

PRIMARY AGRICULTURAL SOILS ACT 250

OF-SITE MITIGATION

H.448 and H.449

*Michael Zahner, Vermont Chamber of Commerce
January of 2014*

**Smart Growth Committee Report
Vermont Legislature – 2009
Chair, Ginny Lyons**

Primary Agricultural Soils

Prior to 2006, conflicts emerged in Act 250 when well-designed projects proposed for areas planned for intensive growth were subject to denial because they had not been adequately clustered on the project tract to preserve a sufficient acreage of primary agricultural soils, a requirement of Subcriterion 9(B)(iii) of 10 V.S.A. § 6086. This requirement resulted in isolated pockets of protected agricultural soils that were unlikely to be farmed in the future. The prior statutory language of Criterion 9(B) represented the antithesis of “smart growth” since it did not allow full high density development to occur on primary agricultural soils in areas served by public investment and infrastructure. This led to the passage of Act 183 of 2006 and the codification of “offsite mitigation” through the payment of fees.

Maximizing development densities in these areas, including designated growth centers, serves to reduce development pressure on primary agricultural soils in outlying rural areas. The Criterion 9(B) revisions approved in Act 183 in 2006, promote more efficient land use in concert with “smart growth” and one of the statutory goals of Act 200 and Act 250’s Capability and Development Plan which is to encourage the historic settlement pattern of compact village and urban centers separated by rural countryside.

ACT 59 GROWTH CENTER STUDY

Report Prepared by

The Department of Housing and community Development (DHcD)

December 15, 2013

Protect large contiguous blocks of farmland and promote the farm economy by ensuring farms are profitable.

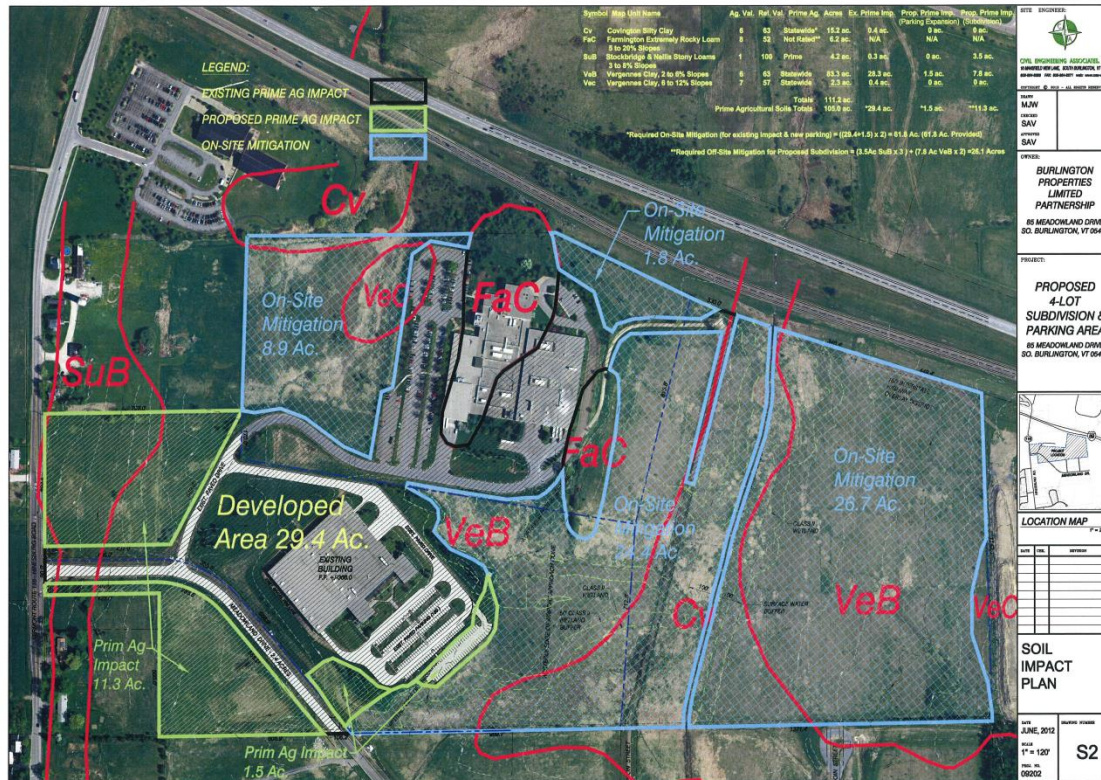
The need for farmland protection was stressed in recognition of all the benefits that local farms provide, including greater food security, job and business development, keeping working lands working and enabling people to make a living from the land. Vermont has a wealth of programs working to protect farmland through conservation, regulation, current use, and those offering assistance, such as helping to match farmers to available farmland. But ultimately all agreed that the key to farmland preservation is focusing on the profitability of farms.

