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

2023 RAP Meeting 5: Tuesday, October 31, 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
- ☒ Chris McDonald-American Clean Power Assoc.
- ☒ Martha Moore-VA Farm Bureau Federation
- ☐ 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
- ☒ Suzan Bulbulkaya
- ☐ 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 – Restatement of Proposals Including New and Revised Proposals for Final RAP Meeting
- 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 #5 with the purpose of discussing new and revised policy proposals which address RAP comments made during Meetings #1-4. The proposals were related to the mapping of existing natural resources, on-site mitigation, off-site mitigation, and the development of an in-lieu fee program.

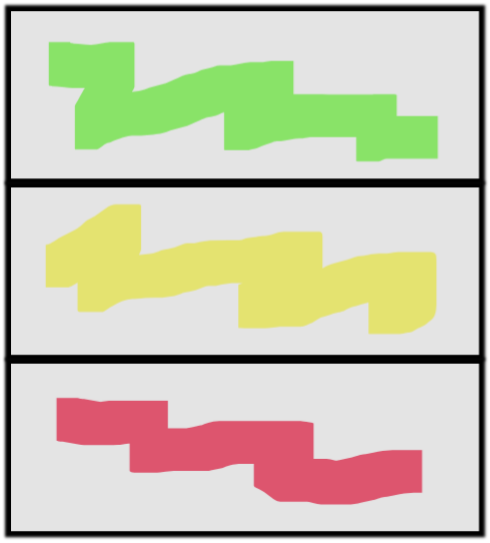
Welcome & Today's Agenda

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: Restatement of Proposals Including New and Revised Proposals for Final RAP Meeting
During the meeting, DEQ introduced one or a group of related proposals to the RAP. SMEs were present to provide some context on the rationale behind several of the proposals as requested. After each proposal or group of proposals was presented, 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 recommendations to improve/modify the proposal. RAP members were advised to avoid restating comments or positions that had been voiced in prior meetings and to focus on addressing the novel elements of each new or revised proposal. The following meeting notes repeatedly reference, paraphrase, or quote from the *DEQ HB 206 Draft Proposals: Restatement of Proposals* 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.

Mapping – Forest Land

DEQ Proposal Forest A.1 - Each applicant will submit a delineation of contiguous forest lands within the project area (using the definition in Va. Code § 10.1-1178) and forest lands within the project area enrolled in a program for forestry preservation pursuant to subdivision 2 of Va. Code § 58.1-3233. The application shall include a calculation of these areas to be disturbed by the project. The delineation and calculation need not be prepared by a forester but shall be certified by the applicant. The Department of Forestry will review the delineation and calculations for accuracy. "Contiguous forest lands" shall include areas separated by:

i) any waterbody;
ii) roads, driveways, or impervious surfaces (including compacted gravel) 40 feet or less in width;
iii) clearings for utilities 200 feet or less in width.

Existing mapping resources are not sufficient to reliably map the area of contiguous forest or lands in forest land use assessment programs. Applicants are already required to delineate forest cover in their stormwater management plans, so this will not add a regulatory burden. Stormwater management plans may be prepared before or after the PBR

application is submitted and may be revised during the review process, but the delineation of existing forest cover only needs to be done once. The limits of disturbance may change during the review process, but the delineation of pre-development forest cover will not.

DEQ Proposal Forest A.1 Comments:

RAP Member Comment (Dan Holmes, PEC): What was the rationale behind limiting the width of impervious surfaces to 40 ft, but allowing the width of a utility corridor to be 200 ft?

- DEQ Response: DEQ will examine other existing conservation easement guidelines used in the state and may consider adjusting this allowance in the final regulation.

RAP Member Comment (Greg Habeeb, Gentry Locke): Has DEQ defined the term "waterbody" for the purposes of this regulation?

- DEQ Response: DEQ has not written a definition, but DEQ agrees that the meaning of the term should be specified, if broadly, in the final regulation.

RAP Member Comment (Unspecified RAP Member): Is Proposal A.1 consistent with the policies held by the Virginia Department of Forestry (VDOF) on this topic?

- DEQ Response: DEQ did not have enough time to review Proposal A.1 with VDOF or any other agencies because of the time constraint between RAP sessions.

RAP Member Comment (Martha Moore, VFBF): In a scenario where two impervious surfaces isolated a strip of forestland, would that area still be considered contiguous?

- DEQ Response: Yes, that area would still be considered contiguous.

RAP Member Comment (Dan Holmes, PEC): How would DEQ manage multiple impacts on a project that are affected by segmentation? Segmenting and permitting may be a potential issue if this proposal is included in the final regulation.

- DEQ Response: Segmenting hasn't been part of our discussions thus far, but DEQ will consider this issue.

RAP Member Comment (Martha Moore, VFBF): Allowable impervious surfaces should be limited to roads and driveways. As it stands, Proposal A.1 threatens the commercial viability of any conserved forest resources.

RAP Member Comment (Judy Dunscomb, TNC): The purpose of the regulation is to maintain commercially viable tracts of forest land. It isn't realistic for a solar developer to build a project that spans a body of water like the James River, but some minor water bodies are large enough to warrant the fragmentation of the parcel.

