

Agency of Agriculture, Food & Markets
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March 10, 2025

Novus Buck Solar LLC
c/o Victoria Westgate and Zachary Berger, SRH Law PLLC
91 College Street, P.O. Box 545
Burlington, VT 05402-0545

by e-mail to: VWestgate@SRHLaw.com and ZBerger@SRHLaw.com

Re: Case number 25-3051-AN

Dear Victoria M. Westgate and Zachary Berger:

The Agency of Agriculture, Food & Markets (AAFM) provides the following background for an eventual application or petition for a Certificate of Public Good (CPG), followed by specific recommendations for conditions to include in a CPG, as applicable, to avoid undue adverse impact to primary agricultural soils (PAS).

After the application or petition is submitted, AAFM is authorized to provide project-specific review and bill back for its time pursuant to [30 V.S.A. § 20](#) and [30 V.S.A. § 21](#).

Section 248 requires that petitions for electric-generation facilities greater than 50 kW include information that delineates the presence and total acreage of PAS as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed, the amount of those soils to be disturbed, and any other proposed impacts to those soils. Physical disturbance includes construction, excavation, grading, placing items on the soil, cutting or clearing trees, and areas of vehicle usage or other soil compaction.

Section 248 requires that petitioners show their proposed facilities “will not have an undue adverse effect on ... the natural environment, the use of natural resources, ... with due consideration having been given to ... impacts to... primary agricultural soils as defined in 10 V.S.A. § 6001.” [30 V.S.A. § 248](#)(b)(5). Primary agricultural soils as defined in [10 V.S.A. § 6001](#)(15) include: (A) soils that the Natural Resources



Conservation Service of the U.S. Department of Agriculture (NRCS) has mapped as having a rating of prime, statewide, or local importance; and (B) soils on the project tract that are of agricultural importance “due to their present or recent use for agricultural activities.” The petition should delineate both types of PAS on the project tract.

For AAFM to efficiently review site plans, please show the PAS and the limits of disturbance on one map. In addition, the site plan filed with the petition should show the location of any proposed primary agricultural soil stockpiles.

At this specific site, the project area appears to consist of approximately one third NRCS-mapped PAS (Colton-Duxbury complex, 3 to 8 percent slopes - 38B).

AAFM presumes that PAS under the definition in § 6001(15)(A) (sometimes referred to as “mapped PAS”) are intact. AAFM will consider claims that PAS is not intact only if sufficient evidence is provided in the petition.

The 45-day notice letter states that the project would be located on a former gravel pit. The letter does not mention whether the site is subject to an Act-250 land-use permit. If the project site is subject to an Act-250 permit, please include in the petition the Act-250 permit number(s) and any language in the permit pertaining to primary agricultural soils.

If there are primary agricultural soils on the Project site, please include the following conditions in the proposed CPG, as applicable:

1. As provided in 30 V.S.A. § 248(t), notwithstanding any contrary provision of the law, primary agricultural soils (PAS), as defined in 10 V.S.A. § 6001, located on the site of a solar electric generation facility approved under this section, shall remain classified as such soils, and the review of any change in use of the site after construction of the facility shall treat the soils as if the facility had never been constructed.
2. In areas where PAS will be excavated, the CPG Holder shall stockpile the PAS separately by soil horizon, making sure these piles are located and planted with ground cover as appropriate to prevent erosion and preserve integrity, and shall comply with AAFM’s *Act 250 Procedure: Reclamation of Vermont Agricultural Soils*,



https://agriculture.vermont.gov/sites/agriculture/files/documents/land_use/ReclamationGuidelinesforAgriculturalSoils_.pdf (rev. Oct. 30, 2014) (“AAFM Guidelines”). The CPG Holder shall stockpile the PAS within the project fence or in a similarly secure place and on slopes less than 15%. The CPG Holder shall also comply with the AAFM Guidelines when sequencing returned soils at the conclusion of construction or project decommissioning. The requirements of this paragraph shall not apply to driven piles or posts to support the solar array, fence posts, and any other driven posts necessary to support infrastructure without the use of concrete or masonry.