Stakeholders suggested various ways to improve local planning and regulation and changes to Act 250 agricultural land mitigation policies. It was suggested that those measures be fine tuned to focus less on keeping land undeveloped and more on the farms' profitability. For example, municipalities could be encouraged to address farming as part of the required economic development element.

Land Use Permit 4C0473 issued by the District #4 Environmental Commission on June 19, 1981 to Mitel (Dynapower) in South Burlington, impacted 29.4 acres of primary agricultural soils which were mitigated on-site preserving 68.1 acres out of a total tract size of 97.5 acres. See next slide. There has been no historical use of the conserved land which is now growing up to brush and small trees.



District Commission Decision (MOD 8 29 12) (LUP 9 27 12): For projects located outside designated growth centers, applicants, in most instances, are required to provide “on-site” mitigation through the use of “innovative land use design resulting in compact development patterns which will preserve primary agricultural soils on the project tract for present and future agricultural use.” The applicants paid an off-site mitigation fee of \$37,555.00 for new development in 2012.



4C0700 issued for Adams Park in Williston, August 20, 1987, which impacted 20 acres of primary agricultural soils. Offsite mitigation at 1:1 ratio, 20 acres preserved on the Fontaine Farm in Williston. The Fontaine Farm was designated as a farm of distinction by the Vermont Agency of Agriculture in August of 2008.



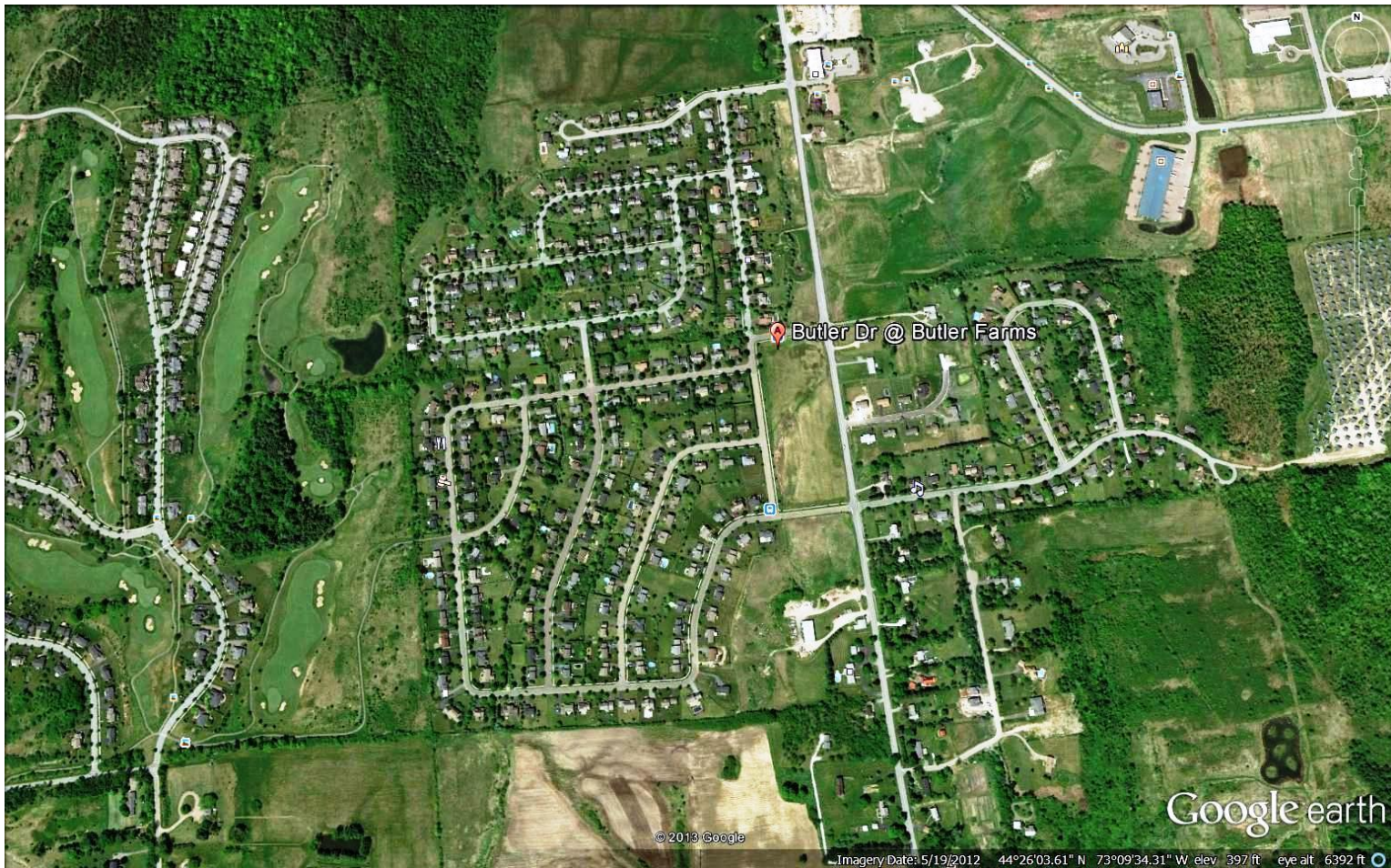
Dairy of Distinction judges look at the cleanliness, physical condition, and uniform appearance of buildings; neat and appropriate landscaping; well graded roads and lanes; fences in good repair; neat ditches that are free of debris; cleanliness of animals; neat barnyards; clean roads free of mud and manure; manure storage facilities out of view; farm machinery that is parked in an orderly fashion; no apparent pollution of streams; clean feed areas; and all unnecessary machinery stored out of sight.