RAP Member Comment (Judy Dunscomb, TNC): In contrast to forestland, pasture is a relatively impervious surface, and when using aerial footage, pasture could be interpreted as impervious surface. Heightened scrutiny should be applied when using aerial photography to categorize a feature as impervious.

RAP Member Comment (Judy Dunscomb, TNC): Allowing forest clearance of up to 200 ft for utility corridors seems excessive and should be reduced if possible. DEQ should limit their allowance for impervious surfaces to just roads and driveways. DEQ should also shrink the acceptable width of constructed roads to less than 40 ft.

RAP Member Comment (Dan Holmes, PEC): Is DEQ including required gravel sides when calculating road width? The allowable width should be less than 40 ft. An acceptable width may be around 28 ft, which would incorporate both a paved one-lane road and any necessary gravel sides.

RAP Member Comment (Joe Lerch, VACO): DEQ should determine whether government rights-of-way that exist on conserved contiguous forest lands would be considered fragmentation. A right-of-way may be partially forested right now, but that could be subject to change in the future if an infrastructure project were constructed along that route.

RAP Member Comment (Kyle Shreve, VFA): Does Proposal A.1 refer to existing roads on a proposed conservation easement, or those constructed after the establishment of an easement? If not, developers may place roads to strategically fragment existing contiguous forestlands. DEQ should clarify this point.

On-Site Mitigation – Forest Land and Prime Agricultural Soils

DEQ Proposal Forest B.3: When a solar project disturbs forest land that is located on prime agricultural soils, the offsite mitigation must conserve forest land whether located on prime agricultural soils or not. Easements on overlapping forest and prime agricultural soils may not be available in the same River Watershed. Requiring double mitigation presents an obstacle that will favor an in-lieu fee.

DEQ Proposal B.3 Comments:

RAP Member Comment (Dan Holmes, PEC): Two different values are being impacted here—prime agricultural soils, and forest lands. If both values are being lost in this scenario, why is DEQ replacing one, while allowing for the permanent loss of the other? Agricultural resources are devalued in Proposal Forest B.3.

- DEQ Response: This issue is incredibly thorny, and DEQ has not come to a conclusion on how this issue should be dealt with in the final regulation. DEQ will continue to explore available policy options.

RAP Member Comment (Judy Dunscomb, TNC): HB 206 calls for the mitigation of both agricultural soils and contiguous forest lands. This proposal allows for the mitigation of just one of these two resources when both are being equally disturbed. Is this proposal allowable under HB 206?

- DEQ Response: HB 206 doesn't address the fact that agricultural and forest resources can be found on the same plot of land. DEQ has struggled with how to execute this concept of "double mitigation." HB 206 may not allow developers to mitigate for just one resource because of the specific acreage triggers written into the bill.

RAP Member Comment (Rick Drazenovich, City of Danville): How much land in Virginia contains overlapping prime agricultural soils and forest lands?

- DEQ Response: At least 350,000 acres that contain prime agricultural soils also have existing forest cover.

RAP Member Comment (Rick Drazenovich, City of Danville): If "double mitigation" proves too onerous for the developer to complete, the solution may be to entirely prohibit solar on lands with overlapping forest and agricultural resources.

RAP Member Comment (Tyson Utt, CEP Solar): Maybe DEQ could develop a compromise between the two and require developers to put 50% of their mitigation efforts towards farmlands and the other 50% towards prime agricultural soils. DEQ should investigate whether there are existing best practices that deal with how to mitigate multiple environmental values.

RAP Member Comment (Kyle Shreve, VFA): One solution could be to incorporate the value of the two resources in the land's value assessment process. In forestry, when forested land is sold or leased, the quality of that forest resource is rated to be fair, good, or excellent based on the quality of the trees. An evaluation of soil quality could also be incorporated into the cost of a new conservation easement or fee-in-lieu.

RAP Member Comment (Undetermined RAP Member): Is DEQ worried that mitigation wouldn't be possible if the developer were required to locate an equivalent parcel?

- DEQ Response: This regulation needs to balance the enabling of renewable energy with the protection of forest and agricultural resources. Doubling the required off-site mitigation appears to be a big hurdle for developers and the enforcement of such a rule may depress the growth of solar production.

RAP Member Comment (Josephus Allmond, SELC): If the availability of equivalent resources is the issue, then the proximity requirement should be loosened for those parcels with both forest and prime agricultural resources so that developers have an easier time meeting a more comprehensive but onerous mitigation requirement.

- RAP Member Response (Judy Dunscomb, TNC): A key component of mitigation is the similarity of the conserved area to the disturbed area. If the proximity requirement were loosened or eliminated all together, then conservation efforts would be much less effective. It is likely that the issue of locating equivalent parcels appears worse on paper than it may be in reality. The data provided by Dr. Lee Daniels (SME - VA Tech) in RAP Meeting #2 seems to indicate that there is actually plenty of land in Virginia that contains both of these resources.

RAP Member Comment (Greg Habeeb, Gentry Locke): None of the language in HB 206 explicitly allows DEQ to ban co-locating development, and so such a policy would likely be struck down in court as illegal. However, it is unclear whether HB 206 would allow DEQ to mandate that, for parcels of overlapping forest and agricultural resources, mitigation be co-located. Neither option seems like an adequate solution. From a developer's perspective, this regulation seems to be creeping towards requiring greater and greater amounts of mitigation, which threatens to "squeeze" the availability of such resources in the private sector.

