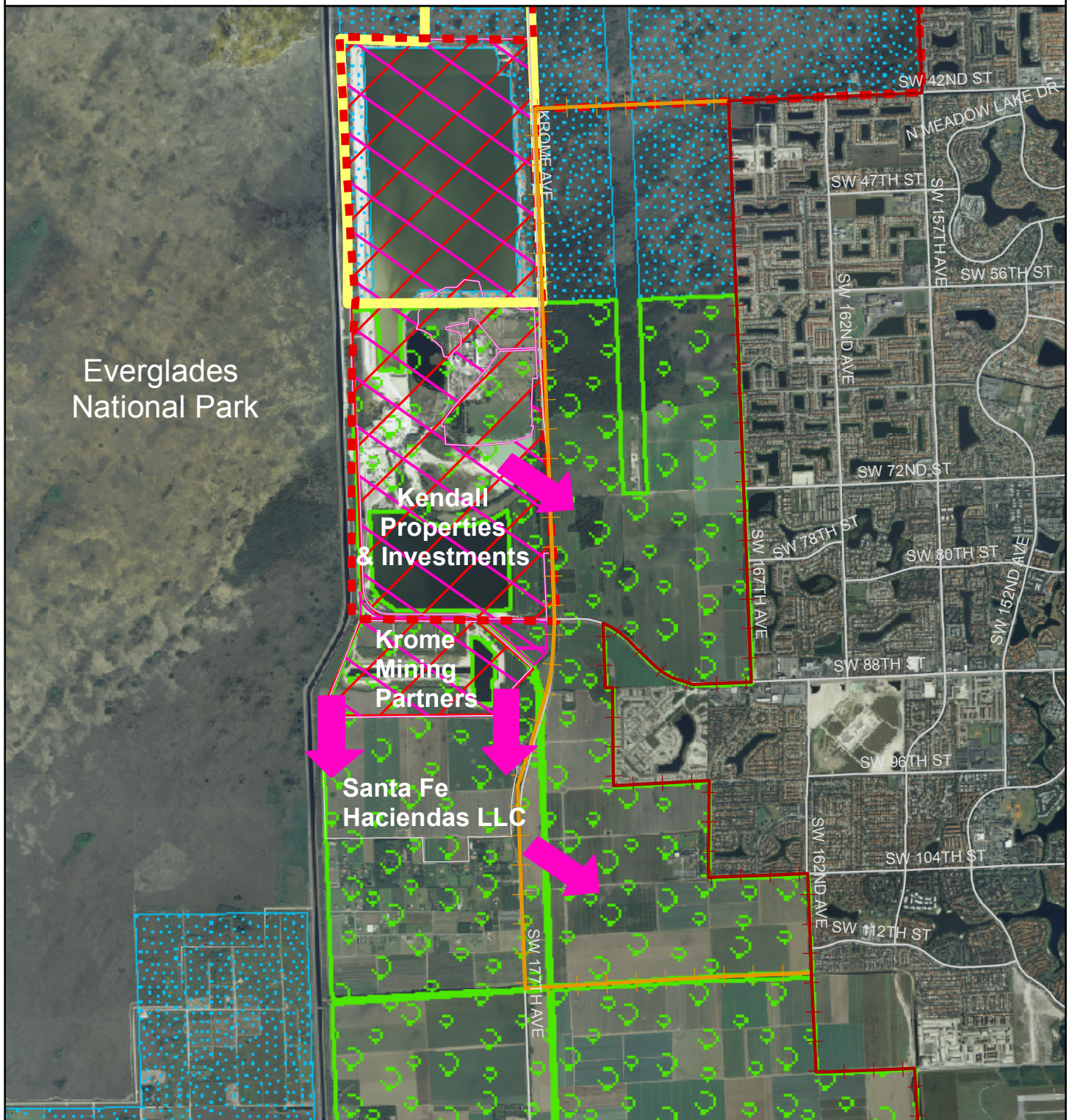
The applicant has explained that they intend to utilize their affiliation with the Krome Mining Partners mine to expand onto the property owned by Santa Fe Haciendas. CEMEX would lease Santa Fe Haciendas property for mining. The Krome Mining Partners received approval in 2002 from the Board of County Commissioners (BCC) to mine in land designated Agriculture based upon special permits and approvals that dated from 1958. (Resolution Z-1-102). Therefore, Cemex could pursue mining operations in agricultural areas without ownership of either parcel.

- Kendall Properties & Investments has a mine located in land designated Agriculture immediately north of Krome Mining Partners; this mine is located east of Everglades National Park and west of the West Wellfield. Although some of the properties located to the east of this mine are owned by the South Florida Water Management District, many are owned by private entities. These private owners may lease their land to rockmining interests. These properties are within the West Wellfield Protection Area, as currently defined (30 and 10 day contaminant travel time zones). (See the map entitled, “Application No. 8: Wellfield and CERP Proximity”)

Kendall Properties & Investments received approval in 2007 from the BCC to mine on land designated Agriculture based upon special permits and approvals dating from 1956. (Resolution Z-4-07)

- A private owner has an Unusual Use approval and an active permit that expires on June 28, 2010, for an excavation at the northwest corner of the intersection of SW 187 Avenue and theoretical SW 368 Street. The project is reportedly 98% complete but the estimated date for final completion for the project is June 2012. This project is approximately four miles east of the CERP C-111 Spreader Canal project and approximately 1 mile west of the CERP Biscayne Bay Coastal Wetlands area.