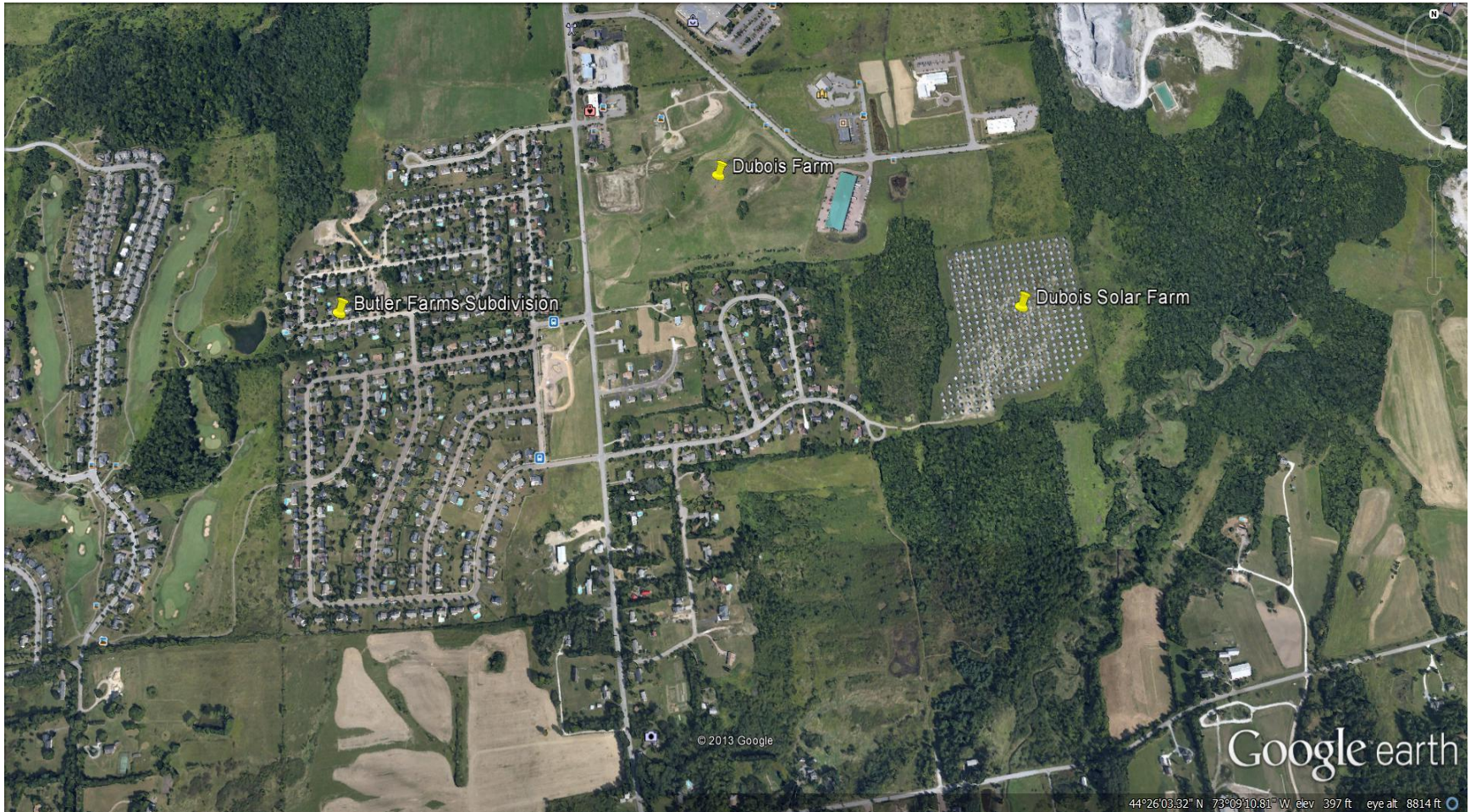
4C0608-10 issued for the Lang Farm development in Essex, Vermont on December 23, 1988, impacting 12.6 acres with 20 acres mitigated onsite.



