

APPENDIX E

**CEAA CASE STUDY COMPARISON: CONTINENTAL STONE LTD.
CRUSHED ROCK QUARRY AND MARINE TERMINAL PROJECT
(BELLEORAM, NEWFOUNDLAND) (CONSOLIDATED STUDY
REPORT, AUGUST, 2007) AND WHITES POINT QUARRY**

Appendix E

Comparison of the How Two New Quarry and Marine Terminal Projects Were Processed Under CEAA:

Continental Stone Ltd. Crushed Rock Quarry and Marine Terminal Project (Belleoram, Newfoundland)

Comprehensive Study Report , August, 2007

Whites Point Quarry and Marine Terminal

Review Panel Report October, 2007

Summary:

These two very similar industrial projects were considered under the CEAA within the same time period. See Chart, Schedule 1, pp. 17-19 comparing key elements of these two projects.

The purpose, scope and environmental setting for these projects were very similar: to develop a new, large rock quarry and marine terminal on the coast of the Atlantic Ocean, one in the Province of Newfoundland, the other in the Province of Nova Scotia, for the purpose of exporting the crushed rock to foreign markets.

In each case they were to be located close to sensitive coastal/marine environments, and close to a community.

Though they were both new quarry projects by private sector proponents geared towards export markets, located about one kilometre away from populated areas, the two projects received different very treatment throughout the EA process, and ultimately a different result.

The project proposed for Belleoram, Newfoundland, the Continental Stone Quarry and Marine Terminal project (“the Belleoram Project”) was financially supported by an agency of the Canadian Government, the Atlantic Canada Opportunities Agency (ACOA). ACOA is under the general supervision of a Federal Cabinet Minister and its specific mandate is to promote opportunities for economic development in this region of Canada.¹ According to the ACOA web site, Continental Stone Limited is a Canadian-controlled company,

¹ The object of the Agency is to support and promote opportunity for economic development of Atlantic Canada, with particular emphasis on small and medium-sized enterprises, through policy, program and project development and implementation and through advocacy of the interests of Atlantic Canada in national economic policy, program and project development and implementation: Atlantic Canada Opportunities Agency Act (R.S.C., 1985, c. 41 (4th Supp.))

formed through a partnership arrangement between Pennecon Ltd. and Central Construction Limited.²

Despite the fact that the Belleoram project was much larger than WPQ (approximately six times the size geographically, and up to 300% more production annually), and that it had the same CEAA federal Responsible Authorities (DFO and Transport Canada) as did the WPQ (plus an additional RA- ACOA), the government-supported Belleoram Project was provided a preferential EA process – a much more limited and much less onerous CEAA review -- than the WPQ, which received no Canadian government funding or support.

The EA process for Belleoram under CEAA was much shorter, less complex, had a much more limited scope, and the EA was reviewed in a manner that was much less onerous for its proponent than the proponent of the WPQ.

Unlike the WPQ, no Panel Review was held for Belleoram. Unlike WPQ, only the marine terminal was examined in the Belleoram CEAA EA. Federal officials were able to arrive at an approach to the Belleoram Quarry and Marine Terminal project that excluded the large new quarry from being evaluated in the CSR -- so that in the result impacts of the quarry were not considered under CEAA.

Even though the marine terminal was the only part of the project left for consideration in the CEAA CSR, many of the issues on this aspect identified for Belleoram were similar to those which arose in the WPQ (e.g. ballast water impact on local fisheries).

But, again, on these issues, the Belleoram Project received preferential treatment in the CSR and by federal officials. In contrast to the WPQ JRP, which raised many significant environmental effects and then theorized why it was not practical or economic for these to be mitigated, federal officials in Belleoram were prepared to identify and require implementation of mitigation measures for potential adverse environmental effects.

The unprecedented rigidity and apparent hostility of the WPQ JRP to that project compared to the reasonable and usual approach taken by federal officials in Belleoram is illustrated by the concern about ballast water potentially being a problem for the local fishery. This potential environmental effect was present in both projects, but was not considered significant in Belleoram because Federal officials were prepared to give credence to the utility of federal *Ballast Water Control and Management Regulations* and other measures the proponent could take to mitigate such concerns. In contrast, the WPQ JRP concluded these regulations were unsatisfactory and could not be relied on; indeed, the JRP went so far as to recommend they be rewritten and be made much more stringent – a recommendation not acted on by Federal officials.

The CEAA EA process for Belleoram did not require a public Review Panel hearing and took only 1.5 years to get to an approval, whereas CEAA was applied to the WPQ so as to

² Pennecon Ltd.'s web site states it is a member of the Penney Group of companies, headquartered in St. John's, Province of Newfoundland & Labrador, Canada. Central Construction Limited operates out of Montague, Province of Prince Edward Island, Canada.

require a Joint Review Panel process that took almost 5 years, and resulted in it being rejected.

This significantly preferential CEAA treatment for Belleoram is all the more striking given that it was recognized early on in the Belleoram Project process by federal officials that “many of the environmental issues will be similar” to the WPQ, and that some of the same federal offices and officials were involved with both projects at this time.³

Summary and Extracts From Federal Files Showing Positions Taken by Federal Officials That Eliminated the Quarry Component of the “Continental Stone Limited Crushed Rock Quarry Project” Being Evaluated Under CEAA

When the Continental Stone project first came to be considered by federal government officials (following its quick processing under the Newfoundland EA legislation) the project was described as a “rock quarry and marine terminal”.