Application No. 8: Proposed Rockmining Expansion Near Lake Belt



- +— Urban Development Boundary
- +— Urban Expansion Area
- - - Lake Belt Area
- Rockmining Overlay Zoning Area

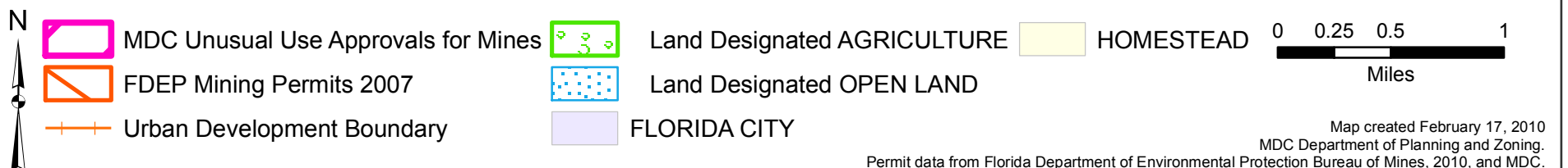
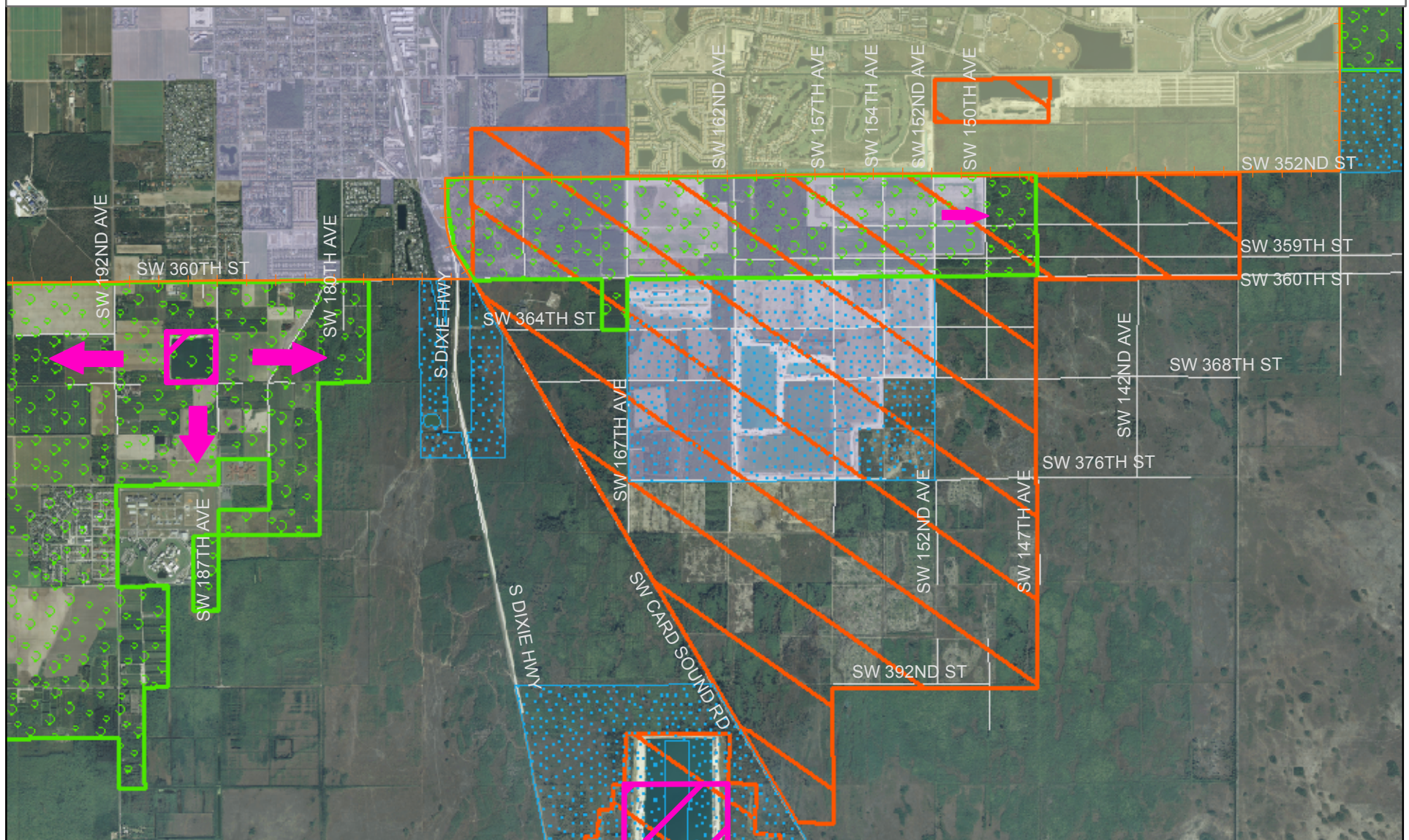
CDMP Land Use Designation

- AGRICULTURE
- . - . OPEN LAND
- / - / FDEP 2007 Mine Permits
- / - / MDC Unusual Use Approval

