

Natural Resources Board Land Use Panel

Statement of Procedure: Preservation of Primary Agricultural Soils

**Revised and adopted by the Land Use Panel: September 11, 2012
Effective September 11, 2012**

(A) Purpose. In accordance with Chapter 25 of Title 3 – Vermont’s Administrative Procedure Act, the land use panel of the natural resources board hereby adopts a procedure to define and implement certain elements of 10 V.S.A. §6086(a)(9)(B) as amended and 10 V.S.A. §6093, as added by Legislative Act 183 effective July 1, 2006, relating to the protection of primary agricultural soils.

(B) Definitions.

(1) “Reduction in the potential of the primary agricultural soils” means any loss or impairment of the potential of the primary agricultural soils on the project tract to contribute or support an economic or commercial agricultural operation.

(2) “Compact development patterns” means the use of innovative land use design specifically intended to minimize or eliminate the fragmentation of primary agricultural soils on a project tract, thus preserving a percentage of the primary agricultural soils on a project tract or tracts, capable of supporting or contributing to an economic or commercial agricultural operation, consistent with the ratio requirements of 10 V.S.A. §6093.

(C) Primary Agricultural Soils Mitigation Flexibility.

(1) Projects located outside designated growth centers. In appropriate circumstances, the district environmental commission may, in lieu of the provisions of subdivision (2) of 10 V.S.A. §6093 require payment of an offsite mitigation fee; or, any combination of onsite or offsite mitigation.

(2) “Appropriate circumstances” enabling the exercise of mitigation flexibility.

(a) A determination of “appropriate circumstances,” as used in 10 V.S.A. §6093(a)(3)(B), may be based on the following findings by a district commission:

(1) (A) the tract of land containing primary agricultural soils is of limited value in terms of contributing to an economic or commercial agricultural operation and that devoting the land to agricultural uses is considered to be impractical based on the size of the tract of land, or its location in relationship to other agricultural and nonagricultural uses, or

(B) the project tract is surrounded by or adjacent to other high density development with supporting infrastructure and, as a result of good land use design, the project will contribute to the existing compact development patterns in the area, or

(C) the area contains a mixture of uses, including commercial and industrial uses, and a significant residential component, supported by municipal infrastructure,

and

(2) the district commission determines that payment of an offsite mitigation fee, or some combination of onsite or offsite mitigation, will best further the goal of preserving primary agricultural soils for present and future agricultural use with special emphasis on protecting prime agricultural soils thus serving to strengthen the long-term economic viability of Vermont's agricultural resources.

(b) A finding of "appropriate circumstances" shall not relieve an applicant from reasonable compliance with 10 V.S.A. §6086(a)(9)(B)(iii).

(c) An applicant's reasonable compliance with 10 V.S.A. §6086(a)(9)(B)(iii) will inform the district commission as to what primary agricultural soils remain available for purposes of on-site mitigation, and therefore, in some cases, a finding of "appropriate circumstances" may allow for positive findings under §6086(a)(9)(B)(iii), even when no (or an insufficient number of) acres of primary agricultural soils capable of supporting or contributing to an economic or commercial agricultural operation are preserved on the project tract or tracts,

(D) Preliminary Agreement with Agency of Agriculture. An applicant may enter into a preliminary agreement with the secretary of agriculture, food, and markets that identifies the primary agricultural soils on the project tract or tracts; and, outlines the proposed mitigation for any reduction in the potential of the primary agricultural soils on those lands. Any such agreement shall serve as evidence that the soils have been adequately identified and that the proposed mitigation satisfies the pertinent requirements of 10 V.S.A. §6086(a)(9)(B)(iii) and (iv), subject to final approval by the district environmental commission.

(E) General Requirements: Protection of Primary Agricultural Soils. All primary agricultural soils preserved for agricultural use on a project tract shall, at a minimum, be protected by permit conditions issued by the district environmental commission. In certain situations, conservation easements may be conveyed to a qualified holder, as defined in 10 V.S.A. §821, with the ability to monitor and enforce easements in perpetuity.