

1 Sec. 6. 10 V.S.A. § 6093 is amended to read:

2 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

3 (a) Mitigation for loss of primary agricultural soils. Suitable mitigation for  
4 the conversion of primary agricultural soils necessary to satisfy subdivision  
5 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

6 (1) Project located in ~~growth center~~ certain designated areas. This  
7 subdivision (1) applies to projects located in the following areas designated  
8 under 24 V.S.A. chapter 76A: a downtown development district, a growth  
9 center, a new town center designated on or before January 1, 2014, and a  
10 neighborhood development area associated with a designated downtown  
11 development district. If the project tract is located in a ~~designated growth~~  
12 ~~center~~ one of these designated areas, an applicant who complies with  
13 subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee  
14 into the Vermont ~~housing and conservation trust fund~~ Housing and  
15 Conservation Trust Fund established under section 312 of this title for the  
16 purpose of preserving primary agricultural soils of equal or greater value with  
17 the highest priority given to preserving prime agricultural soils as defined by  
18 the U.S. Department of Agriculture. Any required offsite mitigation fee shall  
19 be derived by:

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

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

3 (i) ~~for~~ For development or subdivision within a designated ~~growth~~  
4 ~~center~~ area described in this subdivision (a)(1), the ratio shall be 1:1 $\frac{1}{2}$ .

5 (ii) ~~for~~ For residential construction that has a density of at least  
6 eight units of housing per acre, of which at least eight units per acre or at least  
7 40 percent of the units, on average, in the entire development or subdivision,  
8 whichever is greater, meets the definition of affordable housing established in  
9 this chapter, no mitigation shall be required, regardless of location in or outside  
10 a designated area described in this subdivision (a)(1). However, all affordable  
11 housing units shall be subject to housing subsidy covenants, as defined in 27  
12 V.S.A. § 610, that preserve their affordability for a period of 99 years or  
13 longer. ~~For purposes of~~ As used in this section, housing that is rented shall be  
14 considered affordable housing when its inhabitants have a gross annual  
15 household income that does not exceed 60 percent of the county median  
16 income or 60 percent of the standard metropolitan statistical area income if the  
17 municipality is located in such an area.

18 (C) ~~multiplying~~ Multiplying the resulting product by a  
19 “price-per-acre” value, which shall be based on the amount that the ~~secretary~~  
20 ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets  
21 has determined to be the recent, per-acre cost to acquire conservation

1 easements for primary agricultural soils in the same geographic region as the  
2 proposed development or subdivision.

3 (2) Project located outside certain designated ~~growth-center~~ areas. If the  
4 project tract is not located in a designated ~~growth-center~~ area described  
5 subdivision (a)(1) of this section, mitigation shall be provided on site in order  
6 to preserve primary agricultural soils for present and future agricultural use,  
7 with special emphasis on preserving prime agricultural soils. Preservation of  
8 primary agricultural soils shall be accomplished through innovative land use  
9 design resulting in compact development patterns which will maintain a  
10 sufficient acreage of primary agricultural soils on the project tract capable of  
11 supporting or contributing to an economic or commercial agricultural operation  
12 and shall be enforceable by permit conditions issued by the ~~district commission~~  
13 District Commission. The number of acres of primary agricultural soils to be  
14 preserved shall be derived by:

15 (A) ~~determining~~ Determining the number of acres of primary  
16 agricultural soils affected by the proposed development or subdivision; ~~and,~~

17 (B) ~~multiplying~~ Multiplying the number of affected acres of primary  
18 agricultural soils by a factor based on the quality of those primary agricultural  
19 soils, and other factors as the ~~secretary of agriculture, food and markets~~  
20 Secretary of Agriculture, Food and Markets may deem relevant, including the  
21 soil's location; accessibility; tract size; existing agricultural operations; water

1 sources; drainage; slope; the presence of ledge or protected wetlands; the  
2 infrastructure of the existing farm or municipality in which the soils are  
3 located; and the N.R.C.S. rating system for Vermont soils. This factor shall  
4 result in a ratio of no less than 2:1, but no more than 3:1, protected acres to  
5 acres of impacted primary agricultural soils.

6 (3) Mitigation flexibility.

7 (A) Notwithstanding the provisions of subdivision (a)(1) of this  
8 ~~subsection~~ section pertaining to a development or subdivision on primary  
9 agricultural soils within a certain designated ~~growth center~~ areas, the ~~district~~  
10 ~~commission~~ District Commission may, in appropriate circumstances, require  
11 onsite mitigation with special emphasis on preserving prime agricultural soils  
12 if that action is deemed consistent with the agricultural elements of local and  
13 regional plans and the goals of 24 V.S.A. § 4302. In this situation, the  
14 approved plans must designate specific soils that shall be preserved inside  
15 ~~growth centers~~ a designated area described in subdivision (a)(1) of this section.

16 For projects located within such a designated ~~growth center~~ area, all factors  
17 used to calculate suitable mitigation acreage or fees, or some combination of  
18 these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

19 (B) Notwithstanding the provisions of subdivision (a)(2) of this  
20 ~~subsection~~ section pertaining to a development or subdivision on primary  
21 agricultural soils outside a designated ~~growth center~~ area described in

1 subdivision (a)(1) of this section, the ~~district commission~~ District Commission  
2 may, in appropriate circumstances, approve off-site mitigation or some  
3 combination of onsite and off-site mitigation if that action is deemed consistent  
4 with the agricultural elements of local and regional plans and the goals of  
5 24 V.S.A. § 4302. For projects located outside such a designated ~~growth~~  
6 ~~center~~ area, all factors used to calculate suitable mitigation acreage or fees, or  
7 some combination of these measures, shall be as specified in this  
8 subsection (a), subject to a ratio of no less than 2:1, but no more than 3:1.

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