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Final Regulation Agency Background Document

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC15-60
VAC Chapter title(s)	Small Renewable Energy Projects (Solar) Permit by Rule
Action title	Amend 9VAC15-60 to comport with the requirements of Chapter 688 of the 2022 Acts of Assembly
Date this document prepared	March 17, 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Chapter 688 of the 2022 Acts of Assembly, Regular Session (Chapter 688), amends § 10.1-1197.6 of the Code of Virginia and requires amendments to be made to the Small Renewable Energy Projects (Solar) Permit by Rule (PBR), 9VAC15-60, which establishes criteria, procedures and permit requirements as stipulated under the Code of Virginia (§ 10.1-1197.5 et seq.). The existing solar PBR requires an analysis of the beneficial and adverse impacts of the proposed project on natural resources, which includes wildlife and historic resources. If DEQ determines significant adverse impacts to wildlife or historic resources will occur, an applicant must submit a mitigation plan detailing reasonable actions to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions.

Chapter 688 defines and adds prime agricultural soils and forest lands to the requirement in § 10.1-1197.6 of the Code of Virginia for an analysis of the beneficial and adverse impacts to natural resources. If a potential solar project would disturb more than 10 acres of prime agricultural soils or 50 acres of

contiguous forest lands, or if it would disturb forest lands enrolled in a forestry preservation program, it is deemed to have a significant adverse impact requiring the submission of a mitigation plan. If a draft mitigation plan was not provided by the applicant as part of the initial application, the applicant must develop a mitigation plan and conduct a 45-day public comment period. Any small renewable energy project for which an initial interconnection request application has been received and accepted by the regional transmission organization or electric utility by December 31, 2024, is not subject to these new mitigation requirements.

Additionally, in 2019, DEQ followed the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), to initiate amendments to the Solar PBR regulation. DEQ proposed numerous amendments to the regulation concerning: 1) fees, 2) ecological cores (primarily forests), 3) threatened and endangered insects, 4) planting to attract pollinators, 5) historic resources, 6) timeframes, 7) projects with reduced requirements, and 8) clarifications. The purpose of that regulatory action was to clarify the regulatory requirements for applicants and permitted facilities in order to improve the current permitting process. The agency went through the Notice of Intended Regulatory Action stage, a regulatory advisory panel (RAP) was formed and held multiple meetings, the draft regulation was published for public comment, a response to comments document was prepared, and all appropriate reviews were conducted. However, final amendments have not been adopted to date. While the Solar PBR regulation is in the regulatory development process for amendments mandated by Chapter 688, DEQ will also incorporate certain proposed provisions from the 2019 Solar PBR amendment. Although fees were part of the 2019 amendment, governmental fees were not included in this rulemaking process.

As a result of the RAP process and public comments received, a number of amendments were made to the proposal and are described in greater detail in this document.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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- DCR – means Department of Conservation and Recreation
 - DEQ or Department – means Department of Environmental Quality
 - DHR – Department of Historic Resources
 - DOF – means Virginia Department of Forestry
 - GIS – means geographic information system
 - HB 206 – means Chapter 688 of the 2022 Acts of Assembly, Regular Session
 - ILF – means In-Lieu Fee
 - LGBC – means local governing body certification
 - MOA – means memorandum of agreement
 - MW – means Megawatt, a measure of generated electricity
 - NHDE – means Natural Heritage Data Explorer
 - NOI – means Notice of Intent
 - NRCS – means Natural Resources Conservation Service
 - PBR – means Permit by Rule
 - PV – means photovoltaic
 - RAP – means regulatory advisory panel
 - RFP – means request for proposal
 - SCC – means State Corporation Commission
 - SLEAC – means State Land Evaluation and Advisory Council
 - TMDL – means total maximum daily load
 - VDACS – means Virginia Department of Agriculture and Consumer Services
 - VLR – means Virginia Landmarks Register
 - VOF – means Virginia Outdoors Foundation
 - WIP – means watershed implementation plan
 - WSS – means Web Soil Survey

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On March 18, 2025, the Department of Environmental Quality adopted final amendments to 9VAC15-60, the Small Renewable Energy Projects (Solar) Permit by Rule regulation.

Mandate and Impetus

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to the mandate for this regulation.

House Bill 206 (HB 206) was introduced during the 2022 General Assembly session. It was approved April 11, 2022, and enacted into law during the regular session of the 2022 General Assembly in Chapter 688 of the Acts of Assembly. Chapter 688 amends and reenacts § 10.1-1197.6 of the Code of Virginia, by requiring DEQ to consider significant adverse impacts to prime agricultural soils and forest lands. The statute specifies that a disturbance of (i) more than 10 acres of prime agricultural soils, (ii) more than 50 acres of contiguous forest lands, or (iii) forest lands enrolled in a forestry preservation program is deemed to be a significant adverse impact on natural resources. If DEQ determines that there will be a significant adverse impact on wildlife, historic resources, prime agricultural soils, or forest lands, the applicant must submit a mitigation plan following a 45-day public comment period.

The regulation for Small Renewable Energy Projects (Solar) 9VAC15-60 became effective in 2012 and required that if the department determined that significant adverse impacts to wildlife or historic resources or both were likely, the applicant must prepare a mitigation plan. Section 60 under 9VAC15-60 lists the mitigation measures to be taken by the applicant.

The program has grown rapidly and in 2017 there was a legislative modification to increase the size of projects eligible for a PBR from 100 Megawatts (MW) to 150 MW. This increase in MW has resulted in much larger projects seeking permits which correlates to increased acreage per project. This increase has led to concerns about the loss of prime agricultural soils and forest land.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Statutory Authority: Code of Virginia [§ 10.1-1197.6](#) and [Chapter 688](#) of the 2022 Acts of Assembly

Promulgating Entity: Department of Environmental Quality

Federal Requirements: There are no federal standards associated with this regulation

State Requirements:

- Code of Virginia Sections [10.1-1197.5](#) through [10.1-1197.11](#),
- [Chapter 688](#) of the 2022 Acts of Assembly
- Administrative Code Chapter 60, Small Renewable Energy Projects (Solar) Permit by Rule, [9VAC15-60](#)

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

This regulatory action is necessary in order for DEQ to carry out the requirements of Chapter 688 of the 2022 Acts of Assembly. The regulatory action is essential to protect the health, safety, and welfare of Virginia citizens by establishing necessary requirements (in addition to those already established in 9VAC15-60), to protect Virginia's prime agricultural soils and forest lands which may be affected by the construction and operation of small renewable energy projects

Potential Issues: The proposed regulations attempt to balance the need for new renewable energy generation with adverse impacts to prime agricultural soils and forest land. There are limited ways to mitigate the impacts on-site to agricultural soils. These are included in the regulations. There are fewer ways to mitigate impacts to forests on-site because the removal of trees for solar panels necessarily removes the forest. For both resources, the primary mitigation proposed is to require off-site conservation easements that will permanently protect other farms and forests from all types of development.

DEQ based the proposal on numerous meetings of two regulatory advisory panels (RAPs), however the panels did not reach unanimous support for all proposals. Potential issues identified that are addressed in the regulations include:

- Mitigation ratios
- Location of required mitigation
- Developer selection of conservation easements
- Complexity of on-site agricultural mitigation
- Credit for riparian buffers
- Cost of in-lieu fee
- Selection of trustee for in-lieu fee fund

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The requirement to mitigate for C1 and C2 forest cores has been removed in the final amendments. Concerns were raised during the stakeholder meetings and during public comment regarding the accuracy of C1 and C2 forest core mapping. The geographic information system (GIS) criteria used by the Department of Conservation and Recreation (DCR) to map C1 and C2 cores have not been translated into definitions of the cores that can be physically verified on site. DEQ has removed all language requiring mitigation for C1 and C2 forest cores and intends to publish a separate NOIRA to initiate a regulatory action to adopt enhanced mitigation requirements for forest cores with high and outstanding ecological integrity with updated mapping and a procedure for field verification.

The river watershed mitigation district language has been deleted, and a new definition of mitigation districts has been added.

The In-Lieu Fee (ILF) calculation has been revised by subtracting the average use value as determined by the State Land Evaluation and Advisory Council (SLEAC) from the average fair market value of forest or agricultural land in the district where the project is located. DEQ also deleted the minimum ILF amount of \$3,000 per acre.

All developer-proposed easements must be consistent with Virginia Department of Forestry (DOF) guidelines for forest and agriculture conservation. DOF has also been selected as the trustee of the in-lieu fee fund.

Based on comments received and concerns raised by DOF about reducing working forest land, DEQ has removed the mitigation credit for preservation of riparian forest buffers.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage of the regulation is the overall minimization of environmental damage as a result of the siting of solar facilities. The regulation encourages the avoidance of damage to prime soils and forest lands while assuring that any damage that does occur is appropriately mitigated. The regulation continues to facilitate the employment of solar power while establishing more protective mitigation measures. A potential disadvantage of the regulation is the increased cost to developers due to the implementation of the additional mitigation requirements. The increased cost may discourage developers from locating facilities in Virginia. The advantage to the department is the continued implementation of an overall streamlined process for authorizing solar facilities. The disadvantage includes the increased number of elements that will need to be reviewed and verified by department staff within the same 90-day authorization issuance deadline.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information. This is a state-mandated regulatory action and as such there are no regulatory changes that are more restrictive than any federal requirement.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

Other State Agencies Particularly Affected

Department of Agriculture and Consumer Services (VDACS), Department of Forestry (DOF), Department of Historic Resources (DHR), State Corporation Commission (SCC).

Localities Particularly Affected

There are no localities particularly affected by this action.

Other Entities Particularly Affected

Solar-powered electric generation projects consisting of photovoltaic (PV) systems and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 150 megawatts.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
1. Diana Greve	Please stop the clear cutting Virginia's forests for solar farms and development. Repeal VCEA and protect our rural landscapes. A better more gradual solution should be considered to transition our energy sources. Solar farms actually create more problems. The existing trees are working hard to reduce the carbon footprint. The less impact on our environment should be the first parameter to which energy source is "friendly." These solar farms destroy the very thing we are trying to save.	We acknowledge your concern; however, repeal of the Virginia Clean Economy Act is not within DEQ's authority.
2. Christine Graham	Virginia's forests are part of the beauty of our state. I have seen in Orange County the solar panels going up and they are ugly. We need to repeal VCEA. We need to have a variety of energy sources. I am on a fixed income and don't want to be paying more for my electricity.	We acknowledge your concern; however, repeal of the Virginia Clean Economy Act is not within DEQ's authority.
3. Michaela Humby	"A project shall be deemed to have a significant adverse impact if it would disturb more than 10 acres of prime agricultural soils." In connection to the above, does this refer to 10 contiguous acres, or 10 acres total within the limits of disturbance?	The determination of what constitutes significant adverse impact for prime agricultural soils is contained in HB 206 and refers to a total of more than 10 acres within the disturbance zone.

<p>4. The Nature Conservancy</p>	<p>The Nature Conservancy (TNC) supports the following provisions in the draft regulation in their current form:</p> <ul style="list-style-type: none"> • Significant adverse impacts to natural heritage resources and ecological cores are likely whenever the analysis prescribed by 9VAC15-60-40 C indicates that impacts to natural heritage resources or Virginia Natural Landscape Assessment Ecological Cores with a Conservation Rank of C1 or C2 will occur within the disturbance zone as verified by a site visit. • TNC believes the 7:1 mitigation ratio for C1 cores is appropriate given their relatively small intersection with solar suitable areas and high conservation value. Proposed mitigation ratio of 1:1 for forest impacts outside C1 and C2 cores is appropriate. • The proposed ratios for agricultural land provide strong incentives for onsite avoidance and minimization of impacts to soil health and consequently water quality. • Conservation easements are the appropriate tool to offset habitat and working land conversion. Public bodies and accredited land trusts are the entities that have the ability to hold, steward and enforce conservation easements. • Only perpetual conservation easements are sufficient to offset the conversion of farm and forest land to solar. While it is possible that some of these lands may in the future be converted back to farm or forest land, we cannot guarantee that now, and it will be many years before we know the extent to which it might be accomplished successfully. <p>Mitigation Districts The RAP discussed mitigation districts at length. There is a tension between goal of ensuring that districts are large enough for good mitigation projects with willing landowners to be identified and implemented to offset impacts within a reasonable time frame, while also ensuring that the offsets provide equivalent functions and values to impacts and accrue in the project-</p>	<p>Support for the proposal is appreciated. Specific concerns and issues identified by the commenter are discussed in further detail below.</p> <p>Mitigation for C1 and C2 Forest Cores DEQ appreciates the commenter's support of mitigation for C1 and C2 forest cores; however, DEQ received several comments regarding the need to update mapping of C1 and C2 forest cores and provide definitions that can be verified in the field. Therefore, DEQ has removed all language requiring mitigation for C1 and C2 forest cores and intends to publish a NOIRA to initiate a regulatory action to adopt the enhanced mitigation of C1 and C2 cores with updated mapping and a procedure for field verification.</p> <p>Mitigation Districts DEQ concurs with TNC that the proposed mitigation districts should be larger and organized along political boundaries based on combining existing Planning District Committees (PDCs). DEQ also agrees with TNC's recommendation to remove the regulatory language that would allow for mitigation in an adjacent district. The regulation has been updated by deleting the river watershed mitigation district language and adding a new definition of mitigation districts based on the seven new mitigation districts as detailed below:</p> <ol style="list-style-type: none"> 1. Chesapeake Mitigation District comprised of Region 16 – George Washington Regional Commission, Region 17 – Northern Neck PDC and Region 18 – Middle Peninsula PDC 2. Eastern Shore Mitigation District comprised of Region 22 – Accomack-Northampton PDC 3. Northern Piedmont Mitigation District comprised
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	<p>affected community. TNC was initially supportive of the watershed approach when it was discussed by the RAP, but upon further consideration and discussion with potential mitigation providers, now believes that larger districts organized along political boundaries might achieve a better balance between these two considerations. TNC proposes to combine Virginia’s 21 planning district commissions (PDCs) into seven new mitigation districts. If these new mitigation districts are adopted, there should not be a need to allow mitigation projects in adjacent districts.</p> <p>Riparian Forest Buffers TNC recognizes the importance of forest buffers for water quality but does not agree with the way the draft regulation incentivizes their implementation. On-site retention of forest buffers is a reasonable measure to minimize impacts to the function of forest to control sedimentation and erosion and should therefore reduce the required amount of offsite forest protection. Off-site requirements to retain 35-foot forest buffers of on conserved land is a minimum standard that should be required in all conservation easements but does not compensate for the loss of forest functions and values on the solar site and therefore should not receive “extra” mitigation credit.</p> <p>In-Lieu Fee (ILF) Calculation Because land values vary widely across the state, ILF fees should be determined based on mitigation districts, not with a statewide average. Fee amounts should not be stated in the regulation. Instead, the regulation should describe a process for determining fees based on the only large data set of easement prices that exists, which is held by the Department of Taxation pursuant to the land preservation tax credit program. This data set, while subject to certain confidentiality requirements, comprises property-specific appraisals and is therefore much more accurate than local assessment values or statewide USDA values. Finally, fee prices should be updated every two years.</p> <p>In-Lieu Fee (ILF) Administration DEQ should solicit and select one or more ILF administrators through a Request For Proposals (RFP). If no suitable administrator is identified pursuant to the first RFP, DEQ should work with</p>	<p>of Region 8 – Northern Virginia Regional Commission, Region 9 – Rappahannock-Rapidan Regional Commission and Region 10 – Thomas Jefferson PDC</p> <ol style="list-style-type: none"> 4. Richmond-Hampton Roads Mitigation District comprised of Region 15 – Plan RVA, Region 19 – Crater PDC and Region 23 – Hampton Roads PDC 5. Shenandoah Valley Mitigation District comprised of Region 6 – Central Shenandoah PDC and Region 7 – Northern Shenandoah Valley Regional Commission 6. Southside Mitigation District comprised of Region 11 – Central Virginia PDC, Region 12 – West Piedmont PDC, Region 13 – Southside PDC and Region 14 – Commonwealth Regional Council 7. Southwest Mitigation District comprised of Region 1 – Lenowisco PDC, Region 2 – Cumberland Plateau PDC, Region 3 – Mount Rogers PDC, Region 4 – New River Valley Regional Commission and Region 5 – Roanoke Valley-Alleghany Regional Commission <p>Riparian Forest Buffers Based on these and other comments, including concerns raised by DOF about reducing working forest land, DEQ has removed the mitigation credit for preservation of riparian forest buffers.</p> <p>In-Lieu Fee (ILF) Calculation DEQ has revised the calculation of the ILF to subtract the average use value as determined by the Virginia State Land Evaluation Advisory Council (SLEAC) from the average fair market value of forest or agricultural land in</p>
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	<p>appropriate state agencies (DCR, VOF and DOF) to encourage them to submit proposals in response to subsequent RFPs.</p> <p>Only public bodies and accredited land trusts should be eligible to serve as an ILF administrator. (Land trusts who have begun the accreditation process should be eligible to respond to RFPs.) The administrator should be both able to hold easements and fund easements that would be held by others. While it would be preferable for there to be one ILF program statewide, DEQ should consider potential regional administrators if they respond to the RFP.</p> <p>Trustee Administrator Agreement The ILF should be operated pursuant to an agreement between DEQ and the administrator that outlines ongoing obligations of administrator and easement holders. The agreement should specify whether the administrator or easement holder retains mitigation liability throughout the life of an easement. The agreement should address compliance, monitoring and reporting requirements and must contain mechanisms to ensure that mitigation requirements that apply after PBR issuance are adhered to.</p> <p>The agreement should establish a trigger for when enough fees have accumulated in a particular mitigation district that the administrator must find mitigation projects, the time frame within which such projects must be completed, and a minimum size for projects. The ILF administrator should maintain a publicly accessible running tally of the total number of acres required to be mitigated, payments for such mitigation, and mitigation projects completed in each mitigation district. Agreements between DEQ and ILF administrators must be subject to public notice and comment.</p> <p>Innovative Mitigation Alternatives DEQ's approval of alternative mitigation should be subject to public notice and comment.</p> <p>Easement Required Within 1 Yr of PBR Issuance</p>	<p>the district where the project is located. DEQ has also deleted the minimum fee of \$3,000 per acre, allowing the ILF fee determination to be based on values appropriate for each mitigation district. The department will publish the values for each mitigation district annually based on data from SLEAC.</p> <p>In-Lieu Fee (ILF) Administration In response to multiple comments that the Department of Forestry Office of Working Lands should be designated as the trustee or administrator of the ILF fund, DEQ has revised the final regulation. Language has been added in 9VAC15-60-60 H 2 specifying that the Department of Forestry, Office of Working Lands, will serve as trustee to administer the in-lieu fees in trust with the purpose of acquiring conservation easements consistent with the acreage and location of the mitigation requirements.</p> <p>Trustee Administrator Agreement DEQ and DOF will enter into a Memorandum of Agreement (MOA) regarding the ILF Fund. DEQ will take into consideration the comments in developing the MOA.</p> <p>Innovative Mitigation Alternatives Alternative mitigation in 9VAC15-60-60 F will be approved at DEQ's discretion and must be consistent with the intent of HB 206. DEQ revised the language in 9VAC15-60-60 F by specifying that an applicant may propose innovative alternatives to the required mitigation provided that the notice of intent includes a statement that alternative mitigation is being proposed and that directs the public to where additional information on the alternative mitigation can be found. This will enable public comment on proposed alternative mitigation.</p> <p>Easement Required Within 1 Year of PBR Issuance The provision in 9VAC15-60-60 G 2 to acquire an easement within a year of</p>
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	<p>The regulation should describe how DEQ will monitor and enforce the requirement to acquire an easement within a year of PBR issuance. If an easement is not acquired within the required timeframe, the applicant should have to pay the In Lieu Fee.</p> <p>Land Preservation Tax Credit We agree with the intent of the provision that prevents land that has been protected through a charitable gift from counting as mitigation. However, referring to a land preservation tax credit as a “quid pro quo” is inaccurate and problematic. The tax benefit that arises from the donation is not considered under the tax law to be ‘something given in exchange for the gift’ (the definition of quid pro quo).</p> <p>Conservation Easement Templates We support the use of existing easement templates, but the specific Virginia Outdoors Foundation templates referenced in the draft regulation are problematic, especially the one that prohibits timber harvests. We understand that state agencies have already alerted DEQ to this concern and are suggesting better templates for this purpose. A determination of whether an easement is consistent with the appropriate template does not need to be made in advance, but DEQ should have an enforcement mechanism if its subsequent review reveals that the easement is not consistent.</p> <p>Economic Impact Analysis TNC notes that the economic impact analysis cited by both the Office of Regulatory Management and Department of Planning and Budget takes an extraordinarily narrow view of the economic benefit of conserving farmland and forest land. While not all ecosystem services provided by such lands are easily quantified, there is literature available to assist with quantifying some of those benefits. It is most certainly possible to quantify the carbon sequestration achieved by such lands and the economic value of such carbon, which seems particularly relevant to this regulation.</p>	<p>PBR issuance is enforceable as per the language contained in 9VAC15-60-140 which says that DEQ may terminate the PBR whenever DEQ finds that the applicant has failed to comply with the conditions or commitments stated with the permit by rule application or violated the project's mitigation plan. If the applicant is unable to close on the easement within a year, the PBR conditions may provide for alternative compliance by paying the In-lieu Fee.</p> <p>Land Preservation Tax Credit 9VAC15-60-60 G 6 has been amended by replacing “quid pro quo” with “applied to support another benefit.”</p> <p>Conservation Easement Templates DEQ amended the language in 9VAC15-60-60 G 8 to require consistency with Virginia Department of Forestry (DOF) easement guidelines for forest and agriculture conservation. DEQ added 9VAC15-60-60 G 10 providing for review of proposed conservation easements by DOF. This will ensure consistency with the regulation and DOF guidelines for forest and agriculture conservation.</p> <p>Economic Impact Analysis The commenter doesn't provide any specific instances or examples of ecosystem benefits that may or may not result in implementation of the regulation. Our specific regulatory directive was to consider the loss of ecosystem benefits and DEQ did consult with DOF, VDACS, DWR, DCR and others on this topic. Ecosystem benefits were not quantified in the economic impact analysis due to the limited availability of data and lack of precedent in prior ORM economic impact analyses, however, the economic impact analysis indicated a net benefit without the addition of ecosystem services.</p>
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<p>5. Piedmont Environmental Council</p>	<p>PEC supports the proposed regulation’s general direction, and we thank the Department for the process of the Regulatory Advisory Panel. When reviewing the proposed changes, PEC recognized several concerns worthy of highlighting:</p> <p>Mitigation Districts The definition for Mitigation District is unnecessarily large. It fails to adequately address mitigation for loss of forests or prime soils in specific areas. It fails to account for the impact on the local economies or address the concerns of residents. The Department should require applicants to seek mitigation closer to the area of impact. Given the water quality implications of projects, we agree with the Department that mitigation should be tied to watersheds. However, the regulations should encourage mitigation closer to the area of impact. This can be best achieved by requiring smaller mitigation areas.</p> <p>Mitigation Banks for Conservation Easements For the purposes of an In Lieu Fee (ILF), flexibility could be allowed to pursue mitigation in an adjacent area if no credits are available in the same mitigation area as the project. But we would suggest consideration of a mechanism to both incentivize the creation of banks and mitigation within the area of the project. This approach would give greater confidence that required mitigation would occur in a manner where affected local wildlife, ecosystems, and the impacted local community and economy are the primary beneficiaries.</p> <p>Mitigation of Prime Agricultural Soils The language in 9VAC15-60-60 E. 1 regarding prime agricultural soils should make clear that the unit of mitigation is acres of prime agricultural soils, meaning that the 1:1 mitigation ratio requires the replacement of one acre of prime agricultural soils for one acre of prime soils lost, not replacement of one acre of agricultural land more generally. In specific cases, the applicant may need to protect a land area greater than that disturbed by the project in order to provide a 1:1 replacement of the lost resource.</p> <p>Riparian Forest Buffers</p>	<p>Support for the proposal is appreciated. Specific concerns and issues identified by the commenter are discussed in further detail below.</p> <p>Mitigation Districts See response to comment 4 regarding mitigation districts. DEQ has updated the definition of “Mitigation District” to reflect the TNC-proposed seven groups of Planning District Commission boundaries. DEQ also deleted the language in 9VAC15-60-60 G. 5. that would have allowed an option to locate mitigation in an adjacent mitigation district in the event that land could not be located in the same mitigation district. The increased size of the mitigation districts should avoid the need to locate mitigation in an adjacent district.</p> <p>Mitigation Banks for Conservation Easements The regulation does not prevent establishment of private markets for conservation easements.</p> <p>Mitigation of Prime Agricultural Soils DEQ has revised the language in 9VAC15-60-60 E 1 to clarify that the acreage of prime agricultural soils to be conserved must equal the area disturbed.</p> <p>Riparian Forest Buffers See response to comment 4 regarding riparian forest buffers.</p> <p>Partial Mitigation Options to Preserve Prime Agricultural Soils The mitigation ratios were recommended by subject matter expert, Dr. W. Lee Daniels, a soil scientist and Professor of Environmental Soil Science at Virginia Tech who is currently conducting research on the impacts of utility scale solar facilities. These mitigation ratios were also discussed by members of the regulatory advisory panel (RAP) during multiple RAP meetings.</p>
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	<p>It is not appropriate to allow double acreage credit for forested riparian buffer mitigation for loss of soils and/or forested lands. This is especially true for soils. The point of mitigation is to offset loss of ecosystem services from the impacted resource; soils provide different ecosystem services than forested riparian buffers. Generally speaking, mitigation should come with the preservation of lands offering comparable function and value on a 1:1 ratio. Riparian buffers occur on all types of soil. PEC sees no connection with preservation of riparian buffers and mitigation for prime soil disturbance. In the case of mitigating forest loss, double credit for this preservation is extreme. By adopting this preservation standard, the Commonwealth ultimately ignores the full value and function of both soils and forested lands. Any credit for mitigation must be commensurate with the activity and the Department's rationale should be provided for any proposal that offers mitigation credit, especially those greater than a 1:1 ratio.</p> <p>Partial Mitigation Options to Preserve Prime Agricultural Soils PEC recommends revision of the ratios in 9VAC15-60-60 associated with the preservation of topsoil and reduction of soil compaction in Table 1. We also recommend greater clarity on preventive methods for compaction. Ripping alone does not seem sufficient and causes potential for greater erosion and sedimentation at the end of the project's life. Lighter equipment, compression mats, and other alternatives should be considered and addressed in guidance. For example, a key way for projects to decrease grading needs are all terrain trackers. These prefabricated joints for trackers can be installed on slopes of up to 37%, thus limiting land grading and compaction, facilitating faster revegetation and often saving the developer significant expense on grading and soil removal. The allowance of a 90% credit for working with existing grades, preserving the soil structure and reducing compaction seems reasonable, though additional clarity on compaction should be required, as noted. However, we maintain that preservation of topsoil alone or addressing compaction of subsoils alone does not warrant the level of mitigation credit offered under the regulation. As with other provisions, PEC would</p>	<p>PEC's recommendations may be considered in reviewing site specific plans for on-site mitigation.</p> <p>Management Alternatives in Combination with On-Site Soil Mitigation The management alternative percentages were recommended by subject matter expert, Dr. W. Lee Daniels, a soil scientist and Professor of Environmental Soil Science at Virginia Tech who is currently conducting research on the impacts of utility scale solar facilities. The management alternative percentages were also discussed by members of the regulatory advisory panel (RAP) during multiple RAP meetings. The regulation has been revised to specify that only areas within the larger project site receiving this treatment should be credited for the activity and requires adequate guarantees that the management alternatives shall be maintained during the term of the permit.</p> <p>Prime Agricultural Soils Overlain by Forest Land The requirement for mitigation when forest land overlaps with prime agricultural soils was reviewed by the regulatory advisory panel. In consultation with the RAP, DEQ decided that requiring mitigation to include both forest land and prime agricultural soils would be too burdensome.</p> <p>Innovative Mitigation See response to comment 4 regarding innovative mitigation alternatives.</p> <p>Easement Required Within 1 Year of PBR Issuance See response to comment 4 regarding the requirement that a conservation easement must be acquired within a year of PBR issuance.</p> <p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation.</p>
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	<p>ask for the specific rationale and methodology for determining the associated credit levels. The Department should also consider whether a stricter standard is warranted based on the functions of that resource and any diminished capacity.</p> <p>Management Alternatives in Combination with On-Site Soil Mitigation</p> <p>PEC supports granting credit for continued agricultural activities onsite. However, granting 25% credit for these activities could be excessive, depending on the activity selected by the applicant. The language also fails to specify that only areas within the larger project site receiving this treatment should be credited for the activity. To emphasize this point, PEC would argue that under this provision, an applicant could completely degrade the soil value and still be given 25% credit for growing hay, a crop that can grow on poor soils. As well, that hay crop may be given credit for lands that are not actively harvested. As hay would likely only be harvested between panels and not include the entirety of land growing hay, the Department must be clear that only the area in active production and harvest be credited and that the credit be commensurate with the level of preservation or reduced impact to the resource in question. PEC would also note that, while monitoring and compliance procedures are referenced for establishment of pollinator smart habitat/vegetation practices, no such compliance processes are referenced for grazing or cropping activities. Lastly, only the area planted with a crop should receive credit and those areas must be determined to be used and useful in an agricultural sense.</p> <p>Given that some of these activities may not address the loss of function at a level commensurate with mitigation credit, the Department should reconsider the methodology and amend the language to ensure the credit given is appropriate. In a best case scenario, a reasoned value stack analysis for dual use would create a range of values for varying dual uses, ranging from pollinator smart/grazing all the way through high value crops under panel, while also ascribing a range of mitigation value based the portion of project engaged in dual use. For</p>	
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	<p>example, a pollinator smart use under panel would receive less mitigation credit than a project that grows lettuce under panel.</p> <p>Additional value for innovative programs, such as a developer agreement that helps the site's farmer gain ownership of the land after project decommissioning, can also be ascribed additional mitigation value. At minimum, the credit should be calculated based on acres of prime soils where such activities are undertaken and, in turn, the total aggregate credit for all such activities should not exceed 25 percent. The Department should also consider differing levels of credit depending on the activity involved, as not all activities listed provide the same environmental benefit. Finally, if credit is to be provided for grazing and/or cropping activities, the regulation should indicate what monitoring functions will be established to ensure compliance.</p> <p>Prime Agricultural Soils Overlain by Forest Land</p> <p>The allowance for forest preservation alone to mitigate damage to forests on prime agricultural soils is inappropriate. As drafted, the regulation falsely assumes full mitigation, allowing for forest on marginal soils to act as a 1:1 replacement. Prime soils are known to provide ideal conditions for health of plant materials broadly. In most cases, forests located on prime soils are healthier than forests on marginal soils. As well, the department proposal completely ignores the loss of the functions and value of the prime soil resource.</p> <p>PEC would support 1:1 replacement of forest on prime soils if, and only if, the preservation of forestland is also located on prime soils. Otherwise, each of the two resources should be preserved on a 1:1 ratio. So if 100 acres of forest on prime soil were lost, and there were no forests located on prime soils in the mitigation area, the applicant must preserve 100 acres of forest and 100 acres of land consisting entirely of prime soils. Anything less allows the applicant to treat any forest, regardless of health and underlying soils, with equal disregard.</p> <p>Innovative Alternatives</p>	
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	<p>Language in 9VAC15-60-60 E. 7. seems to imply that prime soils can be created, just as a forest can be replanted. This simply is not the case. While we do not oppose the idea that an applicant can improve soil conditions, we would question and are quite skeptical of the notion that a degraded site can be restored to replace “the characteristics of prime agricultural soils” as suggested by this language.</p> <p>Language in 9VAC15-60-60 F. 4. is open to interpretation, limiting any understanding of how this would be implemented. PEC is not necessarily opposed. But, as previously stressed, the credit given would need to be commensurate with the impact.</p> <p>Either in the regulation or in guidance, the Department should provide additional information about how this section would be applied in practice. Credit for this type of mitigation must be demonstrated to replace the functions and value of the previous conditions of the impacted site. As with other provisions, PEC would ask the Department to provide the rationale and/or methodology for determining the associated credit levels if they wish to include this language.</p> <p>Easement Required Within 1 Year of PBR Issuance The provision in 9VAC15-60-60 G. 2. allows issuance of the PBR prior to completing the required mitigation, as it allows the applicant to take one year after receiving the PBR permit to close (i.e. record) the conservation easement. PEC is concerned that DEQ will have limited enforcement tools to ensure completion of the required mitigation after issuing the PBR. DEQ should incorporate regulation or guidance that provides the agency adequate powers to ensure that any conservation easement is recorded and that the required mitigation is completed within the one year timeframe, subject to any extension for good cause.</p> <p>In-Lieu Fee (ILF) Calculation PEC appreciates the Department’s attempt to develop a methodology that reflects the actual cost of conservation in the various regions within Virginia. While the Virginia Land Use Assessment provided by the State Land</p>	
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	<p>Evaluation Advisory Commission (SLEAC) offers some guidance, we are concerned that it fails to capture the full cost of mitigation. We are also concerned by the minimum amount of \$3,000 included in the proposed regulation. We believe the full cost of mitigation could fall well below that minimum in some areas of the state. In others, the prescribed methodology would likely result in values below what is necessary. While we acknowledge a solar developer has the option to secure the easement rather than providing the fee, thus capturing any potential savings, the purpose of the In-Lieu Fee was to make the process easier in recognition that the applicant may not be properly situated to secure mitigation in the region of impact. We would recommend working with state agency staff, professionals and non-profits that conduct these activities, to develop a methodology reflecting the full cost of mitigation for specific regions of the state. That methodology should include the cost for purchase and acquisition of the easement, along with any associated stewardship and administrative costs.</p>	
<p>6. Virginia Coalition for Human Rights</p>	<p>Our comments are bolded and pertain to 9VAC15-60/Sections A and B. 9VAC15-60-30 Application for permit by rule for small solar energy projects with rated capacity greater than five MW and disturbance zone greater than 10 acres...</p> <p>A.shall contain all of the following:</p> <ol style="list-style-type: none"> 1. An NOI to submit the necessary documentation for a PBR to be published in the Virginia Register of Regulations. <ol style="list-style-type: none"> a. The applicant shall submit the NOI in a format approved by the department. <ol style="list-style-type: none"> 1. The Initial NOI filings shall be submitted to the department as early in the project development process as practical, but at least not less than 90 days prior to the start date of the public comment period as required under 9VAC15-60-90 or a minimum of six months before any motion to or voting actions are taken by county board of supervisors to approve or dismiss the Special Use Permit(s). • Future, secondary or modification refilings of NOIs post issuance of a SUP shall restart the public 	<p>The notice of intent relates to filing of the DEQ PBR application. DEQ has no authority to affect the timing or procedures of local government land use reviews. All the information submitted to DEQ is available to the public as soon as it is received.</p> <p>County officials approve the siting of solar projects in their locality and can decide to address these concerns if they so choose.</p> <p>DEQ has no authority to require disclosure of LLC members.</p> <p>DEQ requires the following items to be submitted in a notice of intent:</p> <ul style="list-style-type: none"> • Name of the project • Project Legal Business Name and Virginia State Corporation Commission Entity ID • Name and contact information for the owner and applicant (if applicant different from owner) – include mailing

