

1 H.869

2 Senators Starr, French, McAllister, Sirotkin, and Zuckerman move that the  
3 Senate propose to the House that the bill be amended by adding two new  
4 sections to read as follows:

5 \* \* \* Primary Agricultural Soils \* \* \*

6 Sec. 12. 10 V.S.A. § 6093 is amended to read:

7 § 6093. MITIGATION OF PRIMARY AGRICULTURAL SOILS

8 (a) Mitigation for loss of primary agricultural soils. Suitable mitigation for  
9 the conversion of primary agricultural soils necessary to satisfy subdivision  
10 6086(a)(9)(B)(iv) of this title shall depend on where the project tract is located.

11 (1) Project located in ~~growth center~~ certain designated areas. This  
12 subdivision applies to projects located in the following areas designated under  
13 24 V.S.A. chapter 76A: a downtown development district, a growth center, a  
14 new town center designated on or before January 1, 2014, and a neighborhood  
15 development area associated with a designated downtown development  
16 district. If the project tract is located in ~~a designated growth center~~ one of  
17 these designated areas, an applicant who complies with subdivision  
18 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the  
19 Vermont ~~housing and conservation trust fund~~ Housing and Conservation Trust  
20 Fund established under section 312 of this title for the purpose of preserving  
21 primary agricultural soils of equal or greater value with the highest priority

1 given to preserving prime agricultural soils as defined by the U.S. Department  
2 of Agriculture. Any required offsite mitigation fee shall be derived by:

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

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

7 (i) ~~for~~ For development or subdivision within a designated ~~growth~~  
8 ~~center~~ area described in this subdivision (a)(1), the ratio shall be 1:1;

9 (ii) ~~for~~ For residential construction that has a density of at least  
10 eight units of housing per acre, of which at least eight units per acre or at least  
11 40 percent of the units, on average, in the entire development or subdivision,  
12 whichever is greater, meets the definition of affordable housing established in  
13 this chapter, no mitigation shall be required, regardless of location in or outside  
14 a designated area described in this subdivision (a)(1). However, all affordable  
15 housing units shall be subject to housing subsidy covenants, as defined in  
16 27 V.S.A. § 610, that preserve their affordability for a period of 99 years or  
17 longer. ~~For purposes of~~ As used in this section, housing that is rented shall be  
18 considered affordable housing when its inhabitants have a gross annual  
19 household income that does not exceed 60 percent of the county median  
20 income or 60 percent of the standard metropolitan statistical area income if the  
21 municipality is located in such an area.

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

7 (2) Project located ~~outside certain designated growth center areas~~. If the  
8 project tract is not located in a designated ~~growth center area described in~~  
9 subdivision (1) of this subsection, mitigation shall be provided on site in order  
10 to preserve primary agricultural soils for present and future agricultural use,  
11 with special emphasis on preserving prime agricultural soils. Preservation of  
12 primary agricultural soils shall be accomplished through innovative land use  
13 design resulting in compact development patterns which will maintain a  
14 sufficient acreage of primary agricultural soils on the project tract capable of  
15 supporting or contributing to an economic or commercial agricultural operation  
16 and shall be enforceable by permit conditions issued by the ~~district commission~~  
17 District Commission. The number of acres of primary agricultural soils to be  
18 preserved shall be derived by:

19 (A) ~~determining~~ Determining the number of acres of primary  
20 agricultural soils affected by the proposed development or subdivision; ~~and,~~

1 (B) ~~multiplying~~ Multiplying the number of affected acres of primary  
2 agricultural soils by a factor based on the quality of those primary agricultural  
3 soils, and other factors as the ~~secretary of agriculture, food and markets~~  
4 Secretary of Agriculture, Food and Markets may deem relevant, including the  
5 soil's location; accessibility; tract size; existing agricultural operations; water  
6 sources; drainage; slope; the presence of ledge or protected wetlands; the  
7 infrastructure of the existing farm or municipality in which the soils are  
8 located; and the ~~N.R.C.S.~~ NRCS rating system for Vermont soils. This factor  
9 shall result in a ratio of no less than 2:1, but no more than 3:1, protected acres  
10 to acres of impacted primary agricultural soils.