In a June 14, 2006 letter from Continental Stone to the Regional Superintendent, Navigable Waters Protection (Transport Canada), Continental Stone states it was pleased that Transport Canada will lead the comprehensive study report “for our planned rock quarry and marine facility”. In the same letter Continental Stone states it “has determined that the study should involve the whole area, not just the smaller portion, described as Phase I in the provincial registration document”. Continental Stone also in the same letter states that it believes the scope of work for the quarry site should include a number of things such as:

1. Infilling of the lagoon area south of the Belleoram Barasway;
2. Creation of a stream crossing (culvert, single span bridge) at coordinates;
3. Creation of man-made settling ponds for use of pond water to wash aggregate (pump structure included);
4. De-watering of ponds when required.

The letter continues:

“Ponds that will be utilized for water resources for aggregate washing are Dick’s Pond, Big and Little Nut Pond, Bear Pond and Lou Pond. These ponds follow a system of waterways that run into the quarry site (see attached map)”.⁴

This letter from the proponent is important because it makes clear that from the proponent’s perspective this is both a “rock quarry and marine terminal”. Also, the proponent makes clear

³ May 5, 2006 email from Barry Jeffrey to Steven Zwicker , Canada document 11-492, CP#07751, pg. 025381.

⁴ Canada document 11-342, CP#07601, pg. 024609 – 10; and map of ponds at pg. 024611.

that it has no intention of just limiting its activity to “Phase I” but it wants approval for the “whole area” which is a much larger portion.

Further, the proponent makes clear that a number of areas both on the shore area as well as on land will be affected by the quarry and by quarry activities and that this will affect a number of ponds and waterways. It is clear that the on-land development of this quarry would involve HADD, i.e. “harmful alteration, disruption or destruction” of fish habitat.

The map of the ponds supplied by Continental Stone was provided to DFO officials.⁵ This email string contains an email from Robert Rose at Continental Stone (Pennecon.com) of June 16 in which Robert Rose says “attached you will find the map of the area with the pond names and the letter regarding the scope of the project. If you have any questions call me.”

In the subsequent email from Randy Decker of Transport Canada to other federal officials, Decker says that the written submission just received from Robert Rose focuses “primarily on the water bodies within the project area. Hopefully this will help you with your scoping.” **These emails are annexed as Schedule 2.**

Also, the project would have required blasting to occur within 100 metres of the shoreline and as close as 25 metres. In an email of June 14, 2006, Marvin Barnes, Regional Manager, Environmental Assessment and Major Projects, DFO, sent to other federal officials, re: “Impact of Blasting on Adjacent Fin Fish Aquaculture Sites near Belleoram, Newfoundland”, indicated that while they had received input from “our DFO expert in blasting impacts, that advice assumed that at the onset of blasting, the distance to the water’s edge would be greater than 86 metres and would become greater as the quarry expands thereafter, and therefore it was further assumed there would be no impact at all to either wild or caged fish. However, Mr. Barnes then said:

“We have subsequently contacted Robert Rose of Continental Stone who’s advised that initial blasting within the quarry would take place approximately 100 metres away from the shoreline. As activities at the quarry progress, however, blasting will occur at about 25 metres from the shoreline. Also there would be small blasting within 10-15 metres of the shoreline for road construction. I suspect this will require further detailed analysis, upon receiving a detailed site plan, etc. during the upcoming EA”.⁶

Pausing here, as of June 14, 2006, there were two clear triggers for DFO involvement as an RA under CEAA in this project: use of on-land water bodies and potential HADD to fish, as well as blasting activities near the shoreline that potentially could create impacts to fish.

⁵ June 16, 2006 email from Randy Decker to Marvin Barnes at F and O (DFO) and copied to Vanessa Rodrigues at the Canadian Environmental Assessment Agency, Canada Doc. 11-342, CP#07814, pp. 025560-561.

⁶ Canada document, 11-665, CP#07924, pg. 027072.

This was confirmed in an email July 21, 2006 from Bruce Hood, Manager, Habitat Management, Atlantic and Quebec, Fisheries and Oceans Canada to Ginny Flood, and copied to other officials including those at the CEA Agency, in which Bruce Hood confirms two different matters: (a) that Transport Canada determined at a site visit on July 20 that it did not have a CEAA trigger for any component of the proposal other than a marine terminal; (b) that there were a number of components to the project that should be assessed pursuant to section 35(2) of the *Fisheries Act* which would require issuance of a section 35(2) *Fisheries Act* Authorization. These aspects included the following:

- Construction, modification, decommissioning or abandonment of the marine wharf;
- Infilling of the lagoon area located south of the Belleoram Barasway;
- Infilling and/or de-watering of ponds associated with operation of the quarry, including infilling and/or de-watering of associated outlet streams;
- Drawdown or de-watering of water bodies (i.e. Dick's Pond, Big and Little Nut Pond, Bear Pond and/or Lou Pond) for the purpose of supplying water to the washing station;
- Construction, modification, decommissioning or abandonment of any water control structures;
- Marine infilling associated with road construction and/or quarry construction/operation;
- Creation of stream crossings during construction of the access road.”⁷

Therefore as of July 21, 2006 DFO had concluded that CEAA was triggered by the activities involved with the quarry itself and not just the marine wharf.

This email does however reveal that even at that point DFO was trying to lessen the process by which CEAA would be applied to the project because of these *Fisheries Act* triggers. The email proposes that the construction of the marine wharf would be subjected to a comprehensive study, but the other components listed above would be subject only to a “screening”.

