



June 7, 2013

Sean Bush
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PCL Civil Constructors, Inc.
VTrans No. Brattleboro IM 091-1(65)
Project No. 5513003
Date 07/22/2013
Submission No. WP01.3.1.24.1
Initials ___APG___
SUBMISSION

Jurisdictional Opinion #2-285 - Replacement of Bridges 8N and 8S on Interstate 91 between Exits 2 and 3 in Brattleboro, Vermont.

Dear Sean:

This letter is in response to your request for a jurisdictional opinion pursuant to 10 V.S.A. § 6007 regarding the replacement of Bridges 8N and 8S on Interstate 91 between Exits 2 and 3 in Brattleboro, Vermont. It is my opinion that this project does not require an Act 250 permit as it does not represent a substantial change to a pre-existing development. This opinion is based on the following facts and analysis:

Facts

1. PCL Civil Constructors, Inc. has been selected by VTrans to design and construct the replacement of Bridges 8N and 8S on Interstate 91 between Exits 2 and 3 in Brattleboro with a single structure. The existing twin bridges are 980 feet long and carry Interstate 91 over the West River, Route 30, and the West River Trail. The design calls for the replacement of the bridges with a single structure as well as the realignment of the north and south bound barrels of Interstate 91 through the elimination of the center grass median. Project concept plans have been submitted to various parties to facilitate coordination and completion of final design plans.
2. The project will result in more than 10 acres of actual land disturbance. Additional land which will also be used for staging areas and temporary median crossovers and a total of 22 acres will be involved. (See May 1, 2013, letter and concept plans from Sean Bush to April Hensel).
3. Project construction will occur within the current Interstate right-of way.
4. Interstate 91 was constructed prior to 1970 and qualifies as a pre-existing development.
5. Although initially considered, the project will not use explosives to demolish the bridges. Instead, there will be no use of explosives and in-stream impact will be limited

to placement of a pair of construction pads in the channel (less than 0.6 acres in total size). (Email from Todd Menees, River Management Engineer, to April Hensel, dated May 30, 2013, and email from John Lepore to Todd Menees dated May 29, 2103)

Analysis

Pre-existing Development

Pre-existing developments are exempt from the Act 250 permit requirement unless there has been or is planned a substantial change. The term "development", relating to Act 250 jurisdiction, is defined at 10 V.S.A. §§ 6001(3)(A), 6001a, 6001b, and 6001c. Jurisdiction also attaches to any substantial change to a pre-existing development - 10 V.S.A § 6081(b). The Interstate 91 is a pre-existing development. Therefore, an Act 250 permit is not required unless a substantial change occurs or is proposed.

Substantial Change to Pre-Existing Development

With respect to whether a development is a pre-existing development, the person claiming the exemption has both the burdens of production and persuasion. *Champlain Construction Co.*, Declaratory Ruling Request #214, Memorandum of Decision at 2-4 (Oct. 2, 1990). The person claiming the exemption also has the burden to produce information concerning the scope of the pre-1970 operation and the post-1970 operation sufficient for the Board to determine whether a substantial change has occurred. However, the burden of persuasion with respect to substantial change lies with those who contend that a permit is required. Re: *John Gross Sand and Gravel*, Declaratory Ruling #280, Findings of Fact, Conclusions of Law, and Order at 8 (July 28, 1993).


"Substantial change" is defined as "any change in a development . . . which may result in significant adverse impact with respect to any of the" ten Act 250 criteria. NRB Rule 2(C)(7). Thus, the test for substantial change involves a two-stage inquiry: (i) has there been a cognizable change to the pre-existing development and, if so, (ii) does the change have the potential for significant adverse impacts with respect to Act 250 criteria? Repair and maintenance also do not constitute substantial changes requiring an Act 250 permit. (See Re: *Lake Champagne Campground* Declaratory Ruling #377 Findings of Fact, Conclusions of Law and Order, Page 18 (March 22, 2001).



