

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
SMALL RENEWABLE ENERGY PROJECTS; IMPACT ON NATURAL RESOURCES,
REPORT. (HB 206)

REGULATORY ADVISORY PANEL MEETING MINUTES, MEETING #5, 9/28/22

MEETING LOCATION:
HILLSDALE CONFERENCE CENTER
550 HILLSDALE DR., CHARLOTTESVILLE, VA 22901

Wednesday, September 28, 2022

Members (including primaries, alternates, and SMEs):

In Attendance (Last, First):

Allmond, Josephus	Hawk, Chris	Pollard, Speaker
Belville-Marrion, Jenny	Higgins, Victoria	Sanner, Peggy
Berryhill, Aaron	Holmes, Dan	Seaford, Kevin
Binder, Cathy	Ignosh, John	Shreve, Kyle
Boschen, Amelia	Jesensky, Kenny	Sink, Dominika
Copenhaver, Brad	Killius, Anna	Smiley, Mitchell
Corradi, Rob	Lerch, Joe	Sydnor, Cutter
Crockett, Robert	Marshall, Elizabeth	Thomas, Rick
Davenport, Melanie	Martin, James	Utt, Tyson
Dicks III, Chip	Moore, Martha	Vaughan, Evan
Drazenovich, Rick	Murray, David	Weber, Joe
Dunscumb, Judy	Newton, Jacob	Wheeler, Lauren
Gordon, Chris	Orrell, Jim	Wilder, Joe
Harbin, John	Piontek, Emily	

Members Absent:

Amores, Jon	Dodson, Chris	Giese, Will
Anderson, Meade	Dreiling, Michael	Green, Charles
Bolthouse, Julie	Egghart, Chris	Guthrie, Joe
Brumberg, Sam	Ericson, Jason	Hammond, Jeff
Cizenski, Michael	Fanning, Patrick	Hammond, Drew
Clark, Hilary	Farrelly, Kevin	Hearne, Carrie
Coggeshall, Charlie	Flavin, Andrew	Hertz, Heidi
Connors, Corey	Flowers, Todd	Howe, Kevin
Crenshaw, Walter	Fogel, Jonah	Jacobs, Zach
Crum, Katie	Forren, Kelsey	Jamison, Dan
Daniels, Lee	Francis, Emily	Joshiyura, Neil

Kane, Stephanie

Lasher, Terry

Machiran, Jeff

Martin, Amy

McDonald, Christopher

Norris, Ben

Saunders, Ben

Schmidt, Kevin

Seward, Susan

Sili, Jeff

Sims, Jessica

Skiffington, Michael

Sundstrom, Craig

Westcott Jr, David

Wortzel, Andrea

Department of Environmental Quality:

Foster, Amber

Meyer, Elena M. (absent)

Thompson, Tamera M.

Tripp, Susan

Dowd, Michael (absent)

Rolband, Mike (absent)

Facilitators, Institute for Engagement & Negotiation (IEN), University of Virginia:

Altizer, Kelly

Denckla Cobb, Tanya

Oliva, Michelle Montserrat

Rizk, Sarah

The meeting began at approximately **9:35 am EST**.

Meeting Purpose: This regulatory advisory panel (RAP) convened for Meeting #5 with the purpose of reviewing the survey results of RAP proposals. The IEN facilitation team came up with a recommended shortlist of proposals to cover based on how close they were to consensus. After confirming a shortlist with the RAP, a menti poll was used to determine the top proposals of highest strategic importance. The goal of reviewing these proposals was to take about 30 minutes per proposal and check for clarity, questions, and any changes that could be made to achieve consensus. It was understood by the facilitators and the RAP that achieving consensus on all proposals was not the goal.

Proposal Progress and Logistics: The top five proposals that came out of the menti poll were:

1. Workgroup 1: Avoidance + Minimization, Proposal 1
2. Workgroup 2+3: Mitigation + In Lieu Mitigation, Proposal 1
3. Workgroup 2+3: Mitigation + In Lieu Mitigation, Proposal 2
4. Workgroup 1: Avoidance + Minimization, Proposal 6
5. Workgroup 5: Local Control, Proposals 2 and 3

However, given the time constraints of the day, a new shortlist was proposed after reviewing Workgroup 1, Proposal 1. The final list of proposals that were discussed in Meeting #5 were:

1. Workgroup 1, Proposal 1
2. Workgroup 5, Proposal 5
3. Workgroup 1, Proposal 6
4. Workgroup 5, Proposal 2

5. Workgroup 5, Proposal 1
6. Workgroup 4, Proposal 1
7. Workgroup 2+3, Proposal 1
8. Workgroup 2+3, Proposal 2

By the ending of the meeting, consensus was reached on

Workgroup 5, Proposal 1

Workgroup 5, Proposal 5

Workgroup 4, Proposal 1

Proposal Review: The following section gives the highlights of proposals that were discussed from the meeting.

