



New Jersey Pinelands Commission Development Application

Updated on 4/23/2019



1. Applicant Name(s)

Phoenix Pinelands Corporation

Mailing Address 2414 Route 34, Suite 202

City Manasquan State NJ Zip 08736

Telephone Number 732-223-4999 Email Address wdenise@phoenixsand.com

2. I wish to authorize an agent to act on my behalf regarding this application: Yes No

Agent Name

Howard Butensky

Mailing Address 9 Robbins Street

City Toms River State NJ Zip 08753

Telephone Number 609-296-3103 Email Address

3. Property Owner Name(s)

Phoenix Pinelands Corporation

Mailing Address 2414 Route 34, Suite 202

City Manasquan State NJ Zip 08736

Telephone Number 732-223-4999 Email Address wdenise@phoenixsand.com

4. Property Subject of Development Application:

Municipality Barnegat

Block # 46 Lot # 14 Block # Lot #

Block # 50 Lot # 2 Block # Lot #

Block # 50 Lot # 3 Block # Lot #

Block # Lot # Block # Lot #

Total Acreage of Property:

227.9

5. Are there any easements or deed restrictions affecting this property? Yes No

If yes, please attach a copy of the recorded deed restriction or property easement.

6. Source of Water Supply:

Existing: Well Public Water System N/A

Proposed: Well Public Water System N/A

7. Source of Wastewater Treatment:

Existing: Onsite Septic Public Sewer N/A

Proposed: Existing Onsite Septic Proposed Onsite Septic Public Sewer N/A

8. Description of **existing** uses/development (uses, # of dwelling units/lots, type(s) of commercial use(s), square footage of commercial buildings, etc.) on property:

The property is currently an active mining and resource extraction operation. Applicant also is permitted to operate a concrete batch plant on the property as a permitted accessory use to the mining and resource extraction operation.

9. Description of all **proposed** uses/development (uses, # of dwelling units/lots, square footage of commercial buildings/additions/parking improvements, etc.) on property:

Mining and resource extraction of Areas A, III, IV and V of the Property depicted on the enclosed plan. Applicant will maintain the permitted accessory use to the mining and resource extraction operation of the concrete batch plant.

10. Please choose the appropriate Application Type and provide the required additional information:

Application Type		Required Fee		Additional Information
<input type="checkbox"/>	New dwelling units or lots or resubdivisions	1-4 dwelling units or lots	\$250 per dwelling unit or lot	Total # of proposed units/lots:
		5-50 units or lots	\$1,000 + \$281.25 per dwelling unit or lot for units 5-50	
		51-150 units or lots	\$13,937.50 + \$156.25 per dwelling unit or lot for units 51-150	
		151 and more	\$29,562.50 + \$125 per dwelling unit or lot for units 151 +	
<input type="checkbox"/>	Demolition of any structure that is 50 years old or older ¹	\$250		Year structure was built:
<input type="checkbox"/>	Change of use and no further development (not served by public sewers)	\$250		N/A
<input type="checkbox"/>	Commercial/institutional/non-residential development or mixed residential/commercial ²	Construction Costs	Fee Formula	Total construction costs:
		\$0 - \$500,000	1.25% of construction costs or \$250 minimum	
		\$500,001 - \$1,000,000	\$6,250 + 1% of construction costs between \$500,000 and \$1,000,000	
		Greater than \$1,000,000	\$11,250 + 0.75% of construction costs above \$1,000,000 or \$50,000 maximum	
<input type="checkbox"/>	Linear development (roads, utilities, etc.; does not include bridges)	\$187.50 per acre of all land, or portion thereof, included in the right of way (ROW) of the proposed linear development project and all land outside of the ROW that will be disturbed as part of the linear development project		Acres to be disturbed, rounded up:
<input type="checkbox"/>	Forestry	\$6.25 per acre, or portion thereof, subject of forestry activities		Acres subject of forestry, rounded up:
<input type="checkbox"/>	Golf courses	\$187.50 per acre, or portion thereof, devoted to golf course facility		Golf course facility acres, rounded up:
<input checked="" type="checkbox"/>	Resource extraction/mining	\$1,875 plus \$37.50 per acre to be mined, or portion thereof, within each permit period		Acres to be mined, rounded up: 59
<input type="checkbox"/>	Solar energy facilities	\$1,500 plus \$500 per acre to be developed, or portion thereof, including off-site development		Acres to be developed, rounded up:

¹ If available, please attach pictures of the structure to be demolished.