	<p>hearing/meetings process and invalidate any previously submitted or approved SUPs issued by the DEQ or previously approved by the Board of Supervisors.</p> <ul style="list-style-type: none"> • The initial and any subsequent re-filings or modification of/to any NOI shall contain the name(s) of the developer(s), partners, shareholders or any other entity maintaining an interest of 10% or greater and state if any of the principals, partners, shareholders or party of interest is a foreign citizen or foreign entity either private or governmental. NOIs listing only the name of LLCs will not be accepted. • The initial NOI shall contain the GPS coordinates of project boundaries. In addition, it shall contain project wattage and the number, type, and chemical composition of the proposed solar panels. <p>14. A summary report of the 30-day public review and comment period conducted pursuant to 9VAC15-60-90, including shall include a summary of the issues raised by the public, any written comments received, and the applicant's written response to all of those comments.</p> <p>B. An applicant seeking a PBR under this part shall submit the following:</p> <p>3. PBR applicants shall include with their applications voluntary Safety Data Sheets for the products permanently affixed to the terrain that are prepared by the product's manufacturer in order for county officials and state regulators to properly assess the risk management for establishment of secondary liability insurance rates and for establishment of policies for toxic chemical compounds and PFAS levels.</p>	<p>address, direct phone number, email</p> <ul style="list-style-type: none"> • Proposed maximum rated power capacity in megawatts alternating current (MWAC) • Project street address or detailed description of the project location that can easily be determined on a street map • Location of project in latitude and longitude (decimal degrees) identified as either the centroid or entrance of the project • Project locality: Town, City, or County • Proposed acres of land disturbance • Approximate number of photovoltaic (PV) systems and maximum height of PV systems • Identify is project is located on a brownfield • Name of development company associated with project <p>The proposed change to 9VAC15-60-30 A 14 regarding the 30-day public comment period is unnecessary as it does not change the requirement.</p> <p>DEQ has no authority in the statute or regulation to require the submission of Safety Data Sheets. DEQ also has no authority in the statute or regulation to establish secondary liability insurance rates. Policies for toxic chemical compounds and PFAS levels are determined by USEPA and the General Assembly.</p>
<p>7. W. Lee Daniels, VA Tech</p>	<p>Decompaction of Subsoil 9VAC15-60-60 E 3, Table 1, Option 2</p> <p>Change Language in 9VAC15-60-60 E 3, Table 1, Option 2:</p>	<p>Decompaction of Subsoil 9VAC15-60-60 E 3, Table 1, Option 2</p> <p>DEQ has revised the language in Table 1 consistent with Dr. Daniels' comment.</p>

	<p>I support changing the Mitigation Actions Required language to the following: “Areas with changes in grade due to cut and fill with removal and return of topsoil, decompaction of topsoil to six inches following installation, maintenance of > 75% living vegetative cover for project lifetime, and decompaction to > 24” and surface soil amendment after decommissioning.” Rationale: The current language specifies decompaction of the subsoil (in addition to topsoil) following installation which is not feasible in many site settings following panel installation. As long as the returned topsoil is decompacted to six inches, a certain amount of improvement in the quality of the subsoil is to be expected over the operational (20 to 30 years) period due to rooting and other processes, assuming 75% living vegetation is maintained. However, the deep ripping/decompaction to > 24 inches will be essential for site decommissioning to ensure reasonable levels of soil productivity for agriculture or forestry.</p>	
<p>8. Siller Pollinator Company- Allison Wickham</p>	<p>Include beekeeping as a management alternative in combination with pollinator smart plantings OR change the definition of “Establishment and maintenance of pollinator smart habitat/vegetation”. The United States Department of Agriculture (USDA) considers beekeeping agriculture, and defines honey bee hives as livestock just like sheep. Beekeeping has its own chapter in the Virginia Code. Chapter 44. It falls under Title 3.2. Agriculture, Animal Care, and Food, just like the other specifically highlighted agricultural activities in this amended code. Bees and beekeepers are regulated and monitored by the Virginia Department of Agriculture and Consumer Services just like sheep, hay, and crops. 2VAC5-20-20 of the “Standards for Classification of Real Estate Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law” includes apiary operations as qualifying activities.</p>	<p>DEQ appreciates the thorough response regarding beekeeping and has included establishment and maintenance of pollinator smart habitat/vegetation as partial mitigation; however, the mere presence of hives or bees on-site does not provide the same benefit for prime agricultural soils as pollinator smart habitat/vegetation.</p>
<p>9. Tanya Kruk 10. Susan Mangan 11. Robert Benson</p>	<p>I am writing to support the Virginia Department of Environmental Quality’s (DEQ) draft regulations to implement the mitigation requirements in House Bill 206 (HB206), passed by the Virginia General Assembly in 2022, which requires utility-scale solar developers to mitigate impacts on Virginia’s prime agricultural and forest lands.</p>	<p>Support for the proposal is appreciated.</p>

<p>(Same comment from all three)</p>	<p>Advancing our clean energy future must not come at the cost of degrading our highest value forest and agricultural lands. I support the draft regulations to implement HB206 because they will promote more thoughtful siting of utility-scale solar facilities that avoid prime agricultural and forest lands ensuring that these important natural resources are protected, and environmental impacts are responsibly managed. I am especially concerned with the protection of our most outstanding ecological forest cores, many of which have been impacted by approved projects. To be sure, we need to accelerate the deployment of utility-scale solar. Fortunately, the draft regulations create a mitigation framework that provides solar developers with important flexibility to undertake mitigation in a way that will minimize any perceived burden through thoughtful site design and the ability for a developer to undertake mitigation themselves or pay into a state run program to implement the mitigation.</p> <p>Your action in finalizing these regulations is vital to achieving the goal of supporting renewable energy while preserving Virginia’s critical natural resources.</p>	
<p>12. Rogard Ross</p>	<p>I am writing to support the Virginia Department of Environmental Quality’s (DEQ) draft regulations requiring utility-scale solar developers to mitigate impacts on Virginia’s prime agricultural and forest lands.</p> <p>We need to strongly support implementation of renewable energy in Virginia to convert to a carbon-neutral energy system. Climate change, with its associated extreme weather events, is perhaps the greatest threat to Virginia’s ecosystem, its wildlife, and the people of Virginia.</p> <p>As we promote this transition, we must be thoughtful on the siting of solar facilities that to reduce the impact on forests and prime agricultural lands. Protection of our important ecological forest cores is a very high priority, as these forests are also critical in sequestering carbon and reducing the impact of climate change. Impact to forest land must be strongly mitigated, if not avoided. On farm land, protection of soils and providing for ancillary</p>	<p>Support for the proposal is appreciated.</p>

	<p>agricultural activities such as pollinator ground covers, beekeeping, grazing, and/or growing hay are important mitigation steps.</p> <p>We need solar. The draft regulations create a mitigation framework that provides solar developers with important flexibility to undertake mitigation in a way that will minimize the burden through thoughtful site design and the ability for a developer to undertake mitigation themselves or pay into a state run program to implement the mitigation. Please finalize these regulations to achieve the goals of supporting renewable energy transition and preserving Virginia’s critical natural resources.</p>	
<p>13. Virginia Forestry Association</p>	<p>Conservation Easement Templates Any easement terms for forestland offsetting solar development should be consistent with the Easement Term Guidelines from the Department of Forestry, and no other organization or entity. With the creation of the Office of Working Lands Preservation, the Department of Forestry is now an easement holder and has guidelines for agricultural and forest land. Recommend deletion of the last two sentences of G.8, “Easements for mitigation of prime agricultural soils shall be generally consistent with the Virginia Outdoors Foundation (VOF) easement template for Working Farm/Intensive Agriculture.</p> <p>Mitigation for C1 and C2 Forest Cores Recommend the deletion of the last line of G.7, “Every conservation easement for C1 or C2 forest cores shall restrict disturbance of the conserved land” and the last sentence of G.8, Easements for mitigation of C1 or C2 forest cores shall be generally consistent with the VOF easement template for protection of natural areas.”</p> <p>In-Lieu Fee (ILF) Calculation Recommend a clarification of the value of in lieu payments. It is imperative that agricultural soils be valued differently and using different metrics than forestland. The language is unclear if the USDA National Agricultural Statistics Service cropland assessment valuation applies to both agricultural soils and forestland or just agricultural soils. Prime farmland has a different economic valuation as well as different ecosystem service benefits associated with its preservation than forests do.</p> <p>Recommend using the combination of the assessed value and the State Land Evaluation Advisory Council (SLEAC) value of the forestland</p>	<p>Conservation Easement Templates See response to commenter 4 regarding conservation easement templates.</p> <p>Mitigation for C1 and C2 Forest Cores See response to commenter 4 regarding mitigation for C1 and C2 forest cores.</p> <p>In-Lieu Fee (ILF) Calculation See response to commenter 4 regarding ILF calculation. Using SLEAC use value determinations will provide valuations specific to agricultural and forest land. The deletion of a minimum fee adjusted by change in Virginia cropland value addresses the commenter’s concern.</p> <p>In-Lieu Fee (ILF) Administration See response to commenter 4 regarding ILF administration.</p> <p>Innovative Mitigation Alternatives See response to commenter 4 regarding innovative mitigation alternatives.</p> <p>Riparian Forest Buffers See response to commenter 4 regarding riparian forest buffers.</p> <p>Mitigation Districts See response to commenter 4 regarding mitigation districts.</p> <p>Definition of In-Lieu Fee Payment The in-lieu fee is described in 9VAC15-60-60 H.</p>

	<p>as the only valuation available for forestland mitigation. This would align with the purpose of HB 206 in which the economic impact and ecosystem service benefits lost with the disturbance of contiguous forestland would properly be calculated. We understand that not every locality participates in the SLEAC program, but the SLEAC committee has the capacity to produce estimates for the value of forestland in every county and would likely do so at the request of DEQ at minimal cost.</p> <p>In-Lieu Fee (ILF) Administration Request that the recently created Office of Working Lands Preservation at the Department of Forestry be the sole trustee for any in-lieu mitigation funds received as a part of the HB 206 process. The General Assembly created the Office of Working Lands Preservation in the 2024 Session with the purpose of consolidating our agricultural and forest conservation efforts. Unlike other state entities, the Department of Forestry can hold easements and is well equipped to ensure that any easement follows the Department’s own Easement Guidelines. The General Assembly funded the Office’s staff and any other staffing needs for the Department to administer the in-lieu program should be properly built into the in-lieu fee structure to ensure the Office has adequate staff to carry out the mission.</p> <p>Innovative Mitigation Alternatives Recommend the Department delete F.4 regarding mitigation measures for significant adverse impacts to forest land. We are uncertain what “innovative alternatives” would be available to a developer nor does the underlying bill contemplate alternatives to mitigation. The open-ended nature of the language could lead to the continued loss of prime agricultural soil and forest land in the future.</p> <p>Riparian Forest Buffers Recommend the Department remove sections E.2 and F.2 from the regulation. While we agree with the purpose of voluntary riparian buffer planting for the goal of reaching our Chesapeake Bay targets, we cannot agree to giving extra mitigation credit for the inclusion of such buffers in HB 206. Buffers simply are not a replacement for working lands. Landscape and topography are much different from region to region in the Commonwealth. It is also difficult to envision how these buffers would be counted or verified by the</p>	
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	<p>Department. For example, is the acreage counted in linear feet along a stream bank the same as hundreds of acres elsewhere? Can it be counted if the buffer is spread among multiple landowners and not contiguous? The underlying legislation requires the mitigation of prime agricultural soils and forestland and including additional credit for stream buffers is inconsistent with the scope or intention of the original bill.</p> <p>We appreciate the Department’s definition of “continuous forestland” and “land disturbance”. The definition of forestland reflects the proper status of tree stands and will ensure proper mitigation for potential tree canopy loss. Land disturbance also reflects the definition of disturbance consistent with other forms of development of which mitigation is necessary.</p> <p>Mitigation Districts We also support the “Mitigation District” definition and the use of watersheds as a compromise for mitigation area. We recognize it may be difficult for a developer to find the requisite acreage for mitigation of forestland in a given locality or even hydrologic unit (HUC) to satisfy the requirements of HB 206. We also agree with the Department’s decision to divide the James River District into separate areas to mitigate the water quality impacts of a particular development as close to the land disturbance as possible. The length and shape of that watershed makes this subdivision necessary to preserve water quality in areas with very different topographies.</p> <p>Definition of In-Lieu Fee Payment We recommend the addition of a definition of in-lieu payment for compliance. Language clarifying that in lieu payments are monetary compensation equal to the adequate value of agricultural soils and forestland as determined by the regulation for the purpose of HB 206 compliance would be beneficial to ensure when the requirements have been satisfied.</p>	
<p>14. Virginia Forest Products Association</p>	<p>Allowance of Silvicultural Activities The first mitigation scenario would require developers to locate acreage equal to that disturbed by their project within the same watershed and place that land under a conservation easement with an environmental group that holds easements, such as the Virginia Outdoors Foundation, the Nature Conservancy or any other group that meets the requirements</p>	<p>Allowance of Silvicultural Activities 9VAC15-60-60 G 7 provides that conservation easements for forestland must allow for silvicultural activities. The Code of Virginia defines silvicultural activity in § 10.1-1181.1 to include the harvesting of timber.</p>

	<p>of 10.1-1009. VFPA has concerns with this approach, as many easements held by environmental/conservation groups don't allow for traditional timber harvests, including clear cuts. While some may allow for the removal of dead or diseased trees, or maybe selective thinnings, groups such as those listed above have a mission to conserve trees - not harvest in the traditional silvicultural tradition. While the proposed regulation states "Every conservation easement for forest land shall allow silvicultural activities on the conserved land" we are concerned that these groups will push back on this language allowing for, in essence, commercial timber harvesting on their watch. In this scenario, a solar developer may clear 500 acres of trees for a solar project. To mitigate this forest loss, they may engage in a conservation easement with one of these groups to preserve 500 acres. The potential net effect of this type of mitigation is instead of sawmills losing 500 acres for future harvest, we have lost 1,000 acres if truly commercial timber harvesting is in any way discouraged under these easements.</p> <p>While the mitigation easements are only for the duration of the project (typically 35-40 years), the net effect could be a doubling of lost acres for a generation and potentially a lifetime if the solar facility is continuously renewed and these easements are not managed as the regulation proposes.</p> <p>In-Lieu Fee (ILF) Administration The second type of mitigation scenario is "payment in lieu of" mitigation. The concept is that instead of a solar developer finding and procuring land on their own and entering into a conservation easement with an environmental group, the developer would pay a fee to cover lost acreage and remit that money to the state Department of Forestry. That office would locate suitable land and place it into an easement that would allow for traditional timber harvesting. While this approach gives the timber industry more comfort, the bottom line is it is still placing potentially large tracts of private land under government oversight instead of letting the free market and landowners determine what happens on their property. The assumption is that the tax benefit will pass through to the landowner for placing their land under the easement for the life of the solar project. It will be interesting to see ultimately what volume of acreage would be required for this type of</p>	<p>The commenter states that "mitigation easements are only for the duration of the project (typically 35-40 years)". This is not accurate; the language in 9VAC15-60-10 defines a conservation easement and specifies that it means a perpetual easement.</p> <p>In-Lieu Fee (ILF) Administration See response to comment 4 regarding ILF administration.</p> <p>HB 206 applies to projects up to and including 150 MW. Solar projects that exceed 150 MW are permitted through the Virginia State Corporation Commission in accordance with Title 56 of the Code of Virginia.</p>
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	<p>mitigation and if there would be enough willing landowners to create an acre-to-acre match for lands lost to PBR projects.</p> <p>VFPA's greatest concern is that from the developer's perspective, mitigating the land under either scenario may become so complex and/or costly that it pushes project design outside of the PBR process and as an unintended consequence, encourages development of large projects over 150 MW, where no mitigation is required at all. In this case, projects could easily need tracts ranging from 4,000 to 8,000 acres - a potentially consequential impact on the sawmill business if this type of solar development becomes more frequent.</p>	
<p>15. Broad Water Innovations- Tee Clarkson</p>	<p>We support the idea of offsetting impacts in mitigation districts with the following recommendations:</p> <p>In-Lieu Fee (ILF) Calculation Determining ILF fees based on the Tax Department's information regarding the value of conservation easements throughout the state is a sound approach; however, these fees should be based on specific mitigation districts rather than a statewide average. There is a significant difference in the cost of protecting a property in Loudoun County compared to Halifax County. This should be taken into account.</p> <p>Innovative Mitigation Alternatives "An Applicant may propose innovative alternatives to the required mitigation." These alternatives should be made public and ultimately incorporated into the regulations.</p> <p>Mitigation Districts "A conservation easement shall encumber land in the same mitigation district as the area disturbed. In the event the applicant cannot locate land in the same mitigation district, the department may allow the land to be in an adjacent mitigation district." How will this be determined? This seems awfully broad. There should be specific triggers that determine whether an applicant can mitigate impacts in a neighboring district.</p> <p>Conservation Easement Templates "Easements for forest mitigation shall be consistent with the Easement Term Guidelines adopted by DOF. Easements for mitigation of prime agricultural soils shall be generally</p>	<p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation.</p> <p>Innovative Mitigation Alternatives See response to comment 4 regarding innovative mitigation alternatives.</p> <p>Mitigation Districts See response to comment 4 regarding mitigation districts.</p> <p>Conservation Easement Templates See response to comment 4 regarding conservation easement templates.</p> <p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding Mitigation for C1 and C2 Forest Cores.</p>

	<p>consistent with the Virginia Outdoors Foundation (VOF) easement template for Working Farm/Intensive Agriculture.</p> <p>Mitigation for C1 and C2 Forest Cores Easements for mitigation of C1 or C2 forest cores shall be consistent with the VOF easement template for protection of natural areas." These templates are a good place to start, and that appears to be the intent. The term "generally consistent" should be used across the board. A list of necessary restrictions and requirements would also be helpful in order to create consistency between projects.</p>	
<p>16. Morgan Ralph</p>	<p>I am in favor of amending Chapter 688 of the 2022 Acts of Assembly.</p> <p>The inclusion of agricultural and forested lands for consideration of solar projects opens up more access to clean energy in Virginia. Reviewing these lands for any adverse effects caused by this project is also important as it ensures a more limited impact. The requirement of a mitigation program for adverse effects is fair. The allotment of a 45-day comment period will also permit citizens in the area a chance to share any concern with the project.</p>	<p>Support for the proposal is appreciated.</p>
<p>17. Virginia Association of Soil & Water Conservation Districts</p>	<p>Mitigation for C1 and C2 Forest Cores The proposed regulations should be strengthened so that the only acceptable mitigation for loss of trees in Ecological Core C1 and C2 forest land within the Chesapeake Bay watershed is no loss of trees. DEQ reports that utility scale solar projects have already destroyed approximately 2,000 acres of C1 forest and 5,000 acres of C2 forest. This ecological damage cannot be allowed to continue.</p> <p>Mitigation Ratios We recommend that the mitigation ratios for disturbance of forest land of more than 50 acres of contiguous forest land and for disturbance of forest land enrolled in a program for forestry preservation be significantly higher than the regulation's currently proposed ratio of one to one.</p> <p>Conservation Easements Conservation easements are an inadequate tool for mitigating the loss of forest land. Protecting an existing acre of forest through an easement avoids the possible future loss of that forest but</p>	<p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores</p> <p>Mitigation Ratios The selection of the 1:1 ratio was based on advice of the regulatory advisory panel and an effort to balance the need for mitigation with the need for deployment of renewable energy.</p> <p>Conservation Easements HB 206 requires mitigation but does not specify how the mitigation should be provided. Virginia has utilized conservation easements in other mitigation contexts and this approach was supported by the regulatory advisory panel.</p> <p>Previously Disturbed Lands and Brownfields Projects proposed on previously disturbed land or brownfields, regardless of the size of the</p>

	<p>does nothing to make up for the lost carbon sequestration and ecosystem services of the acre of forest lost in the present. The ecosystem still loses the benefits of the acre of forest converted to utility scale solar.</p> <p>Previously Disturbed Lands and Brownfields If the impact of the pending regulation is at least at the margin to steer solar energy development toward already disturbed land, brownfields, parking lots, and existing residential, commercial, and government buildings, and away from forest and farmland, then we believe that would be a positive and appropriate public policy outcome. In the 2024 session of the General Assembly both the state legislature and the Governor signaled an interest in putting solar where it belongs, on already disturbed lands, by the enactment of Senator Surovell’s bill SB 253 to promote community solar and Delegate Krizek’s bill HB 199 to authorize state grant funding for installing solar on brownfields and old coal mining sites. Strengthening the proposed HB 206 regulations as we suggest would be consistent with that trend, and we urge DEQ to strengthen the regulations as we recommend.</p>	<p>disturbance area, can be permitted under Section 130 of the Solar PBR. 9VAC15-60-130 addresses solar projects on former industrial areas, brownfields, rooftops, and parking lots. Projects that meet the requirements under this section are subject to reduced permitting requirements or no permitting requirements. By requiring mitigation ratios, this should encourage developers to build in these areas. This approach is currently allowed but is not clearly delineated in the existing regulation. Therefore, to the extent that the availability of this approach has not been widely known, this proposed amendment may encourage development on previously disturbed land, protecting additional forest lands or prime agricultural land.</p>
<p>18. Timmons Group-Lauren Wheeler</p>	<p>Regarding the proposed action to amend 9 VAC 15-60 to comport with the requirements of Chapter 688 of the 2022 Acts of Assembly, the following comments are offered. The intent of these comments is to offer areas of needed clarification in the Permit by Rule application and review process to ensure consistency.</p> <p>Grandfathering Clause It is our understanding that of Chapter 688 of the 2022 Acts of Assembly, as written, includes a grandfathering clause. We believe it would be helpful if the grandfathering provisions, and requirements to prove that a project is grandfathered, should be written in the regulations. The regulation should also clarify to which sections the grandfathering would apply.</p> <p>Mitigation for C1 and C2 Forest Cores It is our opinion VDCR’s EcoCores dataset is fallible and not suited for the use in which this proposed regulation would apply it. The EcoCores dataset was last updated in 2011, and it does appear that VDCR has plans to update it. VDCR’s website that the dataset was created to</p>	<p>Grandfathering Clause The grandfathering clause is included in 9VAC15-60-20. Language has been added throughout the regulation to clarify which provisions apply to applications received on or after the effective date of the revised regulation.</p> <p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Definition of Contiguous Forest Land The definition of contiguous forest land has been amended to state that forested areas separated by any waterbody less than 200 feet in width is considered contiguous.</p> <p>Definition of Forest Land Virginia Code §1197.6 J. requires the language in the proposed regulation.</p> <p>Revised NOI</p>

	<p>inform “landscape-scale” conservation efforts, not determine site-specific mitigation thresholds. The EcoCores data is a low-resolution raster dataset, making it an inadequate resource for determining site-specific impacts. Furthermore, it our understanding from the public hearing Q&A session held at the DEQ, that if an EcoCore has been degraded since the dataset was created in 2011, that would not factor into the required mitigation. Therefore, a project may be stuck mitigating for impacts it did not cause.</p> <p>In addition to the above over-arching comments, we offer the below comments/questions regarding specific sections of the proposed regulations.</p> <p>Definition of Contiguous Forest Land The term waterbody should be clarified to a waterbody less than 200’ wide. We believe waterbodies 200’ and greater would “break” the contiguity.</p> <p>Definition of Forest Land Forest land - suggest rewording: "...except that any parcel shall be considered forest land if it was forested at least two years prior to the department's receipt of a draft permit application at the start of the public notice period."</p> <p>Revised NOI In 9VAC15-60-30 A 1 c, regulation should clarify in what scenarios the clock on the 90-day NOI period would restart.</p> <p>Forest Lands Enrolled in A Program for Forestry Preservation New language in 9VAC15-60-30 A 2: "The certification shall also include a statement of the area of the project enrolled in a forestry preservation program pursuant to subdivision 2 of Sect. 58.1-3233 of the Code of Virginia (i.e., classified by the local assessor as forest use for use-value assessment.) - Does this mean land in ag/forestal districts? What if the CUP / zoning approval lifts this designation?</p> <p>Authorization to Construct & Operate New language in 9VAC15-60-30 C 1 a: "The authorization to construct and operate shall become invalid if (i) a program of continuous construction or modification is not begun within</p>	<p>Submission of a revised NOI does not automatically restart the 90-day period, but the nature of the revision could require the applicant to hold a new public comment period.</p> <p>Forest Lands Enrolled in A Program for Forestry Preservation A definition has been added for “Forest lands enrolled in a program for forestry preservation”. Consistent with the intent of Virginia Code Section 10.1-1197.6 J, this definition includes forest land that has been withdrawn from a forestal district with approval of the local governing body as part of the approval of a solar project.</p> <p>Authorization to Construct & Operate This section has been amended to apply the five-year expiration period to applications approved after the effective date of this regulation.</p> <p>45-Day Public Comment Period Virginia Code §10.1-1197.6 B 8 requires an additional 45-day public comment period if a mitigation plan was not provided as part of the initial application. DEQ may also require additional public comment if deficiencies are identified in an application and required revisions constitute a substantive change in the application from what was subject to the initial comment period.</p> <p>Phase I Architectural Survey The requirement for a Phase I Cultural Resources Survey is in the existing regulation and no changes to this requirement have been proposed. A Phase I Cultural Resources Survey consists of an Architectural Survey and Archaeological Survey components. An Architectural Survey entails photographing and recording on standard forms all structures 50 years or older within the project impact area and within 0.5 miles of the perimeter. This 0.5-mile survey envelope may be reduced if it can be</p>
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	<p>60 months from the date the PBR or modification authorization is issued or (ii) 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. Routine maintenance is not considered a modification of a project." Does this apply to projects that have been issued PBRs prior to the regulation taking effect?</p> <p>45-Day Public Comment Period New language in 9VAC15-60-30 C 4: "If the application was not approved because a proposed mitigation plan was not provided by the applicant as part of the initial application and the department determines there are significant adverse impacts, the applicant shall provide a 45-day public comment period detailing reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts and to measure the efficacy of those actions. The public comment shall follow the procedures set forth in 9VAC15-60-90, except that the public comment period shall be 45 days." Does this mean that only deficiencies in the mitigation plan will require a new public comment period?</p> <p>Phase I Architectural Survey Revised / New language in 9VAC15-60-40 B 2: "A Phase I architectural survey of all architectural resources, including cultural landscapes, 50 years of age or older within the disturbance zone and within one-half mile of the disturbance zone boundary and an evaluation of the potential eligibility of any identified resource for listing in the VLR. The architectural survey area may be refined by the applicant based on an analysis of the project's existing viewshed to exclude areas that have no direct visual association with the project. The applicant shall provide detailed justification for any changes to the survey area." How does a project justify this? Desktop / GIS based viewshed analysis or is a field visit required?</p> <p>Natural Heritage Data Explorer Study Revised / New language in 9VAC15-60-40 C: "The applicant shall conduct a preconstruction desktop survey of natural heritage resources and</p>	<p>demonstrated that terrain and/or substantial forest cover shields the view of and from the proposed installation. Substantial forest cover would consist of broad areas of forest lands that can be assumed to have reasonable permanence, especially lands under preservation easement or in state or federal government ownership/control. A thin strip of forest in private ownership that could readily be timbered would not be suitable justification for shrinking the survey envelope. Documentation of terrain or vegetative interruption a viewshed could rely on GIS-based analysis or in person site visits or a combination thereof. However, findings of such analysis would have to be reviewed by DEQ and DHR and be defensible by the prospective applicant by way of objective standards and criteria.</p> <p>Natural Heritage Data Explorer Study Developers conduct desktop studies through DCR's Natural Heritage Data Explorer (NHDE) to determine project feasibility. This could potentially be months or years prior to submission of a NOI or PBR application. To ensure that developers have the most current and best available data from early planning to construction phases, DCR will revise reviews of projects every six months, based on quarterly-updated data on Natural Heritage Resources. The regulatory language clarifies that the applicant should submit the most recent NHDE analysis, which must be dated within six months prior to application submittal. Application submittal is when the items required by Virginia Code §10.1-1197.6 B are submitted and not when the NOI is first submitted.</p> <p>Alternative Map of Prime Agricultural Soils Any documentation submitted with the PBR application is subject to review and confirmation by DEQ.</p>
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	<p>Virginia Natural Landscape Assessment Ecological Cores within the disturbance zone within six months prior to the date of the application submittal. The analyses shall include the following:..." Is this the initial submittal prior to the public comment period or the final submittal after the public comment period? The 90-day NOI waiting period, plus a 45 day public comment period is already 4.5 months. It is likely that projects will have to consult with DCR twice during the PBR in order to meet this requirement.</p> <p>Alternative Map of Prime Agricultural Soils New language in 9VAC15-60-40 D 2: "The applicant may propose to the department an alternative map of the prime agricultural soils on the site based on a report prepared by a professional soil scientist licensed by the Commonwealth of Virginia. This report shall include records of soil samples and other documentation proving the boundaries of prime agricultural soils on the site that are inconsistent with the Web Soil Survey." Will the report / findings be subject to review and confirmation by DEQ?</p> <p>Mitigation for C1 and C2 Forest Cores Does the grandfathering clause included in Chapter 688 of the 2022 Acts of Assembly apply to impacts to EcoCores, or only prime farmland soils and forestland? If impacts to EcoCores are exempt from the grandfathering provision, this would have a devastating effect on projects currently under development.</p> <p>Undisturbed Land On-Site May Be Included in a Conservation Easement New language in 9VAC15-60-60 E 2: "The mitigation ratio may be reduced by providing conserved land containing riparian forest buffers within the easement. For riparian forest buffers, the mitigation ratio shall be reduced to one to two. Riparian forest buffers shall be a minimum of 35 feet. The portion of a riparian forest buffer exceeding 300 feet in width shall not count for purposes of the enhanced mitigation ratio." Can lands being used as Conserved Open Space for water quality also be put into perpetual easements to offset mitigation requirements for the PBR?</p>	<p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Undisturbed Land On-Site May Be Included in a Conservation Easement Undisturbed land on-site may be included in a conservation easement. 9VAC15-60-60 G 6 prohibits counting land that is already subject to a conservation easement or deed restriction from counting as mitigation but does not prohibit land that is undisturbed as a condition of a stormwater management plan from counting.</p> <p>Prime Agricultural Soils Overlain by Forest Land On-site soil mitigation does not address impacts to forest land so off-site mitigation for forest land would still be required. DEQ deleted the requirement to mitigate C1 and C2 forest cores in the final regulation. See response to comment 4 regarding C1 and C2 forest cores.</p> <p>Innovative Mitigation Alternatives Alternatives will be approved at DEQ's discretion and must be consistent with the intent of HB206. See response to comment 4 regarding innovative mitigation alternatives.</p> <p>Change to Amount of Acreage in Off-Site Easement Adjustments to the proposed mitigation may be made until payment of the in-lieu fee or recordation of the easement. If an approved PBR is modified in a way that requires additional mitigation, the additional mitigation must be provided.</p> <p>Site Plan 9VAC15-60-70 C allows for changes in the final plan without revision of the PBR under certain circumstances.</p>
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	<p>Prime Agricultural Soils Overlain by Forest Land New language in 9VAC15-60-60 E 6: "When significant adverse impacts affect prime agricultural soils overlain by forest land, the applicant shall provide a conservation easement for land containing forest land within the mitigation district at a mitigation ratio of one to one. For example, disturbance of 11 acres of prime agricultural soils overlain by forest land shall require 11 acres of conserved forest land." Can the strategies in Table 1 (Options to preserve prime ag soils) be incorporated to reduce the mitigation requirements? How would the overlap of EcoCores on either prime farmland soils or forest land be taken into consideration for mitigation calculations.</p> <p>Innovative Mitigation Alternatives New language in 9VAC15-60-60 E 7: "An applicant may propose innovative alternatives to the required mitigation. An example could include restoration of a degraded site to restore the characteristics of prime agricultural soils. The department may accept innovative proposals by the applicant as alternative mitigation and adjust required mitigation ratios to reflect added benefits." Does this have to be offsite? How is degraded being defined?</p> <p>Change to Amount of Acreage in Off-Site Easement New language in 9VAC15-60-60 G 2: "Closing on any required easements shall occur within one year of the date of issuance of the PBR, unless extended by the department for good cause. Any superior lien shall be subordinated to the easement at closing." What if the array area shifts during Site Plan and the amount of off-site easements change?</p> <p>Site Plan Revised / New language in 9VAC15-60-70 A 8: "The applicant shall submit a site plan that includes maps showing the physical features, topography, and land cover of the area within the site, both before and after construction of the proposed project. The site plan shall be submitted at a scale sufficient for project review, may include multiple pages, and shall include, the following: ..." "Expected types and</p>	<p>Adjustments to the proposed mitigation may be made until payment of the in-lieu fee or recordation of the easement.</p> <p>Recordkeeping and Reporting The applicant or owner will need to certify that they meet the specific conditions of the PBR which will include the measurement of compliance.</p>
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	<p>approximate areas of permanent stormwater management facilities;...." We are assuming this will be a conceptual level stormwater management plan, as the detailed construction plans are not typically prepared at this stage of development.</p> <p>New language in 9VAC15-60-70 C: "In the event an approved PBR includes mitigation requirements pursuant to 9VAC15-60-60 E, F, or G and the proposed mitigation zone changes from what is shown on the site plan approved with the PBR, the applicant shall submit a final development site plan including tabulation of areas required pursuant to subsection A of this section. The final development site plan shall be submitted to the department along with conservation easements or the in-lieu fees required pursuant to 9VAC15-60-60. Provided the changes were the result of optimizing technical, environmental, and cost considerations and do not materially alter the environmental effects caused by the facility or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain, the final development site plan shall not be deemed a revision of the PBR." Does this mean that if the PBR proposes to impact 50 acres of prime ag soils, you can shift the arrays as long as you don't impact any more than 50 acres? Since the off-site easements will have already been purchased or the in-lieu fees already paid, optimizing the array area out of these areas isn't really incentivized unless a refund is an option.</p> <p>Recordkeeping and Reporting New language in 9VAC15-60-100 D 1 e: "Recordkeeping and reporting shall be provided as follows:...For projects that contain mitigation for view shed protection or historic resources, a post-construction demonstration of completed mitigation requirements according to the approved mitigation or landscape plan within 90 days of completion of such work." How will this be determined? Is showing that the trees have been planted enough? Or will trees have to be at certain height / maturity?</p>	
<p>19. Andrew Durfee</p>	<p>I think this is a fantastic step forward to the ethical implementation of more renewable energy in Virginia. I think the requirement of analysis of the beneficial and adverse impacts of a proposed</p>	<p>Support for the proposal is appreciated.</p>