RAP Member Comment (Adrienne Kotula, CBC): Regulations governing the trading of nutrients have tried to address a similar issue. If there is a definite preference for finding an equivalent site that contains both forest resources and prime agricultural soils, DEQ could develop a ranking system wherein completely co-located acres are ideal but incrementally less comprehensive mitigation options are offered if equivalent parcels prove to be difficult to secure. Each subsequent option would still achieve that equal value of mitigation by altering the mitigation ratio required.

SME Comment (Lee Daniels, VT): If a developer can't find enough co-located resource acreage within a given area, then the developer should secure a parcel with prime agricultural soils and attempt to reforest that parcel to satisfy the loss of both co-located resources.

DEQ Proposal Forest C.1: Preservation or planting of riparian forest buffers adjacent to disturbed areas of the solar project and protected by a permanent easement shall mitigate 2 acres of disturbance for each acre of buffer (1 : 0.5). Such buffers shall be a minimum width of 35 feet and a maximum width of 300 feet. Preserved forest land within the project area that is more than 300 feet from the disturbed areas *will not* count as mitigation (but will not require mitigation as disturbed area). The preservation of riparian forest buffers improves water quality flowing off the solar facility. Preservation of forest land on the project site reduces the area of disturbance requiring mitigation but will not count as mitigation except for these riparian buffers. The proposed mitigation ratio is consistent with off-site riparian forest buffers.

DEQ Proposal Forest C.1 Comments:

RAP Member Comment (Kyle Shreve, VFA): In the proposal, the phrase "on-site forest conservation" would be more accurate than solely the term "preservation."

RAP Member Comment (Dan Holmes, PEC): Why are riparian buffers considered equivalent to whole, contiguous forest lands? Additionally, how was the exact ratio in Proposal Forest C.1 determined?

- DEQ Response: Many of the benefits provided by a forest are also provided by a riparian buffer.

RAP Member Comment (Kyle Shreve, VFA): A riparian buffer does not provide the same replacement value as contiguous forest land.

- Several other RAP members indicated in brief that they agreed with this statement.

RAP Member Comment (Adrienne Kotula, CBC): The ecosystems benefits provided by an existing riparian buffer are consistently much greater than those provided by a newly planted buffer. Also, preserving an existing buffer has a much more immediate and assured impact than does a newly established buffer.

RAP Member Comment (Cathy Binder, King George County): Proposal Forest C.1 provides no definition for a riparian buffer. The regulation should include a specific definition so that the quality of the benefits conferred by that buffer to the community can be better ensured.

DEQ Proposal Agriculture C.1: No mitigation credit will be given for compliance with the water quantity requirements of the Virginia Stormwater Act[3] or the local or state erosion and sediment control regulations, however, DEQ will give mitigation credit for water quality mitigation required by the Act which avoids or minimizes impacts to soils. Although compliance with stormwater and erosion and sediment control laws helps reduce some of the greatest loss of prime agricultural soils during site development, this is required for any land disturbing activity. Significant adverse impacts to prime agricultural soil occur even with compliance. For example, topsoil may be removed or compacted to the degree the land no longer meets the definition of prime agricultural soils. In addition, the contributions of the land to the agricultural economy and food and fiber supply are eliminated.

DEQ Proposal Agriculture C.1 Comments:

RAP Member Comment (Joe Lerch, VACO): Do the current DEQ stormwater regulations require the establishment of a perpetual easement as mitigation for a disturbance?

- DEQ Response: Current stormwater regulations require the establishment of a perpetual easement as mitigation for a disturbance. However, it should be understood that stormwater management will be awarded differently from the awarding of mitigation credit for disturbed forest and prime agricultural soil resources.

RAP Member Comment (Adrienne Kotula, CBC): The language used in Proposal Prime Agricultural Soils C.1 is broad and will be difficult for the developer and for other non-governmental entities to clearly interpret.

Off-Site Mitigation – Forest Land and Prime Agricultural Soils

DEQ Proposal Agriculture B.5: OFF-SITE conservation easements for mitigation must be located in the same River Watershed. River Watersheds are generally defined in Virginia Code § 62.1-44.15:23. Wetland and stream mitigation banks. HB 206 requires consideration of impacts to the local agricultural economy and the loss of ecosystem benefits. If compensatory conservation of prime farmland occurs far away from the impacts, it will not provide mitigation of these losses. The use of River Watersheds to determine the location of mitigation relates to the water quality impacts of disturbance. Even though the local agricultural economy does not follow hydrologic units, it offers a reasonable proxy for local impacts.

DEQ Proposal Agriculture B.5 Comments:

RAP Member Comment (Martha Moore, VFBF): Why were river watersheds used to delineate mitigation districts, rather than HUC codes?

- DEQ Response: DEQ determined that the HUC districts would be too restrictive for developers looking for mitigation. Since HUC codes are derived from Virginia's river watersheds, those slightly larger watershed boundaries seemed more appropriate for the purposes of this regulation.

RAP Member Comment (Martha Moore, VFBF): The James River watershed district is so large as to encompass both the far eastern and western sides of the state, which have immensely different forest ecologies. A conservation easement located on the western side of the state would be inadequate when mitigating a loss of eastern forest resources.