² For this application type (shaded above), attach supporting documentation of expected construction costs for the proposed development.

	Application Type	Required Fee	Additional Information
<input type="checkbox"/>	Non-PDC Letter of Interpretation	\$250	N/A

11. Please identify whether any of the following special circumstances apply to this application:

	Special Circumstance	Required Fee
<input type="checkbox"/>	Public development (development proposed by a public agency)	50% of the fee calculated using the above chart (Item #10) with a minimum fee of \$250 and a maximum fee of \$25,000
<input type="checkbox"/>	Religious association or corporation or non-profit organization which is exempt from Federal Income Taxation under Sections 501(c)3 or (d) of the Internal Revenue Code. (This does not apply to organizations that are solely exempt from State Taxation.)	\$500 or the amount calculated in accordance with the above chart (Item #10), whichever is less
<input type="checkbox"/>	Review of any study/survey (cultural, threatened/endangered species, etc.) prior to submission of development application	1/3 of the estimated application fee calculated in accordance with the above chart (Item #10), with the remainder due at the time of application submission
<input type="checkbox"/>	Non-residential development proposing to use an alternate design septic system	\$3,125 + fee calculated in accordance with the above chart (Item #10)
<input type="checkbox"/>	General Development Plan (GDP)	50% of the estimated application fee calculated in accordance with the above chart (Item #10), with the remainder due upon submission of subsequent applications for individual phases of the development

12. **Total fee required** (minimum fee = \$250): \$ 4,087.50

Supplemental Information

The following supplemental information is attached:

- Application fee (Item #12) – Amount enclosed: \$ 4,087.50
Checks and money orders should be made payable to the NJ Pinelands Commission.
- If applicable, supporting documentation of the expected construction costs for the proposed development that were used to calculate the appropriate application fee. (Item #12)
- If applicable, pictures of the structure to be demolished (Item #10)
- If applicable, a recorded deed restriction or property easement (Item #5)
- If applicable, please submit documentation demonstrating that the individual(s) who signed the application form on behalf of the property owner is authorized to act on the property owner's behalf.
- Additional information:

PREPARED BY

STEVEN M. DALTON, ESQ.
Giordano Halleran & Ciesla, P.C.

①5180.00 chg 63 Giordano
DEED RESTRICTION
FOR THREATENED AND ENDANGERED SPECIES

THIS DECLARATION OF DEED RESTRICTION ("Declaration") dated

August 11, 2010,

JUL 28 2017

Made by:

EASTERN CONCRETE MATERIALS, INC., 475 Market Street, Elmwood Park,
New Jersey, 07407 (hereinafter referred to as GRANTOR);

In favor of The State of New Jersey, Department of Environmental Protection, a principle
Department in the Executive Branch of the State of New Jersey, having an address at 401 East
State Street, New Jersey 08625 and the Township of Barnegat, an incorporated municipality
located within the County of Ocean, State of New Jersey, having an address of 900 West Bay
Avenue, Barnegat Township, New Jersey, 08005 (hereinafter referred to as GRANTEES.)

This Declaration is made for no monetary consideration.

WITNESSETH:

WHEREAS, GRANTOR is the owner of certain real property known and designated as
Block 47, Lot 14, and Block 50, Lots 2 and 3, on the tax map of the Township of Barnegat,
County of Ocean, State of New Jersey (hereinafter the "Property"), which Property is described
in the Exhibit A annexed hereto, and is depicted on a plan entitled "Plan Showing Property of
Eastern Concrete Materials, Inc.," prepared by Finelli Consulting Engineers West, dated
February 5, 2009, revised through September 17, 2009 (hereinafter the "Plan") annexed hereto as
Exhibit B; and

INSTR # 2010082024 DR BK 14685 PG 0552 RP/09/2010 10:06:21 AM
SCOTT H. COLABELLA ACTING COUNTY CLERK, OCEAN COUNTY NEW JERSEY

