

PRIMARY AGRICULTURAL SOILS ACT 250

OFF-SITE MITIGATION

H.448 and H.449

**Michael Zahner, Vermont Chamber of Commerce
January of 2014**

**Smart Growth Committee Report
Vermont Legislature – 2009
Chair, Ginny Lyons**

Primary Agricultural Soils

Prior to 2006, conflicts emerged in Act 250 when well-designed projects proposed for areas planned for intensive growth were subject to denial because they had not been adequately clustered on the project tract to preserve a sufficient acreage of primary agricultural soils, a requirement of Subcriterion 9(B)(iii) of 10 V.S.A. § 6086. This requirement resulted in isolated pockets of protected agricultural soils that were unlikely to be farmed in the future. The prior statutory language of Criterion 9(B) represented the antithesis of “smart growth” since it did not allow full high density development to occur on primary agricultural soils in areas served by public investment and infrastructure. This led to the passage of Act 183 of 2006 and the codification of “offsite mitigation” through the payment of fees.

Maximizing development densities in these areas, including designated growth centers, serves to reduce development pressure on primary agricultural soils in outlying rural areas. The Criterion 9(B) revisions approved in Act 183 in 2006, promote more efficient land use in concert with “smart growth” and one of the statutory goals of Act 200 and Act 250’s Capability and Development Plan which is to encourage the historic settlement pattern of compact village and urban centers separated by rural countryside.

ACT 59 GROWTH CENTER STUDY

Report Prepared by

The Department of Housing and community Development (DHcD)

December 15, 2013

Protect large contiguous blocks of farmland and promote the farm economy by ensuring farms are profitable.

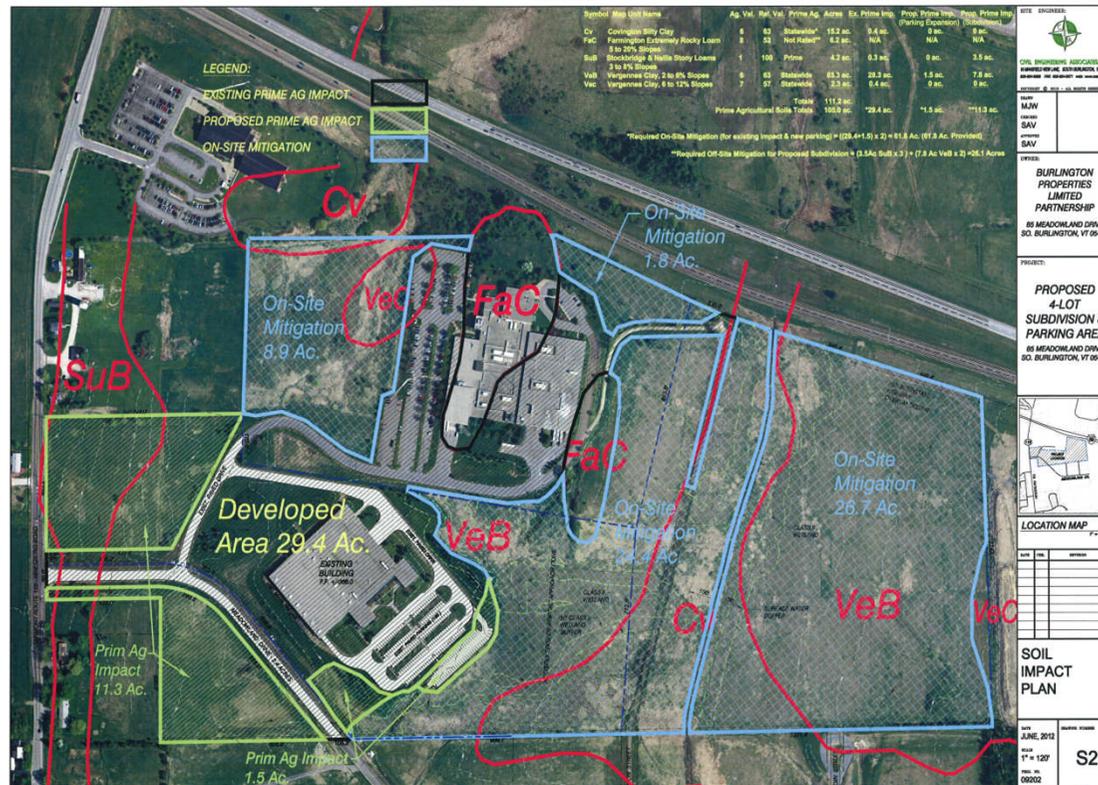
The need for farmland protection was stressed in recognition of all the benefits that local farms provide, including greater food security, job and business development, keeping working lands working and enabling people to make a living from the land. Vermont has a wealth of programs working to protect farmland through conservation, regulation, current use, and those offering assistance, such as helping to match farmers to available farmland. But ultimately all agreed that the key to farmland preservation is focusing on the profitability of farms.