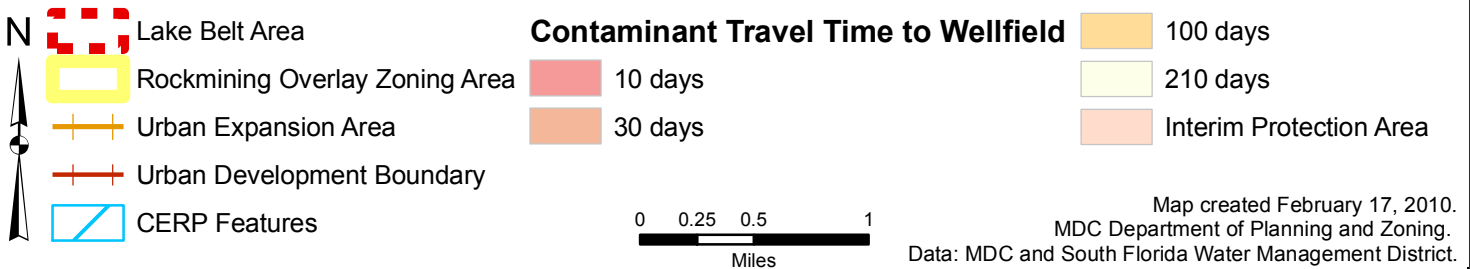
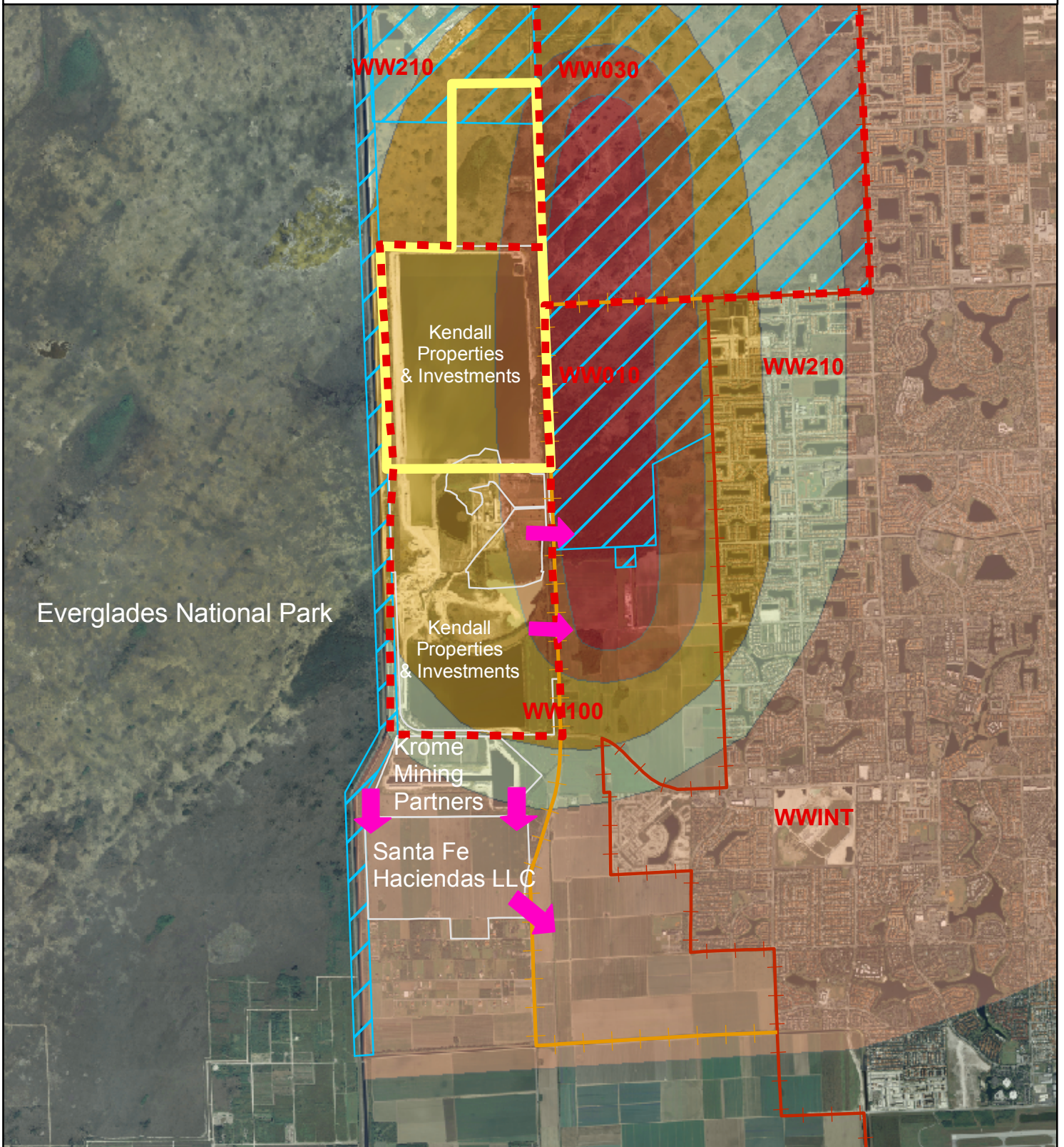
Map created February 17, 2010.
MDC Department of Planning and Zoning.
Data: MDC and Florida Department of Environmental Protection.

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Miles

APPLICATION NO. 8: EXAMPLE OF POTENTIAL ADDITIONAL ROCKMINING EXPANSION



Application No. 8: Wellfield and CERP Proximity



- Several rockmining companies own property just north of SW 360th Street in land designated Agriculture in unincorporated Miami-Dade County and in Florida City. These properties are adjacent to lands being mined with active FDEP permits.

