

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 21-2939-NMP

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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

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**NEIGHBOR INTERVENORS' SECOND MOTION TO DISMISS PETITION,**  
**or in the alternative,**  
**MOTION FOR STAY OF PROCEEDING and**  
**MOTION TO PERMIT ENTRY & INSPECTION OF THE PREMISES FOR A**  
**WETLANDS DELINEATION and**  
**REVISION OF THE SCHEDULING ORDER**

Now come Neighbor Intervenors Michael Binder and Joan Allen, *pro se*, and respectfully request:

- 1) That the Commission Dismiss the Petitioner's application as an incomplete submission that is Withdrawn for all the reasons stated in our currently pending motions, and also because we learned at the site visit that:
  - A. Petitioner has failed to correctly map and delineate the streams and wetlands on the subject property,
  - B. Petitioner has failed to map the vernal pool complex which is contiguous to the subject property on our land,
  - C. Petitioner has failed to provide an accurate cross section of a typical section of the access road.

Or, in the alternative,

- 2) That the Hearing Officer Stay the Proceeding to permit the Neighbor Intervenors' wetlands expert to enter and inspect the site in order to complete a proper Wetlands Delineation that accurately depicts the streams and wetlands that were omitted from the Petitioner's site plans and expert testimony.

### **I. DISMISS THE PETITION AS INCOMPLETE AND WITHDRAWN**

It is clear from the March 25, 2022 Site Visit, that there are many missing elements from the site plan including: the surface and sub-surface structures (culverts, water bars, ditches etc.) that we have mentioned in our currently pending motions for Dismissal, the slope overlays of the entire limits of disturbance, an accurate cross section of the proposed access road, and delineation of all the streams and wetlands on the subject property as well as the Vernal Pool Complex on our land which is contiguous to the Limits of Disturbance of the project site. Therefore, Neighbor Intervenors request the Commission treat the submission as Withdrawn, for failure to comply with the Rule 5.107(C)(5)(d), Rule 5.107(C)(5)(g), and Rule 5.107(C) (9) filing requirements:

(C) Filing Requirements. Applications for net-metering systems subject to this Section 5.107 must contain the following information. Failure to provide any required information will result in the application being deemed incomplete:

(5) Site plans. The applicant must provide a site plan for each project. A site plan must include:

...

(d) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations to or impacts on wetlands or other natural resources protected under 30 V.S.A. § 248(b)(5), including the limits of disturbance and the total acreage of any disturbed area;

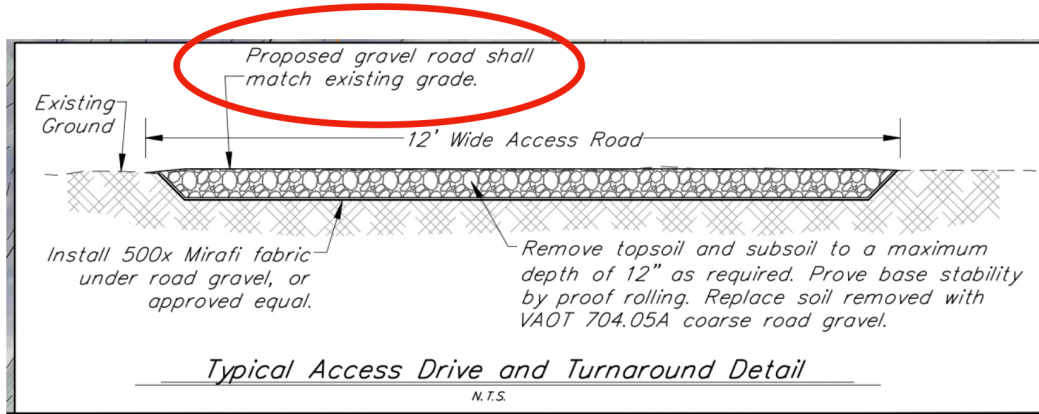
...

(g) Plans of any proposed access driveway, roadway, or parking area at the project site, including grading, drainage, and traveled width, as well as a cross-section of the access drive indicating the width, depth of gravel, paving, or surface materials;

(9) Wetland Delineation. The applicant must provide either a wetland delineation prepared by a qualified consultant, or a letter from the district wetland ecologist or a qualified consultant stating that no delineation is necessary because the net-metering system will not be **proximate** to any significant wetlands.

