



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

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



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- Act 250 is a Vermont development/land use law administered by the NRB
- Quasi-judicial, public process; for projects subject to Act 250 jurisdiction
- AAFM is a statutory party
- District Environmental Commissions issue permit conditions and decisions
- Criterion 9(B), Primary Agricultural Soils, is one of ten criteria (plus sub-criteria). Burden on Applicant to comply with 9(B).



AAFM Review

- The Agency reviews apps for development/subdivision subject to Act 250 jurisdiction, with possible impacts to PAS, making recommendations to the District Environmental Commissions. Reviews site plans, soils matrix, permit history, aerial imagery, site visits if needed.
- May be pre-application review or once application Noticed to Act 250 Agenda
- 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.

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.

Mitigation Multipliers:

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



Natural Resources Atlas

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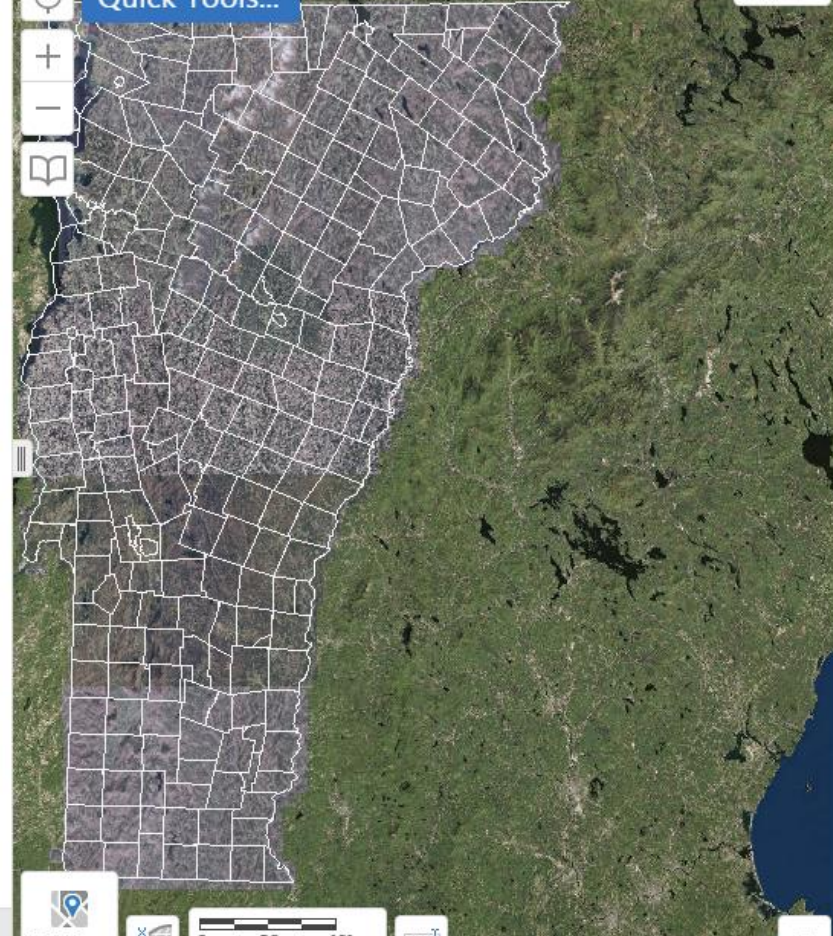


MAP SIMPLY.

