Agriculture and Municipalities

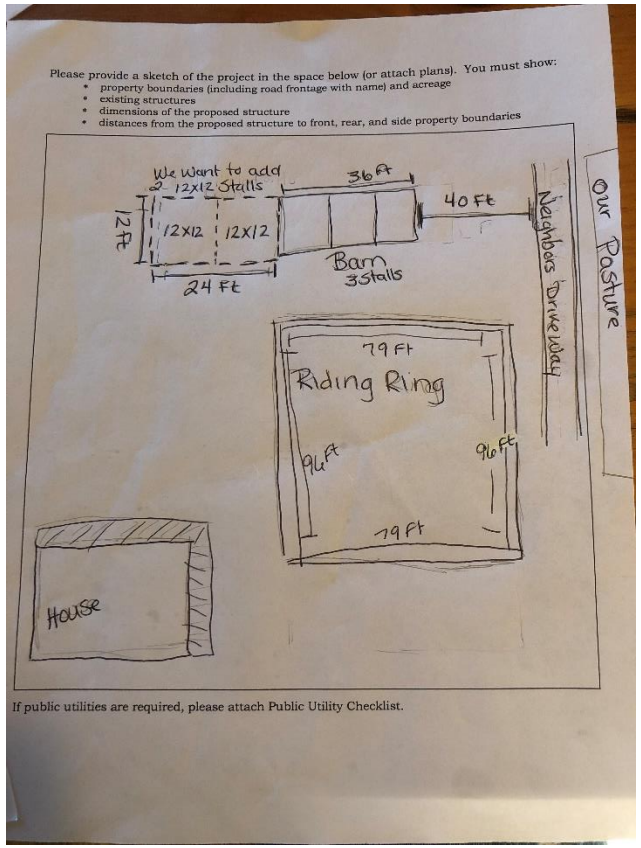
Municipal Day, Montpelier
October 25, 2019

The intersection of municipalities and agriculture:

- What is a farm?
  - RAPs – Why in WQ?
- On Farm Accessory
- Criterion 9(B), Act 250

Farm and Farm Structure Determinations

- When are these needed?
  - Zoning
  - Building a farm structure
  - Accessory on Farm Business
- What is a farm structure?
  - Cannot be multi-use
  - Must still comply with fire safety and building codes
  - Must notify town
  - Must meet municipal setbacks unless a variance is granted by the Agency
- MS4 – Moving fill
- NOT needed to engage in farming activities covered under the Required Agricultural Practices (RAPs)



Why are these questions so tricky?

- Farmers are finding new and innovative ways to sustain their operations
  - Value added – Accessory on Farm and Hemp
- These value added projects or increased diversification is a change for operators, the Agency, Municipalities, and the public
- Regulations and policy are playing catch up
- Operations vary GREATLY
- Increasing number of small operations popping up with the hemp industry

What is a Farm?

- $2,000.00 or more in Ag Sales
- 4.0 contiguous acres
- 4 horses, 5 cattle or Cows,15 pigs, sheep or goats, 50 turkeys, 100 hens, 30 rabbits, etc…
- Managed by farmer filing a 1040(F) tax form in at least one of the past two years
- Prospective business or farm management plan
- Designated by the Secretary

What is Farming?

- Cultivation or other use of land for food, fiber, Xmas Trees, Maple, or orchard crops
- Livestock, Greenhouses and Maple syrup production
- Storage, prep or sale of ag products or Fuel or power from ag products or waste principally (>50%) produced on the farm
- Boarding or owning 4+horses including training, showing, or lessons

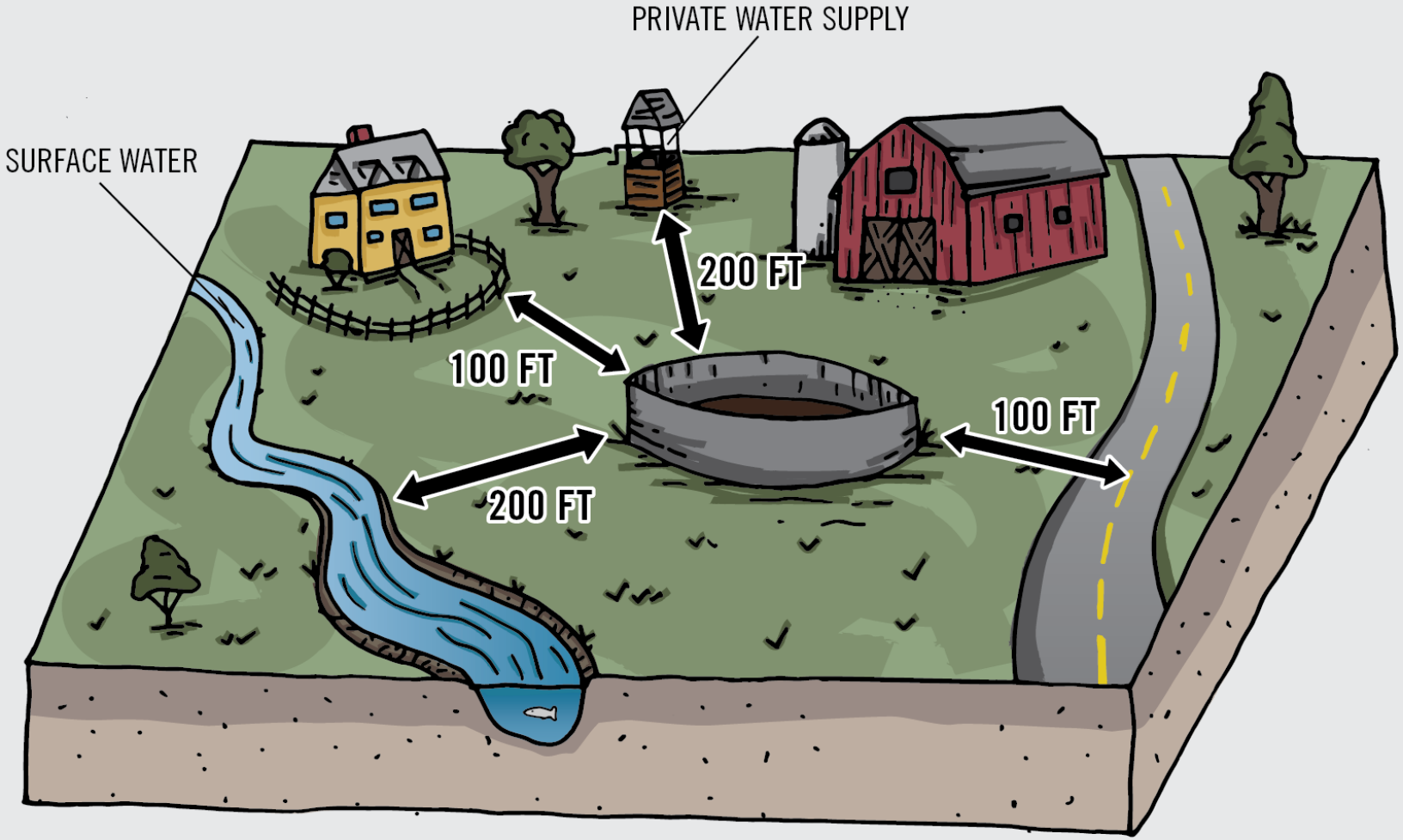
FARMS have to follow the Required Agricultural Practices