	<p>solar project helps avoid a major argument against such endeavors.</p>	
<p>20. Virginia Cattlemen’s Association- Jim Riddell</p>	<p>VCA supported HB 206 in 2022 as it is a tool to help protect vital farm and forestland resources for future generations.</p> <p>In-Lieu Fee (ILF) Trustee We support allowing additional options and recommend that in lieu mitigation dollars collected be deposited into the Virginia Department of Forestry’s Office (VDF) of Working Lands. Funds deposited at VDF will make a major impact in keeping “working lands” and do the most for the public good to protect operating farm and forest resources long term.</p> <p>Allowance of Silvicultural Activities However, it is quite important that all future mitigation using matching easements allow commercial agricultural and silvicultural operations to continue and not impose restrictions which would negatively affect agriculture and forestry enterprises.</p> <p>In-Lieu Fee (ILF) Calculation We also support and recommend using the State Land Evaluation Advisory Council (SLEAC) for all value calculations. SLEAC is the accepted statewide authority on value for farmland and forestland and can effectively and efficiently determine these calculations. We support Dr. Lee Daniels research and recommendations from Virginia Tech regarding compaction damage and steps to mitigate. Dr. Daniels is a renowned soil researcher whose work has defined evaluating, repairing, and improving disturbed and compacted soils involving harsh environment sites such as utility solar facilities and strip mines.</p> <p>Decompaction of Subsoil 9VAC15-60-60 Section E, Part 3, Table 1, Option 2 We support changing the Mitigation Actions Required language in 9VAC15-60-60 Section E, Part 3, Table 1, Option 2 to the following: “Areas with changes in grade due to cut and fill with removal and return of topsoil, decompaction of topsoil and subsoil to six inches following installation, maintenance of > 75% living vegetative cover for project lifetime, and decompaction to > 24” and surface soil</p>	<p>Support for the proposal is appreciated.</p> <p>In-Lieu Fee (ILF) Trustee See response to comment 4 regarding ILF trustee.</p> <p>Allowance of Silvicultural Activities See response to comment 14 regarding silvicultural activities.</p> <p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation.</p> <p>Decompaction of Subsoil 9VAC15-60-60 E 3, Table 1, Option 2 See response to comment 7. DEQ’s subject matter expert agreed with this recommendation.</p>

	<p>amendment after decommissioning.” Rationale: The current language specifies decompaction of the subsoil (in addition to topsoil) following installation which is not feasible in many site settings following panel installation. As long as the returned topsoil is decompacted to six inches, a certain amount of improvement in the quality of the subsoil is to be expected over the operational (20 to 30 years) period due to rooting and other processes, assuming 75% living vegetation is maintained. However, the deep ripping/decompaction to > 24 inches will be essential for site decommissioning to ensure reasonable levels of soil productivity for agriculture or forestry.</p>	
<p>21.Dominion Energy</p>	<p>Clarify Compliance for Managed Grazing The Company suggests providing additional clarity by specifying the method used to demonstrate compliance with the definition of managed grazing over a typical 25–30-year project lifetime. Include minimum operational specifications for grazing activity such as the percentage of the site used for grazing or number of livestock used. The Company also recommends addressing agency expectations if a project is unable to maintain grazing operations due to unforeseen circumstances including insufficient availability of livestock, contractual challenges, etc. Additionally, the Company recommends the proposed regulation include an option for partial mitigation credit to be granted if a project is only able to commit to or carry out grazing for a set period of time rather than the life of the project.</p> <p>Virginia Pollinator Protection Strategy Recommend removing this definition, as it is not used anywhere in the proposed regulation.</p> <p>NOI Submittal to Locality 9VAC15-60-30.A.1 (a) (1) states that the NOI shall be submitted 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 the department. To help facilitate compliance, Dominion Energy recommends DEQ establish a resource listing the contacts that will satisfy this requirement for each locality in order to provide applicants with certainty in meeting this requirement. Applicants may be challenged to</p>	<p>Clarify Compliance for Managed Grazing If an applicant selects managed grazing as an optional on-site mitigation, they will submit a site-specific plan which will include their proposal to determine compliance. The plan will be reviewed and approved as part of the Permit by Rule.</p> <p>Virginia Pollinator Protection Strategy There is no definition of Virginia Pollinator Protection Strategy included in the proposed language.</p> <p>NOI Submittal to Locality The applicant works closely with locality officials early in the project development and approval process; therefore, the applicant should be responsible for sending a copy of the notice of intent to the chief administrative officer and chief elected official in the locality.</p> <p>Predicted Suitable Habitat Model Regulatory language states that no mitigation will be required as a result of the use of predicted suitable habitat (PSH) model. PSH models are developed and maintained by DCR. DCR has indicated that use of the PSH model is currently part of the DCR standard review process and included in DCR's project review/report and has been used in all environmental reviews at DCR for</p>

	<p>direct the NOI to the appropriate contacts due to the use of different titles for applicable positions and changes in personnel at the locality level.</p> <p>Predicted Suitable Habitat Model 9VAC15-60-40.C.1.b requires applicants to submit an analysis that includes the intersection of the site with predicted suitable habitat (PSH) models developed by DCR for rare, threatened and endangered species. Although the proposed language does not specifically state how the results of DCR’s PSH models would be evaluated as part of the application, the Company recommends that the requirement to include this information be removed. The regulation already contains requirements to include information on regulated threatened and endangered species, which should be sufficient to identify where adverse impacts are occurring and mitigation may be required. DCR has developed PSH models for species that are regulated by other agencies such as the Department of Wildlife Resources and the U.S. Fish and Wildlife Services, who have not adopted these PSH models for their use. Decisions regarding whether onsite surveys or mitigation for impacts to protected species are required should only be based on coordination with state and federal wildlife agencies with jurisdiction over those resources. These venues are the most appropriate for this determination and will avoid duplication of governmental activities. Any requirement for applicants to conduct field surveys or plan to mitigate for impacts to non-regulated species based on the results of a PSH model is an unreasonable and potentially prohibitive burden for projects. Decisions regarding whether onsite surveys or additional actions are necessary as a result of PSH output should be left to the applicant based on an informed evaluation of site-specific conditions and considerations.</p> <p>Virginia Solar Site Pollinator/Bird Habitat Scorecard 9VAC15-60-40.C.2 indicates that the applicant’s preconstruction desktop survey of natural heritage resources and Virginia Natural Landscape Assessment Ecological Cores within the disturbance zone...shall include A completed DCR Virginia Solar Site Pollinator/Bird Habitat</p>	<p>over 5 years to streamline the review process. DCR uses the same models as Fish and Wildlife Service (FWS) to decrease the frequency and number of projects requiring full review. Models are used to screen projects, to determine if they need to be reviewed by a biologist. When there is a biologist's review, there may or may not be recommendation for a site visit.</p> <p>Virginia Solar Site Pollinator/Bird Habitat Scorecard DEQ has removed the language in 9VAC15-60-90 C 2 requiring completion of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard as part of the desktop analysis. Participation in the Pollinator Smart Program as a management alternative to decrease off-site conservation is voluntary under HB 206.</p> <p>Mapping Prime Agricultural Soils and Forest Land HB 206 incorporates the USDA definition of prime agricultural soils. Resources are provided on the National Resources Conservation Service (NRCS) Web Soil Survey (WSS) website and on-site field verification of soil is optional under 9VAC15-60-40 D 2. The NRCS provides soil resource information and land use interpretations on the behavioral characteristics of soils, based on soil mapping completed at a scale ranging from 1:15,840 to 1:24,000. DEQ has no resources to check the accuracy of USDA mapping. If the developer disagrees with the NRCS maps, they have the alternative of contracting with a licensed, professional soil scientist for an evaluation.</p> <p>Mitigation for C1 and C2 Ecological Cores See response to comment 4 regarding mitigation for C1 and C2 ecological cores.</p> <p>Accounting for Previous Land Use HB 206 requires mitigation of disturbance of prime agricultural soils,</p>
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	<p>Scorecard. The Pollinator/Bird Habitat Scorecard is not an element of the DCR natural heritage or ecological core database. If required, the Scorecard should not be listed under item “C” of the referenced subsection but should be pulled out as item “D” or other subsequent section. However, Dominion Energy recommends that completion of the Scorecard should be optional and not a required component of the application unless the applicant is proposing to use pollinator habitat as a compensatory measure for prime agricultural soil impacts. A complete Scorecard includes a project vicinity map, planting plan, documentation of seed mix and seeding rates, an optional vegetation management plan, a vegetation monitoring plan, invasive species mapping, documentation of any research collaboration, and site photos. Given the amount of information, level of design, and personnel required to fully complete the scorecard, an entity completing the Scorecard will incur considerable costs without meaningfully adding to the information provided in the application if a project does not intend to pursue a pollinator smart certification.</p> <p>Mapping Prime Agricultural Soils and Forest Land 9VAC15-60-40 D states that in mapping prime agricultural soils on the site, the applicant shall use the U.S Department of Agriculture Natural Resources Conservation Service Web Soil Survey (Web Soil Survey) to map prime agricultural soils on the site...The applicant may propose to the Department an alternative map of the prime agricultural soils based on a report prepared by a professional soil scientist licensed by the Commonwealth of Virginia. This report shall include records of soil samples and other documentation proving the boundaries of prime agricultural soils and the site that are inconsistent with the Web Soil Survey. 9VAC60-40.E requires the applicant to submit information showing all forest land within the boundaries of the site. While the Company appreciates the flexibility of allowing soil mapping to be developed via desktop analysis or field verification, it is worth noting the limitations of the Web Soil Survey platform that resulted in the need to allow for field verification and the additional burden this places on projects. Some of the soil surveys conducted to inform Web Soil Survey mapping were</p>	<p>and provides no basis for reducing protections if the soils are not presently used for agricultural activities. The regulation provides sufficient explanation of the on-site mitigation options, but DEQ may provide additional guidance in the future.</p> <p>Silviculture Restricting conservation easements to ensure protection of the relevant resource is in line with the intent of HB 206. DEQ did delete the language in 9VAC15-60-60 G 7 regarding conservation easement disturbance restrictions for C1 or C2 forest cores on conserved land.</p> <p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation.</p> <p>Site Plan and Context Map Requirements The PBR application is submitted after local government approvals which typically require a similar level of detail. If necessary, revisions can be made post-approval. 9VAC15-60-70 A has been revised to address the comment.</p> <p>Revision to PBR The language in this section is determined by Virginia Code Section 10.1-1197.6 A 11.</p> <p>Operational Plans DEQ has removed the language in 9VAC15-60-80 B.</p> <p>Administrative Amendment This concept is outside the scope of what HB 206 requires, but DEQ may consider guidance to address this in the future.</p> <p>Modification The proposed modification process is consistent with its obligation to public notice and comment in the Code of Virginia and the regulation.</p> <p>Reporting Requirements</p>
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	<p>conducted several decades ago. The quality of soil can change significantly over time, especially if the land is being intensely farmed or subjected to other intense uses. For this reason, it will likely be routinely necessary for applicants to field verify soils data. For large sites, this is a burdensome and potentially costly upfront expense that may challenge project viability. Given that the economics of the project cannot be fully vetted until the mitigation requirements are understood, this creates unreasonable complexity and financial burden for projects to absorb.</p> <p>Similarly, mapping of forest lands will most likely require field analysis and verification with similar impacts to the project.</p> <p>In order for the PBR regulation to be implemented as intended and avoid undue burden on solar development, reliable and accurate information on the location of prime agricultural soils and forested lands must be made available for developers so that the implications of these regulations can be fully understood early in project development and without unreasonable cost to the applicant.</p> <p>Mitigation for C1 and C2 Ecological Cores Dominion Energy embraces protection of areas of high ecological integrity and implementing sound environmental practices to protect wildlife. However, the Company notes that the ecological core designation can be limited by the quality of the data on which the model is based and may be inconsistent with on the ground conditions. Ecological cores are identified using the VNLA, which was last updated in 2017. It is based on the 2011 National Land Cover Database, which can reflect the ground conditions from years prior to 2011. Over a nearly 15-year period of time, it is highly possible that C1 and C2 areas have been fragmented by development.</p> <p>We appreciate that the regulatory language acknowledges the value of verifying the presence of C1 and C2 Cores via a site visit and request further verification regarding how an applicant may demonstrate that the solar project will not cause a significant adverse impact to C1 and C2 Cores.</p> <p>The Company proposes that demonstrating a permanent change in the use (from forest) or ongoing disruption of forest cover for the</p>	<p>DEQ has removed the language in 9VAC15-60-100 D 1 c.</p> <p>Fees Fee payment is due at the time of application submittal and constitutes a complete application as per the Code of Virginia and 9VAC15-60-30 A 15.</p>
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	<p>previous two years should sufficiently demonstrate previously existing disturbance to the C1 or C2 Core. In that case, the solar project should not be viewed as having a significant adverse impact to the VNLA C1 and C2 Ecological Cores. Additionally, demonstrating that areas designated as C1 and C2 have been historically managed for timber should be factored and the model designation adjusted to account for the fact that managed timber does not provide the same level of ecological integrity as unmanaged timber. This fact is supported by the condition of 9VAC15-60-60.G.7 to not allow disturbance in conserved land for C1 and C2 impacts.</p> <p>9VAC15-60-60.D states that If impacts to C1 or C2 forest cores cannot be avoided, mitigation shall be required in the form of a conservation easement or easements. For disturbance of C1 forest cores, the applicant shall provide a conservation easement or easements for land containing C1 forest cores within the same mitigation district at a mitigation ratio of 7:1. For disturbance of C2 forest cores, the applicant shall provide a conservation easement or easements for land containing C2 forest cores within the same mitigation district at a mitigation ratio of 2:1.</p> <p>In addition to the concerns expressed with the Ecological Core model listed in previous comments, the model was not developed as a tool for implementation of a regulatory program. Rather, the model was designed as a guide for agencies or land conservation groups to use in working with interested landowners and/or localities to protect high priority areas under formal conservation agreements. Any requirement to mitigate for impacts to Forest Cores at a higher mitigation ratio than what is required for impact to forest lands under HB206 will result in inconsistent and imbalanced impacts to clean energy development projects.</p> <p>Furthermore, it is unclear how the 7:1 and 2:1 mitigation ratios for C1/C2 Cores were developed and what criteria were used as justification. Both the proposed mitigation ratios and absence of a process for evaluating functions and values do not appear to be consistent with mitigation required for similar resources under other programs, such as forested wetlands systems under the Virginia Water Protection regulations. If</p>	
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	<p>mitigation for C1/C2 Forest Cores is required, applicants must be able to identify the metrics used to determine core designations to most effectively minimize impacts to those attributes when siting projects.</p> <p>In addition, if mitigation for C1/C2 Forest Cores is required at a higher ratio than other forest types, these same ratios should also be applied to acres preserved for mitigation. For example, each 1 acre of mapped C1 Forest Core conserved off site should mitigate for 7 acres of C5, C4, C3 or non-Ecological Core modeled forest land disturbed on site. To maintain consistency and help the regulated public, the Department should develop a comprehensive mitigation table that clearly outlines consideration of conserving C1 and C2 Forest Cores to compensate for forest impacts.</p> <p>Accounting for Previous Land Use 9VAC15-60-60.E states that For prime agricultural soils disturbed by the project, the applicant shall provide mitigation by a conservation easement or easement of land containing prime agricultural soils within the mitigation district at a mitigation ratio of 1:1. Prime farmland is a designation based on soil quality and is not based on how the land is used. Given the broad application of the prime agricultural soil classification, Dominion Energy recommends DEQ further refine mitigation ratios to reflect the presence or absence of pre-existing agricultural activities as well as the potential beneficial ecosystem services impacts and enhancement associated with converting the land to solar. In particular, prime agricultural soils that are not actively being utilized for farming or which are otherwise unfarmable at the time of application should not require any mitigation since there is not an impact on the local agricultural economy from converting prime farmland to solar. The Department of Energy Surface Mining Reclamation Regulations in 4VAC25- 130-700.5 define “historically used cropland” in a manner that may be helpful for setting a standard to determine whether impacted soils should be considered prime agricultural soils that are part of a farming operation at the time the solar development is proposed. Modifying the regulation in such a manner can also drive solar development toward</p>	
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	<p>land not currently being used for agricultural purposes where feasible.</p> <p>Accounting for the previous land use also highlights how solar development can result in significant ecosystem services improvements. Solar deployment can reduce pesticide and herbicide use, improve nutrient cycling, and water retention compared to traditional row crop agriculture. Solar can thus play an important role in reducing water quality impacts from agriculture. Mitigation burdens should reflect these benefits such that land converted from traditional agricultural practices is subject to a mitigation ratio less than 1:1.</p> <p>Table 1 shows that Areas with no change in grade or topsoil removal, no trenching, maintenance of > 75% living vegetative cover, and decompaction to > 6" after decommissioning can provide partial mitigation for impacts to prime agricultural soils.</p> <p>Dominion Energy recommends the development of guidance to explain expectations for meeting the condition to achieve partial mitigation. At minimum, the guidance should 1) clarify whether > 75% living vegetative cover must be maintained across the site for the duration of construction or whether this is a post construction requirement; 2) if > 75% vegetative cover is required for the duration of construction, provide description of means and methods for accessing and installing solar array and associated equipment that would achieve this requirement; and 3) clarify how the intent to conduct decompaction > 6" after decommissioning of the facility will be demonstrated and expectations for addressing as part of the PBR program if decompaction is not feasible at the end of the project life for any reason.</p> <p>Silviculture</p> <p>9VAC15-60-60.G.7 states Every conservation easement for prime agricultural soils shall allow agricultural activities on the conserved land. Every conservation easement for forest land shall allow silvicultural activities on the conserved land. Every conservation easement for C1 or C2 forest cores shall restrict disturbance of the conserved land. Mandating or limiting specific uses and activities within conservation easements that only apply to this regulation</p>	
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	<p>disproportionately impacts small solar renewable energy projects without substantiation. Other conservation easements do not have the same requirements, and it is Dominion Energy’s recommendation that 9VAC15-60-60.G.7 be removed entirely.</p> <p>In-Lieu Fee (ILF) Calculation Developers will need a clear and predictable method for understanding what the in-lieu fee will be for a particular project in order to accurately plan for and assess project viability. Additional detail should be provided regarding how “projected administrative costs” will be calculated or can be estimated by the applicant. If option (ii) is used to calculate the in-lieu fee, it is unclear what the difference would be between the most recent assessed use value per acre and the full assessed value per acre prior to reassessment as a solar use. As written, it would appear that these two numbers should be substantially similar, assuming the land is still in agricultural or silvicultural use prior to development as a solar facility. Given that it is unlikely that option (ii) would result in a substantially higher value and to ensure clarity as to the anticipated in lieu fees, the Company recommends using the cost per acre method as the basis for determining the in-lieu fee amount. This provides the added benefit of minimizing the administrative burden for both the Department and the regulated entity.</p> <p>Site Plan and Context Map Requirements 9VAC15-60-70 includes a list of items that are required elements of the site plan submitted with the PBR application. Several of these items are not feasible to include based on the design stage of project at the time of application submittal. In particular, the location, grades and dimensions of all temporary and permanent on site and access roads may not be known or may change over the course of project design. Dominion Energy recommends allowing alternate information such as the identification of expected access points and account for expected roads as part of the project’s “disturbance zone” without depicting the exact location, dimensions, and grades of roads. In addition, item 10 should be clarified to indicate that the application requires a plan showing mitigation measures and resources</p>	
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	<p>subject to mitigation required by the PBR regulation. Mitigation required under other regulatory programs may not be known at the time of PBR application submittal.</p> <p>9VAC15-60-70.B requires that the context map show Chesapeake Bay Resource Protection Areas pursuant to 9VAC25- 830-80...farmland, brownfield sites... It is likely that the location of Chesapeake Bay Resource Protection Areas will not be confirmed at the time of PBR submittal as localities often include their review and confirmation of these features in their site plan review/approval process. The Company suggests the requirement to show RPAs should be removed.</p> <p>Dominion Energy advocates for additional information being provided regarding the resource used to determine the presence of farmland and brownfield sites. Since the requirement is to show these features within five miles of the site boundary, to ensure consistency in the information provided across applicants, a desktop resource with a set standard should be identified.</p> <p>9VAC15-60-70.C states The final development site plan shall be submitted to the department along with conservation easements or the in-lieu fees required pursuant to 9VAC15-60-60.</p> <p>Provided the changes were the result of optimizing technical, environmental, and cost considerations, do not materially alter the environmental effects caused by the facility, or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain, the final development site plan shall not be deemed a revision of the PBR.</p> <p>Revisions to PBR</p> <p>The Company appreciates DEQ's efforts to ensure that changes to the project reflected in final development site plan may not result in a revision to the PBR. It should be noted that relatively minor changes in the site design that do not materially alter the environmental effects caused by the facility may "alter" other environmental permit requirements. These may include adjustments in the location of permanent stormwater management facilities to address agency comments received through the review process or adjustment in known impacts to wetlands or waterways as the site design is</p>	
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	<p>finalized. As long as the appropriate environmental permits are obtained prior to construction (as certified in the PBR application) and the scope of environmental permits contemplated in the PBR application does not change, there should be no requirement to revise the PBR. To ensure transparency, Dominion Energy recommends clarification on what alterations to environmental permits related to optimizing technical, environmental, and cost considerations would warrant a revision to the PBR.</p> <p>Operational Plans 9VAC15-60-80.B states The applicant shall prepare an operation plan detailing operational parameters for the project including (i) remote monitoring or staffing requirements, (ii) emergency procedures and contacts, (iii) vegetation to be used within the disturbance zone, and (iv) application frequency of herbicides over the life of the project. Owners and operators are encouraged to utilize the link to the VDACS Fieldwatch (9VAC15-60-B 6) prior to the application of either pesticides or herbicides. Dominion Energy suggests that the level of proposed detail required in the operational plan disproportionately impacts small solar renewable energy projects without substantive benefits. In some cases, the elements proposed may not be known at the time of the PBR application and may be subject to change over the 25-30 year lifespan of the project.</p> <p>Administrative Amendment Dominion Energy appreciates DEQ's clarifications to the PBR change of ownership as an administrative amendment. The Company further suggests that in accordance with § 10.1-1197.6.11, changes to the site plan that occur after the applicant has submitted an application shall be allowed by the DEQ without restarting the application process, if the changes do not materially alter the environmental effects caused by the facility, or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain. In other words, changes occurring any time after the application was submitted and throughout the life of the project that meet these parameters should be allowed via an administrative amendment.</p>	
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	<p>Dominion Energy suggests expanding the administrative amendment section to address qualifying changes.</p> <p>Modification In addition, some changes made in order to optimize technical, environmental, and cost considerations will not materially alter the environmental effects caused by the facility but may alter other environmental permits that the Commonwealth requires the applicant to obtain. If an applicant coordinates with the appropriate agency having jurisdiction over the alteration of environmental impacts and receives the applicable permits/approvals from the relevant agency, the Company suggests that an abbreviated modification process be provided to incorporate such changes into the PBR authorization. This modification process should not require the applicant to execute a full modification that includes a certification from the local government and a public comment period.</p> <p>Reporting Requirements 9VAC15-60-100.D.c states that the permittee shall report The date of any onsite construction or significant onsite maintenance that could impact the project's mitigation and avoidance plan within 15 days after such date. It is unclear to the Company what types of activity would be subject to this 15-day reporting requirement. Dominion Energy suggests that DEQ provide examples and further define what types of mitigation and avoidance is being referenced.</p> <p>Fees 9VAC15-60-110.B.1 states All permit application, modification, or CAPZ mitigation fees, if applicable, are due at the time of application or modification submittal. Dominion Energy recommends modifying this language for consistency with the timing required for payment of in lieu fees which must be paid prior to beginning construction. Payment for mitigation prior to construction ensures that fee calculation is based on the most current information available and provides the applicant to adjust payment based on any changes in project design that occur during the PBR application review process. Modification of the language would ensure the payment schedule is consistent with other permitting programs of the Commonwealth</p>	
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	<p>that require upfront initial application fees and mitigation payment prior to construction.</p>	
<p>22. Chesapeake Bay Foundation</p>	<p>Overall, the Chesapeake Bay Foundation (CBF), believes the HB 206 Draft Regulations create a workable approach that will encourage more thoughtful solar facility siting as well as improved construction practices while protecting important forest lands and prime agricultural soils. CBF hopes HB206 will help direct siting of solar projects on previously degraded or disturbed lands.</p> <p>The HB 206 draft regulations provide important flexibility to solar developers by providing the ability to ground truth the accuracy of prime agricultural soil mapping, providing multiple avenues to reduce mitigation requirements as well as different methods to meet the mitigation requirements and the option for an in-lieu fee.</p> <p>Riparian Forest Buffers Proposed mitigation ratio reduction for forested riparian buffers on land to be conserved for mitigation (9 VAC 15-60-60(F)(2)) should be tweaked. Where a property proposed for conservation has riparian areas, there is already an obligation for a conservation easement holder to protect the conservation values associated with that riparian area and a 35-foot buffer is already a standard practice utilized by most easement holders. CBF recommends that DEQ revise 9 VAC 15-60-60(F)(2) to allow mitigation ratio reduction only for the portion of a buffer that exceeds 35 feet (and up to the 300 feet in the current draft).</p> <p>Innovative Mitigation Alternatives CBF also recommends additional guardrails on the proposed language that would allow an applicant to propose alternative mitigation (9 VAC 15-60-60(F)), including an opportunity for public involvement.</p> <p>On-Site Partial Mitigation Options for Prime Agricultural Soils Regarding on-site partial mitigation options, CBF recommends that DEQ clarify the implementation of the partial mitigation options outlined in Table 1 of section 9VAC15-60-60(E)(3). While the regulation provides three distinct options for preserving prime agricultural soils with corresponding mitigation ratios (1:10, 1:4, and 1:2), it fails to specify whether these options may be used in combination within a single project, for instance where different practices are applied in different portions of a larger project site, or</p>	<p>Support for the proposal is appreciated. Specific issues identified by the commenter are discussed in further detail below.</p> <p>Riparian Forest Buffers See response to comment 4 regarding riparian forest buffers.</p> <p>Innovative Mitigation Alternatives See response to comment 4 regarding innovative mitigation alternatives.</p> <p>On-Site Partial Mitigation Options for Prime Agricultural Soils Table 1 in 9VAC15-60-60 E 3, which addresses on-site partial mitigation for prime agricultural soils has been revised in accordance with the comment to specify that the applicant may apply different options to different areas of the site, but options may not be combined on the same portion of the site.</p> <p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Mitigation Districts See response to comment 4 regarding mitigation districts.</p> <p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation. DEQ has revised the in-lieu fee calculation to utilize State Land Preservation Tax Credit program (SLEAC) data and eliminated the statewide minimum. Data from the Land Preservation Tax Credit program is not consistently available due to confidentiality of tax returns.</p> <p>In-Lieu Fee (ILF) Administration See response to comment 4 regarding selection of the ILF trustee.</p> <p>Economic Impact Analysis See response to comment 4 regarding the economic impact analysis.</p>

	<p>whether developers must select and apply only one option across their entire project site.</p> <p>CBF supports the use of perpetual conservation easements on lands with comparable conservation values, held by qualifying and accredited holders under the Virginia Conservation Easement Act (Va. Code § 10.1-1009) or a public body in accordance with the Open-Space Land Act (Va. Code § 10.1-1700), are the appropriate means of mitigation.</p> <p>CBF supports the mitigation ratios in 9 VAC 15-60-60 requiring seven to one mitigation for C1 (Outstanding) and two to one mitigation for C2 (Very High) forest cores. CBF also supports the language in 9 VAC 15-60-50(C) requiring a site visit to verify these forest cores.</p> <p>Mitigation Districts The proposed watershed-based mitigation districts provide reasonable proximity of mitigation to impacts and CBF is generally supportive of the districts as proposed. However, other proposed mitigation districts not based on watersheds could also be appropriate and may better align with service areas of the many land trusts who are likely to hold the conservation easements used for mitigation.</p> <p>CBF also has concerns about the language in 9 VAC 15-60-60(G)(5): “In the event the applicant cannot locate land in the same mitigation district, the department may allow the land to be in an adjacent mitigation district.” This language lacks any guardrails or specificity as to what showing an applicant would need to make to demonstrate that it “cannot locate land” for mitigation within the mitigation district. CBF recommends that DEQ remove this language from the final regulations as an applicant would always have the option of using the in-lieu fee approach to meet mitigation requirements. CBF supports the inclusion of an in-lieu fee option in any final regulations; however, additional details, guardrails, and amendments to the draft regulations are needed to provide certainty and comfort that an in-lieu fee program will be appropriately administered, and that mitigation will occur in a timely and consistent manner.</p> <p>In-Lieu Fee (ILF) Calculation CBF feels that the use of anonymized data from the State Tax Department on conservation</p>	
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	<p>easement values under the state Land Preservation Tax Credit program is the soundest basis for making in-lieu fee cost determinations and requests that DEQ reconsider applying a standard, statewide in-lieu minimum fee. CBF recommends that the final regulations cite the formulation of a fee value based on the Land Preservation Tax Credit program and that such values be updated on a reasonable schedule to reflect changing values and inflation over time. DEQ should add additional clarity in the final regulations as to how the in-lieu fee trustee must implement the in-lieu fee program by specifying any conservation easement secured by the trustee through the in-lieu fee program must meet the same requirements as in 9 VAC 15-60-60(G). The regulation should also lay out certain minimum requirements for the trustee, such as expending funds to acquire easements within an appropriate time frame (to be complementary to the one year closing requirement for easements acquired by applicants) and caps on administrative fees.</p> <p>In-Lieu Fee (ILF) Administration CBF recommends that DEQ draft and adopt (subject to public comment) guidance to address the process of identifying and managing the trustee to administer the in-lieu fee program. This guidance should also include other details and considerations such as trustee eligibility requirements, expectations for administration, criteria for easement acquisition (such as easement size), and terms of a DEQ and trustee agreement.</p> <p>Economic Impact Analysis The economic impact analysis for the HB 206 draft regulations is fatally flawed and should not be relied upon. ORM and DPB should have analyzed studies on various ecosystem services and their associated economic benefits and included a reasonable range of economic values in the economic impact analysis. The many conservation values of forest and agricultural lands were a key driver of CBF's support for HB 206 in the General Assembly and the omission of any value on the natural resources benefits of these lands calls the entire economic impact analysis and any conclusions drawn therefrom as to the costs and benefits of the HB 206 Draft Regulations into question.</p>	
<p>23. Strata Clean Energy</p>	<p>On-Site Management Alternatives</p>	<p>On-Site Management Alternatives</p>