Pausing here we can observe that DFO was acting at this point inconsistently with its approach to the Whites Point Quarry. In the case of the Whites Point Quarry the blasting activity was considered a major issue and the quarry was regarded as an element of the entire CEAA exercise. In the case of the Belleoram Quarry, even though quarrying was to take place within 10 -25 metres of the shoreline as well as further away, DFO ignored that fact completely as a basis for applying CEAA. Moreover, DFO was prepared to limit the way in which CEAA was applied to Belleoram so that only a “screening” would be carried out even though this was the development of a new quarry that in and of itself qualified for a comprehensive study pursuant to section 18(i) of the CEAA *Comprehensive Study Regulations* because its production would exceed 1 million tonnes per year.

It seems clear from even this early date that federal officials were striving to do as little as possible to apply CEAA to this federally supported project. By this date, as indicated, Transport Canada has indicated they would not be an RA in regard to the marine terminal. Now DFO was

⁷ Email, July 21, 2006 from Bruce Hood to Ginny Flood, Canada document 11-152, CP#07411, pp. 023282 and 023283.

signalling that it was not prepared to really assess the quarry at all but simply aspects of quarry development that triggered the need for a potential HADD Authorization.

Federal officials were at this time going so far as to say that there was “no regulatory trigger for the quarry” despite the fact that they recognized that DFO would have to issue *Fisheries Act* approvals that were triggers for CEAA and which would allow them to include the whole of the quarry should they wish to do so, as DFO did at WPQ.

The clear reluctance of federal officials to involve the whole Belleoram quarry is put in an interesting as well as an inaccurate way in the following email from Bruce Hood to Marvin Barnes:

“Yes, as you indicate, our recommendation will be for you to remain with your screening of non-marine terminal components that have DFO regulatory triggers for CEAA. I’ve verified this with Ginny. The rationale is, as you would expect, that DFO doesn’t have a regulatory trigger for the quarry and if we accepted the same scope as ACOA and ACOA backed out of the EA at some point, we would be responsible for the whole enchilada.”⁸

Again, DFO wished to ignore the fact that while they must issue a HADD authorization on which basis they could wrap in the whole quarry component for consideration, they are avoiding that responsibility by the statement “DFO doesn’t have a regulatory trigger for the quarry”. That is clearly wrong and shown to be wrong having regard to what occurred in the Whites Point Quarry matter.

This position is further inconsistent with a draft of the Comprehensive Study Report dated March, 2007 which identified many aspects of the quarry development that would cause HADD and trigger CEAA.

In section 4.1.1 of this draft CSR, it is stated that:

“Construction and operational activities of the quarry have the potential to affect the surrounding terrestrial, fresh water and marine environments by altering the soil and sediment characteristics of the area. Phase I of the quarry project is located adjacent to the ocean shore and also contains the lower end of a small stream/pond system which flows into the Belleoram Barasway, with the land being mostly boreal forest. The remainder of the 900 hectares outside Phase I contain similar terrestrial habitat with several fresh water bodies totalling an area of approximately 75 acres.

Potential effects on soils and sediments include:

⁸ August 31, 2006 email from Bruce Hood to Marvin Barnes re: “Belleoram Quarry Scoping/EA track” Canada document 11-149, CP#07408, pg. 023273

- Erosion related to altered/damaged terrain;
- Metal leaching and acid rock drainage from disturbed rock;
- Chemical contamination from fuel/oil spills or explosive residues; and
- Alteration of marine sediment dynamics.”⁹

The same test CSR also reported the results of evaluation of the “aquatic environment” in the area where the quarry was going to be located and operating. This “fresh water habitat” in the “immediate project area” includes “a small stream system containing four shallow ponds, and a fast running, narrow stream (named T1) emptying into the Belleoram Barasway. Fish and fish habitat surveys of the T1 stream and four associate ponds were conducted. “In general, the habitat is high gradient with large substrate and primarily consists of rearing and migratory habitat.”¹⁰

Further substantiation of why there were fisheries concerns is contained in the following paragraph of the CSR:

“Clearing of trees and overburden within the quarry’s boundary has the potential to increase overland flow to the surrounding areas due to a decreased infiltration capacity of the ground material (soil vs. rock). This is of particular concern in this area, with the presence of steep slopes and the wet conditions in the region ... Construction activities will be coordinated to avoid periods of heavy precipitation and not coincide with sensitive periods for fish and wildlife (when possible).”¹¹

The same draft CSR indicates that Phase I of the new quarry would likely last 20-25 years – this being in the area close to the shoreline. As it puts it:

“Due to the large volume of granite available close to the shoreline there will be a relatively slow progression of development (Phase I lasting 20-25 years); with the remainder of the 900 hectares being quarried with suitable aggregate thereafter. This assessment will primarily address concerns identified with respect to the Phase I boundary.”¹²

Pausing here, it is critically important to observe that all of this discussion about the quarry site containing fish habitat and how development of the quarry would affect streams and ponds in a negative way is not contained in the final version of the Comprehensive Study Report upon which CEAA clearance was given to this project. As will be seen, DFO subsequently managed to

⁹ AMEC, Belleoram Crushed Rock Export Quarry, Draft Comprehensive Study Report, March, 2007, Canada document 11-609, CP#07868 at pg. 026419

¹⁰ *Ibid*, pg. 026408.

¹¹ *Ibid*, pg. 026420.

¹² *Ibid*, pg. 026386.

make all of these issues “disappear” and subsequently took the position that there was no basis for it to be an RA at all in respect of *Fisheries Act* concerns.