- ❑ Siting requirements for farm structures
- ❑ Erosion standards
- ❑ Floodplain management
- ❑ Streamside and Ditch Buffers and manure setbacks
  25’ all surface water, 10’ all ditches
- ❑ Livestock exclusion from surface waters
- ❑ Nutrient management (including seasonal manure application)
- ❑ EDUCATION: Farmers, Custom Operators, Technical Service Providers
- ❑ Tile drainage requirements

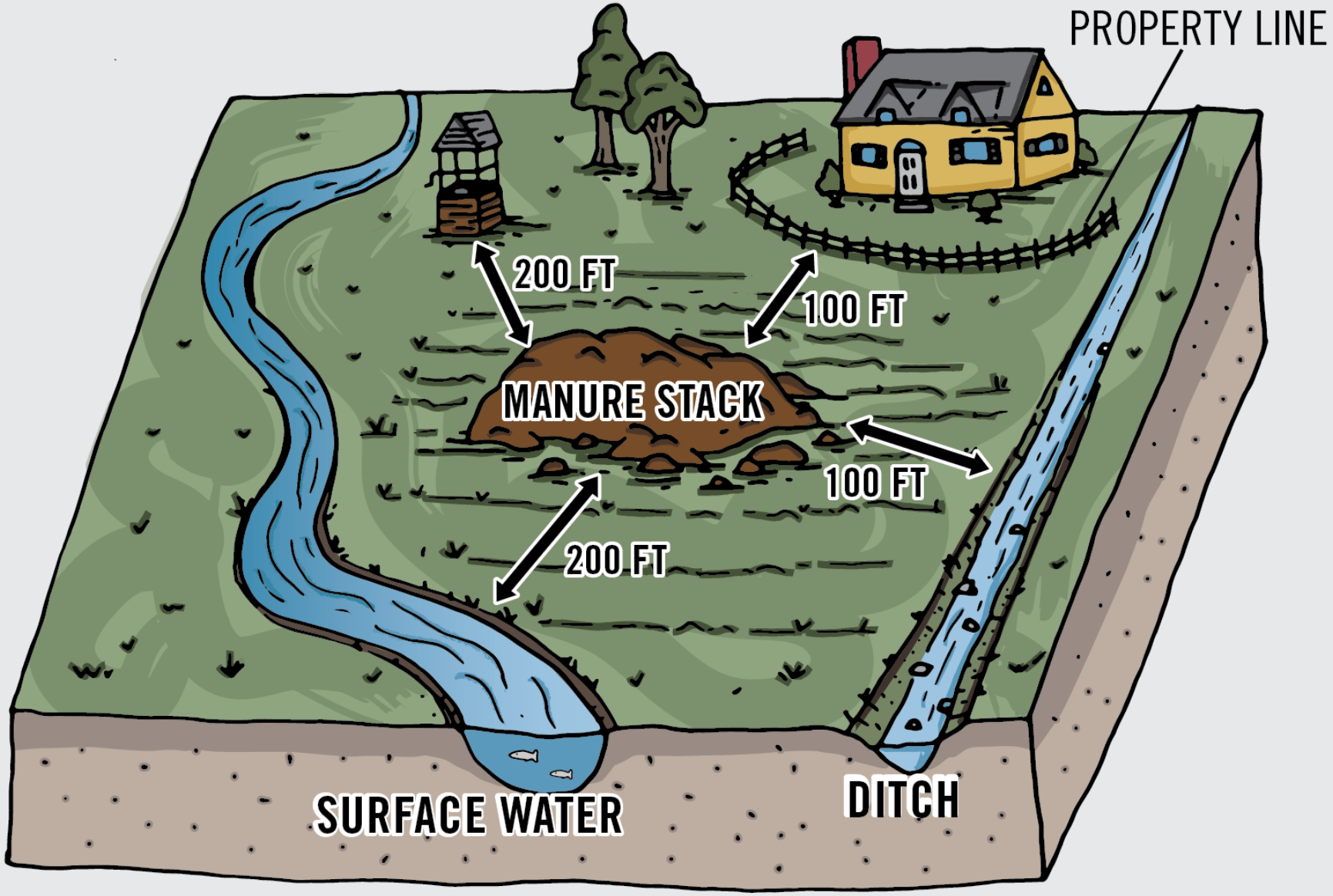
Construction

- Farms must notify the Town
- Must follow local setbacks unless otherwise approved
- Need to comply with Other State permit Requirements
- RAP Setbacks - examples