Stakeholders suggested various ways to improve local planning and regulation and changes to Act 250 agricultural land mitigation policies. It was suggested that those measures be fined tuned to focus less on keeping land undeveloped and more on the farms' profitability. For example, municipalities could be encouraged to address farming as part of the required economic development element.

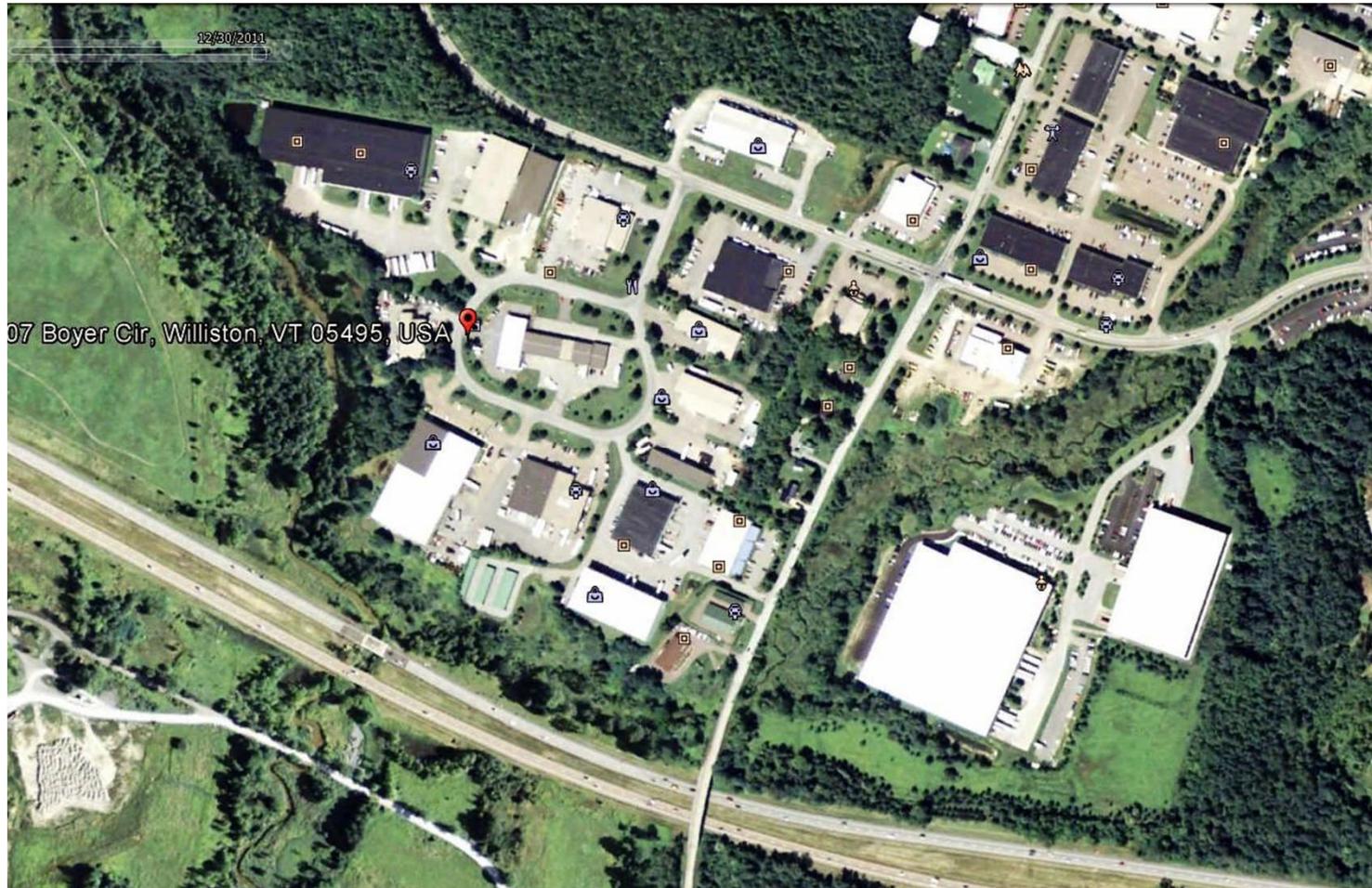
Land Use Permit 4C0473 issued by the District #4 Environmental Commission on June 19, 1981 to Mitel (Dynapower) in South Burlington, impacted 29.4 acres of primary agricultural soils which were mitigated on-site preserving 68.1 acres out of a total tract size of 97.5 acres. See next slide. There has been no historical use of the conserved land which is now growing up to brush and small trees.