	<p>The definition of “active cropping including hayland,” should be amended to include a clause that allows for projects that are planting both pollinator species and hay to only mow the property once a year to maintain the health of the pollinator plant species. This will allow pollinator-friendly plants to complete crucial stages of their lifecycle (flowering and seed production) prior to harvesting hay.</p> <p>Definition of Forest Land The definition of "forest land" should be more clearly defined and should be consistent throughout the regulation. The definition should exclude hedgerows, isolated trees, and small isolated groups of trees less than one acre in size.</p> <p>Definition of Managed Grazing The definition for “Managed grazing” should have a clause adding a clarification to what area the 75% vegetative cover requirement applies. Does it only apply to the “grazed area”?</p> <p>Credit for Riparian Forest Buffer “Riparian forest buffer,” the mitigation credit should also be given for riparian forest buffers adjacent to intermittent waterbodies (i.e., streams) and ephemeral streams.</p> <p>Definition of Disturbance Zone Strata recommends revising the current definition of "disturbance zone" in the proposed regulations. DEQ should clarify that solar projects should only mitigate directly disturbed land, and remove the "100 feet from the boundary" language, and exclude areas outside the applicant's control.</p> <p>Change of Operator, Ownership or Controlling Interest Clarify Section 9VAC 15-60-30 A.1.D., “The applicant shall notify the department of any change of operator, ownership, or controlling interest for a project within 30 days of the transfer. No additional fee shall be assessed.” Change 30 days to 90 days to allow a reasonable amount of time to process the information and required forms.</p> <p>Forestry Preservation Program Certification Amend Section 9VAC 15-60-30 A.2., Strike “The certification shall also include a statement of the area of the project enrolled in a forestry preservation program pursuant to subdivision 2</p>	<p>If an applicant chooses to implement any of the on-site management alternatives (managed grazing; active cropping, including hayland; or establishment and maintenance of pollinator smart habitat/vegetation), in combination with onsite soil mitigation to reduce off-site mitigation, the applicant must select one alternative. If the applicant also chooses to implement any of the remaining alternatives on the same land area, additional off-site mitigation credits will not be given.</p> <p>Definition of Forest Land HB 206 specified that forest land has the same meaning as provided in § 10.1-1178 of the Code of Virginia and states that any parcel shall be considered forest lands if it was forested at least two years prior to the Department's receipt of a permit application. The existing definition of forest land in § 10.1-1178 defines forest trees.</p> <p>Definition of Managed Grazing If an applicant selects managed grazing as an optional on-site mitigation, they will submit a site-specific plan which will include their proposal to determine compliance. The plan will be reviewed and approved as part of the permit by rule.</p> <p>Credit for Riparian Forest Buffer Credit for riparian forest buffers has been removed. See comment 4.</p> <p>Definition of Disturbance Zone The definition of disturbance zone was amended to remove requirement for a 100-foot buffer to be included thus clarifying that the disturbance zone only includes areas of direct disturbance. The disturbance zone is used to determine permit applicability and should therefore not include the additional 100-foot buffer. Areas outside of the disturbance zone that are required to be surveyed as part of the analyses of natural and historic resources will be specified by DCR, DHR and DWR. Impacts associates</p>
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	<p>of § 58,1-3233 of the Code of Virginia, classified by the local assessor as forest for use-value assessment.” This is not an appropriate request of the County and is out of place in the context of the County confirming that the project is in compliance with local land use ordinances. It would be better directed to the Virginia Department of Forestry.</p> <p>William and Mary's Center for Conservation Biology (CCB) Under Section 9VAC 15-60-40 A.1., it is important to determine if William and Mary will be maintaining the bald eagle nesting location desktop website? What guarantee is there that the website will be maintained?</p> <p>Natural Heritage Data Explorer (NHDE) Study/Review Under Section 9VAC 15-60-30 C., the preconstruction desktop survey of natural heritage resources has a validity timeline currently of 6 months that should be changed to a year. Limiting the validity of the agency’s database results to 6 months creates an unreasonable cost and burden on the applicant to refresh the species study and update the report.</p> <p>Mitigation for C1 and C2 Forest Cores Strata has concerns on 9VAC 15-60-30 Section C., regarding the use of the Virginia Natural Landscape (VaNLA) Assessment of Ecological Cores to identify and mitigate disturbance of C1 and C2 ecological cores. The “landscape-scale geospatial analysis” assessed land cover at a ratio scale of 1:50,000, meaning that the analysis was completed statewide at roughly a 0.8-mile (4,166-foot) resolution. VaNLA utilizes land cover data from the National Land Cover Database (NLCD) collected in 2011, thus the information that informs ecological core classification will be at least fourteen years old. Mandating full Phase 1 cultural resource surveys upfront for permitting is excessively burdensome, costing \$200,000–\$300,000. These surveys should depend on desktop and limited pedestrian survey results rather than being required early in the development process. On-site wildlife surveys should not be blanket requirements but determined collaboratively between project proponents and state/federal wildlife agencies. DEQ has historically made recommendations beyond its jurisdiction, such as surveys for species managed by the</p>	<p>with this amendment will be positive because it will correct a long-standing misunderstanding of how buffers are supposed to work.</p> <p>Change of Operator, Ownership or Controlling Interest The PBR currently requires the current owner or operator to notify DEQ at least 30 days in advance of the transfer date. 9VAC15-60-100 A 4 was amended to require notification to be submitted to DEQ within 30 days of the transfer date. This was to address concerns raised during the 2019 RAP meetings that a notice 30 days in advance of a transfer is not feasible within the timeline of the transaction.</p> <p>Change of Operator, Ownership or Controlling Interest Enrollment in a forestry preservation program is determined by the local assessor and needs to be certified at that level.</p> <p>William and Mary's Center for Conservation Biology (CCB) Per a discussion with DWR, William and Mary’s Center for Conservation Biology (CCB) actively maintains the Eagle Nest Locator on the CCB website and there are no plans to discontinue this service.</p> <p>Natural Heritage Data Explorer (NHDE) Study/Review Developers conduct desktop studies through DCR’s Natural Heritage Data Explorer (NHDE) to determine project feasibility. This could potentially be months or years prior to submission of a NOI or PBR application. To ensure that developers have the most current and best available data from early planning to construction phases, DCR will revise reviews of projects every six months, based on quarterly-updated data on Natural Heritage Resources. The regulatory language clarifies that the applicant should submit the most recent NHDE analysis, which must be dated within six months prior to application submittal.</p>
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	<p>Using the Pollinator Smart Scorecard (Section C.2.), originally intended as a voluntary tool, for regulatory purposes is inappropriate. The scorecard, developed without industry input, is outdated and fails to account for challenges like soil composition, seed availability, costs, legal liabilities, fire hazards, and operational risks. The requirement for 30% of the project area to be covered in pollinator plantings for reduced mitigation obligations is overly burdensome and impractical. The final rule should clarify that prime farmland not under existing easements is eligible for mitigation credit (Section D.1.), providing developers with greater certainty. In 9VAC15-60-50 Section D., the 10-acre threshold should be contiguous acreage of prime farmland soils as a management unit that can actually be farmed. It is not fitting with the intent of the bill for mitigation to be required for scattered fragments of soil map units classified as prime farmland that are not contiguous and could not be farmed together. Under 9VAC15-60-50, "Determination of likely significant adverse impacts," Section C, a site visit is required for verification of disturbance zone but it is unclear who is managing this site visit, when it is conducted during the application process, or any associated costs for this site visit. Additional detail is needed in order to plan for and finance this stage into project development timelines. Amend 9VAC15-60-60 Section D. so that if an applicant can find C1 or C2 land available for conservation easements they should be allowed to mitigate anywhere in the state and not be limited to the mitigation district (watershed) where the project is located. This would achieve conservation goals faster and more successfully.</p> <ul style="list-style-type: none"> • Section D., Conserving C1 in the same watershed at 7:1 is impossible. • Section D., Conserving C2 in the same watershed at 2:1 is nearly impossible. Landowners would have to be willing. <p>Amend 9VAC15-60-60 Section E.3. Table 1, Option 1, Add a definition for topsoil. We recommend referring to the topsoil definition in The National Soil Survey Handbook published by the Natural Resources Conservation Service. Amend 9VAC15-60-60 Section E.3. Table 1, Option 1, The mitigation ratio should be higher than 1:10. How is this a negative impact on prime farmland soils? The ratio should be 1:20.</p>	<p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>The requirement for a Phase I Cultural Resources Survey is in the existing regulation and no changes to this requirement have been promulgated or proposed. The DEQ and DHR are willing to accept in fulfillment of the Archaeological component of the Phase I survey a probability-based sampling strategy. When properly executed, such a sampling strategy can greatly reduce the scope and cost of a shovel test-based Archaeological Phase I. There is no requirement under the PBR for a Phase 1A Cultural Resources assessment. However, prospective applicants are strongly encouraged to perform a Phase 1A study and submit it to DEQ and DHR for review. Submittal of this Phase 1A for review engages the respective agencies in the prospective approval of significantly reduced total scope of work resulting in significant cost savings. Completion of the Cultural Resources Survey and its submittal to DEQ and DHR for review and approval should be done early in the application planning process as this greatly reduces the potential for difficulties or delays in deeming a PBR application complete.</p> <p>Per § 10.1-1197.7. of the Code of Virginia, upon submission of a complete application, the Department, after consultation with other agencies in the Secretariat of Natural and Historic Resources before authorizing the project, shall conduct an assessment of whether the application meets the requirements of the applicable permit by rule regulations. Per the Code and regulation, the department shall find that significant adverse impacts to wildlife are likely whenever the wildlife analyses finds that state-listed T&E wildlife are found to occur within the disturbance zone.</p>
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	<p>Amend 9VAC15-60-60 Section E.3.Table 1, Option 2, This ratio should be higher to properly recognize the effectiveness of these treatments, their cost and effort. Ratio should be 1:8.</p> <p>Amend 9VAC15-60-60 Section E.3., “Preserving soil on-site shall reduce but not eliminate the requirement for an easement or in-lieu fee.” – The amount of soil preservation on site should be adequately reflected in the requirement for an easement or in-lieu fee, including eliminating the need all together.</p> <p>Amend 9VAC15-60-60 Section E.5., The 10 acres of prime farmland soils should have to be contiguous.</p> <p>Amend 9VAC15-60-60 Section F.2., The project should also get credit for establishing new buffers since planting new buffers could have a higher benefit to water quality.</p> <p>Amend 9VAC15-60-60 Section H.2., This should be administered by the DEQ and not used as a way to funnel cash to the same NGOs that pushed for HB206.</p> <p>Amend section 9VAC15-60-60 B.3. Payment should be due when determination is issued that the application is administratively complete and the recomplete, person is notified in writing that the person is authorized to construct and operate the facility pursuant to this chapter.</p> <p>No other types of development or industries in Virginia have similar regulatory requirements to those imposed on the solar industry through the PBR process. Solar energy is responsible for a very small percentage of forest and farmland conversion, yet the proposed regulations require the solar industry to be solely responsible for unreasonable and unworkable mitigation requirements.</p> <p>The costs associated with compliance with the proposed mitigation requirements were not appropriately evaluated during the Regulatory Advisory Panel (RAP) or DEQ analysis of the regulations, despite HB 206 requiring the cost of mitigation relative to the project cost to be considered, including the costs to rate payers. No evidence of ratepayer analysis is documented in the meeting minutes, Economic Review Form, or Agency Background Document. The Economic Review Form does not calculate the impact of the proposed regulations on ratepayers and does not assess how they will affect Virginia’s localities or the solar industry.</p> <p>Recordkeeping and Reporting In 9VAC15-60-100, the owner should have at least 60 days to provide any information</p>	<p>DWR might recommend to DEQ and the applicant that a wildlife study or survey be conducted to determine the presence of a threatened or endangered species which would require mitigation. A mitigation plan is an enforceable component of the PBR and would be enforced by DEQ as the regulatory authority.</p> <p>Virginia Solar Site Pollinator/Bird Habitat Scorecard See response to comment 21 regarding Virginia Solar Site Pollinator/Bird Habitat Scorecard</p> <p>The commenter suggested that the final rule should clarify that prime farmland not under existing easements is eligible for mitigation credit. This is implicit in the regulation.</p> <p>The commenter stated that the 10-acre threshold in 9VAC15-60-50 D should specify that prime agricultural soils should be contiguous acreage. This recommendation is inconsistent with HB 206 requirements. The proposed regulatory language for prime agricultural soils was taken directly from the language in HB 206.</p> <p>See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Topsoil is defined in the DEQ Virginia Stormwater Management Handbook. Even with all on-site mitigation practices, there still will be a reduction in productivity of prime agricultural soils.</p> <p>This recommendation is inconsistent with HB 206 requirements. The proposed regulatory language for prime agricultural soils was taken directly from the language in HB 206. Existing forest buffers have more certain benefits than buffers to be planted.</p> <p>The proposed regulation requires DEQ to select a trustee for the fund. DEQ will consider the comment as part of the future selection.</p>
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	<p>requested by the department instead of 30. As listed, 30 days is an unreasonable timeline. Increasing the response time to 60 days will allow a more reasonable amount of time to process the information and required forms and ensure a complete response.</p> <p>Coastal Avian Protection Zones (CAPZ) Fees 9VAC15-60-110, Section B.1., CAPZ mitigation should be part of the overall mitigation plan and not due with the application.</p> <p>Strata supports the use of in-lieu fees as a mitigation option under HB 206 but emphasize the need for clarity, fairness, and economic justification in their implementation.</p> <p>Payment of In-Lieu Fees Satisfies Mitigation Obligation The final rule should ensure that payment of in-lieu fees fully satisfies an applicant’s mitigation obligation, transferring liability to the mitigation provider.</p> <p>In-Lieu Fee (ILF) Calculation The proposed \$3,000 per acre minimum is excessive compared to recent data, such as the \$1,103–\$2,100 per acre value of conservation easements in rural areas. A recalibrated fee structure reflecting actual land values is recommended. DEQ’s method of calculating conservation easement value based on the difference between use value and full assessed value penalizes developers preserving land most at risk of residential or commercial development. An alternative approach using regional conservation easement values is recommended. DEQ should clarify the administrative costs associated with in-lieu fees, as estimates range from \$15,000 to \$30,000 per easement. It is unclear whether these fees are proportional to acreage,</p>	<p>Fee payment is due at the time of application submittal and constitutes a complete application as per 9VAC15-60-30 and the Code of Virginia.</p> <p>Economic Impact Analysis In accordance with state law and executive order, DEQ did conduct an economic impact analysis of this regulatory action; see the Agency Background Document and Office of Regulatory Management form. DEQ made a good faith effort to identify costs associated with the regulation amendments and sought assistance from both the SCC and the solar industry to quantify the impact on electric rates, however, they asserted the data needed to make such calculations is proprietary. The commenter fails to identify any specific cost increases for the department to consider, and no other specific analysis of economic impacts was received during the public comment period. The Virginia Department of Energy provided an estimate of the cost of mitigation relative to the project cost. In an extreme scenario where a project might be required to mitigate 100% of its disturbed acreage at the highest estimated cost (\$10,383 per acre), that would amount to about 3% of total project costs. In most realistic scenarios, the mitigation costs will generally amount to less than 1% of the total project cost. It is not feasible to determine the costs of proposed mitigation to ratepayers. Projects are eligible for DEQ’s Permit-by-Rule if the costs of the project are not directly recovered from rate payers. Accordingly, the cost of mitigation resulting from HB 206 is not being directly recovered from rate payers. Most PBR projects sell power at a price determined by wholesale markets. Ultimately, some of the costs of mitigation may be reflected in higher rates, but quantifying a potential downstream impact to rate payers from additional mitigation costs that could result in higher power</p>
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		<p>purchase agreement prices is very difficult and speculative.</p> <p>Recordkeeping and Reporting Recordkeeping and reporting timelines for project milestones were originally added to 9VAC15-60-100 during the 2019 regulatory development process; the initial reporting deadline was 15 days. Industry comments received during the 2019 comment period indicated that meeting a 15-day deadline would be onerous, so the deadline was changed to 30 days after the event.</p> <p>Coastal Avian Protection Zones (CAPZ) Fees The regulation requires that if any part of the project disturbance zone is located in part or in whole within zones 1, 2, 3, 4, 5, 10, 11, 12, or 14 on the Coastal Avian Protection Zones (CAPZ) map, a mitigation fee of \$1,000.00 per megawatt of rated capacity, or partial megawatt thereof is required. Payment of the CAPZ fee is considered a mitigation measure for significant adverse impacts to wildlife and is considered part of the mitigation plan. The mitigation plan is an enforceable part of the Solar PBR and must be submitted with the application in order for the application to be considered complete.</p> <p>Payment of In-Lieu Fees Satisfies Mitigation Obligation Regulation has been amended to specify that payment of the in-lieu fee in full shall satisfy the mitigation obligations without waiting for acquisition of easements by the trustee.</p> <p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation.</p>
<p>24. Jon Roller, Ecosystem Services, LLC</p>	<p>Please consider adding a cover crop requirement for croplands to the definition of "active cropping, including haylands." The current definition appears to only require the production and</p>	<p>The recommendation to add a cover crop requirement may be considered in reviewing site specific plans for on-site mitigation. The recommendation to reduce the onsite mitigation from 25% to 10% in</p>

	<p>harvest of one crop. This could lead to soil with no living roots for half of the year.</p> <p>Please consider revising the decreased area requirement for offsite mitigation by reducing the onsite mitigation from 25% to 10% in active crop areas where cover crops are not utilized and any other conservation tillage practice other than no-till is utilized. Farmers/producers who utilize cover crops, retain crop residue on fields, and utilize no-till practices should be incentivized and rewarded through the partnership with the solar developer to assist with not only preserving prime soils, but improving them.</p> <p>Suggest adding baseline requirements for all crop fields that are to be utilized for onsite mitigation to have a Revised Universal Soil Loss Equation version 2 (RUSLE2) analysis performed on each field to ensure that the fields are at a minimum being managed to meet "T," the acceptable soil loss for each soil series. All fields must meet "T" with a Soil Conservation Plan, if needed.</p> <p>I agree with Dr. Daniels' comment on the need for additional decompaction of the soil following decommissioning.</p> <p>For Table 1, please consider providing methodologies or the need to use a licensed professional soil scientist to quantify the amount of topsoil that will be removed from the site along with minimum standards to include depths, soil texture, organic matter content and other parameters for the soil that will be returned or imported to the site to utilize Option 2. Preservation of Topsoil as an onsite mitigation measure.</p> <p>Please clarify whether additional environmental banking credits to include, but not limited to compensatory mitigation credits, nutrient credits, and carbon credits can be utilized in the same area as the offsite mitigation for solar impacts.</p> <p>The baseline requirement for offsite mitigation to conserve prime farmland soils is through the protection of those acres with a 1:1 ratio via a perpetual easement. The proposed onsite practices are seasonally and at best annually managed. How does the Department propose to monitor, verify, and enforce that these practices</p>	<p>active crop areas where cover crops are not utilized and any other conservation tillage practice other than no-till is utilized may be considered in reviewing site specific plans for on-site mitigation.</p> <p>The recommendation to add baseline requirements for all crop fields that are to be utilized for onsite mitigation may be considered in reviewing site specific plans for on-site mitigation.</p> <p>The recommendation to provide methodologies or the need to use a licensed professional soil scientist may be considered in reviewing site specific plans for on-site mitigation.</p> <p>Additional environmental banking credits to include, but not limited to compensatory mitigation credits, nutrient credits, and carbon credits cannot be utilized in the same area as the offsite mitigation for solar impacts. Separate easements are required to avoid "double-counting".</p> <p>Restrictions on off-site easement lands will be determined in the applicable easement. Other recommendations regarding the on-site mitigation in this comment may be considered in reviewing site specific plans for on-site mitigation.</p>
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	<p>are being implemented/maintained on a seasonal and annual basis? Since onsite areas are being used to offset impacts of a perpetual nature, then should the onsite mitigation areas be protected via an easement or other land protection instrument that matches the life of the solar facility (at a minimum), if not perpetual? These management areas can only then be released by the decommissioning of the solar facility and adherence to a site reclamation plan. Or the solar developer/landowner could choose to purchase an offsite easement of the remaining acres needed for compliance with the original amount.</p> <p>The use of agricultural practices onsite to decrease the need for offsite mitigation must require verification, validation, and record-keeping throughout the life of the project. Does the Department have adequate resources to review, inspect, and when needed, enforce the provisions of this statute?</p> <p>What does the Department propose to do in situations where the onsite mitigation is determined to be insufficient and is not meeting the intent of the onsite mitigation requirement?</p>	
<p>25. Chip Dicks</p>	<p>Question #1. Since the draft HB 206 regulations do not address the increased costs of HB 206 to ratepayers, are the regulations in compliance with the statutory requirements of the enactment clauses in HB 206?</p> <p>Question #2. Do the draft HB 206 regulations establish an adequate criteria to determine "if" there is a significant adverse impact on prime ag soils or forest lands, in compliance with the statutory requirements of the enactment clauses in HB 206. What generally accepted scientific authorities form the bases for that criteria?</p> <p>Question #3. Do the draft HB 206 regulations establish an adequate criteria to limit the "disturbance areas" of a USS solar project when only a small acreage of the entire project are actually disturbed, in compliance with the statutory requirements of the enactment clauses in HB 206?</p> <p>Question #4. Do the draft HB 206 regulations establish an adequate criteria to establish a state mandated mitigation through a conservation</p>	<p>Question #1. See Economic Impact Analysis response to comment 23.</p> <p>Question #2. HB 206 determined the thresholds for disturbance.</p> <p>Question #3. The disturbance zone is defined as land disturbance which, in turn, uses the definition from Virginia Code § 62.1-44.15:24.</p> <p>Question #4. HB 206 delegates to DEQ the requirements of mitigation and the proposed conservation easements are within that delegation.</p> <p>Question #5. Same as above response.</p> <p>Question #6. There is no need for a lookback period for prime agricultural soils, as HB 206 requires mitigation for prime agricultural soils not agricultural use. Also, HB 206 contains a two-year lookback for forest in the definition of forest land:</p>

	<p>easement or the calculation of an in lieu cash payment, in compliance with the statutory requirements of the enactment clauses? Is there any basis to require conservation easements at all under the statutory requirements of the enactment clauses in HB 206?</p> <p>Question #5. Do the draft HB 206 regulations establish an adequate criteria to establish a scheme of "mitigation districts" based upon watersheds, in compliance with the statutory requirements of the enactment clauses in HB 206? What generally accepted scientific authorities form the bases for that criteria?</p> <p>Question #6. Do the draft HB 206 regulations establish an adequate criteria to establish a reasonable "lookback period" for land designated as prime ag soils but not used for agricultural purposes, or forest lands cut for timber purposes, which would exempt such lands from the state mandated mitigation requirements of HB 206?</p> <p>Question #7. Do the draft HB 206 regulations take into account, using the USDA data, how much of the documented prime ag soil lands in Virginia were lost to farming use because of conversion into USS projects? What was the date of the most recent USDA report?</p> <p>Question #7. Do the draft HB 206 regulations take into account, using the US Forest Service data, how much of the documented C-1 and C-2 forest lands in Virginia were lost to forest use because of conversion into USS projects? What was the date of the most recent Forest Service report?</p> <p>Question #8. Do the draft HB 206 regulations establish an adequate criteria for best construction and land management practices to "mitigate on-site"? And, are the mitigation percentages for such practices appropriately set? What generally accepted scientific authorities form the bases for that criteria?</p> <p>Question # 9. Do the draft HB 206 regulations establish an adequate criteria for evaluating the feasibility of a solar project if the "desk-top" resources are not available either because such resources are outdated or simply not available? And, should such USS project be</p>	<p>"Forest land" has the same meaning as provided in § 10.1-1178 of the Code of Virginia, except that any parcel shall be considered forest land if it was forested at least two years prior to the department's receipt of a permit application."</p> <p>Question #7. HB 206 made the determination that disturbance of more than 10 acres of prime agricultural soils is deemed a significant adverse impact and required no further analysis of USDA data. HB 206 made the determination that disturbance of more than 50 acres of contiguous forest land or any forest land enrolled in a program for forestry preservation is deemed a significant adverse impact and required no further analysis of US Forest Service data.</p> <p>Question #8. On site mitigation options were developed by the HB 206 RAP and informed by multiple subject matter experts.</p> <p>Question # 9. Desktop mapping resources are available for the entire state. The regulation establishes definitions and criteria for determining contiguous forest and prime agricultural soils if an applicant disputes the mapping.</p> <p>Question #10. The proposed DEQ regulation complies with all public notice requirements and stands on its own. Other commenters objected to incorporating the DCR mapping of C1 and C2 cores on the basis they were not subject to public comment as a regulation. Enhanced mitigation requirements for C1 and C2 cores have been removed. See comment 4.</p>
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	<p>exempt from the state mandated mitigation since such resources are not available?</p> <p>Question #10. DEQ clearly complied with all the public notice requirements with respect to the HB 206 regulations. But, I don't believe that Department of Forestry, Department of Conservation and Recreation, Department of Historic Resources, Department of Wildlife, or other state agencies separately complied with required public notice requirements. As such, the question is, that to the extent any other state agency adopted or amended any guidance documents, regulations or other practices, policies and procedures, are such changes not valid because public notice requirements were not met?</p>	
<p>26. C. Richardson</p>	<p>Please consider the following:</p> <ol style="list-style-type: none"> 1. Regarding VAC15-60-50 – D: <u>“A project shall be deemed to have a significant adverse impact if it would disturb more than 10 acres of prime agricultural soils.”</u> <ol style="list-style-type: none"> a. Both prime agricultural and agricultural soils of farmlands of statewide importance should be included in this disturbance limits and throughout the code. b. Significant adverse impact to both types of agricultural soils in mountainous and foot hill regions should be set to 5 acres as flat lands are a premium in some of these counties. Farmers in these regions grow crops on all flat and moderately slope areas that they can transverse. 2. Regarding the definition of conservation easement: <ol style="list-style-type: none"> a. The conservation easement should not be perpetual as this robs future generations of their property rights to use their property as they see fit. b. The life of the solar project is around 20-30 years, the conservation easement should match the length of the project and then the project should be 	<p>1. Mitigation of other agricultural soils</p> <p>HB 206 and Chapter 688 of the 2022 Acts of General Assembly specifies that impacts to more than 10 acres of <i>prime agricultural soils</i> is considered a significant adverse impact, requiring submission of a mitigation plan. It also defines “prime agricultural soils” as soils recognized as prime farmland by the U.S. Department of Agriculture. The proposed regulatory language does not include “farmland of statewide importance” or “farmland of local importance” as these land use classifications were not included in HB 206 and are therefore outside the scope of this regulatory action.</p> <p>2. Duration of Conservation Easement</p> <p>The duration of a solar facility is unpredictable. Even when a facility is on leased land, leases can be renewed or extended. Tying the duration of the easement to the duration of the solar facility will be difficult to enforce. Even when the solar use ends, there is no assurance that the land use will return to agricultural or forestry uses. Most solar facilities have a design life of up to 30 years. The net present value (cost) of a 30-year conservation</p>

	<p>required to turn the project site back to its original land use and decompact the soils.</p> <p>3. Regarding VAC15-60-30 and public review and public notice:</p> <ul style="list-style-type: none"> a. The public review requirement is not sufficient. DEQ is given 45 days to review the project. The public should be given 60 days. b. The public notification requirement is not sufficient. Letters should be sent to all landowners within 5 miles of the project as public notifications in a dying media are not an effective means of communication. c. A public meeting should be required to inform the public of the project and discuss the public's concerns. <p>4. Regarding VAC15-60-60: Mitigation measures for forest lands with the conservation easement are more stringent than for farmland with the easement. The forest mitigation measures require either a seven to one or a two to one mitigation ratio while the farmland requirements require a one-to-one ratio with a carve out to reduce the mitigation ratios with a riparian forest buffer.</p> <ul style="list-style-type: none"> a. Prime farmland should be protected with a mitigation ratio of seven agricultural acres to one project acre (like the C1 forest land). b. Farmland of statewide importance should be protected with a mitigation ratio of four agricultural acres to one project acre. c. All mitigation should occur in the same mitigation district. 	<p>easement is similar to the net present value of a perpetual easement.</p> <p>3. Public review and public notice</p> <p>HB 206 specifies that if a draft mitigation plan was not provided by the applicant as part of the initial application, the applicant will be required to hold a 45-day public comment period. Any efforts requiring notification to surrounding landowners is addressed by the locality. Requirements for public participation are addressed in 9VAC15-60-90.</p> <p>4. Mitigation for forest lands</p> <p>DEQ deleted the requirement to mitigate C1 and C2 forest cores in the final regulation. At an appropriate time, we propose to publish a NOIRA commencing a regulatory action to adopt the enhanced mitigation of C1 and C2 cores with updated mapping and a procedure for field verification. Other mitigation ratios were based on recommendations of the regulatory advisory panel.</p> <p>5. Grandfathered applications</p> <p>The grandfathering clause is included in Section 4 of HB 206 and is therefore required.</p>
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	<p>d. The mitigation for farmland should not be reduced by providing a riparian forest buffer within the easement. The mitigation should protect farmland, not reduce it by substituting it with forest. This reduction carveout should be eliminated.</p> <p>5. Due to the importance of farmlands, the projects should not be grandfathered from the mitigation requirements.</p>	
<p>27. American Farmland Trust</p>	<p>In-Lieu Fee (ILF) Calculation In the draft regulations, DEQ proposed a per-acre fee floor of \$3,000, and an increase to that fee should the difference between the assessed value and the agricultural value be higher. AFT applauds this approach of combining a floor—to provide consistency for developers—with a higher fee sensitive to more expensive land values. AFT encourages DEQ to retain these robust fees. This would fulfill the legislative intent of HB206 by discouraging solar development on prime farmland that Virginia communities and farmers prefer to keep in agricultural production.</p> <p>Review and Revision of Mitigation Fees AFT also recommends regularly revising mitigation fee amounts (e.g., annually until 2030 and then every five years) to ensure they are enabling Virginia to meet its climate goals while steering development to locally preferred areas <u>and</u> mitigating impacts to host communities.</p> <p>Agrivoltaics and Ecovoltaics AFT defines agrivoltaics as active agricultural production integrated into modified solar photovoltaic arrays which stay in farming throughout the full life of the solar project. Agrivoltaics is a new, promising, rapidly evolving area of development that could keep land in production and support farm viability and rural economic vitality as solar advances. But currently, agrivoltaics represent a minute share of projects in Virginia. This is mainly because agrivoltaic projects are <u>often more expensive</u> to construct and operate compared to conventional ground-mounted solar due to array changes that support a farm operation (e.g.,</p>	<p>In-Lieu Fee (ILF) Calculation See response to comment 4 regarding ILF calculation.</p> <p>Review and Revision of Mitigation Fees 9VAC15-60-60 H 1 was revised to require the publication of the in-lieu fee calculation annually.</p> <p>Agrivoltaics and Ecovoltaics Even though HB 206 only requires mitigation for prime agricultural soils, DEQ considered and included mitigation credit for certain agricultural activities, particularly those which protect and maintain the characteristics of prime agricultural soils. Based on subject matter expert advice, DEQ determined to give mitigation credit for agricultural activities only when combined with construction practices which avoid topsoil loss and minimize compaction.</p> <p>If an applicant chooses to implement a plan to maintain any one of three management alternatives in combination with onsite soil mitigation to decrease the required area of off-site conservation easement by 25% of the remaining obligation, the applicant must submit a plan with the application that must be approved by the department. Upon approval, this plan will be included in the PBR</p>

