



**NATURAL RESOURCES BOARD**  
Districts #6 & 9 Environmental Commission  
Geoffrey W. Green, District Coordinator  
111 West Street  
Essex Jct., VT 05452

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July 25, 2008

Paul Craven  
6 Sugar Tree Lane, B3  
Essex Junction, VT 05452

RE: Jurisdictional Opinion #6-001

Dear Paul;

In regards to the Alburgh Trestle maintenance project described in your July 8, 2008 letter, the question raised is whether the work proposed by New England Central Railroad constitutes the "construction of improvements" or whether the work is considered repair and routine maintenance? The following is a brief summary of the facts as I understand them:

1. New England Central Railroad proposes to undertake efforts to restore, repair and maintain the Alburgh Rail Trestle from West Swanton to East Alburgh, Vermont.
2. The trestle is 3500' long and 18' wide and crosses Lake Champlain just south of the new Missisquoi Bay Bridge. The staging area for the project is located on the west side of the crossing (Alburgh). The staging area pre-exists and is used for railroad storage of equipment and material. No improvements and no disturbance are planned for the staging area.
3. The staging area will provide the necessary storage for materials used in the project.
4. Most of the work will be done by a rail mounted boom truck. The boom truck will be used to replace pile caps, pile posting, brace replacement, deck tie replacement, stringer replacement and shimming. Support personal will include the use of boats and small barges.

Rule (2)(C) Definitions states:

(3) "Construction of improvements" means any physical action on a project site which initiates development for any purpose enumerated in Rule 2(A) except for the construction of improvements for a home occupation.

The Natural Resource Board has found that alterations to an existing development do not constitute construction of improvements providing it "does not alter an existing development but prevents or eradicates alteration to an existing development which has occurred or would otherwise occur over time through normal wear and tear. *Atlantic Cellular Co., L.P. and Rinkers Inc.*, DR #340 (FCO at 9) (7/11/97); *In Re Vt. Agency of Transportation (Rock Ledges)* DR #296 (FCO at 10) (3/28/97).



It is my jurisdictional opinion that the proposed scope of work is not proposed to initiate development but is rather a remedial alteration to maintain the existing development and therefore does not constitute a development pursuant to T. 10 §6001(ii).

Sincerely,

/s/Geoffrey W. Green  
District Coordinator

This is a jurisdictional opinion issued pursuant to 10 V.S.A. § 6007(c) and Natural Resources Board Rule 3. Reconsideration requests are governed by Natural Resources Board Rule 3 and should be directed to the district coordinator at the above address. Any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of issuance, pursuant to 10 V.S.A. Chapter 220. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the State of Vermont. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Court is: Environmental Court, 2418 Airport Rd., Suite 1, Barre, VT 05641-8701. (Tel. # 802-828-1660).