In summary, property owners with open-ended (no time limit) Unusual Use approval resolutions for lakes in land designated Agriculture may pursue expansion of quarrying activities on their properties by renewing their excavation permits with the DP&Z. Once reapproved for excavation, these properties may also become sites where, if this text amendment is approved, rockmining uses may expand into agricultural areas. Such expansion can continue until no adjacent owners are willing to sell or lease their properties.

Land Use and Zoning Approval Process for Rockmining, Quarrying, and Ancillary Uses

Significant time and funding has been invested by public and private entities in a multi-year planning effort to determine where rockmining uses should be allowed in the County. The planning effort has resulted in the delineation of an area known as the “Lake Belt” located northwest of urbanized Miami-Dade County.

The Lake Belt area was first identified by the Florida Legislature in 1992 as a source of limestone for the state and an area where drinking water resources needed to be protected.² The state created the Miami-Dade County Lake Belt Plan Implementation Committee to initiate a two-phase comprehensive Lake Belt planning effort that was completed in 2001. Text in the plan (Phase II, page 1) states that the planning effort is, “. . . focused upon balancing limestone mining interests and environmental concerns related to wetland protection, water supply protection and water management needed for Everglades restoration.”

The Lake Belt Plan formed the basis of County and state legislation that facilitates and permits mines in the Lake Belt. State and local agencies considered multiple factors, with significant public input, when making determinations regarding the impacts of the rockmining land use in Miami-Dade County.

As stated in the previous section, an Unusual Use approval is needed to permit any new rockmining uses in unincorporated areas of the County unless a mine is proposed within a special area called the Rockmining Overlay Zoning Area (ROZA). (The Miami-Dade County Zoning Code does not allow rockmining uses by right in any zoning district.) The ROZA generally reflects the boundaries of the Lake Belt area, as defined by the state.

The ROZA was established by the Miami-Dade County Board of County Commissioners (BCC) in September 2004, through Article XLI of the Miami-Dade County Code. Projects proposed in this area may be approved administratively as long as plans are in compliance with specified criteria (Article XLI, Section 33-421). The Code indicates that rockmining uses are permitted in all zoning districts within this overlay area without a public hearing, if approval of pertinent criteria is granted by the DP&Z Director. Permitted rockmining uses include lake excavations, quarrying, and crushing of raw materials. Uses ancillary to rockmining are also allowed provided that the ancillary uses occur with rockmining uses on property under common ownership. These ancillary uses include, “. . .operation of storage facilities for all equipment used in rockmining on premises attendant to the uses set forth herein” and “the outdoor storage

² Webpage: Florida Department of Environmental Protection, Mining and Minerals Regulation, Mandatory Nonphosphate. Accessed on 2/10/10, <http://www.dep.state.fl.us/water/mines/mannon.htm>.

of vehicles and lake excavation equipment required for the rockmining uses permitted by this Article” subject to certain conditions including vehicle maintenance performed according to best management practices as approved by DERM.

Just as certain County land has been approved for rockmining, other areas have been reserved for other land uses. The Agriculture text of the CDMP Land Use Element reserves County land for agricultural land uses and protects this land from encroachment of incompatible uses. Other areas of the County are designated to protect natural resources and facilities, such as public wellfields, from impacts related to incompatible uses.

Long Term Loss of Jobs, Revenue, Available Land for Agriculture

This CDMP application does not recognize the potential negative impact that the proposed text change would have on the Miami-Dade County agriculture industry. As currently written, the change would allow incremental expansion of mining by commercial quarrying entities onto farmland that would permanently remove acreage from future production.

Farmland is a resource that provides ongoing economic benefits to the people of Miami-Dade County. The agriculture industry provides jobs for machinery operators and manual laborers. Fresh food sales and distribution requires sorting, cleaning, handling, refrigeration, and delivery services provided by residents of Miami-Dade and adjacent regions. The trucking industry is also utilized to deliver seeds, fertilizers, and equipment to support the agriculture industry. The United States Department of Commerce, Bureau of Economic Analysis (BEA) reported that the farming industry in Miami-Dade County employed 6,992 people in 2007.

The United States Department of Agriculture’s 2007 Census of Agriculture reported that in 2007, the market value of products sold in the County was \$666.1 million³ (this does not include transportation related revenues). A BEA report on industry contributions to the 2008 gross domestic product for this metropolitan statistical area indicated that the combined contribution of the agriculture, forestry, fishing, and hunting sectors was valued at \$1.408 billion for 2008. The County ranks fifth in the state of Florida in terms of vegetable sales and first in terms of nursery product sales.

The CDMP policies LU-1R and LU-8C and text added to the CDMP in 2008⁴ discuss the need to protect the economic viability of the agriculture industry in South Florida. Department of Planning and Zoning studies⁵ have concluded that viable commercial agriculture in the County is dependent on the maintenance of a certain quantity of agricultural land. Significant acreage of active farmland results in sufficient commerce to ensure that food distribution systems and other industries necessary to support agriculture stay in business; these are basic concepts of economies of scale that apply to many industries. The total land available for agricultural use in Miami-Dade County decreased from approximately 89,000 to 64,700 acres between 1994 and 2008. In 2008, approximately 57,500 acres of agricultural land remained outside the UDB.

³ It is not advisable to compare USBEA total output with US Department of Agriculture market values as these methodologies are distinct.

