COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)
HB 206 Small Renewable Energy Projects: 2023 Regulatory Advisory Panel (RAP)

2023 RAP Meeting 4: Thursday, September 28, 2023 | 10 am – 3 pm

Meeting Location: DEQ Piedmont Regional Office | 4949-A Cox Road | Glen Allen, VA 23060

Facilitated by: Tanya Denckla Cobb | Michelle Montserrat Oliva
Institute for Engagement & Negotiation (IEN), University of Virginia

FINAL MEETING NOTES (MINUTES)

RAP Primary Members Attendance (Name, Organization – alphabetical order by Last Name) - ☒=present, ☐=absent

- ☐ Josephus Allmond-Southern Env. Law Center
- ☒ Cathy Binder-King George County
- ☒ Amelia Boschen-Dominion Energy
- ☐ Sam Brumberg-VMDAEC
- ☒ Brad Copenhaver-VA Agribusiness Council
- ☐ Chip Dicks-Gentry Locke
- ☒ Rick Drazenovich-City of Danville
- ☒ Judy Dunscomb-The Nature Conservancy
- ☒ Patrick Fanning-Chesapeake Bay Foundation
- ☒ Chris Hawk-Advanced Energy United
- ☒ Dan Holmes-Piedmont Environmental Council
- ☐ Stephanie Johnson-CHESSA
- ☒ Adrienne Kotula-Chesapeake Bay Commission
- ☒ Joe Lerch-VA Assoc. of Counties
- ☐ Josh Levi-Data Center Coalition
- ☐ Martha Moore-VA Farm Bureau Federation
- ☐ David Murray-American Clean Power Assoc.
- ☐ Ben Saunders-AES Clean Energy
- ☒ Tim Seldon-Geosyntech Consultants
- ☒ Susan Seward-VA Forest Products Assoc.
- ☐ Kyle Shreve-VA Forestry Assoc.
- ☒ Dominika Sink-Energix Renewables
- ☐ Bill Street-James River Association
- ☒ Tyson Utt-CEP Solar

RAP Alternate Members Attendance (Name, Organization – alphabetical order by Last Name) - ☒=present, ☐=absent

- ☐ Robert Crockett-Advantus Strategies
- ☐ Tom Dunlap-James River Association
- ☒ Don Giecek-CEP Solar
- ☒ Greg Habeeb-Gentry Locke
- ☐ Jeff Hammond-Advanced Energy United
- ☐ Jayme Huston-Energix Renewables
- ☐ Ashish Kapoor-Piedmont Enviro. Council
- ☐ Jimmy Merrick-Advanced Energy United
- ☒ Jacob Newton-VMDAEC
- ☒ Nikki Rovner-The Nature Conservancy
- ☒ Ben Rowe-VA Farm Bureau Federation
- ☒ Brandon Searcey-Dominion Energy
- ☒ Nathan Thomson
- ☒ Caitlin Vincent-SEIA for CHESSA
- ☐ Cliff Williamson-VA Agribusiness Council

RAP

Subject Matter Expert (SME) Members Attendance including Virginia State Agencies and Universities (Name, Organization – alphabetical order by Last Name) - ☒=present, ☐=absent

- ☒ Jenny Belville-Marrion-DHR
- ☒ Aaron Berryhill-VA Energy
- ☒ Jason Bulluck-DCR
- ☐ Mike Cizenski-SCC
- ☐ Lee Daniels-VT
- ☐ Lore Deastra- VA Dept. of Tax

☐ Michael Dreiling-VA EDP
☐ Robert Farrell-DOF
☐ Kevin Farrelly-VA EDP
☐ Jonah Fogel-UVA
☐ Charles Green-DACS
☐ Joe Guthrie-DACS
☐ David Harper-USDA
☐ Carrie Hearne-VA Energy
☐ Rene' Hypes-DCR
☐ John Ignosh-VT
☐ Neil Joshipura-SCC
☐ Ken Jurman-VA Energy
☒ Terry Lasher-DOF
☒ Martha Little-VOF
☐ James Martin-DCR
☐ Amy Martin-DWR
☒ Kevin Schmidt-DACS
☐ Michael Skiffington-VA Energy
☐ Caitlin Verdu-DOF
☒ Joe Weber-DCR

Dept of Environmental Quality & **Facilitation Team, IEN, University of Virginia - ☒=present, ☐=absent**

☐ Meade Anderson-DEQ
☐ Melanie Davenport-DEQ
☒ Mike Dowd-DEQ
☐ Chris Egghart-DEQ
☒ Amber Foster-DEQ
☐ Meghan Mayfield-DEQ
☒ Jonathan Rak-DEQ
☐ Rebeccah Rochet-DEQ
☐ Alex Samms-DEQ
☐ Tamera Thompson-DEQ
☒ Susan Tripp-DEQ
☒ Tanya Denckla Cobb-UVA
☒ Michelle Montserrat Oliva-UVA
☒ Em Mortimer-UVA
☐ Mike Rolband-DEQ

Meeting Materials/Attachments:

- Attachment 1: DEQ Draft Proposals – Local Government Interaction and Easement Requirements
- Attachment 2: RAP Written Feedback to DEQ (Responses Provided via Google Form)
- Attachment 3: Meeting Presentation

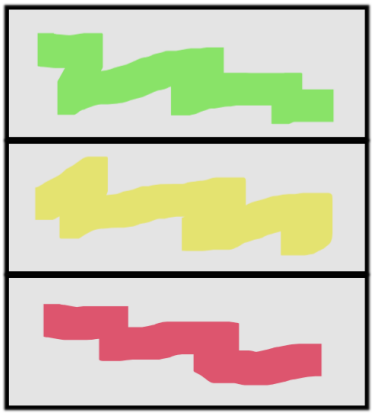
The meeting began at approximately 10:00am EDT.
Meeting Purpose: This regulatory advisory panel (RAP) convened for Meeting #4 with the purpose of discussing a suite of policy proposals prepared by the Department of Environmental Quality relating to local government interaction and easement requirements. Several of the proposals relating to easement requirements were written in response to RAP comments during RAP Meetings 2 and 3.

Welcome & Today's Agenda
Co-Facilitator Tanya Denckla Cobb gave a reminder to all present that only primary RAP members and SMEs are to speak during the proceedings and reviewed the guidelines for participation for primaries, alternates, SMEs, and the public. Co-Facilitator Michelle Oliva then reshared the guidelines for discussion that the primary RAP members agreed to in the previous meeting, which included:

(1) one speaker at a time (2) all perspectives are welcome
(3) listen for new understanding, be curious and open (4) (electronic) e-etiquette

Temperature Gauge Explanation
The Temperature Gauge Exercise is a facilitation tool being used in this RAP process to informally gauge RAP support. This is to assist DEQ in understanding the RAP member gradients of agreement for DEQ proposals as initially drafted. For more details, read the graphic below.

Temperature Gauge Exercise - Explanation



3 – Fully Support

"I support the proposal and its implementation"

2 – Will Support with Reservations

"I have questions and concerns but can live with and support implementation"

1 – Stop

"I have too many questions and concerns, cannot live with it, and we need more discussion"

DEQ Draft Proposals: Local Government Interaction and Easement Requirements

During the meeting, DEQ introduced one or a group of related proposals to the RAP. This structure was identical to that which was used during Meeting #2. Where necessary, SMEs presented key supporting documents and information intended to facilitate understanding of any subsequent proposals. Afterwards, the RAP was invited to provide comments, concerns, or ask clarifying questions. Facilitators prompted RAP members to voice any questions for clarification, elements of support or concern, or any recommendations to improve/modify the proposal. The following meeting notes repeatedly reference, paraphrase, or quote from the *DEQ HB 206 Draft Proposals: Forest Lands* document, which all RAP members were asked to review in depth ahead of the RAP meeting. This file is attached in the post-RAP materials package.