	<p>elevated or spaced array configurations, increased racking costs, livestock fencing, and irrigation equipment). But with the right policies in place, this could increase significantly to keep land in production as solar development advances.</p> <p>Agrivoltaic projects fall under the larger umbrella term of “dual use” which pair solar energy generation with another use. Another example of dual use projects include ecovoltaics, which pair solar with ecosystem services like pollinator habitat. DEQ currently proposes an equal 25% reduction in the mitigation fee for “managed grazing; active cropping, including hayland; or establishment and maintenance of pollinator smart habitat/vegetation.” While pollinator habitat is beneficial, it, alone, does not mitigate impacts to the local farm economy. It is also less costly to establish pollinator habitat than to integrate most agricultural production systems into arrays. Therefore, AFT recommends a smaller fee reduction for ecovoltaic arrays (e.g., 5%) to cover the minimal costs incurred by purchasing seeds and to provide a small incentive for this beneficial use. This will ensure the host community does not relinquish too much of the funding it needs to mitigate the economic impacts of taking land out of production that go unaddressed by this type of dual use.</p> <p>In order to effectively incentivize agrivoltaic systems, AFT recommends that DEQ update the regulations to add:</p> <ol style="list-style-type: none"> 1. A clear definition for agrivoltaics, developed by the Virginia Department of Agriculture and Consumer Services (VDACS) in consultation with other agencies and stakeholders, that includes managed grazing and crop production, 2. Incentives, in the form of fee reductions, commensurate with the planned percent of the array in production <i>and</i> the level of cost incurred to integrate the production system—including a larger fee reduction for the integration of crops, and 3. Details around how DEQ plans to perform monitoring and verification to ensure agricultural production continues for the full life of the array, and enforcement mechanisms (including clawbacks and penalties) should the production cease. <p>Two potential limitations to successfully incorporating these recommended changes into</p>	<p>authorization letter and subject to compliance and enforcement.</p> <p>An applicant may apply any of the 3 partial mitigation options for prime agricultural soil (managed grazing; active cropping, including hayland; or establishment and maintenance of pollinator smart habitat/vegetation, including certification and monitoring in accordance with the DCR/DEQ POLLINATOR–SMART Comprehensive Manual) to preserve prime agricultural soils in different areas of the site, but these options may not be combined on the same portion of the site.</p> <p>As noted by the commenter, the PBR is structured primarily to regulate construction impacts. Once established, DEQ has fewer resources to monitor long-term commitments to maintain agricultural uses on site. Therefore, careful review of the plan to align monitoring and enforcement post-construction with DEQ capabilities will be necessary.</p> <p>DEQ’s authority does not end once the permit is issued. Section 10.1-1197.6 of the Code of Virginia requires DEQ to utilize fees assessed through the PBR program to fund the costs of administering and enforcing the provisions in the statute associated with inspection and monitoring of projects to ensure compliance with the program. 9VAC15-60-60 requires the applicant to prepare a mitigation plan for any resource for which a significant adverse impact determination has been made as a result of the analyses required in 9VAC15-60-40. The mitigation plan must detail actions by the applicant to avoid, minimize, or otherwise mitigate such impacts. These actions will be incorporated as conditions in the mitigation plan and will become an enforceable part of the PBR.</p>
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	<p>the regulations are that 1) DEQ is implements HB206 through a permit by rule process where agency authority ends once the permit is issued, and 2) HB206 didn't require the involvement of the VDACS. However, this is currently the only opportunity to incentivize agrivoltaic projects in Virginia while solar rapidly expands. Therefore, AFT recommends 1) taking any actions possible to add these three criteria into the regulations, and 2) delaying implementation of these agrivoltaic fee reductions until <u>all three</u> criteria are met. Given the rapidly evolving nature of this area of development, AFT also recommends that implementation is reviewed regularly to ensure agrivoltaic incentives are helping to achieve the goals of HB206.</p> <p>While Virginia should develop its own agrivoltaic definition, to aid the Commonwealth in this effort AFT's current recommended statutory definition for what should qualify for agrivoltaic incentives is:</p> <p>"A solar array that is intentionally planned and designed with agricultural producers, and is constructed and operated to achieve integrated and simultaneous production of both solar energy and marketable agricultural products—including crop production, grazing, and animal husbandry—on the land beneath and between rows of solar panels, as soon as agronomically feasible after the commercial operation date and continuing until decommissioning. Systems that include pollinator habitat or apiaries as the sole agricultural use are excluded from this definition." In the future, supporting innovation and adoption of agrivoltaic projects in Virginia to meet the above goals will require 1) increased investment in research and demonstration projects to better understand agronomic impacts of integrating local production systems into solar arrays, 2) an incentive program that both covers cost increases incurred when developing agrivoltaic projects and which has the authority to enforce keeping land in production throughout the life of the array, and 3) a process, led by VDACS with agricultural and energy stakeholders including Extension, to develop a strong definition of what is agrivoltaic to qualify for incentives. When the time comes to develop and implement these more detailed policies, AFT is at the ready to assist in doing so.</p> <p>Mitigation Ratios</p>	<p>VDACS staff participated as subject matter experts in the 2022 and 2023 regulatory advisory panel meetings.</p> <p>Mitigation Ratios See response to comment 5 regarding mitigation ratios.</p> <p>Mitigation Fees The Administrative Process Act requires all regulations to be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. Mitigation fees will be included in this review.</p> <p>Innovative Mitigation Alternatives See response to comment 4 regarding innovative mitigation alternatives.</p> <p>In-Lieu Fee (ILF) Administration See response to comment 4 regarding ILF administration.</p> <p>Easement Required Within 1 Year of PBR Issuance and Conservation Easement Templates See responses to comment 4 regarding these topics.</p>
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	<p>AFT applauds DEQ for including incentives in the proposed regulations for engineering and installation considerations that will protect soil health and leave topsoil undisturbed. However, AFT believes that these should be regulatory requirements that all developers must follow when siting on prime farmland rather than activities that provide heavy discounts to important mitigation fees. Providing a modest fee reduction for these activities until regulatory standards are developed is beneficial. AFT recommends DEQ reduce the proposed fee reduction ratios significantly.</p> <p>Mitigation Fees Another important reason to reevaluate these proposed reductions is that it is increasingly becoming standard practice for developers to use racking and panel structures that do not require extensive grading and/or removal of topsoil. While it may continue to be important to encourage the industry in this direction, offering a 90% reduction in the mitigation required for what may become a standard practice will undercut the entire program. Similarly, the proposed fee reductions for preserving topsoil and decompacting surface soils on cut/fill areas would leave communities unable to effectively mitigate impacts related to the loss of agricultural production. Given the rapidly evolving nature of this technology all fee reductions should be re-reviewed every two years to respond to emerging changes and needs in this area.</p> <p>Innovative Mitigation Alternatives DEQ also proposed allowing the applicant to undertake “restoration of a degraded site to restore the characteristics of prime agricultural soils.” This not only creates a loophole, allowing applicants to reduce or remove the required fee altogether without the input of experts and community members who stand to lose the opportunity for mitigation, it is also scientifically not possible. According to AFT’s soil scientists, the USDA “prime” soils designation is based on inherent soil properties independent of soil health management. If mineral soils are still present, management activities can be undertaken to make that soil highly functional, but even this process takes time, work, and scientific supervision. An applicant not only cannot “restore the characteristics of prime agricultural soils” through management, but restoring soil health would need rigorous, specific, and well-</p>	
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	<p>vetted monitoring requirements. Without greater detail, AFT is concerned that this provides a large loophole to applicants that both cannot be achieved, and which leaves impacts to the local economy unaddressed. AFT recommends removing this language from the proposed regulations.</p> <p>In-Lieu Fee (ILF) Administration Mitigation programs must be implemented by an agency or accredited body that has the ability to effectively mitigate impacts, including in this case to the local farm economy. Additionally, mitigation should take place as proximate as possible to the impact. In the Commonwealth the farmland protection program is now administered by the Office of Working Lands in the Department of Forestry. AFT recommends that DEQ authorize this office, in conjunction with VDACS, to administer farmland mitigation funding for agricultural conservation easements and/or projects that will support farm viability in the host community (e.g., a local processing facility).</p> <p>Easement Required Within 1 Year of PBR Issuance and Conservation Easement Templates AFT also urges additional detail and consideration regarding the proposed conservation easement program. For example, AFT recommends including a rule that, should the easement option be pursued and no easement come to fruition or be materially close to completion within a reasonable period of time, (e.g., 18 months), the applicant be redirected to the in-lieu fee process.</p>	
<p>28. Chesapeake Conservancy</p>	<p>Below, we outline our concerns regarding the proposed regulations and provide recommendations for strengthening their provisions to ensure greater alignment with Chesapeake Bay goals.</p> <p>Concerns Regarding Forest Loss and Habitat Fragmentation The loss of contiguous forest lands for solar development has significant implications for the Chesapeake Bay’s water quality and regional biodiversity. Forests act as critical buffers that reduce sedimentation and nutrient runoff into waterways, protecting the Chesapeake Bay from pollution. The threshold set by statute is 50 acres of contiguous forest lands before requiring mitigation. This threshold is high, allowing for the</p>	<p>Concerns Regarding Forest Loss and Habitat Fragmentation As the commenter mentions the thresholds for mitigation were set by statute; DEQ was required to establish appropriate mitigation for impacts to prime agricultural soils and forest lands above the legislative thresholds.</p> <p>The goal of the proposed 1:1 mitigation ratio is to require forest mitigation in a manner that does not cost the developer substantially more or less than agricultural mitigation. DEQ does not want mitigation requirements to incentivize the</p>

	<p>loss of substantial forest areas without any compensatory measures. The proposed 1:1 mitigation ratio for forest disturbance fails to adequately account for the ecosystem services provided by forests. Set a higher standard mitigation ratio (e.g., 2:1) for all forest land disturbances to minimize habitat loss and fragmentation. For projects located within 300 feet of any stream or wetland, additional mitigation should be required. Mandate the inclusion of riparian buffers of at least 35-feet in width and strict erosion control measures as part of all solar project designs to protect water quality. Depending on the location of the forest, its impact on water quality and wildlife habitat value can vary greatly. Projects located within 300 feet of streams and wetlands could have a significant impact on water quality. In cases where projects may be located proximate to stream and wetland resources, the size of project may be less important than its location.</p> <p>Protection of Prime Agricultural Soils Solar projects often target flat, open lands, which overlap with prime agricultural soils. The regulation requires mitigation only if more than 10 acres of prime soils are impacted. Given the increasing threats to food security and soil health, this threshold is insufficient. Future regulations should consider a lower threshold. There is insufficient incentive to prioritize brownfields or other marginal lands over prime agricultural soils. Incentivize the siting of solar projects on marginal lands, such as brownfields or previously disturbed areas, with lower and more flexible mitigation requirements, to preserve agricultural productivity.</p> <p>Impacts on Wildlife and Pollinator Habitats Expanding the definition of “wildlife” to include threatened and endangered (T&E) insects is a positive step. However, mitigation measures must ensure that solar developers adopt comprehensive strategies to avoid and minimize impacts on all listed T&E species. The inclusion of the Pollinator-Smart Scorecard is a commendable initiative. Pollinator-friendly practices can enhance biodiversity and provide ecosystem services. However, the proposed regulation does not require adherence to the</p>	<p>development of one category of land over the other.</p> <p>Streamside management zones are required for timber harvesting in the areas regulated by the Chesapeake Bay Preservation Act. This helps preserve the water quality benefits of forests when harvesting occurs. Because loss of these water quality benefits is an impact requiring mitigation, streamside management zones should be required for all conservation easements provided for mitigation of solar development.</p> <p>The regulation requires an analysis of the beneficial and adverse impacts on natural resources and requires mitigation if it is determined that impacts to wildlife or historic resources are likely. Project impacts to streams and wetland resources are evaluated by DEQ’s Virginia Water Protection (VWP) Program and any impacts to wetland resources will require compensatory mitigation.</p> <p>Protection of Prime Agricultural Soils This approach is inconsistent with HB206. 9VAC15-60-130 already incentivizes siting on marginal lands as there are reduced or potentially no permitting requirements for locating projects on previously disturbed areas or brownfields.</p> <p>Impacts on Wildlife and Pollinator Habitats HB 206 requires mitigation for prime agricultural soils. The presence of pollinators does not directly mitigate disturbance of soils, therefore, partial mitigation credit for establishment and maintenance of pollinator smart vegetation has been given when combined with on-site soil preservation. Except for this optional on-site mitigation, participation in the Pollinator Smart program is not required.</p>
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	<p>scorecard’s recommendations, which limits its effectiveness. Recommendation: Make compliance with the Pollinator-Smart Scorecard mandatory for projects exceeding a specified size threshold (e.g., 5 MW). This will ensure that solar developments contribute positively to biodiversity.</p> <p>In-Lieu Fees and Conservation Easements The proposed use of in-lieu fees and conservation easements to offset impacts is promising but must be structured to ensure meaningful conservation outcomes. The current \$3,000 per acre minimum for in-lieu fees may undervalue the ecological and economic contributions of prime agricultural and forest lands in some areas of the state. Adjust in-lieu fees to reflect the true conservation value of the impacted lands, using metrics such as ecosystem service valuation. Additionally, prioritize the use of easements within the same watershed to maintain local ecological integrity. Last, conservation easements protect lands that, in general, are not imminently threatened by conversion. Conservation easements that include a restoration project or that can document an imminent threat of conversion should be given higher priority as approved mitigation.</p> <p>General Recommendations for Strengthening the Regulation 1. Cumulative Impact Assessment: Require developers to evaluate the cumulative impacts of multiple solar projects within the same region, particularly on water quality and wildlife corridors. 2. Stakeholder Engagement: Enhance opportunities for public participation by extending the 45-day comment period for mitigation plans to 60 days. 3. Data Transparency: Publish annual reports on mitigation outcomes, including the acreage of conserved lands and the status of restored habitats, to ensure accountability.</p>	<p>In-Lieu Fees and Conservation Easements The nature of a PBR program requires predictable mitigation and an overall consistent approach; the proposal to adjust in-lieu fee values using ecosystem service valuation introduces too much complexity for DEQ to administer through a PBR program.</p> <p>General Recommendations for Strengthening the Regulation Requiring developers to evaluate the cumulative impacts of multiple solar projects within the same region is inconsistent with HB206. Local governments can consider this option in their approvals.</p> <p>HB 206 specifies that if a draft mitigation plan was not provided by the applicant as part of the initial application, the applicant will be required to hold a 45-day public comment period. This would be after and in addition to the initial 30-day public comment period required in 9VAC15-60-90.</p> <p>It is not appropriate to require reporting of annual mitigation outcomes in the regulation, but DEQ will consider this idea in the normal reporting process.</p>
<p>29. Hexagon Energy, LLC-Ester Rekhelman, Ryal Walter & Drew Price</p>	<p>The comments presented below touch on many of the proposed regulations. As a Virginia-based renewable energy development company, we have specific interest in the proposed regulations’ impacts to solar development costs, conservation area identification, and mitigation methodologies. We have organized our comments accordingly. We then present alternative mitigation methodologies for DEQ’s</p>	<p>Impacts to Solar Development Costs See Economic Impact Analysis response to comment 23. HB 206 specified that a disturbance of (i) more than 10 acres of prime agricultural soils, (ii) more than 50 acres of contiguous forest lands, or (iii) forest lands enrolled in a forestry</p>

	<p>consideration. Lastly, we would like to note that we sign on to the comments submitted by MAREC/ACP on behalf of the solar industry. Our comments are meant to supplement theirs and provide a perspective inclusive of our November 26th meeting with DEQ.</p> <p>Impacts to Solar Development Costs: The proposed regulation changes amendments coming to 9 VAC 15-60 Small Renewable Energy Project Permit Regulations drastically increase development costs. With already rising interconnection costs and the high risk associated with local zoning permitting, these proposed regulations will add anywhere from \$23,000/MW to over \$100,000/MW of additional mitigation costs to projects that are already cost- and risk-burdened. Regulations with this level of mitigation expense:</p> <ol style="list-style-type: none"> 1. Work against the Virginia Clean Economy Act stated goals of developing 16,100 MW of onshore solar and wind energy; 2. Increase ratepayers' cost burden, as project costs are ultimately passed along to ratepayers; 3. Favor developers with deep pocket books, pushing small, local developers out of the Virginia market; 4. Reduce the number of Virginians employed in solar energy development, engineering, construction, and operation; <p>Passed in 2020, the Virginia Clean Economy Act (VCEA) identifies solar energy as a vital source of energy Dominion Energy (Dominion) and Appalachian Power (AEP) are required to deploy in order to meet renewable portfolio standards (RPS) compliance. The VCEA also allows for costs associated with solar energy facility development, deployment, and construction to be passed onto the rate-payers of those utilities. The proposed mitigation regulations will add significant costs to the development of solar facilities and, in turn, make them more expensive for the utilities to acquire. Due to VCEA mandated RPS requirements, AEP and Dominion will continue acquiring solar projects at increased costs, passing those cost increases off to the ratepayer.</p> <p>These ratepayer costs increases are especially important in the context of economic equitability. Solar facilities within AEP territory will see an outsized increase in costs because of these</p>	<p>preservation program is deemed to be a significant adverse impact on natural resources, thus requiring mitigation. HB 206 also directed DEQ to develop regulations to implement these requirements; the proposed language meets this requirement. There are existing solar tracker technologies that allow for development on steep grades, sloped and rolling terrain, such as that found in AEP territory.</p> <p>Conservation Area Identification See the response to comment 4 regarding mitigation for C1 and C2 forest cores. The comment regarding monoculture timber plantation impacts may be considered in future proposals regarding mitigation for forest cores.</p> <p>Disturbance Zone See the response to comment 23 regarding the definition of disturbance zone.</p> <p>Mitigation Methodologies DEQ considered a broad variety of potential mitigation options as proposed by two regulatory advisory panels. Conservation easements under HB 206 are different from nutrient banks which require physical alteration to create mitigation. PBR conservation easements restrict future development of conserved property. State agencies and major land trusts involved in the drafting of this regulation believe there will be a market for the required easements.</p> <p>In-lieu fees were broadly supported by the regulatory advisory panel. Section 2 of HB 206 also required the regulatory advisory panel to consider payment of in-lieu fee funds for mitigation when determining appropriate mitigation techniques or criteria to be included in an applicant's mitigation plan.</p>
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	<p>regulations given that area's mountainous topography and significant forestation. The land constraints within AEP's territory do not allow for the traditional mitigation reduction techniques outlined in Table 1 of the regulations, which will likely make the average cost of a project in AEP more expensive than one in Dominion territory. This will drive up costs for utility customers who reside in southwestern Virginia/AEP territory more than other areas of Virginia.</p> <p>Moreover, the regulations incentivize developers to create conservation easements on large tracts of land for cost savings on mitigation, as working with one large landowner is technically easier than working with numerous smaller ones. Landowners with larger tracts of land are more likely to be in a higher economic bracket. This creates an issue where the solar industry is forced to subsidize timber and agricultural practices of already wealthy landowners at the ultimate cost of lower-income ratepayers who will be burdened with increased costs of development associated with mitigation.</p> <p>Additionally, many Virginia counties rely on solar development as a low-intensity land use that brings in significant real property tax, machinery and tools tax, and siting agreement revenue. These proposed regulations will burden development across the state and force these counties to consider other ways to meet their revenue needs. While increased citizen taxation is one way to meet this revenue shortfall, it is unpopular and rarely meets the full needs of a county. This will likely cause an increase in more intensive and permanent types of development (industrial and commercial) with more environmentally harmful effects than solar facilities.</p> <p>Another component of these additional cost increases is their timing in a project's life cycle. Solar energy development is a nuanced, capital intensive exercise with significant investment required early on in the development process. These additional mitigation cost impacts contribute to even more uncertainty in overall project costs. These will alter project investment theses and hold the potential to disincentivize further investment in solar development in Virginia.</p> <p>Conservation Area Identification:</p>	<p>The duration of a solar facility is unpredictable. Even when a facility is on leased land, leases can be renewed or extended. Tying the duration of the easement to the duration of the solar facility will be difficult to enforce. Even when the solar use ends, there is no assurance that the land use will return to agricultural or forestry uses. Most solar facilities have a design life of up to 30 years. The net present value (cost) of a 30-year conservation easement is similar to the net present value of a perpetual easement. The regulation allows conservation easements on other portions of the property not being disturbed.</p> <p>Alternative Mitigation Solutions Payment of an in-lieu fee is an option in the regulation under 9VAC15-60-60 H 1. The regulation also includes language in 9VAC15-60-60 F 4 which allows the option to propose innovative alternatives. See response to comment 4 regarding innovative mitigation alternatives.</p> <p>Monoculture Pine Plantations Monoculture pine may still provide habitat for threatened and endangered species and provide certain ecosystem services such as water quality and quantity benefits.</p> <p>Mitigation Districts Mitigation measures for solar projects should occur as close to the project as possible to address risks and impacts to ecosystem services and the local agricultural or forestry economy in the region affected by the project. See response to comment 4 regarding mitigation districts.</p> <p>Agricultural and Forest Districts These districts both expire and allow the landowner to withdraw when they don't want to participate anymore, not allowing any real protection.</p>
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	<p>Hexagon believes wholeheartedly in the principles of conservation, environmental custodialism, and responsible development. Solar projects in the state of Virginia should be well-sited and take special care to limit their environmental impacts. Our in-person conversation with DEQ in late November was characterized by constant agreement in the mission and purpose of these proposed regulations. With that being said, there are several conservation area identification methodologies that DEQ uses that we believe do not accurately represent areas of high conservation importance. We would like to see these addressed in a new version of the regulations.</p> <p>DEQ leans heavily on datasets collected under Governor Northam’s ConserveVirginia 3.0 program for identification of areas of conservation. If a project impacts an area meeting specific criteria, it must mitigate for these impacts through the methodologies identified in the proposed regulations. The ConserveVirginia 3.0 dataset is designed to “guide state investments for land conservation.” It is not intended to be a definitive land classification tool upon which mitigation requirements through regulation are determined. The Ecological Cores clause of the proposed regulation is an example of this conflation of “guideline” and “definition.” Under the current proposal, projects impacting natural heritage resources described in the Virginia Natural Landscape Assessment Ecological Cores assessment must mitigate these impacts at a ratio of 7:1 for C1 cores and 2:1 for C2 cores. The Virginia Natural Landscape Assessment Ecological Cores assessment was conducted in 2016 by the Department of Conservation and Recreation. The dataset has not been refreshed since its initial publication, is not slated for refresh at any point in the future, and is not presented as a definitive classification resource. Additionally, this dataset does not account for any land that has since been cleared and timbered. We believe this dataset is not suitable as a foundational piece within the regulation framework. DEQ should consider revising this conservation area category by determining mitigation requirements through impacted forest type, rather than ecological core. Special</p>	<p>Agrivoltaics Even with all on-site mitigation practices, there still will be a reduction in productivity of prime agricultural soils; therefore, agrivoltaics cannot eliminate mitigation requirements on a site.</p> <p>Undisturbed Areas Undisturbed area within project boundary does count towards mitigation as long as it is protected by a permanent easement.</p> <p>Administrative Fees This amount will change from year to year. DEQ will coordinate with VOF and DOF Office of Working Lands to calculate an estimate of these costs. Administrative costs will be updated annually.</p> <p>Community Solar Community solar projects are permitted under 9VAC15-60-130 and are exempt from HB 206 mitigation requirements.</p> <p>Visual Buffers Buffers are dictated by the local government. Monoculture pine may still provide habitat for threatened and endangered species and provide certain ecosystem services such as water quality and quantity benefits.</p> <p>Duration of Conservation Easements See response to comment 26 regarding duration of conservation easements.</p> <p>Marketplace for Conservation Easements See response to comment 5 regarding mitigation banks for conservation easements.</p>
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	<p>importance should be placed on hardwood and old-growth forests that have a diverse species mix.</p> <p>Furthermore, we believe DEQ is currently overemphasizing the environmental and ecological importance of monoculture timber plantations. Timber pine plantations are ecologically destructive and reduce biodiversity through their practices. Solar farms, in combination with native pollinators and plant species, provide ecological rehabilitation for areas impacted by timbering operations. If a solar farm impacts land currently used for planted pine plantation timbering (forested areas with more than 35% monoculture pine species), that impact should not be considered as severe as impacts to hardwood and old-growth forests. We believe this change aligns with DEQ’s desire to disincentivize development on areas of diverse forest mix that call for increased conservation.</p> <p>Disturbance Zone</p> <p>We believe the additional 100’ buffer added to any project disturbance zone is arbitrary and unnecessary. Our conversation with DEQ revealed similar thinking from staff. Project boundary disturbance zones should be determined by true construction disturbance, similar to stormwater disturbance standards. This includes land that is taken out of its previous use and developed to hold any infrastructure related to the solar facility. Moreover, the additional 100’ buffer can frequently fall outside of the development site control area, forcing the industry to over-mitigate for areas they cannot and will not disturb. We suggest the removal of this conservation area identification clause.</p> <p>Mitigation Methodologies:</p> <p>Solar projects must mitigate the environmental impacts they cause in the course of their development and construction. Hexagon, as well as other solar developers, believe mitigation comes in many forms. This conflicts with DEQ’s proposed mitigation methodologies, which are limited to “conservation easements” except in case-by-case instances that are undefined in the proposed regulations. There are several issues with this adherence to conservation easements, and we would like to highlight these issues.</p>	
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	<p>Conservation easements, as described by the proposed regulations, are incongruent with historical conservation easement definitions. In the proposed regulations, conservation easements for the mitigation of forested land “should allow for timbering practices,” and conservation easements for the mitigation of prime farmland should “allow for agricultural practices.” While this aligns with the goals of HB206, it does not align with the values and mission of many of the eligible conservation easement holders as outlined in Section G.3. of 9VAC15-60-60 (Mitigation Plan), who tend to take a more conservative conservation approach that does not allow productive activity on the property. This limits the number of organizations that developers can partner with to execute conservation easements for mitigation and can bottleneck the permitting and development process.</p> <p>Alternative Mitigation Solutions Given the requirements outlined in Section G.3. of 9VAC15-60-60 (Mitigation Plan), conservation easement holders allowable by the standards of these regulations do not currently have a market for solar facilities to associate conservation easements with projects for PBR. Our research suggests that conservation easements will be expensive products in any marketplace, with pricing likely to follow nutrient bank pricing of up to \$90,000 per acre, leaving in-lieu fees as the most attractive option for developers. On the topic of In-lieu fees, they are an appreciated mitigation methodology, but we believe they do not necessarily accomplish the underlying goal of actual land conservation. With a lack of other mitigation methodologies, there will be an overreliance on in-lieu fee payments. This is something we see as suboptimal from a land conservation perspective.</p> <p>Duration of Conservation Easements Additionally, conservation easements in the proposed regulations exist in perpetuity. We believe this is a serious oversight by DEQ. In our experience, small landowners are extremely reluctant to enter their land into perpetual easements. The reasons for this are multifold, but generally stem from the reluctance to encumber land and forego the possibility of</p>	
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	<p>future development of any kind.. This reluctance by smaller landowners to enter into perpetual conservation easement agreements will push anyone seeking to create a conservation easement into negotiations with parties wielding outsized influence due to their larger landholdings. There is more willingness for non-institutional landowners to put their land into conservation easements that are contemporary with the project's lifetime.</p> <p>The conservation easements mitigation methodology puts emphasis on "off-site" mitigation. We believe this is counterintuitive to DEQ's goals. If disturbance is happening on site, so too should mitigation where possible.</p> <p>Removing the perpetuity clause opens up more possibilities for on-site mitigation, as it is much more feasible for developers to conserve areas within a property that is already being partially developed for solar, given their pre-existing relationship with landowners and the congruent timelines. Practically speaking, there is a greater chance of success in convincing a landowner who is already participating in solar development to agree to conserve other portions of their property than a third-party who is getting no additional benefits beyond easement payments.</p> <p>Alternative Mitigation Solutions:</p> <p>We propose the following mitigation alternative solutions for inclusion into a new regulation proposal. These alternatives were conceptualized with input from other solar energy developers, as well as DEQ staff. Generally, we have stuck to a common theme: more flexibility needs to be provided to developers for mitigation. Conservation easement creation as a mitigation methodology alone is unrealistic, overly burdensome from a cost perspective, and fails to capture innovative ways in which the solar industry can mitigate its impacts. We recognize DEQ has carved out the opportunity for "creative" solutions to mitigate solar development impacts. We appreciate those opportunities, but believe explicitly enumerating alternatives would benefit the speed and feasibility of the PBR process by providing the industry with more options for mitigation</p> <ul style="list-style-type: none"> ● Monoculture Pine Plantations: When solar development impacts monoculture pine plantations, the mitigation requirement should not be the creation of conservation easements, but 	
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	<p>rather the planting of native pollinators and plant species in areas under panel and in other suitable areas of the disturbance zone. This mitigation strategy helps to reverse the environmentally destructive actions of industrial timbering by increasing biodiversity and restoring depleted soils and native ecosystem balance.</p> <ul style="list-style-type: none"> ● Mitigation Districts: We recommend removing the mitigation district classification, given that the ultimate goal of these regulations is to ensure that the solar industry offsets its impacts on the agricultural and forestal lands across the Commonwealth. The “mitigation district” should be the entire state of Virginia, and not limited to surrounding watersheds. ● Agricultural and Forest Districts: Instead of mandating conservation easements, DEQ should promote the creation and usage of Agricultural and Forest Districts (AFDs). The Agricultural and Forestal Districts Act (§ 15.2-4300 of the Code of Virginia) outlines the policy's purpose to be similar to that of HB206 and its proposed regulations. AFDs create conditions that promote agricultural and forestal use of land without tying the land up in perpetuity to a conservation easement. We highly recommend this be considered as an alternative to conservation easements as a mitigation technique. To effectively leverage the pre-existing AFD mitigation technique as a response to solar, the regulations should tie the AFD length to a solar project's lifetime. We believe approaching the issue of conservation of forested and agricultural spaces from an AFD perspective will greatly increase the number of landowners who would be willing to participate in such conservation efforts. It would also promote the creation of AFD programs in counties that do not already have them. ● Agrivoltaics: In cases where there is active cropping or grazing on a solar site, herein referred to as 'agrivoltaics,' we believe that site requires no mitigation given that the land is simultaneously being used for solar energy production and activities permitted in a conservation easement. Agrivoltaics provide the intended benefit of mitigating impacts to prime farmland. It contrasts with a conservation easement approach, as land put into a conservation easement alone is not required to be used for agricultural purposes (it can, but it's 	
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	<p>not required to do so). Put simply: if a site mitigates its impacts to prime farmlands through agrivoltaics, there should be no additional mitigation requirement for the disturbed soils. Currently, agrivoltaics is identified as a mitigation reduction methodology. It should be a mitigation absolute methodology.</p> <ul style="list-style-type: none"> ● Undisturbed Areas: Areas that remain undisturbed within the project's properties should be eligible to count towards mitigation if adequate site control agreements demonstrate that the land will remain undisturbed for the project's lifetime. This promotes co-located project disturbance zones and conservation easements that mitigate said zones. ● Administrative Fees: The in-lieu fee that is outlined 9VAC15-60-60 Section H refers to a projected administrative fee cost. We would like this amount to be estimated for projects of different sizes so the developer understands what to expect if pursuing this option. ● Community Solar: There should be different and lower mitigation requirements for solar development that occurs in areas characterized as low-to-moderate income (LMI) communities. If DEQ continues to use watershed basins as an analog for mitigation districts, we suggest "significant LMI rate-payer populations" be defined as 5% LMI earners per mitigation district. Emphasizing solar development in LMI communities additionally aligns with the goals of the Inflation Reduction Act to incentivize development in disadvantaged communities. ● Visual Buffers: To promote the establishment of biodiverse habitats, DEQ should reward solar facilities that utilize a diverse mix of native and naturalized hardwood evergreen and deciduous shrubbery and trees for their visual buffers with lowered mitigation ratios. It should also reduce mitigation ratios for projects that create conservation easements on land with diverse forest mix compared to monoculture timber pine plantations. ● Duration of Conservation Easements: If DEQ continues to offer conservation easements as a mitigation methodology, those easements should be contemporary with the project's lifetime, not perpetual. Many landowners who would be ideal candidates to host conservation easements are likely to avoid an agreement that ties their land up in perpetuity. 	
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	<p>Conservation easements have their place in the conservation world, but they are not a scalable enough mitigation methodology to support health levels of solar energy development.</p> <ul style="list-style-type: none"> <p>Marketplace for Conservation Easements: If DEQ is adamant that conservation easements be an exclusive mitigation method, we recommend that DEQ, alongside developers and other stakeholders, establish a marketplace for conservation easements within the state. A clause should be added that allows any conservation easements created after January 1, 2025, to be eligible for a public “market” in which solar developers can purchase these easements for credit towards their PBR application. This can operate similarly to the existing wetland and nutrient bank credits used for wetland impact mitigation by various development types.</p> 	
<p>30. Friends of the Rappahannock-Brent Hunsinger</p>	<p>Friends of the Rappahannock (FOR) generally supports the proposed 206 regulations that will mitigate the loss of prime agricultural soils and contiguous forestlands. We believe these regulations are necessary to help balance achieving the WIP III Chesapeake Bay cleanup goals and commitments to reduce carbon emissions mandated by the Virginia Clean Economy Act (VCEA). With this in mind we appreciate the opportunity to offer a few suggestions to improve the proposed regulations.</p> <p>Mitigation Districts The mitigation districts as proposed are too broad. They should be made smaller to ensure that mitigation occurs as close to projects as possible. This will help ensure that local water quality and habitat are not sacrificed, and extensive clearing of land is not concentrated in one region. Localities are more likely to support projects that are not removing forest and agricultural resources and fragmenting the rural landscape of their communities.</p> <p>Forestland Mitigation Reductions for Riparian Forest Buffers Draft regulation currently allows the ratio of land required in the conservation easement or easements to be reduced by providing land containing existing riparian forest buffers within the easement. Additional credit should not be given for existing riparian forest buffers in</p>	<p>Support for the proposal is appreciated. Specific concerns and issues identified by the commenter are discussed in further detail below.</p> <p>Mitigation Districts See response to comment 4 regarding mitigation districts. DEQ has updated the definition of “mitigation district” to reflect the TNC-proposed seven groups of Planning District Commission boundaries. DEQ also deleted the language in 9VAC15-60-60 G. 5. that would have allowed an option to locate mitigation in an adjacent mitigation district in the event that land could not be located in the same mitigation district.</p> <p>Riparian Forest Buffers See response to comment 4 regarding riparian forest buffers.</p> <p>Easement Required Within 1 Year of PBR Issuance See response to comment 4 regarding the requirement that a conservation easement must be acquired within a year of PBR issuance.</p>