District Commission Decision (MOD 8 29 12) (LUP 9 27 12): For projects located outside designated growth centers, applicants, in most instances, are required to provide “on-site” mitigation through the use of “innovative land use design resulting in compact development patterns which will preserve primary agricultural soils on the project tract for present and future agricultural use.” The applicants paid an off-site mitigation fee of \$37,555.00 for new development in 2012.



4C0700 issued for Adams Park in Williston, August 20, 1987, which impacted 20 acres of primary agricultural soils. Offsite mitigation at 1:1 ratio, 20 acres preserved on the Fontaine Farm in Williston. The Fontaine Farm was designated as a farm of distinction by the Vermont Agency of Agriculture in August of 2008. See next slide.



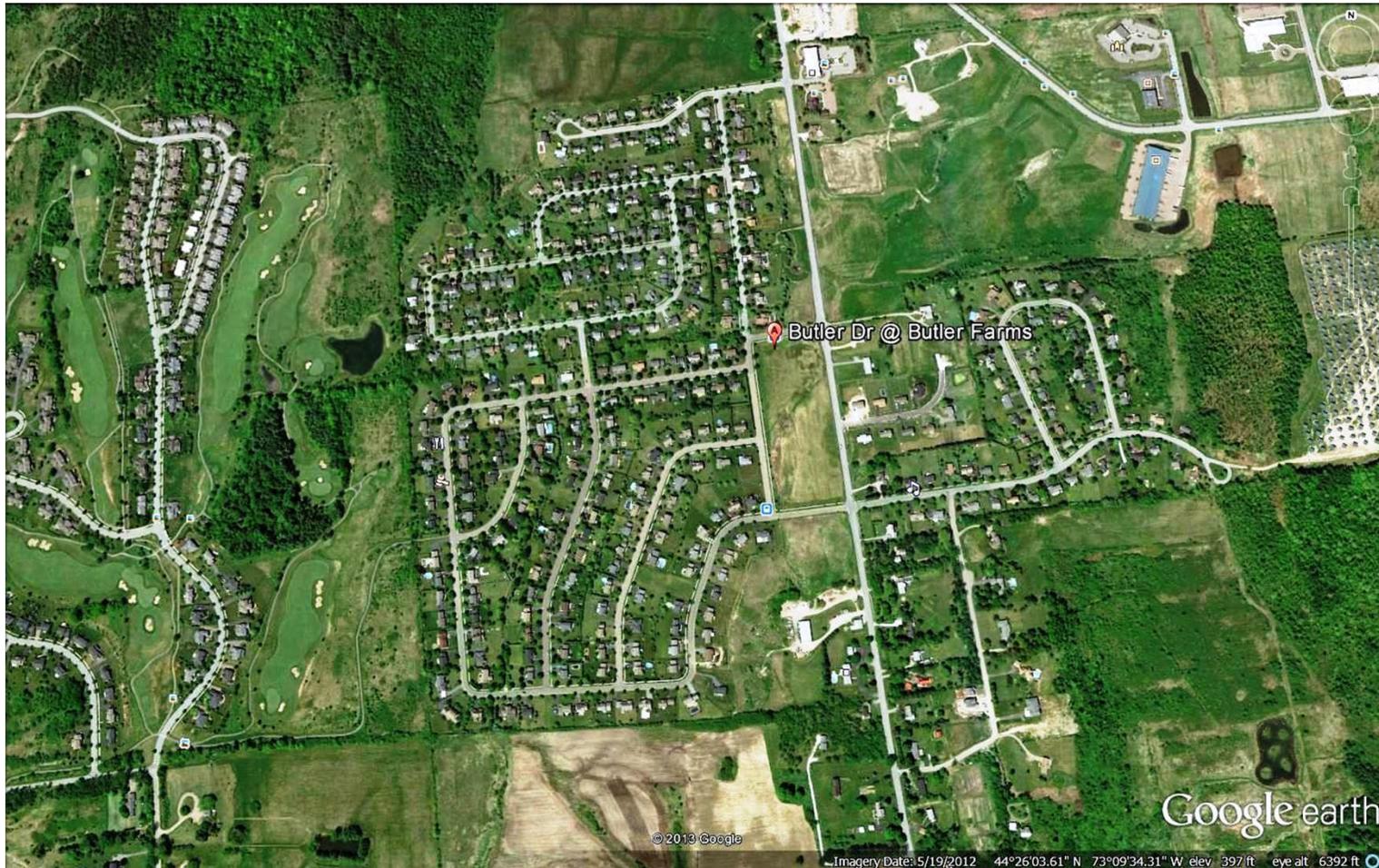
Fontaine Farm in Williston



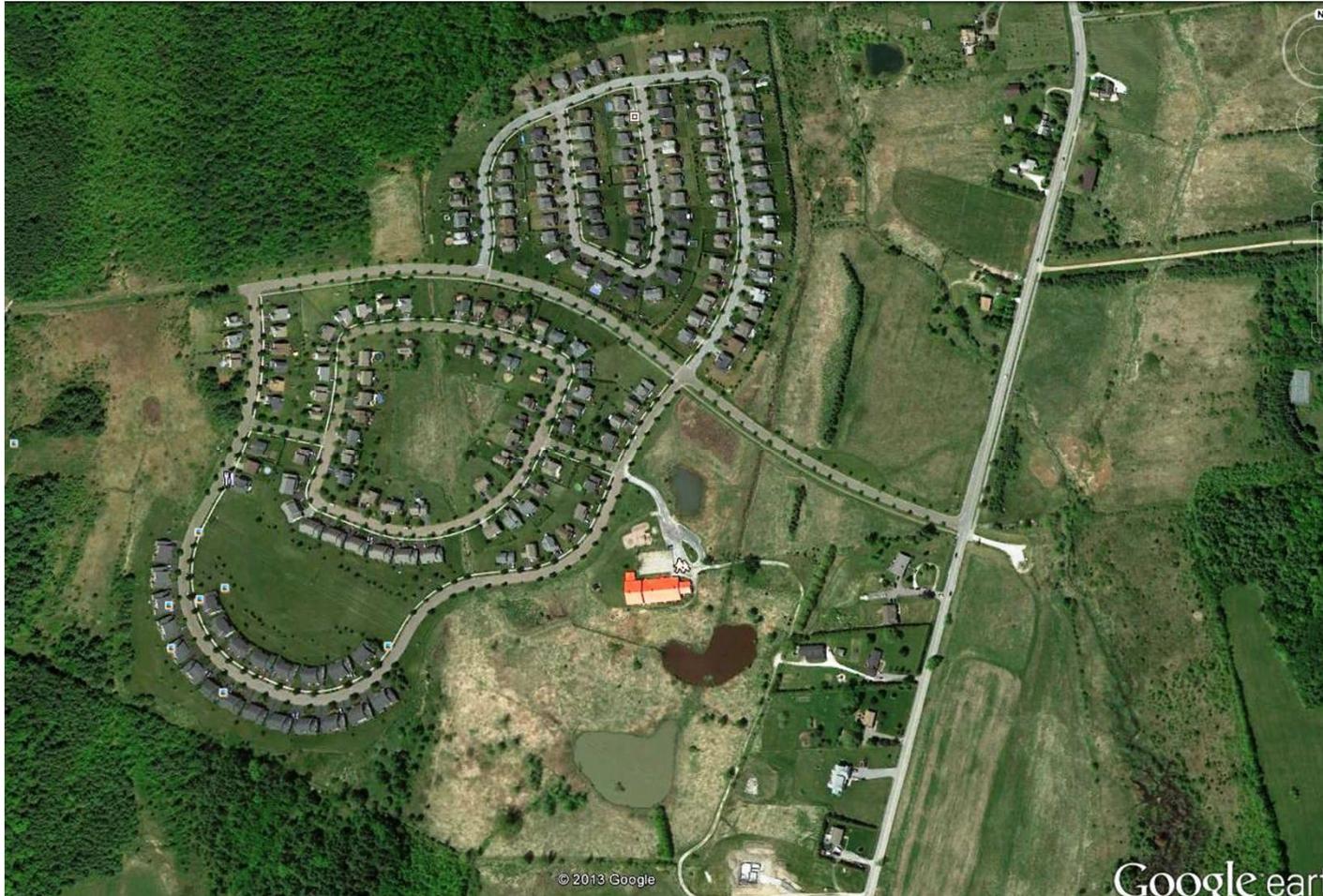
4C0608-10 issued for the Lang Farm development in Essex, Vermont on December 23, 1988, impacting 12.6 acres with 20 acres mitigated onsite.