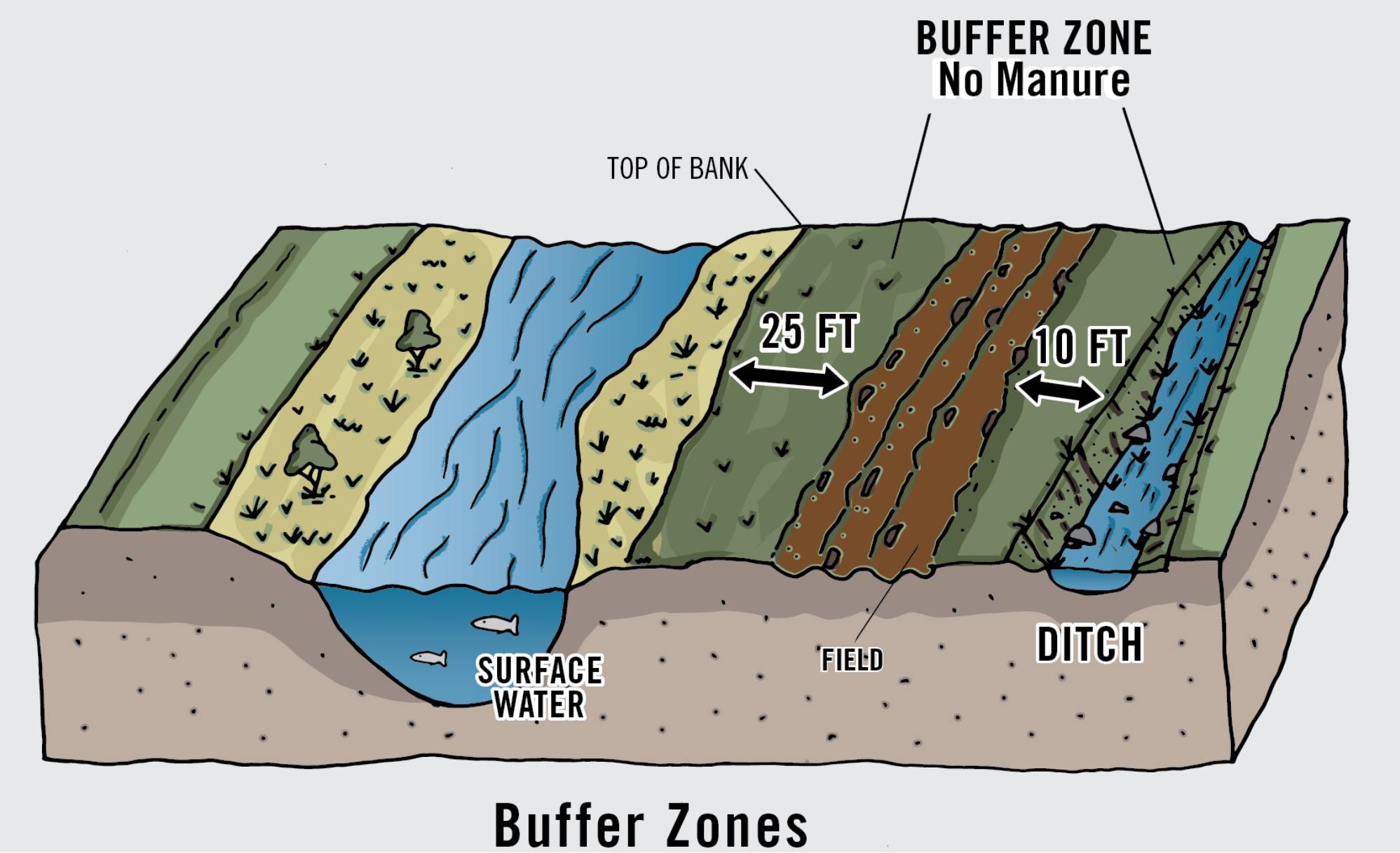
ALL NEW WASTE STORAGE FACILITIES PROPOSED ON SITES WHERE NO STORAGE FACILITY OR PRODUCTION AREA PREVIOUSLY EXISTED SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE FOLLOWING SETBACKS:



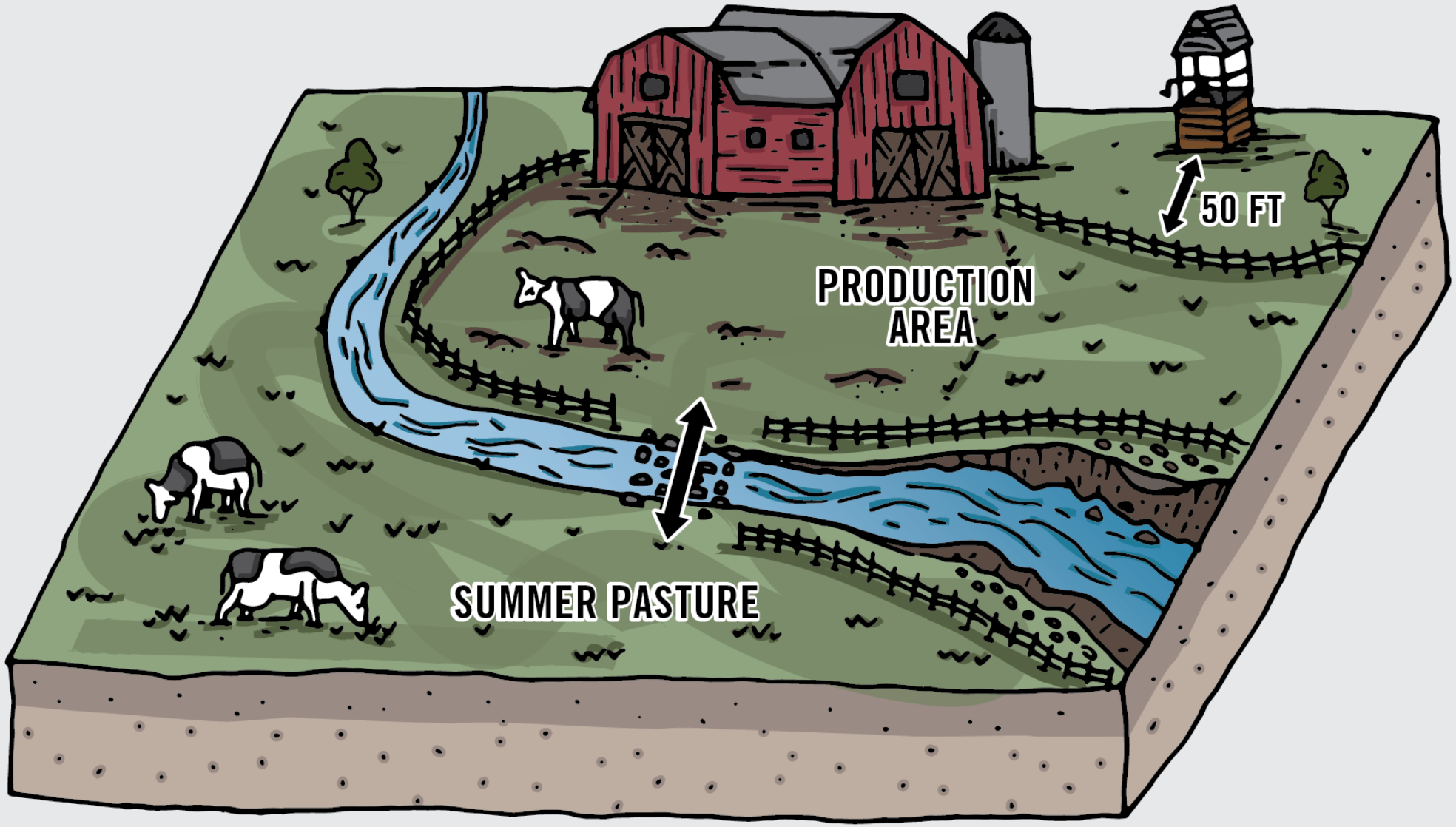
New Waste Storage Facilities



Manure Stacking Setbacks



BUFFERS ARE HARVESTABLE AND THEY CAN BE GRAZED BUT THE BUFFER CANNOT BE TILLED OR HAVE COMPOST OR FERTILIZER APPLIED EXCEPT FOR ESTABLISHMENT OR MAINTENANCE.



