

RESOURCE EXTRACTION PERMIT RENEWAL
PHOENIX PINELANDS CORP.
Block 3, Lot 9.01
Route 539
PA Preservation Area & PV Pinelands Village Zones

Application No. P85-17AB

**RESOLUTION OF APPROVAL 2018-12
PLANNING BOARD, TOWNSHIP OF LITTLE EGG HARBOR**

WHEREAS, an application has been made by **PHOENIX PINELANDS CORP.** for the renewal of a Resource Extraction Permit for Block 3, Lot 9.01 as set forth on the Tax Maps of the Township of Little Egg Harbor; and

WHEREAS, the Planning Board, after carefully considering the evidence presented by the applicant, and the report from its professional staff, hereby makes the following findings of fact:

1. The applicant was represented by Howard Butensky, Esq., at the April 5, 2018 public hearing.
2. The site in question is located along the western side of Route 539 in the Preservation Area (PA) and Pinelands Village (PV) Zones.
3. The applicant has submitted the following:
 - Resource Extraction Plans prepared by Bryan Luoma, PE, dated March 5, 2018
 - Standard Planning Board application package
 - Addendum List of Required Permits
 - Addendum Statement of Operations and Acknowledgement, dated March 5, 2018
 - Addendum List of relief requested
 - Copy of application to Ocean County Planning Board
 - Copy of application to Ocean County Soil Conservation District
 - Copy of application to New Jersey Pinelands Commission
4. The applicant has a propriety interest in the property.
5. The applicant has requested approval in accordance with the Ordinances of the Township of Little Egg Harbor.
6. T&M Associates, the Board engineers, prepared a report dated March 27, 2018. The Board hereby adopts the findings in said report and incorporates them into this Resolution by reference.

7. The applicant requested and was granted waivers from the requirements to submit the following as completeness items:
 - Cultural Resource Study
 - Resource Capability Map
 - Vegetation Map
 - Noise Contour Map
8. The applicant is seeking a two-year renewal permit for a dredge-mining operation in the northern portion of the Township. The current permit, granted pursuant to Resolution 2016-12, will expire on June 30, 2018.
9. The applicant requires the following relief from the requirements of Chapter 290 (Soil Removal, Excavation and Mining) of the Township Ordinance:
 - Section 290-7G(1) limits the size of mined lakes to 20 acres. The applicant proposes a lake size of 199.6 acres. This relief was previously approved in the 2016, 2014 & the 2012 approvals of the Board.
 - The applicant is requesting a waiver from the requirements of § 290-7G(3), which limit the depth of the water in the pond to a maximum of 35 feet. The applicant is proposing to continue the previously-approved water depth of 84.0 feet in Resource Extraction Areas 1 & 3; and a depth of 122 feet in Resource Extraction Areas 2 and 4 thru 10. This relief was previously approved in the 2016, 2014 & 2012 approvals of the Board.
 - Section 290-7G states that in no case shall any excavation have a depth exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated a greater depth will result in no significant adverse impact to the proposed final use or off-site areas. The ground elevation in the area prior to excavation was approximately 100 feet; therefore the applicant is continuing to propose an excavation depth of 135 feet (except Areas 1 and 3 where 97 feet continues to be proposed). This relief was previously approved in the 2016, 2014 & 2012 approvals of the Board.
 - Relief from § 290-7A(1), which requires no area of operation, sedimentation pond, storage area, equipment or other structure or facility be located closer than 200 feet to any property line, stating these are existing conditions. Condition No. 25 of Resolution 2010-18 required the applicant to restore the required 200-foot buffer along the northeastern boundary nearest the existing residences. This restoration work has essentially been completed. The insufficient buffer remains primarily along the northern lines, although the applicant has indicated no resource extraction work will occur within the 200-foot buffer. The existing lake edge is within 26 feet of the Simms Place Road right-of-way. This relief was previously approved in the 2016, 2014 & 2012 approvals of the Board.