Workgroup 1, Proposal 1: The definition of “disturb”

- You can do something that is regulatory land disturbance that is not a significant adverse impact to forest lands. What matters in determining the impact of disturbance for forested land is the use of the land. Is it being converted from forest land to non-forest land?
- Incentivize developers to minimize adverse impacts and leave room for developers to be creative.
- The question of the importance of defining disturbance at all came up in the conversation, with the suggestion to point to other existancing definitions of disturbance instead. However, in the PBR process, the only definition for disturbance is defining the disturbance zone (for the purposes of where studies are being conducted, not necessarily for where something is actually disturbed). Whatever definition is determined by this process will be the only definition used by DEQ for the PBR process.

This is an essential conversation for the RAP to have, but additional time needs to be allotted to reach an agreement. For now, these concerns and complexities will be reflected in the report. Consensus was not reached.

Workgroup 5, Proposal 5: Virginia Energy Guidebook Development

- The purpose of this proposal was clarified to the RAP. This proposal was a recommendation that the RAP wanted to pose to DEQ as a resource guide in effort to decrease friction between solar developers and localities. Its intention is to assist localities in understanding what solar provides and informing what local control there is available.
- RAP discusses that the Virginia Department of Energy is just one of multiple state agencies but it should be broadened to include other state agencies. It is critical that it does not limit perspectives from stakeholder groups. There is a

recommendation that the Virginia Department of Energy lead a process to develop a guidebook.

Consensus is reached.

25 (fully support) 5 (support with reservations) 0 (cannot support)

Workgroup 1, Proposal 6: Significant adverse impacts to prime agricultural soils and forest lands

- The concern is that if you have scattered pieces of prime soils that get impacted by development, would you have to add those tiny pieces together to meet the threshold? Ideally, this would apply to a more workable farming unit.
- In response, RAP members explain that unless you meet the threshold, you will not need to consider the adverse impacts. Additionally, when you are looking at farm productivity, those small pockets are important.

There is importance of the land not being continuous, so the original proposal stands. Consensus is not reached.

Workgroup 5, Proposal 2: Encouraging earlier NOI submission

There are two primary concerns from localities that are being heard.

1. The locality does not hear about the project fast enough
2. The locality does not have the resources to assess them

So, the NOI was used as a mechanism to address these concerns without creating additional burden on the developers.

The highlights from the discussion about proposal 2 are as follows:

- Considering FOIA impacts. The burden on the ability to create a potential project could take away opportunities.
- There is a mandate on the solar developer to give notice to locality before the land use file application (but that is just for siting agreement).
 - For developers, there is concern that the PBR process timeline is done in a sequence of events for a reason (cost control, etc). Changing that might have consequences.
 - For localities, there is concern that they are forced to make a decision before having all the information. That can lead to making a decision that is irreversible.

Consensus was not achieved and further discussion needs to be had. RAP members expressed that further discussion may find other ways to incentivize earlier communication.

Workgroup 5, Proposal 1: PBR and NOI timeline/steps

There is concern about the words “publicly available” because the point of the memorandum is not to give away private information.

The highlights from the discussion about proposal 1 are as follows:

- Strike “publicly available”
- Change the memorandum to say a list of parcels and acknowledge the queue number

Consensus is achieved.

27 (fully support) 3 (support with reservations) 0 (cannot support)

Workgroup 4, Proposal 1: Method for field verification

- HB894 is only charged with looking at prime ag, but in the discussion of the workgroup they recognized it would be for both. The process for prime ag is already done, but what is the equivalent qualified person and process for forestry?
- We can consider it a consensus, however we must acknowledge the concern that if agriculture has a qualification, then so should forestry.

Consensus is achieved.

25 (fully support) 5 (support with reservations) 0 (cannot support)

Workgroup 2+3, Proposal 1: Create a standardized checklist of functions and values

- There are concerns about who is doing the assessment, who is verifying, and the qualifications of the person who is doing the assessment. Ultimately the state should be confirming the results by a person who the state appointed.
- What is meant by current conditions? And could that mean that you could devalue the quality?
 - The purpose of this initial assessment is to understand the current condition of the property, what changes they are likely to cause on the property, and what is the mitigation cost of that change. That has to be part of that assessment to flag for a developer the financial risk.
- There is also some more discussion to be done on why the **conditions** are really important to include. For example, soil maps can be outdated. You may see aerial imagery that indicates whether the soil is no longer prime. The RAP has suggestions that Lidar is better than aerial in terms of assessing the condition of the soil.

A test for consensus was not conducted.

Workgroup 2+3, Proposal 1: Scoring criteria should be included to easily value prime ag/forest soil

- Functions and values definitions are nebulous.
- The checklist aims to be finite, objective, applicable across the board. The goal is to be able to understand from a desktop survey what the cost will be.
- The functions and values would be scored/evaluated using established methodologies. Are there models in other states for how to determine a cost from an objective evaluation process? This process could be similar to the state's land use assessment using USDA data for crops or the process for compensation using a third-party system for wetlands.

A test for consensus was not conducted.

Conclusion: The RAP discussed the intention of this report being an educational document.

Following this meeting (meeting #5), the team at IEN will work through the feedback provided from the survey, as well as the discussions summarized above. A draft report will be developed and circulated to RAP members around the middle of October for feedback. The primary purpose is to ensure that RAP comments are being accurately represented. The IEN team will then incorporate any final feedback and send it to DEQ with a goal date of October 31, 2022.