Conclusion

The bridge replacement goes beyond repair and maintenance. This work does not simply prevent or eradicate alteration to an existing development that would occur through normal wear and tear. The proposed design is a significant alteration as it eliminates two bridges replacing them with a single span and also provides for realignment and improvement to the approaches. This goes beyond simple replacement due to wear and tear. Therefore, the new bridge design represents a cognizable change. In evaluating the potential for significant adverse impacts, I have considered the method of demolition of the existing bridges. One method considered for demolition would involve the use of explosives and then removing the debris from the streambed of the river. This method of demolition has the potential for significant impact under Criterion 1 Undue Water Pollution and has been rejected by the Agency of Natural Resources River Management Engineer. The contractor has indicated this method will not be used. The methods of demolition now proposed minimize instream impacts, as well as erosion potential. The proposed design, methods of construction, and traffic management during construction also will minimize impacts under the relevant Act 250 criteria. Provided the demolition does not involve explosives, I conclude the project will not have significant adverse impacts under the criteria, and, thus, an Act 250 permit is not required.

Best regards,



April Hensel
District 2 Environmental Coordinator

cc: Statutory Parties

This is a jurisdictional opinion issued pursuant to 10 V.S.A. 5 6007(c) and Act 250 Rule 3(A). Reconsideration requests are governed by Act 250 Rule 3(B) and should be directed to the district coordinator at the above address within 30 days of the date of this opinion. Any appeal of this decision must be filed with the Superior Court, Environmental Division, within 30 days of the date the decision was issued, pursuant to 10 V.S.A. Chapter 220. The Notice of Appeal must comply with the Vermont Rules for Environmental Court Proceedings (VRECP). The appellant must file with the Notice of Appeal the entry fee required by 32 V.S.A. 5 1431 and the 5% surcharge required by 32 V.S.A. 5 1434a(a), which is \$262.50 as of January 201 1. The appellant must also serve a copy of the Notice of Appeal on the Natural Resources Board, National Life Records Center Building, Montpelier, VT 05620-3201, and on other parties in accordance with VRECP 5(b)(4)(B). For additional information on filing appeals, see the Court's website at: <http://www.vermontjudiciary.org/IGTC/environmental/default.aspx> or call (802) 828-1660. The Court's mailing address is: Superior Court, Environmental Division. 2418 Airport Road, Suite 1, Barre, VT 05641 -8701.



E-Notification CERTIFICATE OF SERVICE JO #2-285

I hereby certify that I sent a copy of the foregoing Jurisdictional Opinion and attachments on June 7, 2013, by U.S. Mail, postage prepaid, to the individuals without email addresses and by electronic mail, to the following with email addresses: **Note: Any recipient may change its preferred method of receiving notices and other documents by contacting the District Office staff at the mailing address or email below. If you have elected to receive notices and other documents by email, it is your responsibility to notify our office of any email address changes.** All email replies should be sent to nrb-act250springfield@state.vt.us

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By:
Terry Ranney
NRB Technician



From: [Jacqueline Dagesse](#)
To: [Wright, Andrea](#); [Foster, Eric](#); [Caleb Linn](#); [Hoffman, Garrett](#)
Cc: [Mary O'Leary](#); [Gammell, Ann](#); todd.sumner@state.vt.us; [Nick Palazzolo](#); [Andrew Gantt](#); [Steve Sawyer](#); [Urquhart, Brice](#)
Subject: Act 250 Jurisdictional Opinion for Bridges 8 and 9
Date: Tuesday, July 09, 2013 12:20:44 PM

All,

We had a discussion with April this morning regarding her jurisdictional opinion and the full limits of the project. Verbally, she confirmed that it was the intent of her letter to cover both Bridges 8 and 9. She has sent the email below as documentation.

We will keep this on file with other regulatory approvals.

Jacquie

----- Forwarded message -----

From: Hensel, April <April.Hensel@state.vt.us>
Date: Tue, Jul 9, 2013 at 11:55 AM
Subject: RE: FW: Act 250
To: Jacqueline Dagesse <jdagesse@eivtech.com>
Cc: Caleb Linn <cjlinn@pcl.com>

Yes, you are correct it does cover all work at that location. Best regards, April Hensel

From: Jacqueline Dagesse [mailto:jdagesse@eivtech.com]
Sent: Tuesday, July 09, 2013 10:53 AM
To: Hensel, April
Cc: Caleb Linn
Subject: Fwd: FW: Act 250

Hi April,

To follow up from our conversation, I would like to confirm that the Jurisdictional Opinion # 2-285 (attached) covers the full limits of our design build project [Bridge 9N and 9S in addition to Bridge 8N and 8S] in Brattleboro, VT.

Thank you,

Jacquie

Jacqueline Dagesse, MBA, PMP
Environmental Engineer

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