To illustrate how the scope of the project was changed to eliminate the quarry between 2006 and 2007, refer to the July 12, 2007 “Notice of Commencement of an Environmental Assessment” (update) published on the CEAA website for this project. This document states that the scope of the project has nothing to do with the quarry project, but is only in relation to the marine terminal: <http://www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=31499&ForceNOC=Y>

Quite specifically this CEAA notice states that:

- “Transport Canada has determined, based on the *Navigable Waters Protection Act*, section 5(1)(a) trigger under the Law List Regulations of the Act, that the scope of the project for the purpose of the EA will include ... the concrete caisson marine terminal.
- DFO has determined, based on the anticipated *Fisheries Act* section 35(2) trigger under the Law List Regulations that the scope of the project for the purposes of DFO’s EA will be ... the Concrete Caisson Marine Terminal”.

Obviously there is utter inconsistency between what was described as fish habitat environment that would be affected by the quarry in internal DFO 2006 documents and what DFO had determined it would care to deal with as of 2007.

This notice is also completely inconsistent with the “Draft Environmental Assessment Work Plan, Belleoram Crushed Granite Rock Quarry” prepared by the CEA Agency dated September 20, 2006 in which it is stated that DFO has CEAA responsibilities for not only the concrete caisson marine terminal, but also for:

“...the construction, operation, modification, decommissioning, or abandonment for all water control structures; stream crossings created during construction of the access road; infilling and/or dewatering of aquatic habitats associated with the operation of the quarry and road construction; and drawdown or dewatering of water bodies for the purpose of supplying water to the washing station.”¹³

As late as December 6, 2006 DFO was still writing to the proponent that project components other than the marine terminal will need a HADD determination and therefore a CEAA screening, and that DFO is going to proceed with the CEAA screening at the same time as the comprehensive study is going on.

This letter is another important confirmation that DFO clearly understood that there were HADD issues arising in conjunction with the quarry even though DFO had made up its mind it would

¹³ Canada document 11-082, CP#07341, pg. 022889.

not include the quarry within the scope of a comprehensive study but rather just let these various so-called minor components be left to a screening.¹⁴

However, during the period January – February, 2007 emails between federal officials established that the CEA Agency was pressuring DFO to make certain determinations as to whether it would do a screening at all based on HADD or if it was going to do a screening to give clear reasons that would eliminate the need for the quarry to be assessed at the same time and have the government pressured into conducting a review panel EA.

It is important to remember this is the same time period as the Whites Point Quarry hearing was getting ready to commence. In the period January – February, 2007 the Whites Point JRP was making its final round of information requests and by May 1, 2007 it had announced that the Whites Point Quarry EIS was deemed complete and public hearings could begin in June.

In response to these messages from the CEA Agency and other officials, DFO at first attempted some strange rationalization for limiting the application of CEAA to a screening ,i.e. “that the quarry will develop over a number of decades” and that DFO hadn’t been given adequate development details for the quarry.¹⁵ However the CEA Agency was nervous about this as is evident from an email from Brett Maracale, January 12, 2007 to Marvin Barnes which states in part:

“Hi Marvin – thanks for the wording provided earlier today, **however the Agency feels that it does not give us comfort with respect to the potential for a screening to be referred to a Review Panel.**”¹⁶

Similarly, doubt was expressed on this rationale by DFO being sufficient in an email from David Robinson at the CEA Agency in an email of January 12 in which he says in reference to Marvin Barnes’ email earlier that day:

“**If this is supposed to provide some comfort as to the unlikelihood to the referral to a panel, it doesn’t do the trick.** Perhaps we could share with Marvin one of the earlier letters from DFO.”¹⁷

It clearly appears what is going on at this point in time is DFO is trying to re-write history and have the whole situation somehow finessed such that they would no longer have any CEAA trigger. On January 17, 2007 Marvin Barnes wrote to others in Environment Canada saying that he understood they are requesting a letter from Fisheries and Oceans with respect to DFO’s intentions with respect to the level of any CEAA review of the “on-land” components. He says:

¹⁴ Canada document 11-091, CP#07350, pp. 022924-925.

¹⁵ See email of January 12, 2007 from Bruce Hood to Marvin Barnes, Canada document 11-148, CP#07407, pg. 023272.

¹⁶ Canada document 11-147, CP#07406 pg. 023269.

¹⁷ Canada document 11-025, CP#07284, pg. 022672.

“... as I indicated to you, we have just today received the project description from the proponent as requested at our meeting in September. This document is currently undergoing a review to establish whether or not the project, as proposed will result in a HADD and therefore trigger a CEAA review. Once this assessment is complete, and likely after we have met with the proponent and their consultant, we will be in a position to advise you with respect to the level of any assessment, etc.”¹⁸

By February 1, 2007, i.e. within less than 2 weeks from the date of the last message from Marvin Barnes, DFO was able to determine, based on verbal advice from the proponent’s consultant, that somehow the project would be configured such that there would be no HADD. In his February 1, 2007 email Marvin Barnes wrote to David Robinson at the CEA Agency stating the following:

“Please be advised that, with respect to the Belleoram Continental Stone quarry project, we have been advised verbally by the proponent’s consultant (with a letter to follow from the proponent) that the project will now be configured such that there will be no harmful alteration, disruption or destruction of fish habitat (HADD) resulting from the aspects of this project other than that arising from the marine terminal itself. As a result of there being no HADD for the components of the project, other than the marine terminal, there will be no requirement to consider the issuance of a section 35(2) *Fisheries Act* Authorization and therefore no requirement for a CEAA review at any level.

As you already have DFO’s letter support regarding the EA track for the comprehensive study of the marine terminal component of the project (as per DFO’s scope of project) I assume that all issues outstanding on this project have been addressed at this time.”

