

**PLANNING STAFF REPORT
SPECIAL USE PERMIT**

SUMMARY:

Hearing Date: April 15, 2019
Applicant: JEAT Properties, LLC
Property Owner: JEAT Properties, LLC
Case Number: SUP 2019-08

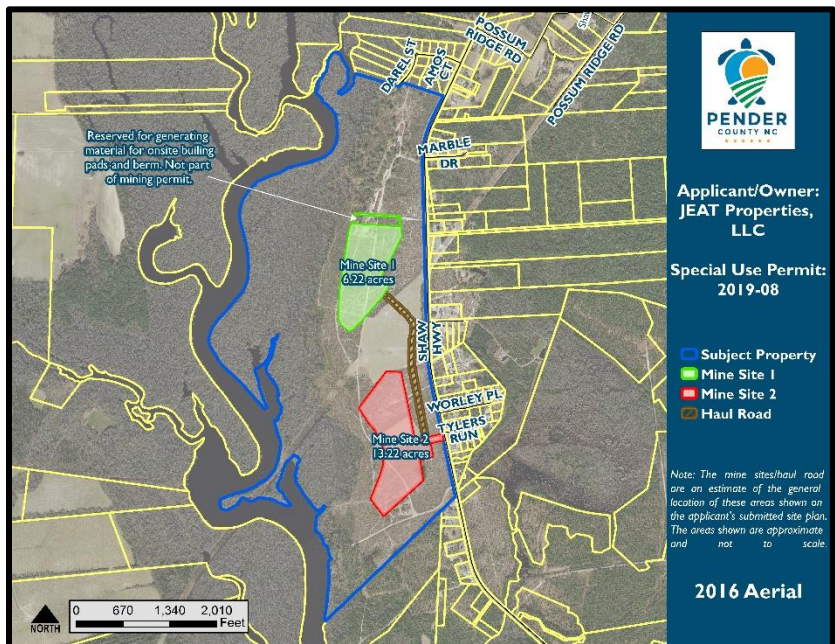
Land Use Proposed: JEAT Properties, LLC, applicant and owner, is requesting the approval of a Special Use Permit for the operation of a sand pit mine, or "Borrow Pit Sand Mining" (NAICS 212321).

Property Record Number and Location: There is one (1) tract associated with this request totaling approximately ±202.87 acres, with the total mining area encompassing approximately ±24.40 acres, or approximately 12% of the total property area. The subject property's main access point is located approximately ±7,827 feet (±1.48 miles) north of the intersection of Shaw HWY (SR 1520) and NC HWY 210, across from Tylers Run (Private), in the Topsail Township. The subject property may be further identified by Pender County PIN 3256-14-2674-0000. Maps showing aerial and vicinity views are provided below and on the following page.

Zoning District of Property: The subject property is zoned RP, Residential Performance zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; Borrow Pit Sand Mining (NAICS 212321) is permitted via Special Use Permit, with additional standards, when submitted in conjunction with a Master Development Plan in the RP, Residential Performance zoning district.

PROJECT DESCRIPTION:

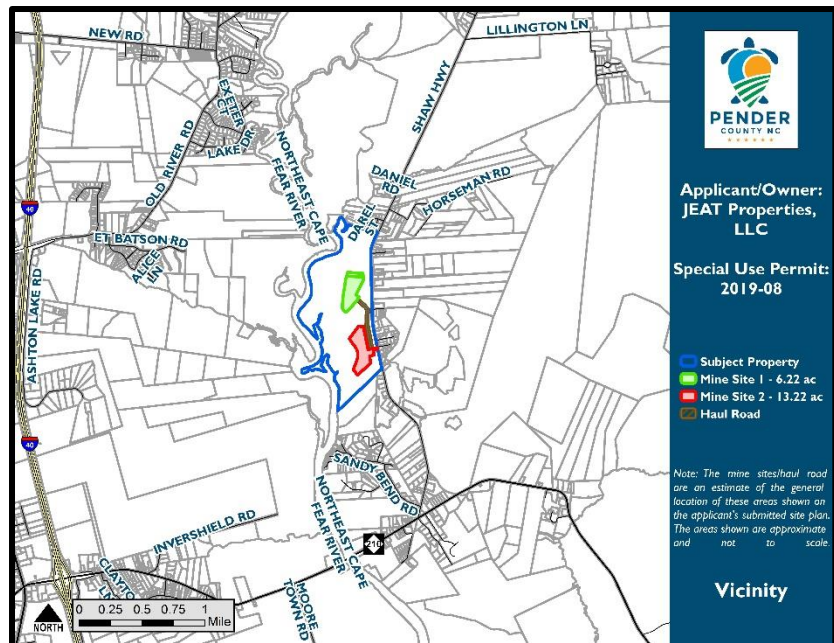
The proposed Special Use Permit (SUP 2019-08) is requesting the approval of a sand pit mining operation to include approximately ±24.40 acres of the ±202.87 subject property, with temporary sediment basins



