

New York State Department of Environmental Conservation

Environmental Permits, Region 8

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Joe Martens
Commissioner

September 27, 2012

Via e-mail (hellert@continentalplacer.com) and U.S. Mail

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

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

REC'D OCT 01 2012

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 September 11, 2012 in support of the above-referenced application for an Article 23, Mined Land Reclamation permit. We received the additional information on September 12, 2012, which was sent in response to the Department's prior correspondence dated December 8, 2011.

The project involves the proposed construction of a 215.5± acre stone and agricultural lime quarry on approximately 269.45± acre parcel of land. The proposed site is located off Fletcher Chapel Road in the Town of Shelby, Orleans County, about 3.7 miles south of the Village of Medina. As proposed, the excavation area would total approximately 172 acres and mining operations would include blasting, crushing, and washing. In addition, the site would require dewatering during mining. The final reclamation would be a combination of wildlife open space and two lakes approximately 35 and 156 acres in size.

Based on our review we have determined that 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 December 8, 2011 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 responses you have provided with the recent re-submission, subject to further revision in accordance with the additional comments that are being provided below in response to your September 11, 2012 package.

Application Documents

2. As noted in your response (page 1), all necessary permit application forms will be properly completed and submitted with your 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 Part 621.3 (a) (4)) with your submission of the final Draft EIS submission. According to the Draft EIS version submitted in August, 2011 (p. 34) the proposal also requires SPDES and Air permits from the Department. Therefore, please also address the following:
 - a. As currently proposed, the mine would require coverage under the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activities and would need to meet the requirements identified in Part VIII. Sector J of that permit (information available on-line at: <http://www.dec.ny.gov/chemical/9009.html>). Please discuss the specific stormwater pollution prevention plan and effluent limitations required by this permit in the revised Draft EIS and provide a completed SPDES Multi-Sector General permit Notice of Intent form.
 - b. Section 4.1.3 of the Draft EIS (revised August, 2011) indicates that the processing equipment will operate under a DEC-issued air permit. However, we were unable to locate information in the Draft EIS or Mined Land Use Plan that indicates the specific capacities of the proposed processing equipment. Please provide the maximum capacities of the processing equipment in tons per hour, and any other information relevant to determining potential emissions of regulated contaminants, so that an accurate determination regarding the applicable air permitting (or registration) requirements can be made. If an air state facility is required for this facility, the necessary application form(s) must be submitted.

Draft EIS Response Comments

3. Traffic – The Department has evaluated the additional information and responses provided regarding potential traffic impacts. Please address the following in the revised Draft EIS:
 - a. The applicant appears to have addressed the feasibility of the different scenarios for truck traffic distribution, however, it is unclear as to what is being proposed. Based on the June, 2012 traffic study, it would appear that a mine entrance from Sour Springs Road is not viable given the intersection geometry at Sour Springs Road and Fletcher Chapel Road, and that the mine entrance will be located off Fletcher Chapel Road. However this is not clearly presented as the preferred alternative and the Draft EIS should clearly indicate the proposed traffic routing and mine entrance alternative in all sections of the document where such information is presented and discussed, including the supporting Mined Land Use Plan.
 - b. While the June, 2012 Traffic Study indicates the peak truck traffic volume would be 240 trips per day, several of the comment responses provided (e.g., pp. 36 and 48) indicate that the maximum truck trips would be 480. This discrepancy should be clarified and, if necessary, the Traffic Study revised accordingly. In addition the revised Draft EIS should provide an analysis based on accurate and consistent traffic estimates.
4. Blasting/Noise – Based on the response provided to Comment No. 5, it is unclear how was it determined what portion of the airblast was to be removed. Specifically, how was the inaudible portion calculated/determined which resulted in the 70.42 decibel reduction depicted on Table 2? Also, that portion or percent of the airblast that falls above and below 20 Hz should be identified.

