

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

Application No. P85-17AC

**RESOLUTION OF APPROVAL 2020-10
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 June 25, 2020 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 May 20, 2020
 - Standard Planning Board application package
 - Addendum List of Required Permits
 - Addendum Statement of Operations and Acknowledgement, dated February 26, 2020
 - Addendum List of relief requested
 - Waiver request, dated February 26, 2020
 - Barthymetric Survey prepared by Vincent Creevy, PLS, dated April 17, 2020
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 June 1, 2020. 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 2018-12, will expire on June 30, 2020.
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 2018, 2016, 2014 & 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 2018, 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 2018, 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, however, the applicant must continue to review the area and topsoil and reseed in bare areas. The existing lake edge is within 26 feet of the Simms Place Road right-of-way. This relief was previously approved in the 2018, 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 2018, 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 2018, 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, 2022. 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 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 June 1, 2020 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 June 1, 2020 report referenced above.
5. The applicant shall continue to comply with all conditions contained in Resolution 2018-12, 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, 2022, 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.



GEORGE GARBARAVAGE, 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 June 25, 2020, memorializing the vote of the Little Egg Harbor Township Planning Board at a meeting previously held on June 25, 2020, a quorum being present and voting in the majority.



Robin Schilling, Board Secretary