4C0614-4 issued to Homer and Marie Dubois, high density 54 lot subdivision at Butler Farms, South Burlington, Vermont on October 26, 1992 impacting 33 acres, offsite mitigation fee of \$90,000.



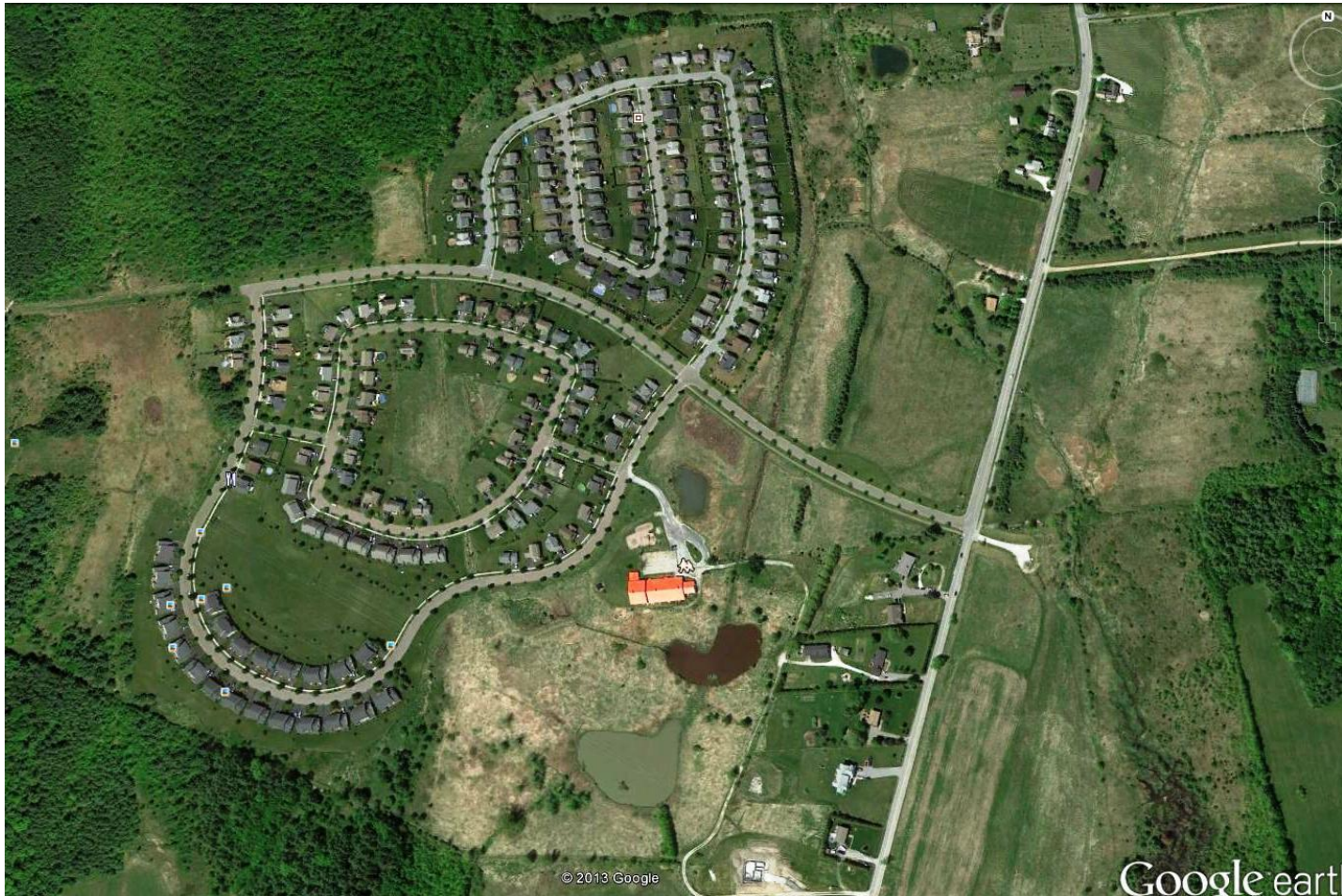
Dubois Farm Solar Park



Dubois 2.2 MW Solar Electric Generation Facility

- The proposed project is a 2.2 MW solar electric generation facility located on approximately 22 acres of an approximately 32-acre leased site. The leased site is part of a 53-acre undeveloped parcel of land located at the eastern end of Dubois Drive, to the south of Meadowland Drive and north of Van Sicklen Road in South Burlington, Vermont.
- CCSP proposes to install the following components: (1) approximately 383 trackers; (2) approximately 9,192 individual polycrystalline solar photovoltaic panels of 240 watts each; (3) electrical lines in underground conduit connecting the panels to the inverters and switch gear enclosure; (4) distributed inverters on each array; (5) four 500 kVA transformers; and (6) underground electrical lines, buried at least 18 inches deep, connecting the Project to Green Mountain Power Corporation's ("GMP") distribution system. Michael/Goldsmith pf. at 8; Michael/Goldsmith supp. pf. at 2-3; exhs. SBSF-PM/DG-3 and 10-12. See exh. SBSF-PM/DG-3.e (depicting similar solar arrays).
- Each tracker-mounted set of solar panels will have a maximum height of nineteen feet 1-3/4 inches from ground level when the tilt of the tracker is at the highest. The trackers will be placed in a grid, spaced at approximately 50-foot intervals from center to center to maximize use of the land and minimize shading from the adjacent trackers. The trackers will use a small electric motor to operate a hydraulic system that will cause the tracker to rotate (yaw) and tilt up and down to maintain perpendicular alignment with the sun as the sun changes angles throughout each day and seasonally.

4C0948-EB issued to MBL Associates for the construction of 221 Unit residential development in South Burlington on June 25, 1995. Impacting 34 acres of primary agricultural soils, offsite mitigation fee of \$102,000. Conservation efforts occurred on the Marshall Farm in Enosburg and the Leduc Farm in South Burlington (see next slide).



