

1 DRAFT BASED ON NATURAL RESOURCES BOARD AND AGENCY OF  
2 AGRICULTURE, FOOD AND MARKETS PROPOSAL

3 TO THE HOUSE OF REPRESENTATIVES:

4 The Committee on Agriculture and Forest Products to which was referred  
5 House Bill No. 448 entitled “An act relating to Act 250 and primary  
6 agricultural soils” respectfully reports that it has considered the same and  
7 recommends that the bill be amended by striking out all after the enacting  
8 clause and inserting in lieu thereof the following:

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

10 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

11 (a) Mitigation for loss of primary agricultural soils. ~~Suitable~~ Subject to the  
12 District Commission’s approval, an applicant shall provide suitable mitigation  
13 for the conversion of primary agricultural soils necessary to satisfy subdivision  
14 6086(a)(9)(B)(iv) of this title ~~shall depend on where the project tract is located.~~  
15 through one of the following means:

16 (1) ~~Project located in growth center. If the project tract is located in a~~  
17 ~~designated growth center, an applicant who complies with subdivision~~  
18 ~~6086(a)(9)(B)(iv) of this title shall deposit~~ Off-site mitigation fee. The deposit  
19 of an offsite off-site mitigation fee into the Vermont ~~housing and conservation~~  
20 ~~trust fund~~ Housing and Conservation Trust Fund established under section 312  
21 of this title for the purpose of preserving primary agricultural soils of equal or

1 greater value with the highest priority given to preserving prime agricultural  
2 soils as defined by the U.S. Department of Agriculture. Any required ~~offsite~~  
3 off-site mitigation fee shall be derived by:

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

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

8 (i) ~~for~~ For development or subdivision within a **designated**  
9 **growth center, designated downtown, or a neighborhood development**  
10 **area associated with a designated downtown,** the ratio shall be 1:1;

11 (ii) For development or subdivision outside a **designated growth**  
12 **center, designated downtown, or a neighborhood development area**  
13 **associated with a designated downtown,** the factor shall be based on the  
14 quality of the affected primary agricultural soils and other factors that the  
15 Secretary of Agriculture, Food and Markets may consider relevant, including  
16 the soil's location, accessibility, tract size, existing agricultural operations,  
17 water sources, drainage, slope, the presence of ledge or protected wetlands, the  
18 infrastructure of the existing farm or municipality in which the soils are  
19 located, and the NRCS rating system for Vermont soils. This factor shall result  
20 in a ratio of no less than 2:1, but no more than 3:1, protected acres to acres of  
21 impacted primary agricultural soils.

1            ~~(iii) for~~ For residential construction that 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, no mitigation shall be required. However, all affordable housing  
6            units shall be subject to housing subsidy covenants, as defined in 27 V.S.A.  
7            § 610, that preserve their affordability for a period of 99 years or longer. ~~For~~  
8            ~~purposes of~~ In this section, housing that is rented shall be considered  
9            affordable housing when its inhabitants have a gross annual household income  
10           that does not exceed 60 percent of the county median income or 60 percent of  
11           the standard metropolitan statistical area income if the municipality is located  
12           in such an area.

13            (C) ~~multiplying~~ Multiplying the resulting product by a  
14            “price-per-acre” value, which shall be based on the amount that the ~~secretary~~  
15            ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets  
16            has determined to be the recent, per-acre cost to acquire conservation  
17            easements for primary agricultural soils in the same geographic region as the  
18            proposed development or subdivision.

19            ~~(2) Project located outside designated growth center. If the project tract~~  
20            ~~is not located in a designated growth center, mitigation shall be provided on~~  
21            ~~site in order to preserve primary agricultural soils for present and future~~

1 ~~agricultural use, with special emphasis on preserving prime agricultural soils.~~  
2 ~~Preservation of primary agricultural soils shall be accomplished through~~  
3 ~~innovative land use design resulting in compact development patterns which~~  
4 ~~will maintain a sufficient acreage of primary agricultural soils on the project~~  
5 ~~tract capable of supporting or contributing to an economic or commercial~~  
6 ~~agricultural operation and shall be enforceable by permit conditions issued by~~  
7 ~~the district commission.~~ On-site mitigation. The preservation of primary  
8 agricultural soils on the site of the proposed development or subdivision. The  
9 number of acres of primary agricultural soils to be preserved shall be  
10 derived by:

11 (A) ~~determining~~ Determining the number of acres of primary  
12 agricultural soils affected by the proposed development or subdivision; ~~and,~~  
13 (B) ~~multiplying~~ Multiplying the number of affected acres of primary  
14 agricultural soils by a factor based on the quality of those primary agricultural  
15 soils; and other factors as that the secretary of agriculture, food and markets  
16 Secretary of Agriculture, Food and Markets may ~~deem~~ consider relevant,  
17 including the soil's location; accessibility; tract size; existing agricultural  
18 operations; water sources; drainage; slope; the presence of ledge or  
19 protected wetlands; the infrastructure of the existing farm or municipality in  
20 which the soils are located; and the N.R.C.S. NRCS rating system for  
21 Vermont soils. This factor shall result in a ratio of no less than 2:1, but no

1 more than 3:1, protected acres to acres of impacted primary agricultural soils,  
2 **except for development in a designated growth center, designated**  
3 **downtown, or a neighborhood development area associated with a**  
4 **designated downtown, in which case the ratio shall be 1:1.**

5 (3) Mitigation flexibility.