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

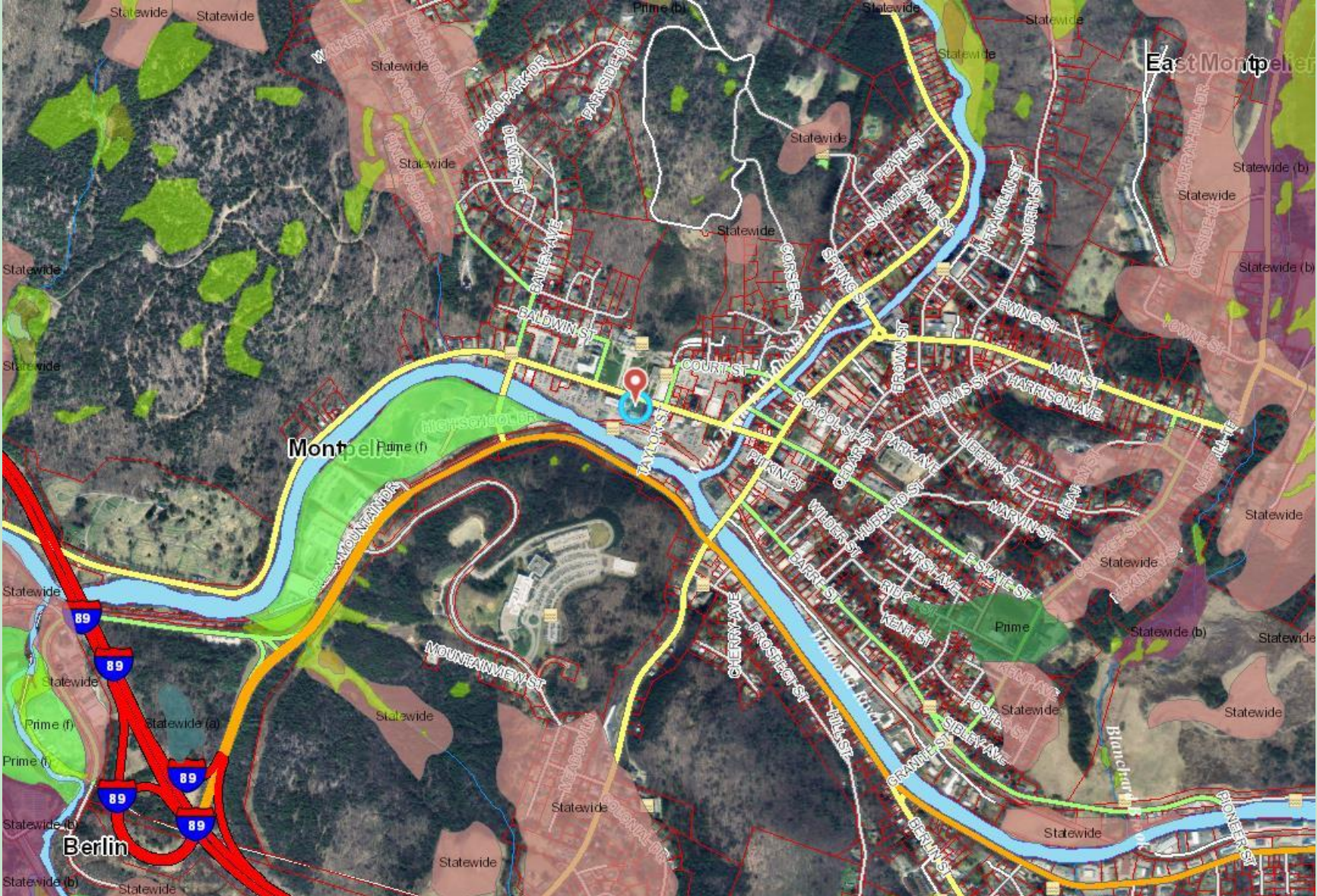


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On-site Mitigation: default outside of designated areas



