

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Randolph Davis Road Solar LLC for a
Certificate of public good, pursuant to 30
V.S.A. §§ 248 and 8010, authorizing the
Installation and operation of a 500kW group
Net-metered solar electric generation system in
Randolph, Vermont

Case No. 21-2939-NMP

**FIRST SET OF INFORMATION REQUESTS SERVED UPON
AGENCY OF AGRICULTURE, FOOD, AND MARKETS BY
INTERVENORS MICHAEL BINDER AND JOAN ALLEN**

July 6, 2022

Intervenors Michael Binder and Joan Allen, *pro se*, hereby serve the following First Set of Information Requests upon Agency of Agriculture, Food, and Markets ("Agency") in this matter in accordance with Vermont Public Utility Commission Rule 2.214 and V.R.C.P. 33, 34 and 36.

DEFINITIONS

The following definitions apply to the following discovery requests:

- 1) Reproduce the request being responded to before the response per V.R.C.P. 33.
- 2) Responses to any and all Intervenor requests that are contained herein or that may be filed later should be supplied to Intervenor as soon as they become available to the Agency. That is, the Agency should not hold answers to any requests for which it has responsive data, documents, etc. until responses to any or all other requests are compiled.
- 3) V.R.C.P. 33 requires the response to each request to be made under oath by a Person competent to testify concerning the response and all documents and exhibits produced as part of the response. With respect to each request, please state (1) the name(s) and title(s) of the person or persons responsible for preparing the response; and (2) the administrative unit which maintains the records being produced or maintains the data from which the answer was prepared; and (3) the date on which each question was answered.
- 4) Where information requested is not available in the precise form described in the question or is not available for all years (or other periods or classifications) indicated in a series of years (or other periods or classifications), please provide all information with respect to the subject matter

of the question that can be identified in the Agency's work papers and files or that is otherwise available.

- 5) These requests shall be deemed continuing and must be supplemented in accordance with V.R.C.P. 26(e). The Agency is directed to change, supplement and correct its answers to conform to all information as it becomes available to the Agency, including the substitution of actual data for estimated data. Responses to requests for information covering a period not entirely in the past (or for which complete actual data are not yet available) should include all actual data available at that time and supplementary data as it becomes available.
- 6) Wherever responses include estimated information, include an explanation (or reference to a previous explanation) of the methods and calculations used to derive the estimates.
- 7) Some of Intervenor's requests may make particular reference to a portion of the Agency's filing. Notwithstanding this specific direction, these items should be understood to seek discovery of all information available to the Agency that is responsive to the questions stated.
- 8) "Identify," when used in connection with natural person(s) or legal entities, shall mean the full name and current business address of the person or entity.
- 9) "Document," as used herein, shall be construed as broadly as possible to include any and all means and media by which information can be recorded, transmitted, stored, retrieved or memorialized in any form, and shall also include all drafts, versions or copies which differ in any respect from the original. All spreadsheets provided must have all formulae intact and accessible.
- 10) "Petition," as used herein, means Agency's petition filed with the Vermont Public Utility Commission in this docket, unless the context indicates otherwise.
- 11) "Limits of Disturbance" means the boundary within which all construction, materials storage, grading, landscaping, and any other activities related to site preparation, construction, operation, maintenance, and decommissioning take place as a result of the net-metering system, including areas disturbed due to the creation or modification of access roads, utility lines, and the clearing or management of vegetation. (VT PUC, Net Metering Rule 5.103 Definitions).
- 12) With respect to each document produced by the Agency, identify the person(s) who prepared the document and the date on which the document was prepared.
- 13) If any interrogatory or request requires a response that the Agency believes to be privileged, please state the complete legal and factual basis for the claim of privilege, provide the

information required by the 5/16/95 order in Docket No. 5771 and respond to the parts of the interrogatory or request as to which no privilege is asserted.

14) If any interrogatory or request is objected to in whole or in part, please describe the complete legal and factual basis for the objection, and respond to all parts of the interrogatory or request to the extent it is not objected to. If an objection is interposed as to any requested documents, please identify the document by author, title, date and recipient(s), and generally describe the nature and subject-matter of the document as well as the complete legal and factual basis for the objection.

