



REQUEST FOR BOARD ACTION

ITEM NO. 20.

DATE OF MEETING: June 17, 2013

REQUESTED BY: Ed McCarthy, Planner II, Planning & Community Development

SHORT TITLE: Resolution to Approve a Special Use Permit (SUP) Revision to Extend the Life of an Existing SUP.

BACKGROUND: Martin Marietta Materials, Inc applicant, on behalf of Plum Creek Timberlands, LP, owner, is requesting approval of a revision to Special Use Permit # 04-02-16-08 granted in 2004, and amended in 2006 by Special Use Permit # 06-04-17-04. The present amendment request is to extend the term of the permit for an additional (10) ten years, from 10-05-2014 through 10-4-2024. The subject property is located approximately 4,800 feet south of Rebecca Kennedy Road along the eastern portion of I-40. The property is zoned GI, General Industrial and can be identified by Pender County PIN 3243-56-6900-0000. According to the Pender County Unified Development Ordinance's §5.2.3 Table of Permitted Uses, Nonmetallic Mineral Mining and Quarrying is permitted via Special Use Permit in the GI zoning district.

SPECIFIC ACTION REQUESTED: To hold a public hearing and consider the approval of a Special Use Permit revision for the extension of a mining operation.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

The Board hereby (approved, modified, denied) a special use permit revision for a mining operation, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

Chairman 6/17/2013

Date

ATTEST 6/17/2013
Date

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

Hearing Date: June 17, 2013
Applicant: Martin Marietta Materials, Inc
Property Owner: Plum Creek Timberlands, LP
Case Number: 10964

Land Use Proposed: Martin Marietta Materials, Inc applicant, on behalf of Plum Creek Timberlands, LP, owner, is requesting approval of a revision to Special Use Permit # 04-02-16-08 granted in 2004, and amended in 2006 by Special Use Permit # 06-04-17-04, to extend the term of an existing mining operation, as defined in the Pender County Unified Development Ordinance:

Mining: The breaking or disturbing of the surface soil or rock in order to remove minerals to make them suitable for commercial, industrial or construction use, but not including excavation or grading when conducted in aid of an on-site farming or construction.

Property Record Number and Location: The subject property is located approximately 4,800 feet south of Rebecca Kennedy Road along the eastern portion of I-40. The property can be identified by Pender County PIN 3243-56-6900-0000.

Zoning District of Property: The property is currently zoned GI, General Industrial, and Nonmetallic Mineral Mining and Quarrying is permitted via SUP in the GI zoning district.

PROJECT DESCRIPTION:

Martin Marietta Materials, Inc applicant, on behalf of Plum Creek Timberlands, LP, owner, is requesting approval of an amendment to Special Use Permit # 04-02-16-08 granted in 2004, and amended in 2006 by Special Use Permit # 06-04-17-04 for the use of a limestone mining operation. The subject property is located approximately 4,800 feet south of Rebecca Kennedy Road along the eastern portion of I-40. The amendment will apply to a 330 acre portion of property zoned GI, General Industrial, which can be identified by Pender County PIN 3243-56-6900-0000. According to the Pender County Unified Development Ordinance's §5.2.3 Table of Permitted Uses, Nonmetallic Mineral Mining and Quarrying is permitted via Special Use Permit in the GI zoning district.

The present amendment request is to extend the term of the permit for an additional (10) ten years, from 10-05-2014 through 10-4-2024, by amending item No. 17 of SUP No. 04-02-16-08. Presently, this condition reads as follows:

"17. The term of this permit shall extend to September 20, 2014, unless renewed by Pender County."

The amendment to the SUP will result in the following:

"17. The term of this permit shall extend from 10-5-2014 through 10-4-2024, unless renewed by Pender County. (This is the standard 10 year term for state and Pender County mining permits.)"

This request does not affect any other items pertaining to SUP No. 04-02-16-08 other than item No. 17, and subsequently, all other local, state, federal and SUP regulations still apply to this permit. According to the 2004 Special Use Permit, (04-02-16-08), "The nearest residence and water supply well to this expansion area is located more than 3,000 feet north, and Interstate 40 is located about 1,800 feet west." It appears that the closest residential structure to the west is located more than 2,500 linear feet

from the mining site, as measured from the westernmost boundary of the 330 acre site, east of I-40 on the 2012 Orthoimagery.