Fat Sheep Farm and Cabins; Windsor, VT – On-site mitigation in ag use



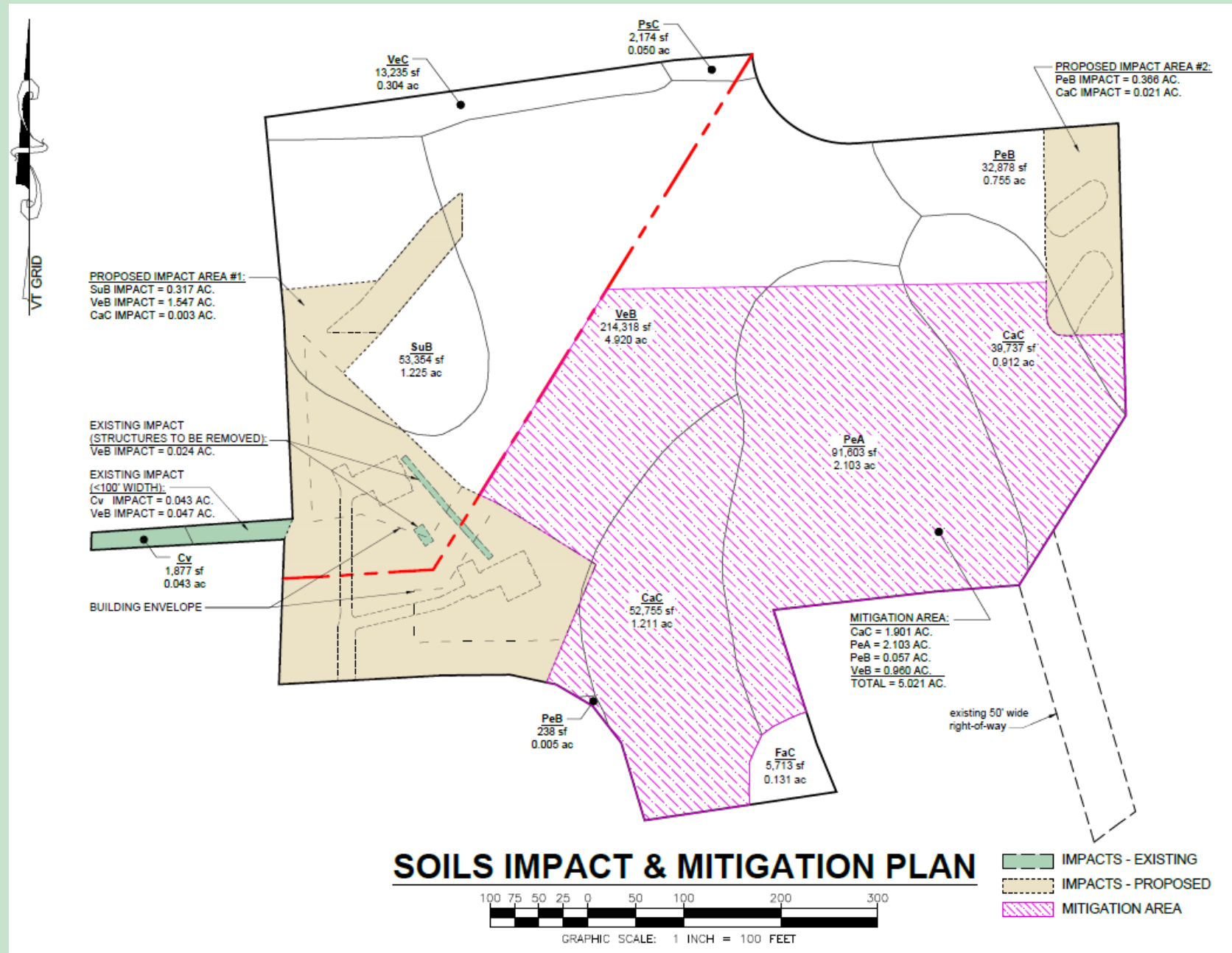
Development subject to Act 250 on PAS; note the direct and indirect impact areas (Windsor, VT)

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)