Petitioner's site plan fails to comply with the requirements of the Rules because as we saw on the site visit, there are streams and wetlands on site, and a vernal pool complex contiguous with the site that were omitted from the submission of the Petitioner. Also, the Petitioner's site plan contains a cross section of the access road that is not typical of most of the proposed access road. We saw on the site visit that the access road bed is not level, but the submitted cross section of the road (RDS MS-2A) is on a **level existing grade**. (see Figure 1, below)

According to the site plan, Petitioner proposes to develop the access road by digging a trench 12 feet wide and up to 1 foot deep, stockpiling the Prime Agricultural Soils (PAS) from the trench, and filling the trench with gravel. At decommissioning, the gravel is to be scooped out of the trench and the PAS is to be restored to the road bed from the stockpile. Neighbor Intervenors would admit that the Petitioner's plan to restore the PAS is feasible, but only if the cross sections of the access road were actually as the Petitioner depicted in their misleading submission.

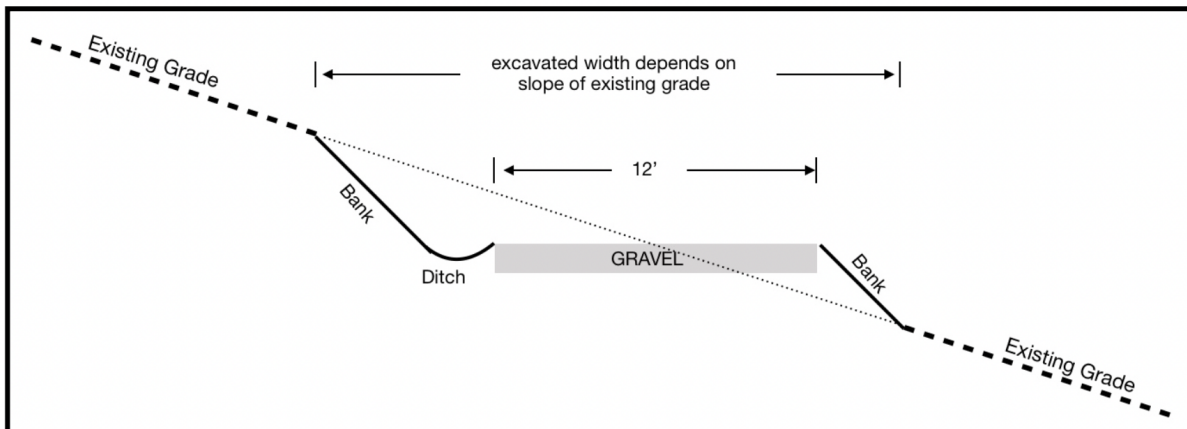


Clipping from Petitioner's Exhibit RDS MS-2A Showing Road Cross Section

Figure 1

Neighbor Intervenors' Figure 2 (below) shows some typical elements of a cross section of a road that is cut into an existing sloped grade.

The excavated width of such a road is much wider than the 12 ft roadbed (Figure 2),



Intervenor's Sketch Showing Some Elements of a Road Cross Section on a Slope

Figure 2

and both PAS topsoils and subsoils will be disturbed and co-mingled by the excavation. On some sections of the proposed road, the swath of excavated soils is 40 feet wide (as shown on RDS MS-2A). During the 25 year life of the project, road gravel may migrate into the ditch and may migrate down the lower embankment. The Parties cannot evaluate the Petitioner's plan for removal of gravel and restoration of PAS with the inapplicable and misleading cross section of the road that has been submitted.

Because the Petitioner has submitted obviously erroneous wetland delineations in support of this project, has failed to provide details of surface and subsurface water management structures, and has failed to submit a useful cross section of the proposed access road, their submission is *de facto* incomplete. Therefore, until and unless the Petitioner files a complete submission that contains all of the required information that the Parties are entitled to evaluate, the Petitioner's application should be treated by the Commission as an incomplete submission that is Withdrawn.

## **II. STAY THE PROCEEDING TO PERMIT ENTRY AND INSPECTION OF PROPERTY FOR A WETLANDS DELINEATION**

If the Commission does not Dismiss the Petition as incomplete and withdrawn, then Neighbor Intervenors request that the Hearing Officer Stay the Proceeding, and in addition Order that the Neighbor Intervenors may have their own Wetlands Scientist enter and inspect the property for purposes of conducting a wetlands delineation for submittal as expert testimony at the Technical Hearing. This is essential for the preparation of the Neighbor Intervenors' case particularly in light of the fact that a proper and adequate wetlands delineation was not included

with the Petition. Therefore, our due process rights dictate that we have the opportunity to discover evidence to prepare for the Technical Hearing.

According to our Wetlands Scientist, a proper wetlands delineation must await the plants emerging from the ground, which usually occurs in late May. Therefore, if the Petition is not dismissed by the Commission, Neighbor Intervenors request an Order from the Hearing Officer that Petitioner allow our expert to enter the property to conduct a wetlands delineation between May 21, 2022 and June 21, 2022, and re-set the Scheduling Order in the Proceedings to accommodate this request, with time for discovery.

Thank you for your attention to this matter.

DATED Randolph, Vermont this 29<sup>th</sup> day of March, 2022.

/s/ Joan Allen

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