Local Control-Related Proposals

A. Locality Notification

DEQ Proposal A.1: The initial Notice of Intent (NOI) shall be submitted by the applicant to DEQ as early in the project development process as practicable, but at least 90 days prior to the start of the public comment period required under 9VAC15-60-90. The notice of intent allows the public and state and local government to begin engagement with the applicant and identify issues early in the review process. This helps DEQ meet the 90-day review period once the application is filed. This proposal was also presented in the slides from RAP Mtg #1

The need for early notification must be balanced with the need of the applicant to negotiate land rights confidentially and the premature disclosure of a project before the parameters of the application are determined by the applicant. 90 days prior to the start of the public comment period balances these factors. Given the timeline of the application process, requiring the NOI at this time should not affect the overall speed of the review process.

DEQ Proposal A.1 Comments:

RAP Member Comment (Greg Habeeb, Gentry Locke): It is a concern of Gentry Locke that several of the proposals being presented today seem to go beyond the scope of HB 206. This proposal isn't directly

anticipated by HB 206 language, and it is also not divined by the legislative intent expressed by the House when discussing the bill. This comment is not in opposition of the actual proposal, but rather that the action appears to lie outside of the scope of HB 206, and it is unclear whether local control is a topic on which the RAP has been asked to pass judgement.

- DEQ Response: DEQ is acting in accordance with its enabling statute to update its regulations. This proposal may be not directly related to HB 206, but it concerns DEQ's existing regulations relating to solar development permit-by-rule, and so it is within DEQ's authority to periodically review and update those regulations. Under HB 206, the RAP is required to review a certain number of topics related to solar development, but the legislation does not limit the topics which the RAP is allowed to discuss.
- RAP Member Response (Rick Drazenovich, City of Danville): The above comment was made by a lobbyist who isn't involved in negotiations with local government on this subject. This proposal will encourage engagement with local government so that obstacles to development can be identified and overcome at the earliest possible stage.
- RAP Member Response (Joe Lerch, VACO): Local government interaction does relate to mitigation in that it helps to improve the quality of off- and on-site mitigation efforts by improving the initial negotiation process.

RAP Member Comment (Chris Hawk, APEX): Has DEQ identified what the average delta (in days) is between the date of applicant NOI submittal and the commencement of a subsequent public comment period? DEQ should consider what length of time between those two steps would be the most helpful to localities. Additionally, localities have the right to set their own permitting requirements in addition to the state's permit-by-rule process. Amending a state permitting requirement may not necessarily help with any procedural issues occurring at the local level.

DEQ Proposal A.2: The NOI shall be submitted by the applicant to the chief administrative officer and chief elected official of the locality in which the project is proposed to be located at the same time the NOI is submitted to DEQ. Local governments have expressed the need to coordinate with solar applicants early in the process. This allows local governments to inform the applicant of special zoning requirements or procedures and begin the community engagement process. Local officials do not always monitor the Virginia Register, so this will ensure they receive actual notice when the NOI is submitted.

DEQ Proposal A.2 Comments:

RAP Member Comment (Cathy Binder, King George County): This proposal was initially suggested to DEQ by the 2022 RAP Local Control Workgroup, where it received immense support from the workgroup's members. I have personally encountered projects where the developer didn't commit to open engagement with local officials, which ultimately caused those local officials to become defensive during negotiations and to ultimately seek to force the developer to move the project elsewhere. This 90-day period will hopefully improve the success rate of solar projects because it will make it easier for local officials to stay aware of potential solar developments in their area and to then keep the public better informed.

RAP Member Comment (Cathy Binder, King George County): It would be helpful to also share with local officials the link to the website where the NOI is posted so that it can be more easily shared with local residents. Additionally, the local newspaper in King George County has gone out of business and no longer serves those residents. How else could citizens access this information in this situation?

- DEQ Response: The DEQ's Permit-By-Rule process already requires the applicant to hold a public engagement process for which the applicant is entirely responsible for. As part of the

application, the applicant must prove that they complied with the NOI comment period requirements, which include announcing their intention to complete a solar project in the area and informing the public where more resources on the development can be found. This information is required to be posted in two places: in the local newspaper, and on the Virginia Regulatory Town Hall website. DEQ is not involved in administering the public engagement process at all.

RAP Member Comment (Joe Lerch, VACO): It would be beneficial to encourage localities to post NOIs on their local government's website rather than leaving citizens to sign up for notices through the Virginia Regulatory Town Hall website. However, the developer isn't required to post the NOI anywhere other than what is strictly required in the statute.

B. Expiration of NOI and PBR

DEQ Proposal B.1: The NOI shall expire if no application has been submitted to DEQ within 48 months (4 years) from the NOI submittal date unless DEQ receives a written request for extension prior to the NOI expiration date. A NOI extension may be granted for an additional 36 months (3 years) at which time the NOI shall expire. DEQ and other state agencies use the pending NOIs to predict workload and make policy decisions based on the expected number and size of solar projects. Projects that have no chance of moving forward may remain in the queue years after they are no longer viable. This expiration will simply require filing a new NOI if an applicant wants to proceed.

DEQ Proposal B.1 Comments:
RAP Member Comment (Chris Hawk, APEX): Will DEQ utilize any discretion in approving a request for an NOI extension?

- DEQ Response: If the applicant confirms the project is still viable, DEQ will approve the extension.

RAP Member (Ben Rowe, VAFB): How will this proposal apply to existing NOIs that were submitted more than four years ago?

- DEQ Response: This proposal will not be applied retroactively. However, after these regulations are adopted, DEQ intends to reach out to developers with existing NOIs to check the status of those solar projects and verify their continuing viability.

DEQ Proposal B.2:

A) The PBR authorization to construct and operate shall become invalid if:
   (1) a program of continuous construction or modification is not begun within 60 months (5 years) from the date the PBR or modification is issued, or
   (2) a program of construction or modification is discontinued for a period of 24 months (2 years) or more, except for a department-approved period between phases of a phased construction project.

B) The DEQ may grant an extension on a case-by-case basis.

C) The applicant for any project for which the PBR authorization has expired shall submit a new NOI, application documents, and appropriate fees to reactivate authorization.

Most permit approvals expire if construction does not proceed or the use is not established after a certain time period. The applicant should be given a reasonable opportunity to complete construction, if

approved, but this right should not last indefinitely. This requirement is consistent with protecting an applicant's vested rights. Five years allows ample time to complete the approvals and resolve any appeals. It should be noted that this period is longer than what most local governments give as the length of the validity of their approvals.

DEQ Proposal B.2 Comments:

RAP Member Comment (Joe Lerch, VACO): If the locality required that construction began within a period of less than two years, and the developer violated that requirement, would this invalidate the PBR permit because the permit would no longer be in line with local regulations?

- DEQ Response: The expiration would not be coterminous. If the local authorization expired after PBR issuance, it would not mean that the state authorization expired.

RAP Member Comment (Judy Dunscomb, TNC): It could be beneficial to check this proposal for consistency with the SEC's current requirements on continuous construction and permit extensions.

RAP Member Comment (Tyson Utt, CEP Solar): What is the definition of "construction" as it is used in this proposal? There has recently been a lot of recent debate at the federal level as to what constitutes "commencing construction."