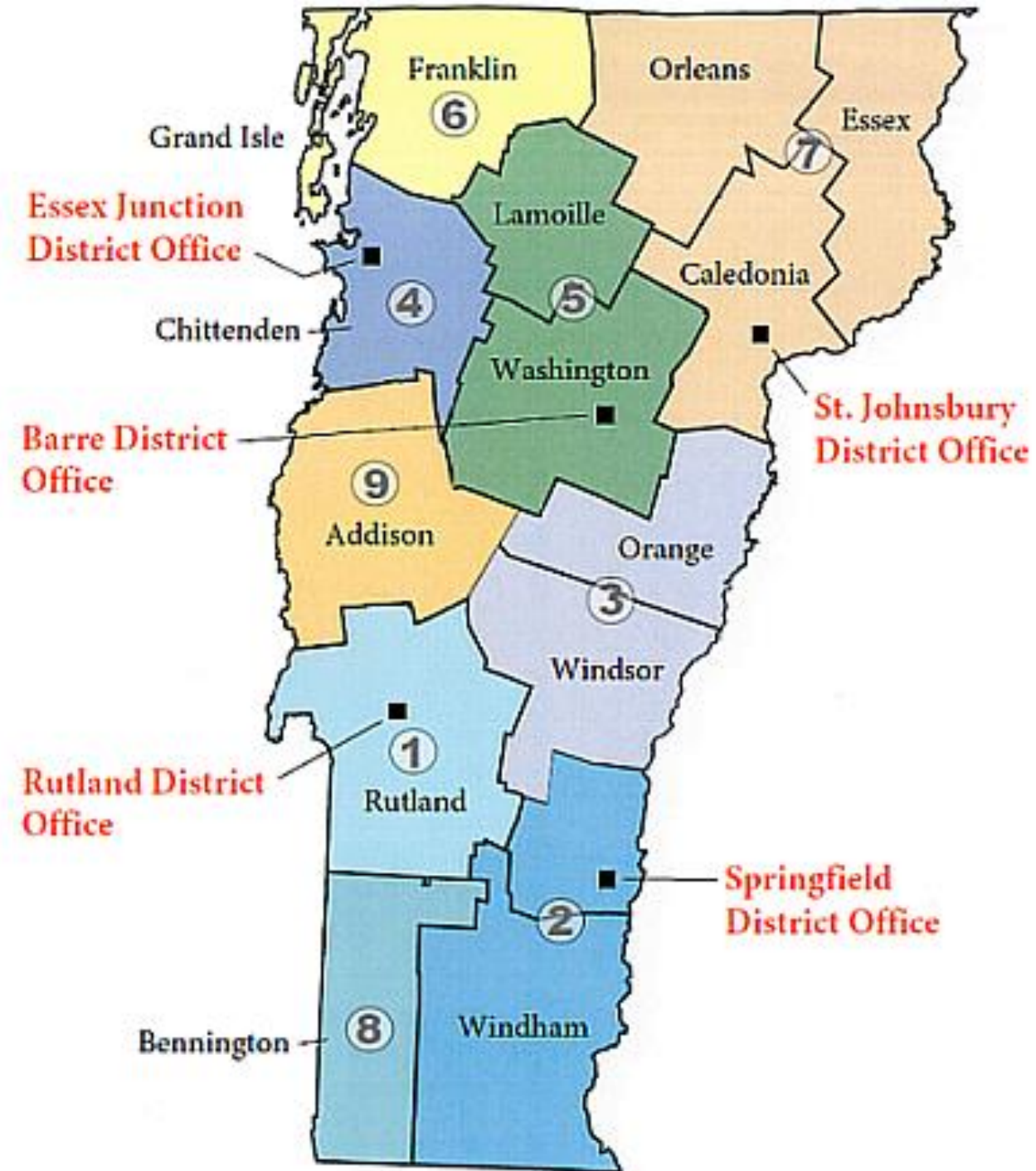
- Fee into Vermont Housing and Conservation Trust Fund, administered by **VHCB**, for “preserving [PAS] of equal or greater value with the highest priority given to preserving prime agricultural soils.” 10 V.S.A. § 6093(a)(1).
- VHCB leverages these funds along with those from other sources to conserve 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.