⁴ CDMP Application No. 13, April 2008 Cycle.

⁵ Urban and Agricultural Land Use Trends and Projections, Miami-Dade County, Florida. Miami-Dade County Department of Planning and Zoning, 2002. The study indicated that the County needs to maintain at least 52,000 acres of agricultural land through 2025 to maintain a viable agricultural industry.

Farms in Miami-Dade also provide food security for residents throughout the County. As fuel costs rise, the cost of importing crops rises. By maintaining productive fields within the County, local entrepreneurs may farm winter vegetables and summer tropical fruits and sell them within this region, without the added cost of transportation (and the greenhouse gas emissions associated with truck or jet fuel transport).

If this text amendment is approved, the applicant has indicated that they intend to mine a parcel of land owned by Sante Fe Haciendas to the south of the Krome Mining Partners quarry. According to the County's Agricultural Manager, the 412 acre parcel owned by Santa Fe Haciendas is currently being leased by a farmer who produces primarily sweet corn, and sometimes beans or tomatoes. This productive farmland contributes to the viability of the agriculture industry in Miami-Dade County and supplies County residents and others with fresh food.

Once farmland is mined, agricultural jobs and revenue generated annually from that land are permanently displaced. Spent mines in agricultural areas will result in large artificial lakes that complicate the efficient distribution of agricultural products. Expansion of mining uses into land designated on the County's CDMP for agriculture is inconsistent with adopted County goals related to the preservation of the agriculture industry.

Surplus Supply of Aggregate and Limerock

Mines in the Lake Belt and other parts of Miami-Dade County are currently producing a large annual surplus of aggregate (crushed rock used to build and resurface roads) and limerock, far more than is needed to support construction and economic growth of the Miami-Dade economy. Components of a recent United States Army Corps of Engineers (USACE) study⁶ focused on the economic significance of limestone mining in the Lake Belt area; this study was associated with USACE rockmine permitting for Lake Belt area mines. Pertinent information from this study is summarized in this section. The USACE report states that for 2006, the state of Florida consumed 143 million tons of aggregate with 120 million tons coming from Florida mines. It goes on to say, "Forty-five percent of the state's 120 million tons of aggregate came from the 10 mines in the Lake Belt." (page 1-4); "the Lake Belt area has been the single largest source of construction-grade limestone products for the State of Florida," (page 1-3) and, "one of the largest sources in the United States".(page 3-97) The FDEP Bureau of Mines also reported that aggregate and fill from the Lake Belt provides one-half of the limestone used annually in Florida. (The Lake Belt is approximately 51,000 acres in size as defined by the state, F.S. 373.4249.)

The USACE explained that the Florida Department of Transportation (FDOT) is the largest single consumer of crushed rock in Florida. Only certain areas of Florida have the type of higher quality aggregate that qualifies for use by the FDOT, and eight of ten active Lake Belt mines are qualified to provide FDOT grade aggregates. Aggregate from the Lake Belt is being used by FDOT to build roads in FDOT District 6 (Miami-Dade and Monroe), District 4 (Broward and four counties to the north), District 1 (Collier and eleven other counties along the southwest coast), District 5 (nine counties in the Orlando area), District 7 (five counties in the Tampa area), and to a lesser extent, District 2 (about 18 counties in the Jacksonville area). Florida panhandle projects and projects outside of the state are also receiving material mined from the Miami-Dade County Lake Belt (USACE, FSEIS, pages 1-4 and 3-98).

⁶ United States Army Corps of Engineers. Final Supplemental Environmental Impact Statement on Rock Mining in the Lake Belt Region of Miami-Dade County, Florida. 2009. Chapter 1 and Chapter 3. Accessed at <http://www.lakebeltseis.com/library.htm>.

The FDOT's demand for aggregate fluctuates with public and private demands for new roads and other infrastructure projects. More public works projects are funded when local and state economies are growing rapidly, and sufficient funds from taxes and bonds are available to finance these projects. Data shows that there has been a significant and documented state-wide decrease in demand for aggregate (durable high quality material that can be used for infrastructure and construction projects) and limerock base (generally softer, lower quality material used as fill). This decrease in demand is related to Florida's contracted economy, housing industry, and infrastructure activity. At the peak of the housing boom in 2006, the USACE reported that the Lake Belt produced 53.6 million tons of limerock and 45.6 million tons of aggregate. In 2008, demand fell to 26 million tons of limerock and 22.1 million tons of aggregate. (page 1-5)

The applicant, CEMEX Construction Materials Florida, has recently received three new FDEP permits to mine approximately 6,300 acres within the Lake Belt area⁷. These mines, also permitted by the USACE, will remain in active production for approximately 18 years.⁸

The extent of the activity of existing Lake Belt mining is summarized below with statistics from the recent USACE Record of Decision Document, Section 2, page 10:

- Prior to 2002 within a 18,579 acre mining area, there were 3,896 acres of lakes.
- From 2002-2009 approximately 2,396 new acres of lakes were created through mining.
- From 2002-2009 average mining impact was 388 acres/year and average excavation was 342 acres/year.

Statistics from the recent USACE, FSEIS, Chapter 1, page 1-5:

- 2000-2008: mining has produced 402.5 million tons of aggregate and 342.2 million tons of limerock.