- DEQ Response: A Virginia Supreme Court Case has defined the commencement of construction as the "unification of building materials." It is unclear whether that case would affect our regulations. DEQ will investigate whether this or any other state level court decisions are relevant to this proposal and update the RAP about their findings on the subject at a later time.

RAP Member Comment (Greg Habeeb, Gentry Locke): One part of the proposal says that the permit shall expire at a certain time, and another part of the proposal says that the permit may be extended. DEQ should clarify this language, as it appears to be contradictory.

- DEQ Response: DEQ will consider clarifying the regulatory language in this proposal.

DEQ Comment: Proposal B.1 and B.2 do not relate to HB 206 and were first developed during the 2019 RAP Sessions.

RAP Member Comment (Judy Dunscomb, TNC): The 2023 RAP was convened to talk about HB 206, but it makes sense that the RAP is also asked by DEQ to provide feedback on some of the proposals that were brought up during the 2019 RAP. To lessen confusion, it might be helpful to present these recommendations to the RAP in two different sets of proposals: one set explicitly related to HB 206, and another set that involves the PBR process but that was originally discussed in the earlier 2019 RAP.

- DEQ Response: For the final meeting, the draft proposals will be clearly labeled or categorized to make this issue clearer for RAP members.

RAP Member Comment (Cathy Binder, King George County): Attaching an "expiration date" to issued permits is helpful to local officials because it becomes much clearer when the local government should redirect their attention to other concerns. Additionally, DEQ should clearly define continuous construction to prevent conflicts with developers later on.

RAP Member Comment (Joe Lerch, VACO): Proposal B.2 is a good idea, but DEQ should provide more clarity as to how local approval will impact DEQ approval. If an SUP were to expire, would that mean that the PBR approval would then be considered invalid? Secondly, what if a locality were to extend their SUP approval beyond the extension period allowable by DEQ?

RAP Member Comment (Nathan Thomson, JRA): Would the developer be responsible for recording any discontinuance in project construction, or is DEQ responsible for monitoring project continuity? In a situation where construction only occurred on one day out of a 2-year period, would DEQ allow that project's PBR to be subsequently remain valid for another two years?

- DEQ Response: The applicant is required to submit an as-built site plan after construction. If the site plan is not received within 5 years of the date of issuance of the PBR, DEQ will require evidence of continuous construction prior to the end of the 5-year period. Additionally, local governments are encouraged to monitor projects and report instances of noncompliance to DEQ.
- DEQ Response: The case outlined in this comment would not constitute "continuous construction." In several other policy areas that DEQ is responsible for, DEQ staff are currently required to make similar determinations regarding continuous construction on a case-by-case basis.

RAP Member Comment (Will Cleveland, SELC): Will continuous construction be explicitly defined in the resulting regulations? If not, will the determination be made at the discretion of DEQ, and what criteria would DEQ use in determining what constitutes continuous construction?

- DEQ Response: DEQ invites RAP members to make suggestions as to how "continuous construction" should be defined in the context of this set of regulations.

RAP Member Comment (Tyson Utt, CEP Solar): The proposal should provide some allowances for circumstances that are beyond the control of the developer. It might be appropriate to allow a developer to appeal a decision or request an extension if an external factor causes an interruption in the development timeline.

- DEQ Response: Regarding significant, unexpected project interruptions, DEQ will likely mimic the language currently in use in other relevant regulatory policy areas. DEQ aims to balance the interests of the developer and the locality.

RAP Member Comment (Dan Holmes, PEC): Even if this decision would be made on a case-by-case basis, DEQ should provide the criteria used in the evaluation.

RAP Member Comment (Joe Lerch, VACO): Sometimes, site plan approval is included as a required condition of a local Special Use Permit. If in the site plan approval process the developer commits to "bonding for the decommissioning," which is a significant investment on the part of the developer, the developer should be able to submit this information to DEQ and potentially receive partial mitigation credit for their efforts.

C. PBR Conditions and Local Approval Conditions

DEQ Proposal C.1: Mitigation required in a local land use approval or locality siting agreement may satisfy the mitigation obligations required for the PBR if: (a) the local requirement conforms to the regulations established by DEQ; and (b) the local requirement is incorporated as a specific condition of the PBR approval.

Under Virginia's delegation of land use approval, DEQ and local governments may make independent decisions about the solar project consistent with their enabling legislation.

DEQ regulations provide that the local land use decision occurs first. If a locality requires a zoning condition which also satisfies a DEQ requirement, DEQ should recognize that condition. However, it is possible in the future that a zoning condition may be amended or withdrawn by the locality. Therefore, if DEQ relies on a zoning condition for compliance, the condition should be restated in the PBR approval.

Hopefully the DEQ proposed conditions for mitigation of impacts on forests and prime agricultural soils will address some of the issues considered for the local land use approval. To avoid inconsistent or duplicative requirements, the local government may align its mitigation requirements with DEQ regulations. Upon adoption, DEQ will continue its outreach activities to inform local governments about the regulations.

DEQ Proposal C.1 Comments:

RAP Member Comment (Dominika Sink, Energix): DEQ should avoid requiring redundant mitigation plans at both the local and state level. If a locality were to require a form of mitigation through the local permitting process that is not included in the DEQ requirements, could those local mitigation efforts partially reduce the state-level mitigation burden of the PBR applicant?

- DEQ Response: Any local mitigation efforts that meet the minimum requirements written in DEQ's off-site mitigation requirements would count towards that applicant's mitigation burden incurred through the PBR process. The resulting regulations will be written clearly enough that applicants and local governments will understand what their mitigation burden will be before an application is submitted and can thus ascertain whether a local mitigation requirement meets DEQ's standards.

RAP Member Comment (Dominika Sink, Energix): The priorities of local governments can differ widely from those stated in HB 206. On a discretionary, case-by-case basis, could DEQ consider other forms of mitigation sought by local governments that are not written into the PBR regulations, such as payment into a local environmental project fund or funds paid for lost economic activity, to meet a portion of an applicant's state-level mitigation requirements?

RAP Member Comment (Dan Holmes, PEC): Will DEQ attempt to educate localities on how these PBR mitigation guidelines could be replicated at the local level, and thus met also at the state level? These policy goals could be met more efficiently if the localities and DEQ were on the same page.

RAP Member Comment (Joe Lerch, VACO): What was the intent of the enactment clause as it was written in HB 206? This proposal is attempting to tie local siting agreements made with localities to state-level mitigation efforts, and it might be helpful to clarify how the proposal is either directly or indirectly supporting the goals stated in HB 206.

RAP Member Comment (Tyson Utt, CEP Solar): The intent here is to avoid duplicative requirements. It is quite probable that a site requirement will include something that is out of line with what DEQ is requiring, but it may be appropriate that DEQ allow for some level of discretion or flexibility in their mitigation requirements to allow for strongly held local priorities to be met this way.

RAP Member Comment (Joe Lerch, VACO): There is a benefit to allowing locally required mitigation to take the place of a portion of DEQ-required mitigation in that the burden of enforcement would fall on the locality.

RAP Member Comment (Amelia Boschen, DE): Any mitigation requested by a locality should be prioritized, even if it doesn't meet the requirements set by DEQ at the state level. The RAP's discussion seems to be prioritizing the proximity of any resultant mitigation, and allowing some flexibility within these regulations would further this priority.

RAP Member Comment (Dominika Sink, Energix): Developers shouldn't have to navigate two sets of mitigation requirements from both the state and locality. The locality's mitigation requirements should supersede DEQ's state-level requirements.

