

Item 7 - Correspondence

From: [Elshan Bal](#)
To: [MCP-Chair](#)
Subject: Chaberton Solar Sugarloaf I LLC Case No 9726
Date: Tuesday, September 3, 2024 7:56:28 PM
Attachments: [Greenway Farms Letter Chaberton Project Support.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Sir/Madam,

See attached support letter for Chaberton Solar Sugarloaf project. I hope it will find support by majority of reviewers.

Elshan Bal
Partner

Greenway Farms, LLC
6909 Damascus Road
Gaithersburg, MD 20882

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Greenway Farms, LLC
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August 28, 2024

Re: Chaberton Solar Sugarloaf I LLC Case No 9726

To Whom It May Concern:

Thank you for the opportunity to express my support for Project Sugarloaf, a small community solar project located off Darnestown Rd in Dickerson, Montgomery County.

We are an aquaponic farm producing food under cover in a greenhouse. As you may know CEA consumes a lot of energy to produce high value crops such as fish and produce. Each year we spend close to \$50,000 dollars just to keep our 8 thsd. square foot greenhouse energizing grow lights and ambient temperature with warm air in cold, and cool air in hot seasons.

Wouldn't be nice to feed our farmhouse and food production facility with clean energy coming from community solar, produced locally?!

When I heard about Chaberton community solar projects, I immediately realized the value each project can bring to local communities, including prevention of dislocation of native pollinators, generating energy from clean sources, keeping people on their lands, and many other benefits that could be attributed to each Chaberton project.

We need to save the bees and businesses around them! Literally! Our farm is next to Maryland Honey Company. It was so sad to learn that the company is shutting its doors after so many years of service, since the land they and bees occupy recently was allocated for a residential construction. It is really sad to see such developments in the immediate neighborhood.

This community solar project will have native pollinators growing underneath the entire array, supporting increased yields to agriculture within a 5-mile radius of the site, and helps increase the threatened bee, butterfly, and bird populations. That habitat will also provide an extensive root system throughout resulting in better stormwater management and erosion reduction, and increasing soil health and biodiversity. After the approximately 30-year life of the facility, the land will be healthier and more fertile than when the solar panels were installed. That means when the project life of the facility ends, the array can be removed and farmed nearly immediately thereafter. Our future depends on renewable energy projects like these being implemented.

Thank you for taking the time to read this letter outlining the reasons why I support Project Sugarloaf. I urge you to approve this project, and future similar projects.

Thank you,

Best regards,



Elshan Bal
Partner

Cell phone: (+1) 310.804.7510
Email: elshan@greenwayfarms.us

Greenway Farms, LLC
6909 Damascus Road
Gaithersburg, MD 20882

From: [Francoise Carrier](#)
To: [MCP-Chair](#)
Cc: [Butler, Patrick](#); [Beall, Mark](#); ryan.boswell@chaberton.com; [Katie Griffin](#)
Subject: Chaberton Solar Sugarloaf Mandatory Referral, Agenda Item 7
Date: Thursday, August 29, 2024 6:11:04 PM
Attachments: [Lett Pl Bd 8-29-24 w.Exhibits.pdf](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

On behalf of the applicant, please distribute the attached letter to the members of the Planning Board in connection with Item 7 on the Board's September 4, 2024 agenda. We would appreciate your distributing this letter to the Board with the weekly packet on August 30, so they have the opportunity to review this material contemporaneously with the staff report.

Thank you,

Françoise M. Carrier



Co-Chair, Land Use & Zoning Practice Group
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August 29, 2024

Artie Harris, Chair, and Members of the Montgomery County Planning Board
2425 Reddie Drive, 14th Floor
Wheaton, MD 20902

Re: Mandatory Referral Application MR2024016, Chaberton Solar Sugarloaf

Dear Chair Harris and Members of the Board:

I write on behalf of my client Chaberton Energy (“Chaberton”) to provide supplemental information in preparation for the Mandatory Referral hearing scheduled for September 5, 2024 regarding Chaberton’s proposed Project Sugarloaf community solar project. Maryland’s Community Solar program is intended to increase the amount of solar energy generated in the State while making it accessible to residents who do not otherwise have the means to choose the benefits of solar energy, such as residents who do not own their own home or do not have the financial means to place solar panels on their home. This project will be required to have at least 40% percent subscribers of limited or moderate income, who are guaranteed to receive a discount on their electricity bills of at least 20% compared to standard Potomac Edison rates. Significantly, community solar subscribers lock in the percentage discount, so as rates continue to rise over time, their absolute annual savings will increase. A recent state study estimated that Potomac Edison will increase rates by 24% in 2025/26, making the availability of savings through community solar all the more valuable.¹

For the reasons stated in this letter and to be discussed more fully at the Mandatory Referral hearing, Chaberton requests that the Planning Board recommend to the County Council transmittal of the comments that follow to the PSC:

“The Montgomery County Council requests that in considering the CPCN application of Chaberton Solar Sugarloaf LLC, Case No. 9726 ML 310345, the Public Service Commission take into account the following:

1. The Application does not comply with the Comprehensive Plan for Montgomery County, Thrive Montgomery 2050.
2. The Application is contrary to the goals of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan*.
3. The Application conflicts with the intent and requirements of Montgomery County’s Agricultural Reserve (AR) Zone.”

¹ Maryland Office of People’s Counsel study, “Bill and Rate Impacts of PJM’s 2025/2026 Capacity Market Results & Reliability Must-Run Units in Maryland,” issued August 14, 2024.

As you will hear in more detail at the hearing, Chaberton is a local company, headquartered in Rockville. It is the developer for numerous solar power projects throughout the country, with the heaviest concentration in the Mid-Atlantic. The Sugarloaf Project is a community solar installation proposed on Darnestown Road in Dickerson, within the County's Agricultural Reserve (the "Ag Reserve"). Chaberton proposes a project that will generate four megawatts ("MW") of solar available to subscribers within the Potomac Edison utility territory, prioritizing direct savings to residents of Montgomery County. The project is under review through Maryland's Certificate of Convenience and Necessity ("CPCN") process, which provides Montgomery County with the opportunity to comment on the application before a final decision is made by the Maryland Public Service Commission ("PSC"). This letter will address several issues discussed in the planning staff report for the upcoming hearing, dated August 23, 2024 (the "Staff Report"), as outlined below.

1. Chaberton is Committed to Agrivoltaics. Chaberton has voiced its intention to implement agrivoltaics at this site on numerous occasions and has made a binding commitment to do so as a condition of CPCN approval, see CPCN Case No 9726, ML No 311975.
2. Natural Resources Inventory ("NRI") Awaits Planning Staff Approval. Chaberton has been under the impression that it had responded to all staff comments on the submitted NRI until receiving an additional round of comments on August 27. Chaberton is working hard to respond promptly to the new comments.
3. Forest Conservation Plan ("FCP") Has Been Informally Submitted while Awaiting NRI Approval. Chaberton submitted an FCP on June 21, 2024 showing no mitigation requirements and believes that the FCP is ready to be formally accepted, reviewed and approved in short order as soon as the NRI has been approved. Based on previous discussions with planning staff, Chaberton believed all involved understood that the FCP would be formally submitted after approval of the NRI, and would be reviewed on a separate track from the Mandatory Referral review. CPCN approvals typically require approval of an FCP as a licensing condition. Chaberton is not aware of any projects that have been required to have an approved FCP in place before approval of a CPCN. Further, since solar projects are exempt from afforestation requirements and this project does not trigger reforestation, the outcome of the FCP is already known.
4. CPCN Approval by PSC Weighs Local Zoning and Planning Against Benefits of Solar Energy. In considering a CPCN application, state law requires the PSC to give "due consideration" to the recommendation of the governing body of the county in which the solar power project is proposed to be located. See Maryland Public Utilities Act ("PUA") Sect. 7-207(e)(1). Maryland courts have confirmed that the PSC has full, unqualified authority to decide where solar generating stations with a capacity over two MW may be sited, reaching a balance that includes local planning and zoning among several factors (see discussion below). Chaberton is aware of

no legal authority suggesting that a local ban on utility-scale solar is the only possible justification for the PSC to approve a solar project over a local jurisdiction's objections. Relevant PSC decisions are discussed below.

