



Tom Appel  
NEMCO  
50 Elliot Street  
Brattleboro, VT 05301

Application #: 3R1113  
Exhibit #: 023  
Date Received: 9-19-2019

9/19/2019

Re: LUP Application 3R1113, FARM Developing, LLC, Randolph  
Consideration of primary agricultural soils under 10 V.S.A. §§6093, 6086

Dear Applicant:

Thank you for the opportunity to comment on the above-referenced project.

**Purpose:**

This review letter will aid in the District Commission's determination whether any reduction in the agricultural capability of the primary agricultural soils will occur as a result of the construction of the project. Please note that this letter focuses solely on whether there are primary agricultural soils on the project site (10 V.S.A. § 6001(15)), any impact to these primary agricultural soils and whether any proposed mitigation is adequate, pursuant to 10 VSA §6093(a).

**Summary of Agency Review:**

The Agency's review indicates the proposed impacts under Criterion 9(B) include:

7.24 acres of primary agricultural soils that will be impacted, either directly or indirectly;

**16.76 acres** of mitigation necessary because of the statutory multipliers:

5.87 acres of primary agricultural soils proposed mitigated on-site [subject to confirmation from the DEC Wetlands Program that the proposed area is free of jurisdictional wetlands]; and

10.89 acres proposed mitigated off-site [subject to the Commission's findings as to appropriate circumstances].

**Process and Basis for Opinion:**

The Agency was originally contacted by Tom Appel on behalf of FARM Developing, LLC (the "Applicant"), to review a project generally described as FARM Developing Hotel, Restaurant and Conference Center. The Agency's review primarily consisted of a review of the following submitted materials:

- PAS Site Plan with Soils Matrix, titled "Agricultural Soils Disturbance", revision date 08/09/2019;
- Existing Conditions Plan, titled "Existing Conditions", dated 10/1/2018;
- Conceptual Site Plan, titled "Conceptual Site Plan", dated 1/9/2019;

- Preliminary Site Concept Plans, dated 01/15/2019.

The Agency’s review of primary agricultural soils is also based on an evaluation of USDA soil survey(s), satellite imagery, the supplied site development plans, supplied ground topographic survey, soil limitations, size, location, landscape patterns and other elements of the definition of primary agricultural soil as applied to the project site. See 10 V.S.A. § 6001(15).

*The review and evaluation indicates:*

The proposed impacts to primary agricultural soils, as defined by 10 V.S.A. § 6001(15), total 7.24 acres and consist of proposed impacts to the following soil types:

<i>Key</i>	<i>Soil Type</i>	<i>Ag Value</i>	<i>Slope</i>	<i>Proposed Impact (Acres)</i>
BuB	Buckland Loam	3	3-8%	4.57
CaB	Cabot Silt Loam	6d	0-8%	2.67

The Agency accepts your assertion that there are 0 acres of preexisting impacts and that 7.24 acres of the primary agricultural soils on the site will be directly or indirectly impacted by the proposed development.

**Recommendations:**

Based on the 7.24 acres of impact, the total amount of mitigation required pursuant to 10 V.S.A. § 6093(a) is **16.76 acres**.

Mitigation calculation: [4.57 acres (impact to “Prime” soils of agricultural group “3”) \* 2.5 (stipulated multiplier)] + [2.67 acres (impact to “Statewide” soils in value group 6d) \* 2 (stipulated multiplier)] = 16.76 acres

The Applicant has proposed on-site mitigation of 5.87 acres of primary agricultural soils on the project tract. The proposed 5.87 acre on-site mitigation area consists of 4.54 acres “Prime” soils (Buckland loam) and 1.33 acres Statewide soils (Vershire Glover rocky loam; Cabot silt loam). Subject to confirmation from the DEC Wetlands Program that the proposed area is free of jurisdictional wetlands, on-site protection of these soils is acceptable to the Agency as depicted on the Applicant’s PAS Site Plan, titled “Agricultural Soils Disturbance”, revision date 08/09/2019. All mitigation is subject to approval by the Commission.