In a response to that email from David Robinson at the CEA Agency, Mr. Robinson confirmed this made the Agency very happy:

“Thank you, Marvin. Now that we have confirmation that DFO will not be conducting a screen on the quarry footprint, we can now move forward with briefing our Minister.”¹⁹

Despite the fact that the CEA Agency and DFO were able to take steps to avoid DFO having to assess the quarry, there was still a political problem for all concerned given that ACOA had originally scoped its own CEAA environmental assessment of the project to include the quarry as well as the marine terminal. The political problem is evident in a May 18, 2007 email from Vanessa Rodrigues at the CEA Agency to various officials at Transport Canada and Public

¹⁸ Canada document 11-146, CP#07405, pg. 023268.

¹⁹ Canada document 11-145, CP#07404, pg. 023267.

Works Canada regarding the scope of the project. Public Works Canada was the agent for ACOA in having a comprehensive study report prepared for ACOA. In this email the CEA Agency official points out that as things have gone up to this point in time ACOA would have the responsibility for assessing the whole (900 hectare) project under CEAA because that's how they defined it. As Vanessa Rodrigues puts it in her email:

“I have discussed this with my contacts in headquarters and simply put, ACOA has scoped the whole 900 hectare quarry and marine terminal from construction to decommissioning. So this means they have to look at everything within that area (including the water bodies beyond Phase I) and determine the environmental effects of the project in that area. DFO is obligated under the Act to provide expert advice to ACOA on the significance of impacts.

I don't believe the proponent has baseline data beyond Phase I clearly this is very problematic at this stage of the game. Are there any options to deal with this? E.g. does DFO have any data already available for water bodies in that area, can we discuss funding with the proponent, maybe they will only apply for funding related to the marine terminal and scope can be modified”²⁰

Another indication that there was some political game-playing going on here are references by DFO to the potential that HADD might be incurred in later stages of the project and how DFO could rationalize not being concerned about that for the present purposes. DFO surmised that even “if any HADD were incurred in later phases, that would be at least 20 years later and DFO could simply do a screening level assessment on such water bodies and in effect ignore the mine itself.”²¹

This approach appears highly inconsistent with the JRP consideration of Whites Point Quarry in that the JRP did not limit its consideration of that project to the first few years but rather was very concerned about how it might ultimately develop and the longer term implications of the total development.

The political nature of the Belleoram exercise is further confirmed in a May 23, 2007 email from Vanessa Rodrigues at the CEA Agency to Marvin Barnes, Randy Decker and others which summarizes a “Federal Review Team Conference Call – Belleoram Crushed Granite Rock Quarry”.

²⁰ Canada document 11-619, CP#07878, pg. 026727. Note that this email was sent to Public Works Canada because it was acting as an agent for ACOA to have a comprehensive study report prepared in respect of those parts of the project that required a CEAA.

²¹ May 22, 2007 email from Marvin Barnes to Vanessa Rodrigues, Canada document 11-260, CP#07519, pp. 023952-023954.

First, it is claimed that ACOA had a “misunderstanding” regarding its responsibilities to include water bodies in the comprehensive study “given that DFO had determined there were no concerns from their perspective at the current time”. However, the CEA Agency clarified during the call:

“That regardless of DFO’s current determination, ACOA’s scope is the whole 900 hectares and given the scope, ACOA is responsible for determining the environmental effects of the project on the 900 hectares, including the water bodies ... if they do not do this the determination of environmental effects would be unknown and the Minister of Environment cannot make an EA decision based on this.”

The Agency memo further states:

“The proponent/consultant neglected/misunderstood ACOA’s scope and requirements.”

The summary then goes on to discuss options which include the following:

- Continue with the current scope – this will require additional field data to be collected and time delay;
- Proponent withdraws intention to apply for federal funding thereby ACOA would withdraw from the comprehensive study and scope would be reduced to TC and DFO current process, the marine terminal. The proponent has verbally indicated that this is an option if applying for funding causes additional delays;
- Proponent submits an application to ACOA for funding limited to the marine terminal or Phase I only – this will enable ACOA to reduce the scope significantly thereby eliminating some of the information requirements beyond the Phase I boundary or beyond the marine terminal;
- Should ACOA decide to re-scope there are two approaches to consider. The most cautious approach from a legal perspective is to re-scope, re-consult with the public, re-submit a track report to the Minister of Environment and wait for a new track decision; this will take significant time;
- The next approach is a risk management approach whereby the scope would be adjusted and the community would be consulted shortly thereafter via a community meeting, the posting on CEAR would be adjusted to reflect the change; this will take less time but there is some level of risk ...”

Under the heading Next Steps the memo suggests that Sean speak to Karl to determine what ACOA is comfortable with in terms of the current scope/circumstances and options for re-

scoping and that when the path forward has been determined the RA should decide what level of confidence they have in the proponent/consultant in producing a viable CSR.²²

This email demonstrates that the Canadian Environmental Assessment Agency as well as DFO and Transport Canada were willing to give up a clear means of causing a full assessment of the 900 hectare quarry when it suited the political purpose of allowing the proponent, who was favoured by the Government of Canada and who was to receive federal funding, to get on with its project. This is clearly inconsistent with the much more onerous approach these same officials imposed on the WPQ.

On May 31, 2007 an email was received from Randy Decker confirming that ACOA had now received a funding application which specified “that funds were requested for the marine terminal portion of the project only therefore ACOA will be limiting their scope of the project to the marine terminal only ...”²³

The same email explained that based on the funding change “the quarry development and operation will not be assessed during the CEAA assessment unless there is another federal department triggered as a RA on the quarry site.” It also referenced an attached revised VEC table from the track report which was submitted to the Environment Canada in December, 2006. “The VEC table has been revised to reflect the narrower scope (marine terminal only). Please review the revised VEC table and feel free to provide comments.” The letter indicated Mr. Decker would go through all the comments previously made by reviewers and “highlight those that are related to the marine terminal” i.e. that only those would be considered to be relevant in finalizing the CSR.