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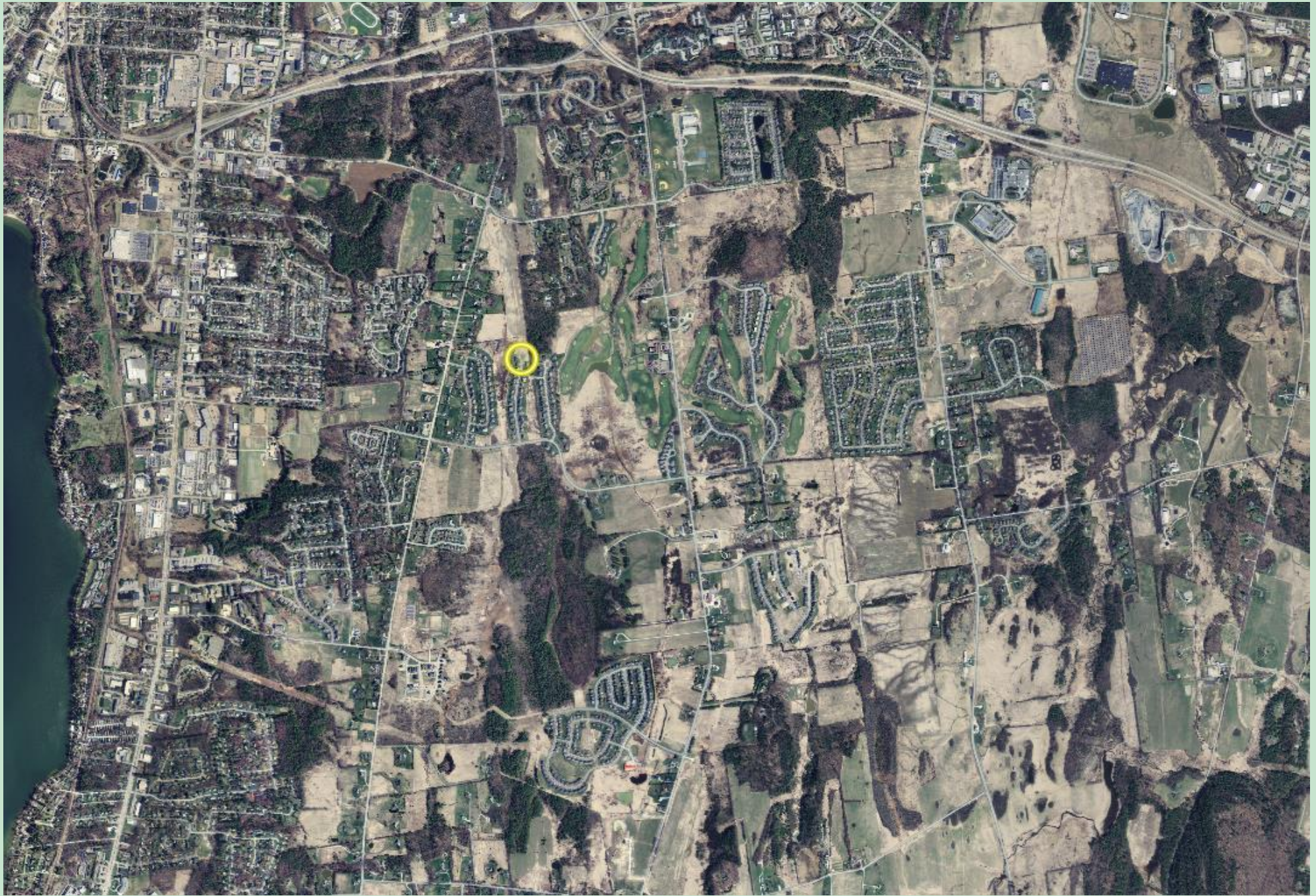
Off-site Mitigation Rates by District