According to Martin Marietta Materials, Inc, "To date we have mined about one third of this tract. A portion of the property on the eastern side does not contain enough reserves to warrant excavation, so when we return to operations we will focus on the south central and western portions of the property. We have enough reserves remaining on this tract for several years of mining, maybe more depending on market conditions."

Use Type	Ref NAIGS	Zoning Districts									
		RA	RP	RM	MHI	PD	CB	GI	IT	GI	IC
Sector 21: Mining, Quarrying, Oil And Gas Extraction											
Nonmetallic Mineral Mining and Quarrying	2123	S									S

EVALUATION:

- A. **Public Notifications:** Advertisements for the proposal have been placed in the *Pender-Topsail Post & Voice*. Adjacent property owners were notified by first class mail.
- B. **Basis for Granting SUP:** See attachment A for Procedures for Reviewing Applications (§3.12.3 of Unified Development Ordinance) and General Provisions Concerning Special Use Permits (§3.12.4 of Unified Development Ordinance).
- C. **Unified Development Ordinance Compliance:** The property is currently zoned GI, General Industrial, and Nonmetallic Mineral Mining and Quarrying is permitted in the GI zoning district by Special Use Permit, as prescribed by the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses.
- D. **2010 Comprehensive Land Use Plan Compliance:** The subject property is classified as Industrial in the *2010 Comprehensive Land Use Plan*. The Industrial land use classification designates areas of the county where industrial uses are present or desired.

The SUP request is supported by policies and goals within the *2010 Comprehensive Land Use Plan*:

Policy 1A.1.5 – The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.

Additionally, the request does not conflict with any goals or policies within the Plan.

- E. **Existing Land Use in Area:** The land use in the area consists of mining operations to the north, a mix of mining operations and timber/forest land to the east, timber/forest land to the south and residential development along the opposite side of I-40 to the west.
- F. **Site Access Conditions:** The site has access to NC Highway 210 via Rebecca Kennedy Road, and is in close proximity to US Highway 117 and Interstate 40.
- G. **Conditions To Consider In Issuing the Special Use Permit For This Project:**
 1. The applicant shall meet all other local, state and federal regulations
 2. The project shall comply with all requirements of the Pender County Unified Development Ordinance.
 3. Any violation of the conditions of this permit, confirmed by the Zoning Administrator, shall result in a proceeding to revoke in accordance with Section 3.12.4.B.

4. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in effect for the duration of this permit.
5. All conditions of SUP # 04-02-16-08 and 06-04-17-04 shall be effective for this revision, excluding item No. 17, as it is being revised. Item No. 17 will be revised to read as stated in No. 7, below.
6. "17. The term of this permit shall extend from 10-5-2014 through 10-4-2024, unless renewed by Pender County."

Attachment A

3.12.3 Procedures for Reviewing Applications

- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.
- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.
- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
 1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
 2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
 3. The proposed use shall not constitute a nuisance or hazard;
 4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
 5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
 6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
 7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
 8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

3.12.4 General Provisions Concerning Special Use Permits

- A. Compliance With Other Codes - Granting of a Special Use Permit does not exempt the applicant from complying with all of the requirements of building codes and other Ordinances.
- B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the

provisions of this Ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified. After a public hearing has been held, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

- 1) That the approval was obtained by fraud.
- 2) That the use for which such approval was granted is not being executed.
- 3) That the use for which such approval was granted has ceased to exist or has been suspended for one year.
- 4) That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
- 5) That the permit granted is in violation of an Ordinance or Statute.
- 6) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

C. Expiration - Unless a request for additional time is granted or approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void if final Zoning Approval has not been issued for the project within 24 months after the Notice of Approval of the Special Use Permit has been served on the applicant. The Administrator may provide one extension of the expiration date by no more than 6 months, for complex projects requiring major state or federal permits, upon receipt of a written request for such extension by the applicant detailing the reasons for delay in completion of the requirements for the Zoning Approval.

D. Duration of Special Use - Any conditions imposed on a special use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the Pender County UDO 3-28 Article 3 – Review Procedures Special Use Permit or subsequently changed or amended by the Board of Commissioners after application to the Board of Commissioners and a public hearing.

