

**RESPONSE SUMMARY FOR AUTHORIZATION UNDER THE
VERMONT STREAM ALTERATION GENERAL PERMIT
PROJECT NO. SA-05-041-2015 ATHENS VAN KUREN BRIDGE**

Re: Proposed installation of a 15-foot bridge spanning an unnamed tributary to Athens Brook in Athens, Vermont, involving the excavation of ten or more cubic yards of instream material

The above referenced authorization allows for the installation of a 15-foot span bridge over an unnamed tributary to Athens Brook. The bridge will be used to access the lot located at 272 Route 35 in Athens. The project will be built on an access easement owned by the applicant Renee Van Kuren. The proposed project involves the installation of precast concrete abutments, and in-stream stone fill to protect the abutments. The proposed project is eligible for coverage under the Vermont Stream Alteration General Permit.

The Department of Environmental Conservation (Department or DEC) placed the draft authorization on public notice on May 22, 2016. The Department received written comments from Robert Vietzke, the owner of the property across which Ms. Van Kuren's easement lies. The following is a summary of the comments received from Mr. Vietzke, and the Department's responses to those comments.

Comment 1: The Department of Environmental Conservation (Department) River Management staff lacks the authority to impose a construction project of this magnitude on the site without a revised easement clarifying the applicant Ms. Van Kuren's obligation to properly maintain the proposed bridge. The Department lacks the authority to issue authorization under the Vermont Stream Alteration permit to the dominant estate without the consent of the subservient property owner.

Response: The Department's authority to issue authorizations under the Vermont Stream Alteration general permit stems directly from 10 V.S.A. Chapter 41, 10 V.S.A. Chapter 165, and the Vermont Stream Alteration Rule (Environmental Protection Rule, Chapter 27). Pursuant to 10 V.S.A. § 7501, the Department issued the Vermont Stream Alteration General Permit in 2014. The application for coverage under the general permit requires the name and contact information of the applicant, and the landowner if different from the applicant. In this case, Ms. Van Kuren is both the landowner and the applicant. Both the applicant and Mr. Vietzke have stipulated to the fact that Ms. Van Kuren holds a valid easement across Lot 270. The proposed bridge will be constructed within the right-of-way of this easement, for the purpose of allowing access over the tributary to Ms. Van Kuren's lot. Based on the River Management Program review, the proposed project is

not of an unusual size or magnitude for the location of the project. Nor are bridges distinguished as more impactful than other stream alteration activities.

The installation of the proposed bridge is necessary to allow Ms. Van Kuren to use her easement to access her property, and the bridge was determined by Department staff to be the least environmentally impactful design for providing the necessary stream crossing. Neither state statute or regulation requires the consent of a subservient landowner before the Department can issue an authorization for activity under the Stream Alteration General Permit on an easement held by the applicant. The proposed activity will take place on the land held by Ms. Van Kuren per the terms of her easement, and will not take place on land owned by the Vietzkes outside of the easement. The Department's jurisdiction extends to reviewing a proposed project for conformance with the Stream Alteration Standards (Vermont Stream Alteration General Permit § B.3). Any negotiation between the parties to clarify their maintenance obligations under the easement is outside of the jurisdiction of Department staff, and is not determinative in the decision to issue an authorization under this general permit.

Comment 2: The State may not impose a permanent structure like a bridge on our land without permission in the easement allowing for construction activities.

Response: As stated above, the project is proposed to take place on land owned by the applicant Ms. Van Kuren, per the terms of her easement. Additionally, the authorization under the Stream Alteration General Permit does not impermissibly allow Ms. Van Kuren to enter on to the Vietzke's land to construct the proposed bridge. The General Permit itself states: "An authorization under this General Permit does not grant the permittee the right to enter onto any property not owned by the permittee." Vermont Stream Alteration General Permit § G.1. Furthermore, "Authorization under this General Permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits. Vermont Stream Alteration General Permit § G.4. Issues regarding entry on to the Vietzke's property for any purpose should be resolved between the parties, and are not pertinent to this authorization.

Comment 3: Without language in the easement clarifying who is responsible for bridge maintenance, the subservient property owners might be held liable for repair or maintenance of the bridge in the future. Issuance of the authorization represents a "taking" of the subservient landowners' rights and an imposition of obligations to maintain the bridge onto those landowners.

Response: As the sole applicant and permit holder, Ms. Van Kuren is solely responsible for complying with the terms of the General Permit. This includes compliance with all of the conditions listed in Section 3 of the Authorization, requiring that the bridge meets the terms and conditions of the General Permit, and will not significantly damage the rights of riparian owners. The Authorization also requires that stream alteration activity is conducted in a manner that will not violate the Vermont Water Quality Standards. Should the activity result in a violation of the permit conditions, the permit holder Renee Van Kuren will be liable for those violations unless she has transferred the authorization to another party per Vermont Stream Alteration General Permit § G.12. This authorization does not impose liability for any aspect of the project on any party other than the applicant and permittee.