6 ~~(A) Notwithstanding the provisions of subdivision (1) of this~~  
7 ~~subsection pertaining to a development or subdivision on primary agricultural~~  
8 ~~soils within a designated growth center, the district commission may, in~~  
9 ~~appropriate circumstances, require onsite mitigation with special emphasis on~~  
10 ~~preserving prime agricultural soils if that action is deemed consistent with the~~  
11 ~~agricultural elements of local and regional plans and the goals of 24 V.S.A.~~  
12 ~~§ 4302. In this situation, the approved plans must designate specific soils that~~  
13 ~~shall be preserved inside growth centers. For projects located within a~~  
14 ~~designated growth center, all factors used to calculate suitable mitigation~~  
15 ~~acreage or fees, or some combination of these measures, shall be as specified~~  
16 ~~in this subsection, subject to a ratio of 1:1.~~

17 ~~(B) Notwithstanding the provisions of subdivision (2) of this~~  
18 ~~subsection pertaining to a development or subdivision on primary agricultural~~  
19 ~~soils outside a designated growth center, the district commission may, in~~  
20 ~~appropriate circumstances, approve off-site mitigation or some combination of~~  
21 ~~onsite and off site mitigation if that action is deemed consistent with the~~

1 ~~agricultural elements of local and regional plans and the goals of 24 V.S.A.~~  
2 ~~§ 4302. For projects located outside a designated growth center, all factors~~  
3 ~~used to calculate suitable mitigation acreage or fees, or some combination of~~  
4 ~~these measures, shall be as specified in this subsection, subject to a ratio of no~~  
5 ~~less than 2:1, but no more than 3:1. Combined mitigation. The payment of an~~  
6 ~~off-site mitigation fee under subdivision (a)(1) of this section combined with~~  
7 ~~the preservation of the remaining primary agricultural soils on the site of the~~  
8 ~~proposed development or subdivision under subdivision (a)(2) of this section.~~  
9 ~~For the purpose of calculating the amount of the off-site-mitigation fee and the~~  
10 ~~acreage to be preserved on-site, an applicant may propose and the District~~  
11 ~~Commission may approve an allocation of the acreage of affected primary~~  
12 ~~agricultural soils between subdivisions (1) and(2) of this subsection (a).~~

13 \* \* \*

14 (b) In determining suitable mitigation under this section, the District  
15 Commission:

16 (1) shall apply each of the following to determine whether off-site  
17 mitigation, either alone or combined with on-site mitigation, is  
18 appropriate, and such mitigation shall be preferred if the Commission  
19 finds that:

1           **(A) the project tract:**

2                   **(i) is surrounded by or adjacent to high density development**  
3           **with supporting infrastructure and the project will contribute to the**  
4           **existing compact development patterns in the area; or**

5                   **(ii) is within an area that contains a mixture of uses, including**  
6           **commercial and industrial, and a significant residential component;**  
7           **supported by municipal water, wastewater, and roadway infrastructure;**

8                   **(B) based on the recommendation of the Secretary of**  
9           **Agriculture, Food and Markets, devoting the tract to agricultural uses is**  
10           **impractical based on its size or relationship to other land uses or**  
11           **site-specific characteristics;**

12                   **(C) off-site mitigation shall comply with 24 V.S.A. § 2791(13)(A)**  
13           **and (E); and**

14                   **(D) payment of an off-site mitigation fee, or requiring a**  
15           **combination of on-site and off-site mitigation, will best further the**  
16           **preservation of primary agricultural soils for present and future**  
17           **agricultural use with special emphasis on protecting prime agricultural**  
18           **soils.**

19                   **(2) shall apply each of the following to determine whether on-site**  
20           **mitigation is appropriate, and on-site mitigation shall be preferred if the**  
21           **Commission finds that:**

1           **(A) the project tract supports an agricultural operation or has**  
2           **recently been in active production or rotation;**

3           **(B) the primary agricultural soils on project tract consist**  
4           **predominantly of NRCS agricultural value groups 1–5;**

5           **(C) the project tract has site-specific characteristics that, as**  
6           **recommended by the Secretary of Agriculture, Food and Markets,**  
7           **warrant on-site mitigation; or**

8           **(D) on-site mitigation shall comply with 24 V.S.A. § 2791(13)(A)**  
9           **and (E).**

10           (c) Easements required for protected lands. All primary agricultural soils  
11           preserved for commercial or economic agricultural use by the Vermont  
12           ~~housing and conservation board~~ Housing and Conservation Board pursuant to  
13           this section shall be protected by permanent conservation easements (grant of  
14           development rights and conservation restrictions) conveyed to a qualified  
15           holder, as defined in section 821 of this title, with the ability to monitor and  
16           enforce easements in perpetuity. Off-site mitigation fees may be used by the  
17           Vermont ~~housing and conservation board~~ Housing and Conservation Board  
18           and shall be used by the Agency of Agriculture, Food and Markets to pay  
19           reasonable staff or transaction costs, or both, of the ~~board and agency of~~  
20           ~~agriculture, food, and markets~~ Board and Agency related to preserve the



1 preservation of primary agricultural soils or to implement the implementation  
2 of section 6086(a)(9)(B) or 6093 of this title.

