



**Testimony of the Vermont Chamber of Commerce - H.448 Primary Agricultural Soils
Senate Natural Resources and Energy Committee - April 2, 2014**

10 V.S.A. Section 6093(3)(b)

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

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

(2) General.

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

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

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

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

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

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

(4) Off-site or combined mitigation. The District Commission shall give preference to off-site mitigation, either alone or combined with on-site mitigation, if the Commission finds that:

(A) payment of an off-site mitigation fee, or requiring a combination of on-site and off-site

mitigation, will best further the preservation of primary agricultural soils for present and future agricultural use with **special emphasis on protecting prime agricultural soils**;

Vermont Chamber: In this subdivision defining one of the factors in favor of "off-site" mitigation, there is a "special emphasis" on protecting "prime agricultural soils" (with a value rating of 1 and 3 out of 7) seems to be inconsistent with the reference to "agricultural soils groups 1 - 5" in (3)(B) above, one of the factors favoring on-site mitigation.

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

(C) one of the following applies:

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

(ii) the project tract:

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

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

(c) Suitable mitigation; designated areas. For development or subdivision of primary agricultural soils inside a designated area listed in subdivision (a)(1)(B)(i) of this section, the applicant shall choose a mitigation option that conforms to subdivision (a)(1) (off-site mitigation fee), (2) (on-site mitigation), or (3) (combined mitigation) of this section.

Table 1. Agricultural Value Groups of Vermont Soils by Important Farmland Rating, Acres, Percentage of State Land Area, and Relative Value compiled in 1985.

Agricultural Value Group	Important Farmland Rating	Acres (1985)	Percentage of State	Relative Value
1	Prime	91,983	1.56	100
2	Statewide	10,919	0.18	97
3	Prime	289,654	4.88	84
4	Statewide	81,568	1.37	82
5	Statewide	115,386	1.94	69
6	Statewide	469,321	7.92	63
7	Statewide	284,026	4.80	57
8		436,916	7.37	52
9		302,716	5.11	43
10		1,496,360	25.25	22
11		2,348,101	39.62	0
Total		5,926,950	100.0	

The acreage figure used to generate this table is based on estimated acres mapped in 1985 for the original report.

Vermont Housing Conservation Board (VHCB) 2002 Report

<http://www.vhcb.org/mitigationreport.pdf>

Executive Summary

Since 1991 [to 2002], VHCB has received approximately \$1 million in mitigation funds generated by the loss of 634 acres of primary agricultural soils in 58 developments under Act 250 jurisdiction. These funds are legally restricted to protection of farms within the geographical area of the development. As of November 30, 2002, VHCB has matched approximately \$500,000 of these funds with \$3,500,000 in state, federal and private funds to purchase conservation easements on 22 farms containing a total of 5,183 acres of land. All of the landowners who sell development rights on their farms are paid fair market value for deeded conservation easements based on a qualified appraisal. These 5,183 acres contribute to large blocks of farmland protected in perpetuity by Vermont's network of conservation land trusts working with private and public partners.

Conclusion

Off-site mitigation payments have become an integral and important part of Vermont's efforts to protect farmland for agricultural purposes, to strengthen our rural economy and to maintain the health and integrity of our communities and the rural landscape. Agriculture is fundamental to Vermont's economy and no state has made a greater per capita investment in conserving the working landscape than Vermont. By utilizing off-site mitigation under Act 250, Criterion 9(B), District Environmental Commissioners can promote development within concentrated growth centers while assuring protection of our best farmland.

\$2,334,274.84 committed in Chittenden County (to date) for the preservation of primary agricultural soils through the Vermont Housing and Conservation Board.

Source: District #4 Environmental Commission.