Randy Decker’s email advising how the scope of the project would clearly now exclude the quarry and only involve the marine terminal was transmitted to other involved federal officials including personnel at Health Canada. On May 31st a Health Canada official involved in this project wrote back stating:

“We knew from the beginning that there is scanty information on GW/hydrogeology for this study, it was expected!”²⁴

In other words, some federal officials appeared to understand the political reality that there was no real intention on the part of concerned responsible authorities such as Transport Canada or DFO or ACOA to subject the quarry to a CEAA assessment if they could find a means of avoiding that.

This was further confirmed in an email of June 1, 2007 from Barry Jeffrey, who is Environmental Assessment Coordinator for EPOD (likely the Environmental Protection Office Dartmouth) of Environment Canada in which this official indicates he understood that how

²² Canada document 11-532, CP#07791, pp. 025502-025503.

²³ Canada document 11-533, CP#07792, pg. 025504.

²⁴ Canada document 11-529, CP#07788, pg. 025496.

Belleoram was being treated was substantially different from the treatment of the Whites Point Quarry. He wrote:

“I would have thought that the train had already left the station with a fully scoped project on federal side. In my view, narrowing the scope at this late stage in process does not necessarily follow from the rationale described by TC [in the May 31/07 email from Randy Decker].

... in this case with ACOA and a funding trigger in the equation, interim scoping does not apply. And I can't see how it can be applied retroactively anyway. As it stands, the federal-provincial panel of the whole of the Whites Point Quarry and Marine Terminal chugs along based on only TC and DFO law list triggers for the marine works and the Minister's decision on referral of the whole project.

And since the Minister has already made a decision on the track report as submitted for Belleoram project (i.e. a project which included both the quarry and terminal) has the CEA Agency offered anything on this proposed approach to narrowing the scope at this point? ... It would seem that the implications extend well beyond explaining the scoping changes to the public during a review of a revised CSR (as proposed below). And of course, the more limited provincial EA review is long over. Loraine, are you aware of any similar scenarios in country? Looking forward to seeing how this gets interpreted.”²⁵

Comments on the Final CSR Report for the Belleoram Project dated August 23, 2007, prepared for the Proponent by AMEC Earth and Environmental²⁶

Even though the final CSR Report was limited to the marine terminal aspects, it does discuss similar shipping and related issues that were also involved in the Whites Point Quarry project. Without reviewing the various elements of the Belleoram CSR report in detail here, what is clear is that federal officials in the case of the Belleoram project were able to conclude that all of the various environmental concerns regarding marine issues, fish habitat, interference with species at risk etc. that were also raised by the JRP in the WPQ matter, could be mitigated; none of them presented significant adverse environmental effects considering mitigation measures that could reasonably be applied.

²⁵ Canada document 11-249,CP#07508, pg. 023929.

²⁶ This document was not produced by Canada as it on the CEA website. The website link is: http://www.ceaa-acee.gc.ca/050/documents_staticpost/pdfs/23263E.pdf

For example, with regard to the issue of bulk carriers presenting problems in a marine environment the Belleoram CSR states that such interactions will be minimized by several factors including:

- the infrequent passage of the bulk carrier (every 5-7 days);
- its travel within a designated shipping corridor which maintains a distance of at least 3 kilometres from any identified sensitive marine bird habitat;
- its slow speed within Belle Bay (2 knots);
- not dumping bilge or foreign ballast at the marine terminal site or outside the bounds of the *Canada Shipping Act* and associated Regulations;
- not refuelling at the marine terminal;
- registering ships with the Eastern Canada Response Corporation Limited.”²⁷

With regard to whales, the CSR states:

“The proponent will discuss options to mitigate for disturbance of whales with DFO, including any anticipated monitoring requirements.”

With regard to migratory birds, “all activities will comply with the *Migratory Birds Convention Act* and Regulations and the *Species At Risk Act*, with the project’s construction and operation being designed to mitigate the effects on these sensitive species.”²⁸

It is also interesting to compare the justification for the selection of the Belleoram site compared to the Whites Point Quarry site as described in the CSR:

- “The initial site selection was completed in 2005 using a set of development criteria designed to maximize success of the project. These criteria included a deep water, ice free port and a large tonnage source of high quality aggregates.”²⁹
- “The site has been chosen due to the high quality and high yield of granite available. The site is also proximal to international shipping routes for easy distribution via ocean going bulk carriers.”³⁰
- “The nearest permanent residence is approximately 800 metres from the quarry’s most southern point.”³¹

It can be fairly surmised that these criteria would likely also have been in the minds of the proponents of the Whites Point Quarry project. It can also be observed that the nearest

²⁷ August 23, 2007 CSR Report, Executive Summary, page V, Document 2142, pp. 007345-007537.

²⁸ *Ibid*, pg. V.

²⁹ *Ibid*, pg. 4.

³⁰ *Ibid*, pg. 6.

³¹ CSR, pg. 6.

permanent residence proximate to the Whites Point Quarry project is 800 metres. In other words, there appear to be no substantial differences in justification for choosing the site as between these projects.