Livestock Exclusion from Surface Waters

LIVESTOCK SHALL BE EXCLUDED FROM SURFACE WATERS IN PRODUCTION AREAS (BARNYARD, FEEDLOT AND HEAVY USE AREAS) EXCEPT AT DIFINED LIVESTOCK CROSSINGS OR WATERING AREAS

Agriculture.Vermont.gov/rap

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Accessory on-farm businesses

Act 143
An act relating to municipal regulation of accessory on-farm businesses

When does AOFB law come into play?

- Only in communities with land use regulations

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AOFB does not change the applicability of other regulations

- Act 250
- Fire safety
- Wastewater/ Potable Water
- Wetlands
- Health Department
- On-farm slaughter
- Stormwater

ACT 143 DOES NOT CHANGE ENROLLMENT REQUIREMENTS FOR LAND AND BUILDINGS IN THE CURRENT USE PROGRAM

What does the law do?

- Creates a statewide municipal land use category called "accessory on-farm business"

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Accessory On-Farm Business

(I) The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.

(II) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products.

What does the law do?

- It defines terms for the purposes of implementing the law

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Definitions

- "Farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

- "Qualifying product" means a product that is wholly: (I) an agricultural, horticultural, viticultural, or dairy commodity, or maple syrup; (II) livestock or cultured fish or a product thereof; (III) a product of poultry, bees, an orchard, or fiber crops; (IV) a commodity otherwise grown or raised on a farm; or (V) a product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.

Definitions

- "Farm" means a parcel or parcels owned, leased, or managed by a person, devoted primarily to farming, and subject to the RAP rules. For leased lands to be part of a farm, the lessee must exercise control over the lands to the extent they would be considered as part of the lessee's own farm. […]
- "Farming" includes the on-site storage, preparation, and sale of agricultural products principally produced on the farm"

What does the law do?

- Limits municipal regulatory authority over AOFB to site plan review and application of performance standards

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Who is Responsible?

- AAFM
- Operator
- Municipality

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Existing AAFM Responsibilities

- AAFM continues to protect and maintain water quality by requiring farm operators to meet standards outlined in the Required Agricultural Practices rule
- AAFM maintains responsibility for determining whether it is a farm and Required Agricultural Practices rule apply to the operation
- AAFM approves alternative setbacks from those required by a municipal bylaw, as outlined in the Required Agricultural Practices rule

NEW AAFM Responsibilities

- Provide periodic written notification and training sessions to farms covered by the Required Agricultural Practices rule on the existence and requirements of this law
- Alert farms that in order to operate an accessory on-farm business other state permits may be necessary

Farm Operator Responsibilities

Apply for municipal site plan review and other permits, as necessary and provide evidence used in site plan review process

- Is it a "farm" covered by Required Agricultural Practices rule?
- Is it a business that is accessory to the primary farm use?
- Is the business operated by farm owner, one or more persons living on the farm, or a lessee of a portion of the farm?
- Is it an educational, social or recreational event that features agricultural practices or qualifying products, or is a business that sells qualifying products?

Municipal Responsibilities

Determines eligibility of the proposal to qualify as an Accessory On-Farm Business

- Is it a farm owner, resident, or lessee?
- Does it meet the definition of an accessory on-farm business?
- Applies municipal site plan review and performance standards and issues decisions

*Municipalities can adopt more permissive land use regulations

This Law Does Not

- It does not change the need to get other permits for development or to operate a business

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Accessory On-Farm Business Analysis Sales

- Is this a "farm"? And is "farming" happening on the site?
- How much is the sales from products principally produced (PPP) on the farm?
- What is the sales from qualifying products (QP)?

QP sales must not exceed 49% of the total sales of PPP at the farm.

Accessory On-Farm Business Analysis Events

- Is this a farm? And Is "farming" happening on the site?
- Does the farm host educational, recreational or social events on the farm? and
- Does it include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products ?

Act 250, Criterion 9(B): Primary Agricultural Soils

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

Image generated with ANR Natural Resources Atlas

- Act 250 is a Vermont land use law administered by the Natural Resources Board
- Quasi-judicial, public process; for projects subject to Act 250 jurisdiction (jurisdictional triggers)
- While improvements for farming under 2500' currently fall outside the definition of development, jurisdiction may attach today if the parcel has an existing permit or if improvements for a commercial purpose go beyond the scope of the "farming" definition
- Jurisdictional opinions are issued by NRB's District Coordinators
- AAFM is a statutory party in Act 250 proceedings addressing 9(B)
- District Environmental Commissions issue permit conditions and decisions
- Criterion 9(B), Primary Agricultural Soils, is one of ten criteria (plus sub-criteria)

10 V.S.A. § 6001(3)(E)

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision (22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter….

10 V.S.A. § 6001(22)

(22) "Farming" means:

(A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or

(B) the raising, feeding, or management of livestock, poultry, fish, or bees; or

(C) the operation of greenhouses; or

(D) the production of maple syrup; or

(E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or

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)

