

**H.448, An Act Relating to Act 250 and Primary Agricultural Soils
Overview, House Agriculture and Forest Products, Jan. 15, 2014**

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1. *Topic of bill: mitigation under Act 250 for development of primary agricultural soils*

2. *Background*

- Act 250 requires a land use permit prior to development or subdivision (as defined in 10 V.S.A. chapter 151).
- Criterion 9(B) requires the applicant to demonstrate that the project will not reduce the agricultural potential of any primary agricultural soils **or** that the project satisfies various subcriteria, including “suitable mitigation.”
- Under current law, “suitable mitigation” is on-site except in a designated growth center or “in appropriate circumstances.”

3. *Rationale for bill*

Proponents of the bill seek to allow the District Commissions greater flexibility than under current law to approve on-site mitigation, off-site mitigation, or a combination of on- and off-site mitigation.

4. *Summary of bill*

The bill allows the applicant, with the District Commission’s approval, to provide suitable mitigation through of three means:

- Off-site mitigation fee
- On-site mitigation
- Combined mitigation (off-site and on-site)

The bill directs the District Commissions to consider various factors in approving mitigation, including the tract’s ability to contribute to an economic agricultural operation, the nature and density of surrounding land uses, and which type of mitigation best supports preserving primary agricultural soils for present and future agricultural use.

Pls see reverse for relevant statutes not included in the bill text.

H.448: Relevant Statutes Not in Bill Text

1. 10 V.S.A. § 6086(a)(9)(B) – Act 250 criterion on primary agricultural soils

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

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

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

(iii) except in the case of an application for a project located in a designated growth center, the subdivision or development has been planned to minimize the reduction of agricultural potential of the primary agricultural soils through innovative land use design resulting in compact development patterns, so that the remaining primary agricultural soils on the project tract are capable of supporting or contributing to an economic or commercial agricultural operation; and

(iv) suitable mitigation will be provided for any reduction in the agricultural potential of the primary agricultural soils caused by the development or subdivision, in accordance with section 6093 of this title and rules adopted by the land use panel.

2. 10 V.S.A. § 6001(15) – Act 250 definition of primary agricultural soils

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