

**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

**NEIGHBOR INTERVENORS' COMMENTS ON PETITIONER'S
REQUEST FOR A WAIVER OF RULE 5.108(B)**

July 8, 2022

Now come Neighbor Intervenors ("Landowners") Michael Binder and Joan Allen, *pro se*, and respectfully offer comments on Petitioner's request to have the most recent changes to the project treated, by Waiver of Rule 5.108(B), as a Minor Amendment.

INTRODUCTION

There is precedent for treating the recent project changes as a Minor Amendment because the changes reduce the Limits of Disturbance, and for the most part, reduce somewhat the undue adverse impact of the development. Landowners note that the underground power cables have been rerouted to a steeper area of the site. This may slightly increase the undue adverse impact of development, but Landowners agree that overall, there is benefit to the changes. For those reasons Landowners agree with the Petitioner that this Amendment should be treated as Minor.

On the other hand, Landowners know that further changes to the project are **inevitable**, and will create a Major Amendment. Landowners' comments explain why a Major Amendment is inevitable and why granting the Waiver will not bear on the ultimate outcome of this case.

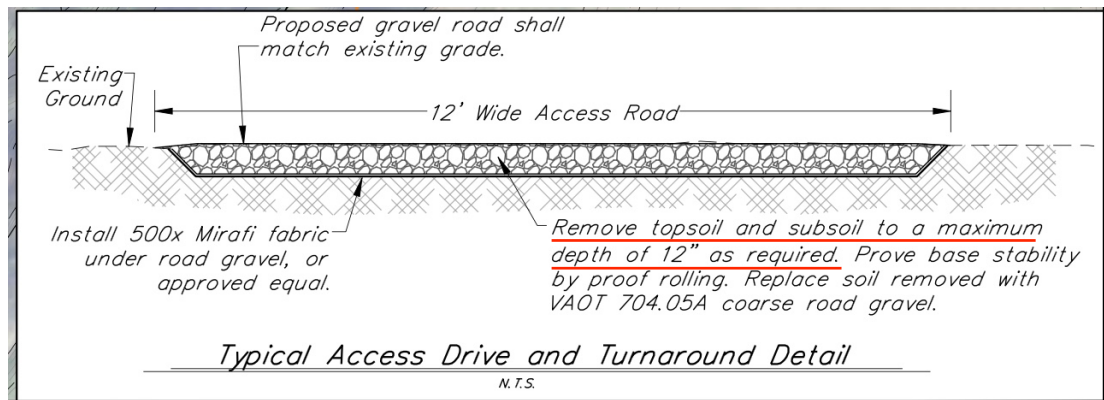
Comments Part I

A Thought Experiment

In Part I of these Comments, Landowners request that the reader 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 road.