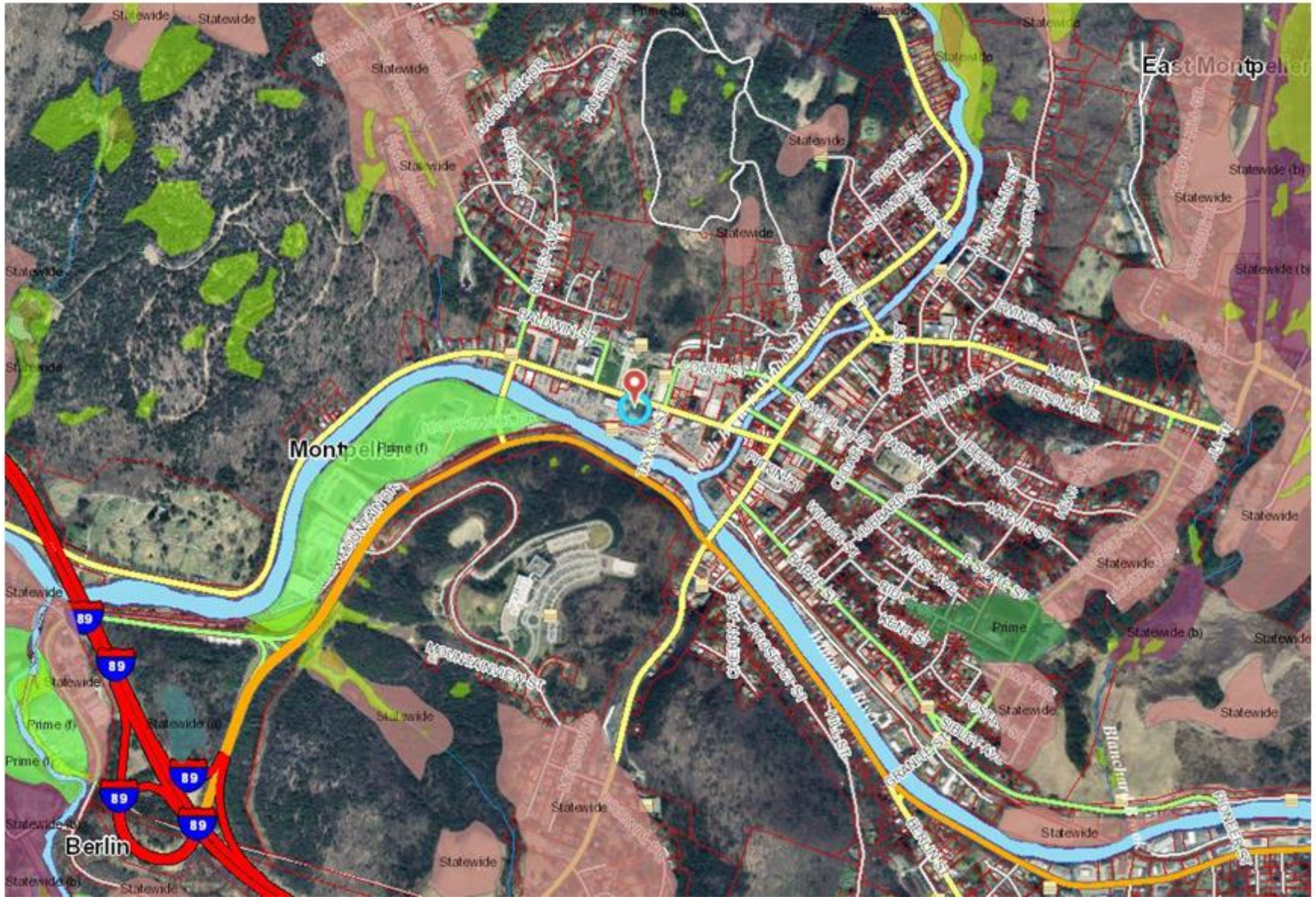
10 V.S.A. § 6001(15)

(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:

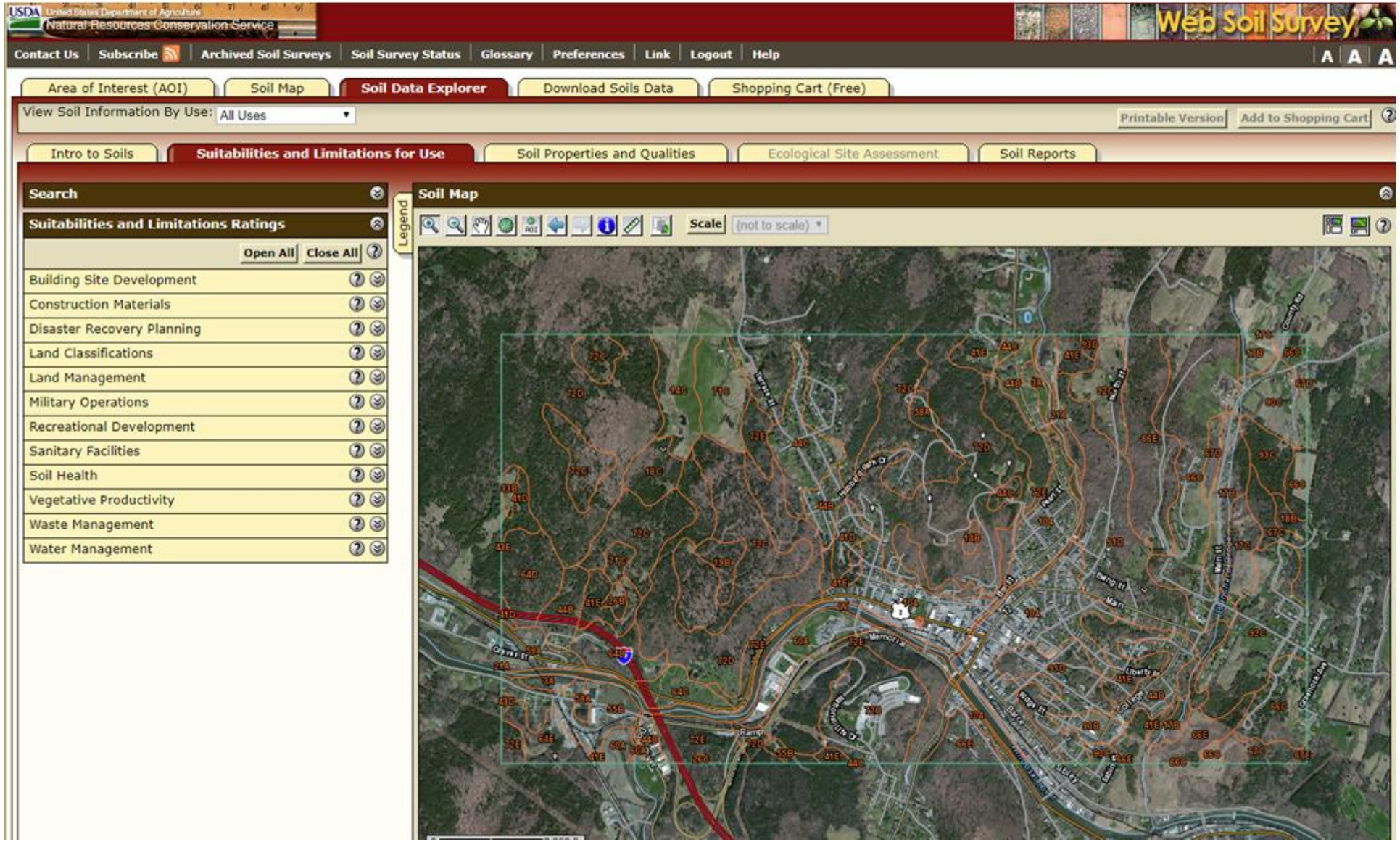
(i) impacts to the soils relevant to the agricultural potential of the soil from previously constructed improvements;
(ii) the presence on the soils of a Class I or Class II wetland under chapter 37 of this title;
(iii) the existence of topographic or physical barriers that reduce the accessibility of 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.

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



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



AAFM Review

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- The Agency reviews apps for development/subdivision subject to Act 250 jurisdiction, with possible impacts to PAS, making recommendations to the District Environmental Commissions.

- AAFM reviews whether soils meet definition of PAS; acreage of impacts; acreage of mitigation warranted; and proposed on-site mitigation. Files review/comments and attends hearings as needed.