WHEREAS, the GRANTEES consist of a principal Department of the Executive Branch of State Government charged with the responsibility to formulate comprehensive policies for the conservation of the natural resources of the state, including protection of threatened and endangered species and their associated habitat, the promotion of environmental protection and the prevention of pollution of the environment of the State (N.J.S.A. 13:1D-9) and a municipal body whose intent is to preserve and protect certain lands within the municipality that constitute apparent critical habitat for threatened and endangered species, respectively; and

WHEREAS, the GRANTOR submitted a development application for a resource extraction operation at the Property to the New Jersey Pinelands Commission, Application No. 1980-0061.004; and

WHEREAS, in the course of reviewing this development application, the New Jersey Pinelands Commission has determined that it appears that critical habitat for certain designated threatened or endangered species are located on the Property; and

WHEREAS, in order to demonstrate that the proposed development complies with the requirements of the Pinelands Comprehensive Management Plan and the Township of Barnegat's certified land use ordinances regarding threatened and endangered species and their habitat, the GRANTOR proposes to deed restrict from development as defined in the Pinelands Comprehensive Plan a portion of the Property, said are being depicted on the Plan as the "Proposed Deed Restricted Preservation Area" (hereinafter the "Restricted Area"), and said Restricted Area being particularly described in the metes and bounds legal description attached hereto as Exhibit C; and

WHEREAS, through deed restricting the Restricted Area depicted and described in Exhibits B and C, the apparent critical habitat located on the Property should be protected;

NOW, THEREFORE, in consideration for the foregoing, the covenants and agreements contained herein and other good and valuable consideration, the GRANTOR, for itself, its successors and assigns, hereby grants, bargains, conveys, transfers and assigns to the GRANTEES, their successors and assigns, in perpetuity, the following covenants and restrictions:

1. The following activities shall not take place within the Restricted Area without the prior written approval of the Commission.

a. Structure or structures shall not be constructed, built, installed, placed, erected, assembled, manufactured, fabricated, altered, enlarged, maintained, repaired, renovated or replaced on, above, or beneath the surface of the Restricted Area depicted on and described in Exhibits B and C. The term "structure" means a combination of materials to form a construction, fabrication, or any thing of human manufacture, for temporary or permanent occupancy, use or ornamentation having a fixed location on, above or below the surface of land or attached to something having a fixed location on, above or below the surface of land:

b. The surface topography and natural features of the Restricted Area depicted on and described in Exhibits B and C shall not be disturbed or altered.

c. Trees, shrubs, native plants, vegetation or other plant material shall not be cut, destroyed or removed from the portion of the Restricted Area depicted on and described in Exhibits B and C, except that dead, fallen, diseased

or infected tree limbs or other vegetation that pose a health or safety hazard may be trimmed or removed.

- d. Invasive or non-native species shall not be planted on the Restricted Area depicted on and described in Exhibits B and C.
 - e. No alteration to the landscape, including vegetation removal, except as authorized in N.J.A.C. 7:50-6.124 regarding fire protection, or planting of additional vegetation shall occur on the Restricted Area depicted on and described in Exhibits B and C.
 - f. No other activity shall be conducted on, or use made of, the Restricted Area depicted on and described in Exhibits B and C that is likely to have an adverse impact on the apparent critical habitat for threatened or endangered species located on the Property.
2. Notwithstanding any provision of this Declaration to the contrary, if Northern pine snake (*Pituophis m. melanoleucus*) is removed from the list of threatened and endangered species maintained by the State of New Jersey, such that Northern pine snake is no longer considered to be a State threatened or endangered species, then this Declaration shall expire, terminate and be extinguished by its own terms, without any prior approval from the New Jersey Pinelands Commission or GRANTEES and, provided that any necessary relief that may be required by the New Jersey Conservation Restoration Act is granted by the New Jersey Department of Environmental Protection, Green Acres Program, the restrictions imposed pursuant to this Declaration shall be removed from the Property.