4C0614-4 issued to Homer and Marie Dubois, high density 54 lot subdivision at Butler Farms, South Burlington, Vermont on October 26, 1992 impacting 33 acres, offsite mitigation fee of \$90,000.



4C0948-EB issued to MBL Associates for the construction of 221 Unit residential development in South Burlington on June 25, 1995. Impacting 34 acres of primary agricultural soils, offsite mitigation fee of \$102,000. Conservation efforts occurred on the Marshall Farm in Enosburg and the Leduc Farm in South Burlington. See next slide.



Leduc Farm in South Burlington, acreage conserved as a result of MBL Associates



4C1125 issued to Severance Corners on July 3, 2003, partial findings on Criterion 9(B) for mixed use development with 152 residential units and 86,000 square feet of office, commercial and retail space. Impacted 36.23 acres of primary agricultural soils, generating offsite mitigation fee of \$130,264 which was used to preserve acreage on the Marshall Farm in Enosburgh and the Hatshorn Farm in Waitsfield.



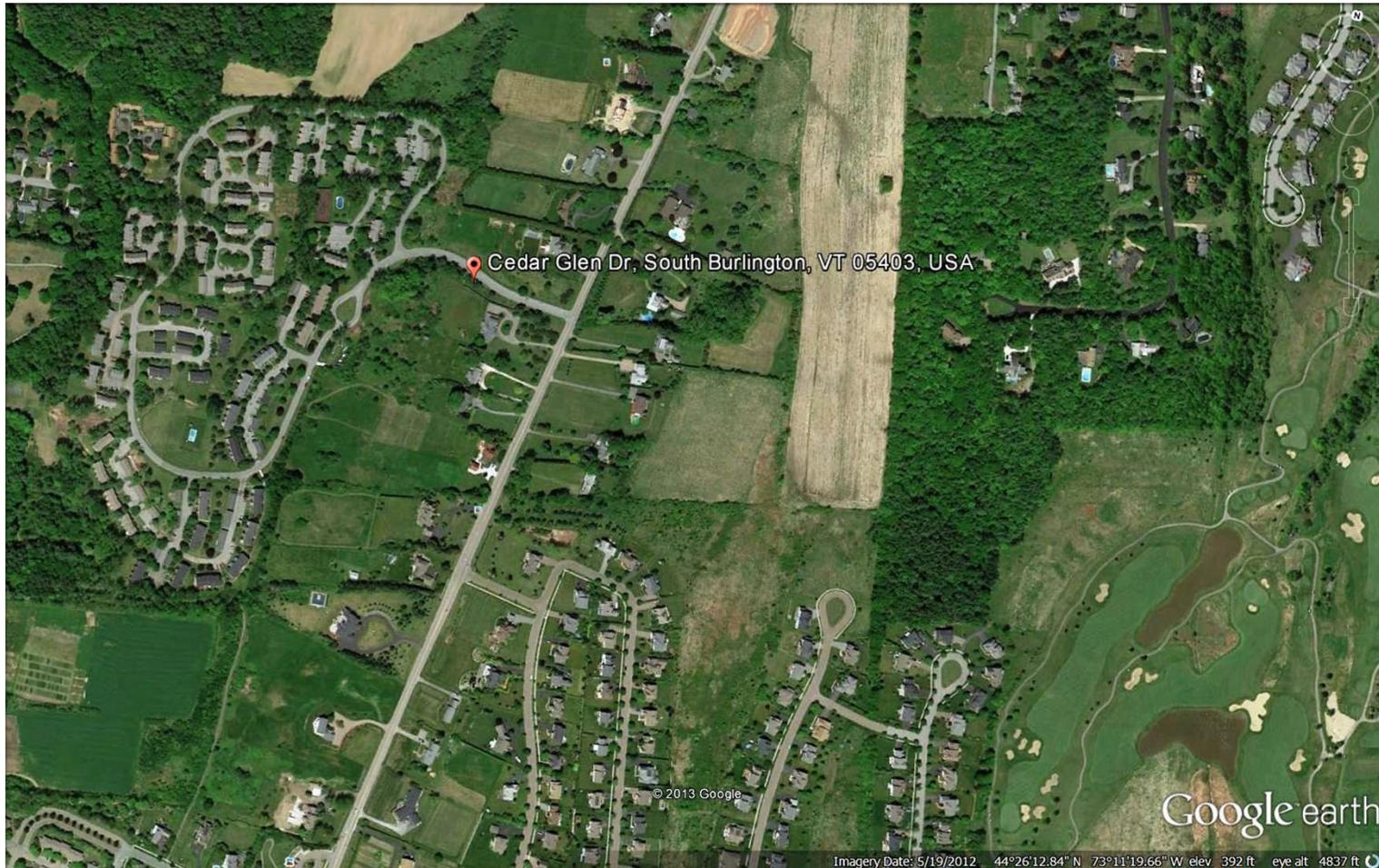
4C1007 issued May 29, 1997 to Husky Corporation in Milton, for Phase I, a 155,000 SF MOLD DEVELOPMENT CENTER, impacting approximately 10 acres of primary agricultural soils relying on an extensive on-site mitigation plan. Project is not in a state designated growth center. I was not able to access all information online and therefore additional data is needed.