installed at the southern portion of each mining site. This proposed mining pit area will be mined prior to and during the construction of the Brick Chimney Landing subdivision (PR-02-2015; MDP-12-2015; Preliminary Plat 13-2015; SUB-527-2017 [Phase 1 Final Plat] MDP-2018-06 [Phase 2]; SUBMAJ-2019-22 [Phase 2 Preliminary Plat]). The proposal contains two mining sites, with Mining Site #1 located towards the central portion of the subject parcel, and Mining Site #2 located towards the southern portion of the subject parcel. According to the applicant's submitted

narrative, once the mines are complete, they will serve as an amenity pond to Brick Chimney Landing and will partially manage stormwater for the subdivision.

A borrow pit is an area where material such as soil, gravel or sand, has been dug for use at another location. The applicant states that in some cases borrow pit sand mining would be beneficial in financially assisting future development. The materials could be mined on the development site being prepped for construction and then sold to be used elsewhere. When approved as part of the development process, this use would result in an area prepared for development and identified and incorporated into the overall development plan, used for future stormwater or amenity features.



PROJECT HISTORY:

On September 24, 2015, applicant applied for both a Master Development Plan and Preliminary Plat (MDP-12-2015 and Preliminary Plat 13-2015) at the Pender County Planning and Community Development department office. These applications were for Phase 1 of Brick Chimney Landing, which included twenty-one (21) single family residential homes on approximately ± 22.13 acres. On February 23, 2017, both of the above-mentioned plans were approved by Pender County Planning and Community Development department, for an approval period of two (2) years (Attachment 1).

On March 28, 2017, the applicant applied for a Final Plat for Brick Chimney Landing's Phase 1 (SUB-527-2017). This application was for the same twenty-one (21) single family residential homes described in MDP-12-2015 and Preliminary Plat 13-2015. SUB-527-2017 was approved by the Pender County Planning and Community Development on April 19, 2017, for an approval period of two (2) years (Attachment 2).

On March 20, 2018, the applicant applied for a Master Development Plan (MDP-2018-06) for Phase 2 of the Brick Chimney Landing Subdivision. This Master Development Plan was for the approval incorporated the previously platted Phase 1 and proposed 281 single family residential homes on an approximately ± 386.7 acre tract (Attachment 3). Currently, this MDP-2018-06 has not been approved and is still pending. This application will remain valid until March 20, 2020.

Also on March 20, 2018, the applicant applied for a Zoning Text Amendment to the Pender County Unified Development Ordinance to amend Section 5.3.2 'Table of Permitted Uses' to allow for the use of 'Borrow Pit Mining' (NAICS 212321) as a use permitted with an approved Special Use Permit and in conjunction with the Master Development Plan Process with Standards in the RP, Residential Performance zoning district (ZTA 2018-02). The Pender County Planning Board unanimously recommended approval of the Zoning Text Amendment to the Unified Development Ordinance at their June 5, 2018 meeting. The Pender

County Board of County Commissioners, at their June 18, 2018 meeting, approved ZTA 2018-02, as described above (Attachment 4).

On January 25, 2019, the applicant applied for a Preliminary Plat for Brick Chimney Landing's Phase 2 (SUBMAJ-2019-22), which includes 281 single family residential homes on an approximately ± 386.7 acre tract (Attachment 5). Currently, SUBMAJ-2019-22 has not been approved and is still pending. The application will remain valid until January 25, 2021. Please see Attachment 6 for a visual of the proposed mining sites overlaid on the MDP-2018-06.