RAP Member Comment (Dan Holmes, PEC): The state has a responsibility to protect the state's resources, which may at times conflict with their other responsibilities to local governments. Just because a mitigation plan is accepted at the local level doesn't mean DEQ has to accept that mitigation plan regardless of whether it meets their agency's requirements. Perhaps the solution is to give partial credit where appropriate.

RAP Member Comment (Greg Habeeb, Gentry Locke): HB 206 is clearly intended to set state-wide mitigation requirements, which will inevitably take away some discretion at the local level. From a practical standpoint, Proposal C.1 seems redundant. DEQ won't be able to determine if local required mitigation efforts meet or exceed state requirements except on a case-by-case basis. Proposal C.1 doesn't seem to eliminate any steps in the PBR process for either the developer or for DEQ.

RAP Member Comment (Tyson Utt, CEP Solar): If a locality asks a developer to adequately mitigate for half of the developer's total disturbed acreage as defined by DEQ, there should be an expectation that the other half required by the state would still be completed by the developer according to the requirements set by DEQ. Partial credit can be given for mitigation required by the locality, but the remaining disturbed acreage still needs to be mitigated for. The RAP should be discussing the technicalities of Proposal C.1. For example, would a locally required conservation easement still count towards a portion of the developer's state-level mitigation requirements if the easement agreement differs from DEQ's guidelines as to what percentage of the land can be developed?

RAP Member Comment (Judy Dunscomb, TNC): On-site mitigation is intended to reduce the total acreage of agricultural and forest resources that would then need to be mitigated for off-site, either through the acquisition of an equivalent conservation easement or through the payment of a fee-in-lieu. The option to implement on-site mitigation is still useful because an applicant can reduce their total mitigation burden. Something an applicant does for the locality, that also counts for DEQ, should feel like a "win" for developers.

RAP Member Comment (Chris Hawk, APEX): DEQ should consider replacing the word "may" with the word "shall" to make the language clearer.

RAP Member Comment (Dan Holmes, PEC): The developer has a responsibility to understand and communicate DEQ's requirements to the locality, but localities should also be educated about the state's requirements so that they can help the applicant understand how the locality's requirements could overlap with DEQ's requirements.

RAP Member Comment (Susan Seward, VFPA): Some localities would prefer to receive a fee in lieu of proximally located conservation easements. This proposal should incorporate more flexibility so as to not exclude this common preference.

- DEQ Response: The local siting agreement process is an existing avenue through which a locality could request funds from the developer. DEQ's fee-in-lieu program will only go towards the state-level conservation priorities laid out by DEQ.
- RAP Member Response (Judy Dunscomb, TNC): If a locality has a pre-existing initiative that accomplishes the same conservation outcomes as DEQ's regulations, then the state might want to consider allowing fee-in-lieu funds to go directly to that locality.
- RAP Member Response (Joe Lerch, VACO): One example of a locality-led conservation initiative that could meet DEQ's requirements is the Albemarle County Agricultural Conservation Easements Program. Albemarle County should be able to request that a developer's fee-in-lieu is paid into the Agricultural Conservation Easements program, provided that any resultant mitigation efforts would meet DEQ's standards.

RAP Member Comment (Rick Drazenovich, City of Danville): Every locality is different and will have different needs. Some localities would want this program to be very structured, while others may want increased flexibility.

RAP Member Comment (Dan Holmes, PEC): The local permitting process is separate from the state. Proposal C.1 does not interfere with or diminish a locality's powers related to the local permitting process. DEQ should accept mitigation required separately by the locality if that mitigation meets the state's requirements. Additionally, localities should be given the tools to mimic DEQ's requirements to eliminate redundancy without sacrificing the quality of resulting mitigation.

DEQ Proposal C.2: Local governments may not restrict where mitigation required by the PBR regulations can occur. Local government may prohibit or impose its own conditions on development of solar facilities. However, local government cannot modify the terms of PBR requirements through its zoning powers. Further restricting the boundaries where required mitigation may occur could become an undue burden on solar development.

DEQ Proposal C.2 Comments:
RAP Member Comment (Undetermined): Under the Virginia Open-Space Land Act, a locality is allowed to specify in their Comprehensive Plan where they would like land to be conserved within the locality. Does Proposal C.2 conflict with the power given that conservation easements placed within a locality must align with that locality's Comprehensive Plan?

- DEQ Response: A locality can say where conservation may occur within their jurisdiction, but they couldn't prevent a developer from locating off-site mitigation outside of the locality.

RAP Member Comment (Greg Habeeb, Gentry Locke): These regulations will almost inevitably lead to the duplication of mitigation efforts because localities are likely going to continue to exercise their right to specify how a developer should meet their local obligations. Additionally, Proposal C.2 restates an existing Virginia state law which indicates that the locality can't tell a developer how to comply with DEQ's state-level mitigation. DEQ should look for an avenue through which local and state level priorities could be better balanced.

Conservation Easements-Related Proposals

D. Conservation Easements for Mitigation

General Rules

DEQ Proposal D.1: Separate conveyance of a portion of the property or division of the property is prohibited. Exceptions may be made for properties greater than 150 acres depending on conservation attributes and in accordance with the Virginia Outdoors Foundation (VOF) guidelines for the maximum number of divisions permitted. To protect prime agricultural soils and forest land, properties should remain as a whole to the extent possible, and divisions or creation of new parcels should be minimized. Dividing land into smaller parcels has the greatest negative impact on keeping properties intact which increases the likelihood of maintaining agricultural and forest activities.

DEQ Proposal D.1 Comments:

RAP Member Question (JRA?): What is the significance of the 150-acre threshold in Proposal D.1? Was that number suggested during an earlier RAP?

- SME Response: The 150-acre threshold was determined through an analysis of the differential benefits conferred by plots of conserved lands based on intact size of the protected area. A conservation easement of a larger size is much more valuable. However, subdivision of land should still be avoided regardless of size.

RAP Member Comment (Dan Holmes, PEC): Should a private landowner seek to conserve a portion of their land and give another portion to a family member, this process could be completed before the conservation easement agreement is negotiated. Division and conservation don't have to be opposing goals.

RAP Member Comment (Undetermined): In developing Proposals D.1, D.2, and D.3, how were the norms guiding traditional conservation practices adapted to this context?

- DEQ Comment: The Virginia Outdoors Foundation (VOF) shared their guidelines for conservation easement agreements with DEQ, some of which DEQ has decided to alter for the purposes of these regulations. Of those guidelines, DEQ identified a handful to present to the RAP that DEQ wished to get the RAP's feedback on.
- SME Comment: VOF has tested and improved their guidelines over the last 50 years. Of the guidelines shared by VOF, DEQ incorporated the sections that dealt directly with forest and soil resource conservation.

RAP Member Question (Tyson Utt, CEP Solar): In a situation where a developer owned a 100-acre parcel and sought to develop 50 acres into a solar facility and the other 50 acres for conservation, would that developer be allowed to subdivide the land for that purpose?

- DEQ Response: Any subdivision occurring before the easement is recorded is acceptable. Subdivisions would only be prohibited after the conservation easement agreement is in effect.

DEQ Proposal D.2: Grading, blasting, filling, or earth removal. Grading, blasting, filling, or earth removal shall be prohibited except for:

1. **creating or maintaining farm or hunting ponds.**
2. **erosion and sediment control.**
3. **as required in the construction of permitted buildings, structures, roads, driveways, trails, and utilities.**

Protection of agricultural soils and forests requires restrictions on disturbing the land. Exceptions are necessary for the permitted agriculture or silviculture related activities.