RAP Member Comment (Cathy Binder, King George County): How would a developer mitigate for a site that spans multiple watersheds? Additionally, some of the municipalities located east of I-95 could be affected disproportionately because they must adhere to groundwater use restrictions and have less capacity for disturbance to the local watershed.

RAP Member Comment (Dan Holmes, PEC): The James River watershed district is too large to ensure effective, equivalent mitigation for solar disturbances within those regions. This proposal will likely cause friction with local governments. DEQ should prompt developers to initially search for mitigation within their given HUC district and allow developers to look outside of that HUC district if no equivalent property is found, with the stipulation that they will have to secure that mitigation at a higher acreage ratio.

RAP Member Comment (Undetermined RAP Member): HUC districts would provide more effective off-site mitigation. Giving developers the option to look outside of HUC districts at an increased mitigation ratio would provide developers the flexibility needed to overcome barriers of land availability.

RAP Member Comment (Nathan Thomson JRA): The James River watershed district is far too large. Many of the communities within that district have vastly different typologies and ecologies. The mitigation produced using this map will be less effective than what HB 206 seems to call for.

RAP Member Comment (Susan Seward, VFPA): Limiting the size of the mitigation districts would be helpful to ensure that any benefits to the local timber economy stay in that same region. Another option could be to allow developers to look in adjacent localities if nothing can be found in their immediate vicinity.

RAP Member Comment (Judy Dunscomb, TNC): Aside from the James River watershed district, this watershed district map is well proportioned. However, the larger the district size, the greater the variability in the fair-use value of land within the district, which would drive demand for off-site mitigation towards the areas with the lowest property values. Allowing mitigation in an adjacent district at a higher mitigation ratio could be a good solution that eases the demand pressure on local property values. However, if most developers end up choosing to use the in-lieu fee program, it will likely be impossible to determine whether the mitigation ratio should be adjusted at the time of PBR approval, which is when developers would assumedly be paying their fee.

RAP Member Comment (Greg Habeeb, Gentry Locke): As off-site mitigation is increasingly regionalized, the barriers to locating mitigation grow in difficulty. This is a thorny issue. DEQ should be sure that their solution adheres to the language of HB 206.

DEQ Proposal Forest B.6: OFF-SITE conservation easements for mitigation must be located in the same River Watershed as the impacted site. River Watersheds are generally defined in Virginia Code § 62.1-44.15:23. Wetland and stream mitigation banks. and shown on the map below. The July 25, 2023, RAP meeting supported the concept that mitigation should be geographically proximate to or have some meaningful nexus with the agricultural lands being impacted by solar development. However, concerns were raised about the use of hydrologic units, political boundaries, or physiographic provinces. Requiring mitigation in the same River Watershed aligns with other DEQ regulatory programs and allows for consistent calculations of nutrient loads under the Chesapeake Bay Watershed Implementation Plan. The ten River Watersheds compare with approximately 54 8-digit HUC codes proposed at RAP Meeting #2.

DEQ proposes to combine the “Chesapeake Bay and its Small Coastal Basins” on the west coast of the Bay with the larger river watersheds, e.g., Rappahannock River, and to combine the “Chesapeake Bay and its Small Coastal Basins” on

the east side of the Bay with the "Atlantic Ocean" to form a new "Eastern Shore" river watershed. Strict application of the Virginia Code definitions would result in areas too restrictive for obtaining mitigation. These combinations are reflected on the map below.

RAP Members expressed that their reactions to DEQ Proposal Forest B.6 mirrored their reactions to DEQ Proposal Prime Agricultural Soils B.6.

DEQ Proposal Forest F.1: Easements for forest mitigation shall generally be consistent with the Easement Term Guidelines adopted by the Virginia Department of Forestry (VDOF). These include restrictions on divisions and a maximum of two dwellings per parcel permitted with one main dwelling up to 3000 square feet of above ground footprint and one additional dwelling up to 1000 square feet of above ground footprint. The collective footprint of impervious surfaces will be limited to 15,000 square feet per parcel. The proposed restrictions are consistent with VDOF guidelines for forest conservation easements.

DEQ Proposal Forest F.1 Comments:

DEQ Comment: The best management practices developed by the VDOF include a minimum required acreage size.

RAP Member Comment (Cathy Binder, King George County): Permitted buildings and structures should include underground or minimally impervious utilities and stormwater facilities.

RAP Member Comment (Undetermined RAP Member): Impervious surfaces should be limited to 1% rather than 15,000 square feet per parcel because the 1% requirement scales to parcels of varying sizes.

RAP Member Comment (Undetermined RAP Member): Why did DEQ include the phrase "shall generally be consistent with" in Proposal F.1? This phrasing indicates that DEQ is attempting to maintain some flexibility when deciding which VDOF requirements to adopt.

- DEQ Response: DEQ hasn't made a final decision as to which of the VDOF's best management practices will be included in the final regulation because there may be the need to alter some of VDOF's requirements to align with the purposes of HB 206.

RAP Member Comment (Josephus Allmond, SELC): Timber harvest for biomass energy production should not be allowed on conservation easements.

RAP Member Comment (Judy Dunscomb, TNC): DEQ should clarify the definition of a parcel in the regulatory language. An easement could be held over multiple tax parcels. Additionally, a more useful metric than the number of dwellings allowed on an easement would be the total square feet of any buildings constructed on the easement.

