

# New York State Department of Environmental Conservation

## Environmental Permits, Region 8

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Joe Martens  
Commissioner

May 3, 2013

Via e-mail ([hellert@continentalplacer.com](mailto:hellert@continentalplacer.com)) and U.S. Mail

John R. Hellert, Senior Geologist  
Continental Placer Inc.  
11 Winner's Circle  
Albany, New York 12205

REC'D MAY 08 2013

Re: Frontier Stone LLC, Proposed Shelby Quarry  
Town of Shelby, Orleans County  
DEC Application No. 8-3436-00033/00001

### NOTICE OF INCOMPLETE APPLICATION

Dear Mr. Hellert:

The New York State Department of Environmental Conservation (DEC) has reviewed the additional information you provided with your letter of March 21, 2013 regarding the preliminary Draft Environmental Impact Statement (DEIS) for the above-referenced permit application.

Based on our review we have determined that DEIS is not yet adequate for acceptance and the application remains incomplete. The following additional information and items must still be addressed:

#### State Environmental Quality Review Act

1. As the lead agency pursuant to the New York State Environmental Quality Review Act (SEQRA), the Department has issued a positive declaration for this action. Before the application can be considered complete, the Department must accept a Draft Environmental Impact Statement (Draft EIS). The information provided in your letter response was submitted for the purpose of addressing technical questions/issues raised in our February 15, 2013 comment letter, but does not purport to be a revised Draft EIS for acceptance. We appreciate the opportunity to review the technical information in a non Draft EIS format, which helps facilitate our review. Prior to accepting the application as complete, a revised Draft EIS will need to be provided that incorporates the revisions noted below.

#### Application Documents

2. As noted in your letter dated September 11, 2012, all necessary permit application forms will be properly completed and submitted with the final Draft EIS submission. The application will remain incomplete until the Department's receipt of properly completed application forms. In addition to forms necessary for the Article 23, Mined Land Reclamation Permit, please also provide updated and properly completed forms for all other necessary DEC permits for this proposal (See 6 NYCRR 621.3 (a) (4)) with your submission of the final Draft EIS submission.

In this regard, revised regulations became effective April 1, 2013 for the withdrawal of water in New York State (6 NYCRR Part 601). These regulations require a water withdrawal permit for the withdrawal of water over 100,000 gallons per day, which includes systems designed to dewater mining operations. Since the proposed operation would exceed this threshold, a water withdrawal

permit will be required and a permit application must be provided. Application materials and instructions for water withdrawal permit applications are available on the DEC website at: <http://www.dec.ny.gov/permits/6377.html>.

### Draft EIS Response Comments

3. Traffic – The Department has evaluated the additional information and responses provided regarding potential traffic impacts. Based on information provided in your letter, the DEIS, including the June 2012 and January 2013 studies, still contains inconsistent references to the volume of traffic estimated. All DEIS references to traffic volumes should clearly indicate whether the data being provided for a truck “trip” is a one-way figure or two-way figure. Please address the following in the revised Draft EIS:
- a. Average Truck Volume Estimate: Using the assumptions provided in Section V.B of the January 2013 traffic study, which are noted below, the average volume of truck traffic would be approximately 128 trips (one-way) per day. However, the text of the DEIS (Section 4.2.3) indicate that the average will be 8-10 trucks per hour, and the 2013 traffic study indicates 65 “trips” per day. Further, page 6 of your March 21 letter indicates in the DEIS “the same numbers of truck trips are consistently used, 8 to 10 (one-way) for the average and 30 truck trips (one-way) for a worst case.”
- $$350,000 \text{ tons per year} \div 220 \text{ working days per year} \div 8 \text{ hours per day} \div 25 \text{ tons per truck} \approx 8 \text{ full trucks per hour.}$$
- Therefore, this would equal 16 truck “trips” per hour, with one empty truck arriving and one full truck departing the site.
- $$16 \text{ “trips”} \times 8 \text{ hours/day} = 128 \text{ “trips” per day average.}$$
- (\* we note that the proposed hours of operation in the Mined Land Use Plan are actually 12 hours per day M-F).
- b. Peak Truck Volume Estimate: As noted above, your letter response dated March 21 (p. 6) indicates that the worst-case truck volume would be 30 “one-way” trips per hour. However, a reference to the January 2013 report appearing just above this statement in the same letter indicates that the peak hours would generate 60 total truck trips during the AM and PM peak hours. If the reference to 8-10 trucks per hour is a one-way reference pertaining to *full* trucks, as noted above, then it would appear that a one-way 30 truck per hour peak would equate to up to 60 truck *trips* per hour (both full and empty). Therefore, contrary to the 240 “trips per day” peak referenced in your letter (p. 6), this would result in a peak of approximately 480 truck trips for an 8-hour day.
4. The DEIS will need to be revised to indicate that a Part 601 Water Withdrawal permit is required for the proposed project.
5. Air Quality: It would appear that the revised emissions inventory shows that further air modeling under the DEC Commissioner’s Policy on Fine Particulate Matter (CP-33) will not be needed since the potential emissions will be below the applicable 15 ton per year threshold. However, staff is not familiar with the “AIRS uncontrolled factor” used to estimate the emissions from the primary and secondary crushers, and cannot verify that the estimated emissions are accurate. The use of the “AIRS uncontrolled factor” will need to be explained in more detail in the emissions inventory provided in the DEIS and other relevant documents.

6. **Wildlife:** Please note that since our February 15, 2013 letter, DEC staff have observed an active osprey nest on the site on the existing powerline right-of-way. Ospreys are listed in New York State as a "special concern" species. This information should be included and discussed in the DEIS.

In addition to the above, it is our understanding that revisions to the DEIS will be made concerning potential groundwater impacts and expanded mitigation measures. Prior to the submission of a response to this letter, we anticipate discussing potential groundwater impacts and alternatives to the currently proposed mitigation measures with you and your client at a meeting in the near future.

This letter is designed to address items necessary to complete the application and address additional information that will be need to be included in the DEIS. It is not a permit decision or an endorsement of any alternatives or mitigation scenarios which have been included in your submissions.

We remain available to meet and discuss any of the above items, should you or your client feel that it would be helpful. If you have any questions about this notice, or would like to schedule a meeting to discuss this application, please call me at (585) 256-5382. Thank you.

Sincerely,



Scott E. Sheeley  
Regional Permit Administrator

Cc: Steve Army, DEC Region 8  
Heidi Kennedy, DEC Region 8  
Dixon Rollins, DEC Region 8  
Tom Marriott, DEC Region 8  
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