Statistics from the recent USACE Record of Decision on the May 2009 FSEIS on Rock Mining in the Lake Belt Region of Miami-Dade County, Florida, page 14 and 21:

- In 2032, when ten newly re-authorized Lake Belt mines are completely excavated (if all permit conditions are met throughout the permitting period) there will be 14,102 acres of new lakes, a 7,327 acre increase from January 2010. *The total amount of aggregate that this mining activity will generate will depend on the depths of each mine (generally 80-100 feet) but can be estimated at 1.412 billion tons of aggregate. (Total capacity of the Lake Belt area may be around 2.1 billion tons). (USACE FEIS, Chapter 2, page 2-51)*

FDOT State Materials Office information provided to the County February 11, 2010:

- 6,050 tons of material needed per single lane mile for FDOT highway projects (These figures are for twelve foot wide lanes and do not include shoulders. Approximately 1,760 tons of aggregate needed and 4,290 limerock needed for the road base.)

Miami-Dade County Public Works Department information provided to DP&Z February 19, 2010:

- 7,446 tons needed per single lane mile and 29,785 tons needed per mile for new construction of a four-lane roadway with a raised median. (County uses about 10% reclaimed asphalt pavement (RAP) in their type S-1 asphalt mixes. FDOT assumed 15% RAP for their asphalt mix calculations above).
- 1,300 tons needed per mile to resurface a four-lane roadway with a raised median.

⁷ Florida Department of Environmental Protection permits 175244-008, 175244-004, 175252-005.

⁸ United States Army Corps of Engineers. Department of the Army Project Specific Record of Decision/Statement of Findings for the CEMEX FEC Quarry (Cemex-FEC ROD/SOF) ((Permit Application# SAJ-2000-02373(IPLAO))

In summary, rockmining permits that have already been issued provide a surplus of aggregate for the State of Florida. Current Lake Belt area mining permits allow for mining to continue through 2032; these mines will produce 1.412 billion tons of aggregate. This amount of aggregate could support years of economic growth and development in Miami-Dade County.

Environmental and Water Quality Issues

Research indicates that rockmining and the lakes that result from rockmining can negatively impact hydrology and public water sources in some locations. The documented and potential impacts of this activity involve the water quality of certain public drinking water wells, and aspects of Everglades restoration efforts that are managed by federal, state, and county agencies.

Decisions related to the expansion of this industry into new areas should not be made summarily, without professional research-based studies, and without coordination from the state and federal government. State and federal government agencies have significant regulatory responsibilities and interests, such as Everglades restoration, that may be affected by these decisions.

Comprehensive Everglades Restoration Plan

The federal government approved the Comprehensive Everglades Restoration Plan (CERP) in 2000. This multi-billion dollar state and federal initiative is intended to assist in the restoration and protection of water resources in central and southern Florida (http://www.evergladesplan.org/about/about_cerp_brief.aspx). The CERP is supported by federal, state, and local policies, including policies in the CDMP.

Land Use Element Objective LU-3 is written to ensure that land development in Miami-Dade County will protect natural resources by reflecting management policies including those of the CERP. Two CERP project areas, identified using data from the South Florida Water Management District, are within close proximity of land that may be affected by this proposed text amendment. The “Everglades National Park Seepage Management Project” in the Bird Drive area is located in an area that may be affected by this amendment. The “Everglades National Park Seepage Management Project” or the L-31 North Seepage Management Pilot is immediately to the west and adjacent to land that may be affected by this proposed text amendment.

A central component of the Comprehensive Everglades Restoration Project is to restore the natural water level and flow of fresh water through wetlands south toward Florida Bay. Canals that drain urban and agricultural areas east of the Everglades also draw water eastward (or cause seepage) from the Everglades National Park ecosystems toward Biscayne Bay. The L-31N canal runs north/south and is located immediately to the west of the property onto which the applicant proposes to expand a mine (owned by Santa Fe Haciendas LLC). The L-31N canal collects water from the water conservation area to the west and routes it south; this is an obstacle to ecosystem restoration in this area.

The USACE makes the following statement regarding mining in the Lake Belt area, “Rock removal as a result of mining activities within the Lake Belt area would impact groundwater flow and reduce the filtration capacity currently provided by the Biscayne Aquifer . . . Seepage rates from Water Conservation Area-3B and the L-30 Canal to the east and from ENP (Everglades

National Park) and the L-31N Canal to the east are expected to increase as the amount of rock being removed from the Lake Belt area increases.” The report goes on to state that a mitigation plan to address additional losses of water that would be caused due to continued mining would be required before any permits will be issued for additional mining south of the Tamiami Trail (The applicant is pursuing permits to expand mining into areas south of the Tamiami Trail or SW 8th Street). (USACE, FSEIS, pages 2-47 and 2-48)

New Lake Belt mining permits indicate that the USACE has determined that new mining south of Tamiami Trail (SW 8th Street) will require “seepage mitigation projects.” Additionally, a 1,500 foot buffer strip of wetland is required along the L-31N canal to avoid additional seepage impacts to the Everglades National Park from new rockmine lakes. The USACE explained this required setback in their Record of Decision document related to new Lake Belt mining permits issued in February 2010,

Seepage increases south of the Tamiami Trail were attributable to the Kendall Properties mine. The lack of any buffer between the Everglades National Park and the mining raises particular concern to the Corps given the localized effects seen on the Pennsuco Wetlands adjacent to the mining north of Tamiami Trail. Without buffer wetlands, any seepage effects caused to the adjacent wetlands would reduce the hydroperiod of the Everglades National Park wetlands in direct contradiction to the goals of the Comprehensive Everglades Restoration Plan. Even though the effect would be localized, the Corps determined that seepage impacts on the Everglades National Park wetlands would be contrary to the public interest.⁹