3. If installing electric conduit or other project features using fill or other imported material of any kind in areas of PAS, the CPG Holder shall remove any PAS in a manner that separates soil horizons, stockpile the displaced layer(s) for the life of the Project, and replace the remaining soil horizons in their original sequence to fill the trench after installation of the conduit or other project feature. When decommissioning and removing electric conduit or other project features, the CPG Holder shall excavate and replace soil horizons in the same way, this time removing the conduit or other items and imported material and replacing it with the stockpiled layer(s) that the imported material previously displaced, restoring the original sequence of soil layers.
4. The Project shall not include any grading of PAS, unless required to manage stormwater associated with construction of the access road. Any soil or gravel used for roads or staging areas shall be separated from native soils by a suitable barrier, such as geotextile fabric.
5. In areas of tree cutting within PAS, any stump removal shall occur using light equipment, such as a skid steer or small excavator, at the time of tree cutting and other construction activities. To minimize soil disturbance, grubbing in the proposed tree cutting/grubbing area shall involve only what is necessary to remove tree stumps and woody debris to construct the Project. Tree stumps shall be shaken clean over the area from which they were removed and either chipped or ground up. Chips and ground wood shall be used to fill any minor depressions in



- areas where trees were removed, widely dispersed so as not to form significant piles, and/or transported offsite for proper disposal. Wood in any form shall not be piled onsite after construction is complete.
6. To reduce impacts to PAS from soil compaction, the CPG Holder shall not use any vehicle or equipment with an axle load (the fraction of gross weight distributed over each axle) of over 12,000 pounds on wet soils. Wet soils exist when the site has seen higher than average rainfall for a trailing 30-day period, based on National Weather Service or similar state or federal rainfall data. This prohibition shall not apply to the use of any onsite gravel roads that are constructed with geotextile fabric, a minimum of 10" of gravel, and a 1" or thicker cap of crushed aggregate.
 7. Prior to construction and again at the end of decommissioning, the CPG Holder shall test bulk density of the soil on each mapped soil unit containing primary agricultural soils within the Project limits to ensure that the primary agricultural soils on the site are materially the same after the Project as they were before construction. "Materially the same" means an increase in soil bulk density of no more than 10 percent.
 - a. The CPG Holder shall undertake the soil tests and mitigate any material change in soil bulk density as follows:
 - (I.) Before construction, for each area of direct impact such as staging areas, access roads, and any area on the Project site where axle loads (the fraction of the gross weight distributed over each axle) of construction vehicles or equipment will exceed 12,000 pounds per vehicle, the CPG Holder will collect two soil samples at least 100 feet apart and test them using the method "Bulk Density Test" described in the Natural Resources Conservation Service "Soil Quality Test Kit Guide." (Currently available online at https://efotg.sc.egov.usda.gov/references/public/WI/Soil_Quality_Test_Kit_Guide.pdf.)



- (II.) In any areas of primary agricultural soils on the Project site where axle loads of construction vehicles or equipment will not exceed 12,000 pounds, the CPG Holder shall collect and test one sample for each mapped soil unit before construction and shall otherwise follow the same testing protocols.
- b. At the end of the decommissioning process, the CPG Holder shall repeat the testing at the same locations tested before construction. If the post-decommissioning soil bulk density for any sample shows an increase in soil bulk density from preconstruction soil bulk density that is greater than 10 percent, then the CPG Holder shall conduct agricultural subsoiling and/or other strategies to decompact soil until soil bulk density is materially the same as it was prior to Project construction.
- c. The CPG Holder shall serve test results upon AAFM within 60 days of the test, as follows:
 - (I.) By email and U.S. Mail to counsel of record in this matter, as listed in PUC records at the time of service; and
 - (II.) By email to AGR.Notice@vermont.gov, as may be updated in PUC records at the time of service.

To determine the 30-day trailing average rainfall compared to normal for that period, as a percentage, for the purposes of condition 6 above:

Navigate to <https://water.noaa.gov/>.

In Map, choose “satellite” to navigate to your project site.

In Layers, collapse River Gauges drop down. Scroll down to Precipitation Estimate. Enable the check box.

Open the drop down.

Scroll down past the year, month, day drop-down options to the drop-down for days. Select Last 30 days.

Click the radio button “Percent of Normal” and choose an opacity

Below the opacity slider, view the legend for “RAINFALL (percentage)”



AAFM may provide additional comments and propose additional CPG conditions after reviewing the application or petition.

Sincerely,

Alexander DePillis
Senior Agricultural Development Coordinator