RAP Member Comment (Dan Holmes, PEC): Are the allowable impervious areas included when counting towards a developer's mitigation burden, or is the extent of the forested area all that will be considered? The off-site mitigation acreage should exclude large impervious surfaces, including planned developed areas.

- DEQ Response: The requirements listed in Proposal F.1 are prospective. Once the easement is established, it would allow for development up to a series of defined limits at any time in the future. However, any nonforested area in existence at the time the easement is established would be excluded from the acreage considered for a developer's mitigation burden.

RAP Member Comment (Kyle Shreve, VFA): Disallowing biomass harvesting is not within the purview of either VDOF or DEQ. The forest industry would disapprove if such a rule were implemented on any new conservation easements created through this regulation. In no way shape or form should this code dictate where the timber goes.

DEQ Proposal Forest F.2: For properties between 51 and 250 acres, a minimum of 80% of the property acreage must be maintained in a forest land use. For properties greater than 251 acres, a minimum of 75% of the property acreage must be maintained in a forest land use. If an easement is accepted on a property 50 acre or less in size, a minimum of 95% of the property acreage must be maintained in forest use. No additional forest conversion is permitted if the property does not meet these minimum thresholds at the time of the conveyance. Restrictions on forest conversion are critical to accomplishing the mitigation purposes of HB206.

DEQ Proposal Forest F.2 Comments:

RAP Member Comment (Nathan Thomson, JRA): DEQ shouldn't allow any reduction in the minimum required property acreage that must be maintained in forest use for larger parcels. Those larger parcels are the lands that are most prime for wildlife ecology. It doesn't make sense to step down DEQ's requirements on larger properties.

In-Lieu Fee – Forest Land and Prime Agricultural Soils

DEQ Proposal Agriculture D.2: The in-lieu fee for mitigation will be determined annually for impacts to prime agricultural soils by adding the projected administrative costs (including agency staff time, legal fees, due diligence costs, stewardship fees paid to the holder, etc.) to the predicted cost of a perpetual easement necessary to protect the required acreage of agricultural land. DEQ is considering calculating the predicted cost by either:

a) the median of the appraised value per acre of agricultural preservation tax credits approved in the same River Watershed as the area of impact during the prior five-year period; or
b) the difference between the most recent use value per acre of agricultural land and the full assessed value per acre of the land affected by the solar project prior to re-assessment as a solar use.

DEQ Proposal Forest D.2: The in-lieu fee for mitigation will be determined annually for impacts to forest land by adding the projected administrative costs (including agency staff time, legal fees, due diligence costs, stewardship fees paid to the holder, etc.) to the predicted cost of a perpetual easement necessary to protect the required acreage of forest land. DEQ is considering calculating the predicted cost by either:

a) the median of the appraised value per acre of forest preservation tax credits approved in the same River Watershed as the area of impact during the prior five-year period; or
b) the difference between the most recent use value per acre of forest land and the full assessed value per acre of the land affected by the solar project prior to re-assessment as a solar use.

DEQ Proposal Agriculture D.2 and Proposal Forest D.2 – Option A Comments:

RAP Member Comment (Dominika Sink, ER): Would the fee-in-lieu be collected annually, or in one lump sum?

- DEQ Response: The fee-in-lieu would be a one-time payment.

RAP Member Comment (Dan Holmes, PEC): Does DEQ expect the administrative fee to be static, regardless of the size of a project's required mitigation?

- DEQ Response: The administrative fee wouldn't necessarily scale up or down on a per-acre basis, however, the size of the administrative fee will likely have to be loosely proportional to the size of a project's required mitigation. This could be determined by some kind of terraced system wherein an increase of a certain acreage triggers an increase in the required administrative fee.

DEQ Proposal Agriculture D.2 and Proposal Forest D.2 – Option B Comments:

RAP Member Comment (Dan Holmes, PEC): Some counties don't collect such granular data on use values in their jurisdiction. How would DEQ handle counties that don't have readily available data on use-value assessments?

- DEQ Response: The Department of Agriculture and Applied Economics at Virginia Tech could provide DEQ with adequate data on use-value assessments for all municipalities in Virginia since their analysis is based on publicly recorded data. However, it should be noted that these determinations are calculated two years behind the

current market. DEQ will reach out to their colleagues at Virginia Tech to make sure that DEQ can access these data for this purpose. DEQ would have to compensate Virginia Tech for any additional staff costs.

RAP Member Comment (Judy Dunscomb, TNC): A property assessment is intended to be a best proxy for fair-market value, but it does not represent the exact fair-market value of that property. This gap between the assessed value and the true fair-market value introduces a lot of uncertainty into the determination of the cost of fees-in-lieu.

- DEQ Response: Counties use mass-appraisal methods wherein the entire county is examined but individual appraisals are not made for each parcel within the municipality.

RAP Member Response (Judy Dunscomb, TNC): The approach DEQ is leveraging to approximate the value of required mitigation is good. However, this approach would be incomplete without also determining the value of the services that an easement is providing once it has been implemented, which is a more difficult task. An open-space easement has a much lower value than a conservation easement because of the severity of the restrictions on the conservation easement. If DEQ were to use Option A, it would be necessary to exclude easements that don't accomplish the goals of this regulation. We would need the individual requirements of each individual easement.