DEQ Proposal D.2 Comments:
RAP Member Question (Brad Copenhaver, VAC): Does Proposal D.2 differ from the limits on development typically required by the Department of Forestry (DOF)? If not, why does Proposal D.2 need to be discussed by the RAP?

- RAP Member Response (Judy Dunscomb, TNC): These provisions are relevant in that Proposal D.2 would be required in any easement negotiated by a developer and an appropriate third party directly. Alternatively, these provisions would be expected to be part any easement agreement that was negotiated using the funds put into the in-lieu fee program.

RAP Member Comment (Chris Hawk, APEX): The RAP shouldn't be discussing every detail included in a conservation easement agreement. It is extremely likely that developers would ultimately pay accredited land funds to fulfill their off-site mitigation requirements, and those organizations already have this knowledge.

- RAP Member Response (Judy Dunscomb, TNC): The RAP needs to discuss the specifics of easement restrictions for several reasons. The solar industry should have a common understanding of what the restrictions will look like to accomplish the purpose of these regulations (protecting prime soil or prime forestlands). Appropriate third-party conservation organizations should be given a baseline standard that they would need to be able to meet in order to participate in this program. Additionally, in order to estimate how much conservation easements may cost per acre, it must first be known what minimum criteria each easement agreement is required to contain. At some point, the RAP should be given an estimation of the total dollar amount that is expected to be made available for off-site conservation through the fee-in-lieu option. Only then can RAP members representing third-party conservation organizations indicate whether a fee-in-lieu program will achieve DEQ's conservation goals.

RAP Member Comment (Brad Copenhaver, VAC): Were Proposal D.2 read very broadly, more intensive agricultural activities could potentially be prohibited by this proposal.

DEQ Proposal D.3: The limitations or obligations created by the easement must conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the property is located. Compliance with the local government's comprehensive plan is required by Va. Code §10.1-1010.E.

DEQ Proposal D.4
All easements will include: 1) Right of Inspection; 2) Enforcement; 3) Permission for landowner to use the property except as specifically restricted in the easement; 4) Procedure for Notice and Approval of changes in use; 5) Requirements for conversion, diversion, and extinguishment; and 6) Subordination of deeds of trust. These requirements of open space easements under Virginia law are appropriate for mitigation easements.

DEQ Proposal D.4 Comments:
RAP Member Question (Dan Holmes, PEC): Is the "Right of Inspection" provision conferred to the easement holder or to DEQ?

- DEQ Response: The easement holder retains a right of inspection. DEQ has also considered including a right of enforcement by DEQ.

RAP Member Comment (Undetermined): The Land Conservancy Board strongly recommends that an easement be co-held by both a state or local agency and a local land trust because the inclusion of a conversion-diversion standard ensures that the easement will be held in perpetuity should the independent land trust revoke its rights as an easement holder. It is somewhat less protective to allow single-holder easements without a state co-holder.

RAP Member Comment (Dan Holmes, PEC): If a conversion-diversion standard isn't being proposed, what would happen if a disturbance occurs on a conservation easement that is in conflict with the easement agreement?

- SME Response (Martha Little, VOF): An extinguishment of the original conservation agreement or a disturbance to the property typically results in some kind of compensation paid to the easement holder. However, at that point it may be difficult to locate an equivalent piece of property using those funds.

DEQ Proposal D.5: The holder of a mitigation easement must be: 1) a charitable corporation, charitable association, or charitable trust complying with the Virginia Conservation Easement Act and accredited by the Land Trust Accreditation Commission or its designated subsidiary entity; or 2) any state agency having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, or the Virginia Recreational Facilities Authority. These requirements of open space easements under Virginia law are appropriate for mitigation easements. Accreditation by the Land Trust Accreditation Commission will ensure charitable organizations are capable of performing the duties of an easement holder.

DEQ Proposal D.5 Comments:

RAP Member Comment (Cathy Binder, King George County): Parks and recreation authorities may choose to transform the use of the land to pursue that agency's own priorities.

RAP Member Comment (Undetermined): If the intent of HB 206 is to mitigate the loss of farm and forest land, and secondarily, to maintain that land's original use as either farm or forest land, why would DEQ allow for recreation and parks authorities to hold land?

- DEQ Response: Parks and recreation authorities were included in Proposal D.5 with the intention of increasing the number of state agencies that could potentially acquire and hold a conservation easement under these regulations. DEQ will consider removing parks and recreation authorities from holding conservation easements established under these regulations.

RAP Member Comment (Chris Hawk, APEX): As long a conservation easement is being successfully managed, it doesn't seem to matter who holds the easement. A parks authority could put a forest easement to recreational use and still be in compliance with DEQ's stated easement requirements.

E. Specific Rules for Agriculture Easements

DEQ Proposal E.1: No buildings or structures are permitted except: 1) Farm buildings or structures; 2) Dwelling units; 3) Buildings for the processing and sale of farm or forest products or for certain animal-related uses; 4) Solar facilities scaled to provide on-site power; 5) Wind turbines; or 6) Small-

scale miscellaneous buildings or structures. The collective footprint of buildings, structures, parking lots, roads and other impervious surfaces will be limited to no more than 5% of the land area. Although the primary purpose of the easement is to protect agricultural soils, a secondary purpose is to maintain agricultural activities. The exceptions above are necessary to allow farming. The proposed restrictions are derived in part from the VOF Template February 7, 2018 Working Farm/Intensive Agriculture deed template. DEQ expects the proposed agriculture mitigation easement form will be similar to this template. Precedent for the 5% maximum footprint percentage comes from the Erosion and Sediment Control Law Virginia Code § 62.1-44.15:51.

This list was created by VOF as a template for "working farms" which is from where this was drawn. The collective footprint of all of these structures and buildings, parking lots, roads, impervious surfaces will be limited to no more than 5% of the land area, which was increased from the VOF standard that no more than 0.25% of land area can be made impervious. This change comes from a section within DEQ's erosion and sediment control laws that give simplified or favored plan review for farm-related activities, which use this 5% threshold.

DEQ Proposal E.1 Comments:

RAP Member Question (Greg Habeeb, Gentry Locke): Were a landowner to own property adjacent to a conservation easement that is also under their ownership, could on-site solar facility constructed on the conservation easement serve agricultural facilities on both the easement property and the adjacent property?

- SME Response: When using a solar facility located on a conservation easement, power generated in excess of what is required for the owner's usage of the easement can only be diverted back into a local power grid and cannot be used on another property or for any other purpose.

RAP Member Comment (Undetermined): Can DEQ expand on what "certain animal-related uses" means in practice?

- SME Response: An animal-related use could refer to a barn, an indoor riding ring, or other activities that are typically undertaken when raising animals on a farm.

RAP Member Comment (Cathy Binder, King George County): DEQ should expand on what the full list of accessory uses relevant to the construction of a small solar facility would contain.

RAP Member Comment (Dan Holmes, PEC): PEC would not allow for 5% of land area to be converted to impervious surfaces on a conservation easement held. This percentage should be decreased. Additionally, commercial use of wind turbines should be excluded from the list of allowable uses.

RAP Member Comment (Undetermined): Only a few local conservation easement holders would allow for up to 5% of land area to be converted to impervious surfaces on a conservation easement. The studies referenced by DEQ that recommend this percentage are not supported by this RAP member's organization. Additionally, the differing percentages for forest and prime agricultural soils easements could ultimately incentivize the mitigation of prime agricultural soils over forest resources.