5. Hydrology and Dewatering – The Department has evaluated the additional information and responses provided regarding potential hydrology and mine dewatering impacts. Please address the following in the revised Draft EIS:
 - a. The maximum gallons per minute (gpm) discharge rate needs clarification. The re-submission indicates that the monthly average discharge rate for March will be 385.6 gpm, Alpha indicates that the annualized average will be 259.67, and the Continental report provides a range of 104 to 694 gpm. To allow the Department to fully address surge pumping and the maximum gpm rating that will occur in its evaluation of impacts and permit decision, please clearly identify the maximum rate of pumping that will not be exceeded at any time through the life of the operation and its estimated duration. Please note that this information will also be further evaluated to determine whether the anticipated alteration of water levels in State-regulated freshwater wetland A-5 (Class I), the receiving wetland, will require an Article 24, Freshwater Wetland permit pursuant to 6 NYCRR Part 663. If an Article 24, Freshwater Wetland permit is required, a Joint Application Form and supporting documents will be required.
 - b. The response includes a brief discussion on an alternative discharge to Fish Creek. If this will be used as an alternative, a specific proposal, triggers, and evaluation will be required to be presented in the revised Draft EIS. Any plan developed for alternative discharges should also address comments and concerns that may be raised by the US Fish & Wildlife Service, and further coordination with that agency regarding water discharges is encouraged.
 - c. With respect to the response for Comment No. 8, the Alpha report indicates that the area of influence (AOI) will extend from the face of the quarry, however, Figure 12 of the last revised Draft EIS shows the AOI originating from the center of the project area. This should be depicted from the quarry perimeter in the next revised Draft EIS.
 - d. With respect to the response provided for Comment No. 9, the new monitoring well locations will need to be identified on the Mining Plan Map. In addition, the residential well survey identified one shallow overburden well adjacent to the proposed quarry, and specific details for the majority of the wells within the area of influence has not been obtained. Therefore, overburden monitoring also needs to be added to the plan. Finally, if a permit is issued for this site, well monitoring would be required (from the initiation of pumping) weekly for the first six months, monthly for the first two years, and every two months thereafter.
6. Fish and Wildlife – The response letter indicates that the cerulean warbler is not listed in New York State as threatened, endangered, or special concern. This is incorrect. This species is listed in New York State as a species of special concern.
7. Cultural Resources – The only determination from the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) regarding cultural resources to date is their March 5, 2007 letter that pertains only to the proposed mining phases 1 and 4. The revised Draft EIS must reflect the limited nature of the Phase 1B testing performed, and the need for additional Phase 1B archaeological testing and OPRHP review for proposed mine phases 2 and 3 prior to any mining activities being conducted in those phases. Depending on the results of any additional phase 1B testing, further avoidance or archaeological investigations may also be required for proposed mining phases 2 and 3.
8. Please revise the DEC contact person on the cover page of the Draft EIS to indicate the following: Scott E. Sheeley, Regional Permit Administrator, NYSDEC Region 8, 6274 E. Avon-Lima Rd., ph. 585-226-5382, fax 585-226-2830, e-mail: sesheele@gw.dec.state.ny.us.

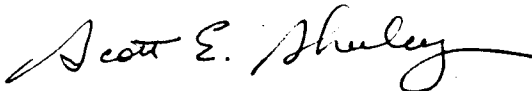
9. Section 4.1.4.3 of the Draft EIS (August, 2011) references State-regulated freshwater wetlands MD-3 and OK-1. However, freshwater wetland A-5 is nearer to the southern boundary of the mine site than either freshwater wetland MD-3 or OK-1. Either the reference to freshwater wetland OK-1 should be revised to read A-5, or freshwater wetland A-5 should be added to the list of wetlands identified.

The Department has determined that a revised Draft EIS that incorporates the responses provided in your September 11, 2012 comment response package, and satisfactorily addresses the additional comments provided by the Department above, would likely be adequate for formal public distribution and review. As a result, with your next submission please provide five electronic copies of the fully revised Draft EIS on DVD or CD-ROM for our review. Upon our determination that the revised Draft EIS is adequate, we will request a sufficient number of hard copies for formal acceptance and public distribution. Please also note that once formally accepted, the Draft EIS will also have to be made available to the public on-line. To facilitate on-line posting, we recommend that you or your client establish a website location/address where the documents would be posted and also provide the Department with the address. The website address will be needed for the purposes of noticing the Department's acceptance of the Draft EIS.

This letter is designed to address items necessary to complete the application. 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) 226-5382. 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
Leo Bracci, DEC Region 8
Frontier Stone, LLC
Kevin Brown, Esq.
Supervisor, Town of Shelby
US Fish & Wildlife Service, Iroquois National Wildlife Refuge