Provided there are no jurisdictional wetlands identified in the proposed on-site mitigation area, the Agency requests these 5.87 acres be protected, at a minimum, through permit conditions issued by the District Commission as follows:

- a. *The protected primary agricultural soils as depicted in Exhibit \_\_\_\_ (the designated mitigation area) shall be maintained in a manner ensuring that they will be available for economic or commercial agriculture, in perpetuity. Only activities designated as “farming” pursuant to 10 V.S.A. § 6001(22) shall be*

*permissible in the designated mitigation area. All other activities, development, construction, or improvements shall be prohibited. If, at any time, a designated and open mitigation area is not used for an economic or commercial agricultural purpose, the Permittees shall ensure that the soils remain open and unobstructed by haying or brush hogging the area a minimum of once every two years. A Rule 34(E) hearing, otherwise known as Stowe Club Highlands Analysis, is required if any activity, other than those defined as farming by 10 V.S.A. § 6001(22), is proposed in the designated mitigation area.*

- b. Pursuant to 10 V.S.A. § 6081(s), no permit amendment is required for farming that will occur on primary agricultural soils preserved in accordance with 10 V.S.A. § 6093 or will not conflict with any condition in this permit.*
- c. The following "right to farm" covenant shall be included in any declaration of covenants for the project and in each deed conveying any portion of the project tract:
  - i. Notice is given of the existence of preserved agricultural lands located in the vicinity of the lands conveyed herein. Current or future agricultural operations on these lands may include, without limitation: plowing; planting; fertilizing; spraying; the use of agricultural chemicals, pesticides and herbicides in the course of cultivating, harvesting, storing and transporting agricultural products; and the raising, feeding and management of livestock. Consistent with this notice, the lands are conveyed subject to a perpetual easement for any noise, odors, dust, and/or byproducts and impacts that may occur in the course of conducting accepted agricultural and best-management practices on these nearby agricultural lands. Grantees, by the acceptance of this deed, waive any objection to impacts arising from required agricultural and best-management practices, and are further notified that existing agricultural activities which are consistent with required agricultural and best-management practices do not constitute a nuisance or a trespass.**
- d. Prior to commencement of the project or within 3 months or permit issuance, whichever occurs first, the Applicant shall provide to the Vermont Agency of Agriculture, Food and Markets a geo-referenced field boundary file depicting the location of onsite mitigation as outlined in condition # [ ].*

The on-site preservation of 5.87 acres will *not* meet the minimum required mitigation for this project. The applicant must seek a ruling from the District Commission that appropriate circumstances exist, mitigation flexibility is warranted, and the payment of an off-site mitigation fee, in combination with onsite mitigation, will best further the goal of preserving primary agricultural soils for present and future agricultural use, pursuant to 10 V.S.A. §6093(a)(3) (Mitigation Flexibility).

If the District Commission finds appropriate circumstances for mitigation flexibility, the District Commission will issue a specific condition in the Land Use Permit requiring the applicant to pay an off-site mitigation fee. If off-site mitigation is approved, the applicant pays the mitigation fee into a fund administered by the Vermont Housing and Conservation Board. The fund is used to purchase development rights or conservation easements on primary agricultural soils, generally in the same agricultural use area of your project. The calculation of this fee is subject to the mitigation ratios of 10 V.S.A. §§6093 (a)(2)(B). In this case, with the mitigation ratios in place, the off-site mitigation would be 10.89 acres (provided the Commission approves the Applicant's proposed use of 5.87 acres on-site mitigation; as noted above, the total mitigation warranted is 16.76 acres). See mitigation calculation above.

**Next Steps**

The applicant should provide a copy of this review letter to the District Commission as part of the Act 250 application. The District Commission will advise the applicant and the Agency if the proposed use of on-site and off-site mitigation is acceptable in order to address the impact to the 7.24 acres of primary agricultural soils.

Sincerely,

**Vermont Agency of Agriculture, Food & Markets**



By: -----  
Ari Rockland-Miller  
Act 250 Coordinator  
Vermont Agency of Agriculture, Food & Markets  
802-828-5399  
ari.rockland-miller@vermont.gov

Cc: District 3 Coordinator, Linda Matteson  
See Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify on this 19th day of September 2019, a copy of the foregoing:

*Agency of Agriculture, Food & Markets – Criterion 9(B) Review*

regarding **LUP Application # 3R1113, FARM Developing, LLC, Randolph**

was sent by email to the individuals listed below (or first class mail, to individuals without email address):

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c/o Paul Rea  
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Arden LLC  
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Agency of Natural Resources  
Office of Planning & Policy

1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901  
Anr.act250@vermont.gov; Elizabeth.lord@vermont.gov

District # 3 Environmental Commission  
100 Mineral Street, Suite 305  
Springfield, VT 05156  
NRB.Act250Springfield@vermont.gov

Dated at Montpelier, Vermont this **September 19, 2019**

VERMONT AGENCY OF AGRICULTURE, FOOD & MARKETS



By: \_\_\_\_\_  
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