F. Specific Rules for Forest Easements

DEQ Proposal F.1 No buildings or structures are permitted except hunting cabins or recreational structures. The collective footprint of buildings, structures, parking lots, roads and other impervious

surfaces will be limited to no more than 1% of the land area. Generally, conservation of forests is restricted to the growing and harvesting of trees, however, economically sustainable forest management requires complementary accessory uses including hunting, fishing, and recreation.

DEQ Proposal F.1 Comments:
RAP Member Comment (Susan Seward, VFPA): What existing policies did DEQ refer to when determining that the collective footprint of all impervious surfaces should not exceed 1%?

RAP Member Comment (Susan Seward, VFPA): Will decking, matting, and the gravel roads that are used to transport large logging vehicles be considered impervious surfaces?

- SME Response (Martha Little, VOF): Gravel roads, forestry trails, decking and matting would not be considered impervious surfaces. Developments constructed for silvicultural activities are temporary, and so are not considered impervious surfaces.
- SME Response (Terry Lasher, DOF): DOF believes that conservation easements should not be used to facilitate development of any kind. Most existing conservation easements were donated by a landowner who willingly gave up some of their development rights either as a donation or in exchange for a tax incentive. It should be noted that in a conservation easement market, as DEQ is attempting to create, landowners will be provided with a different set of incentives when considering placing their land under a conservation easement.

SME Comment (Terry Lasher, DOF): The allowances for impervious surfaces will primarily impact easement holders. DOF's policy on impervious surfaces is that an easement has a maximum developable portfolio of 5 acres or less.

SME Comment (Martha Little, VOF): VOF holds over 5,000 easements and allows for all sorts of structures and buildings in their easement agreements. However, VOF typically limits impervious surfaces to as little as 0.25% of the easement's land area. Even allowing 1% of the land area in an easement to be developed could result in the construction of substantial and potentially harmful development. To protect prime agricultural soils, development should be limited to a threshold lower than what DEQ is currently proposing.

RAP Member Comment (Cathy Binder, King George County): What is the definition of a recreation structure? The language of Proposal F.1 seems as if structures such as tennis courts or other large installations could be allowed, which don't seem appropriate for forest or farmland easements.

- DEQ Response: DEQ is aiming to implement less restrictive easement requirements. This regulation shouldn't become too detailed, but DEQ will consider outlining all allowable recreation structures in the regulatory language.

DEQ Proposal F.2:
Silvicultural activities are permitted but shall conform with:

> **1) A written forest stewardship management plan prepared by either a private consulting forester or a VDOF forester. Once under easement, all forest management activities on the property must conform to the management plan, which is tailored to meet the landowner's goals and can be updated at any time as goals, forest conditions or timber markets change.**
> **2) A written pre-harvest plan before any timber harvesting can take place.**

3) Best management practices to be implemented with any timber harvesting.

Silvicultural activity is defined in Virginia Code Section 10.1-1181.1. The proposed restrictions on silvicultural activities are derived from the Virginia Department of Forestry Working Forest Conservation Easement Program. DEQ expects the proposed forest mitigation easement form will be similar to easements used by this program.

DEQ Proposal F.2 Comments:

DEQ Member Comment (Will Cleveland): Protecting land from biofuel harvesting should be a priority given that the primary intent of these regulations is to mitigate resource disturbance due to electrical energy generation. Would harvesting wood for the purpose of producing utility-scale biomass fuel be considered a permitted silvicultural activity?

- DEQ Response: Harvesting wood for the purpose of producing utility-scale biomass fuel would be considered a permissible silvicultural activity, as it is common for timber operations to use or sell excess or scrap wood as biomass fuel.

RAP Member Comment (Amelia Boschen, DE): DEQ should provide some clarity on what structures or buildings will be understood as an impervious surface. This proposal does not immediately make it clear to the RAP what kinds of development would be allowed.

RAP Member Comment (Susan Seward, VFPA): Placing acres of productive timber land under such constricted development conditions as outlined in Proposal F.2 will likely stymy timber production in several regions.

RAP Member Comment (Undetermined): Most forestry easements already require the planting of riparian buffers. Was the language in Proposal F.2 drawn from silvicultural or water quality regulations, or both? This RAP Member's organization requires that a conservation easement utilize BMPs for forest lands, which include the installation of a 50-foot riparian buffer along waterways. The trees in these riparian buffers are protected from harvest except for the trees' upper story. Some easements may also require a larger buffer depending on the location of the easement. For example, an easement located within a habitat protection area may require additional protective measures. Variable environmental factors need to be accounted for within the easement negotiation process.

SME Response (Martha Little, VOF): VOF requires riparian buffer zones to be planted and maintained on all of their easements. Timber harvesting is not allowed within these buffer zones. However, their width is often modified to best serve the regional ecosystem.

RAP Member Comment (Susan Seward, VFPA): The Silvicultural Act does not include a definition of or reference to biomass harvesting; it is a typical practice to utilize scrap or excess harvested wood as biomass fuel, and so this practice should be permitted on an easement allowing silvicultural practices.

- SME Response (Terry Lasher, DOF): Silvicultural activities aren't defined by the purpose of the resultant tree or wood product. Forest resources are considered to be renewable as long as they are replanted after they are harvested. Additionally, energy production using biomass has less of an impact on forestland than utility-scale solar because it is a renewable resource. Regardless,

the purpose of this regulation is to mitigate the impact of utility-scale solar and not biomass fuel production.

RAP Member Comment (Judy Dunscomb, TNC): Another workgroup is currently discussing how BMPs for timber harvest could be adapted to better preserve the life cycle of the forest. This policy topic is important to explore, but this RAP session is not the most productive place to have this conversation.

RAP Member Comment (Susan Seward, VFPA): It isn't the norm among silvicultural businesses to always adhere to strict BMPs. Proposal F.2 is going to limit the potential economic value of the forest resources on any conservation easement, which could ultimately harm property owners making a living off of timber harvesting.

Session Wrap-up

Before closing the meeting, DEQ asked if RAP members had any specific information requests that DEQ could prepare for the following meeting. RAP Members requested the following:

1) Can DEQ provide specific examples of what the fee-in-lieu program will look like in practice? The RAP needs to start thinking about how the fee-in-lieu plan could come to fruition.
2) Can DEQ provide some additional educational information on the impact of certain easement restrictions on the benefits conveyed by the conservation easement? Additionally, can DEQ expand on what criteria an easement must meet to follow DEQ's mitigation requirement?
3) Can DEQ provide more information on the types of organizations that could most effectively deliver these easement "products" to localities, and on the types of organizations that could help to support silvicultural and agricultural activities conducted on easements?

The DEQ team thanked the RAP members for their participation and reminded the RAP that primary members could submit additional comments through the Google Form that was shared with the RAP at the start of the meeting. Any additional comments submitted through this form were due by 5:00 PM on Tuesday, October 3rd.

Per the schedule below, the next RAP meeting is on Tuesday, October 31st, 2023, from 10:00am-3:00pm at the DEQ Piedmont Regional Office.