3. Nothing contained herein shall be construed to convey to the public any right of access to or use of the Property, and the GRANTOR shall, subject to Paragraph 8 hereof, retain the exclusive right of access to and use of the Property.
4. To accomplish the purposes of this Deed Restriction, the GRANTOR grants the following rights to the GRANTEES, their employees, agents, representatives, successors and assigns and to the New Jersey Pinelands Commission, which is a special beneficiary of the Declaration, its employees, agents, representatives, successors and assigns:
 - (a) To have access and enter upon at all reasonable times to inspect the portion of the Property described in the Restricted Area and to enforce the terms of this Declaration; provided, however, that except in cases in which immediate entry is required to prevent, terminate or mitigate any violation of this Declaration, such entry shall be made upon twenty-four (24) hours prior notice to the GRANTOR, and to the daylight hours on regular business days of the week;
 - (b) In addition to the exercise of any statutory or common law right, to enforce this Declaration by means of any remedy provided for herein or available at law or equity, including but not limited to, enjoining any activity on, or use of, the Restricted Area that is inconsistent with the purpose of this Declaration;
 - ~~(c) To require GRANTOR or third persons to restore the Restricted Area or~~
any portion thereof, as may be damaged by an inconsistent use or activity;
and

(d) To protect and preserve the Restricted Area, and in connection therewith, to determine the consistency of any activity or use for which no express provision is made herein with the purposes of this Declaration.

GRANTOR intends that enforcement of the terms, covenants, conditions, and restrictions of this Declaration shall be at the discretion of the GRANTEES and the New Jersey Pinelands Commission, which is a special beneficiary of this Declaration, their successors or assigns, and that any forbearance on behalf of the GRANTEES or the New Jersey Pinelands Commission, their successors or assigns, to exercise their rights hereunder in the event of any breach by the GRANTOR or third persons shall not be deemed or construed to be a waiver of the GRANTEES' or the New Jersey Pinelands Commission's rights granted hereunder in the event of any subsequent breach, regardless of the number of breaches or the length or time this Deed Restriction remains unenforced.

5. GRANTOR intends that enforcement of the terms, covenants, conditions, and restrictions of this Declaration shall be at the discretion of the GRANTEES and the New Jersey Pinelands Commission, which is a special beneficiary of this Declaration, their successors or assigns, and that any forbearance on behalf of the GRANTEES or the New Jersey Pinelands Commission, their successors or assigns, to exercise their rights hereunder in the event of any breach by the GRANTOR or third persons shall not be deemed or construed to be a waiver of the GRANTEES' or the New Jersey Pinelands Commission's rights granted

hereunder in the event of any subsequent breach, regardless of the number of breaches or the length or time this Declaration remains unenforced.

6. Subject to the limitations set forth in this Declaration, the terms, covenants, conditions, and restrictions of this Declaration shall run with the land and shall be binding, in perpetuity, upon the GRANTOR, its successors or assigns, and all entities having or acquiring any right, title or interest in the portion of the Property described in the Declaration subject to the limitations set forth in the Declaration, the Property or any part thereof, for as long they hold any right, title, or interest in the Property.
7. This instrument shall be recorded in the Office of the Clerk of Ocean County and a reference to this instrument shall be contained in a separate paragraph of any future deed, lease, or document of transfer or conveyance affecting the Restricted Area. GRANTOR shall give written notice to the GRANTEES of any such transfer or conveyance of interest in the Restricted Area prior to or within ten (10) days following such transfer or conveyance. Such notice shall include the name and address of the recipient/owner of such interest. GRANTOR shall provide a copy of this instrument to all subsequent recipients/owners of an interest in any part or the entire Property. The failure of the GRANTOR to perform any act required by this Paragraph shall not impair the validity of this instrument or limit its enforceability in any way.

~~8. If any provision of this Declaration is held invalid as a result of its conflict with~~
any federal, state, or local law, regulation, or other requirements, statutory or administrative, the remainder of this Declaration shall not be affected thereby.

9. The following schedules and exhibits are annexed hereto and shall form a part of this Deed Restriction:

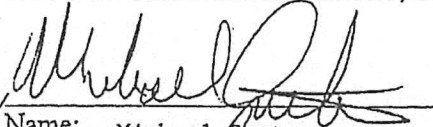
Exhibit A: Metes and Bounds Description of the Property

Exhibit B: Plan entitled "Plan Showing Property of Eastern Concrete Materials, Inc.", prepared by Finelli Consulting Engineers West, dated February 5, 2009, revised through June 29, 2009

Exhibit C: Metes and Bounds Description of Restricted Area

IN WITNESS WHEREOF, and intending to be legally bound, the GRANTOR has executed this indenture.

EASTERN CONCRETE MATERIALS, INC.