Leduc Farm in South Burlington, acreage conserved as a result of MBL Associates



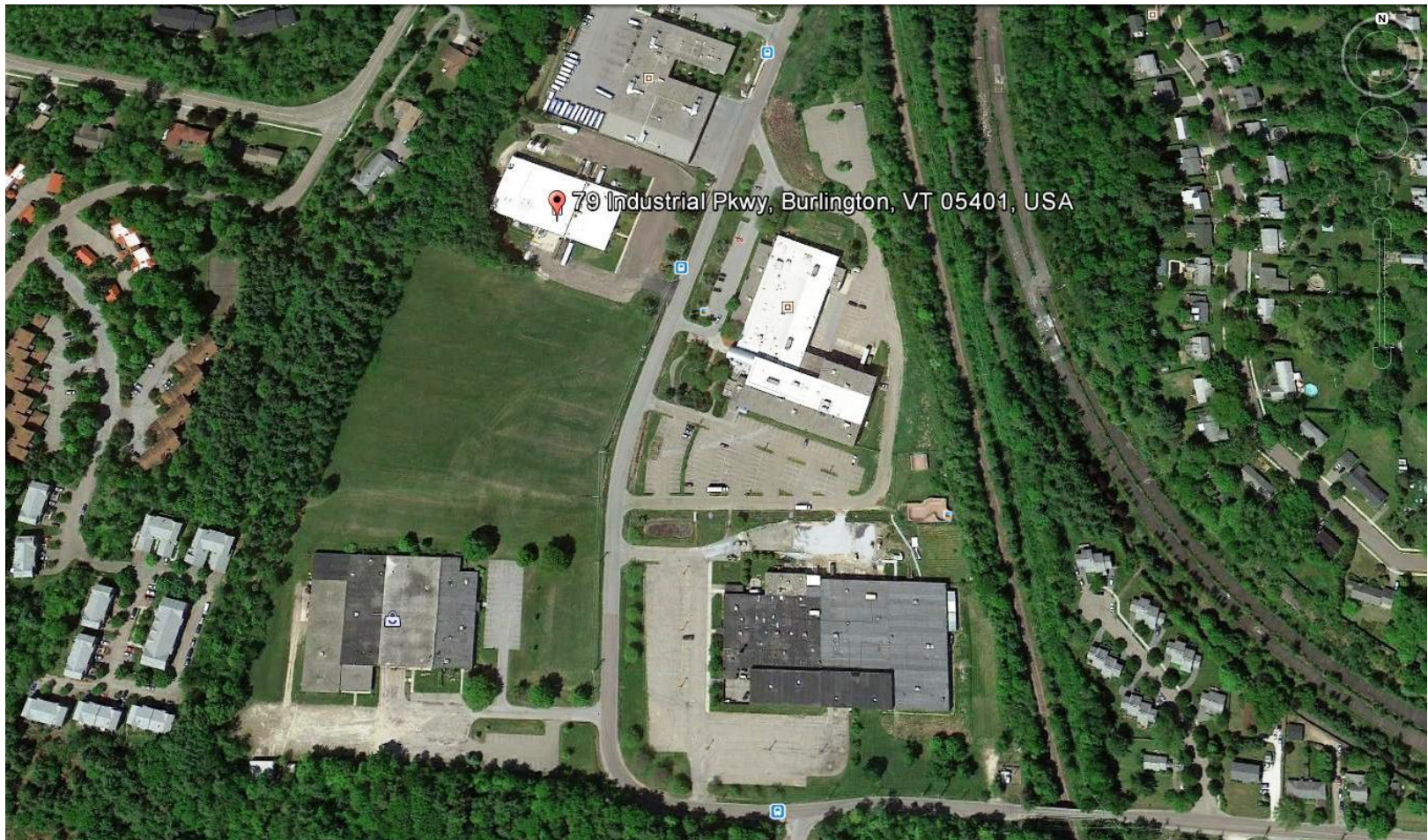
4C1125 issued to Severance Corners on July 3, 2003, partial findings on Criterion 9(B) for mixed use development with 152 residential units and 86,000 square feet of office, commercial and retail space. Impacted 36.23 acres of primary agricultural soils, generating offsite mitigation fee of \$130,264 which was used to preserve acreage on the Marshall Farm in Enosburgh and the Hatshorn Farm in Waitsfield.



