

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) Requirements and factors. This subsection sets out requirements for**
15 **and factors to be considered in determining suitable mitigation under this**
16 **section.**

17 **(1) Findings. In determining suitable mitigation, the District**
18 **Commission shall consider and make findings on each requirement and**
19 **factor described in subdivisions (2) through (4) of this subsection.**

20 **(2) General. Mitigation for the conversion of primary agricultural**
21 **soils shall comply with 24 V.S.A. § 2791(13)(A) (smart growth principles;**

1 historic development patterns) and (E) (agricultural and forest
2 industries).

3 (3) Mitigation entirely on-site. The District Commission shall
4 give preference to mitigation that is entirely on-site if the Commission
5 finds that:

6 (A) the project tract supports an agricultural operation or has
7 been in active production or rotation within the last five years; or

8 (B) the primary agricultural soils on the project tract consist
9 predominantly of NRCS agricultural value groups 1–5; or

10 (C) the project tract has site-specific characteristics that, as
11 recommended by the Secretary of Agriculture, Food and Markets,
12 warrant on-site mitigation.

13 (4) Off-site or combined mitigation. The District Commission shall
14 give preference to off-site mitigation, either alone or combined with on-site
15 mitigation, if none of the factors set forth for entirely on-site mitigation
16 under subdivision (3) of this subsection applies and the Commission finds
17 that:

18 (A) payment of an off-site mitigation fee, or requiring a
19 combination of on-site and off-site mitigation, will best further the
20 preservation of primary agricultural soils for present and future

1 **agricultural use with special emphasis on protecting prime agricultural**
2 **soils:**

3 **(B) the applicant has demonstrated that the development or**
4 **subdivision maximizes the efficient use and development potential or**
5 **allowable density of the project tract; and**

6 **(C) one of the following applies:**

7 **(i) based on the recommendation of the Secretary of**
8 **Agriculture, Food and Markets, devoting the tract to agricultural uses is**
9 **impractical based on its size or relationship to other land uses or**
10 **site-specific characteristics, and the applicant demonstrates that the**
11 **development or subdivision maximizes the efficient use and development**
12 **potential or allowable density of the project tract; or**

13 **(ii) the project tract:**

14 **(I) is surrounded by or adjacent to high density**
15 **development with supporting infrastructure and the project will**
16 **contribute to the existing compact development patterns in the area; or**

17 **(II) is within an area that contains a mixture of uses,**
18 **including commercial and industrial, and a significant residential**
19 **component, supported by municipal water, wastewater, and roadway**
20 **infrastructure.**

1 (c) Easements required for protected lands. All primary agricultural soils
2 preserved for commercial or economic agricultural use by the Vermont
3 ~~housing and conservation board~~ Housing and Conservation Board pursuant to
4 this section shall be protected by permanent conservation easements (grant of
5 development rights and conservation restrictions) conveyed to a qualified
6 holder, as defined in section 821 of this title, with the ability to monitor and
7 enforce easements in perpetuity. Off-site mitigation fees may be used by the
8 Vermont ~~housing and conservation board~~ Housing and Conservation Board
9 and shall be used by the Agency of Agriculture, Food and Markets to pay
10 reasonable staff or transaction costs, or both, of the ~~board and agency of~~
11 ~~agriculture, food, and markets~~ Board and Agency related to preserve the
12 preservation of primary agricultural soils or to ~~implement the implementation~~
13 of section 6086(a)(9)(B) or 6093 of this title.

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

15 (15) “Primary agricultural soils” means ~~soil map units with the best~~
16 ~~combination of physical and chemical characteristics that have a potential~~
17 ~~for growing food, feed, and forage crops, have sufficient moisture and~~
18 ~~drainage, plant nutrients or responsiveness to fertilizers, few limitations~~
19 ~~for cultivation or limitations which may be easily overcome, and an~~
20 ~~average slope that does not exceed 15 percent. Present uses may be~~
21 ~~cropland, pasture, regenerating forests, forestland, or other agricultural~~

1 ~~or silvicultural uses. However, the soils must be of a size and location,~~
2 ~~relative to adjoining land uses, so that those soils will be capable, following~~
3 ~~removal of any identified limitations, of supporting or contributing to an~~
4 ~~economic or commercial agricultural operation. Unless contradicted by~~
5 ~~the qualifications stated in this subdivision, primary agricultural soils~~
6 ~~shall include important farmland soils map units with a rating of prime,~~
7 ~~statewide, or local importance as defined by the Natural Resources~~
8 ~~Conservation Service (N.R.C.S.) of the United States Department of~~
9 ~~Agriculture (U.S.D.A.)~~ each of the following:

10 (A) An important farmland soils map unit that the Natural 20
11 Resources Conservation Service of the U.S. Department of Agriculture
12 (NRCS) has identified and determined to have a rating of prime,
13 statewide, or local importance, unless the District Commission determines
14 that the soils within the unit have lost their agricultural potential. In
15 determining that soils within an important farmland soils map unit have
16 lost their agricultural potential, the Commission shall consider:

17 (i) impacts to the soils relevant to the agricultural potential of
18 the soil from previously constructed improvements;

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

1 **(iii) the existence of topographic or physical barriers that**
2 **reduce the accessibility of the rated soils so as to cause their isolation and**
3 **that cannot reasonably be overcome; and**

4 **(iv) other factors relevant to the agricultural potential of the**
5 **soils, on a site-specific basis, as found by the Commission upon the**
6 **recommendation of the Secretary of Agriculture, Food and Markets.**

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

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

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

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

20 (ii) except in the case of an application for a project located in a
21 designated growth center, there are no lands other than primary agricultural

1 soils owned or controlled by the applicant which are reasonably suited to the
2 purpose of the development or subdivision; and

3 (iii) ~~except in the case of an application for a project located in~~
4 ~~a designated growth center,~~ the subdivision or development has been
5 planned:

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

11 (II) to maximize the efficient use and development density
12 of the project tract on which those soils are located, if the reduction in
13 agricultural potential of the primary agricultural soils is to be mitigated
14 entirely off-site pursuant to subdivision (iv) of this subdivision (9)(B); The
15 applicant shall provide a site plan that demonstrates that the project tract
16 will be fully and densely developed before the Commission will find that
17 entirely off-site mitigation is appropriate; and

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

1 Sec. 4. EFFECTIVE DATE

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

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6 (Committee vote: _____)

7

8

Representative [surname]

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FOR THE COMMITTEE