BY: 
Name: Michael Centoso
Title: President

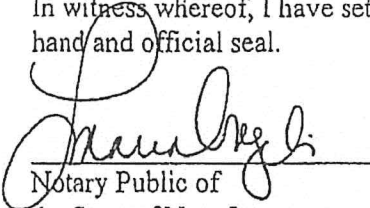
STATE OF NEW JERSEY :

COUNTY OF MONMOUTH:

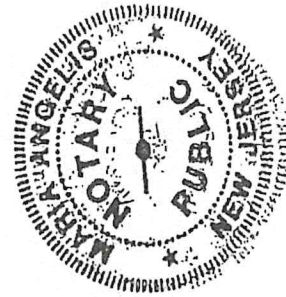
I CERTIFY that on August 11th, 2010, MICHAEL GENTOSO personally came before me and acknowledged under oath, to my satisfaction, that this person;

1. This person signed, sealed and delivered the attached Declaration as President of Eastern Concrete Materials, Inc., the Corporation which is the Grantor in this Deed; and
2. The proper corporate seal was affixed;
3. This Deed was signed and made by the Corporation as its voluntary act and deed by virtue of authority from its Board of Directors; and

In witness whereof, I have set my hand and official seal.


Notary Public of
the State of New Jersey

MARIA ANGELIS
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 10/25/2012



RECORD AND RETURN TO:
STEVEN M. DALTON, ESQ.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701

::ODMA\PCDOCS\GHCDOCS\704301\3

Exhibit A

Metes and Bounds of Property owned by Eastern Concrete Materials, Inc

Barnegat Township
Ocean County
New Jersey

All that certain tract of land situate in Barnegat Township, Ocean County, New Jersey. Said land consisting of the future and current active quarry area contained within Block 46 Lot 14 and Block 50 Lots 2 and 3 and is described as follows:

Beginning at a point. Said point being the most northeasterly corner of the property described herein and also along lands now or formerly of New Jersey DEP Block 46 Lot 10 and lands now or formerly of New Jersey DEP Block 46 Lot 15.

1. Thence along lands now or formerly of New Jersey DEP Block 46 Lot 15 and Block 50 Lot 4, the two following courses and distances:
 - A) South $04^{\circ}-09'-34''$ East, a distance of 4562.38 feet to a point.
 - B) South $72^{\circ}-31'-04''$ East, a distance of 660.00 feet to a point.
2. Thence along lands now or formerly of Jack Cervetto Trust Block 50 Lot 5, South $29^{\circ}-21'-09''$ West, a distance of 1376.03 feet to a point.
3. Thence along lands now or formerly of New Jersey DEP Block 50 Lot 6, the eleven following courses and distances:
 - A) North $67^{\circ}-55'-29''$ West, a distance of 246.45 feet to a point.
 - B) North $61^{\circ}-36'-29''$ West, a distance of 398.30 feet to a point.
 - C) North $76^{\circ}-16'-29''$ West, a distance of 526.00 feet to a point.
 - D) North $62^{\circ}-55'-29''$ West, a distance of 200.00 feet to a point.
 - E) North $56^{\circ}-25'-29''$ West, a distance of 508.40 feet to a point.
 - F) North $10^{\circ}-06'-36''$ East, a distance of 96.00 feet to a point.
 - G) North $55^{\circ}-31'-23''$ West, a distance of 163.90 feet to a point.
 - H) North $10^{\circ}-37'-38''$ East, a distance of 112.85 feet to a point.
 - I) North $74^{\circ}-23'-23''$ West, a distance of 225.00 feet to a point.
 - J) North $39^{\circ}-02'-23''$ West, a distance of 91.90 feet to a point.
 - K) North $71^{\circ}-03'-23''$ West, a distance of 479.63 feet to a point.

4. Thence along lands now or formerly of New Jersey DEP Block 50 Lot 1, the four following courses and distances:
 - A) North $12^{\circ}-59'-20''$ East, a distance of 199.78 feet to a point.
 - B) North $47^{\circ}-18'-27''$ East, a distance of 1794.85 feet to a point.
 - C) North $07^{\circ}-55'-26''$ West, a distance of 657.00 feet to a point.
 - D) South $76^{\circ}-57'-37''$ West, a distance of 528.00 feet to a point.