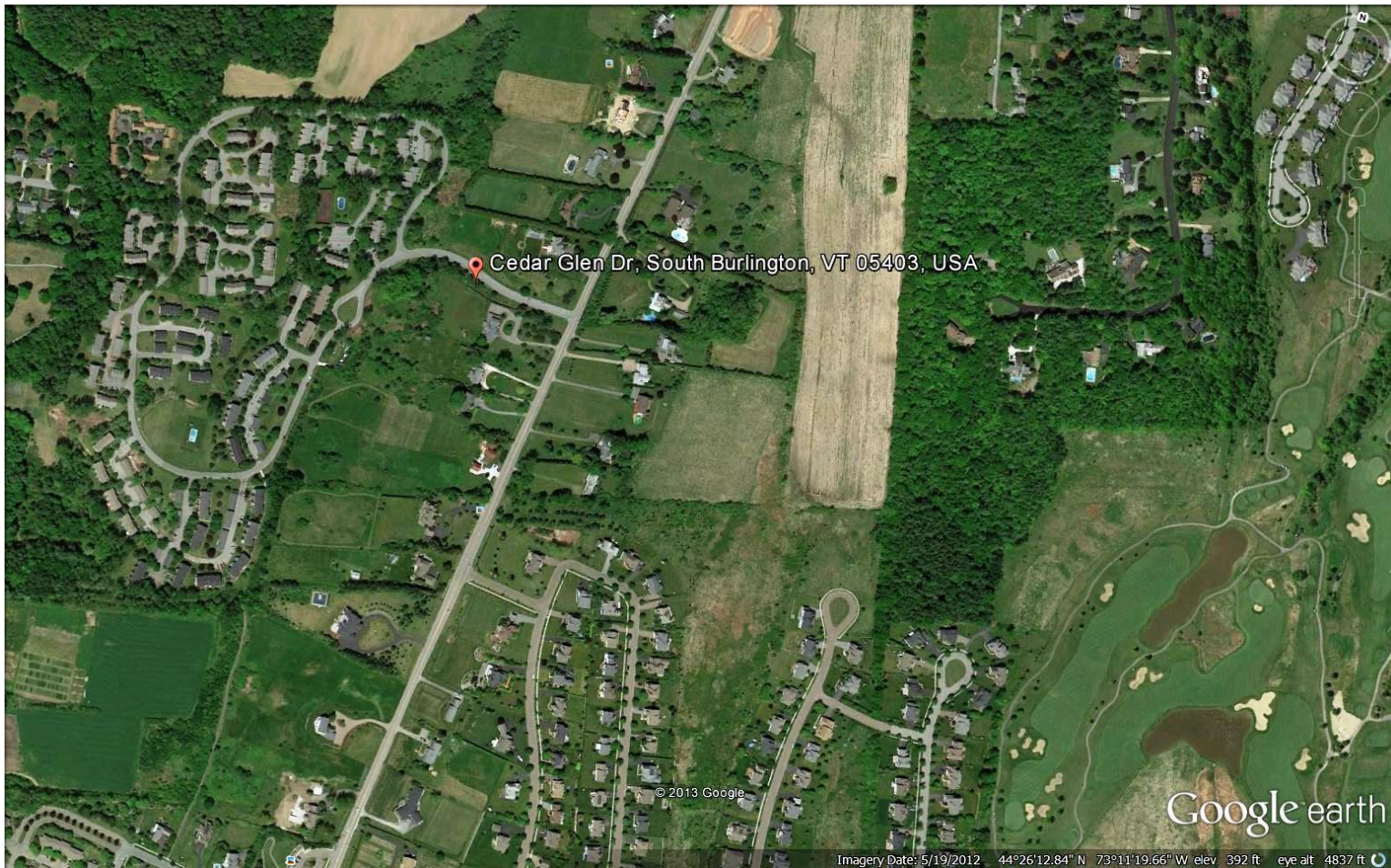
4C1007 issued May 29, 1997 to Husky Corporation in Milton, for Phase I, a 155,000 SF MOLD DEVELOPMENT CENTER, impacting approximately 10 acres of primary agricultural soils relying on an extensive on-site mitigation plan. Project is not in a state designated growth center. I was not able to access all information online and therefore additional data is needed.



4C0325-2 issued April 5, 2012 to Big Sky, off Industrial Parkway in Burlington, impacting 6 acres of primary agricultural soils. Because this track is surrounded by industrial and other high intensity land uses, the Commission found it was unlikely that this tract could contribute or support a commercial or economic agricultural operation and therefore it did not meet the legal definition for primary agricultural soils. The development was allowed to move forward after meeting all other environmental criteria.



4C1173-1, Spear Meadows off Dorset Street in South Burlington, impacting 23.23 acres of primary agricultural soils. This project is pending in front of the District #4 Commission, partial application under Criterion 9(B) filed in 2008 with a request for combined offsite mitigation consisting of a Transfer-of-Development Rights (TDR) approval in South Burlington and an offsite mitigation fee to the VHCB to make up the difference.