E. Conditions and Guarantees - Prior to the granting of any special use, the Board of Commissioners may stipulate such conditions and restrictions upon the establishment, location, or construction, maintenance, and operation of the special use as it deems necessary for the protection of the public and to secure compliance with the standards and requirements specified in this Ordinance. In all cases in which special uses are granted, the Board of Commissioners shall require such evidence and guarantees as it may deem necessary to assure that conditions stipulated in connection therewith are being and will be complied with.

- 1) Such conditions may include a time limitation.
- 2) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, "that a solid board fence be erected around the site to a height of six (6) feet before the use requested is initiated".
- 3) Conditions of a continuing nature may be imposed. For example, "exterior loud speakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m."

F. Filing of Special Use - The Administrator shall file the approved or disapproved application forms with the decision of the Board of Commissioners.

G. Appeals from the Board of Commissioners - Appeals to the Superior Court may be taken by any person, firm, or corporation aggrieved, or by any officer, department, board of the county affected by any decision of the Board of Commissioners, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Commissioners is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board of Commissioners shall be delivered to the applicant by certified mail, return receipt requested.

H. Revisions - Major revisions to a Special Use Permit must be submitted to the Board of Commissioners. All legal notice and application fee requirements must be met for major revisions. Revisions that are considered minor revisions to an approved Special Use Permit may be reviewed and approved by the Administrator after basic submission requirements have been completed. All revisions approved by the Administrator must meet the original conditions of the permit as approved by the County Commissioners and current provisions of the Zoning Ordinance. The addition of an accessory structure less than 1000 sq. ft., addition of parking or other ancillary facilities or uses or the addition of similar product lines are examples of revisions that may be considered minor revisions.

PROJECT NARRATIVE

This application is solely for the purpose of amending paragraph 17 of Special Use Permit No. 04-02-16-08 dated 10-5-04. The requested amendment is to extend the term of this permit for an additional ten (10) years from 10-5-14 through 10-4-24. This request for amendment applies only to the 330 acres shown on the map hereto attached.

Also attached is the project narrative from the application for the 2004 permit, as well as the project narrative for an application to amend that permit, which amendment was granted under date of 4-17-06. Market conditions have changed substantially since the time of these applications.

No change is requested in either the original permit or the 2006 amendment except to extend the term of the original permit and any amendments for an additional ten (10) years.

This amendment is requested because of the following circumstances:

1. The down turn in the economy has not required extensive mining, so a substantial amount of aggregate still remains to be mined.
2. Martin Marietta has transferred its interest in some of the lands at the Castle Hayne site to Titan Cement and continues to mine pursuant to a lease. Martin Marietta desires to mine out that site as much as possible prior to having to relinquish possession of this property to Titan Cement.
3. During this stepped up mining operation at Castle Hayne, the mining operation at Rocky Point will be put on hold until such time as a need exists to reactivate it. The site is not being abandoned and the lease terms and conditions will be complied with.

This requested amendment will not affect the factors considered in the issuance of a special use permit, to wit, traffic, blasting, noise, air/dust, property values, and hydrogeology. Nothing in the conditions applicable to the original permit as amended will be changed other than the extension of the term for ten (10) years.

All State and Federal permits which may need to be renewed during the additional term will be obtained.

If additional information is needed, Martin Marietta will be happy to provide it.

Dated: ___ April 2013.



PLUM CREEK PROPERTY

Area A

Area B

Area C

Expansion Area

Remaining Plum Creek Property

NORTH ARIZONA - PERMITS & DEVELOPMENT
 PROJECTS DIVISION UNDER GENERAL SUPERVISOR
 PROJECTS DIVISION UNDER GENERAL SUPERVISOR

Exhibit "A"

TITLE: [Illegible]
 DATE: [Illegible]

PROJECT NO. 2008-001
 DATE: 11/11/08
 BY: [Illegible]
 CHECKED BY: [Illegible]