- Relief from § 290-7A(3), which requires a wetlands buffer of 300 feet, is also being requested. The applicant is proposing a buffer of 150 feet, again indicating it is an existing condition. This relief was previously approved in the 2016, 2014 & 2012 approvals of the Board.
 - Relief from § 290-7A(2), which requires no area of excavation, sedimentation pond, storage area, equipment or other structure or facility be located closer than 1,500 feet to any residential or non-resource extraction-related commercial use in existence on the date the permit is issued. The applicant is proposing a 1,100ft buffer for “stationary or fixed land-based machinery”, based upon this being an existing condition. The applicant further notes the floating dredge will maintain a minimum of 200 feet to any property line (300 feet to Route 539), provided it is operating within an approved resource extraction area. This relief was previously approved in the 2016, 2014 & 2012 approvals of the Board.
10. The applicant requested the Resource Extraction Permit be granted for a period of two years, in accordance with § 290-5B, through June 30, 2020. The applicant presented testimony in support of the application and that granting the two-year permit renewal would in no way be detrimental to the public good. The hours of operation will be consistent with prior permit approvals: Monday through Friday from 6:00 a.m. to 7:30 p.m. and on Saturdays from 7:00 a.m. to 3:00 p.m. for sales and loading and from 7:00 a.m. to 6:00 p.m. for dredging and maintenance. There shall be no trucking or dredging beyond these hours. The number of employees (10) will also be substantially similar to prior approvals. The applicant presented testimony relative to the impact of the dredging. Expert testimony was presented by Bryan Luoma, P.E., (engineer who prepared the resource extraction plans). Robert Woodington, Vice-President, Phoenix Pinelands Corporation, also presented testimony on behalf of the applicant. The applicant is not requesting any expansion of the mining areas or operations beyond that previously approved by the Board.
11. Interested parties attended the meeting and commented on the application; the public’s comments have been placed on the record and taken into consideration by this Board.

WHEREAS, the Planning Board has determined that the applicant should be granted the requested relief, as set forth below, for the following reasons:

1. The application is in substantial compliance with the Township Ordinance.
2. The application is consistent with prior approvals of the Planning Board.
3. The application presents no issues beyond those previously considered and approved by the Planning Board.
4. The safety and well-being of the immediate area will not be adversely affected by the proposed permit extension.

NOW, THEREFORE, BE IT RESOLVED by the Little Egg Harbor Township Planning Board that the application is hereby approved subject to the following conditions:

- 1. These specific conditions noted herein are an integral part of the basis for which the approval is being granted and are intended to be inseparable from the right of enjoyment of this approval.**
- 2. The applicant must post all bonds and guaranties as required by Ordinance Chapter 290 and recommended by this Board and said Planning Board engineer. Moreover, the Applicant must post all required engineering inspection fees.**
- 3. The applicant shall comply with all enumerated conditions and recommendations of the Planning Board Engineer's March 27, 2018 report referenced above. Said conditions are incorporated herein by reference.**
- 4. The applicant shall submit revised plans and documents in accordance with the requirements of the Planning Board Engineer's March 27, 2018 report referenced above.**
- 5. The applicant shall continue to comply with all conditions contained in Resolution 2016-12, Resolution 2014-11 & Resolution 2012-09, all of which are incorporated herein by reference.**

In addition, the following general conditions shall apply:

1. The applicant must submit proof of payment of all currently due taxes to the Little Egg Harbor Township Planning Board.
2. All representations and statements made by the Applicant, as well as Applicant's representatives and witnesses, shall be considered and deemed to be relied upon by the Board in rendering this decision and to be an expressed condition of this Board's actions in approving the subject application. Any misstatement or misrepresentation, whether by mistake or change in circumstance shall be deemed a breach of this condition of approval and shall subject this application to further review of this Board's own motion.
3. In the event the Planning Board determines it reasonably relied upon any misstatement or misrepresentation, any approvals previously given may be rescinded and any improvements at the time in place on the premises in question shall not be in compliance with the ordinances of the Township of Little Egg Harbor.

4. In the event the applicant is proven to have violated the limitations and conditions of this approval, either in municipal court or any other legal or administrative proceedings, the Township of Little Egg Harbor reserves the right to revoke the two-year mining permit and require the applicant to appear before the Planning Board for further review as the Planning Board may deem necessary. The applicant would further be subject to any other sanctions available by law.

5. The terms and conditions contained herein shall be binding upon all successors, assigns, personal representatives, heirs, and all and every other person or entity taking possession or title with respect to the premises in question.

6. The applicant must obtain reports with signed certifications from the Township of Little Egg Harbor Engineer, code Enforcement Officer, and Building Department certifying that all conditions of the Resolution have been met.

7. No permit shall be issued until the Planning Board professional fees have been confirmed by the Board Secretary as paid in full. In the event a two-year permit is issued and there are outstanding Planning Board professional fees, a stop work order will be filed against the applicant/contractor until such professional fees have been paid.

8. In the event there is an existing violation, the applicant shall have thirty (30) days from the date of the Notice of Decision was published to correct the violation. Failure to correct the existing violation within the time proscribed will result in the issuance of a summons.

