

1 H.449

2 Introduced by Representatives Jerman of Essex and Hebert of Vernon

3 Referred to Committee on

4 Date:

5 Subject: Natural resources; conservation and development; land use; Act 250;
6 primary agricultural soils; mitigation

7 Statement of purpose of bill as introduced: This bill proposes comprehensive
8 revisions to provisions of 10 V.S.A. chapter 151 (Act 250) that govern
9 mitigating the development or subdivision of primary agricultural soils.

10 An act relating to Act 250 and primary agricultural soils

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

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

13 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

14 (a) Mitigation for loss of primary agricultural soils. ~~Suitable mitigation~~
15 This section sets out the requirements for mitigating the conversion of primary
16 agricultural soils necessary to satisfy subdivision 6086(a)(9)(B)(iv) (suitable
17 mitigation) of this title, which shall depend on where the project tract is located
18 consist of onsite or off-site mitigation or a combination of onsite and off-site
19 mitigation. In addition to subdivision 6086(a)(9)(B)(iv) of this title, mitigation
20 approved under this section shall support an affirmative finding under

1 subdivision 6086(a)(9)(B)(iii) (land use design; compact development patterns)
2 of this title.

3 (1) ~~Project located in growth center. If the project tract is located in a~~
4 ~~designated growth center, an applicant who complies with subdivision~~
5 ~~6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the~~
6 ~~Vermont housing and conservation trust fund established under section 312 of~~
7 ~~this title for the purpose of preserving primary agricultural soils of equal or~~
8 ~~greater value with the highest priority given to preserving prime agricultural~~
9 ~~soils as defined by the U.S. Department of Agriculture. Any required offsite~~
10 ~~mitigation fee shall be derived by:~~

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

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

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

17 (ii) ~~for residential construction that has a density of at least eight~~
18 ~~units of housing per acre, of which at least eight units per acre or at least 40~~
19 ~~percent of the units, on average, in the entire development or subdivision,~~
20 ~~whichever is greater, meets the definition of affordable housing established in~~
21 ~~this chapter, no mitigation shall be required. However, all affordable housing~~

1 ~~units shall be subject to housing subsidy covenants, as defined in 27 V.S.A. §~~
2 ~~610, that preserve their affordability for a period of 99 years or longer. For~~
3 ~~purposes of this section, housing that is rented shall be considered affordable~~
4 ~~housing when its inhabitants have a gross annual household income that does~~
5 ~~not exceed 60 percent of the county median income or 60 percent of the~~
6 ~~standard metropolitan statistical area income if the municipality is located in~~
7 ~~such an area.~~

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

13 ~~(2) Project located outside designated growth center. If the project tract~~
14 ~~is not located in a designated growth center, mitigation shall be provided on~~
15 ~~site in order to preserve primary agricultural soils for present and future~~
16 ~~agricultural use, with special emphasis on preserving prime agricultural soils.~~
17 ~~Preservation~~ Onsite mitigation. The district commission may require onsite
18 preservation of primary agricultural soils, which shall be accomplished through
19 innovative land use design resulting in compact development patterns ~~which~~
20 that will maintain a sufficient acreage of primary agricultural soils on the
21 project tract capable of supporting or contributing to an economic or

1 commercial agricultural operation and shall be enforceable by permit
2 conditions issued by the district commission. The number of acres of primary
3 agricultural soils to be preserved shall be derived by:

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

6 (B) multiplying the number of affected acres of primary agricultural
7 soils by a factor based on the quality of those primary agricultural soils, and
8 other factors as the ~~secretary of agriculture, food and markets~~ Secretary of
9 Agriculture, Food and Markets may ~~deem~~ consider relevant, including the
10 soil's location; accessibility; tract size; existing agricultural operations; water
11 sources; drainage; slope; the presence of ledge or protected wetlands; the
12 infrastructure of the existing farm or municipality in which the soils are
13 located; and the N.R.C.S. rating system for Vermont soils. This factor shall
14 result in a ratio of no less than 2:1, but no more than 3:1, protected acres to
15 acres of impacted primary agricultural soils. However, if the tract containing
16 the affected primary agricultural soils is within a growth center designated
17 under 24 V.S.A. § 2793c, this ratio shall be 1:1.

18 (2) Off-site mitigation. In appropriate circumstances, a district
19 commission may approve off-site mitigation.