The Florida Department of Environmental Protection is also withholding new permits for mining south of Tamiami Trail while the Miami-Dade Limestone Products Association member companies, which include the applicant, continue with design proposals for a seepage mitigation pilot project. There is no indication in this proposed text amendment that the applicant or representatives of Krome Mining Partners have applied for or successfully coordinated with CERP related agencies including DERM regarding the impacts of seepage in this area. Furthermore, it is unclear to what extent this proposed text amendment could negatively impact CERP. The USACE has specifically stated that additional unbuffered mining south of Tamiami Trail would be in direct contradiction to the goals of CERP and would be contrary to the public interest.

West Wellfield Protection Area

The state legislature, the USACE, DERM, and others have studied and documented some of the impacts of mining in the Lake Belt area and a Miami-Dade County Lake Belt Mitigation Plan has been created. The state has approved legislation that requires a 24 cent per ton mitigation fee for sand and rock sold from the Lake Belt area, “for the mitigation of wetland resources lost to mining activities”. (Florida House of Representatives, House Bill 1039) In 2006, Senate Bill 1306 additionally approved a “water treatment plant upgrade fee” (F.S. Section 373.41492 *Miami-Dade County Lake Belt Mitigation Plan; mitigation for mining activities within the Miami-Dade County Lake Belt*) to upgrade the treatment systems of water plants that receive water coming from the Northwest Wellfield in Miami-Dade County.

⁹ Department of the Army Record of Decision on the May 2009 Final Supplemental Environmental Impact Statement on Rock Mining in the Lake Belt Region of Miami-Dade County, Florida. May 2009 (Released January 2010). Page 30.

As shown on the map entitled, “Application No. 8: Wellfield and CERP Proximity”, agricultural areas potentially affected by this proposed text amendment are located within the current boundaries of the West Wellfield Protection area. It is not clear whether the Alexander Orr Water Treatment Plant, that receives waters from the West Wellfield, will be impacted by mining activity in the West Wellfield Protection Area, such that it too would necessitate upgrades. This potential impact and cost should be considered when reviewing this proposed text amendment.

Consistency with CDMP Goals, Objectives, Policies, Concepts and Guidelines

The following CDMP goals, objectives, policies, concepts, and guidelines will be impeded if the proposed text change is approved:

- Full intent and meaning of the “Agriculture” text (p. I-58, I-59).
- LU-1O. Miami-Dade County shall seek to prevent discontinuous, scattered development at the urban fringe particularly in the Agriculture Areas, through its CDMP amendment process, regulatory and capital improvements programs and intergovernmental coordination activities.
- LU-1P. While continuing to protect and promote agriculture as a viable economic activity in the County, Miami-Dade County shall explore and may authorize alternative land uses in the South Dade agricultural area which would be compatible with agricultural activities and associated rural residential uses, and which would promote ecotourism related to the area's agricultural and natural resource base including Everglades and Biscayne National Parks.
- LU-1R. Miami-Dade County shall take steps to reserve the amount of land necessary to maintain an economically viable agricultural industry. Miami-Dade County shall adopt and develop a transfer of developments rights (TDR) program to preserve agricultural land that will be supplemented by a purchase of development rights program to preserve agricultural land and environmentally sensitive property. The density cap of the land use category in the receiving area established by the TDR program may be exceeded. Land development regulations shall be developed to determine the extent that the density cap may be exceeded based on parcel size but in no case shall it exceed 20 percent.
- LU-1S. The Comprehensive Development Master Plan (CDMP) shall be consistent with the Miami-Dade County Strategic Plan adopted by the County Commission on June 3, 2003 by Resolution R-664-03. The Miami-Dade County Strategic Plan includes County wide community goals, strategies and key outcomes for Miami-Dade County government. Key outcomes of the Strategic Plan that are relevant to the Land Use element of the CDMP include increased urban infill development and decreased urban sprawl, protection of viable agriculture and environmentally-sensitive land, improved community design, reduced flooding, improved infrastructure and redevelopment to attract businesses to underserved and distressed areas, available and high quality green space throughout the County, and more integrated land-use development to decrease dependence on automobiles.
- LU-2B. Priority in the provision of services and facilities and the allocation of financial resources for services and facilities in Miami-Dade County shall be given first to serve the area within the Urban Development Boundary (UDB) of the Land Use Plan (LUP)

map. Second priority shall support the staged development of the Urban Expansion Area (UEA). Urban services and facilities which support or encourage urban development in Agriculture and Open Land areas shall be avoided, except for those improvements necessary to protect public health and safety and which service the localized needs of these non-urban areas.