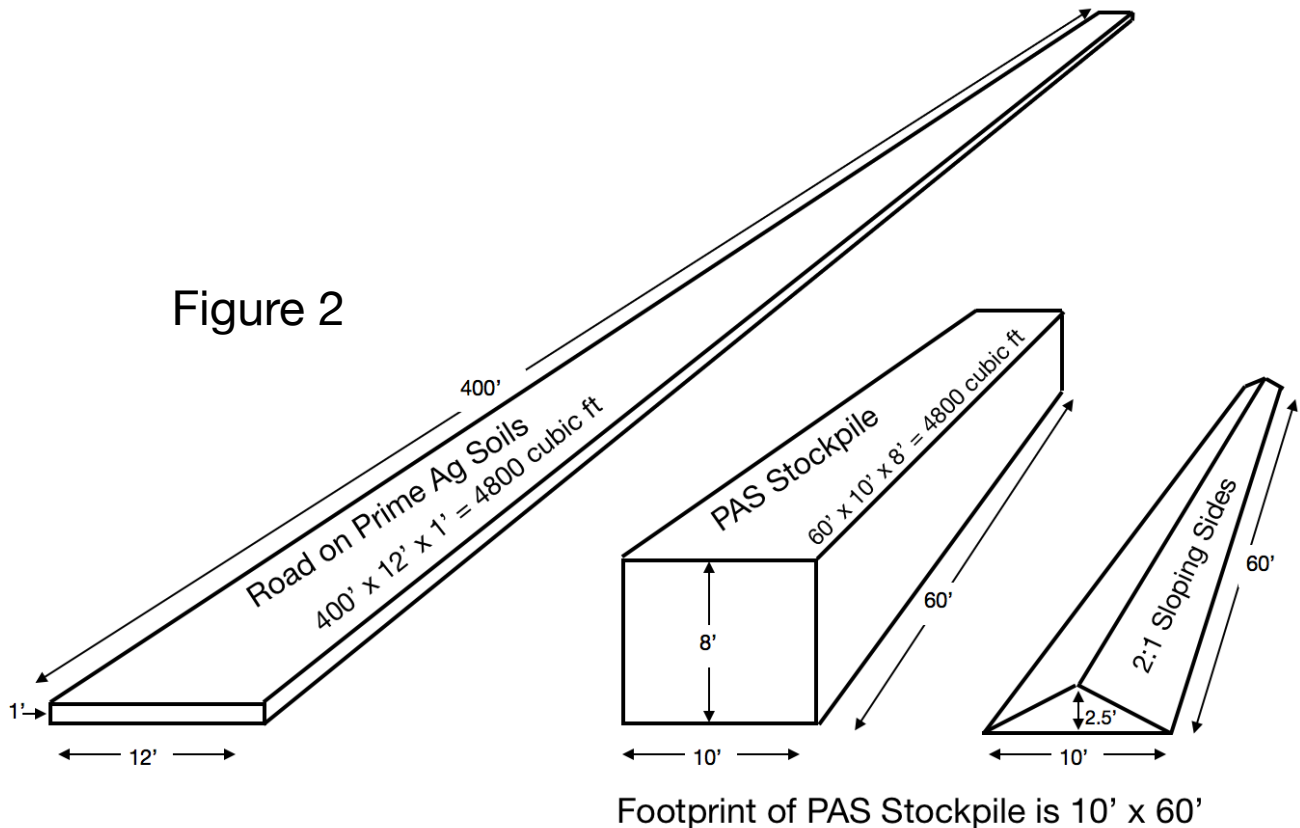
Figure 1

from RDS MS-2



The Site Plan (see Figure 3) shows that a 400 ft stretch of the Access Road is on Buckland Prime Agricultural Soils (PAS). If the 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 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 the 10 ft x 60 ft PAS Storage Area with a 2:1 slope embankment, the depth of the 12 ft wide road excavation would have to be less than 2 inches. If the excavation of PAS is 2 inches or deeper, the PAS Storage Area is undersized.