Mitigation Multipliers:
10 V.S.A. § 6093(a)(2)(B)

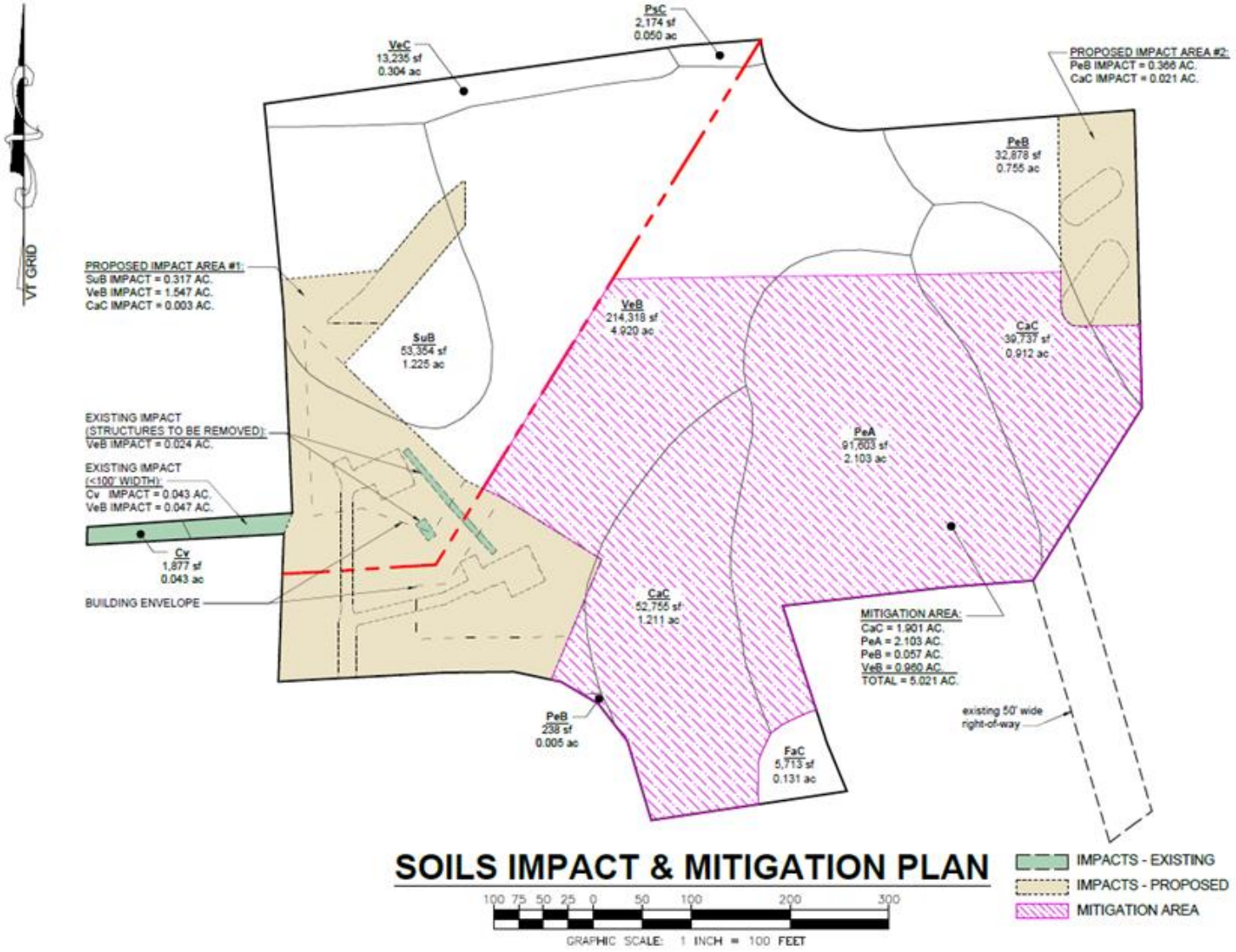
- Soils with an agricultural value 1, multiply by 3
- Soils with an agricultural value 2, multiply by 2.75
- Soils with an agricultural value 3, multiply by 2.5
- Soils with an agricultural value 4, multiply by 2.25
- Soils with an agricultural value 5 - 7, multiply by 2

Note: 1:1 ratio applies in designated areas and Industrial Parks as defined and permitted by Act 250 as of 01/01/06.

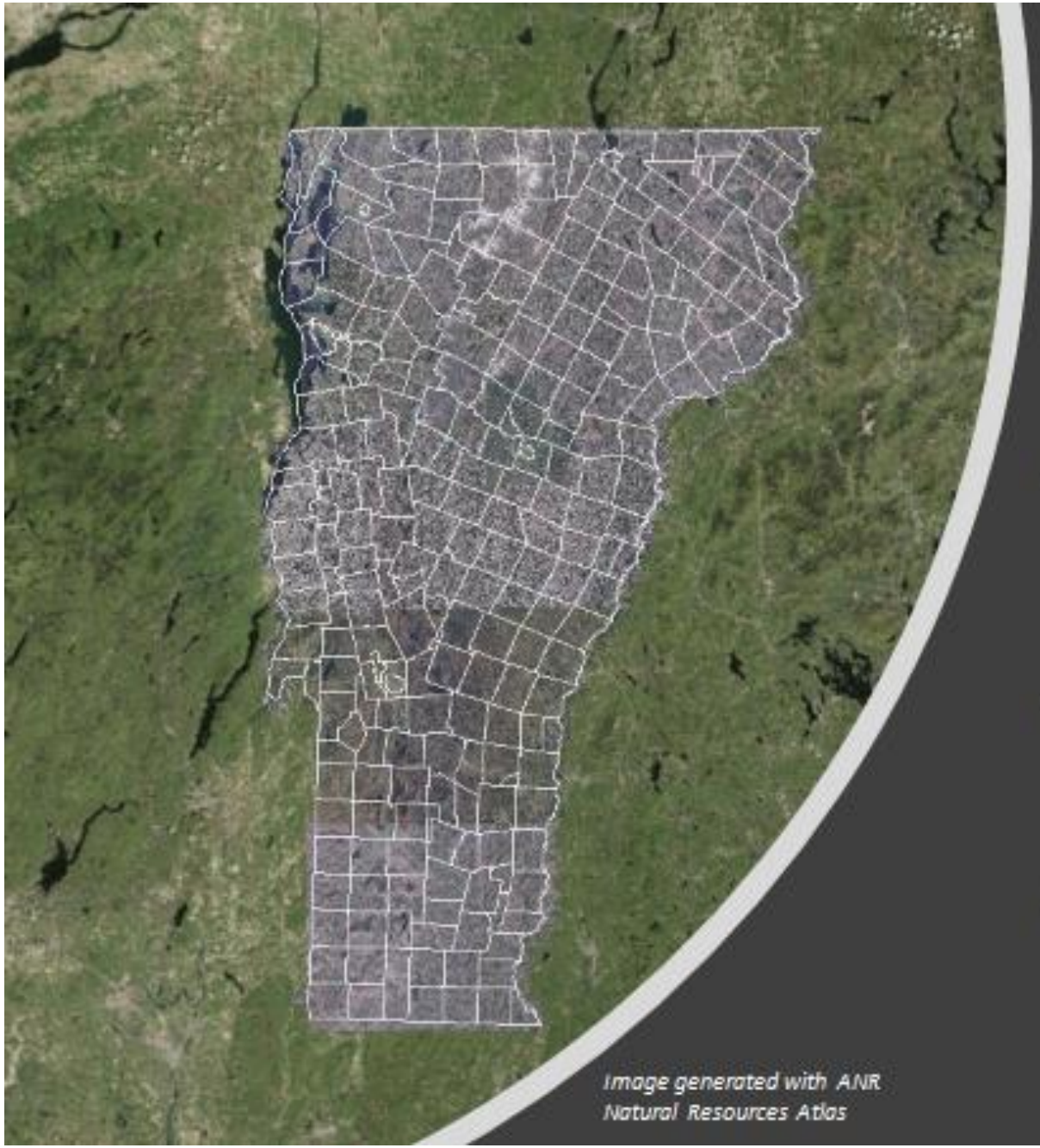
On-site Mitigation: What is Required?