9. This approval is further conditioned upon the review and approval of all other agencies exercising jurisdiction in this matter, either by affirmative action by such other agency or by required passage of time in lieu thereof.


10. The terms and conditions imposed upon the applicant are an integral and material part of the approval granted by this Board. This Board would not have voted affirmatively for said approval without the imposition of the terms and conditions contained in this Resolution.

11. The applicant shall comply with all regulations and obtain all necessary permits required by outside agencies, including local, state and federal.

BE IT FURTHER RESOLVED that the applicant's request for a two-year Resource Extraction Permit, valid through June 30, 2020, and limited to the terms and conditions as set forth more fully in the preamble of this Resolution, be and hereby is approved.

BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the applicant, the Building Department, and the Township Clerk by the Planning Board secretary.

BE IT FURTHER RESOLVED that notification of this favorable Resolution shall be published in an official newspaper of Little Egg Harbor Township within ten (10) days of its passage.



KENNETH LANEY, Chair

CERTIFICATION

I, **Robin Schilling**, Secretary of the Little Egg Harbor Township Planning Board, certify that the foregoing Resolution was duly adopted at a meeting held on May 3, 2018, memorializing the vote of the Little Egg Harbor Township Planning Board at a meeting previously held on April 5, 2018, a quorum being present and voting in the majority.



Robin Schilling, Board Secretary



YOUR GOALS. OUR MISSION.

March 27, 2018

Planning Board Chairman and Members
Little Egg Harbor Township
665 Radio Road
Little Egg Harbor Township, NJ 08087

Re: T&M File No. LEPB-R1983
Application No. 1985-17AB
Sun Bank Escrow File No. 522068102
Mining Permit Renewal (2018 thru 2020) – Phoenix Pinelands Corp.
Block 3, Lot 9.01
Township of Little Egg Harbor, Ocean County, NJ

Dear Chairman Laney and Board Members:

We have received the above-referenced application for the renewal of a Mining Permit, the subject of which is the continuation of a dredge-mining operation in the northern portion of the Township. The current 2-year permit expires on June 30, 2018. The Phoenix Pinelands site is located along the western side of Route 539, approximately 200 feet south of the Stafford Township border, and is within the Preservation Area (PA) and Pinelands Village (PV) Zones.

We received the following documents on March 8, 2018 in support of this application:

1. Resource Extraction Plans consisting of 16 sheets prepared by Bryan E. Luoma, P.E., dated March 5, 2018;
 2. Standard Planning Board application package;
 3. Addendum to the application listing required development permits (pursuant to Ordinance Section 290-6L), dated March 5, 2018;
 4. Addendum to the application including a Statement of Operations and Acknowledgement (as required by Ordinance Section 290-6X), dated March 8, 2018;
 5. Addendum to the application listing the relief requested;
 6. Copy of an application to the Ocean County Planning Board;
 7. Copy of an application to the Ocean County Soil Conservation District;
 8. Copy of an application to the New Jersey Pinelands Commission;
- Copy of checks representing the application fee of \$250.00 and escrow/review fees of \$6,000.00.

Completeness Waivers

Along with the application package, our office also received correspondence from the applicant's attorney dated March 5, 2018, requesting waivers from the requirements to submit the following as completeness items:

1. Cultural Resource Study;
2. Resource Capability Map;
3. Vegetation Map;



Le: Planning Board Chairman and Members
Little Egg Harbor Township
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4. Noise Contour Map.

The applicant should present detailed justification supporting each of the requested waivers. The Board should act on the requested completeness waivers prior to hearing the application.

We have reviewed the submittals, and offer the following comments for the Board's consideration:

1. Planning and Zoning –

- 1.1 This application is for the renewal of an ongoing resource extraction operation. The applicant is presently working under a permit granted pursuant to Resolution 2016-12, as adopted April 7, 2016. The current permit (number 0308) expires on June 30, 2018.
- 1.2 The most recent permit renewal (2016-2018) continued to allow the enlargement of the existing lake to 199.6 acres and excavation to an elevation of 3.0 feet (NGVD 1988) in Resource Extraction Areas 1 and 3; and to -35.0 feet in Resource Extraction (RE) Areas 2 and 4 thru 10. With the current renewal request, the applicant is proposing to maintain those previously approved lake limits and depths.