A Summary of Mitigation Measures is included in Chapter 11 to the CSR. Many of these involve the same issues that arose in the Whites Point Quarry matter. It is relevant to note that all of these issues have been judged in the case of Belleoram to have “non-significant” effects after application of mitigation. This includes such issues common to Belleoram and Whites Point Quarry as the following:

- fish and fish habitat;
- blasting;
- marine terminal operation;
- ship loading;
- shipping activities;
- commercial fisheries;
- navigation and marine safety;
- marine birds;
- species at risk;
- atmosphere;
- human health and safety.³²

The proponent also identified a “Follow-Up Program” as well as made “Commitments and Obligations” with respect to how the project would be carried out, which are found in Chapter 12 of the CSR .

The use of these measures is standard in EA and should have been considered by the Whites Point Quarry panel.

Conclusion

This comparison of the Belleoram Continental Stone Quarry and Marine Terminal Project to the Whites Point Quarry and Marine Terminal Project demonstrates that the CEAA process can be manipulated, depending on the political objectives of government officials, to either expedite and ease EA requirements or put roadblocks in the path of a project and stop it from coming to fruition. This ability to manipulate the process in government back-rooms unfortunately provides little certainty for project proponents as it allows the CEAA process to be exploited for purposes that may have little to do with the environmental merits of a particular project.

³² CSR, *supra* note 26, chapter 11, pp 129-142.

Schedule 1

**BELLEORAM AND WHITES POINT QUARRY AND MARINE TERMINAL PROJECTS
COMPARISON OF KEY ELEMENTS**

	Belleoram	Whites Point
Project Name:	Belleoram Crushed Granite Rock Quarry Marine Terminal Project	Whites Point Quarry and Marine Terminal Project
Project Type:	Construction and operation of a granite quarry, processing facility, ship loading facility and marine terminal	Construction and operation of a basalt quarry, processing facility, ship loading facility and marine terminal
Government Financial Support:	Federal Government – Atlantic Canada Opportunities Agency	None
Proponent:	Continental Stone Limited, a partnership of Pennecon Ltd. (St. John's, Newfoundland) and Central Construction Ltd., (Montague, P.E.I.)	Bilcon of Nova Scotia Corporation, a wholly owned subsidiary of Bilcon of Delaware, which is wholly owned by the principals of the Clayton group of companies of New Jersey (Ralph Clayton and Sons; Clayton Concrete, Block and Sand)
Intended Market:	U.S.A. and Europe	New Jersey, U.S.A.
Material:	Granite	North Mountain basalts
Location and Proximity to Populated Area:	Near (less than 1 km) from Village of Belleoram, Newfoundland, population 480.	Near (less than 1 km) from Village of Little River, population approximately 200
Size of Operation:	900 hectares	152 hectares (quarrying 120 hectares, other lands as buffer zones)

	Belleoram	Whites Point
Tons Per Year:	6,000,000 tons per year [Canada document 11-004, page 022576-577]	2,000,000 tons per year
Character of the Locale:	Low density rural setting, most of the area outside the town is undeveloped wilderness “Fishing is currently the main industry in the area”	Rural landscape of forests, fields and rock outcrops interspersed with fishing villages [JRP Report pg 69]
Proposed Life of Project:	50 years	50 years
Responsible Authorities:	Transport Canada, DFO and the Atlantic Canada Opportunities Agency	Transport Canada, DFO and the Atlantic Canada Opportunities Agency
Triggers:	Subsection 5(1) of the <i>Navigable Waters Protection Act</i> for marine terminal Subsection 35(2) of the <i>Fisheries Act</i> for the harmful alteration, disruption, or destruction of fish habitat Federal Government (ACOA) financial assistance to the proponent	Subsection 5(1) of the <i>Navigable Waters Protection Act</i> for marine terminal Subsection 35(2) of the <i>Fisheries Act</i> for the harmful alteration, disruption, or destruction of fish habitat
Type of CEAA Assessment and Scope of Project Assessed:	Comprehensive Study Report EA-restricted to Marine Terminal	Joint Review Panel EA – Quarry and Marine Terminal
Time for CEAA Process:	1.5 years: Notice of Commencement: June 7, 2006 Decision November 23, 2007	Almost 5 years: February 17, 2003- December 17, 2007

	Belleoram	Whites Point
Public Opposition:	No: Public support including the Town of Belleoram and from The Coast of Bays Corporation	Yes: Significant split in the community: opposition from fishing families & descendants, retirees and summer residents. Opposition from 5 elected officials from 3 levels of government; Bear River First Nation is opposed
Key Stakeholders:	Key stakeholders included the Town of Belleoram, the Miawpukek First Nations, Port Authority, Fish, Food and Allied Workers	“Those opposing the Project included a mixture of long-term residents, seasonal residents and full-time residents who had retired to the area; for some, their incomes do not depend on the local economy while others (such as fishers, winklers and tour boat operators) have a strong connection to the environment, especially its continuing pristine nature.” [JPR Report, pg 87]
Decision:	Project cleared under CEAA “after taking into consideration the comprehensive study report and taking into account the implementation of appropriate mitigation measures, the project is not likely to cause significant adverse environmental effects . Implementation of mitigation measures is required” [http://www.ceaa.gc.ca/050/details-eng.cfm?evaluation=19881#Documents]	Project rejected under CEAA Panel found that the Project would have a significant adverse effect on the “core values” of the affected communities. No finding of significant adverse environmental effect was made. [JPR Report, pg 4]

June 14, 2006

P.O. Box 8274, Stn A
1309 Topsail Road
St. John's, NL
Canada A1B 3N4

Regional Superintendent
Navigable Waters Protection
P.O. Box 1300, St. John's NL
A1C 6H8

Dear Mr. Shea,

**Re: Notre reference BWA 8200-06-1037
Proposed Rock Quarry and Marine Facility, Belleoram, Fortune Bay, NL**

Continental Stone Limited is pleased that your organization will lead the Comprehensive Study Report for our planned rock quarry and marine facility. We look forward in assisting the various government agencies and community groups in completing this report in an expeditious manner.

