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Notice of Intended Regulatory Action (NOIRA) 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 include mitigation for forest cores
Date this document prepared	March 19, 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Department of Environmental Quality (DEQ) was directed by [Chapter 688](#) of the 2022 Acts of Assembly to amend the Small Renewable Energy Projects (Solar) Permit by Rule (PBR), ([9VAC15-60](#)) regulation to consider significant adverse impacts to prime agricultural soils and forest lands. As part of that regulatory action, DEQ initially proposed requiring enhanced mitigation for C1 and C2 forest cores as identified through a ranking system previously developed by the Department of Conservation and Recreation (DCR). DCR previously defined and ranked ecological cores into 5 categories (C1 through C5) in 2017 for use as a planning tool. Comments received on the proposed regulation identified several limitations of the available mapping tool and definition of C1 and C2 forest cores when used as a regulatory tool. DEQ has decided to initiate this regulatory action to address the issues concerning enhanced mitigation for forest cores with very high and outstanding ecological integrity.

This regulatory action will be used to develop regulatory amendments to address enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity using updated mapping and definitions which can be applied in the field to verify the mapped resources.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

Department or DEQ – means Department of Environmental Quality

DCR – means Department of Conservation and Recreation

HB – means House Bill

GIS – means Geographic Information Systems

RAP – means Regulatory Advisory Panel

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapter 688 of the 2022 Acts of Assembly (HB 206) amended and reenacted § [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.

The HB 206 Regulatory Advisory Panel (RAP) recommended requiring mitigation for disturbance of forest lands at a ratio of 1 acre conserved for each acre of forest land disturbed (1:1). The RAP further recommended requiring mitigation for disturbance of C1 forest cores at a ratio of 7 acres conserved for each acre of C1 core disturbed (7:1) and mitigation for disturbance of C2 forest cores at a ratio of 2 acres conserved for each acre of C2 core disturbed (2:1). Forest cores are a subset of forest land that include large patches of natural habitat that are ranked based upon many variables including environmental diversity, species diversity, water quality benefits, and habitats. Comments received on the proposed regulation developed to incorporate changes required by HB 206 in late 2024 identified several limitations of the

available mapping and definition of C1 and C2 forest cores when used as a regulatory tool. Chapter 688 of the 2022 Acts of Assembly required DEQ to adopt the required amendments no later than December 31, 2024. Rather than delay adoption of the required amendments, DEQ is moving forward with finalizing amendments to 9VAC15-60 required by Chapter 688 without including enhanced mitigation for C1 and C2 forest cores. This amendment will focus on inclusion of enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity using mapping and definitions which can be applied in the field to identify forest cores of very high and outstanding ecological integrity.

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](#)

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](#),
- Administrative Code Chapter 60, Small Renewable Energy Projects (Solar) Permit by Rule, [9VAC15-60](#)

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is to establish enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity using mapping and definitions which can be applied in the field to identify forest cores with very high and outstanding ecological integrity.. The HB 206 RAP recommended enhanced mitigation for disturbance of C1 and C2 forest cores delineated by DCR’s existing Ecological Cores dataset, but did not discuss the limitations raised by subsequent comments on the proposed regulation. This regulatory

action will allow DEQ to address the limitations raised by comments while proceeding with implementation of the minimum mitigation required HB 206.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The Small Renewable Energy Projects (Solar) Permit by Rule regulation establishes the specific criteria required for a complete application to construct and operate a solar project in Virginia. This amendment will address enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity using mapping and definitions which can be applied in the field to identify forest cores with very high and outstanding ecological integrity.. Revisions to the regulations may include:

- Add definitions of forest cores with very high and outstanding ecological integrity;
- Add forest cores with very high and outstanding ecological integrity to the existing requirement for the analysis of the beneficial and adverse impacts to natural resources;
- Add mitigation plan requirements for forest cores with very high and outstanding ecological integrity; and
- Other changes necessary to clarify, evaluate the need for, or implement enhanced mitigation for impacts to forest cores.

Comments submitted on the proposed regulations published in 41:4 VA.R. 489-513 included concerns with using C1 and C2 forest cores as mapped by DCR in the Virginia Natural Landscape Assessment. The following issues will be evaluated as part of this regulatory action and regulatory revisions may be proposed to address these issues:

- The map of ecological cores (including the geographic information system (GIS) criteria used to map C1 and C2 cores) was not adopted as part of any regulatory process with opportunity for public comment.
- The Virginia Natural Landscape Assessment that maps the cores has not been updated since 2017 using 2011 land cover imagery. Examples have been provided where C1 and C2 forest cores have subsequently been cleared and may no longer be mapped as cores today.
- The GIS criteria used to map C1 and C2 cores have not been translated into definitions of the cores that can be physically verified on site. Therefore, applicants have no recourse to challenge the accuracy of the designation.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Alternatives to the proposal are being considered by the department. The department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the department, along with the reasoning by which the department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulation to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action to establish enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it would not meet the stated purpose of the regulatory action to establish enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity.
3. Take no action to amend the regulations and continue to implement the recently amended regulation. This option is not being selected because it would not meet the stated purpose of the regulatory action to establish enhanced mitigation for disturbance of forest cores with very high and outstanding ecological integrity.

**Periodic Review and
Small Business Impact Review Announcement**

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The department is seeking comments on this regulation, including but not limited to: ideas to be considered in the development of this regulation, the costs and benefits of the alternatives stated in this background document or other alternatives, and the potential impacts of the regulation. The department is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: 1) projected reporting, recordkeeping, and other administrative costs; 2) the probable effect of the regulation on affected small businesses; and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Amber Foster, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218; Telephone: (804) 774-8474; email address: Amber.Foster@deq.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Public Hearing at Proposed Stage

A public hearing will not be held following the publication of the proposed stage of this regulatory action unless requests for a public hearing are received during the NOIRA public comment period from at least 25 persons.

Regulatory Advisory Panel

Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.

DEQ is using a panel to develop a proposal. Persons interested in assisting in the development of a proposal should notify the Department's contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). The primary function of the panel is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the panel will be sent to all applicants.