2023 RAP MEETINGS: 10 am-3 pm at the DEQ Piedmont Regional Office	**Dates**
1: Overview of the Current Situation (Informational)	Fri Jun 23
2: Issues focusing on Soil	Tue Jul 25
3: Issues focusing on Forestry	Fri Sep 8
4: Issues focusing on Local Control	Thu Sep 28
5: Wrap-up meeting	Tue Oct 31

Name (RAP Primary and SME Members only)	Organization	Type of Member	Clarifying Question/s (reference proposal # if specific to one proposal)	Comments, Concerns, Suggestions for DEQ to Consider (reference proposal # if specific to one proposal)
A. Locality Notification (Proposals A.2-A.2)				
Amelia Boschen	**Dominion Energy**	Primary	A.2	There does not appear to be precedent for a DEQ program to require an applicant to submit an NOI to a local body. We recommend DEQ forward a copy of the NOI to the appropriate local contacts. This would be more consistent with other permit related processes where DEQ forwards and/or coordinates information with other relevant authorities. Alternatively, if the applicant is required to submit the NOI directly, we recommend that DEQ maintain a list of local contacts (similar to CBPA) on their website to ensure the submittal is made to the appropriate individual (s).
B. Expiration of NOI and PBR (Proposals B.1-B.2)				
Amelia Boshen	**Dominion Energy**	Primary	B.1	Additional clarification is needed regarding the definition of construction and/or continuous construction; This definition should be consistent with other programs and should include projects that are under legal contract to commence construction within the required time period.
Amelia Boshen	**Dominion Energy**	Primary	B.2	Item A (2) indicates that a PBR to construct and operate shall become invalid if a program of construction or modification is discontinued for a period of 24 months or more, except for a department-approved period between phases of a phased construction project. PBRs remain active as an operational authorization through the life of a project. When a final draft of this language is developed, it should be clear that invalidation is only an issue if construction is interrupted for 24 months prior to commencement of commercial operation and final stabilization of the project site. It should be acceptable for the project to have extended periods when construction is not occurring through the operational life of the project.
Chris Hawk	**Advanced Energy United**	Primary		DEQ Proposal B.1: In order to clarify that the additional 36 month (3 year) NOI extension will be granted automatically upon request by the applicant, we recommend that DEQ Proposal B.1 be amended to replace "NOI extension may be granted" with "NOI extension shall be granted (or similar)". Additional language should be provided to clarify that existing NOIs are not subject to the NOI expiration. DEQ Proposal B.2: Force Majeure, permit appeals, and other delays that cannot be controlled by the applicant should not invalidate a PBR authorization to construct and operate.
Joe Lerch	**Virginia Association of Counties**	Primary	B.2	§ 10.1-1197.6.B lists the conditions for issuance of PBR and includes "A certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances." Typically, utility-scale solar projects are approved by localities as a special use permit (SUP) within an agricultural district. SUPs may have conditions (either as condition of approval, or as part of the zoning ordinance governing SUPs) that stipulate for an SUP to remain valid it must begin construction (or have site plan approval, or completed a site plan application) within a specified time period, (i.e. 2 years) upon approval of the local governing body. Expiration of the SUP due to not meeting this deadline (unless otherwise extended by resolution of the governing body per § 15.2-2209.1:2) would result in the "use" (i.e. utility-scale solar) not complying with the local zoning (land use) ordinance.
C. PBR Conditions and Local Approval Conditions (Proposals C.1-C.2)				
Amelia Boshen	**Dominion Energy**	Primary	C.1	The regulatory language should provide additional flexibility for the locality to determine acceptable forms of mitigation for impacts to prime ag soils and forest lands for solar project sited in that locality. Recommend removing language that the local requirement must conform to the regulations established by DEQ. If there are alternative mitigation measures that benefit the locality directly and/or are deemed to sufficiently mitigate for the impacts in that locality, they should be accepted even if they deviate from the DEQ mitigation requirements.
Chris Hawk	**Advanced Energy United**	Primary		DEQ Proposal C.1: We support the intent to avoid duplicative mitigation requirements at the county and state level. In addition to Options A and B, it would be beneficial to include additional option(s) that allows for local mitigation to satisfy state mitigation, even if the local mitigation is not directly called for in the state mitigation requirements. Allowing for additional local mitigation to be utilized for state mitigation would emphasize the importance of local knowledge that could be more beneficial than the currently proposed mitigation.
Patrick Fanning	**Chesapeake Bay Foundation**	Primary	How does the proposed limitation in C.2 square with the requirement in the Open Space Lands Act and Conservation Easement Act that any conservation easement must be in compliance with the locality's comprehensive plan?	
Dominika Sink	**Energix**	Primary	C.1	The way the proposal is written creates an issue of potentially requiring the developer to pursue double mitigation- if the locally approved mitigation is not one of the types of mitigation currently listed, it would not check the box for PBR and require SECOND mitigation for PBR. This creates and undue burden on the developer and projects- any mitigation approved by locality for this purpose should be approved by DEQ. Otherwise developers will be forced into double mitigation.
Josephus Allmond	**Southern Environmental Law Center**	Primary	C.1	DEQ should actively work with localities to educate them on what DEQ considers appropriate mitigation. All mitigation should expressly include carbon sequestration and carbon storage costs and benefits. If forests are cleared for solar developments, trees, top and limbs should not be burned on site, nor burned in biomass power plants.

Name (RAP Primary and SME Members only)	Organization	Type of Member	Clarifying Question/s (reference proposal # if specific to one proposal)	Comments, Concerns, Suggestions for DEQ to Consider (reference proposal # if specific to one proposal)
Martha Moore	**Virginia Farm Bureau**	Primary	C.2	The proposal states "Local governments may not restrict where the mitigation required by the PBR regulations can occur." Can DEQ provide clarity on this section's intent? What if DEQ allows something inconsistent with a locality's comprehensive plan, how can a locality be prohibited from restricting land use changes?

Name (RAP Primary and SME Members only)	Organization	Type of Member	Clarifying Question/s (reference proposal # if specific to one proposal)	Comments, Concerns, Suggestions for DEQ to Consider (reference proposal # if specific to one proposal)
D. Conservation Easements for Mitigation (Proposals D.1-D.6)				
Amelia Boshen	**Dominion Energy**	Primary	D.2	As stated by DEQ in the meeting, the regulatory language should make it clear that easements will dictate what activities can (and cannot) be carried out on easement lands, but cannot say what the easement holder "must" do. That is, as long as prohibited activities are not carried out on the easement lands, there is no requirement for specific industrial agricultural or silvicultural activities to be ongoing.
Amelia Boshen	**Dominion Energy**	Primary	D.3	Provide clarification as to whether the applicant will have to provide documentation to demonstrate confirmation that the easement conforms to the comprehensive plan. DEQ presented this proposal as existing law enforced elsewhere in the regulations associated with easements. That being the case, consider whether this language is necessary.
Chris Hawk	**Advanced Energy United**	Primary		DEQ Proposal D.1 through D.5: During the five (5) discussions revolving around conservation easements for mitigation, it was made apparent that site-specific nuances associated with individual conservation easements has resulted in individual land trusts using different metrics to determine the conditions of their respective conservation easements. Given that each solar site has similar nuances, it would be more beneficial to allow for the respective land trust to determine the appropriate conservation easement conditions. Additionally, the D.1 through D.5 proposals are already covered via existing state codes; and creating separate references/requirements within the PBR could lead to misinterpretation and confusion for all parties involved. DEQ Proposal D.1: VOF emphasized during the meeting that the 150 acre division minimum is an antiquated guideline that is no longer used, given the nuances of each conservation easement. DEQ Proposal D.5: Mitigation conservation easements should be permitted to be held by any Land Trust Accreditation Commission accredited organization or any "state agency having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority formed pursuant to Article 6 (¬ß 15.2-5152 et seq.) of Chapter 51 of Title 15.2, or the Virginia Recreational Facilities Authority." So long as the appropriate, equivalent resource is protected (i.e. forests or prime farmland), the holder of the easement should not be the determining factor for mitigation.
Judy Dunscomb	**The Nature Conservancy**	Primary		TNC agrees that property divisions should be limited, and we think it makes sense to refer to Virginia Outdoors Foundation's (VOF) former guidelines for the maximum number of divisions permitted.
Judy Dunscomb	**The Nature Conservancy**	Primary		Regarding D.2: TNC typically limits grading, blasting, filling, or earth removal as proposed. In our experience, ponds are an amenity frequently desired by a fee owner, however they are often an easement management and enforcement challenge. We suggest being more specific about the purpose, location, and total area of ponds, e.g., ponds should not be placed in riparian areas or exceed a certain acreage In addition, we recommend that the easement also allow grading, blasting, filling, or earth removal for the purposes of stream or wetland restoration.
Martha Moore	**Virginia Farm Bureau**	Primary	D.1; D.2	D.1: Why was VOF language selected and not DOF? Can you clarify who will hold the easements, will it be the property owner or the solar developer? D.2: Why is this land disturbance language under the conservation easement section? Protection of soil should be beyond just the land in easement.
Martha Moore	**Virginia Farm Bureau**	Primary	D.5	Why are park authorities, public recreational facilities authorities, and the Virginia Recreational Facilities Authority listed in this section? The purpose of the mitigation lands is to preserve working lands, not parks and open space. Holders of easements should exist for the purpose of preserving working lands.