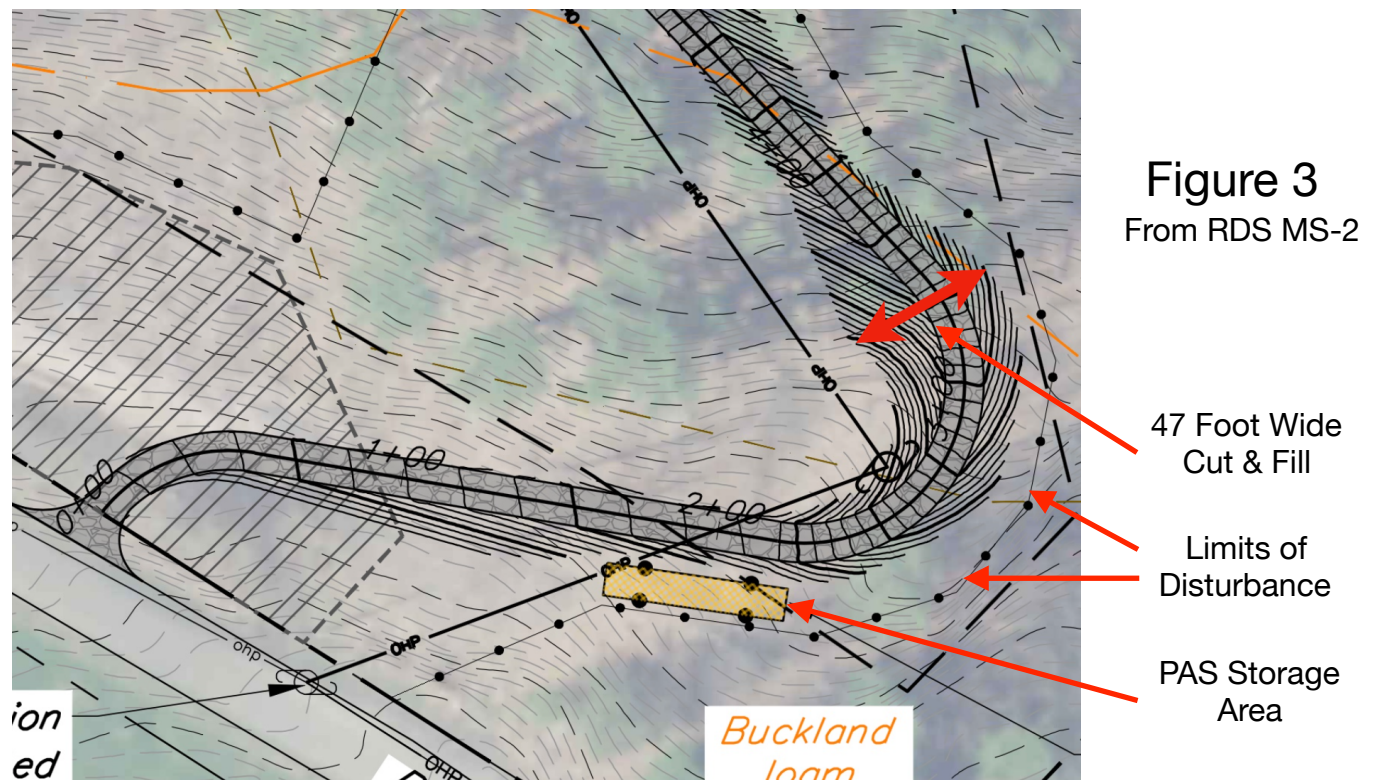
Comments Part II

Stop Pretending it's Flat

Now, in Part II, the Thought Experiment is replaced by Reality. 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 and ditching.

Figure 3 is a detail from the Site Plan and it shows the part 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. The Agency of



Agriculture, Food, and Markets (AAFM) has requested in their Comments that as a condition of the CPG, procedures in Reclamation Guidelines for Agricultural Soils¹ are to be followed. The topsoil and subsoil Horizons must be removed, segregated and stockpiled by Horizon before the cutting and filling may occur. The Buckland PAS that underlies the road typically has 20 to 36

¹ Included with these comments as Exhibit JA-MB-8

inches of Solum² that will have to be removed, segregated into Horizons and stockpiled. If the 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).

In Part I of these Comments, Landowners 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, in Part II 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 than the 12 ft roadbed (up to 47 ft). The PAS Stockpile Area is likely undersized by two orders of magnitude.

Comments Part III Absurd Restoration Plans

The Reclamation Guidelines for Agricultural Soils, states: [Exhibit JA-MB-8]

“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.”

Much of the proposed Access Road is on slopes over 30%, including much of the stretch that overlies the PAS. It is absurd to think that one may “restore” the greater than 30% slopes under the Access Road to slopes of less than 15%. Clearly, The Reclamation Guidelines for Agricultural Soils were not intended to be used for projects that are on slopes greater than 15%, and certainly not for slopes up to 39% as are present on the proposed Access Road. The Reclamation Guidelines serve AAFM well when “only lands with good exposure and gentle slopes make sense for solar development”³. As development proposals become increasingly

² USDA Soil Survey https://soilseries.sc.egov.usda.gov/OSD_Docs/B/BUCKLAND.html

³ TRORC Plan page 242 is on page 257 of Exhibit MB-3 submitted May 6, 2022

atypical and unprecedented it is incumbent upon AAFM to deny projects that cannot be reasonably reclaimed. Any site can be reclaimed as best as is practical, but at some point “practical” is not consistent with AAFM’s responsibility to protect agricultural soils.

Comments Part IV There is No Cure

Some deficiencies in the Petitioner’s most recent site plan, such as the lack of an Elevation Drawing, the lack of a description of the structures (e.g. culverts) for surface and subsurface water management, and the inaccurate and misleading cross section of the Access Road, can be cured without creating an Amendment. Other necessary alterations in the site plan (e.g. enlarging the inadequate wetland buffers) will require another Minor Amendment.

The location of the PAS Stockpile Area is constrained by its proximity to the Limits of Disturbance (Figure 3). There are steep slopes between the Stockpile and the town road. The Stockpile Area cannot be enlarged, by orders of magnitude, in its current location to contain the excavated PAS. Any cure for the deficient PAS Stockpile Area will create a Major Amendment. Any cure for the inability to properly reclaim PAS will require rerouting the Access Road off of the steep PAS, and that will also create a Major Amendment.

CONCLUSION

Landowners note that granting the Waiver of Rule 5.108(B) will not affect the outcome of this case because a Major Amendment is inevitable and will ultimately result in the Petitioner’s application being treated as withdrawn. Granting the Waiver will prolong, and therefore unnecessarily delay the proceedings (and the outcome) in this case.

Dated July 8, 2022.

/s/ Joan Allen

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Dated July 8, 2022.

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