Based on the proposed continuation of the resource extraction operation, the applicant is requesting the following relief from the requirements of Chapter 290:

- 1.2.1 Section 290-7G(1) limits the size of mined lakes to 20 acres. The applicant is proposing a lake size of 199.6 acres.
- 1.2.2 The applicant is requesting a waiver from the requirements of Section 290-7G(3), which limit the depth of the water in the pond to a maximum of 35 feet. The applicant is proposing a water depth of 84.0 feet in Resource Extraction Areas 1 and 3; and a depth of 122 feet in Resource Extraction Areas 2 and 4 thru 10. Similar relief was granted for the 2016/2018 renewal. Testimony supporting the requested relief should be provided.
- 1.2.3 Section 290-7G states that in no case shall any excavation have a depth exceeding 65 feet below the natural surface of the ground existing prior to excavation unless it can be demonstrated a greater depth will result in no significant adverse impact to the proposed final use or off-site areas. The ground elevation in the area prior to excavation was approximately 100 feet; therefore the applicant is continuing to propose an excavation depth of 135 feet (except Areas 1 and 3 where 97 feet continues to be proposed). During the hearings for prior permit renewals, the applicant presented expert testimony addressing the issues of side slope stability, and the potential for adverse impact to off-site areas and water quality (aquifer contamination) as a result of the dredging operation to the proposed



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depths. The applicant should provide updated verification of same. The impact of dredging to the proposed depth relative to the final use of the site should also be presented. This should be discussed.

- 1.2.4 The applicant is requesting relief from Section 290-7A(1), which requires no area of operation, sedimentation pond, storage area, equipment or other structure or facility be located closer than 200 feet to any property line, stating these are existing conditions. Condition No. 25 of Resolution 2010-18 required the applicant to restore the required 200-foot buffer along the northeastern boundary nearest the existing residences. This restoration work has essentially been completed, although as we have noted in recent inspections, the area needs to be topsoiled and reseeded in bare areas. The insufficient buffer remains primarily along the northern lines, although the applicant has indicated no resource extraction work will occur within the 200-foot buffer. We note the plans depict the existing lake edge within approximately 26 feet of the Simms Place Road right-of-way.
 - 1.2.5 Relief from Section 290-7A(3), which requires a wetlands buffer of 300 feet, is also being requested. The applicant is proposing a buffer of 150 feet, again indicating it is an existing condition. Similar relief was granted for the 2016/2018 permit renewal. This should be discussed.
 - 1.2.6 The applicant is requesting relief from Section 290-7A(2), which requires no area of excavation, sedimentation pond, storage area, equipment or other structure or facility be located closer than 1,500 feet to any residential or non-resource extraction-related commercial use in existence on the date the permit is issued. The applicant is proposing a 1,100 foot buffer for “stationary or fixed land-based machinery”, based upon this being an existing condition. The applicant further notes the floating dredge will maintain a minimum of 200 feet to any property line (300 feet to Route 539), provided it is operating within an approved resource extraction area.
- 1.3 The plans indicate the applicant is seeking permission to mine all ten resource extraction areas, resulting in the increased pond depth discussed above. The applicant should offer testimony supporting its need to mine all ten areas. The Board may recall discussions at the prior renewal hearings concerning restricting extraction operations in Areas 1 and 3 in favor of new Areas 9 and 10, which are further from the existing residences. As noted previously, the applicant is proposing no changes to the limits and depths granted by the 2016/2018 renewal. This should be discussed.
 - 1.4 Condition No. 23 of Resolution 2016-12 requires the applicant to submit an annual hydrographic survey of the lake bottom, signed and sealed by a NJ-licensed land surveyor. An updated survey, dated February 15, 2018, was



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received by our office on March 23, 2018. Based upon a comparison of this latest survey with that submitted in early 2017, we note depth increases of approximately 5 to 10 feet in RE-5, RE-6, RE-7, RE-8, and RE-9. There are only negligible changes to the depths of RE-2, RE-4 and RE-10. The applicant should present additional information regarding these changes.

1.5 We also note an increase in depth of approximately 2 to 10 feet in RE-1 and RE-3, areas in which the mining was to be limited. This should be addressed.

