S.233

Introduced by Senator Lyons

Referred to Committee on

Date:

Subject: Conservation and development; state land use; mitigation of primary agricultural soils

Statement of purpose: This bill proposes to provide a municipality that has adopted a transfer of development rights program with the presumption that development or subdivision of land on an area receiving transfer development rights satisfies the off-site mitigation requirements for primary agricultural soils.

An act relating to the use of transfer of development rights for off-site mitigation of primary agricultural soils

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 6093 is amended to read:

§ 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

(a) Mitigation for loss of primary agricultural soils. Suitable mitigation for the conversion of primary agricultural soils necessary to satisfy subdivision 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

(1) Project located in growth center. If the project tract is located in a designated growth center, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont housing and conservation trust fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

(A) determining the number of acres of primary agricultural soils affected by the proposed development or subdivision;

(B) multiplying the number of affected acres of primary agricultural soils by a factor resulting in a ratio established as follows:

(i) for development or subdivision within a designated growth center, the ratio shall be 1:1;

(ii) for residential construction that has a density of at least eight units of housing per acre, of which at least eight units per acre or at least 40 percent of the units, on average, in the entire development or subdivision, whichever is greater, meets the definition of affordable housing established in this chapter, no mitigation shall be required. However, all affordable housing units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or longer. For

purposes of this section, housing that is rented shall be considered affordable housing when its inhabitants have a gross annual household income that does not exceed 60 percent of the county median income or 60 percent of the standard metropolitan statistical area income if the municipality is located in such an area.

(C) multiplying the resulting product by a "price-per-acre" value, which shall be based on the amount that the secretary of agriculture, food and markets has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

(2) Project located outside designated growth center. If the project tract is not located in a designated growth center, mitigation shall be provided on site in order to preserve primary agricultural soils for present and future agricultural use, with special emphasis on preserving prime agricultural soils. Preservation of primary agricultural soils shall be accomplished through innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of primary agricultural soils on the project tract capable of supporting or contributing to an economic or commercial agricultural operation and shall be enforceable by permit conditions issued by the district commission. The number of acres of primary agricultural soils to be preserved shall be derived by:

(A) determining the number of acres of primary agricultural soils affected by the proposed development or subdivision; and

(B) multiplying the number of affected acres of primary agricultural soils by a factor based on the quality of those primary agricultural soils, and other factors as the secretary of agriculture, food and markets may deem relevant, including the soil's location; accessibility; tract size; existing agricultural operations; water sources; drainage; slope; the presence of ledge or protected wetlands; the infrastructure of the existing farm or municipality in which the soils are located; and the N.R.C.S. rating system for Vermont soils. This factor shall result in a ratio of no less than 2:1, but no more than 3:1, protected acres to acres of impacted primary agricultural soils.

(3) Mitigation flexibility.

(A) Notwithstanding the provisions of subdivision (1) of this subsection pertaining to a development or subdivision on primary agricultural soils within a designated growth center, the district commission may, in appropriate circumstances, require onsite mitigation with special emphasis on preserving prime agricultural soils if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of section 4302 of Title 24. In this situation, the approved plans must designate specific soils that shall be preserved inside growth centers. For projects located within a designated growth center, all factors used to calculate suitable mitigation

acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

(B) Notwithstanding the provisions of subdivision (2) of this subsection pertaining to a development or subdivision on primary agricultural soils outside a designated growth center, the district commission may, in appropriate circumstances, approve off-site mitigation or some combination of onsite and off-site mitigation if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of section 4302 of Title 24. For projects located outside a designated growth center, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of no less than 2:1, but no more than 3:1.

(4) Industrial parks.

(A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils located in an industrial park as defined in subdivision 212(7) of this title and permitted under this chapter and in existence as of January 1, 2006, shall be allowed to pay a mitigation fee computed according to the provisions of subdivision (1) of this subsection, except that it shall be entitled to a ratio of 1:1, protected acres to acres of affected primary agricultural soil. If an industrial park is developed to the fullest extent before any expansion, this ratio shall apply to any contiguous

1 expansion of such an industrial park that totals no more than 25 percent of the
2 area of the park or no more than 10 acres, whichever is larger; provided any
3 expansion based on percentage does not exceed 50 acres. Any expansion
4 larger than that described in this subdivision shall be subject to the mitigation
5 provisions of this subsection at ratios that depend upon the location of the
6 expansion.
7 (B) In any application to a district commission for expansion of an
8 existing industrial park, compact development patterns shall be encouraged
9 that assure the most efficient use of land and the realization of maximum
10 economic development potential through appropriate densities.
11 Industrial park expansions and industrial park infill shall not be subject to
12 requirements established in subdivision 6086(a)(9)(B)(iii) of this title, nor to
13 requirements established in subdivision (9)(C)(iii).
14 (b) Easements required for protected lands. All primary agricultural soils
15 preserved for commercial or economic agricultural use by the Vermont
16 housing and conservation board pursuant to this section shall be protected by
17 permanent conservation easements (grant of development rights and
18 conservation restrictions) conveyed to a qualified holder, as defined in section
19 821 of this title, with the ability to monitor and enforce easements in
20 perpetuity. Off-site mitigation fees may be used by the Vermont housing and
21 conservation board to pay reasonable staff or transaction costs, or both, of the

board and agency of agriculture, food, and markets to preserve primary agricultural soils or to implement section 6086(a)(9)(B) or 6093 of this title.

(c) Transfer of development rights. Notwithstanding the mitigation provisions of subdivisions 6086(a)(9)(B)(iii) and (iv) of this title and subsections (a) and (b) of this section, a municipality that has adopted a transfer of development rights program in accordance with section 4423 of Title 24 shall be entitled to the presumption that:

(1) Development or subdivision of a parcel of land that has been specified as a receiving area meets the appropriate circumstances test for off-site mitigation outlined in subdivision (a)(3)(B) of this section if the municipality has planned for significantly higher densities in this area as compared to the sending area.

(2) The purchase of development rights from an eligible sending area within the municipality that increases the densities on the receiving parcel complies with the off-site mitigation requirements of subdivisions 6086(a)(9)(B)(iii) and(iv) of this title and subdivision (a)(3)(B) of this section provided that:

(A) The protected primary agricultural soils are of equal or greater value than the agricultural land that is being lost to development or subdivision, and the soils are being protected in accordance with the mitigation ratios specified in this section, subject to a ratio of no less than 2:1, but no

more than 3:1 as determined by the secretary of the agency of agriculture, food and markets;

(B) The primary agricultural soils being protected will be of sufficient acreage capable of supporting or contributing to an economic or commercial agricultural operation; and

(C) The primary agricultural soils in the sending area are being protected in perpetuity by permit condition of the district environmental commission, and the instruments transferring the conservation easements and the development rights are recorded in the land records of the municipality.