11 (3) Mitigation flexibility.

12 (A) Notwithstanding the provisions of subdivision (a)(1) of this  
13 ~~subsection~~ section pertaining to a development or subdivision on primary  
14 agricultural soils within a certain designated ~~growth-center~~ areas, the ~~district~~  
15 ~~commission~~ District Commission may, in appropriate circumstances, require  
16 onsite mitigation with special emphasis on preserving prime agricultural soils  
17 if that action is deemed consistent with the agricultural elements of local and  
18 regional plans and the goals of 24 V.S.A. § 4302. In this situation, the  
19 approved plans must designate specific soils that shall be preserved inside  
20 ~~growth-centers~~ a designated area described in subdivision (a)(1) of this section.

21 For projects located within such a designated ~~growth-center~~ area, all factors



1 used to calculate suitable mitigation acreage or fees, or some combination of  
2 these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

3 (B) Notwithstanding the provisions of subdivision (a)(2) of this  
4 subsection ~~section~~ pertaining to a development or subdivision on primary  
5 agricultural soils outside a designated ~~growth center~~ area described in  
6 subdivision (a)(1) of this section, the ~~district commission~~ District Commission  
7 may, in appropriate circumstances, approve off-site mitigation or some  
8 combination of onsite and off-site mitigation if that action is deemed consistent  
9 with the agricultural elements of local and regional plans and the goals of  
10 24 V.S.A. § 4302. For projects located outside such a designated ~~growth~~  
11 ~~center~~ area, all factors used to calculate suitable mitigation acreage or fees, or  
12 some combination of these measures, shall be as specified in this  
13 subsection (a), subject to a ratio of no less than 2:1, but no more than 3:1.

14 \* \* \*

15 (b) Easements required for protected lands. All primary agricultural soils  
16 preserved for commercial or economic agricultural use by the Vermont  
17 ~~housing and conservation board~~ Housing and Conservation Board pursuant to  
18 this section shall be protected by permanent conservation easements (grant of  
19 development rights and conservation restrictions) conveyed to a qualified  
20 holder, as defined in section 821 of this title, with the ability to monitor and  
21 enforce easements in perpetuity. Off-site mitigation fees may be used by the

1 Vermont ~~housing and conservation board~~ Housing and Conservation Board  
2 and shall be used by the Agency of Agriculture, Food and Markets to pay  
3 reasonable staff or transaction costs, or both, of the ~~board and agency of~~  
4 ~~agriculture, food, and markets~~ Board and Agency related to preserve the  
5 preservation of primary agricultural soils or to implement section the  
6 implementation of subdivision 6086(a)(9)(B) or section 6093 of this title.

7 Sec. 13. 10 V.S.A. § 6001(15) is amended to read:

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

1 ~~Resources Conservation Service (N.R.C.S.)~~ of the United States Department of  
2 ~~Agriculture (U.S.D.A.)~~ each of the following:

3 (A) An important farmland soils map unit that the Natural Resources  
4 Conservation Service of the U.S. Department of Agriculture (NRCS) has  
5 identified and determined to have a rating of prime, statewide, or local  
6 importance, unless the District Commission determines that the soils within the  
7 unit have lost their agricultural potential. In determining that soils within an  
8 important farmland soils map unit have lost their agricultural potential, the  
9 Commission shall consider:

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

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

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

17 (iv) other factors relevant to the agricultural potential of the soils,  
18 on a site-specific basis, as found by the Commission after considering the  
19 recommendation, if any, of the Secretary of Agriculture, Food and Markets.

20 (B) Soils on the project tract that the District Commission finds to be  
21 of agricultural importance, due to their present or recent use for agricultural

- 1 activities and that have not been identified by the NRCS as important farmland
- 2 soil map units.
- 3 and by renumbering the remaining section to be numerically correct.