Continental Stone Limited has determined that the study should involve the whole area and not just the smaller portion described as phase 1 in the Provincial Government Registration Document. Additionally, we have determined the scope of work for the quarry site including the names of ponds located on the site.

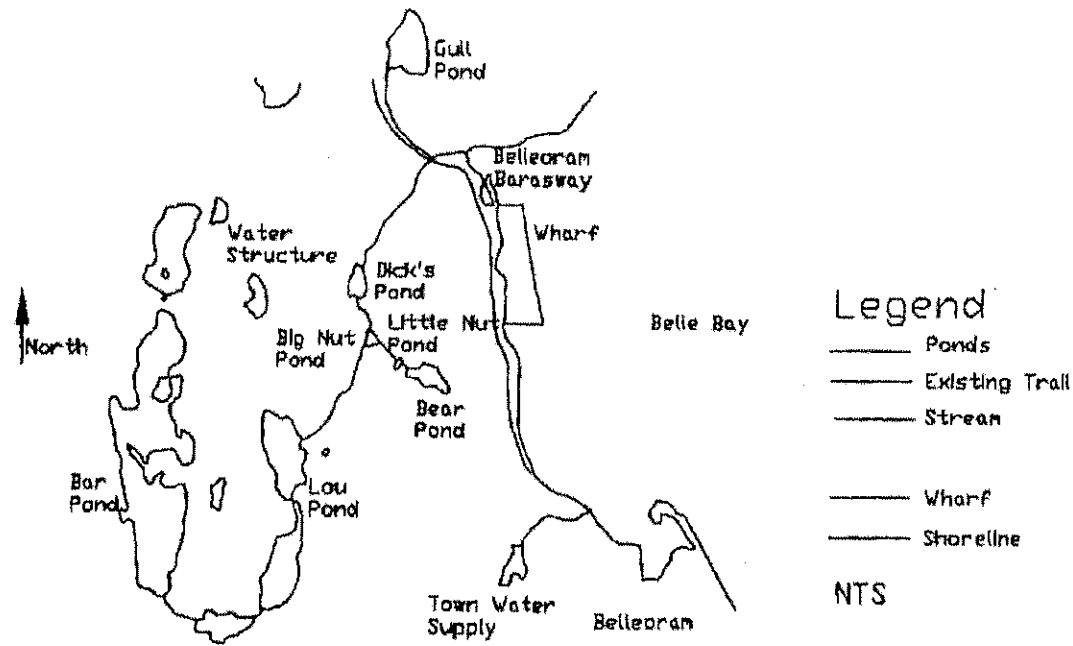
Continental Stone would also like to include the following areas for study:

1. Infilling of the lagoon area south of the Belleoram Barasway
2. Creation of a stream crossing (culvert, single span bridge) at co-ordinates
3. Creation of man-made settling ponds
4. The use of pond water to wash aggregate (pump structure included)
5. Dewatering of ponds when required. Ponds that will be utilized for water sources for aggregate washing are Dix's Pond, Big and Little Nut Pond, Bear Pond, and Lou Pond. These ponds follow a system of waterways that run into the quarry site (see attached map). Bar Pond, Gull Pond, and Stearins Pond will not be used.

If you require further information, please don't hesitate to contact me.

Yours truly,

Robert Rose



From: [Rodrigues, Vanessa \[CEAA\]](#)
To: [Cynthia Bell \[CEAA\]](#); [Benjamin Chevill \[CEAA\]](#); [Tobin Gibson \[St. Vincent's\]](#); [Dustin Jarrin \[HCL/OTL/B\]](#); [Sari Mendy \[CEAA\]](#); [jeanm@nov.nl.ca](#); [McAlister, Andrew \[CEAA\]](#)
Subject: FW: Belleoram Crushed Granite Rock Quarry - Additional project components
Date: June 16, 2006 15:02:07
Attachments: scope of project for Dan Sheat.doc, scan.pdf

For your information

A/Senior Program Officer
Canadian Environmental Assessment Agency
1801 Hollis Street
Suite 200
Halifax, NS
B3J 3N4

E-mail: vanessa.rodrigues@ceaa-acee.gc.ca
Phone: (902) 426-9460
Fax: (902) 426-6550

-----Original Message-----

From: Decker, Randy **On Behalf Of** Decker, Randy
Sent: Friday, June 16, 2006 3:44 PM
To: Barnes, Marvin: F&O; Russell, Dana: F&O
Cc: Rodrigues, Vanessa [CEAA]; Whyte, Margie
Subject: FW: Continental Stone Limited

Good Afternoon All,

This is the written submission received from Robert Rose indicating project components in addition to those stated in the provincial registration document. These are focused primarily on the water bodies within the project area. Hopefully this will help you with your scoping.

Cheers,

Randy Decker
Environmental Officer | Agent de l'environnement
Transport Canada | Transports Canada
P.O. Box 1300 | C.P. 1300
St. John's, NL A1C 6H8
Tel: (709) 772-3061
Fax: (709) 772-3072
e-mail: deckerr@tc.gc.ca

-----Original Message-----

From: Robert Rose [<mailto:rose@penncon.com>]
Sent: Friday, June 16, 2006 2:48 PM
To: Decker, Randy
Subject: Continental Stone Limited

Hello Randy

Attached you will find the map of the area with the pond names and the letter regarding the scope of the project. If you have any questions call me. Hopefully this will be it.
Robert Rose

Continental Stone
Bus 709 782 3404
Cell 709 746 3117

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