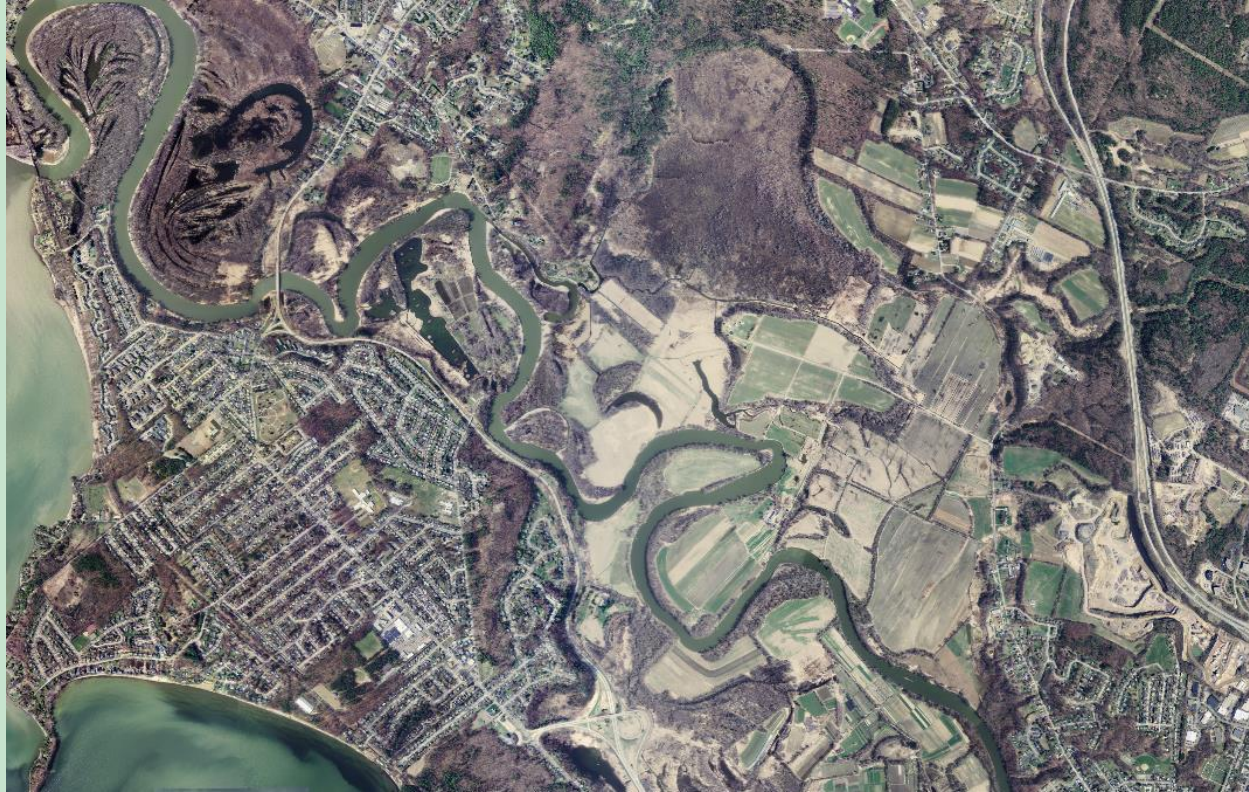


# Act 250, Criterion 9(B): 10 V.S.A. § 6086 9(B)



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- AAFM is a statutory party under Act 250 Criterion 9(B), reviewing projects proposing impacts to primary agricultural soils (PAS)
- Criterion 9(B), Primary Agricultural Soils, is one of ten Act 250 criteria (plus sub-criteria). Burden on Applicant to comply with 9(B).
- All mitigation/recommended permit conditions subject to approval by Natural Resources Board (NRB) District Commissions

# 10 V.S.A. § 6086 9(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; and
- (ii) except in the case of an application for a project located in a designated growth center, 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; and
- (iii) except in the case of an application for a project located in a designated growth center, 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.”

# Primary Agricultural Soils (PAS)

10 V.S.A. § 6001(15)

- (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.