- "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).
- No requirement the soils be actively farmed today; conserving the resource for present and future use
- 2-acre minimum area (de minimis if under 2 acres mitigation; cumulative impacts)
- Soils of equal or better agricultural value to those being impacted (emphasis on "Prime")
- No Class I/II wetlands
- Access / availability
- Enforceable by permit conditions, issued by DC (recommended by the Agency)

Example: On-site mitigation area (pink) and direct/indirect impacts (beige)



4C0883, Hinesburg (plan by Barnard & Gervais, LLC), used here for conceptual purposes only



Off-site Mitigation

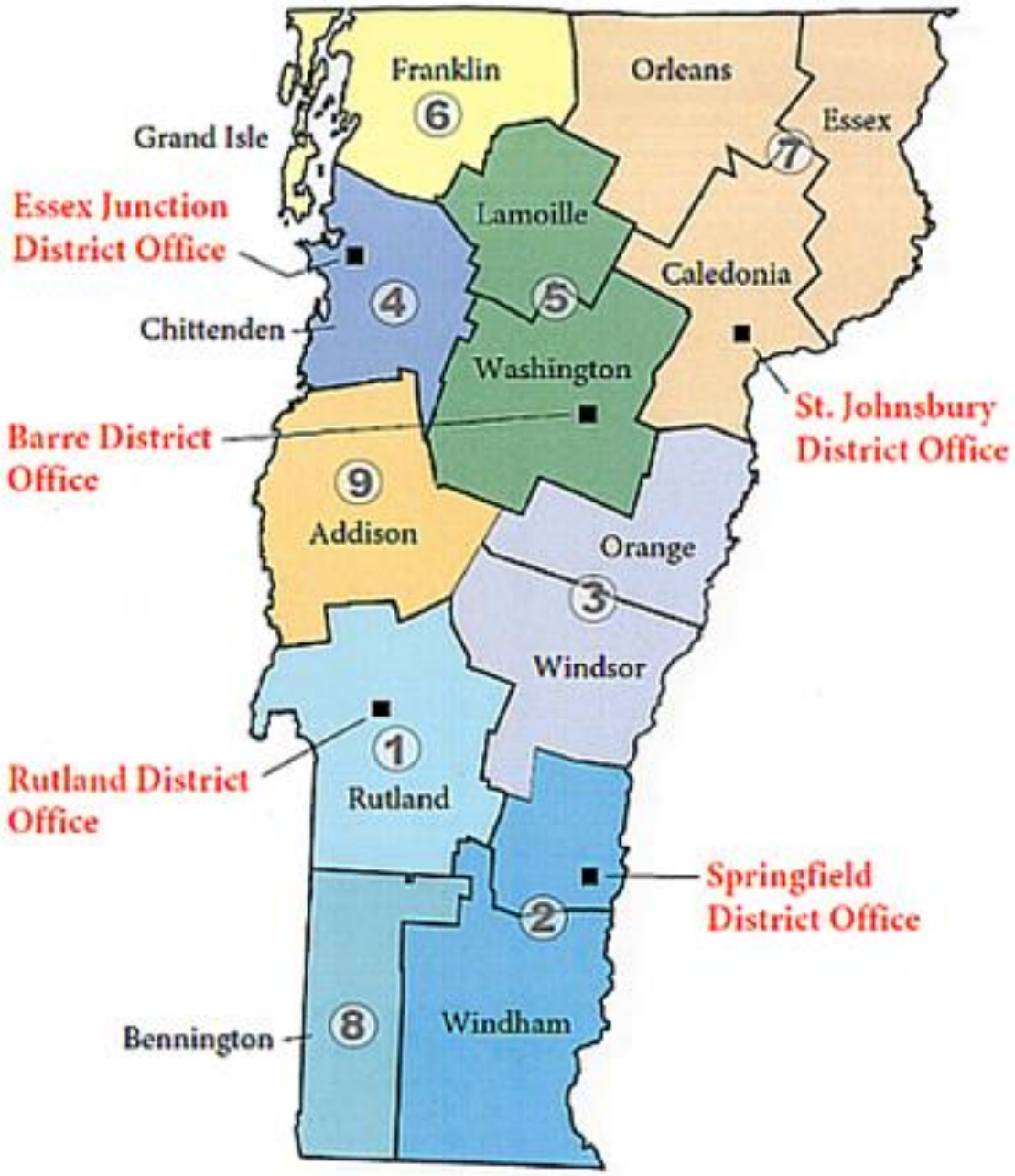
(by permit condition issued by Commission)

