

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred  
3 House Bill No. 448 entitled “An act relating to Act 250 and primary  
4 agricultural soils” respectfully reports that it has considered the same and  
5 recommends that the Senate propose to the House that the bill be amended as  
6 follows:

7 First: In Sec. 1, 10 V.S.A. § 6093, by striking out subsection (b) in its  
8 entirety and inserting in lieu thereof a new subsection (b) to read:

9 (b) Suitable mitigation; outside designated areas. This subsection sets out  
10 requirements for and factors to be considered in determining suitable  
11 mitigation for development or subdivision of primary agricultural soils outside  
12 a designated area listed in subdivision (a)(1)(B)(i) of this section.

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

16 (2) General.

17 (A) Mitigation for the conversion of primary agricultural soils shall  
18 comply with 24 V.S.A. § 2791(13)(A) (smart growth principles; historic  
19 development patterns) and (E) (agricultural and forest industries).

1           (B) The determination of suitable mitigation shall be consistent with  
2           the agricultural elements of the applicable local and regional plans and the  
3           goals of 24 V.S.A. § 4302.

4           (C) The applicant shall demonstrate that the development or  
5           subdivision makes efficient use of the project tract through compact  
6           development.

7           (3) Mitigation entirely on-site. The District Commission shall require  
8           mitigation that is entirely on-site if the Commission finds that:

9           (A) the project tract supports an agricultural operation or has been in  
10          active production or rotation within the last seven years;

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

13          (C) after considering the recommendation, if any, of the Secretary of  
14          Agriculture, Food and Markets, the project tract has site-specific characteristics  
15          that warrant on-site mitigation.

16          (4) Off-site or combined mitigation. The District Commission may  
17          allow off-site mitigation, either alone or combined with on-site mitigation, if  
18          none of the factors in subdivision (3) of this subsection applies and the  
19          Commission finds that:

20          (A) payment of an off-site mitigation fee, or requiring a combination  
21          of on-site and off-site mitigation, will best further the preservation of primary

1 agricultural soils for present and future agricultural use with special emphasis  
2 on protecting prime agricultural soils;

3 (B) after considering the recommendation, if any, of the Secretary of  
4 Agriculture, Food and Markets, devoting the tract to agricultural uses is  
5 impractical based on its size or relationship to other land uses or site-specific  
6 characteristics;

7 (C) the project tract is surrounded by or adjacent to high density  
8 development with supporting infrastructure and the project will contribute to  
9 the existing compact development patterns in the area; and

10 (D) the project tract is within an area that contains a mixture of uses,  
11 including commercial and industrial, and a significant residential component  
12 supported by municipal water, wastewater, and roadway infrastructure.

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

1 reasonable staff or transaction costs, or both, of the ~~board and agency of~~  
2 ~~agriculture, food, and markets~~ Board and Agency related to preserve the  
3 preservation of primary agricultural soils or to ~~implement~~ the implementation  
4 of section 6086(a)(9)(B) or 6093 of this title.

5 Second: In Sec. 3, 10 V.S.A. § 6086(a)(9)(B), by striking out (iii) in its  
6 entirety and inserting in lieu thereof a new subdivision (iii) to read:

7 (iii) ~~except in the case of an application for a project located in a~~  
8 ~~designated growth center,~~ unless the reduction in agricultural potential of the  
9 primary agricultural soils is to be mitigated entirely off-site pursuant to  
10 subdivision (iv) of this subdivision (9)(B), the subdivision or development has  
11 been planned to minimize the reduction of agricultural potential of the primary  
12 agricultural soils through ~~innovative~~ land use design ~~resulting~~ that results in  
13 compact development patterns, so that the remaining primary agricultural soils  
14 on the project tract are capable of supporting or contributing to an economic or  
15 commercial agricultural operation; and

16  
17

18 (Committee vote: \_\_\_\_\_)

19

\_\_\_\_\_

20

Senator \_\_\_\_\_

21

FOR THE COMMITTEE