20 (A) A district commission shall not approve off-site mitigation under
21 this subdivision (2) without finding that the proposed development or

1 subdivision of primary agricultural soils and proposed off-site mitigation are
2 consistent with the duly adopted local and regional plans under 24 V.S.A.
3 chapter 117 and with the goals of 24 V.S.A. § 4302(c)(1) (historic settlement
4 patterns).

5 (B) In determining the existence of appropriate circumstances under
6 this subdivision (2), the district commission also shall consider and issue
7 findings of fact respecting each of the following:

8 (i) whether the tract of land containing primary agricultural soils:

9 (I) has limited ability to contribute to a commercial agricultural
10 operation and whether devoting the tract to agricultural uses is impractical
11 based on its size or relationship to other land uses;

12 (II) is surrounded by or adjacent to compact development with
13 supporting infrastructure and the project's design will contribute to an existing
14 pattern of compact development; or

15 (III) is within a larger area that contains a mixture of uses,
16 including commercial and industrial uses and a significant residential
17 component, that is supported by infrastructure;

18 (ii) whether the project is designed to assure the most efficient use
19 of land and the realization of maximum economic potential through
20 appropriate densities, while taking into account the project's long-term needs;

1 (iii) whether payment of an off-site mitigation fee, or requiring a
2 combination of onsite and off-site mitigation, will best further the preservation
3 of primary agricultural soils for present and future agricultural use, with
4 special emphasis on preserving prime agricultural soils.

5 (C) An applicant obtaining approval of off-site mitigation under this
6 subdivision (2) shall pay an off-site mitigation fee unless the district
7 commission approves off-site mitigation within the municipality pursuant to
8 subsection (c) of this section.

9 (D) An off-site mitigation fee under this subdivision (2) shall be paid
10 into the Vermont Housing and Conservation Trust Fund established under
11 section 312 of this title for the purpose of preserving primary agricultural soils
12 of equal or greater value with the highest priority given to preserving prime
13 agricultural soils as defined by the U.S. Department of Agriculture. An off-site
14 mitigation fee under this subdivision (2) shall be calculated by deriving the
15 acreage of primary agricultural soils to be preserved in the manner specified
16 under subdivision (a)(1) (onsite mitigation) of this section and multiplying the
17 result by the “price-per-acre” value under subsection (d) of this section.

18 (3) ~~Mitigation flexibility.~~

19 ~~(A) Notwithstanding the provisions of subdivision (1) of this~~
20 ~~subsection pertaining to a development or subdivision on primary agricultural~~
21 ~~soils within a designated growth center, the district commission may, in~~

1 appropriate circumstances, require onsite mitigation with special emphasis on
2 preserving prime agricultural soils if that action is deemed consistent with the
3 agricultural elements of local and regional plans and the goals of 24 V.S.A.
4 § 4302. In this situation, the approved plans must designate specific soils that
5 shall be preserved inside growth centers. For projects located within a
6 designated growth center, all factors used to calculate suitable mitigation
7 acreage or fees, or some combination of these measures, shall be as specified
8 in this subsection, subject to a ratio of 1:1.

9 (B) Notwithstanding the provisions of subdivision (2) of this
10 subsection pertaining to a development or subdivision on primary agricultural
11 soils outside a designated growth center, the district commission may, in
12 appropriate circumstances, approve off site mitigation or some combination of
13 onsite and off site mitigation if that action is deemed consistent with the
14 agricultural elements of local and regional plans and the goals of 24 V.S.A.
15 § 4302. For projects located outside a designated growth center, all factors
16 used to calculate suitable mitigation acreage or fees, or some combination of
17 these measures, shall be as specified in this subsection, subject to a ratio of no
18 less than 2:1, but no more than 3:1. Designated growth center; affordable
19 housing. Notwithstanding subdivision 6086(a)(9)(B)(iv) (suitable mitigation)
20 of this title, no mitigation of primary agricultural soils shall be required under
21 this chapter for residential construction within a growth center designated

1 under 24 V.S.A. § 2793c if the residential construction has a density of at least
2 eight units of housing per acre, of which at least eight units per acre or at least
3 40 percent of the units, on average, in the entire development or subdivision,
4 whichever is greater, meets the definition of affordable housing established in
5 this chapter. However, all affordable housing units shall be subject to housing
6 subsidy covenants, as defined in 27 V.S.A. § 610, that preserve their
7 affordability for a period of 99 years or longer. For purposes of this section,
8 housing that is rented shall be considered affordable housing when its
9 inhabitants have a gross annual household income that does not exceed
10 60 percent of the county median income or 60 percent of the standard
11 metropolitan statistical area income if the municipality is located in such
12 an area.