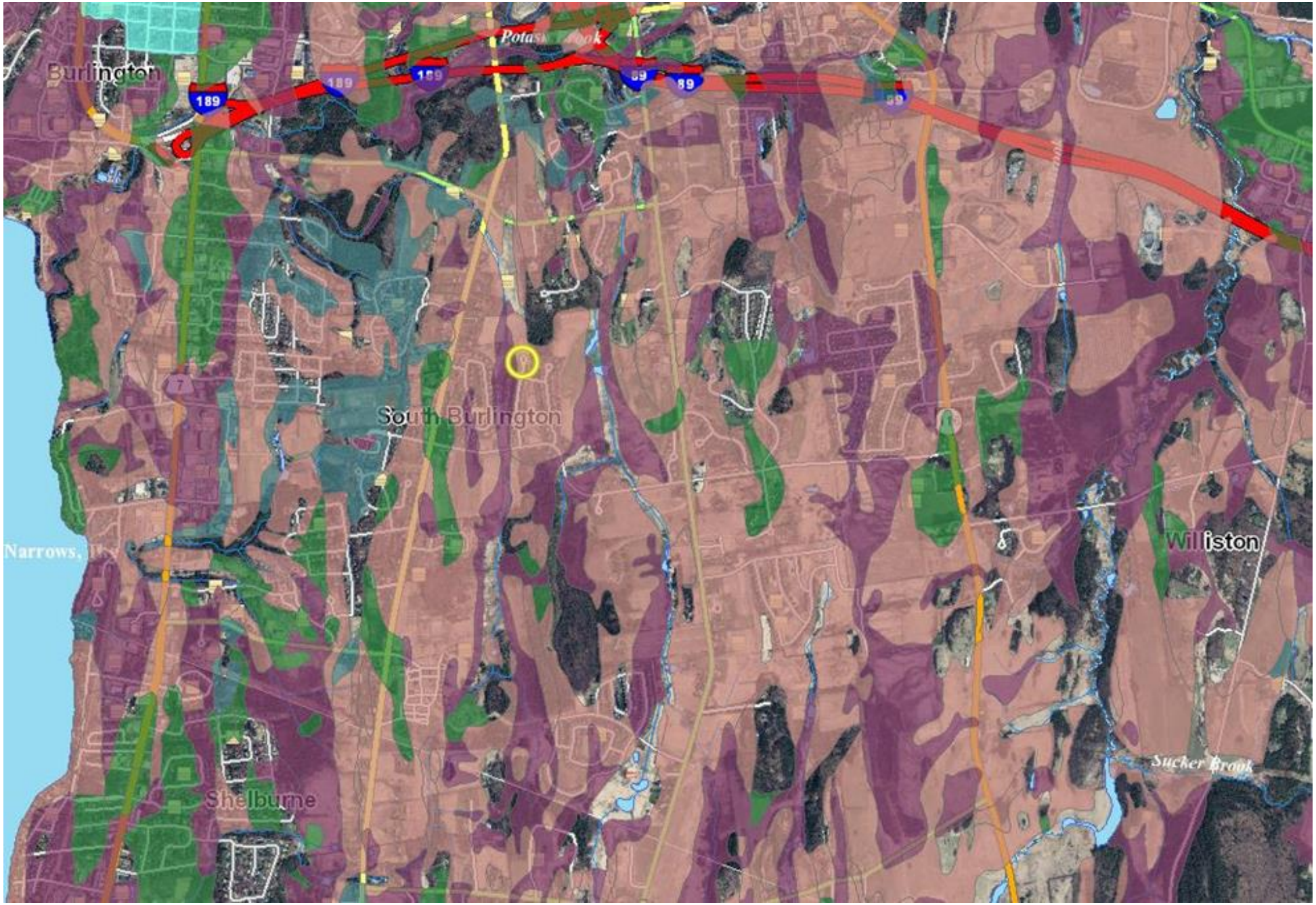
- Fee into Vermont Housing and Conservation Trust Fund, administered by VHCB, for "preserving [PAS] of equal or greater value with the highest priority given to preserving prime agricultural soils." 10 V.S.A. § 6093(a)(1).
- VHCB leverages these funds along with those from other sources to conserve prime farmland in the region of the development through permanent conservation easements (and, pursuant to statute, to be used by AAFM to pay reasonable staff/transaction costs)
- Available for projects in designated areas (ie downtown development district; growth center; Industrial Park in existence and permitted by Act 250 as of Jan. 1, 2006). 10 V.S.A. § 6093(a)(1).
- 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, if consistent with agricultural elements of local/regional plans. 10 V.S.A. § 6093(a)(3). AAFM does not weight in on appropriate circumstances – leaves it to Commission.

Off-site Mitigation Rates by District

- Based on what the Secretary of the Agency has determined to be the "recent, per-acre cost to acquire conservation easements for [PAS] in the same geographic region as the proposed development or subdivision"
- Today, the Agency sets these rates annually based on recent closings on easements by VHCB

Image Credit: Natural Resources Board http://nrb.vermont.gov




Burlington
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South Burlington
Williston
Shelburne
Sucker Brook

Contact your State Permitting Specialist

https://dec.vermont.gov/environmental-assistance/permits/specialists

ct 250: Criterion 9(I | Web Soil Survey - NI | Natural Resources A | Searchable Act 250 D | District Commission | HR Self Service | Act 250 tracking syst

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Department of Environmental Conservation

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FIND A PERMIT SPECIALIST

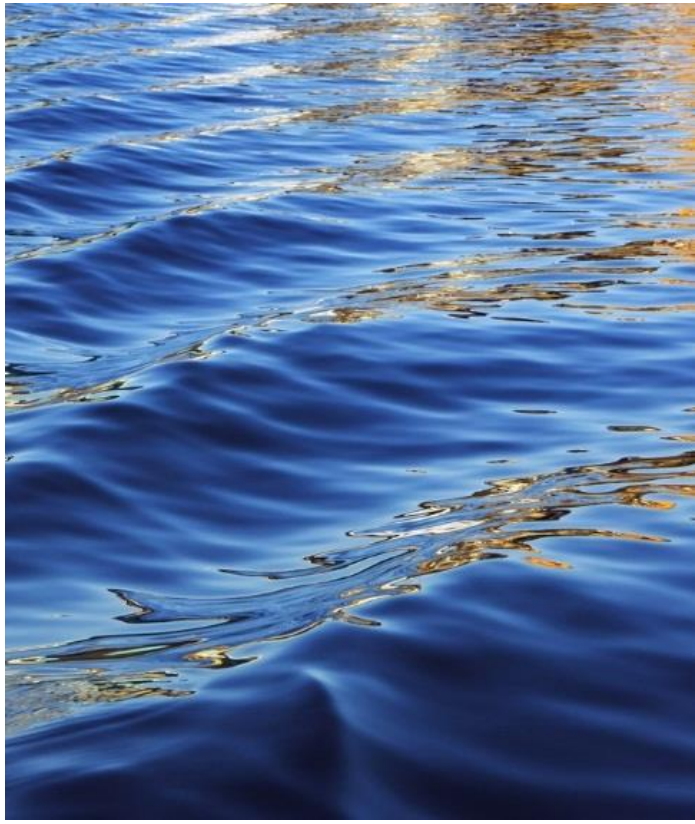
To find the Permit Specialist serving your area, select your town from the dropdown list below and click on the "Find My Permit Specialist" button. Contact information for the Permit Specialist in the Regional Office serving your area is provided.

Hint: If you click on the text box to select it, then press the first letter of your town name, it will scroll down to the start of town names beginning with that letter.

Select Your Town

Find My Permit Specialist

Questions?



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