Mining Operation Phasing

According to the applicant's submitted site plan, both Mining Sites #1 and #2 will be operated in phases. Both Mining Sites consist of five (5) phases and the total acreage of each phase is listed below and shown on Sheet 1 of the submitted site plan:

Mining Site #1	Mining Site #2
Phase 1: 1.50 acres	Phase 1: 2.67 acres
Phase 2: 1.30 acres	Phase 2: 2.63 acres
Phase 3: 1.14 acres	Phase 3: 2.24 acres
Phase 4: 1.30 acres	Phase 4: 2.56 acres
Phase 5: 0.98 acres	Phase 5: 3.12 acres
Phases Total: 6.22 acres	Phases Total: 13.22 acres

The temporary sediment basins will be installed prior to the initiation of Phase 1 of both Mining Sites. The construction schedule and chronological sequence of land disturbing activities is shown on Sheet 1 of the submitted site plan.

Hours of Operation

According to the applicant's narrative, the proposed sand pit mine will operate during normal business hours (8:00 AM to 5:00 PM; Monday thru Friday). The narrative further explains that the mine pit will be staffed with two (2) employees who will be responsible for excavation and loading material for customers. As the proposed mining pit area is located over 500 feet from adjacent property owners in an existing cleared area, the applicant states that this proposal will not adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the subject property.

Driveway Access

The applicant's site plan and page two (2) of the submitted narrative, proposes the mining operation will have one driveway access point along Shaw HWY, approximately $\pm 7,827$ feet (± 1.48 miles) north of the intersection of Shaw HWY (SR 1520) and NC HWY 210, across from Tylers Run (Private). The applicant assures that proper signage will be posted to protect the safety of passing motor vehicles. All proposed driveways are subject to review and approval by the NCDOT through a driveway permit which may be required at the Major Site Development Plan submittal.

The applicant states that new haul roads will be installed, as shown on the submitted site plan, which are approximate locations of where the subdivision roads will be constructed following the mining operation.

Landscaping and Buffers

Section 8.1.2 of the Pender County Unified Development Ordinance prescribes that the landscaping and buffering requirements found in this Article shall apply to all development within Pender County with the exception of bona fide farming activities, properties listed on the National Register of Historic Places (NRHP) and residential development of one housing type in the Residential Performance Districts. This Section further details that landscaping and buffer requirements shall apply in all business, planned development, industrial, and non-residential uses in other zoning districts when:

- A. A new principal structure is built, or
- B. An existing principal structure is expanded sufficiently to increase its interior square footage by fifty percent (50%) or more, in any one or more expansions, or
- C. An existing use is expanded sufficiently to increase its square footage by fifty percent (50%) or more, in any one or more expansions, or
- D. A change in use from residential related to office, service, commercial or industrial, or from office, service or commercial to industrial, or
- E. In any residential development with two or more types of housing development, or
- F. A use is discontinued on a site for a consecutive period of one hundred eighty (180) days per Section 10.4.4 and a new use is proposed.

Since the subject property of the proposed Special Use Permit is within the RP, Residential Performance zoning district, and provisions A-F, above, do not apply, the standards outlined in Article 8 do not apply.

To ensure that the requested use will not impair the integrity or character of the surrounding or adjoining districts, will not adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property, nor constitute a nuisance or hazard, the applicant is proposing to retain a 50 foot buffer directly surrounding the limits of disturbances of both mine sites. These buffers are shown on Sheets 1-3 of the submitted site plan.

Utilities

Since there is no facility on site for the mining operations, the applicant does not propose the need for any water or wastewater service. However, the mining site will utilize a port-a-john service as restroom facilities for the two (2) employees.

Mining Permit

Regulations for borrow pit sand mining are overseen by NCDEQ Division of Land, Minerals and Land Resources. Any final zoning approvals are contingent upon review and approval from NCDEQ. Specifically, the permit is required for the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores or other solid matter. This includes any activity involved in "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," as stated in the Pender County Unified Development Ordinance (Appendix A, Page 17).