- DEQ Response: The Virginia Department of Taxation must ensure the confidentiality of any shared tax records. Unfortunately, this precludes DEQ from identifying whether the tax credits were awarded for open space or conservation easements. Without knowledge of the type of easement provided on the properties, it is impossible to determine whether an aggregate value represents properties that are following more stringent conservation requirements.
- SME Response (Suzan Bulbulkaya, DCR-VLCF): The monetary value of an easement is based on the highest and best value of the land. The more divisions relinquished by the landowner, the higher the monetary compensation required to secure the easement. Although it is tough to translate conservation value into a dollar amount, the economic value of the development rights relinquished in an easement can be determined. The only difference between a conservation easement and an open-space easement is who holds the easement. Land trusts hold conservation easements. State and local governments hold open-space easements. Maybe if the basic requirements of a DEQ easement are set out, such as no divisions allowed or a certain percentage of forestland and ag land must remain viable for production, then monetary values could be better assessed? The restrictions in the easement (what is relinquished) determine the monetary value of the easement.]

SME Response (Undetermined SME): The Virginia Department of Conservation and Recreation is in the process of developing a database of easement values based on land use categories and acreage that DCR will share with DEQ once it is complete.

SME Response (Terry Lasher, DOF): When DOF purchases an easement, an appraisal is completed both before and after the easement terms are accepted by the landowner. The terms included in an easement agreement can sometimes change the value of the resulting land easement in unpredictable ways.

RAP Member Comment (Rick Drazenovich, City of Danville): Does DEQ expect that the structure of this fee-in-lieu program will be re-examined and improved upon at some point? This regulation should either include some kind of sunset provision or scheduled periods for revision.

- DEQ Response: The fee-in-lieu program will be updated every year to reflect changes in the state market. This program must be adjusted every year in order to adequately replace in full any resources lost to solar development. DEQ will survey peer agencies and conservation organizations to determine the extent of the financial burden that a fee-in-lieu program would place on the agency in order to determine an adequate administrative fee.

RAP Member Comment (Susan Seward, VFPA): DEQ should consider using Virginia Planning District Commission (PDC) boundaries to delineate the mitigation districts for this program. PDCs typically contain anywhere from 6-12 localities located adjacent to one another. Within these planning districts, local governments have a history of collaborating with one another, which would likely improve the location of off-site mitigation efforts.

RAP Member Comment (Tyson Utt, CEP Solar): After the regulation has been active for five to ten years, will DEQ try to redesign this program?

- DEQ Response: DEQ will accumulate more data as the program matures, which could provide an opportunity to improve the program's structure. Regardless, DEQ is required to review its regulations every five years. This regulation will get reviewed with great scrutiny because of its complex and contentious nature.

RAP Member Comment (Judy Dunscomb, TNC): Relying on an assessment of fair-market value provides a weak foundation for the fee-in-lieu program. Additionally, property values are dynamic, and to rely on two-year-old tax figures would likely compromise the adaptability and effectiveness of the fee-in-lieu structure.

RAP Member Comment (Dan Holmes, PEC): DEQ should review this regulation every five years to determine whether the program has produced enough funds to cover the costs of mitigating for each solar development that receives PBR approval or whether the regulation has requested excess funds from developers.

SME Member (Carrie Hearne, VDOE): Five years is a long time to go without revising this program. Will the entity that is ultimately selected to administer the fee-in-lieu program have some kind of advisory council that can conduct a continuous review of the program's methods and results?

- DEQ Response: The issue of an advisory council hasn't been discussed thus far in any of the RAP sessions. It is difficult at this stage to say when DEQ will be prompted to re-evaluate the program; however, if it becomes clear that the fee-in-lieu structure is causing issues well before five years has passed, it can likely be assumed there will be significant pressure on DEQ from the private sector to revise the program.

DEQ Proposal Agriculture D.1: DEQ will allow payment of an in-lieu fee for mitigation provided the program: a) will assure timely implementation of actual mitigation generally consistent with the ratios adopted for off-site easements; and b) will not impose uncompensated administrative costs on DEQ or other state agencies.
DEQ is considering requesting the Virginia Land Conservation Foundation (VLCF) to distribute the funds through annual competitive grants similar to the annual VLCF Grant Round. In-lieu fee funds will be divided into Farmland Preservation and Forestland Preservation. Scoring for grants will give strong preference for applications in the same River Watershed as the impacts mitigated.

VLCF is comprised of the Secretaries of Natural and Historic Resources and Agriculture and Forestry, Gubernatorial Appointees from all areas of the Commonwealth, and Senate and House Appointees. The Virginia Department of Conservation and Recreation provides staff and administrative support. An interagency taskforce reviews and recommends grant applications to the Virginia Land Conservation Foundation. Grant awards are based on applications for 50% or less of total project costs (state agencies may receive 100%) pursuant to specific criteria defined in each category. Utilizing an existing grant program with extensive experience deploying state funds for Farmland Preservation and Forestland Preservation aligns best with the purposes of mitigation outlined in HB 206.