2. Mining Plans –

- 2.1 According to Plan Sheet 3 of 16, the applicant is seeking to operate the site in accordance with the Board's prior approvals. Hours of operation are: 6:00 AM to 7:30 PM, Monday through Friday; 7:00 AM to 3:00 PM on Saturday for sales and loading; and 7:00 AM to 6:00 PM on Saturdays for dredging and maintenance. The applicant should provide testimony on the current number of employees working at the site.
- 2.2 The applicant must verify compliance with the requirements of Section 290-7M regarding the maintenance of roadways, dust control, access to public highways, traffic safety, and the clean-up of any materials spilled as a result of mining operations.
- 2.3 The applicant must also comply with the requirements of Section 290-8 with regard to Restoration Standards, as applicable. All affected areas need to be depicted and clearly labeled on the plans.
- 2.4 The plans should be revised to depict any recent road improvements on the site, including in the area of the offices and storage buildings.
- 2.5 Pursuant to Section 290-60, all buildings and structures must be shown on the plan and their respective uses must be clearly labeled. The applicant shall confirm that all are shown.
- 2.6 The plans indicate that the topographic basemap is from 2015; however, the plans should detail the 2018 bathymetric survey. Based on our review, it appears that the 2015 reference may be a typo. This should be discussed.
- 2.7 The property owner's lists shown on Sheet 3 are dated February 24, 2014 (Little Egg Harbor) and March 14, 2014 (Stafford). Lists no older than 6 months will be required for public notice. The plans should be updated to match current lists.
- 2.8 The following should be added to the plans:
 - 2.8.1 Additional information regarding the stockpiles, including size and height, should be provided.
 - 2.8.2 Any utility easements, rights-of-way, etc., impacting or crossing the site.



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2.8.3 There is a callout on Sheet 2 that reads "Limit of 2018/2020 Mining Application"; said callout should be extended to "point" to the proposed lake edge.

3. Miscellaneous -

- 3.1 As per Section 290-5C of the Township Mining Ordinance, by copy of this letter we are requesting a report from the Township Engineer's Office and the Township Environmental Commission pertaining to the Phoenix Pinelands site.
- 3.2 Section 290-6I requires the applicant to provide a map depicting stormwater drainage patterns, along with the appropriate calculations, delineating how stormwater runoff will be handled.
- 3.3 The applicant should address the issue of maintenance of the access road along the northeasterly portion of site.
- 3.4 We also reference the most recent inspection report dated January 5, 2018 from the Township Engineer regarding results of site inspections and requirements for restoration and planting. The applicant should provide an update on anticipated dredge locations, temporary restoration, etc.
- 3.5 The applicant will be required to submit a performance bond in accordance with Section 290-9B, the amount of which will be calculated by this office.
- 3.6 Should the application for permit renewal be approved, the applicant will be required to fund an escrow account to reimburse the Township for the costs of four inspections per year in accordance with Section 290-7C. The amount of the escrow will be determined by the Township Engineer.
- 3.7 The applicant shall submit proof of liability insurance pursuant to the requirements of Section 290-7D.
- 3.8 Should the application be approved, we recommend the Board continue to require all applicable conditions of approval noted in Resolution 2016-12. Said conditions include, but may not be limited to, the following:
 - 3.8.1 Water quality testing and reporting requirements. We note that the Township Engineer's office has not received water testing results since 2016.
 - 3.8.2 Maintenance of slopes at a ratio of five feet to one foot from the water's edge to a depth of 15 feet below the surface.
- 3.9 The applicant must submit proof/copies of the following:
 - 3.9.1 NJ Pinelands Commission approval;
 - 3.9.2 Ocean County Planning Board approval;
 - 3.9.3 Ocean County Soil Conservation District Certification;



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- 3.9.4 NJDEP Water Allocation Permit;
- 3.9.5 NJPDES General Permit (Mining and Quarrying Industry);
- 3.9.6 NJDEP Air Pollution Control Permit;
- 3.9.7 NJ Department of Weights and Measures Registration;
- 3.9.8 NJ Department of Labor Mining Registration Certificate;
- 3.9.9 NJDEP Flood Hazard Area Permit;
- 3.9.10 Any and all other required agency approvals.





March 27, 2018
Sheet 7

Le: Planning Board Chairman and Members
Little Egg Harbor Township
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Should any Member of the Board have questions regarding this application, please do not hesitate to contact this office.

Very truly yours,

JASON A. WORTH, P.E., P.P., C.M.E.
PLANNING BOARD ENGINEER
LITTLE EGG HARBOR TOWNSHIP

JAW:ls
Enclosures

cc: Robin Schilling, Board Recording Secretary
Terry Brady, Planning Board Attorney
Scott Taylor, Board Landscape Architect
Garrett Loesch, Administrator/CFO
Diana McCracken, Township Clerk
Jeanne Connolly, Chairperson, Environmental Commission
Mark Ellis, Zoning Officer
Howard Butensky, Esq.
Phoenix Pinelands Corp.
15 Roszel Road, Suite 103, Princeton, NJ 08540
Martin Conroy, Esq. (Via Fax Only: 609-452-0090)
Bryan Luoma, P.E.
190 Lewis Street, Suite 401, Rahway, NJ 07065

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