	<p>easements. The intent of this regulation is in part to mitigate for the total amount of forestland lost. Forestland not existing in a riparian buffer still provides a variety of ecosystem benefits. Tree canopy in Virginia continues to decline despite significant efforts to stem the loss as we strive to meet our Chesapeake Bay WIP III cleanup goals.</p> <p>Conservation Easements As proposed closing on any required easements would have to occur within one year of the date of issuance of the PBR, unless extended by the department for good cause. FOR is concerned about what backstops exist to enable DEQ to ensure required mitigation is completed. DEQ should be given any tools needed to ensure conservation easements are recorded, and mitigation is completed in one year.</p>	
<p>31. MAREC, ACP, SEIA, CHESSA</p>	<p>No Mitigation Required of Other Land Uses The undersigned are unaware of other industries in Virginia that have land use mitigation requirements similar to those of the solar industry. Solar energy is responsible for a very small percentage of forested and farmland conversion, yet the proposed regulations require the industry to shoulder unparalleled, unreasonable, and unworkable mitigation requirements.</p> <p>Failure to Consider Cost The costs associated with compliance were not appropriately evaluated during the Regulatory Advisory Panel (RAP) or DEQ analysis of the regulations, despite HB 206 explicitly calling for consideration of “(ii) the cost of mitigation relative to the project cost, including the costs of proposed mitigation to rate payers,” among other factors. Nowhere in the meeting minutes, Economic Review Form, or Agency Background Document is there evidence of ratepayer analysis. The Economic Review Form not only fails to calculate the impact of the proposed regulations on ratepayers but fails to assess how they will affect localities and the solar industry.</p> <p>Grandfathering is Unclear it is unclear when a proposed solar facility must abide by the new regulations. HB 206 makes clear that mitigation of forested land and farmland is not required of projects that submitted an initial interconnection request by December 31st, 2024.4 We recommend that per state law, any proposed changes to the permit-by-rule program should only apply to projects</p>	<p>No Mitigation Required of Other Land Uses The proposed regulation is consistent with the requirements of HB 206.</p> <p>Failure to Consider Cost See Economic Impact Analysis response to comment 23.</p> <p>Grandfathering Clause See response to comment 18 regarding grandfathering.</p> <p>Disturbance zones See response to comment 23 regarding disturbance zone.</p> <p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Forest land delineations Aerial photography is readily available to check for forest cover within two years prior to the application submittal.</p> <p>Prime Ag Soil Mapping See response to comment 21 regarding mapping of prime agricultural soils</p> <p>Ecological Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p>

	<p>filing an initial interconnection request after December 31st, 2024.</p> <p>Disturbance zones <i>Modify disturbance zone to only include areas where there is direct disturbance.</i> DEQ should clarify that solar projects should not mitigate for any forest and farmland acreage that is not directly disturbed by removing the language “and 100 feet from the boundary of the directly impacted area”. It should also be clarified to exclude areas not controlled by the applicant.</p> <p>Forest core designations The undersigned support the definition of a C1 and C2 forest cores as 100 meters inward from the beginning of the designation – to avoid incidental issues as described above.</p> <p>Forest land delineations 9VAC15-60-40 E. requires a developer to conduct forest land delineations as part of early-stage due diligence. It is unclear how this “forest land” aligns with the definition of forest land that also encompasses land cleared within the past 2 years, per the legislative text.</p> <p>Prime Ag Soil Mapping We recommend DEQ allow project proponents to conduct field verification, and subsequently dispute the NRCS map.</p> <p>Ecological Cores The undersigned have similar concerns for using the Virginia Natural Landscape (VaNLA) Assessment of Ecological Cores to identify and mitigate for disturbance of C1 and C2 ecological cores. The “landscape-scale geospatial analysis” assessed land cover at a ratio scale of 1:50,000, meaning that the analysis was conducted statewide at about 0.8-mile (4,166’) resolution. VaNLA uses land cover data from the National Land Cover Database (NLCD) collected in 2011, therefore, the data used to determine ecological core classification will be at least fourteen years old. While the Virginia Department of Conservation and Recreation (VDCR) updated ecological cores in 2017, we understand the data is based on the NLCD from 2011. We are aware of prospective projects wherein high core designations have been placed on lands that have since been cleared/timbered (before consideration of a potential solar facility). In other cases, lands historically utilized for silviculture have been designated with high core values,</p>	<p>Predicted Suitable Habitat (PSH) Models See response to comment 21 regarding PSH models.</p> <p>Disturbance zone verification by Site Visit No site visit is required to verify the disturbance zone. The disturbance zone is determined from the applicant’s plans. 9VAC15-60-50 C provides that no mitigation for impacts to natural heritage resources will be required unless the resources are verified by a site visit presumably by the ap</p> <p>Phase 1 cultural resources survey The requirement for a Phase I Cultural Resources Survey is in the existing regulation and no changes to this requirement have been proposed. The DEQ and DHR are willing to accept in fulfillment of the Archaeological component of the Phase I Survey requirement use of a probability-based sampling strategy. When properly executed, such a sampling strategy can greatly reduce the scope and cost of a shovel test-based Archaeological Phase I. There is no requirement under the PBR for a Phase 1A Cultural Resources Assessment. However, prospective applicants are strongly encouraged to perform a Phase 1A study and submit the report document to DEQ and DHR for review. Submittal of this Phase 1A for review engages the respective agencies in the prospective approval of a significantly reduced total scope of work that can result in significant cost savings. Such a scope for Ph1 Archeological Survey is generally far less than what is required for linear transportation projects or large area infrastructure projects that fall under Section 106 of the National Historic Preservation Act (NHPA).</p> <p>Wildlife surveys and jurisdiction 9VAC15-60-30 B requires consultation with other agencies in the Secretariat of Natural and Historic</p>
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	<p>highlighting the lack of complex analysis used to associate ecological cores. This is because the 2011 NLCD identifies three forest types, none of which can be associated with silviculture operations. The proposed regulations appear to require that even in cases where trees/habitat are no longer present on a property, or where trees were cut down as part of a silviculture operation after 2011 but two years before submission of a PBR application, applicants may be required to mitigate for lands designated as ecological cores by a GIS analysis not intended for site-specific use. Given the significant number of limitations with the Natural Heritage Data Explorer – and potential project-level impacts associated with these limitations – we recommend DEQ allow flexibility in field verification and sampling, and articulate guidance for applicants that choose to conduct these surveys. It is important that methods to verify natural resources will not create a substantial cost burden on projects – given the purpose of the Natural Heritage Data Explorer is to help developers avoid investing significant upfront capital into sites with a substantial risk to wildlife and other natural resources.</p> <p>Predicted Suitable Habitat (PSH) Models This potential regulatory requirement was not discussed at any permit-by-rule RAP meeting in 2019, 2022 or 2023. Moreover, the existing data is of low resolution and currently performs inadequately on the data explorer. The DEQ has not provided any record-based justification for using a "predicted habitat" analysis over actual observations of threatened and endangered (T&E) species. Additionally, no cost-benefit analysis has been conducted to assess the impact of this new requirement. There is a lack of clarity regarding the additional areas that would be affected, the mitigation measures needed, and the criteria for determining those requirements for suitable habitats. Without a well founded explanation or justification in the record, this requirement appears arbitrary and capricious. We are not aware of any Virginia regulatory program that requires PSH modeling analysis, not to mention required mitigation for suitable habitat where species are not present.</p> <p>Disturbance zone verification Under 9VAC15-60-50, "Determination of likely significant adverse impacts," Section C, a site visit is required for verification of disturbance zone but it is unclear who is managing this site</p>	<p>Resources as is common with most other state environmental reviews.</p> <p>Forest land mitigation requirements Per the Department of Forestry, managed forest plantations may still provide habitat for threatened and endangered species and provide certain ecosystem services such as water quality and quantity benefits.</p> <p>Forest cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Silviculture requirements This provision was recommended by the regulatory advisory panel and is consistent with the HB 206 requirement to consider the impact of disturbance on the local forestal economy.</p> <p>Prime agriculture ratios The definition of prime agricultural soils is provided by HB 206 and does not differentiate between land uses.</p> <p>Prime Ag Soils-Revise mitigation ratios to consider previous land use The definition of forest land is provided by HB 206 and does not differentiate between land uses.</p> <p>Prime Ag Soils-Revise mitigation ratios to consider Ecosystem improvements HB 206 only requires DEQ to mitigate adverse impacts for prime agricultural soils, forest lands or forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia.</p> <p>Eliminate mitigation requirement for acreage used for agrivoltaics See response to comment 27 regarding Agrivoltaics and Ecovoltaics.</p> <p>The Pollinator Smart Scorecard should not be used for regulation</p>
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	<p>visit, when it is conducted during the application process, or any associated costs for this site visit. Our members request further detail to plan for – and possibly finance - this process, which should be mapped out in consultation with industry to avoid development uncertainty.</p> <p>Phase 1 cultural resources survey The requirement to have a full Phase 1 cultural resources survey (9VAC15-60-40 B.2. and B.3) is a large and overly burdensome effort to conduct up front for state permitting. In general, these extensive surveys can range between \$200,000 - \$300,000. Execution of a full Phase 1 survey should depend on the results of a Phase 1A, which consists of an initial desktop survey and an on-site, limited pedestrian survey. It is unreasonable to require this process early in the development stage at the time of permit application. It is unclear whether any other industries are subject to similar requirements.</p> <p>Wildlife surveys and jurisdiction Finally, on-site surveys based on DCR recommendations should not be required. Decisions on whether on-site surveys are necessary should be driven by the project proponent and their coordination with state and federal wildlife agencies. These venues are the most appropriate for this determination; if a decision to conduct field surveys is made, project proponents can review options for approaches and methodologies with the appropriate wildlife agency, rather than within the permit-by-rule process. DEQ should refrain from making recommendations on resources that fall outside of their jurisdiction.</p> <p>Forest land mitigation requirements <i>Reduce Forest Mitigation Ratio to 1:10 for Active Timber Plots; Forest Monoculture.</i> DEQ proposes excessive mitigation requirements for impacts on forest lands. HB 206 does not require a specific mitigation ratio for forest land, yet the proposed regulations require mitigation as high as 7:1, meaning conservation of seven acres of forest land for every acre disturbed by project development. Furthermore, these ratios are inflexible; though Section 2 of the legislation specifically allows for a variety of mitigation techniques or criteria to be considered in the PBR process, no mitigation techniques are proposed to reduce mitigation ratios for forest land. The statute details eight criteria to be considered when determining appropriate</p>	<p>See response to comment 21 regarding Virginia Solar Site Pollinator/Bird Habitat Scorecard.</p> <p>Pollinator plantings Participation in the Pollinator Smart Program as a management alternative to decrease off-site conservation is voluntary under HB 206.</p> <p>Easement eligibility The language in 9VAC15-60-60 G 6 describes lands available for conservation easements.</p> <p>Certainty around in-lieu fees DEQ added language to 9VAC15-60-60 H 1 to clarify that payment of the in-lieu fee in full will satisfy the mitigation obligations without waiting for acquisition of easements by the trustee.</p> <p>In-lieu fees should reflect the typical value of a conservation easement for agricultural and forest use See response to comment 4 regarding the ILF calculation.</p> <p>ORM Economic Review Form is Incorrect The ORM Economic Review Form is consistent with ORM's regulatory economic analysis manual.</p> <p>Provide Estimate of In-lieu Fee Administrative Costs DEQ will determine the projected administrative costs annually in consultation with other state agencies involved in acquiring easements and publish those costs for applicants.</p> <p>Sea Turtle Mitigation Per DWR the criteria that proposed lighting must be submitted to DWR and USFWS for approval prior to construction is currently a requirement for any work/disturbance in sea turtle crawl areas.</p> <p>Justify Requirement for 75% Vegetative Cover The requirement of "maintenance of >75% living vegetative cover for the</p>
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	<p>mitigation techniques or criteria. It also allows developers and regulators to consider the full mitigation hierarchy of avoid, minimize, and mitigate (including compensation when necessary). Nowhere does it detail a specific mitigation ratio. It is unclear why high mitigation ratios were proposed for disturbance of forest land. Approximately 60% of Virginia's land mass – more than 16,000,000 acres – is forested. According to the Virginia Department of Forestry, 209,000 acres are harvested or commercially thinned, and 25,000 acres are disturbed by wildfires every year. In contrast, we estimate fewer than 210,000 acres of land will be required to meet future solar energy targets.¹⁰ Thus, even in a theoretical – and infeasible - maximum development scenario, if the solar industry were to site 100% of future ground-mounted facilities on forested lands over the next two decades, it would use a comparable amount of land as the total acreage disturbed for the commercial forestry industry in just one year, about 0.56% of total forested lands in the Commonwealth. That limited impact, which itself is artificially inflated since not all solar development will take place on such lands, does not justify the mitigation ratios proposed in the regulations.</p> <p>Forest cores <i>Revise Mitigation Ratios Consistent with the 2019 Proposed Regulation.</i> The reason for the recommended ratios for C1 and C2 forest cores is unclear, as previous mitigation requirements were much less exaggerated. For example, in 2019, the agency recommended a developer demonstrate avoidance and mitigation of ecological cores through protection, restoration, and enhancement of the affected or similar resource. It did not stipulate mitigation through purchase of conservation easements at a 7:1 and 2:1 ratio, or in-lieu fee of at least \$21,000, or \$6,000 per acre. It is unclear why, under the proposed regulations, DEQ has not only substantially narrowed the options for mitigation of ecological cores, but greatly increased their rigor. Given the limited impacts of future solar deployment on Virginia's forests, we recommend significantly reducing the ratio of mitigation required for disturbing forest lands, especially for C1 and C2 forest cores. We also recommend DEQ distinguish between forests based on ecosystem services benefits. For example, a diverse forest mix can provide greater ecological value than a loblolly pine plantation – yet the proposed regulations do not incentivize solar</p>	<p>solar project's lifetime is consistent with the DEQ stormwater handbook, Version 1.1 Section 6.3.1.5.5, Solar Installation Soil Compaction and Plant Selection/Establishment, minimum standard 1 and revegetation guidelines.</p> <p>Add examples of Innovative Alternatives See response to comment 4 regarding innovative mitigation alternatives.</p> <p>Conservation Easements The language in 9VAC15-60-60 G 1 a allowing the area of conserved land to be increased or decreased subsequent to submission of the plan identifying the proposed conserved land is included to provide flexibility to adjust the required mitigation if the disturbed area changes.</p> <p>Allow Site Plan Modifications The language in this section is determined by Virginia Code Section 10.1-1197.6 A 11.</p>
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	<p>developers to select land that would otherwise be clearcut or harvested for commercial purposes. We recommend DEQ distinguish between natural forests delivering rich and consistent ecosystem services benefits – including water quality benefits and retention – and monoculture plantations, which are regularly cleared and thinned. Similarly, using commercial forest land for projects has fewer impacts than on undeveloped, natural land. Therefore, for forest land actively being used as timber plots or monoculture Prime farmland in Virginia – Virginia’s Land & Energy Navigator. plantations, we recommend a reduced conservation ratio of 1:10. We also recommend against considering cleared plantations to be forested land.</p> <p>Silviculture requirements <i>Remove requirement to allow silvicultural activities on conservation easements.</i> The provision stipulating all conservation easements for forest land not designated as a C1 or C2 ecological core must allow for silvicultural activities is contradictory. During the 2023 RAP meeting, a representative from DEQ stated, “Economic value will not be prioritized over environmental/ecosystem values on the land.” It is thus unclear why the regulation mandates all conservation easements allow for silvicultural activities, as such activities inevitably result in impacts on wildlife and other ecosystem services.</p> <p>Prime agriculture ratios The undersigned have concerns with the proposed 1:1 mitigation requirement for prime agricultural lands, given the costs and other challenges associated with securing easements for prime agricultural land. Given the broad application of the term “prime agricultural soils,” it is recommended DEQ further refine mitigation requirements to reflect the presence of pre-existing agricultural activities as well as beneficial ecosystem services impacts and enhancements associated with converting the land to solar. HB 206 does not explicitly require 1:1 mitigation, so this ratio need not be the default mitigation requirement proposed by DEQ. Per the legislative text, the agency “shall consider,” among other factors, “the cost of mitigation relative to the project costs, including (ii) the costs of proposed mitigation to ratepayers... (v) the impact on the local agricultural or forestry economy when such soils or lands are displaced; (vi) the loss of ecosystem benefits.” It is unclear</p>	
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	<p>how these criteria were taken into consideration when determining this ratio.</p> <p>Prime Ag Soils Revise mitigation ratios to consider previous land use. - Similar to forest land, prime farmland designations are ubiquitous throughout Virginia - totaling over 3.3 million acres of land in some counties. Prime farmland is a designation based on soil quality, the data for which can be dated, not based on how the land is necessarily utilized today. Although the land may currently be, or may have previously been, designated as prime farmland, it may not necessarily be used for farming; about 30 million acres of U.S. cropland have been abandoned since the 1980s. Given the significant variability in economic contributions and environmental impacts of different land uses, it is unclear why the proposed regulations do not consider this when determining appropriate mitigation practices. For example, prime farmland that is not actively being utilized for farming or that is otherwise unfarmable at the time of application should not require substantial mitigation since there is not an “impact on the local agricultural...economy” from converting prime farmland to solar. HB 206 requires DEQ to detail “reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate” impacts to prime farmland; any reasonable action to mitigate impact of solar development using unfarmed land on the agricultural economy should be commensurately minimal. Modifying the regulation in such manner can also drive solar development toward land not currently being used for agricultural purposes when feasible.</p> <p>Prime Ag Soils Revise mitigation ratios to consider Ecosystem improvements - Accounting for the previous land use also highlights how solar development can result in significant ecosystem services improvements. Recent studies have demonstrated that solar deployment can reduce pesticide and herbicide use, and improve nutrient cycling, pollinator habitat, and water retention compared to traditional row crop agriculture. Solar can thus play an important role in reducing water quality impacts from agriculture: a recent EPA study estimated that 27% of the phosphorus and 60% of the nitrogen entering the Chesapeake Bay originate from cropland.¹³ While every solar facility deployed in Virginia reduces carbon dioxide emissions as well as air</p>	
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	<p>and water pollution as a result of offsetting traditional thermal generation, the shift of traditional agricultural land uses into solar generation can reduce water and fertilizer use and conserve land from more intensive uses. Mitigation burdens should reflect these benefits, especially since placing land in conservation easements does not guarantee ecosystem services improvements. For example, a 2021 agency review of 65 conservation easements found that 65% do not meet the minimum conservation standards set by the Virginia Outdoors Foundation.</p> <p>Eliminate mitigation requirement for acreage used for agrivoltaics</p> <p>The undersigned support the provision in the draft rule that provides agrivoltaics projects with a more favorable mitigation ratio, as the agricultural land use is preserved. However, a 25% reduction in mitigation may be insufficient in many cases, particularly for hayland or grazing if the previous land use was managed for such activities. If open space or pasture is maintained for grazing, there should not be any mitigation required of the acreage disturbed; if farmland used to grow hay continues to grow hay at the solar facility, there should likewise be no mitigation required. Additionally, we suggest that the proposed regulation incorporate an option to grant partial mitigation credit if a project can only commit to or implement grazing for a specified duration, rather than the entire lifespan of the project.</p> <p>The Pollinator Smart Scorecard should not be used for regulation</p> <p>While we appreciate the opportunity to reduce mitigation requirements through pollinator friendly vegetation management practices, the Pollinator Smart Scorecard is not appropriate to use for regulation. In 2018, the scorecard was developed with the explicit understanding that it would be a voluntary designation and not used as regulation, and it is inappropriate to subsequently incorporate it into this process. Furthermore, it was developed over 5 years ago without any industry representatives as authors. Should DEQ aim to spur greater ecosystem services benefits through vegetation management strategies, we recommend either initiating a new process for updating the scorecard or issuing mitigation credits for planting and maintaining native vegetation. This is in part because pollinator plantings are not</p>	
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	<p>feasible on every site, and there are a variety of challenges and considerations, including: a) Soil composition b) Seed availability c) Cost d) Potential attraction of listed species, and associated legal liability e) Potential fire hazard from taller vegetation f) Potential hazard for operations and maintenance staff (bee stings, trips and slips, tall vegetation hiding other hazards etc, which can lead to serious injuries and fatalities.)</p> <p>Pollinator plantings We also found the requirement that 30% of the project area be covered in pollinator plantings to be eligible for reduced mitigation obligations is overly burdensome. DEQ should coordinate with industry to determine a more feasible percentage.</p> <p>Easement eligibility Finally, the final rule should specify that prime farmland acres that are not otherwise under an existing easement should by default be eligible for mitigation credit under these regulations. This would help provide certainty to developers on land that is eligible for mitigation.</p> <p>Certainty around in-lieu fees The undersigned support the concept of in-lieu fees as an alternative available to an applicant from which to choose, which is consistent with Section 2 of HB 206. The final rule should make clear that once an applicant has paid the required fees, their mitigation obligation has been met. This helps provide certainty to applicants, their investors, localities, landowners, and other stakeholders. It is then up to the mitigation provider to follow through with securing the necessary easements with any resulting liabilities for failure to do so being transferred to the mitigation provider.</p> <p>In-lieu fees should reflect the typical value of a conservation easement for agricultural and forest use It is unclear how DEQ arrived at \$3,000 per acre as a minimum in-lieu fee. Based on the latest DCR report on land preservation tax credits, the average value of conservation easements in rural counties can be as low as \$1,103 per acre.¹⁵ In 2022, the per acre value of easements receiving matching state funds for farmland preservation averaged under \$2,100 – and in some cases this value included incidentals such as surveys, title insurance, appraisals, and reasonable legal</p>	
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	<p>fees.¹⁶ Using the minimum in-lieu fee of \$3,000, we calculated the total cost of mitigation using example projects. For one 240-megawatt project, a developer would incur a total of \$1.6 million in-lieu fees, excluding administrative costs, based on the following: • Ecological Cores: (154 acres) \$462,000 • Forests: (234 acres) \$702,000 • Prime Ag soils (154 acres) \$462,000 For context, \$1.6 million represents approximately one-tenth of total annual state funding for farmland conservation. It is thus strongly recommended DEQ revise the in-lieu fee to better represent the value of farmland being used for solar. DEQ determined in-lieu fees could also be based on the difference between use value and full assessed value to estimate the conservation easement value of the proposed solar site. However, this reveals a contradiction in regulation. Many localities view solar as a necessary and effective tool to slow residential sprawl and maintain the rural character of a county. Taking the difference between the use value and full assessed value of land inherently punishes developers conserving land most vulnerable to development. In fact, according to conservation organizations during one of the RAP sessions, a primary purpose of a conservation easement is to preserve land that would otherwise be developed for residential or commercial purposes.¹⁹ By taking the difference between use value and full assessed value, the proposed regulation would incentivize developers to preserve land that is more likely remain open space or agriculture rather than land at-risk for housing or commercial development. DEQ could address this inherent contradiction – and account for the high variability of conservation easement values - by calculating the value of conservation easements of similar land in the region.</p> <p>ORM Economic Review Form is Incorrect ORM failed to appropriately quantify the economic value of forests and farmland. To estimate the per acre annual contribution of one acre of farmland, ORM simply divided the total direct and indirect estimated economic contributions of the entire agriculture industry by the total number of acres in farmland in Virginia. This back-of-the-envelope calculation greatly overstates the per-acre value of farmland and ignores the diversity of the agricultural economy. 68% of cash receipts from agriculture in Virginia derive from dairy and meat animals; yet the vast majority of farmland is dedicated to growing commodity crops, such as hay or soybeans. The</p>	
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	<p>annual contribution of the crops can vary between \$125 and \$600 per acre, based on average crop yields and commodity prices, not \$6,281 as suggested by ORM. Similarly, VDOF estimated the present value of loblolly pine forest between \$388 and \$686 per acre, far lower than \$1,800 per acre as suggested by ORM. The proposed regulations also fail to factor in the economic benefits provided by solar, which already provides a variety of tangible economic benefits to Virginians, providing 4,141 family-supporting jobs, \$14,589,561 in state and local tax revenue, annual landlease payments totaling \$19,337,210, and an overall capital investment of \$5,481,681.</p> <p>Provide Estimate of In-lieu Fee Administrative Costs Finally, the undersigned also request that DEQ provide an estimate of administrative costs related to payment of in-lieu fees. In the 2023 RAP, a representative from the Virginia Outdoors Foundation estimated a developer would need to pay \$15,000 - \$30,000 per easement. However, it is unclear if these fees will be proportionate to the number of acres disturbed or conserved, type of land, or a flat fee reflecting staff time.</p> <p>Sea Turtle Mitigation It is unclear why the regulations were revised to require both DWR and U.S. Fish & Wildlife Services approve the proposed project lighting plans for projects proximate to sea turtle habitats. This change was not included in the proposed revisions of 2019, nor does it relate to HB 206. It is unclear why this change was made, and how the approval process would work with both DWR and USFWS. We are unaware of USFWS having an existing process in place to manage permit applications and proposed project lighting plans from solar developers. We recommend maintaining the regulations as-is; as federal take permits can be pursued independent of the permit-by-rule process.</p> <p>Justify Requirement for 75% Vegetative Cover The undersigned request clarity on the requirements associated with "Table 1. Partial Mitigation Options to Preserve Prime Agricultural Soils." The requirement of "maintenance of >75% living vegetative cover for project lifetime" is not clear, as it does not indicate what the 75% refers to. Is this project area, disturbed area, or pervious area?</p>	
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	<p>Add examples of Innovative Alternatives We applaud DEQ for offering alternative solutions to mitigation and allowing project proponents to propose creative mitigation approaches. This is critical for allowing innovative, community based solutions to address the common goals of local stakeholders. We recommend DEQ consider the following structures that should be specifically called out as options in the final rule: • Instead of land conservation – which may not directly benefit tenant or emerging farmers - fees in-lieu that could support local 4-H clubs, training of young farmers, and education and training programs for tenant farmers. Over one-third of Virginia’s producers are over the age of 65, these initiatives could support the industry’s generational transition. • Conservation of the disturbed area after project decommissioning, resulting in immediate, local conservation benefits. • Restoration of riparian buffers or wetlands offsite, which would support the state’s goal of managing Chesapeake Total Maximum Daily Load (TMDL).</p> <p>Conservation Easements We also have concerns related to a provision in G.1, which establishes requirements for conservation easements, specifically: “a. Identification of the proposed conserved land, <u>provided the area of conserved land may be increased or decreased subsequent to submission of the plan as needed to meet the mitigation approved with the application,</u>” [emphasis added]. It is recommended DEQ remove the emphasized portion, as it places unnecessary uncertainty on the developer. Developers apply for permits at the early stages of the project, and state agency feedback informs the project design. It is unreasonably burdensome and premature to require mitigation measures before the project is fully planned. It is also challenging to secure an easement that is for a variable number of acres. DEQ may be able to address this uncertainty by establishing a process to confirm the number of acres requiring mitigation before the final application is submitted.</p> <p>Allow Site Plan Modifications We suggest that the DEQ allow site plan changes submitted after the application without restarting the process, provided they do not materially alter the environmental impact or other</p>	
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	<p>required permits. DEQ could expand the administrative amendment section to cover these changes. Additionally, changes made to optimize technical, environmental, and cost considerations that do not materially alter the environmental impact but may affect other permits should undergo an abbreviated modification process. If the applicant coordinates with the relevant agency and obtains the necessary permits, the modification should be incorporated into the PBR authorization without needing full modification, including local government certification and a public comment period.</p>	
<p>32. Sun Tribe Development</p>	<p>Overall, Sun Tribe Development is supportive of the mission of the Permit by Rule process and values the opportunity for engagement with DEQ. In the spirit of collaboration and cooperation, we have drafted the following comments to clarify and adjust the implementation of HB 206 requirements.</p> <p>Cost of Mitigation 1. HB 206 asks for the Department to consider “(ii) the cost of mitigation relative to the project cost, including the cost of proposed mitigation to rate payers.” We believe that this factor is currently not addressed in the proposed regulations. We are concerned that the aggregate cost for compliance among solar facilities sited and permitted within the state will have a significant negative impact on ratepayers. First, the proposed regulations in their current state potentially threaten cost-effective and locally supported projects that would be otherwise viable and provide economic assistance to localities. Second, for projects that can survive and develop within these proposed conditions, high mitigation costs will be passed down to the ratepayer through the utility byway of overall higher project costs or higher prices for energy sold from these facilities to the utility.</p> <p>Solar Projects not subject to PBR 2. Not all projects are subject to the permit-by-rule process, namely projects above 150 MWac or other projects that go through the CPCN process. This regulation as proposed has the potential to disadvantage these small projects in favor of much larger projects which already benefit from economies of scale. Sun Tribe</p>	<p>Cost of Mitigation See response to comment 23 regarding economic impact analysis.</p> <p>Solar Projects not subject to PBR The proposed regulation is consistent with the requirements of HB 206.</p> <p>Definition of Disturbance Zone See response to comment 23 regarding definition of disturbance zone.</p> <p>Ecological Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p> <p>Coordination with DEQ Staff DEQ and the other sister agencies involved in the review of solar projects appreciate early consultation with developers. We recommend pre-application meetings and encourage consultation as early as possible to avoid costly delays due to insufficient mitigation plans or deficiencies in the PBR application. NOI submittal is not necessary to conduct a pre-application consultation with DEQ staff.</p> <p>Clarification Around Reporting and Mitigation Requirements 1) in this example no mitigation would be required for disturbance of 40 acres of forest because it is less than 50 acres of contiguous forest land.</p>

	<p>Development specifically focuses on projects 1-150 MWac, so is particularly aware of this balance.</p> <p>Definition of Disturbance Zone 3. As many other parties have commented, Sun Tribe Development advocates for the definition of the disturbance zone to be based on the project's proposed land disturbance limits rather than its current proposed definition (within a 100-foot buffer from that boundary). We believe this is the most accurate way to mitigate the actual disturbance caused by a project, as well as ensure that the acreage mitigated is truly within the control of the project.</p> <p>Ecological Cores 4. As many other parties have commented, Sun Tribe Development is concerned about the accuracy of the Virginia Natural Landscape Assessment Ecological Cores dataset. The age of the underlying aerial imagery upon which the dataset was developed, the scale and raster format of the dataset, and the inability to adjust based on recent site conditions are all concerning and not aligned with the intent of the rest of the proposed text. Sun Tribe is appreciative that the other datasets referenced in the proposed text are based on known scientific inputs and developers are allowed the ability to consult experts to adjust boundaries where they are deemed inaccurate, but DEQ has stated that the Ecological Cores dataset does not allow this expert adjustment to occur. Sun Tribe Development requests that DEQ relies on a more accurate and defined dataset to define and evaluate high-value forest land across the state.</p> <p>Coordination with DEQ Staff 5. Sun Tribe Development appreciates the value of the DEQ PBR staff's time and notes that developers are more likely to engage with staff earlier on in the development process, especially where datasets defining mitigation acres are uncertain or open to interpretation. This coordination will likely occur far before NOI stage.</p> <p>Clarification Around Reporting and Mitigation Requirements</p>	<p>Therefore, 15 acres of prime ag soils must be mitigated. 2) Mitigation of disturbance to prime agricultural soils may be reduced by on-site options described in Table 1.</p> <p>Duration of Conservation Easements See response to comment 25 regarding duration of conservation easements.</p> <p>Mitigation for C1 and C2 Forest Cores See response to comment 4 regarding mitigation for C1 and C2 forest cores.</p>
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	<p>6. We request clarification around reporting and mitigation requirements for areas that may exist within the disturbance zone that are characterized as existing within multiple datasets (for example, prime agricultural soil and forest land). We note that 9VAC15-60-60-E-6 addresses the mitigation plan specifically, but we are requesting additional clarity for this scenario in other sections.</p> <p>a. In 9VAC15-60-50 when determining if a project is deemed to have a significant adverse impact. For example, if a project disturbs 40 acres of contiguous forest lands and 15 acres of prime agricultural soils but 14 of those acres are overlain by both datasets, does the significant adverse impact get triggered?</p> <p>b. Whether or not these overlain areas can utilize Partial Mitigation Options per Table 1</p> <p>Duration of Conservation Easements</p> <p>7. Sun Tribe Development believes the most effective mitigation of ecological impacts occurs onsite or adjacent to those impacts. We request that DEQ staff consider how best to incentivize onsite mitigation for impacts addressed in the proposed text. Our main concern is the requirement that conservation easements be established in perpetuity when solar projects are scheduled to be decommissioned on a known timeframe. We believe landowners would be interested in conserving land adjacent to solar projects if the timeframe for easement is in line with the life of the solar facility, but they may be more wary to do so if the term is in perpetuity.</p> <p>Mitigation for C1 and C2 Forest Cores</p> <p>8. Sun Tribe Development has experience working with landowners who operate large-scale timber plantations. We are concerned that this land use is being falsely valued above other types of land use that provides more ecological benefits and request that DEQ reevaluate the ecological value of this type of land use. Typical pine plantations consist of monoculture loblolly pine (or similar) that is planted and harvested on a 30-40 year cycle (similar to the life cycle of a solar facility). In addition to the loss of forest canopy on this recurring cycle, harvesting operations also disturb land cover due to heavy</p>	
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	<p>tracked vehicles conducting timbering operations. Additionally, although timber companies follow state forestry best practices in proximity to known wetlands, it is our professional experience that land in Virginia almost always has more extensive wetlands onsite than show up in desktop datasets, so destruction of forested wetlands is likely common in timber harvesting operations. After harvest, herbicides are used heavily to prepare for the next timber crop. Sun Tribe Development has seen projects where monoculture timber plantations have been characterized with a conservation rank of C1 or C2 even though this land use has occurred on the property for decades. We request that the ecological benefit of these practices is evaluated by DEQ and mitigation ratios and practices described in the proposed text are adjusted accordingly.</p>	
<p>33. Alliance for the Shenandoah Valley-Kate Wofford</p>	<p>Alliance for the Shenandoah Valley strongly supports the draft amendments required by HB206 to advance renewable energy while protecting farm and forest land.</p> <p>Mitigation Districts As the draft amendments move forward, we encourage DEQ to consider decreasing the size of the “mitigation district” as defined in the draft regulation. The Shenandoah River Basin is a very large land area, and farmland protection efforts, in particular, will be most effective as close to the impact as practical. Similarly, we support the provision that allows mitigation included in a siting agreement approved by a locality to satisfy the DEQ mitigation obligations. Several Shenandoah Valley counties have conservation easement authorities with farmland protection goals that are aligned with the goals of HB206. These publicly-supported land protection programs are a logical vehicle to achieve the mitigation objectives.</p>	<p>Mitigation Districts See response to comment 4 regarding mitigation districts.</p>
<p>34. SELC, Appalachian Voices, CCAN, Sierra Club, NRDC</p>	<p>Revise Mitigation Districts We recommend that the final regulations adopt the mitigation district proposal recommended in The Nature Conservancy’s comments on the Proposed Regulations, which will also provide appropriate flexibility. Allowing mitigation within these broader districts would achieve a balance between ensuring offsets to the impacted land and community while also providing an expansive enough territory for developers to</p>	<p>Revise Mitigation Districts See response to comment 4 regarding mitigation districts.</p> <p>Reduce In-lieu Fee See response to comment 4 regarding ILF calculation.</p>