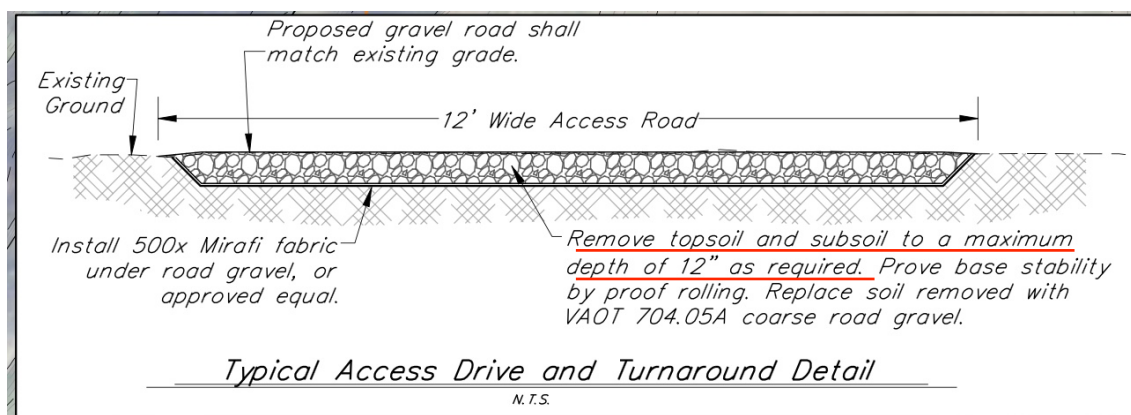
15) To expedite the discovery process and the resolution of this docket, the Agency should contact the Intervenor as soon as possible, and prior to the deadline for response, if it seeks clarification on any of these information requests.

16) Intervenor reserves the right to submit additional information requests to the Agency.