13 (4) Industrial parks.

14 (A) Notwithstanding any provision of this chapter to the contrary, a
15 conversion of primary agricultural soils located in an industrial park as defined
16 in subdivision 212(7) of this title and permitted under this chapter ~~and in~~
17 ~~existence as of January 1, 2006,~~ shall be allowed to pay a mitigation fee
18 ~~computed according to the provisions of subdivision (1) of this subsection,~~
19 ~~except that it shall be entitled to a ratio of 1:1, protected acres to by~~
20 multiplying the acres of affected primary agricultural soil by the
21 “price-per-acre” value under subsection (d) of this section. ~~If an industrial~~

1 ~~park is developed to the fullest extent before any expansion, this ratio shall~~
2 ~~apply to any contiguous expansion of such an industrial park that totals no~~
3 ~~more than 25 percent of the area of the park or no more than 10 acres,~~
4 ~~whichever is larger; provided any expansion based on percentage does not~~
5 ~~exceed 50 acres. Any expansion larger than that described in this subdivision~~
6 ~~shall be subject to the mitigation provisions of this subsection at ratios that~~
7 ~~depend upon the location of the expansion.~~

8 (B) In any application to a district commission for expansion of an
9 existing or for a new industrial park, compact development patterns shall be
10 encouraged that assure the most efficient use of land and the realization of
11 maximum economic development potential through appropriate densities,
12 taking into account any long-term needs for project expansion within the
13 industrial park. Industrial park expansions and industrial park infill shall not
14 be subject to requirements established in subdivision 6086(a)(9)(B)(iii) of this
15 title, nor to requirements established in subdivision 6086(a)(9)(C)(iii).

16 (b) Easements required for protected lands. All primary agricultural soils
17 preserved for commercial ~~or economic~~ agricultural use by the Vermont
18 ~~housing and conservation board~~ Housing and Conservation Board or a
19 municipality pursuant to this section shall be protected by permanent
20 conservation easements (grant of development rights and conservation
21 restrictions) conveyed to a qualified holder, as defined in section 821 of this

1 title, with the ability to monitor and enforce easements in perpetuity. All such
2 easements shall include a covenant that provides agricultural activities on the
3 conserved soils with protections equal to or exceeding the protections provided
4 under 12 V.S.A. chapter 495 (nuisance suits against agricultural activities).

5 Off-site mitigation fees ~~may be used by~~ paid to the Vermont housing and
6 ~~conservation board~~ Housing and Conservation Board may be used to pay
7 reasonable staff or transaction costs, or both, of ~~the board and agency of~~
8 ~~agriculture, food, and markets~~ that Board and the Agency of Agriculture, Food
9 and Markets to preserve primary agricultural soils or to implement section
10 6086(a)(9)(B) or 6093 of this title.

11 (c) Local option; mitigation of primary agricultural soils. In lieu of onsite
12 mitigation under subdivision (a)(1) of this section or payment of an off-site
13 mitigation fee under subdivision (a)(2) of this section, the district commission
14 may approve a proposal by the applicant for off-site mitigation within the
15 municipality. In this section, “off-site mitigation within the municipality”
16 means the permanent conservation of agricultural soils on a tract that is located
17 in the same municipality as the tract on which primary agricultural soils are
18 proposed for development or subdivision, provided that:

19 (1) the municipality has adopted bylaws for the transfer of development
20 rights under 24 V.S.A. § 4423;

1 (2) the adopted bylaws provide for one or more designated sending areas
2 for which the right to develop primary agricultural soils may be acquired and
3 provide for one or more designated receiving areas that are eligible to receive
4 such rights and that promote high density development;

5 (3) the tract on which primary agricultural soils are proposed for
6 development or subdivision is within such a designated receiving area;

7 (4) the tract on which primary agricultural soils are proposed for
8 conservation is within such a designated sending area; and

9 (5) the acreage of primary agricultural soils to be preserved is calculated
10 in accordance with subdivision (a)(1) (onsite mitigation) of this section.

11 (d) Price-per-acre value. In this section, the “price-per-acre” value shall be
12 the amount that the Secretary of Agriculture, Food and Markets has determined
13 to be the recent, per-acre cost to acquire conservation easements for primary
14 agricultural soils in the same geographic region as the proposed development
15 or subdivision.

16 Sec. 2. EFFECTIVE DATE

17 This act shall take effect on July 1, 2013.