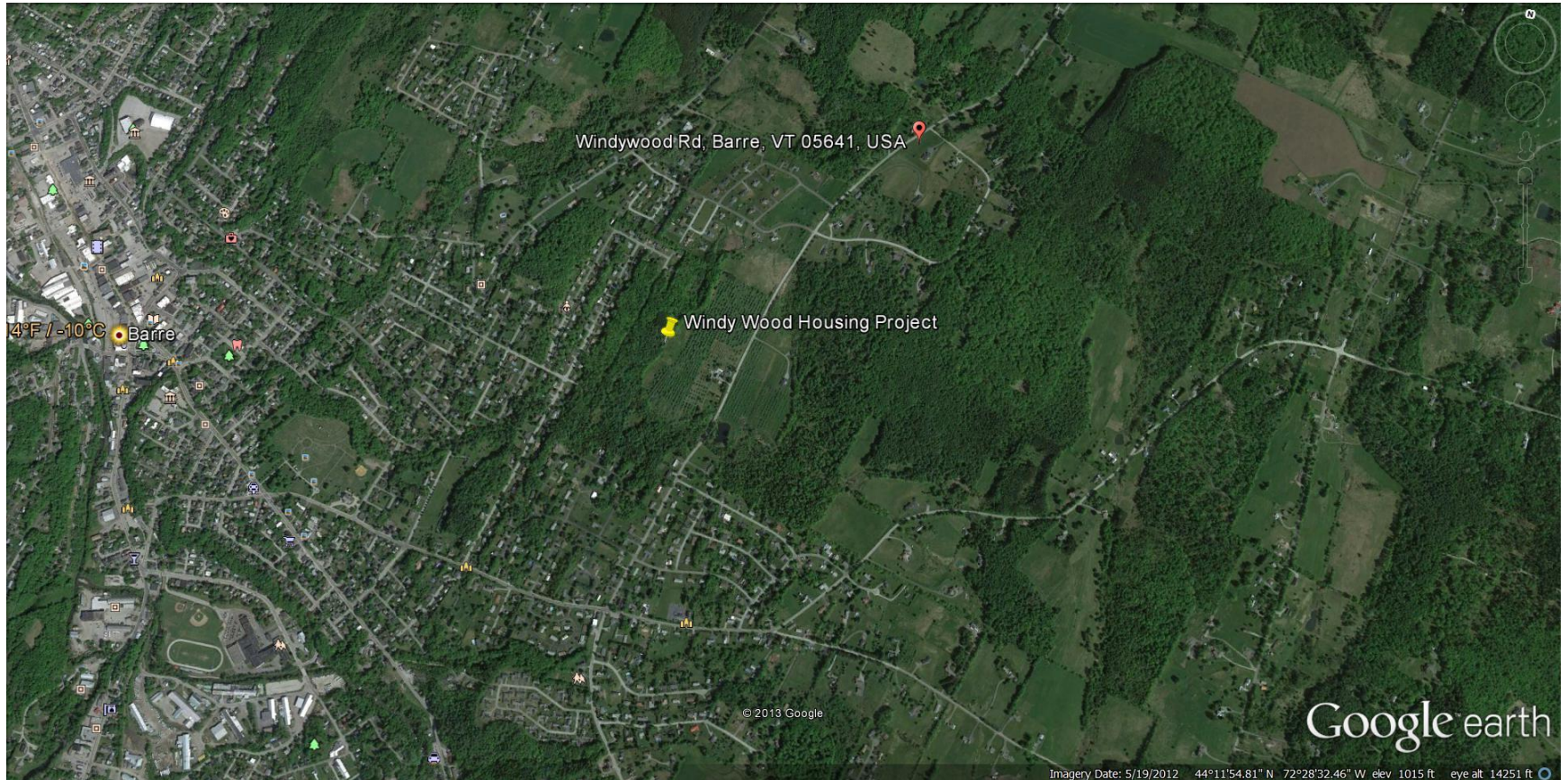
4C1128 issued March 16, 2005 for the Cider Mill (Dorset Street Associates) project in South Burlington seeking partial findings under Criteria 9(B) and 9(C) to create 59 single family lots and 90 multifamily dwelling units with infrastructure improvements, impacting 82.60 acres, generating an offsite mitigation fee of \$407,218 helping to conserve the J & J Boissoneau Farm in Essex and the Intervale Farm in Burlington.



4C0887-1R issued for Finney Crossing for a phased Planned Use Development with 356-residential units and 186,000 sf. of commercial space, both served by municipal water and sewer services. Phased project is within Williston's state designated growth center. Mitigation ration is 1:1 and the applicants agreed to pay a total of \$276,876.49 in off-site mitigation fees for the entire project. 32 acres of PAS were preserved on-site.



Location of Windy Wood Housing Project Barre, Vermont



CONSTRUCT IMPROVEMENTS AND SUBDIVIDE A 95 ACRE TRACT OF LAND INTO 9 LOTS FOR AN EXPANSION OF THE ST ALBANS TOWN INDUSTRIAL PARK. IMPACT 59 ACRES OF PRIMARY AGRICULTURAL SOILS. APPROVED THROUGH OFF-SITE MITIGATION AT A RATIO OF 2.45 ACRES PRESERVED TO 1 ACRE IMPACTED.