Applicant:
 Martin Marietta Materials,
 Inc

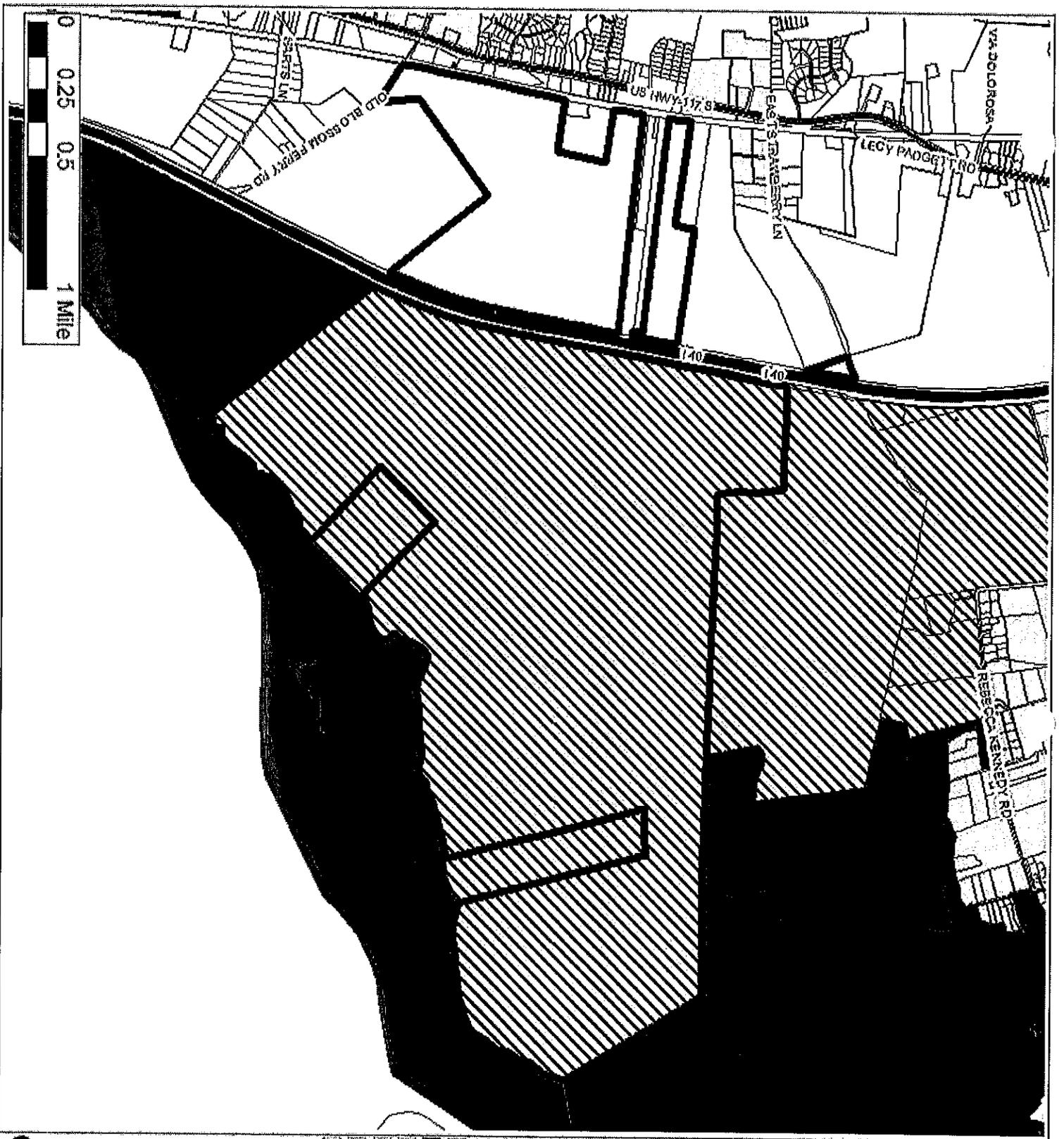
Owner:
 Plum Creek Timberlands,
 LP

**Special Use
 Permit
 # 10964**

Legend
 Subject Property



2012 AERIAL



Applicant:
 Martin Marietta Materials,
 Inc

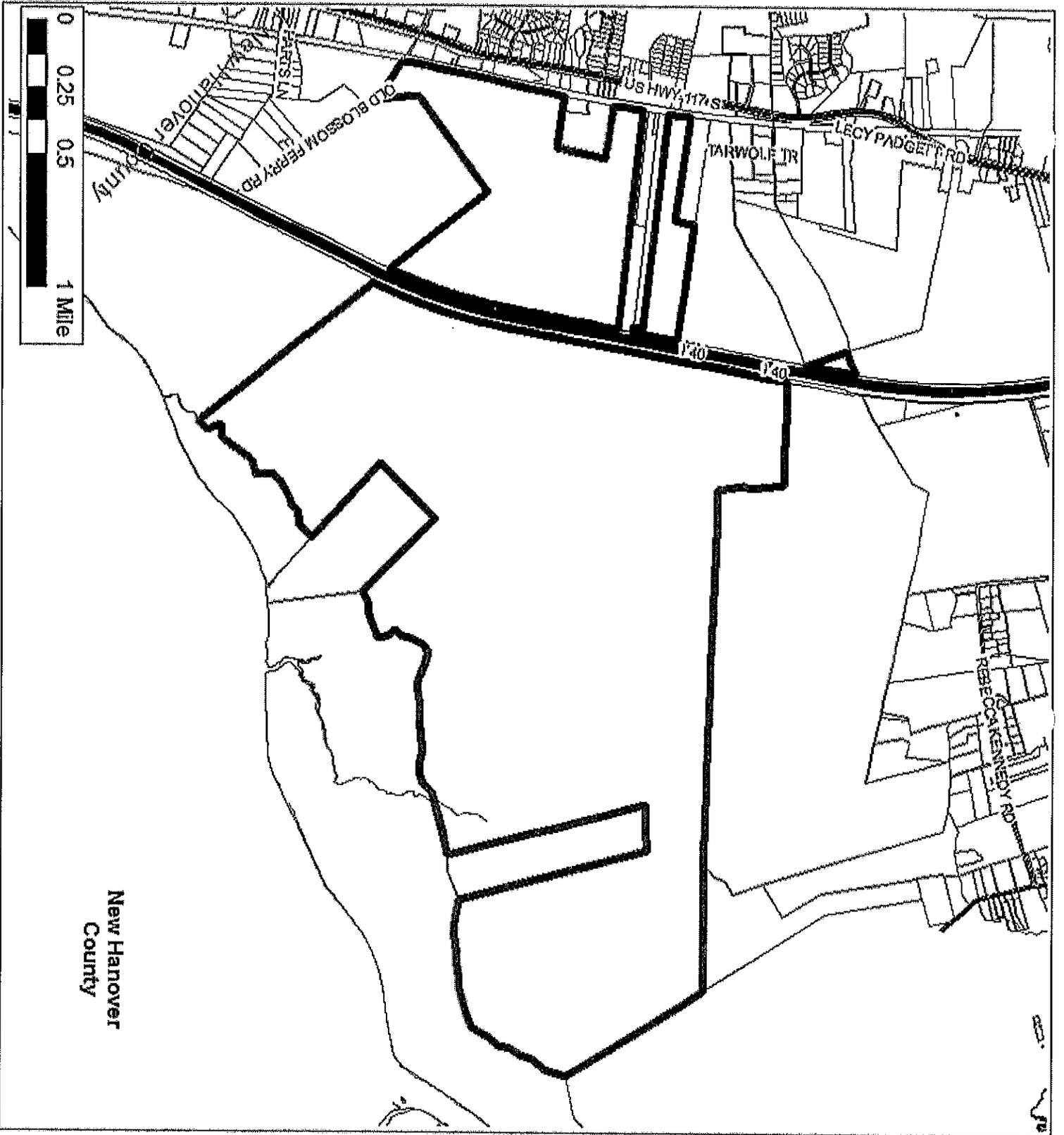
Owner:
 Plum Creek Timberlands,
 LP

**Special Use
 Permit
 # 10964**

- 2010 Land Use Classification**
-  Conservation
 -  Industrial
 -  Mixed Use
 -  Office, Institutional, Business
 -  Rural Growth
 -  Suburban Growth



**LAND USE
 CLASSIFICATION**



New Hanover
County



Applicant:
Martin Marietta Materials,
Inc

Owner:
Plum Creek Timberlands,
LP

**Special Use
Permit
10964**

Legend
 Subject Property



VICINITY



Applicant:
 Martin Marietta Materials,
 Inc.

Owner:
 Plum Creek Timberlands,
 LP

**Special Use
 Permit
 # 10964**

- Zoning Classification**
- Subject Property
 - General Executive (GE)
 - General Industrial (GI)
 - Industrial Transition (IT)
 - Office & Professional (O)
 - Rural Agricultural (RA)
 - Planned Development (PD)
 - Residential Performance (RP)
 - Environmental Conservation (EC)
 - Manufacturing Area (MCOB)
 - Manufacturing North Park (MNP)
 - Rejuvenated Area (R)



ZONING