	<p>identify plots for conservation easements in a reasonable timeframe.</p> <p>Reduce In-lieu Fee While we do not have a recommendation for a specific numerical discount to the \$3,000/acre in-lieu fee in the Proposed Regulations, we urge DEQ to consider adopting a lower number in the final regulations in recognition of the central role solar plays in the clean energy transition, the related land and environmental preservation benefits, and the impact of this fee on Virginia ratepayers. The in-lieu fee alternative focuses too narrowly on solar land use without regard to the environmental benefits of solar and the role solar will play in driving Virginia’s clean energy transition. As drafted, however, the in-lieu alternative also does not account for the environmental attributes of solar or reflect the resource’s central role in Virginia’s clean energy policy. Under this mitigation option, an applicant must pay an amount equal to “the predicted costs of a perpetual easement,” deemed to be “the greater of” \$3,000 per acre of disturbed land or “the difference between the most recent assessed use value per acre [of the disturbed land] and the full assessed value per acre of the land affected by the solar project prior to re-assessment as a solar use.” Like the conservation easement option, this route seems to focus solely on land preservation without balancing the benefits of solar development against its land use impacts. First, the cost is tied to a “perpetual easement,” which, as explained above, is in tension with solar decommissioning requirements. Second, the \$3,000/acre amount appears to be based on the Economic Impact Analysis, from the Virginia Department of Planning and Budget, which estimates that the median appraised value of land preservation easements equals \$2,973.58 While this value may appear appropriate based on the chosen mitigation framework and can be reduced through various mitigation efforts, adopting a value equal to generic conservation easements ignores the environmental benefits of solar to land preservation. In particular, this \$3,000 value does not reflect that the rapid deployment of clean energy— with solar as the lynchpin—is necessary to not only improve the air and water quality in the state, but also slow the quickening,</p>	<p>Mitigation Measures for Significant Adverse Impacts to Prime Agricultural Soils Even with all on-site mitigation practices, there still will be a reduction in productivity of prime agricultural soils. No change made to the proposed regulation as a result of this comment.</p> <p>Conservation Easements Should Expire with end of Solar Project See response to comment 26 regarding duration of conservation easements.</p> <p>Innovation Mitigation Alternatives See response to comment 4 regarding innovative mitigation alternatives.</p>
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	<p>increasingly harmful effects of climate change from fossil-fuel generating resources. As we have seen in recent months, disasters like Helene, which are occurring with greater frequency and intensity, pose a greater threat to Virginia’s most valuable agricultural lands. A Virginia Tech analysis recently estimated that “the damage from Hurricane Helene to Virginia’s agriculture, forestry, and related industries will fall between \$416 million and \$630 million.” Taking steps to slow warming temperatures is also necessary to prevent indiscriminate land impacts from forest fires; in March of 2024 alone, over 100 fires burned 7,500 acres throughout Virginia, including in the Shenandoah National Park. Ultimately, this year’s spring fire season “burned nearly 20,000 acres, the most burned during a spring fire season in the last years,” and more than nine times the 2023 spring season. In the face of these escalating climate risks, solar is by no means the only, or even the largest, threat these valuable lands face. And, in fact, for some of the most disastrous, permanent threats, solar—including scalable and cost effective utility-scale solar—is a key part of the solution.</p> <p>Mitigation Measures for Significant Adverse Impacts to Prime Agricultural Soils</p> <p>Require No Off-site Mitigation if No Change in Grade - Eliminate the requirement to purchase a conservation easement or pay an in-lieu fee for projects that opt for the first mitigation option “to preserve prime agricultural soils,” referred to as “Option 1: no change in grade.”</p> <p>Increase Credit for Active Cropping - We recommend that “active cropping including hayland,” in combination with any of the three soil mitigation options in 9 Va. Admin. Code § 15-60-60(E)(3), eliminate the conservation easement or in-lieu fee requirement.</p> <p>Increase Credit for Managed Grazing - We recommend that “managed grazing,” in combination with any of the three soil mitigation options in 9 Va. Admin. Code § 15-60-60(E)(3), eliminate the conservation easement or in-lieu fee requirement, or, in the alternative, receive a steeper discount than the proposed 25% reduction.</p>	
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	<p>Conservation Easements Should Expire with end of Solar Project</p> <p>DEQ should revise the “conservation easement” definition by removing the requirement that this mitigation be “perpetual” and specifying that that “conservation easements” should last for the life of the small renewable energy project requiring mitigation, with an option to extend the easement if the life of the facility is extended. The conservation easement mitigation option ignores the Virginia Code’s decommissioning requirements and fails to reflect that solar land use, unlike other types of development, does not require land to be permanently altered. First, the requirement that conservation easements be “perpetual” ignores the life cycle of utility-scale solar. All solar facilities subject to these regulations have useful lives of 25 to 30 years, after which they are subject to stringent decommissioning requirements that must also meet local requirements. Specifically, Virginia Code requires solar developers to enter into a written agreement with localities “to decommission solar energy equipment, facilities, or devices” subject to specific terms including that the developer “provides financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee.” The section defines “decommission” as including the “reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.” In other words, Virginia Code requires that the land be substantially “restored,” in which case it will be available for previous or different land uses once the installation is decommissioned. Nevertheless, the regulations would require perpetual mitigation for a solar facility’s 25- to 30-year impact.</p> <p>Support Allowing Innovative Alternatives -</p> <p>The sections of the Proposed Regulations providing DEQ, solar developers, and localities with flexibility to develop alternative site-specific mitigation plans should be adopted in the final regulations.</p>	
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<p>35. Virginia Farm Bureau Federation</p>	<p>In-Lieu Fee (ILF) Administration Request the Office of Working Lands Preservation at DOF be sole trustee for any in-lieu mitigation funds for both prime ag soil and forestland.</p> <p>Allowance of Silvicultural Activities Any requirements in the regulation should explicitly allow for silvicultural activities to preserve the health of the forest in instances of needed harvesting, especially for invasive pests or disease. Delete last line of G.7, "Every conservation easement for C1 or C2 forest cores shall restrict disturbance of the conserved land." Delete last two sentences of G.8, "Easements for mitigation of prime agricultural soils shall be generally consistent with the Virginia Outdoors Foundation (VOF) easement template for Working Farm/Intensive Agriculture. Easements for mitigation of C1 or C2 forest cores shall be generally consistent with the VOF easement template for protection of natural areas."</p> <p>Valuation Should Be Different Between Agricultural Soils and Forestland The Virginia Farm Bureau believes strongly that any final HB 206 regulations should work toward the conservation of Virginia's working farms and forests. The final regulations must ensure that agricultural soil and forest land are valued accurately for its environmental and economic benefits to the industry. To ensure this, the language in H.1 must see that the in-lieu valuation is different between agricultural soils and forestland. Prime agricultural soil provides different benefits than forest land. While both are important for mitigation efforts, the values can be different and be evaluated by differing metrics in both economic and ecological values.</p> <p>We recommend subdividing H.1 into mitigation values for agricultural soils and then forestland:</p> <ul style="list-style-type: none"> For subsection (i) dealing with prime agricultural soil, we recommend utilizing the appraised value of the land, a baseline of \$3,000 per acre of disturbance of agricultural soils to mitigate for the ecosystem services loss, and an addition of the SLEAC value for cropland harvested or the average price for each crop as stated in the most recent yearly report of USDA's 	<p>In-Lieu Fee (ILF) Administration See response to comment 20 regarding ILF administration.</p> <p>Allowance of Silvicultural Activities See response to comment 20 regarding allowance for silvicultural activities.</p> <p>DEQ has revised the easement requirement to require consistency with Virginia Department of Forestry easement guidelines for forest and agriculture conservation.</p> <p>Valuation Should Be Different Between Agricultural Soils and Forestland See response to comment 4 regarding ILF calculation.</p> <p>Partial Mitigation Options The ratios for on-site mitigation were developed by the RAP with input from subject matter experts. DEQ agrees that enforcement of the required on-site practices will be critical to successful mitigation.</p> <p>Riparian Forest Buffers See response to comment 4 regarding Riparian Forest Buffers.</p> <p>Overlap forest and prime Agricultural Soils The requirement for mitigation when forest land overlaps with prime agricultural soils was reviewed by the regulatory advisory panel. DEQ determined in consultation with the RAP that requiring mitigation to include both forest land and prime agricultural soils would be too burdensome.</p> <p>Innovative Alternatives See response to comment 4 regarding innovative alternatives.</p> <p>Managed Grazing</p>
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	<p>National Agricultural Statistics Service (NASS) if no SLEAC value is available for the locality in which the project is being located.</p> <ul style="list-style-type: none"> As a suggested clarification to subsection (ii) of section H.1 regarding forestland, we would recommend using the combination of the assessed value and the State Land Evaluation Advisory Council (SLEAC) value of the forestland, rather than the difference. This would align with the purpose of HB206 in which the economic impact and ecosystem service benefits lost with the disturbance of contiguous forestland would properly be calculated. If there is not a SLEAC value for a particular county, a SLEAC value from the nearest county within the hydrologic unit (HUC) should be used. <p>Partial Mitigation Options We are concerned over the ratios included in the partial mitigation options to preserve prime agricultural soils contained in Table 1 in 9VAC15-60-60. While we appreciate DEQ’s commitment to top-soil preservation and prevention of soil compaction during installation, we are unsure of how successful the targets will be to prevent these outcomes. DEQ has found that up to 70% of solar installations are not in compliance with stormwater regulations. We are concerned about the Department’s ability to verify the conditions needed to be met in order to qualify for a ratio of 1:10 for HB206 compliance. We would prefer more prime agricultural soil be preserved elsewhere for use in production agriculture than credit be given for unachievable onsite mitigation measures.</p> <p>Riparian Forest Buffers We disagree with the Department’s inclusion of a reduction in mitigation measures for conserved land containing riparian buffers as contained in Section E.2 and F.2 from the regulation. HB206 was not designed to be a mechanism for accomplishing our Chesapeake Bay nutrient reduction goals and buffers simply are not a replacement for working lands displaced by solar installations. The underlying legislation requires the mitigation of prime agricultural soils and forestland and including additional credit for stream buffers is inconsistent with the scope of that intention. Landscapes and soil types are</p>	<p>Inclusion of managed grazing as an on-site mitigation was recommended by the RAP to encourage an activity that supports the agricultural community while adding nutrients to the soil. The definition is not intended to regulate grazing in any way but to make clear grazing as a solar mitigation needs to maintain vegetative cover to minimize erosion. If an applicant selects managed grazing as an optional on-site mitigation, they will submit a site specific plan which will include their proposal to determine compliance. The plan will be reviewed and approved as part of the permit by rule.</p> <p>Agrivoltaics See response to comment 27 regarding Agrivoltaics and Ecovoltaics. DEQ welcomes further development of agrivoltaics.</p> <p>Ecovoltaics See response to comment 27 regarding Agrivoltaics and Ecovoltaics. The RAP accepted the SME recommendation of the 25% credit for all three practices. Although there may be different benefits to the practices DEQ doesn’t have a basis to give differing levels of credit.</p> <p>Mitigation Districts See response to comment 4 regarding mitigation districts.</p> <p>Mitigation Ratio Reductions Solar development is subject to construction stormwater plan requirements similar to the requirements for industrial development. No mitigation credit is given in the regulation for mere compliance with the stormwater management plan requirements.</p>
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	<p>different from region to region within a watershed and the preservation of prime soil for growing crops is not necessarily in an area in which a buffer will be installed. On a practical level, what is the mechanism the Department will use to verify these buffers? Will the Department of Conservation and Recreation’s Agricultural Cost-Share Program be used to comply with HB 206? For these reasons, we would request the removal of Section E.2 and E.3.</p> <p>Overlap forest and prime Ag Soils Disappointed developers do not have to be responsible for preserving ag soils that happen to contain forest. HB 206 intention is to preserve prime ag soils; If development occurs on prime ag soils which happens to contain trees, the preservation of forestland not on prime ag soil is not as valuable a resource and should be treated as such.</p> <p>Innovative Alternatives We would recommend the Department delete Sections E.7 and F.4 regarding mitigation measures for significant adverse impacts to prime agricultural soils and forest land. We are uncertain what “innovative alternatives” would be available to a developer nor does the underlying bill contemplate alternatives to mitigation. The open-ended nature of the language could lead to the continued loss of prime agricultural soils and forest land in the future.</p> <p>We appreciate the use of the Department’s definition of “contiguous forestland” and “land disturbance”. The definition of forestland reflects the proper status of tree stands and will ensure proper mitigation for potential tree canopy loss. Land disturbance also reflects the definition of disturbance consistent with other forms of development of which mitigation is necessary. The Farm Bureau supports keeping both as drafted in 9VAC15-60-10.</p> <p>Managed Grazing We do object to the inclusion of a definition of “Managed Grazing” in 9VAC15-60-10. There is no other statutory definition of grazing and a plan for grazing is not equivalent to livestock management in production agriculture. Per our objections to the definition of “Managed</p>	
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	<p>Grazing”, “Active Cropping” and “Pollinator Habitat”, we would recommend the deletion of E.4 in 9VAC15-60-60.</p> <p>Agrivoltaics Recommendation that Commonwealth convene a stakeholder group led by Virginia Cooperative Extension to develop definition for "agrivoltaics" to ensure solar projects categorized as such are true "dual use" projects producing and selling an agriculture product. Definition of agrivoltaics could alleviate concerns of either / or situation where land is changing from one to the other. Instead, the land currently being used for agriculture could continue to be farmed and a solar developer could be incentivized to design their solar development to fit the farming operation for a true dual use situation.</p> <p>Ecovoltaics Dual use opportunity of "ecovoltaics" provides ecosystem services such as pollinator habitat. As regulation currently written, appears to be two different types of "dual use" solar developments given the same mitigation reduction of 25%. Propose the following change: Pollinator Smart habitat / vegetation results in 5% reduction of off-site conservation easement and Agrivoltaics (currently listed as managed grazing; active cropping, including hayland) result in 25% reduction of off-site conservation easement.</p> <p>Mitigation Districts Mitigation districts should be aligned with hydrologic unit codes (HUCs) rather than watershed like other mitigation programs such as nutrient banks.</p> <p>Mitigation Ratio Reductions Fee reductions [for erosion and sediment control standards] should not be as high as proposed. Many advances in technology (e.g., Nevados) that allows for decreased grading and allowing installation on slopes up to 37% to follow natural topography. Decreasing or eliminating grading is a decreased cost for developers creates a win-win with cost savings while protecting the environment and soil health.</p>	
<p>36. Friends of Buckingham</p>	<p><u>A) As a grassroots organization that has been working to protect Buckingham County for</u></p>	<p>Environmental Justice</p>

	<p><u>the past decade, we would like to address Environmental Justice concerns for the fair and meaningful involvement of all people in the development of changes to 9 VAC 15-60 Small Solar Renewable Energy Projects Permit Regulation.</u> There is great concern that communities most likely to be subjected to the environmental and economic hardships that come with the loss of agricultural lands and forested lands, and rezoning of agricultural and residential lands to industrial use, are NOT aware of the changes being proposed and thus NOT involved in the development of the new regulations. Further, navigating and interpreting the draft information, and additional materials pertaining to the proposed changes to 9 VAC 15-60 on the Regulatory Town Hall presents additional barriers to inclusion.</p> <p>Mitigations should be further enhanced to include Environmental Justice analysis and concerns which will result from the losses of forests and farms.</p> <p><u>B) Mitigations for soil vitality and soil health have not been addressed in the draft document.</u> Site based mitigations should require additional management of and additional compensation for the following:</p> <ul style="list-style-type: none"> • Grading based on 1) volume (i.e. number of cubic yards moved) and 2) percent slope change that occurs. A composite score produced, and additional mitigations incurred for projects that inflict the greatest impacts to site topography on a sliding scale. • Preconstruction, operational, and decommissioning phases should require <i>onsite</i> testing and maintenance of soils. Multiple parameters should be tested. These tests should be performed at regular intervals and include traditional soil tests with the addition of testing for lead, PFAS, and materials within solar panels that would be harmful if they were to be present in the environment. • Stored topsoil should be monitored and managed using best practices to preserve its integrity. Depth and time of topsoil storage are critical factors that lead to degradation. Mitigations should 	<p>DEQ followed all the public notice and public comment requirements of the Administrative Process Act and all adopted guidance regarding public input. Section 7 of the Virginia Clean Economy Act requires the SCC, when considering the placement of renewable energy facilities, to consider how those facilities benefit historically economically disadvantaged communities, but this section does not apply to DEQ. It is unclear whether solar development authorized by PBR has beneficial or detrimental impacts to environmental justice communities.</p> <p>The Virginia Stormwater Management Handbook includes several sections requiring protection of soils against erosion, compaction and other adverse impacts of solar development, e.g. Section 6.3.1.5.</p> <p>Brownfields and Previously Disturbed Areas 9VAC15-60-130 addresses solar projects on former industrial areas, brownfields, rooftops, and parking lots. Projects that meet the requirements under this section are subject to reduced permitting requirements or no permitting requirements. Requiring mitigation for projects on prime agricultural soils and forestland should encourage developers to build on brownfields or previously disturbed areas.</p>
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	<p>be based on the preservation, degradation, or improvement of the soils.</p> <ul style="list-style-type: none"> • Redistribution of subsoil and topsoil should be done in a manner that replicates or improves initial site conditions. Mitigations should be based on the preservation, degradation, or improvement of the soils. <p><u>C) Please consider and keep in mind the following:</u></p> <p>Mitigations <i>should</i> include incentives that shift the solar buildout to the built world. Solar panels should be placed on already developed lands like former industrial areas, brownfields, rooftops, and parking lots. Forests and Farms safeguard our irreplaceable ecosystems and wildlife!!! It is NOT necessary to destroy nature to deploy solar.</p> <p>Regarding the current draft, we have concerns over the treatment of topsoil and maintaining its health, viability, and carbon capture during removal and redistribution. If the soil degrades, it is NOT the topsoil it was prior to disturbance.</p> <p><i>“Soil is more than the dirt under our feet and the ground we stand on. It’s a living ecosystem and it impacts our world in more ways than we might think. Soil performs many functions to sustain plants, animals, and humans. The functions performed by healthy soil include water storage; good water infiltration and drainage; support high crop yields and high crop quality; providing habitat for diverse soil organisms and high microbial activity; supplying nutrients to plants; retaining and recycling nutrients (N, P, K, S, Mg, Ca, etc.); stores carbon; and reduces greenhouse gases.” ~</i> https://www.pubs.ext.vt.edu/content/pubs_ext_vt_edu/en/SPES/spes-583/spes-583.html ~</p> <p><u>D) While you are evaluating these and other public comments, please consider how they are applicable in the context of DEQs mission.</u> <i>“DEQ’s Mission is to protect and enhance the environment of Virginia in order to promote the health and well-being of the Commonwealth’s citizens, residents, and visitors in accordance with applicable laws and regulations.” ~</i> https://www.deq.virginia.gov/get-involved/about-us ~</p>	
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<p>37. Mary Hodge</p>	<p>In light of the fact that over 10,000 acres of prime Virginia land, 2,400 acres of prime farmland, and 7,700 acres of beautiful forest land have been taken by solar each year in Virginia, I feel like the DEQ needs to promote the strongest mitigation measures of all.</p> <p>These lands are food-producing lands, our breadbasket, our building materials, our forests and wildlife habitats, and the lungs of our planet. I think you should make the strictest mitigation methods or not even allow solar to be built on prime forest.</p> <p>Any solar applicant needs to also have posted material safety data sheets on their panels to disclose any heavy metals such as cadmium or PFAs that could be released into the system. I appreciate the input from the agricultural and forestry industries on HB206. It is of utmost importance that we protect our essential and resource conserving economic practices that our local communities have been built upon, as well as our vital and beautiful Virginia view sheds.</p> <p>Solar has proven itself that it does not work efficiently as a source of reliable power, while in the meantime destroying forests, farms, communities, waterways, and ecological complexes. I prefer that there be no mitigation allowed at all. This is an utterly ridiculous concept, robbing Peter to pay Paul. The solar industry should simply not be permitted to build on prime farming land and destroying carbon absorbing healthy soil in the process. Nor should ever a tree or forest that supplies so much life to this earth be allowed to be cut or razed in order to place a solar installation upon the land.</p> <p>According to UVA Weldon center's recent estimate, 130,000 Virginia acres have been destroyed by solar, and the majority of these installations are poor producers of electricity. Face it, it is a bad idea, and no more land should be utilized unless it is on a brownfield, wasteland, or on an industrial rooftop.</p> <p>While I applaud your concept of mitigation of both forest and farmland, I do not believe this to be a solution. It would be preferable to place even stronger guardrails on this land consuming and groundwater polluting industry. The grandfather clause should also be stricken completely from the text, as well as any loopholes giving solar developers more leeway on circumventing local requirements. Neither</p>	<p>The proposed regulation is consistent with the requirements of HB 206. There is no defined term "prime forest." The scientific literature indicates there is no significant risk of contamination from solar panels as used in facilities approved by PBR.</p>
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	should more credence be given to radical "environmental" groups and lobbyists than to actual people who live on and with the land.	
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Detail of Changes Made Since the Previous Stage

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC15-60-10		*Added definition of "C1 forest core"	*Deleted proposed definition of "C1 forest core".	Deleted proposed definition to clarify that mitigation for C1 forest cores will not be required for a solar PBR application. DEQ has removed all language requiring mitigation for C1 forest cores and intends to publish a NOIRA to initiate a regulatory action to adopt the enhanced mitigation of C1 cores with updated mapping and a procedure for field verification. This change was made in response to comments.
9VAC15-60-10		*Added definition of "C2 forest core"	*Deleted proposed definition of "C2 forest core".	Deleted proposed definition to clarify that mitigation for C2 forest cores will not be required for a solar PBR application. DEQ has removed all language requiring mitigation for C2 forest cores and intends to publish a NOIRA to initiate a regulatory action to adopt the enhanced mitigation of C2 cores with updated mapping and a procedure for field verification. This change

				was made in response to comments received.
9VAC15-60-10		Added definition of "Contiguous forest land"	Amended proposed definition of "Contiguous forest land" to add language that forested areas separated by any waterbody "less than 200 feet in width" is considered contiguous.	Amended proposed definition to clarify that forested areas separated by any waterbody less than 200 feet in width is considered contiguous and will be included in the summary calculation of contiguous forest land acres in a project. This change was made in response to comments received.
9VAC15-60-10		Amended definition of "Disturbance zone"	Amended proposed definition of "Disturbance zone" to remove 100-foot buffer requirement.	Deleted language to clarify that the disturbance zone only includes areas of direct disturbance. The disturbance zone definition is used to determine permit applicability and mitigation requirements and therefore should not include the additional 100-foot buffer. Areas outside of the disturbance zone that are required to be surveyed as part of the analyses of natural and historic resources will be specified by DCR, DHR and DWR. This change was made in response to comments received.
9VAC15-60-10			Added definition of "Forest lands enrolled in a program for forestry preservation".	Added definition for clarity; HB 206 specifies forest lands enrolled in a forestry preservation program are deemed to be a significant adverse impact on natural resources, thus requiring mitigation; therefore, the definition must be added. This change was made in response to comments received.
9VAC15-60-10		Amended definition of "Interconnection point" by removing word, "points".	Amended definition of "Interconnection point" to restore original word "points".	Amended for clarity. Restoring language to original definition as the word "points" was removed in error.

9VAC15-60-10		*Added definition of "Mitigation district"	*Amended proposed definition of "Mitigation district".	Changed proposed definition of mitigation districts by deleting river watersheds and adding new mitigation districts that more closely resemble eco-regions and areas of similar property values. These broader mitigation districts will enable developers to find acreage for conservation easements required for mitigation of prime agricultural soils and forest land in a reasonable timeframe and eliminate the need to obtain conservation easements in adjacent mitigation districts. This change was made in response to comments received.
9VAC15-60-10		Added definition of "Mitigation zone"	Deleted proposed definition of "Mitigation zone".	Deleted the proposed definition of mitigation zone as it is no longer needed since the 100-foot buffer language was removed from the definition of disturbance zone.
9VAC15-60-10		*Added definition of "Riparian forest buffer"	*Deleted proposed definition of "Riparian forest buffers".	Deleted proposed definition because the mitigation credit for preservation of riparian forest buffers has been removed in response to comments received.
9VAC15-60-10			Amended current definition of "Site" to remove "of" and add "containing" to the definition.	DEQ's original proposal to replace the word "containing" with "of" in the definition of "site" was intended only to simplify the language, and not to effectuate a substantive change. However, on further review, it appears that the word "containing" is essential to demonstrating the intended meaning. In <i>Smith v. Department of Environmental Quality and Riverstone Solar</i> , CL23-52 (Buckingham Cir. Ct.

				<p>2023), a group of petitioners challenged the validity of DEQ’s decision to approve a solar facility under the small solar permit by rule. As part of their challenge, they argued that DEQ operated under an incorrect application of the regulation’s definition of “site,” because (as they argued) “site” means “[e]ither the disturbance area or the actual acreage of the panels, facilities, and infrastructure,” as opposed to the “dimensions of the parcel where the project is proposed for construction.” The circuit court rejected the petitioners’ narrow interpretation of the definition of “site”; and the word “containing” was important in highlighting a broad understanding of the meaning of “site.” Replacing the word “containing” with “of,” therefore, might be wrongly construed as adopting the Riverstone petitioners’ narrow conception of the word “site.” Accordingly, DEQ is undoing this proposed change and preserving the status quo.</p>
9VAC15-60-20 D			Amended Applicability Section by adding HB 206 grandfathering provision language to a new subsection “D”	Added new grandfathering language to the applicability section to clarify when applications will be subject to the mitigation requirements for prime agricultural soils and forest land. This change was made in response to comments received.
9VAC15-60-30 A 1 a (1)		Added a requirement that an NOI must be submitted at least 90 days prior to the start of the required	Amended proposed language to add effective date to the requirement for initial NOI submittal.	Added effective date to proposed NOI language to clarify that NOIs submitted before the effective date of the regulation are not

		public comment period.		required to submit the NOI to DEQ at least 90 days prior to the start of the public comment period. NOIs submitted after the effective date of the regulation will be subject to this requirement. This change was made in response to comments received.
9VAC15-60-30 A 1 a (2)		Added a requirement that a copy of the NOI must be sent to locality officials.	Amended proposed language to add an effective date to the requirement for NOI submission to locality officials.	Added effective date to proposed NOI language to clarify that NOIs submitted before the effective date of the regulation are not required to send a copy of the NOI to locality officials. NOIs submitted after the effective date of the regulation will be subject to this requirement. This change was made in response to comments received.
9VAC15-60-30 A 2		Added a requirement that the LGBC letter or form must include a statement of the project area enrolled in a forestry preservation program.	Amended proposed language to add an effective date to the requirement to include a statement of the project area enrolled in a forestry preservation program.	Added effective date to clarify that LGBC letters or forms submitted before the effective date of the regulation are not required to include a statement of the project area enrolled in a forestry preservation program. LGBC letters or forms submitted after the effective date of the regulation will be subject to this requirement. This change was made in response to comments received.
9VAC15-60-30 A 10		Operating plan requirement.	Restoring original regulatory language that requires an operating plan to describe how the project will operate in compliance with the mitigation plan if a mitigation plan is required by 9VAC15-60-50.	Needed to clarify that an operating plan must be submitted and provide details on how the project intends to operate in compliance with the mitigation plan, if a mitigation plan is required.
9VAC15-60-30 C 1 a		Added language clarifying that a PBR or modification	Amended proposed language to add a grandfathering	Amended proposed language to clarify that PBR authorization or

		authorization will be deemed invalid if a program of continuous construction is not commenced with 60 months from PBR or modification issuance.	provision to the requirement for continuous construction.	modification letters issued before the effective date of the regulation cannot be deemed invalid if the project has not commenced a program of continuous construction within 60 months from the date of the PBR or modification. PBR authorization or modification letters issued after the effective date of the regulation will be subject to this requirement. This change was made in response to comments received.
9VAC15-60-40 C 2		Added language requiring completion of DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard	Amended proposed language by deleting requirement for completion of Virginia Solar Site Pollinator/Bird Habitat Scorecard.	Deleted proposed language to clarify that completion of the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard is not required as part of the desktop analysis for a PBR application. Participation in the Pollinator Smart Program as a management alternative to decrease off-site conservation in 9VAC15-60-60 E 4 is voluntary. This change was made in response to comments received.
9VAC15-60-50 C		*Added language to specify that C1 and C2 ecological cores, are considered significant adverse impacts.	*Amended proposed language by deleting ecological cores in determination of significant adverse impacts to natural heritage resources.	Deleted to clarify that if the disturbance zone of a project intersects with an C1 or C2 ecological core, this will not be considered a significant adverse impact to natural heritage resources that would require mitigation. As mentioned previously, DEQ removed all language requiring mitigation for C1 and C2 forest cores and intends to publish a NOIRA to initiate a regulatory action to adopt the enhanced mitigation of C1 and C2 cores with updated mapping and a

				procedure for field verification. This change was made in response to comments received.
9VAC15-60-60 D		*Added language to specify mitigation measures for significant adverse impacts to C1 and C2 ecological cores. If impacts to C1 or C2 forest cores cannot be avoided, mitigation shall be required in the form of a conservation easement. For disturbance of C1 forest cores, the applicant must provide a conservation easement for land containing C1 forest cores within the same mitigation district at a mitigation ratio of seven to one. For disturbance of C2 forest cores, the applicant must provide a conservation easement for land containing C2 forest cores within the same mitigation district at a mitigation ratio of two to one.	*Amended proposed language by deleting mitigation measures for impacts to C and C2 ecological cores in subsection D. As a result, all following subsections in 9VAC15-60-60 are re-lettered.	Deleted language to clarify mitigation measures are not required for projects with impacts to C1 or C2 ecological cores because DEQ removed all language requiring mitigation for C1 and C2 forest cores as previously discussed. This change was made in response to comments received.
9VAC15-60-60 E 1	9VAC15-60-60 D 1	Mitigation requirements for prime agricultural soils	Amended proposed language by deleting, "land containing".	Deleted to clarify that the acreage of prime agricultural soils to be conserved must equal the area disturbed. This change was made in response to comments received.
9VAC15-60-60 E 2	9VAC15-60-60 D 2	*Mitigation credit given towards prime agricultural soil mitigation for preservation of	*Amended the proposed language by deleting the mitigation credit for preservation of	Deleted mitigation credit as it would allow a double acreage credit for forested riparian buffer mitigation for loss of prime

		riparian forest buffers.	riparian forest buffers in subdivision 2. As a result, the following subdivisions in 9VAC15-60-60 are being re-numbered.	agricultural soils. This change was made in response to comments received.
9VAC15-60-60 E 3	9VAC15-60-60 D 2	Actions to preserve prime agricultural soils on the project site will be counted as partial mitigation.	Amended proposed language for partial mitigation actions for prime agricultural soils.	Amended language to clarify that the applicant may apply any of the 3 partial mitigation options to preserve prime agricultural soils to different areas of the site, but these options may not be combined on the same portion of the site. This change was made in response to comments received.
9VAC15-60-60 E 3 Table 1 Option 2	9VAC15-60-60 D 2 Table 1 Option 2	Preservation of Topsoil	Amended proposed language in Option 2 of Table 1 by deleting reference to "subsoil".	Deleted requirement for decompaction of subsoil in Table 1, Option 2, Preservation of Topsoil. This change was made in response to comments received.
9VAC15-60-60 E 4	9VAC15-60-60 D 3	Management alternatives for prime agricultural Soils	Amended proposed language pertaining to the area of an off-site conservation easement.	Added language to clarify that the use of any of the management alternatives along with any of the options in table 1 will decrease the required area of off-site conservation easement by 25% of the remaining obligation, as this was not clear in the original language. Also added language to clarify that the plan must include adequate guarantees that any management alternatives will be maintained during the term of the permit and will only count on areas of the site subject to the management alternative. These changes were made in response to comments received.
9VAC15-60-60 E 7	9VAC15-60-60 D 6	Innovative alternatives to mitigation for prime agricultural soils	Amended proposed language to add requirements to the NOI if innovative alternatives for prime	Added language to clarify that an applicant may propose innovative alternatives to the required mitigation for prime agricultural soils provided

			agricultural soils are being proposed.	that the NOI includes a statement that alternative mitigation is being proposed and that it directs the public to where additional information on the alternative mitigation can be found. This will notify the public that innovative alternatives are being proposed and allow for the opportunity to address them during the required public participation effort in 9VAC15-60-90. This change was made in response to comments received.
9VAC15-60-60 F 2	9VAC15-60-60 E 2	*Mitigation credit towards forest land mitigation for preservation of riparian forest buffers	*Amended proposed language by deleting the mitigation credit for preservation of riparian forest buffers in subdivision 2.	Deleted mitigation credit as it would allow a double acreage credit for forested riparian buffer mitigation for loss of forest lands. This change was made in response to comments received.
9VAC15-60-60 F 4	9VAC15-60-60 E 3	Innovative alternatives to mitigation for contiguous forest land or forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia	Amended proposed language stating that the notice of intent must include a statement that alternative mitigation is being proposed. The notice of intent must also direct the public to where additional information on the alternative mitigation can be found.	Language added to clarify that an applicant may propose innovative alternatives to the required mitigation for contiguous forest land or forest lands enrolled in a program for forestry preservation pursuant to subdivision 2 of § 58.1-3233 of the Code of Virginia provided that the notice of intent includes a statement that alternative mitigation is being proposed and that it directs the public to where additional information on the alternative mitigation can be found. This will notify the public that innovative alternatives are being proposed and allow for the opportunity to address them during the required public participation effort in 9VAC15-60-90. This change was made in

				response to comments received.
9VAC15-60-60 G 5	9VAC15-60-60 F 5	Requirements for conservation easements in mitigation plan	Amended proposed language by deleting the option for a conservation easement to be located in an adjacent mitigation district.	Deleted language allowing the option for a conservation easement to be located in an adjacent mitigation district. Definitions of mitigation districts were broadened to include larger geographic areas. This eliminates the need to obtain conservation easements in adjacent mitigation districts. This change was made in response to comments received.
9VAC15-60-60 G 6	9VAC15-60-60 F 6	Requirements for conservation easements in mitigation plan	Amended proposed language regarding land preservation tax credit.	Deleted language referring to a land preservation tax credit as a "quid pro quo" and added "applied to support another benefit". The current language prohibits land protected through a charitable gift from counting as mitigation. Referring to a land preservation tax credit as a "quid pro quo" is inaccurate as the tax benefit that arises from the donation is not considered under the tax law to be "something given in exchange for the gift". This change was made in response to comments received.
9VAC15-60-60 G 7	9VAC15-60-60 F 7	Requirements for conservation easements in mitigation plan	Amended proposed language requiring conservation easement restrictions.	Amended proposed language to delete requirement that every conservation easement for C1 or C2 forest cores will restrict disturbance of the conserved land. No longer needed as DEQ removed all language requiring mitigation for C1 and C2 forest cores. This change was made in response to comments received.