DEQ Proposal Forest D.1: DEQ will allow payment of an in-lieu fee for mitigation provided the program: a) will assure timely implementation of actual mitigation generally consistent with the ratios adopted for off-site easements; and b) will not impose uncompensated administrative costs on DEQ or other state agencies. DEQ is considering requesting the Virginia Land Conservation Foundation (VLCF) to distribute the funds through annual competitive grants similar to the annual VLCF Grant Round. In-lieu fee funds will be divided into Farmland Preservation and Forestland Preservation. Scoring for grants will give strong preference for applications in the same River Watershed as the impacts mitigated.

VLCF is comprised of the Secretaries of Natural and Historic Resources and Agriculture and Forestry, Gubernatorial Appointees from all areas of the Commonwealth, and Senate and House Appointees. The Virginia Department of Conservation and Recreation provides staff and administrative support. An interagency taskforce reviews and recommends grant applications to the Virginia Land Conservation Foundation. Grant awards are based on applications for 50% or less of total project costs (state agencies may receive 100%) pursuant to specific criteria defined in each category. Utilizing an existing grant program with extensive experience deploying state funds for Farmland Preservation and Forestland Preservation aligns best with the purposes of mitigation outlined in HB 206.

Some fee in lieu programs, such as payment for emissions of a pollutant, are equivalent to a tax with the purpose of providing an economic incentive to avoid the harmful impact. It appears that conversion of forest lands and prime agricultural soils cannot largely be avoided because of solar siting requirements, so the cost of a fee in lieu would not provide an effective incentive to avoid these impacts. A fee in lieu program for solar PBRs could provide mitigation equivalent to the proposed requirements for off-site easements that help prevent conversion of other forest and agricultural lands.

DEQ Proposal Agriculture and Forest D.1 Comments:

RAP Member Comment (Dan Holmes, PEC): How much time does DEQ expect to pass between the payment of the fee-in-lieu and the implementation of those funds by VLCF? DEQ should avoid any unnecessary delays in the implementation of mitigation.

- DEQ Response: If the solar developer chooses to satisfy their mitigation requirements by paying a fee-in-lieu of mitigation, that sum will be paid to DEQ immediately after a PBR has been issued.

RAP Member Comment (Dan Holmes, PEC): Has DEQ reviewed the list of easement restrictions currently required by VLCF when implementing new conservation easements, and do those restrictions align well with the goals of HB 206?

- DEQ Response: DEQ plans on altering existing VLCF scoring criteria so that strong preference is given to applications located in the same mitigation districts as the impacts that are being mitigated. Current VLCF standards are likely more flexible than the requirements that are prioritized under this regulation.
- SME Response (Suzan Bulbulkaya, DCR-VLCF): At a minimum, newly secured conservation easements must include the establishment of 35-foot vegetated riparian buffers along perennial waterbodies and the use of agricultural conservation plans and forest management plans. VLCF holds applicants accountable to any additional restrictions promised by the applicant, which were awarded points in their application.

RAP Member Comment (Undetermined RAP Member): Would VLCF conduct a separate grant round solely for the mitigation of agricultural and forest resources? Additionally, has VLCF contemplated whether the addition of this funding could prompt legislators to shrink the funds provided to the VLCF from the state?

- SME Response (Suzan Bulbulkaya, DCR-VLCF): In 2017, VLCF received large amounts of external grant funding from a few different sources. The following fiscal year, no funding was allocated to the VLCF in the state budget. However, in 2019, the VLCF received approximately the same amount of funding as they did in previous years, and state support for the VLCF from the General Assembly has returned in full.

RAP Member Comment (Kyle Shreve, VFA): How will DEQ ensure that VLCF-funded conservation efforts adhere to DEQ's requirements?

- SME Response (Suzan Bulbulkaya, DCR-VLCF): VLCF can formally collaborate with a state agency to determine how restricted funds will be spent. VLCF has the authority to set up a restricted grant round shaped by a memorandum of agreement with DEQ that would establish grant requirements for applicants.

RAP Member Comment (Undetermined RAP Member): What would happen if VLCF doesn't attract enough applicants to meet the mitigation burden of state solar development?

- DEQ Response: This is a risk of any fee-in-lieu program that relies on grant rounds. VLCF consistently has more applicants than funding, and news of these funds would hopefully raise demand for VLCF grants.

RAP Member Comment (Dan Holmes, PEC): Because the funds produced through a fee-in-lieu program will likely influence the amount of state funding awarded to VLCF or any other participating state entity, DEQ should make it clear that these funds are being paid to DEQ and that VLCF is just acting as an administrator of the program.

RAP Member Comment (Dan Holmes, PEC): Mitigation should be additive. The fee-in-lieu program should avoid simply facilitating the establishment of conservation easements that would have eventually been established even without any action on the part of DEQ or the developer, and DEQ should prioritize the conservation of more vulnerable lands within the state.

RAP Member Comment (Joe Lerch, VACO): Aside from the VLCF, DEQ could consider sending funds to the DOF's Forest Sustainability Fund or to AFID grants. Both funds focus on repairing agricultural and forest economies that are affected by the demand for land generated by land development.

RAP Member Comment (Kyle Shreve, VFA): Localities already utilize the Forest Sustainability Fund and AFID grants. Another benefit of using these two funds is that they don't rely on a grant round, which would hopefully lessen the length of time between payment of the fee-in-lieu and its implementation.

RAP Member Comment (Undetermined RAP Member): The Forest Sustainability Fund likely wouldn't meet the same additionality requirements that the VLCF would meet. Additionally, local forest conservation districts typically aren't perpetual, which would make conservation efforts less effective.