PREAMBLE TO DISCOVERY QUESTIONS

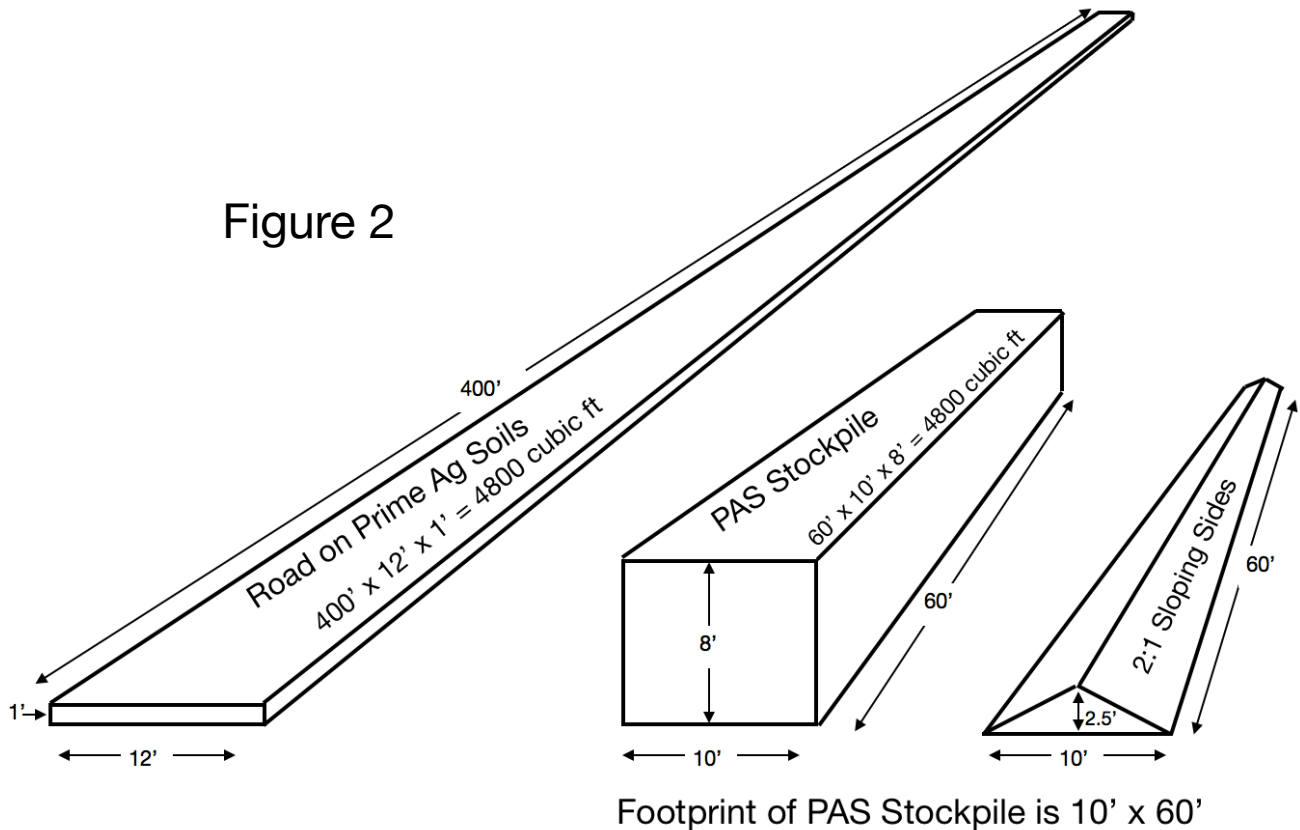
• A THOUGHT EXPERIMENT •

Please pretend the project site is flat, and that the Access Road Cross Section in the Site Plan (Figure 1) is a typical cross section of the proposed road.



The Site Plan (see Figure 3) shows that a 400 ft stretch of the Access Road is on Buckland Prime Agricultural Soils (PAS). If 12 inches of PAS were scooped out of the road bed as described in Figure 1, the volume of the PAS would be 4800 cubic feet (see Figure 2).

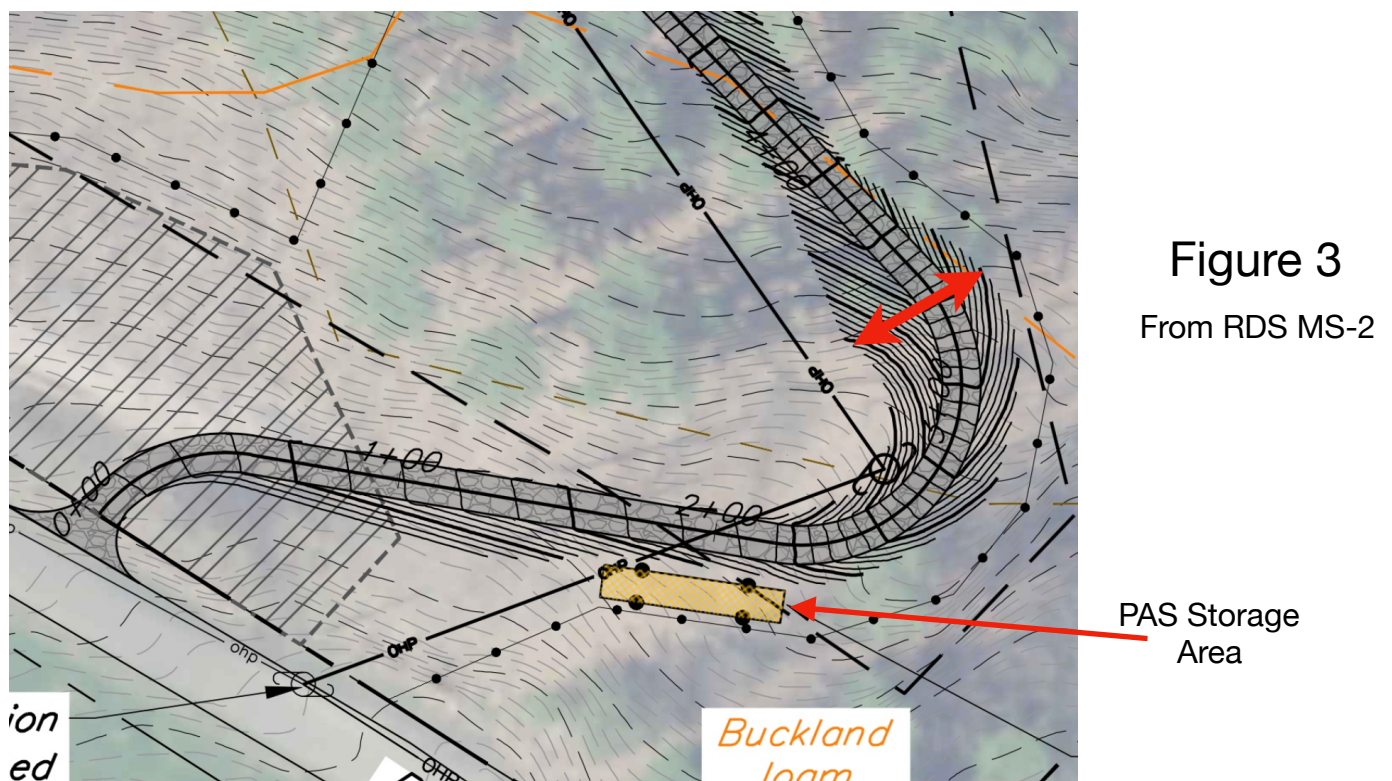
As can be seen in Figure 2, The amount of PAS removed from the Access Road would fill a rectangular solid measuring 10 ft wide, 8 ft high, and 60 ft long. Of course, soil embankments must be sloped. An embankment with a 2:1 slope is also depicted in Figure 2, and its capacity on a 10' x 60 ft footprint is less than 750 cubic ft.