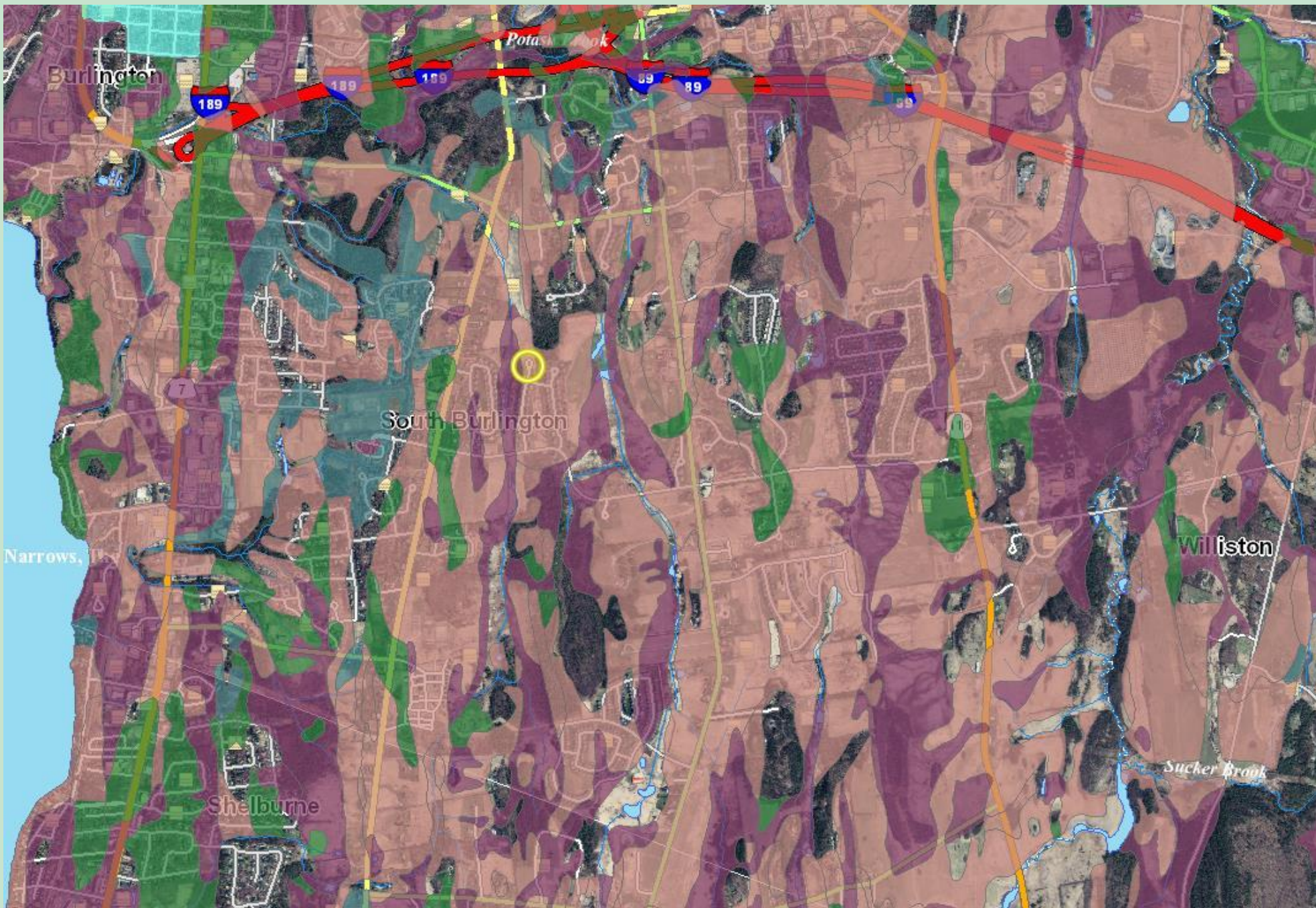
- Based on what the Secretary of the Agency has determined to be the “recent, per-acre cost to acquire conservation easements for [PAS] in the same geographic region as the proposed development or subdivision”
- Today, the Agency sets these rates annually based on recent closings on easements by VHCB