RAP Member Comment (Martha Moore, VFBF): Perhaps DEQ should work with DOF to establish and maintain easements because DOF as a holder would prioritize the maintenance of productive commercial forest lands.

RAP Member Comment (Jimmy Merrick, AEU): On some projects, the developer is ultimately able to reduce a project's paneled area a PBR is issued. If the fee-in-lieu funds are paid and distributed at the time of permit approval, will DEQ consider refunding a portion of that payment proportional to the reduction in paneled area? Also, what would be done with the fee-in-lieu if a project ends up falling through at some point?

RAP Member Comment (Brad Copenhaver, VAC): VLCF is an appointed board, which leaves it open to political influence. The makeup, expertise, and priorities of that board are going to shift with each state election. The DEQ should also consider the Farm Preservation Fund as an alternative to the VLCF.

RAP Member Comment (Undetermined RAP Member): How many forest easements has VLCF granted?

- SME Response (Suzan Bulbulkaya, DCR-VLCF): If more than $10 million is granted to the VLCF fund in total by the state budget, then the fund is divided into separate agriculture and forestry grant rounds in that year. If VLCF receives less than $10 million from the state, then the two categories are combined. Typically, VLCF grants more funding for forestry conservation than agricultural conservation. About 95% of VLCF's forest conservation efforts allow for continued harvesting on conserved forest land.

RAP Member (Dan Holmes, PEC): When does DEQ expect to require developers to pay their fee-in-lieu?

- DEQ Response: Requiring fee-in-lieu payment at the time of PBR issuance would be the most effective process in terms of administrative capacity. However, it is understood that the fee-in-lieu amount may change over time as the developer moves forward. DEQ will consider internally whether it would be appropriate to give developers

the opportunity to request a delay in payment should they anticipate a significant change in planned paneled area after PBR issuance.

RAP Member (Undetermined RAP Member): A significant benefit to using VLCF to distribute these funds is that the grants are scored by an inter-agency team with both forest and agricultural state entities represented. Their process is handled uniquely in the way that it brings together disparate expertise.

RAP Member Comment (Judy Dunscomb, TNC): The RAP has voiced a hesitation for the model where a developer finds an easement themselves, so it is necessary to identify or create an entity that can secure and hold conservation easements for the purposes of this regulation. However, the RAP hasn't been able to discuss which development restrictions or requirements should be enforced on any conservation easement secured using the fees-in-lieu. DEQ must enforce some consistency between the requirements of HB 206 and the requirements of the entity overseeing the implementation of the fee-in-lieu program. The agencies, organizations, and funds that RAP members have suggested thus far have their own organizational requirements that will impact the quality of any resulting mitigation. Until the easement requirements have been decided, it feels pointless to debate which organization to collaborate with. DEQ should write up an RFP that contains all of their priorities, requirements, and expectations for the fee-in-lieu program. DEQ can look at the resources provided by Conserve Virginia to see examples of standard easement language.

RAP Member Comment (Susan Seward, VFPA): DEQ should give the county in which the project is located the option to select an appropriate recipient organization. This would empower localities and encourage conversations between landowners, developers, and local and state officials.

- SME Response (Suzan Bulbulkaya, DCR-VLCF): Virginia state law requires that conservation easements conform with the locality's comprehensive plan at the time the easement is granted.

RAP Member Comment (Undetermined RAP Member): There isn't enough available information for the RAP to express a preference for a specific entity to administer these fees-in-lieu. DEQ should spend more time determining easement requirements and then create an RFP to see which organizations are interested in participating under the stated requirements.

Reflection on 2023 RAP Process

RAP Member Comment (Cathy Binder, King George County): Localities should invest more resources in their comprehensive plan and other government resources so that they can make improved decisions around development and conservation.

RAP Member Comment (Martha Moore, VFBF): It is much appreciated that RAP members embraced open dialogue and were engaged in discussion. It is also essential that, moving forward, DEQ continues to prioritize the preservation of productive, commercially viable agricultural and forestry lands in the state.

RAP Member Comment (Dan Holmes, PEC): The goal of this RAP was to develop a regulation that works for all sides of this issue. If the developers aren't able to navigate the regulation, then another RAP may have to be convened. However, regardless of our challenges with solar development, it is absolutely necessary to ensure that equivalent mitigation is being completed.

RAP Member Comment (Rick Drazenovich, City of Danville): DEQ conducts this regulation as a permit-by-rule process, which by its nature is intended to be streamlined and administratively efficient.

RAP Member Comment (Tyson Utt, CEP Solar): This discussion seems to be in its early stages. All parties are welcome to continue problem-solving with Virginia's solar developers to work out these issues.

Session Wrap-up

The DEQ team thanked the RAP members and SMEs 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 Monday, November 6th.
DEQ has learned a whole lot from the RAP and thanks each of the members and also each of the SMEs.

DEQ reminded the RAP that, until they receive word that the RAP has officially been disbanded, FOIA rules still apply to RAP member communications. RAP members should hold off on meeting with one another in groups of more than two people for now.

Looking Forward

Because the regulation must first pass executive review, which does not have a set time limit, it is unclear when the regulation will begin its 60-day public comment period. However, the final regulation will be sent to the Virginia state legislature by December 2024.

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.