4C0325-2 issued April 5, 2012 to Big Sky, off Industrial Parkway in Burlington, impacting 6 acres of primary agricultural soils. Because this track is surrounded by industrial and other high intensity land uses, the Commission found it was unlikely that this tract could contribute or support a commercial or economic agricultural operation and therefore it did not meet the legal definition for primary agricultural soils. The development was allowed to move forward after meeting all other environmental criteria.



4C1173-1, Spear Meadows off Dorset Street in South Burlington, impacting 23.23 acres of primary agricultural soils. This project is pending in front of the District #4 Commission, partial application under Criterion 9(B) filed in 2008 with a request for combined offsite mitigation consisting of a Transfer-of-Development Rights (TDR) approval in South Burlington and an offsite mitigation fee to the VHCB to make up the difference.



4C1128 issued March 16, 2005 for the Cider Mill (Dorset Street Associates) project in South Burlington seeking partial findings under Criteria 9(B) and 9(C) to create 59 single family lots and 90 multifamily dwelling units with infrastructure improvements, impacting 82.60 acres, generating an offsite mitigation fee of \$407,218 helping to conserve the J & J Boissoneau Farm in Essex and the Intervale Farm in Burlington.



4C0887-1R issued for Finney Crossing for a phased Planned Use Development with 356-residential units and 186,000 sf. of commercial space, both served by municipal water and sewer services. Phased project is within Williston's state designated growth center. Mitigation ration is 1:1 and the applicants agreed to pay a total of \$276,876.49 in off-site mitigation fees for the entire project. 32 acres of PAS were preserved on-site.



Vermont Housing Conservation Board (VHCB) 2002 Report

<http://www.vhcb.org/mitigationreport.pdf>

Executive Summary

Since 1991 [to 2002], VHCB has received approximately \$1 million in mitigation funds generated by the loss of 634 acres of primary agricultural soils in 58 developments under Act 250 jurisdiction. These funds are legally restricted to protection of farms within the geographical area of the development. As of November 30, 2002, VHCB has matched approximately \$500,000 of these funds with \$3,500,000 in state, federal and private funds to purchase conservation easements on 22 farms containing a total of 5,183 acres of land. All of the landowners who sell development rights on their farms are paid fair market value for deeded conservation easements based on a qualified appraisal. These 5,183 acres contribute to large blocks of farmland protected in perpetuity by Vermont's network of conservation land trusts working with private and public partners.

Conclusion

Off-site mitigation payments have become an integral and important part of Vermont's efforts to protect farmland for agricultural purposes, to strengthen our rural economy and to maintain the health and integrity of our communities and the rural landscape. Agriculture is fundamental to Vermont's economy and no state has made a greater per capita investment in conserving the working landscape than Vermont. By utilizing off-site mitigation under Act 250, Criterion 9(B), District Environmental Commissioners can promote development within concentrated growth centers while assuring protection of our best farmland.

\$2,779,237 has been earmarked in off-site mitigation funds to date in Chittenden County alone.

Source: District #4 Environmental Commission