5. Thence along lands now or formerly of New Jersey DEP Block 50 Lot 1 and Block 46 Lot 13, the two following courses and distances:
 - A) North $43^{\circ}-47'-23''$ West, a distance of 1206.39 feet to a point.
 - B) North $40^{\circ}-42'-37''$ East, a distance of 1391.61 feet to a point.

6. Thence along lands now or formerly of New Jersey DEP Block 46 Lot 10, North $62^{\circ}-57'-37''$ East, a distance of 1570.90 feet to a point, the place of beginning.

The entire site property as described contains 227.873 +/- acres.

- D) South $76^{\circ}-57'-37''$ West, a distance of 528.00 feet to a point.
5. Thence, along lands now or formerly of New Jersey DEP Block 50 Lot 1 and Block 46 Lot 13, the two following courses and distances:
- A) North $43^{\circ}-47'-23''$ West, a distance of 1206.39 feet to a point.
 B) North $40^{\circ}-42'-37''$ East, a distance of 1391.61 feet to a point.
6. Thence, along lands now or formerly of New Jersey DEP Block 46 Lot 10, North $62^{\circ}-57'-37''$ East, a distance of 1570.90 feet to a point, the place of beginning.
7. Thence, along a line that crosses through the preservation area, South $16^{\circ}-56'-39''$ West, a distance of 277.73 feet from the place of beginning of the land described above.
8. Thence, counter-clockwise around the active mining area, through lands of which this is part, the fifteen following courses and distances:
- A) South $52^{\circ}-57'-05''$ West, a distance of 667.81 feet to a point.
 B) South $04^{\circ}-14'-52''$ East, a distance of 1832.14 feet to a point.
 C) South $83^{\circ}-18'-59''$ West, a distance of 141.65 feet to a point.
 D) South $07^{\circ}-54'-34''$ East, a distance of 712.38 feet to a point.
 E) South $47^{\circ}-18'-27''$ West, a distance of 1251.52 feet to a point.
 F) South $42^{\circ}-24'-33''$ East, a distance of 610.27 feet to a point.
 G) South $35^{\circ}-16'-21''$ East, a distance of 370.34 feet to a point.
 H) South $72^{\circ}-24'-28''$ East, a distance of 739.32 feet to a point.
 I) South $68^{\circ}-14'-34''$ East, a distance of 573.66 feet to a point.
 J) South $42^{\circ}-22'-30''$ East, a distance of 263.26 feet to a point.
 K) South $82^{\circ}-40'-56''$ East, a distance of 144.42 feet to a point.
 L) North $29^{\circ}-21'-09''$ East, a distance of 782.69 feet to a point.
 M) North $71^{\circ}-29'-53''$ West, a distance of 610.51 feet to a point.
 N) North $12^{\circ}-56'-23''$ West, a distance of 487.40 feet to a point
 O) North $04^{\circ}-09'-34''$ West, a distance of 3853.53 feet to a point. Said point being the same point described as number 7, above.
9. Thence, along a line that crosses through the preservation area, North $16^{\circ}-56'-39''$ East, a distance of 277.73 feet to a point, the place of beginning.

Less and exempting the following areas:

1. ~~The current access easement through the Preservation Area identified as "Access Easement Thru Preservation Area" as depicted on Exhibit B, the Plan Showing Property of Eastern Concrete Materials, Inc., dated February 5, 2009, revised through September 17, 2009.~~
2. A 25' wide future easement area at the North end of the Preservation Area identified as "25' Access Easement Thru Preservation Area" as depicted on Exhibit B, the Plan

Showing Property of Eastern Concrete Materials, Inc., dated February 5, 2009, revised through September 17, 2009, said easement to be granted pending approval of The Pinelands Commission and Barnegat Township, and to be utilized for future access to the active mining area.

3. An approximately 2.59 acre area depicted as "Area Subject to Removal from Preservation Area" on Exhibit B, Plan Showing Property of Eastern Concrete Materials, Inc., dated February 5, 2009, revised through September 17, 2009, the exact metes and bounds location of which shall be defined at a future date pending approval by The Pinelands Commission and Barnegat Township.
4. An existing access roadway depicted as "Yellow Dam Road" on Exhibit B, Plan Showing Property of Eastern Concrete Materials, Inc., dated February 5, 2009, revised through September 17, 2009.

The Proposed Deed Restricted Preservation Area contains 106.04+/- acres.