According to the submitted narrative, the applicant is aware that a mining permit will be required from NCDEQ and an application package will be submitted to NCDEQ concurrently with this Special Use Permit application. Nonmetallic Mineral Mining and Quarrying shall be subject to all criteria set forth in NCGS §74, North Carolina Mining Act. The applicant assures that the mining activities will be contained to the project site, which is approximately 12% of the total area of the subject property.

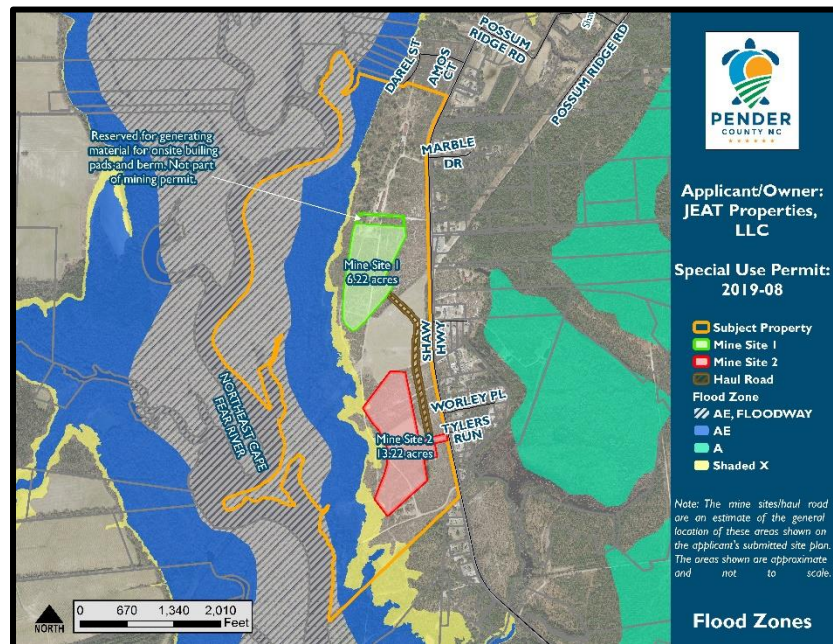
Fencing

According to note 2 under “Planned Erosion and Sediment Control Practices” shown on Sheet 1 of the submitted site plan, sediment fencing should be installed as shown on the plan, to delineate and protect wetlands and specified areas, and around any temporary stockpile areas as necessary to prevent any graded interior areas from eroding onto adjacent lands or roadway, or into inlets, or as directed by engineer.

Environmental Concerns

According to the National Wetlands Inventory, there are Freshwater Forested/Shrub Wetland on the subject property, but it does not appear that these wetlands intersect any portion of the proposed mining site. Notes 5 and 6 on Sheet 1 of the submitted site plan state that all wetlands on site area 404 (No impervious setbacks required) and no wetlands exist within the limits of disturbance. Any disturbance to these wetlands is subject to the review and approval of the United States Army Corps of Engineers. Further, all development within jurisdictional wetlands requires review and approval from the United States Army Corps of Engineers. Any development within these areas may be subject to the permit requirements of Section 404 of the Clean Water Act.

Data from the North Carolina Flood Risk Information System (NCFRIS) indicates that the subject property is located within the Zone AE and 0.2% Annual Chance Flood Hazard (Shaded X) area. Both of these flood zones are designated as Special Flood Hazard Areas. According to Sheet 1 of the submitted site plan, Mining Site 1 does not intersect any portion of these Special Flood Hazard Areas. However, the northwestern and southwestern portions of Mining Site 2 do intersect a portion of the Shaded X Special Flood Hazard Area. Any mining activities in the Special Flood Hazard Area may be required to be in accordance with the Pender County Flood Damage Prevention Ordinance.