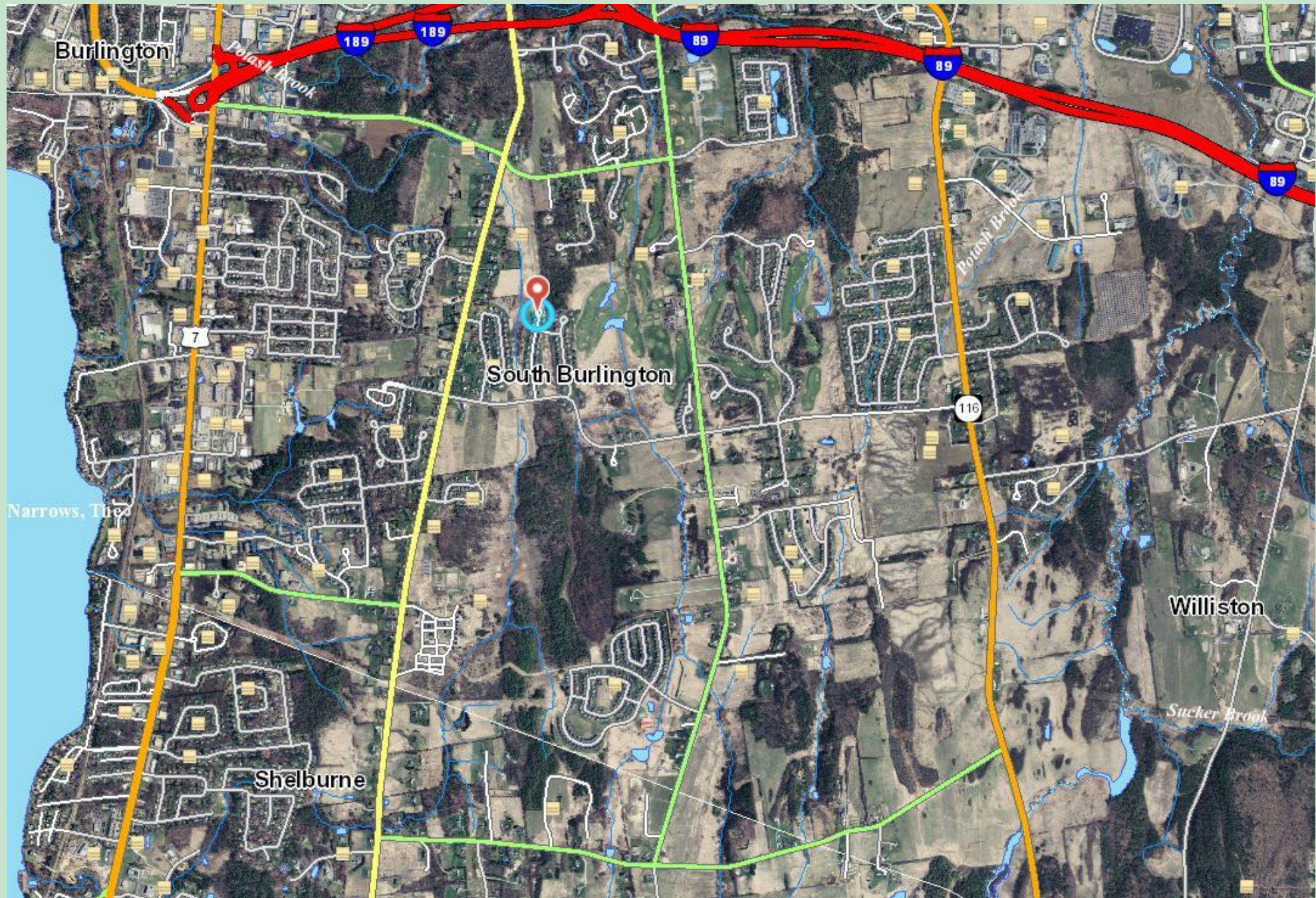


2018 Off-site Mitigation Rates

District	Cost per Acre
1	\$1,782
2	\$3,649
3	\$5,560
4	\$5,295
5	\$2,982
6	\$2,036
7	\$1,345
8	\$1,837
9	\$1,584







Questions?

<http://agriculture.vermont.gov/land-use/act250>