# AAFM Review

- The Agency reviews apps for proposed jurisdictional development, with possible impacts to PAS, issuing review letters with recommendations to NRB District Environmental Commissions. Reviews site plans, soils matrix, permit history, aerial imagery, site visits if needed.
- AAFM reviews whether soils meet definition of PAS; acreage of proposed impacts; acreage of mitigation warranted; and proposed on-site mitigation. Files review/comments and attends hearings as needed.



ANR Natural Resources Atlas;  
see NRCS mapped statewide,  
prime, or locally important soils

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- *Image generated with ANR Natural Resources Atlas*

# NRCS Web Soil Survey - <https://websoilsurvey.sc.egov.usda.gov>

The screenshot displays the NRCS Web Soil Survey interface. At the top, the USDA logo and "Web Soil Survey" title are visible. Below the navigation bar, the "Soil Data Explorer" tab is selected. The "View Soil Information By Use:" dropdown is set to "All Uses". The "Suitabilities and Limitations for Use" section is active, showing a list of categories with expand/collapse icons. The main map area displays a soil map overlaid on an aerial photograph of a residential area. The map shows various soil codes (e.g., 72C, 41E, 64D) and a legend on the left side.

**Search**

**Suitabilities and Limitations Ratings**

[Open All](#) [Close All](#) ?

Building Site Development	?	⌵
Construction Materials	?	⌵
Disaster Recovery Planning	?	⌵
Land Classifications	?	⌵
Land Management	?	⌵
Military Operations	?	⌵
Recreational Development	?	⌵
Sanitary Facilities	?	⌵
Soil Health	?	⌵
Vegetative Productivity	?	⌵
Waste Management	?	⌵
Water Management	?	⌵

**Soil Map**

Scale (not to scale)

Legend

Map showing soil codes overlaid on an aerial photograph of a residential area. The map includes a legend and navigation tools.

## Mitigation Multipliers:

set by AAFM based on soil ag value, pursuant to 10 V.S.A. § 6093(a)(2)(B)

- Soils with an agricultural value 1, multiply by 3
- Soils with an agricultural value 2, multiply by 2.75
- Soils with an agricultural value 3, multiply by 2.5
- Soils with an agricultural value 4, multiply by 2.25
- Soils with an agricultural value 5 - 7, multiply by 2

Note: See upcoming slide for contexts such as defined designated areas, in which 1:1 ratio applies.



## On-site Mitigation: default outside of designated areas

“Innovative land use design resulting in compact development patterns which will maintain a sufficient acreage of [PAS] on the project tract capable of supporting or contributing to an economic or commercial agricultural operation.” 10 V.S.A. § 6093(a)(2).

Available for present/future ag use. Enforceable by permit condition issued by District Commission.



# Off-site Mitigation

*(by permit condition issued by Commission)*

- Fee into Vermont Housing and Conservation Trust Fund, administered by VHCB, for “preserving [PAS] of equal or greater value with the highest priority given to preserving prime agricultural soils.” 10 V.S.A. § 6093(a)(1). VHCB uses these funds to achieve significant farmland conservation outcomes, permanent conservation easements.
- Price/acre, by District, based on the “recent, per-acre cost to acquire conservation easements for [PAS] in the same geographic region as the proposed development or subdivision”. 10 V.S.A. § 6093(a)(1)(C).
- Off-site mitigation is default for projects in specific designated areas (downtown development district; growth center; new town center designated on or before 1/1/2014; NDA associated with designated downtown development district); also Industrial Parks as defined and permitted by Act 250, in existence as of Jan. 1, 2006). 1:1 ratio applies for those projects in defined designated areas. 10 V.S.A. § 6093(a)(1); 10 V.S.A. § 6093 (a)(4)(A).
- For projects outside designated areas, available only subject to District Commission’s findings of mitigation flexibility (appropriate circumstances) for off-site or a combination of on and off-site, standard multipliers apply. 10 V.S.A. § 6093(a)(3).

See NRB Statement of Procedure: Preservation of Primary Agricultural Soils.



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Natural Resources Atlas*



Questions?