

Act 250 & Primary Agricultural Soils

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10 VSA 6001 (15)- Definition of Prime Ag Soils

- (15) "Primary agricultural soils" means each of the following:

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

- (i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;
- (ii) the presence on the soils of a Class I or Class II wetland under chapter 37 of this title;
- (iii) the existence of topographic or physical barriers that reduce the accessibility of the rated soils so as to cause their isolation and that cannot reasonably be overcome; and
- (iv) other factors relevant to the agricultural potential of the soils, on a site-specific basis, as found by the Commission after considering the recommendation, if any, of the Secretary of Agriculture, Food and Markets.

(B) Soils on the project tract that the District Commission finds to be of agricultural importance, due to their present or recent use for agricultural activities and that have not been identified by the NRCS as important farmland soil map units.

10 VSA 6086(9)(B)

(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;

(ii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, 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;

(iii) except in the case of an application for a project located in a designated area listed in subdivision 6093(a)(1) of this title, 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 Natural Resources Board.

10 VSA 6093

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

(1) Project located in certain designated areas. This subdivision applies to projects located in the following areas designated under 24 V.S.A. chapter 76A: a downtown development district, a growth center, a new town center designated on or before January 1, 2014, and a neighborhood development area associated with a designated downtown development district. If the project tract is located in one of these designated areas, an applicant who complies with subdivision 6086(a)(9)(B)(iv) of this title shall deposit an offsite mitigation fee into the Vermont Housing and Conservation Trust Fund established under section 312 of this title for the purpose of preserving primary agricultural soils of equal or greater value with the highest priority given to preserving prime agricultural soils as defined by the U.S. Department of Agriculture. Any required offsite mitigation fee shall be derived by:

10 VSA 6093

(A) Determining the number of acres of primary agricultural soils affected by the proposed development or subdivision.

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

(i) For development or subdivision within a designated area described in this subdivision (a)(1), the ratio shall be 1:1.

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

(C) Multiplying the resulting product by a "price-per-acre" value, which shall be based on the amount that the Secretary of Agriculture, Food and Markets has determined to be the recent, per-acre cost to acquire conservation easements for primary agricultural soils in the same geographic region as the proposed development or subdivision.

10 VSA 6093

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

(A) Determining the number of acres of primary agricultural soils affected by the proposed development or subdivision.

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

10 VSA 6093

(3) Mitigation flexibility.

(A) Notwithstanding the provisions of subdivision (a)(1) of this section pertaining to a development or subdivision on primary agricultural soils within certain designated areas, the District Commission may, in appropriate circumstances, require on-site mitigation with special emphasis on preserving prime agricultural soils if that action is deemed consistent with the agricultural elements of local and regional plans and the goals of 24 V.S.A. § 4302. In this situation, the approved plans must designate specific soils that shall be preserved inside a designated area described in subdivision (a)(1) of this section. For projects located within such a designated area, all factors used to calculate suitable mitigation acreage or fees, or some combination of these measures, shall be as specified in this subsection, subject to a ratio of 1:1.

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

10 VSA 6093

(4) Industrial parks.

(A) Notwithstanding any provision of this chapter to the contrary, a conversion of primary agricultural soils located in an industrial park permitted under this chapter and in existence as of January 1, 2006, shall be allowed to pay a mitigation fee computed according to the provisions of subdivision (1) of this subsection (a), except that it shall be entitled to a ratio of 1:1 protected acres to acres of affected primary agricultural soil. If an industrial park is developed to the fullest extent before any expansion, this ratio shall apply to any contiguous expansion of such an industrial park that totals no more than 25 percent of the area of the park or no more than 10 acres, whichever is larger; provided any expansion based on percentage does not exceed 50 acres. Any expansion larger than that described in this subdivision shall be subject to the mitigation provisions of this subsection at ratios that depend upon the location of the expansion.

(B) In any application to a District Commission to amend a permit for an existing industrial park, the most efficient and full use of land shall be allowed consistent with all applicable criteria of subsection 6086(a) of this title. Industrial park expansions and industrial park infill shall not be subject to requirements established in subdivision 6086(a)(9)(B)(iii) or 6086(a)(9)(C)(iii) of this title. (requirement to minimize)

10 VSA 6093

(b) Easements required for protected lands. All primary agricultural soils preserved for commercial or economic agricultural use by the Vermont Housing and Conservation Board pursuant to this section shall be protected by permanent conservation easements (grant of development rights and conservation restrictions) conveyed to a qualified holder, as defined in section 821 of this title, with the ability to monitor and enforce easements in perpetuity. Off-site mitigation fees may be used by the Vermont Housing and Conservation Board and shall be used by the Agency of Agriculture, Food and Markets to pay reasonable staff or transaction costs, or both, of the Board and Agency related to the preservation of primary agricultural soils or to the implementation of subdivision 6086(a)(9)(B) or section 6093 of this title.