3 Sec. 2. 10 V.S.A. § 6001(15) is amended to read:

4 **(15) “Primary agricultural soils” means ~~soil map units with the best~~**  
5 **~~combination of physical and chemical characteristics that have a potential~~**  
6 **~~for growing food, feed, and forage crops, have sufficient moisture and~~**  
7 **~~drainage, plant nutrients or responsiveness to fertilizers, few limitations~~**  
8 **~~for cultivation or limitations which may be easily overcome, and an~~**  
9 **~~average slope that does not exceed 15 percent. Present uses may be~~**  
10 **~~cropland, pasture, regenerating forests, forestland, or other agricultural~~**  
11 **~~or silvicultural uses. However, the soils must be of a size and location,~~**  
12 **~~relative to adjoining land uses, so that those soils will be capable, following~~**  
13 **~~removal of any identified limitations, of supporting or contributing to an~~**  
14 **~~economic or commercial agricultural operation. Unless contradicted by~~**  
15 **~~the qualifications stated in this subdivision, primary agricultural soils~~**  
16 **~~shall include important farmland soils map units with a rating of prime,~~**  
17 **~~statewide, or local importance as defined by the Natural Resources~~**  
18 **~~Conservation Service (N.R.C.S.) of the United States Department of~~**  
19 **~~Agriculture (U.S.D.A.) each of the following:~~**

20 **(A) An important farmland soils map unit that the Natural**  
21 **Resources Conservation Service of the U.S. Department of Agriculture**

1 (NRCS) has identified and determined to have a rating of prime,  
2 statewide, or local importance, unless the District Commission determines  
3 that the soils within the unit have lost their agricultural potential. In  
4 determining that soils within an important farmland soils map unit have  
5 lost their agricultural potential, the Commission shall consider:

6 (i) impacts to the soils from previously constructed  
7 improvements;

8 (ii) the presence on the soils of a Class I or Class II wetland  
9 under chapter 37 of this title;

10 (iii) the existence of topographic or physical barriers that  
11 reduce the accessibility of the rated soils so as to cause their isolation and  
12 that cannot reasonably be overcome; and

13 (iv) other factors, on a site-specific basis, as found by the  
14 Commission upon the recommendation of the Secretary of Agriculture,  
15 Food and Markets.

16 (B) Soils on the project tract that the District Commission finds to  
17 be of agricultural importance, due to their present or recent use for  
18 agricultural activities and which have not been identified by the NRCS as  
19 important farmland soil map units.

1 Sec. 3. 10 V.S.A. § 6086(a)(9)(B) is amended to read:

2 (B) Primary agricultural soils. A permit will be granted for the  
3 development or subdivision of primary agricultural soils only when it is  
4 demonstrated by the applicant that, in addition to all other applicable criteria,  
5 either, the subdivision or development will not result in any reduction in the  
6 agricultural potential of the primary agricultural soils; or:

7 (i) the development or subdivision will not significantly interfere  
8 with or jeopardize the continuation of agriculture or forestry on adjoining lands  
9 or reduce their agricultural or forestry potential; and

10 (ii) except in the case of an application for a project located in a  
11 designated growth center, there are no lands other than primary agricultural  
12 soils owned or controlled by the applicant which are reasonably suited to the  
13 purpose of the development or subdivision; and

14 (iii) ~~except in the case of an application for a project located in~~  
15 ~~a designated growth center,~~ the subdivision or development has been  
16 planned;

17 (I) to minimize the reduction of agricultural potential of the  
18 primary agricultural soils through ~~innovative~~ land use design ~~resulting that~~  
19 results in compact development patterns, so that the remaining primary  
20 agricultural soils on the project tract are capable of supporting or contributing  
21 to an economic or commercial agricultural operation; or

1                    **(II) to maximize the efficient use and development density**  
2                    **of the project tract on which those soils are located, if the reduction in**  
3                    **agricultural potential of the primary agricultural soils is to be mitigated**  
4                    **entirely off-site pursuant to subdivision (B)(iv) of this subdivision (9). The**  
5                    **applicant shall provide a site plan that demonstrates that the project tract**  
6                    **will be fully and densely developed before the Commission will find that**  
7                    **entirely off-site mitigation is appropriate;** and

8                    (iv) suitable mitigation will be provided for any reduction in the  
9                    agricultural potential of the primary agricultural soils caused by the  
10                    development or subdivision, in accordance with section 6093 of this title and  
11                    rules adopted by the Natural Resources Board.

12                    Sec. 4. EFFECTIVE DATE

13                    This act shall take effect on July 1, 2014.

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17                    (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

Representative [surname]

FOR THE COMMITTEE