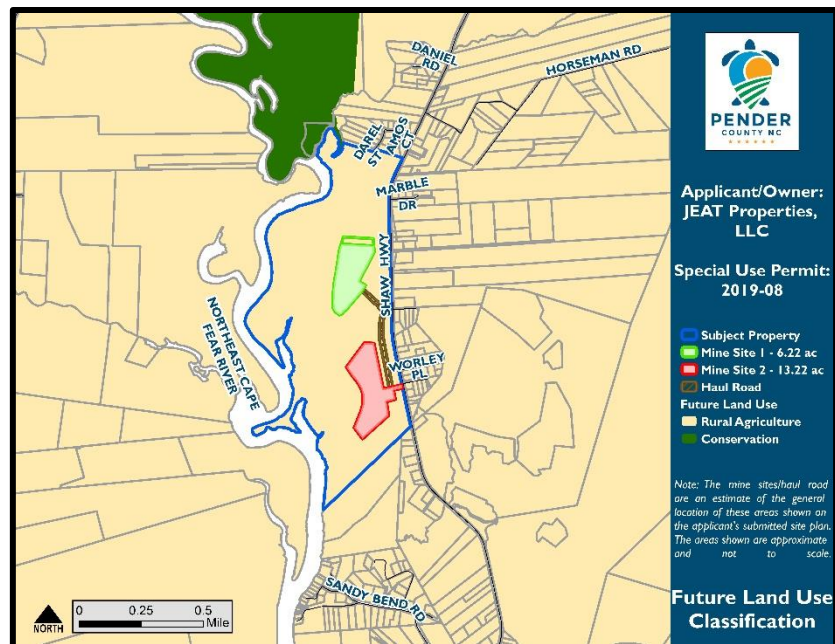


Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, the proposal is subject to all other applicable Federal, State, and local permits and agency approvals.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
Sector 21: MINING, QUARRYING, OIL AND GAS EXTRACTION											
Nonmetallic Mineral Mining & Quarrying	2123	S								S	
Except: 212321 Borrow Pit Sand Mining			PMDS			PMD					

EVALUATION:

- A. Public Notifications:** Advertisements for the proposal have been placed in the Pender-Topsail Post & Voice. Adjacent owners within five hundred feet (500') of the subject parcel were notified by first class mail; as well as a sign advertising the public hearing was placed on the subject property.
- B. Basis for Granting SUP:** Approval procedures are located in Section 3.12.3 of Unified Development Ordinance and revocation procedures are located Section 3.12.4 of Unified Development Ordinance. See Attachment 7 for approval procedures (§3.12.3 of the Unified Development Ordinance) and revocation procedures (§3.12.4 of the Unified Development Ordinance).
- C. Unified Development Ordinance Compliance:** The subject properties are zoned RP, Residential Performance zoning district and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; Borrow Pit Sand Mining (NAICS 212321) is permitted via Special Use Permit, with additional standards, when submitted in conjunction with a Master Development Plan in the RP, Residential Performance zoning district.
- D. Pender 2.0 Comprehensive Land Use Plan Compliance:** The subject property is classified as Rural Agriculture in the Pender 2.0 Comprehensive Land Use Plan. The Rural Agricultural future land use category supports and protects Pender County's agricultural areas. These areas are an essential part of the County's economy and agricultural heritage. Within the Rural Agriculture future land use category, agriculture uses are highly encouraged. Preservation of prime farmland soils for continued prosperity of farming and forestry operations should be considered. Manufactured homes and very low density single-family detached dwellings are appropriate uses in this category.



Commercial, civic, office, and institutional uses are permitted where compatible with existing neighborhoods and as a resource or employment opportunity for area residents. Development density within this category is one dwelling unit an acre or less. Expansion of centralized water and sewer systems within this future land use category are discouraged, unless necessary to protect public health when existing systems fail.

In addition to being consistent with the Future Land Use Map, the proposed Special Use Permit is also consistent with two (2) goals and one (1) objective within the Pender 2.0 Comprehensive Land Use Plan:

Goal 5.1: Land Use and Growth Management: Manage the physical growth and development of Pender County by encouraging more intensive land uses in key locations identified for such growth while preserving and protecting the unique physical character and social assets of the rural heritage and coastal habitat that makes the County a unique place to live.