- Objective LU-3. Upon the adoption of the CDMP, the location, design and management practices of development and redevelopment in Miami-Dade County shall ensure the protection of natural resources and systems by recognizing, and sensitively responding to constraints posed by soil conditions, topography, water table level, vegetation type, wildlife habitat, and hurricane and other flood hazards, and by reflecting the management policies contained in resource planning and management plans prepared pursuant to Chapter 380, Florida Statutes, and approved by the Governor and Cabinet, or included in the Comprehensive Everglades Restoration Plan approved by Congress through the Water Resources Development Act of 2000.
- LU-3B. All significant natural resources and systems shall be protected from incompatible land use including Biscayne Bay, future coastal and inland wetlands, future potable water-supply wellfield areas identified in the Land Use Element or in adopted wellfield protection plans, and forested portions of Environmentally Sensitive Natural Forest Communities as identified in the Natural Forest Inventory, as may be amended from time to time.
- LU-3F. Any zoning action or amendment to the CDMP that would approve any use other than direct production and permitted residential uses of property, in an area designated as Agriculture, whether as a primary use or as an accessory or subordinated use to an agricultural use, or action that would liberalize standards or allowances governing such other uses on land that is, a) outside the Urban Development Boundary (UDB), and b) within one mile of the right-of-way line of any portions of Krome Avenue designated in this Plan for improvement to 4-lanes, shall require an affirmative vote of not less than five members of the affected Community Zoning Appeals Board and two-thirds of the total membership of the Board of County Commissioners then in office, where such Community Zoning Appeals Board or Board of County Commissioners issues a decision. The term "direct agricultural production" includes crops, livestock, nurseries, groves, packing houses, and barns but not uses such as houses of worship, schools, sale of produce and other items, and outdoor storage vehicles. This policy is not intended to permit any use not otherwise permitted by the CDMP. Any modification to this section to allow additional uses within the one mile distance from Krome Avenue shall require an affirmative vote of not less than two-thirds of the Board of County Commissioners then in office.
- LU-8C. Through its planning, capital improvements, cooperative extension, economic development, regulatory and intergovernmental coordination activities, Miami-Dade County shall continue to protect and promote agriculture as a viable economic use of land in Miami-Dade County.
- Concept #14 in the section "Concepts and Limitations of the Land use Plan Map" of the Land Use Element, "Encourage agriculture as a viable economic use of suitable lands."

- Objective CON-6 Soils and mineral resources in Miami-Dade County shall be conserved and appropriately utilized in keeping with their intrinsic values.
- CON-6C. Areas in Miami-Dade County having soils with good potential for agricultural use without additional drainage of wetlands shall be protected from premature urban encroachment.

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APPENDIX A

APPLICATION

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**APPLICATION TO AMEND THE
LAND USE PLAN MAP
OF THE MIAMI-DADE COUNTY**

2009 NOV -2 P 3:49

COMPREHENSIVE DEVELOPMENT MASTER PLAN

PLANNING & ZONING
METROPOLITAN PLANNING SECT

1. APPLICANT

CEMEX Construction Materials Florida, LLC

2. APPLICANT'S REPRESENTATIVE

Kerri Barsh, Esq.
Greenberg Traurig
1221 Brickell Avenue
Miami, FL 33131

By:



Kerri L. Barsh, Esq.

Nov. 2, 2009

Date

3. DESCRIPTION OF REQUESTED CHANGE

- A. A change to the Text of the Adopted Components of the Comprehensive Development Master Plan for Miami-Dade County (Fee Schedule § A.2)

The text change is proposed for Page I-59 of the Future Land Use Element as follows:

Agriculture

Existing quarrying and ancillary uses in the Agriculture area may continue operation and be considered for approval of expansion (by ordinance or zoning application), including the expansion of *bona fide* quarrying and ancillary uses onto property adjacent to existing quarrying operations.

4. REASONS FOR AMENDMENT

The Future Land Use Element currently allows the expansion of quarrying within the Agricultural area. The proposed text change clarifies that *bona fide* quarrying operations may expand not only within property already used for quarrying operations but also onto adjacent properties. The text amendment also clarifies the means by which such approvals may be granted.

There are limited areas in the County where geologic, environmental and infrastructure make quarrying operations at all possible. The proposed text amendment recognizes the demand for construction grade aggregate at the local and state levels (for example, for aggregate that will support economic stimulus projects). The proposed text amendment ensures that local operations can meet that demand. At the same time, however, the proposed text amendment is limited--namely, it applies only to *bona fide* operations (*i.e.*, commercial quarrying operations by commercial quarrying entities) and the expansion of quarrying operations will be onto property adjacent to existing operations.

Accordingly, approval of the requested Amendment would be consistent with the implementation of the CDMP goals, objective and policies.

5. ADDITIONAL MATERIAL SUBMITTED

Additional information will be supplied at a later date under separate cover.

6. COMPLETE DISCLOSURE FORMS

Attached as **Exhibit A**.

DISCLOSURE OF INTEREST*

If a **CORPORATION** owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: CEMEX Construction Materials Florida, LLC

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
<u>CEMEX S. A. B. de C. V., Traded on NYSE</u>	<u>Indirect owner of</u>
<u></u>	<u>100%</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

If a **TRUST or ESTATE** owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME:

<u>NAME AND ADDRESS</u>	<u>Percentage of Interest</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

If a **PARTNERSHIP** owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME:

<u>NAME AND ADDRESS</u>	<u>Percent of Ownership</u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>
<u></u>	<u></u>

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: _____

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

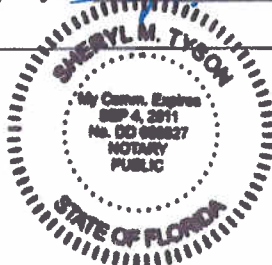
NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature: _____
(Pete Lyons)
(Applicant)

Sworn to and subscribed before me this 4th day of Sept, 2009 Affiant is personally known to me or has produced _____ as Identification.

Sheryl M. Tyson
(Notary Public)



My commission expires _____

*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.