9VAC15-60-60 G 8	9VAC15-60-60 F 8	*Consistency with easement term guidelines	*Amended proposed language to clarify that conservation easements should be consistent with the Easement Term Guidelines from the Department of Forestry for forest and agriculture conservation rather than the Virginia Outdoors Foundation Easement template.	Deleted language requiring consistency with the Virginia Outdoors Foundation easement and added language clarifying that conservation easements will be consistent with Department of Forestry (DOF) guidelines for forest and agriculture conservation. This change was made in response to comments received.
	9VAC15-60-60 F 10		*Added language for Conservation Easement Review and Compliance and Fee.	Added language to clarify that DOF will review all proposed conservation easements for compliance with the PBR regulation and will charge the applicant a fee for this review as DEQ does not have staff trained to perform this function. This change was made in response to comments received.
9VAC15-60-60 H 1	9VAC15-60-60 G 1	*Payment of In-Lieu Fee (ILF) as an alternative to providing a conservation easement.	*Amended proposed language to revise the calculation of the ILF. Added ILF Trustee costs to ILF calculation. Deleted the minimum In-Lieu Fee (ILF) of \$3,000 per acre.	Revised the calculation of the ILF to subtract the average use value as determined by State Land Evaluation Advisory Council (SLEAC) data from the average fair market value of forest or agricultural land in the district where the project is located. Recognizing that the trustee administering the ILF will incur costs, language regarding trustee costs was added to the ILF fee costs. Language regarding the statewide \$3,000 per acre minimum fee ILF was deleted. These changes were made in response to comments received.
9VAC15-60-60 H 2	9VAC15-60-60 G 2	*Trustee to administer the in-lieu fees (ILF)	*Amended proposed language regarding trustee of the ILF fund.	Added language to clarify that the Department of Forestry, Office of Working Lands will serve as trustee to administer the ILF fees

				in trust with the purpose of acquiring conservation easements consistent with the acreage and location of the mitigation requirements. This change was made in response to comments received.
9VAC15-60-60 H 3	9VAC15-60-60 G 3	Payment of in-lieu fee (ILF) in full satisfies mitigation requirement	Amended proposed language regarding payment of the in-lieu fee .	Added language to clarify that payment of the in-lieu fee in full will satisfy the mitigation obligations without waiting for acquisition of easements by the trustee. Also needed to clarify that issuance of the PBR authorization letter is not dependent on easement acquisition by the trustee if the applicant has paid the ILF as a mitigation alternative. This change was made in response to comments received.
9VAC15-60-70 A 1		Site plan requirements	Amended proposed language by removing requirements that the site plan must show a 100-foot buffer beyond the disturbance zone.	Deleted language requiring 100-foot buffer beyond the disturbance zone to be shown on the site plan. Needed for clarity as the definition of disturbance zone no longer includes the 100-foot buffer. This change was made in response to comments received.
9VAC15-60-70 A 10		Site plan requirements	Amended proposed language in site plan requirements regarding mitigation resources.	Added language clarifying that the location of any mitigation measures and resources subject to mitigation in 9VAC15-60-60 must be shown on the site plan as this information is used to verify compliance with the mitigation plan.
9VAC15-60-70 C		Context map requirements	Amended proposed language to replace mitigation zone with disturbance zone.	Needed for clarity as the definition of disturbance zone no longer includes the 100-foot buffer and the definition for mitigation zone has been deleted.

9VAC15-60-70 D 1		As-built post-construction site plan requirements	Amended to delete the requirement for as-built post-construction site plans to show a 100-foot buffer beyond the disturbance zone.	Needed for clarity as the definition of disturbance zone no longer includes the 100-foot buffer.
9VAC15-60-80 B		Operation plan requirements	Deleted certain requirements in the operation plan.	Deleted requirements for the operation plan to contain remote monitoring or staffing requirements, (ii) emergency procedures and contacts, (iii) vegetation to be used within the disturbance zone, and (iv) application frequency of herbicides over the life of the project as these requirements are outside the scope of the solar PBR. This change was made in response to comments received.
9VAC15-60-100 D 1 c		Reporting requirement	Deleted reporting requirement.	Deleted requirement to report any onsite construction or significant onsite maintenance that could impact the project's mitigation and avoidance plans as it is unclear what types of scenarios might apply in this situation. This change was made in response to comments received.
9VAC15-60-130 A 3		Projects Located on Previously Disturbed or Repurposed Areas	Amended acreage criteria.	Amended language to clarify that that impact to undisturbed areas must be equal to or less than 2 acres, not 10 acres. If the undisturbed area for a project located on previously disturbed or repurposed area exceeds 2 acres, the project would not qualify for permitting under 9VAC15-60-130.
9VAC15-60-130 C 2 c		Projects Located on Previously Disturbed or Repurposed Areas	Amended to delete language pertaining to previously disturbed areas.	Amended to delete language pertaining to previously disturbed areas. Projects categorized in this subdivision are not required to submit notification or certification to DEQ; therefore, the

				calculation of acreage in previously disturbed areas is not required.
9VAC15-60-9999		Documents incorporated by reference	Removed references to documents no longer needed as requirements were removed from the regulation.	Needed for clarity.

Detail of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC15-60-10		Currently no definition of "active cropping including hayland".	Definition of "active cropping including hayland" added to define an alternative plan that can be used in addition to partial mitigation options for prime agricultural soils to decrease mitigation ratios required for off-site conservation. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "administratively complete application".	Definition of "administratively complete application" added to clarify application review process in 9VAC15-60-30 C. No significant impact anticipated.
9VAC15-60-10		Current definition of "Applicant" amended.	Definition of "applicant" amended to clarify that a developer can submit a PBR application. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Brownfields".	Definition of "Brownfield" added to clarify permitting requirements in Section 9VAC15-60-130. No significant impact anticipated.
9VAC15-60-10		Current definition of "Coastal Avian Protection Zone" amended.	Definition of "Coastal Avian Protection Zone" amended to remove reference to 9VAC15-60-120-C 1 as Section 120 is being repealed. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Commencement of commercial operation".	Definition of "Commencement of commercial operation" added to establish timeline for notification and submission of as built post construction site plan to DEQ. No significant impact anticipated.

9VAC15-60-10		Currently no definition of "Conservation easement".	Definition of "conservation easement" added to define one of the mitigation measures available to an applicant when significant adverse impacts to prime agricultural soils or forests cannot be avoided in a project. Also specifies that a conservation easement is perpetual. Minor impacts to applicants as it will require them to obtain an easement or pay an in-lieu fee; however, these mitigation options are required by Chapter 688.
9VAC15-60-10		Currently no definition of "conserved land".	Definition of "conserved land" added to clarify the total area of conserved land in a project that must be calculated by the applicant. A plan with the conserved land total must be submitted to DEQ and the applicant must obtain conservation easement(s) for this total. Minor impacts to applicants as it will require them to obtain an easement or pay an in-lieu fee; however, these mitigation options are required by Chapter 688.
9VAC15-60-10		Currently no definition of "contiguous forest land".	Definition of "contiguous forest land" added to clarify project areas as the regulation states that a disturbance of 50 acres or more of contiguous forest land is considered a significant adverse impact requiring mitigation. Minor impacts to applicants as it will require them to obtain an easement or pay an in-lieu fee; however, these mitigation options are required by Chapter 688.
9VAC15-60-10		Current definition of "Department" amended.	Definition of "department" amended for clarity by adding agency acronym. No significant impact anticipated.
9VAC15-60-10		Current definition of "DGIF" deleted.	Definition of "DGIF" deleted as acronym has changed to "DWR". Definition no longer needed. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "DCR Virginia solar Site Pollinator/Bird Habitat Scorecard".	Definition of "DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard" added as participation in the Pollinator Smart Program can be used by an applicant as a management alternative to decrease off-site conservation required for impacts to prime agricultural soils. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Disturb".	Definition of "disturb" added to define a specific action integral to the regulation. No significant impact anticipated.

9VAC15-60-10		Current definition of "Disturbance zone" amended.	Definition of "disturbance zone" amended to clarify that the disturbance zone only includes areas of direct disturbance and does not include an additional 100-feet. Also defines the disturbance zone areas used in the DCR Virginia Solar Site Pollinator/Bird Habitat Scorecard. The disturbance zone definition is used to determine permit applicability and mitigation requirements and therefore should not include the additional 100-foot buffer. Areas outside of the disturbance zone that are required to be surveyed as part of the analyses of natural and historic resources will be specified by DCR, DHR and DWR. Impacts associated with this change will be positive because it will correct a long-standing misunderstanding of how buffers are supposed to work.
9VAC15-60-10		Currently no definition of "Document Certification".	Definition of "document certification" added as this is a new requirement in 9VAC15-60-30 B 2 a. Needed for the regulation to operate administratively. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "DOF".	Definition of "DOF" added for clarity. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "DWR".	Definition of "DWR" added for clarity. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Establishment and maintenance of pollinator smart habitat/vegetation".	Definition of "establishment and maintenance of pollinator smart habitat/vegetation" added to define an alternative plan that can be used in addition to partial mitigation options for prime agricultural soils to decrease mitigation ratios required for off-site conservation found in 9VAC15-60-60 E 4. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Forest land".	Definition of "forest land" added to delineate areas subject to new mitigation requirements. Minor impacts to applicants as it will require them to obtain an easement or pay an in-lieu fee; however, these mitigation options are required by Chapter 688.
9VAC15-60-10		Currently no definition of "Forest lands enrolled in a program for forestry preservation".	Definition of "Forest lands enrolled in a program for forestry preservation" added for clarity. HB 206 specifies forest lands enrolled in a forestry preservation program are deemed to be a significant adverse impact on natural resources, thus requiring mitigation.

9VAC15-60-10		Currently no definition of "Land disturbance" or "land-disturbing activity".	Definition of "land disturbance" or "land disturbing activity" added to define the areas and types of impacts to the project that could require mitigation. The terms are also important as land disturbance or land disturbing activities are not allowed without PBR authorization. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Managed grazing".	Definition of "managed grazing" added to define an alternative plan that can be used in addition to partial mitigation options for prime agricultural soils to decrease mitigation ratios required for off-site conservation. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Megawatt" or "MW".	Definition of "megawatt" added for clarity. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Mitigation District".	Definition of "mitigation district" added as conservation easements must encumber land in the same mitigation district where the project is to be constructed. Mitigation districts were developed by combining the 21 Planning District Commissions (PDCs) into seven mitigation districts; PDCs more closely resemble eco-regions and areas of similar property. Broader mitigation districts will enable developers to find acreage for conservation easements required for mitigation of prime agricultural soils and forest land in a reasonable timeframe and eliminate the need to obtain conservation easements in adjacent mitigation districts.
9VAC15-60-10		Currently no definition of "Mitigation Ratio".	Definition of "mitigation ratio" added to establish the ratios of land to be conserved for each area disturbed. The ratio can vary depending on mitigation options selected by the applicant.
9VAC15-60-10		Currently no definition of "Notice of Intent".	Definition of "notice of intent" added in order for the regulation to operate administratively. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Open Area".	Definition of "open area" added to define the areas of a project being reviewed through the DCR Virginia Solar Site Pollinator Program. No significant impact anticipated.
9VAC15-60-10		Current definition of "Owner" amended.	Definition of "owner" amended to clarify that one must have a controlling interest in a project to be deemed an

			owner. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Panel Zone".	Definition of "panel zone" added to define the areas of a project being reviewed through the DCR Virginia Solar Site Pollinator Program. No significant impact anticipated.
9VAC15-60-10		Current definition of "Permit by rule" amended.	Definition of "permit by rule" amended for clarity. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Phase I archeological survey"	Definition of "Phase I Archeological Survey" added to clarify type of survey required for the analysis of historic resources. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Phase I architectural survey"	Definition of "Phase I Architectural Survey" added to clarify type of survey required for the analysis of historic resources. No significant impact anticipated.
9VAC15-60-10		Current definition of "Preconstruction" amended.	Definition of "preconstruction" amended to clarify when desktop surveys, studies and mapping must occur. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Previously disturbed or repurposed areas".	Definition of "previously disturbed or repurposed areas" added to clarify the criteria for projects applicable to reduced permitting requirements in 9VAC15-60-130. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Prime agricultural soils".	Definition of "prime agricultural soils" added to delineate areas subject to new mitigation requirements. Minor impacts anticipated as impacts to prime agricultural soils will require either conservation easement(s) or in-lieu fee.
9VAC15-60-10		Currently no definition of "Project".	Definition of "project" added in order for the regulation to operate administratively. No significant impact anticipated.
9VAC15-60-10		Current definition of "Rated Capacity" amended.	Definition of "rated capacity" amended to clarify that the rating is measured in MW. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Responsible person".	Definition of "responsible person" added to in order for the regulation to operate properly. No significant impact anticipated.
9VAC15-60-10		Currently no definition of "Screen zone".	Definition of "screening zone" added to define the areas of a project being reviewed through the DCR Virginia Solar Site Pollinator Program. No significant impact anticipated.
9VAC15-60-10		Current definition of "Small renewable energy project" amended.	Definition of "small renewable energy project" amended to add the definition

			of energy storage facility. No significant impact anticipated.
9VAC15-60-10		Current definition of "Threatened and endangered" amended.	Definition of "T&E" amended to add VDACS T&E species, which includes insects. Potential impact to applicants as the presence of T&E insects in the disturbance zone would trigger the determination that adverse impacts to wildlife are likely which would require mitigation.
9VAC15-60-10		Currently no definition of "VDACS".	Definition of "VDACS" added for clarity. No significant impact anticipated
9VAC15-60-10		Currently no definition of "Virginia Natural Landscape Assessment Ecological Cores".	Definition of "Virginia Natural Landscape Assessment Ecological Cores" added to clarify areas to be included in the preconstruction desktop analysis survey of natural heritage resources.
9VAC15-60-10		Current definition of "VLR" amended.	Definition of "VLR" amended for clarity. No significant impact anticipated.
9VAC15-60-10		Current definition of "Wildlife" amended.	Definition of "wildlife" amended to clarify that T&E insects are considered T&E wildlife. Potential impact to applicants as the presence of T&E insects in the disturbance zone would trigger the determination that adverse impacts to wildlife are likely which would require mitigation.
9VAC15-60-20		Applicability.	Catchline amended to more accurately reflect the activity. Needed for clarity. No significant impact anticipated.
9VAC15-60-20 A		Applicability.	Text related to "authority deleted for clarity; no need to reiterate underlying authority No significant impacts anticipated.
9VAC15-60-20 B	9VAC15-60-20 A	Applicability.	Re-lettered citation.
9VAC15-60-20 C	9VAC15-60-20 B	Applicability.	Deleted references to 9VAC15-60-130 as the regulation already indicates requirements for these permits are covered in Part III of the Chapter.
9VAC15-60-20 D	9VAC15-60-20 C	Applicability.	Re-lettered citation.
	9VAC15-60-20 D	Applicability.	Added grandfathering language from HB 206 to clarify when applications will be subject to the mitigation requirements for prime agricultural soils and forest land. This change was made in response to comments received.
9VAC15-60-30		Application for permit by rule for solar energy projects with rated capacity greater than five MW and disturbance zone greater than 10 acres.	Catchline amended to more accurately reflect the activity. Needed for clarity. No significant impact anticipated.

9VAC15-60-30 A 1		Application contents.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority.
	9VAC15-60-30 A 1 a (1)	Application requirements – Notice of intent	Added a requirement that an NOI must be submitted at least 90 days prior to the start of the required public comment period. Also added an effective date to clarify that NOIs submitted before the effective date of the regulation are not required to submit the NOI to DEQ at least 90 days prior to the start of the public comment period. NOIs submitted after the effective date of the regulation will be subject to this requirement. Needed for accurate recordkeeping and clear data submittal timeframes.
	9VAC15-60-30 A 1 a (2)	Application requirements- NOI must be sent to locality	Added a requirement that a copy of the NOI must be sent to locality officials. Also added an effective date to clarify that NOIs submitted before the effective date of the regulation are not required to send a copy of the NOI to locality officials. NOIs submitted after the effective date of the regulation will be subject to this requirement. Needed for accurate recordkeeping and clear data submittal timeframes.
	9VAC15-60-30 A 1 b	Application requirements – NOI Expiration	Added a requirement that an NOI submitted after the effective date of the regulation will expire if an application has not been submitted within 48 months from the NOI submittal date. The applicant can request an extension for an additional 36 months, at which time the NO will expire. Needed for accurate recordkeeping and clear data submittal timeframes.
	9VAC15-60-30 A 1 c	Application requirements- NOI Project Changes	Added a requirement that project changes resulting in an increase of MW or acreage must submit a new NOI. Needed for accurate recordkeeping.
	9VAC15-60-30 A 1 d (1), (2), (3)	Application requirements- NOI Ownership Changes	Added a requirement that DEQ must be notified within 30 days for change of operator, ownership, or controlling interest for a project. Subdivisions 1 through 3 detail the required documentation and timeline for an ownership change. Needed for accurate recordkeeping and clear data submittal timeframes.
9VAC15-60-30 A 2		Application requirements- Local Governing Body Certification (LGBC)	Removed reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Added a requirement that the LGBC letter or

			form must include a statement of the project area enrolled in a forestry preservation program. Added an effective date to this requirement to clarify that LGBC letters or forms submitted before the effective date of the regulation are not required to include a statement of the project area enrolled in a forestry preservation program. LGBC letters or forms submitted after the effective date of the regulation will be subject to this requirement. Needed for accurate recordkeeping and clear data submittal timeframes.
9VAC15-60-30 A 3		Application requirements-Interconnection Studies.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority.
9VAC15-60-30 A 4		Application requirements-Interconnection Agreements.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Detailed information regarding interconnection submission of interconnection agreements and studies were moved to new subdivisions. Needed for accurate recordkeeping and clear data submittal timeframes.
	9VAC15-60-30 A 4 a, b, c	Application requirements-Interconnection Agreements.	Added language to specify when interconnection study can be submitted in place of an interconnection agreement, timeline for submission of final interconnection agreement and requirement for DEQ to submit agreements to SCC. Needed for accurate recordkeeping and clear data submittal timeframes.
9VAC15-60-30 A 5		Application requirements-Maximum Generation Capacity Certification.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Added requirement that the maximum generation capacity certification must be stamped in addition to being signed by a professional engineer. Needed for accurate recordkeeping.
9VAC15-60-30 A 6		Application requirements-Impacts to National Ambient Air Quality Standards.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Added reference to national ambient air quality standards. Needed for accurate recordkeeping.
9VAC15-60-30 A 7		Application requirements-Desktop Analysis.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Added language to specify historic resources

			are included in the studies. Needed for accurate recordkeeping.
9VAC15-60-30 A 8		Application requirements-Mitigation Plan.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Deleted language requiring mitigation plan to be submitted as an addendum to the operating plan. The mitigation is a separate document that should be submitted to DEQ if a determination of likely significant adverse impacts has been made. Needed for accurate recordkeeping.
9VAC15-60-30 A 9		Application requirements-Project Design Certification.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Added requirement that the project design certification must be stamped in addition to being signed by a professional engineer. Needed for accurate recordkeeping.
9VAC15-60-30 A 10		Application requirements-Operating Plan.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority.
9VAC15-60-30 A 11		Application requirements-Site Plan and Context Map.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Added requirement for submission of a context map in addition to a detailed site plan. Needed for accurate recordkeeping.
9VAC15-60-30 A 12		Application requirements-Environmental Permits.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority.
9VAC15-60-30 A 13		Application requirements-Utility Certification.	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority.
9VAC15-60-30 A 14		Application requirements-Summary Report of Public Participation	Deleted reference to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. Deleted duplicative language about the location of the public meeting location as language is included in 9VAC15-60-90.
9VAC15-60-30 A 15		Application requirements-Fee Payment	Added language to clarify that in-lieu fees are not required with an initial application submission.
9VAC15-60-30 B		Submittal contents.	Original language in 9VAC15-60 B moved to 9VAC15-60 C.
	9VAC15-60-30 B 1	Submittal contents.	Added language clarifying that an applicant seeking a PBR must submit all items in 9VAC15-60 A, exclusive of in-Lieu fees, to DEQ.
9VAC15-60-30 B	9VAC15-60-30 B 2 a, b, c	Submittal contents-Cover Letter Requirements.	Added document certification statement and requirement for responsible person name and PBR contact information. Needed for accurate recordkeeping.

	9VAC15-60-30 C	Department action.	Language from 9VAC15-60-B moved here. Amended to include additional agencies potentially involved in application review. Added language regarding application determination, i.e., administratively complete vs. incomplete as well as the process and requirements for resubmission if necessary. Needed for accurate recordkeeping and clear data submittal timeframes.
	9VAC15-60-30 C 1 a, b, c	Department action.	Added language clarifying that a PBR or modification authorization will be deemed invalid if a program of continuous construction is not commenced with 60 months from PBR or modification issuance. Clarifies that phased construction is allowed but subject to time limits and approval from DEQ. Provides details required for submission if a PBR or modification application becomes invalid. Also added an effective date to clarify that PBR authorization or modification letters issued before the effective date of the regulation cannot be deemed invalid if the project has not commenced a program of continuous construction within 60 months from the date of the PBR or modification. PBR authorization or modification letters issued after the effective date of the regulation will be subject to this requirement. Needed for accurate recordkeeping and clear data submittal timeframes.
	9VAC15-60-30 C 2, 3	Department action.	Language moved from 9VAC15-60-30 B.
	9VAC15-60-30 C 4	Department action.	Language added to clarify that if a proposed mitigation plan was not provided by the applicant as part of the initial application and the department determines there are significant adverse impacts, the applicant must hold a 45-day public comment period following the procedures set forth in 9VAC15-60-90.
	9VAC15-60-30 C 5	Department action.	Language added to clarify that if an application is incomplete and the applicant fails to submit necessary supplemental information within 90 days of the date the department notified the applicant of deficiencies, the application will be deemed withdrawn.

9VAC15-60-40		Analysis of impacts on natural and historic resources.	Catchline amended to more accurately reflect the activity. Needed for clarity. Removed all references to § 10.1-1197.6 B 2 of the Code of Virginia; no need to reiterate underlying authority. No significant impact anticipated.
9VAC15-60-40 A 1		Analysis of wildlife.	Amended to add requirement for desktop study to include bald eagles. No impacts anticipated bald eagle populations are no longer considered endangered or threatened.
9VAC15-60-40 B 2		Architectural Survey	Amended to add language that an architectural survey area may be refined by the applicant based on an analysis to exclude areas that have no direct view to the project. This could potentially reduce expenditures for the applicant.
9VAC15-60-40 B 3		Archeological Survey	Amended to add language that the survey may be guided by a research design that utilizes a probability assessment or predictive modeling. This could streamline archaeological investigations and potentially reduce expenditures for the applicant.
	9VAC15-60-40 C 1, 2, 3, 4	None.	Added requirements to be included in the natural heritage resources desktop study.
9VAC15-60-40 D		Mapping of prime agricultural soils.	Language regarding summary report was moved from subsection D to F. New language in D requires applicant to map acres of prime agricultural soils on the site; also lists reporting requirements. Needed because impacts to 10 or more acres of prime agricultural soils requires mitigation required by Chapter 688. Minor impacts as applicant will be required to purchase a conservation easement or pay an in-lieu fee.
	9VAC15-60-40 E	None.	Language requires applicant to map acres of forest land on the site; also lists reporting requirements. Needed because impacts to 50 or more contiguous acres of forest requires mitigation required by Chapter 688. Minor impacts as applicant will be required to purchase a conservation easement or pay an in-lieu fee.
	9VAC15-60-40 F	None.	Language regarding summary report was moved from subsection D to F. Adds subsections D and E to the reporting requirements. No significant impacts anticipated.

9VAC15-60-50		Determination of likely significant adverse impacts.	Catchline amended to more accurately reflect the activity. Needed for clarity. No significant impact anticipated.
	9VAC15-60-50 C	None.	Added language to clarify that a site visit can be conducted to evaluate significant impacts to natural heritage resources identified through the desktop analysis and that mitigation will not be required solely as a result of a project that intersects with a predicted suitable habitat model.
	9VAC15-60-50 D	None.	Added language to specify that a project will be deemed to have a significant adverse impact if it would disturb more than 10 acres of prime agricultural soils Language needed because significant adverse impacts require mitigation. Minor impacts as applicant will be required to purchase a conservation easement or pay an in-lieu fee.
	9VAC15-60-50 E	None.	Added language to specify that a project will be deemed to have a significant adverse impact if it would disturb more than 50 acres of contiguous forest lands or if it would disturb forest lands enrolled in a program for forestry preservation. Language needed because significant adverse impacts require mitigation. Minor impacts as applicant will be required to purchase a conservation easement or pay an in-lieu fee.
9VAC15-60-60 A		Mitigation plan.	Added language to specify mitigation in a siting agreement approved by a locality can satisfy mitigation requirements for the PBR under certain conditions. This could be a benefit to the applicant.
9VAC15-60-60 B 2 c		Project lighting approval.	Added language to clarify that any project lighting for nighttime construction proposed for a project during sea turtle nesting season must be submitted to DWR and the U.S. Fish and Wildlife Service for approval prior to construction.
9VAC15-60-60 B 3		CAPZ Mitigation Fee.	Added language to clarify that payment of the CAPZ mitigation fee is due with the application.
9VAC15-60-60 C 3		Impacts to VLR-eligible or VLR-listed archeological sites.	Added language to clarify that significant adverse impacts to VLR-eligible or VLR-listed archeological sites that cannot be avoided or minimized must be mitigated through

			archaeological data recovery approved by DHR and DEQ.
	9VAC15-60-60 D	None	Mitigation measures for prime agricultural soils added. Needed to meet the requirements of § 10.1-1197.6.
	9VAC15-60-60 E	None.	Mitigation measures for forest land added. Needed to meet the requirements of § 10.1-1197.6.
	9VAC15-60-60 F	None.	Requirements for all conservation easements added. Needed to meet the requirements of § 10.1-1197.6.
	9VAC15-60-60 G	None.	Requirements for in-lieu fees added. Needed to meet the requirements of § 10.1-1197.6.
9VAC15-60-70 A, B		Site plan and context map requirements.	Amended to clarify information required to be shown on the site plan maps. Needed for clarity. No significant impacts anticipated.
9VAC15-60-70 A 10		Site plan requirements	Amended to specify that the location of any mitigation measures and resources subject to mitigation in 9VAC15-60-60 must be shown on the site plan. Needed to clarify the requirements for inclusion in the site plan, as this information is used to verify compliance with the mitigation plan.
	9VAC15-60-70 C	None.	Added documentation required for submittal with post-construction site maps; required to verify acres in disturbance zone have not significantly changed from initial submittal to final site plan development. Amended to replace mitigation zone with disturbance zone. Needed for clarity as the definition of disturbance zone no longer includes the 100-foot buffer and the definition for mitigation zone has been deleted. No significant impact anticipated.
	9VAC15-60-70 D	None.	Submission requirements for as-built post construction site plans added for clarity. No significant impact anticipated.
9VAC15-60-80		Small solar energy project design standards.	Catchline amended to more accurately reflect the activity. Needed for clarity. No significant impact anticipated.

9VAC15-60-90 A - F		Public participation.	Moved public participation language from 9VAC15-60-30 A 14 to Section 90. Needed for clarity. No significant impact anticipated.
9VAC15-60-100		Change of ownership, project modifications, termination.	Catchline amended to more accurately reflect the activity. Needed for clarity. No significant impact anticipated.
9VAC15-60-100 A		Change of ownership.	Amended by changing submission date for a change of ownership from 30 days in advance to within 30 days of the transfer date, adding language that these changes won't become effective until notification is received from both the original applicant and the new applicant and to clarify that a change of ownership is considered an administrative amendment. No significant impact anticipated.
9VAC15-60-100 B		Project name change.	Amended to move language regarding modifications to 9VAC15-100 C. Added new language to clarify that a name change is considered an administrative amendment. No significant impact anticipated.
9VAC15-60-100 C		Modifications.	Amended to move language regarding permit termination to 9VAC15-60-140 B. Amended to clarify the information required for submittal of a modification. Removed language stating that a modification cannot be used to increase the rated capacity of a project. A modification can be used to increase the rated capacity of a project as long as the additional rated capacity in the modification added to the rated capacity in the existing permit does not exceed 150 MW. No significant impact anticipated.
	9VAC15-60-100 D	None.	Recordkeeping and reporting requirements added. Needed for procedural clarity and certainty. No significant impact anticipated.
9VAC15-60-110		Fees for projects subject to Part II of this chapter.	Amended to clarify that fees are not required for administrative amendments, to add language regarding electronic fee payment and to add information required on the application fee form. No significant impact anticipated.
9VAC15-60-120		Internet accessible resources.	Updated information in this section. No significant impact anticipated.
9VAC15-60-130		Small solar energy projects less than or equal to five megawatts or less than or equal to 10 acres or	Amended for clarity. Revised language to clarify when an owner or operator of a small solar energy project is required to submit any notification or certification

		meeting certain categorical criteria.	to the department and when an owner is not required to submit any notification or certification to the department.
9VAC15-60-130 A 1		Small solar energy projects less than or equal to five megawatts or less than or equal to 10 acres or meeting certain categorical criteria.	Revised language to increase the maximum rated capacity where the applicant is not required to submit any notification or certification to the department from 500 KW to one MW. This was done at the request of the Department of Energy to align with nonresidential net metering requirements. No significant adverse impact anticipated.
9VAC15-60-130 A 3		Small solar energy projects less than or equal to five megawatts or less than or equal to 10 acres or meeting certain categorical criteria.	New language clarifies that projects located on previously disturbed land cannot exceed 150 MW and clarifies that a brownfield project must go through the brownfields determination process. No significant adverse impact anticipated.
	9VAC15-60-140 B	None.	Language moved from 9VAC15-60-100 C. Needed for compliance and enforcement. Recommendation by the Assistant Attorney General adds new language that includes enforcement provisions and is consistent with language in the Energy Storage Regulation. No significant impact anticipated.
	9VAC15-60-9999	None.	Added new section to list documents incorporated by reference. No significant impacts anticipated.
9VAC15-60-9999		Removed references to documents no longer needed as requirements were removed from the regulation.	Needed for clarity.
Citations		None.	Citations have been updated to reflect additions and deletions from the regulation.