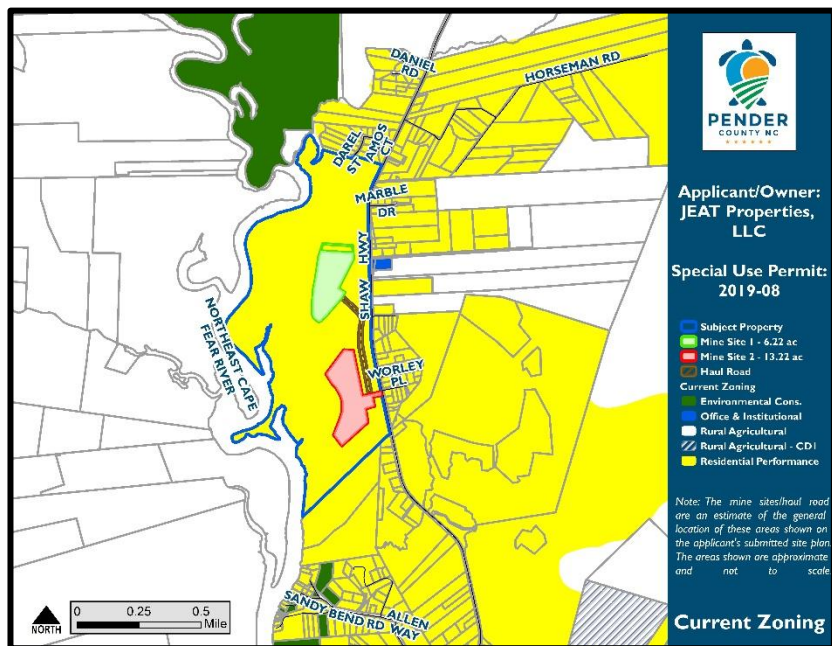
Objective 5.1: Land Use and Growth Management: Ensure that development and use of resources balances protection of natural resources and agricultural lands with economic development, avoids risks to public health and welfare, and is consistent with the capability of the land.

Goal 5.9: Public Input: Increase opportunities for public input in all facets of the land use planning process.

The proposed Special Use Permit does not appear to be inconsistent with any goals, policies, or objectives within the Pender 2.0 Comprehensive Land Use Plan.

E. Existing Land Use in Area:

There is one (1) tract associated with this request totaling approximately ±202.87 acres, with the total mining area encompassing approximately ±24.40 acres, or approximately 12% of the total property area. The surrounding properties are primarily rural and residential in nature. The properties to the North, West, and South are currently occupied by vacant wooded and riverine areas. The subject property is bound by the Northeast Cape Fear River on the west and single-family homes on the East.



F. Site Access Conditions: The applicant's site plan and page two (2) of the submitted narrative, proposes the mining operation will have one driveway access point along Shaw HWY, approximately ±7,827 feet (±1.48 miles) north of the intersection of Shaw HWY (SR 1520) and NC HWY 210, across from Tylers

Run (Private). The applicant assures that proper signage will be posted to protect the safety of passing motor vehicles. All proposed driveways are subject to review and approval by the NCDOT through a driveway permit which may be required at the Major Site Development Plan submittal.

The applicant states that new haul roads will be installed, as shown on the submitted site plan, which are approximate locations of where the subdivision roads will be constructed following the mining operation.

G. Conditions To Consider In Issuing the Special Use Permit For This Project:

1. The project shall comply with all requirements of the Pender County Unified Development Ordinance.
2. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
3. The applicant shall meet all other local, state and federal regulations.
4. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
5. The Board Order Findings of Facts shall be recorded with the Pender County Register of Deeds.
6. 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.
7. The mining operations shall be completed within two (2) years of the Master Development Plan approval. The administrator may grant an extension of six (6) months with a written request provided by the applicant and/or property owner that justifies the need for the extension. This extension is contingent upon the continued preparation of the site for residential development.
8. Daily functions of the mine shall be Monday through Friday from 8:00 AM until 5:00 PM.
9. The applicant or operators responsible for excavating and loading material for customers shall retain a 50 foot buffer directly surrounding the limits of disturbances of both mine sites detailed in this Special Use Permit.
10. This borrow pit sand mine shall be limited to 12.5% of the total tract acreage.