Note that in Figure 1, PAS is removed to a maximum depth of 12 inches. If the excavation turns out to be less than 12 inches, the volume of the PAS would (of course) be less than 4800 cubic feet. In order for the PAS to fit in a 10 ft x 60 ft PAS Storage Area with a 2:1 embankment slope, the depth of excavation of the 12 ft wide road would have to be less than 2 inches. If the excavation of PAS is greater than 2 inches, the PAS Storage Area is undersized.

CONCLUSION OF THE PREAMBLE TO DISCOVERY QUESTIONS

The Thought Experiment is concluded. The Access Road is not on flat land and the cross section in the Site Plan (Figure 1) is very misleading. The proposed road is actually on very steep slopes and it will require extensive cutting and filling. Figure 3 is a detail from the Site Plan and it shows the stretch of the Access Road that is on PAS. Note that the cut & fill is up to 47 ft wide at the double-headed red arrow.



If the procedures outlined in Reclamation Guidelines for Agricultural Soils are followed, the topsoil and subsoil Horizons will be removed, segregated by Horizon, and stockpiled before the cutting and filling may occur. The Buckland PAS that underlies the road typically has 20 to 36 inches of Solum¹ that will have to be removed, segregated into Horizons and stockpiled. If the

¹ USDA Soil Survey https://soilseries.sc.egov.usda.gov/OSD_Docs/B/BUCKLAND.html

excavation cuts into Horizon C which underlies the Solum, that Horizon will also have to be segregated. This is likely where the terrain is steepest and/or the Solum is thinnest (20 inches). The Thought Experiment demonstrated that if the PAS was excavated **just** 2 inches deep over the length and width of **just** the 12 ft wide roadbed, the PAS Storage Area would be undersized. Now it is clear that the depth of excavation of PAS will be at least 20 inches (in a best case scenario) and the area of excavation will be significantly wider (up to 47 ft) than the 12 ft roadbed. The PAS Stockpile Area is likely undersized by two orders of magnitude.

INTERROGATORIES, REQUESTS TO ADMIT, and REQUESTS TO PRODUCE

Questions are for Mr. Depillis.

1) Admit that the 10 ft by 60 ft PAS Storage Area shown in the Site Plan cannot hold the volume of PAS that must be excavated.

2) The Reclamation Guidelines for Agricultural Soils states:

“In areas where soils with a NRCS farmland classification of prime, statewide or local importance are to be reclaimed, the final site topography should have slopes less than 15 percent”.

Admit that the Reclamation Guidelines for Agricultural Soils are not meant to reclaim areas with pre-construction grades over 15%, and certainly not meant to reclaim areas with pre-construction grades of 15-39% as are found on the proposed access road; and also Admit that steep areas that cannot be reclaimed should not be developed.

3) Any site can be reclaimed as best as is practical. Admit that, **in principle**, some steep sites may exist where PAS cannot be reclaimed without undue adverse impact on the PAS.

Dated July 6, 2022.

/s/ Joan Allen

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Dated July 6, 2022.

/s/ Michael Binder

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