Name (RAP Primary and SME Members only)	Organization	Type of Member	Clarifying Question/s (reference proposal # if specific to one proposal)	Comments, Concerns, Suggestions for DEQ to Consider (reference proposal # if specific to one proposal)
E. Agricultural Conservation Easement (Proposal E.1-E.2)				
Amelia Boshen	**Dominion Energy**	Primary	E.1	Provide clear language to indicate that solar panels would be considered impervious surface consistent with stormwater management regulations. If the 5% maximum impervious surface allowance is maintained, consider a requirement that impervious surface cannot be increased above the percentage existing at the time the easement is established. That is, the easement property may not exceed the % impervious in place at the time the easement is established or %5 (whichever is lower).
Chris Hawk	**Advanced Energy United**	Primary		DEQ Proposal E.1: During the five (5) discussions (DEQ Proposals D.1 through D.5) revolving around conservation easements for mitigation, it was made apparent that site-specific nuances associated with individual conservation easements has resulted in individual land trusts using different metrics to determine the conditions of their respective conservation easements. Given that each solar site has similar nuances, it would be more beneficial to allow for the respective land trust to determine the appropriate conservation easement conditions. Creating separate references/requirements within the PBR could lead to misinterpretation and confusion for all parties involved.
Patrick Fanning	**Chesapeake Bay Foundation**	Primary		Using 5% collective footprint for agricultural easements versus 1% for forested easements may result in developers favoring agricultural siting over forest siting. All proposals should avoid incentivizing siting on one resource versus the other.
Patrick Fanning	**Chesapeake Bay Foundation**	Primary		CBF does not support the 5% collective footprint and we are not aware of any easement holder in the Commonwealth that would allow a collective footprint of this magnitude. The given justification for the 5% proposal is also flawed and is also not focused on protection of prime agricultural soils. A more appropriate collective footprint would be less than 1%.
Judy Dunscomb	**The Nature Conservancy**	Primary		DEQ Proposal E.1 Although wind turbines can be compatible with ongoing uses of the land for agriculture and forestry, to the extent that such a use results in loss of prime soils or forest habitat that undercuts the purpose for which the easement was established. Because of this, the placement of utility scale wind turbines on properties protected under HB206 is not practicable. Overall, TNC had found that it is easier to administer and enforce easements where building envelopes are specified in the easement. We suggest that easements for the purposes of mitigating impacts to forests and ag lands from solar development include designated building envelopes not to exceed 1% of the total area. The 5% of total area is too large. The cited precedent for a 5% maximum footprint percentage from the Erosion and Sediment Control Law is designed to achieve a different purpose than offsetting loss of forest and prime soils.
Brad Copenhaver	**Virginia Agribusiness Council**	Primary		VAC urges DEQ to keep in mind and allow for all potential agricultural activities on easement properties - an example that came up in the meeting is certain practices that are standard agricultural activities that involve moving dirt.
Joe Lerch	**Virginia Association of Counties**	Primary	E.1	E.1 allows for easements to have "Solar facilities scaled to provide on-site power." § 56-594.2 of the Code of Virginia lists 7 conditions to define a "small agricultural generating facility". Pertinent to this discussion condition 1.b states that it "... does not exceed 150 percent of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available." DEQ should consider allowing a facility that meets this definition (e.g. the full definition of "small agricultural generating facility") to be allowed as a condition of the easement.
Martha Moore	**Virginia Farm Bureau**	Primary	E.1	This section lists "certain animal-related uses" as permitted structures. How will DEQ define this? Why are wind turbines listed as permitted? This should have the "scaled to provide on-site power" language after it.
F. Forest Conservation Easement (Proposal F.1-F.2)				
Amelia Boshen	**Dominion Energy**	Primary	F.1	Provide a definition of impervious surface to be used by all easement holders to ensure consistency. Consider using definition employed under the state erosion and sediment control and stormwater management regulations.
Patrick Fanning	**Chesapeake Bay Foundation**	Primary	DEQ should clarify its interpretation of hunting cabins. Most easements limit the number of dwellings and hunting cabins would likely be considered dwellings by many potential easement holding organizations.	
Patrick Fanning	**Chesapeake Bay Foundation**	Primary		Proposal F.2 discusses silvicultural activities permitted and there was discussion during the meeting of DOF's silvicultural water quality protections being less protective than those used in VOF's template, especially as they relate to Resource Protection Zones (RPZs). Any proposal for permissible silvicultural activities in riparian areas should be at least as protective as VOF's template.
Josephus Allmond	**Southern Environmental Law Center**	Primary	F.2	For forest easements, harvesting timber for biomass power generation is not a permitted silvicultural activity.

Name (RAP Primary and SME Members only)	Organization	Type of Member	Clarifying Question/s (reference proposal # if specific to one proposal)	Comments, Concerns, Suggestions for DEQ to Consider (reference proposal # if specific to one proposal)
Judy Dunscomb	**The Nature Conservancy**	Primary	DEQ Proposal F.2 TNC's working forest easements typically include wider streamside buffers and other requirements such as not timbering on critical slopes (greater that 70%). Understanding that these are to be working forest easements, would easement holders be allowed to go beyond DOF BMPs?	DEQ Proposal F.1 As with proposal E.1 Overall, TNC had found that it is easier to administer and enforce easements where building envelopes are specified in the easement. We suggest that easements for the purposes of mitigating impacts to forests and ag lands from solar development include designated building envelopes not to exceed 1% of the total area. DEQ Proposal F.2 TNC supports requirements for written forest stewardship management and pre-harvest plans.
Brad Copenhaver	**Virginia Agribusiness Council**	Primary		In the meeting on September 28, there was some discussion at the very end about prohibiting harvesting timber from easement protected land for the use of biomass. VAC strongly opposes any sort of restriction of this type--landowners should not be restricted in how they sell or market their timber and/or any waste material.
Martha Moore	**Virginia Farm Bureau**	Primary	F.1, F.2	Under F.1, silvicultural buildings should be included as permitted. An example would be tree nursery accessory buildings. Under F.2: there should be a provision to explicitly allow harvesting or timber is allowed.
Kyle Shreve	**Virginia Forestry Association**	Primary		We believe proper forest management in accordance with a Department of Forestry management plan should be a requirement of any easement holder, not just permitted. We are also aware that limitations on harvesting for biomass generation. VFA opposes any easement requirements with limitations on a landowner's ability to sell timber stock that is properly harvested.