5. Montgomery County Solar Energy Policy Should Support a Realistic Amount of Community Solar to Support State Goals and Environmental Justice. Montgomery County's leaders and residents have voiced support for solar energy as part of the County's response to the global climate crisis and to lower the cost of energy for Maryland residents. The County's Zoning Code, however, has a complete ban on solar facilities over two MW and a *de facto* ban on non-accessory use solar facilities less than two MW in the Ag Reserve. This project and others under review through the CPCN process are opportunities for the County to choose not to stand in the way of a reasonable amount of community solar in the Ag Reserve at a scale that is approved at the state level, while leaving intact the County's existing zoning restrictions for smaller projects, which are approved at the county level. Adopting this position would allow the County to make a meaningful contribution to Maryland's need for solar power and to promote environmental justice for residents of Montgomery County and the State.

1. Chaberton is Committed to Agrivoltaics

Chaberton has long had a commitment to implementing agrivoltaics as part of solar power projects to achieve a dual harvest – renewable energy and agricultural production. Chaberton has expressed its intention to implement agrivoltaics at Project Sugarloaf to planning staff, as noted in the Montgomery Planning Impact Report on solar collection systems issued December 28, 2023, p. 7. Before reading the staff report, we were not aware that staff would consider this to be a commitment only if Chaberton first obtained approval from the Montgomery County Office of Agriculture (“OAG”) for a specific plan. Chaberton is working with the Maryland Department of Agriculture (“MDA”) on a condition of approval of the CPCN for another project that will require Chaberton to obtain approval for an agrivoltaics plan from the MDA at least 30 days before operations begin at the site. *See* Licensing condition 11(b) for CPCN Case No. 9714, Snow Solar Project. To remove any ambiguity, Chaberton has also committed on the CPCN record for Project Sugarloaf to a similar licensing condition that will require Chaberton to obtain approval for an agrivoltaics plan from the MDA at least 30 days before operations begin at the Sugarloaf site. Supplemental Direct Testimony of Ryan Boswell on Behalf of Chaberton Solar Sugarloaf I LLC, submitted August 28, 2024, attached as Exhibit A. Chaberton is also willing to consult with the OAG on its agrivoltaics plan, but for a state-approved project, it is appropriate for approval to rest with the MDA.

2. Natural Resources Inventory (“NRI”) Awaits Planning Staff Approval

Chaberton submitted a draft Natural Resources Inventory/Forest Stand Delineation (“NRI”) on July 11, 2024, received comments from planning staff on July 17, 2024 and submitted a response to those comments on August 9, 2024. Additional comments were received from planning staff on August

14, 2024 and a response was submitted to these comments on August 16, 2024. Comments were also received from planning staff on August 27, 2024. Chaberton intends to have a response to those comments finalized by August 30, 2024.

3. Forest Conservation Plan Has Been Informally Submitted while Awaiting NRI Approval

Although Chaberton submitted an FCP on June 21, 2024, planning staff apparently does not consider it to have been submitted because it cannot be formally accepted until the NRI has been approved. The substance of the Sugarloaf FCP is non-controversial. Chaberton will not be required to take any actions under the FCP because neither of the possible planting requirements, afforestation and reforestation, applies: (a) solar generation projects are exempt from afforestation under state law (*see* Maryland House Bills 0723 and 1511) and (b) the Sugarloaf project will not remove any forest from the site, so there is no reforestation requirement. Chaberton believes that the FCP is ready to be formally accepted, reviewed and approved in short order as soon as the NRI has been approved.

As to the timing of FCP approval, decisions granting a CPCN typically require approval of an FCP as a post-CPCN-approval licensing condition. Chaberton is not aware of any solar generation projects that have been required to have an approved FCP in place before approval of a CPCN. Chaberton will have ample time to obtain Montgomery County's approval of an FCP on a timeframe that is compliant with the anticipated CPCN conditions.

4. CPCN Approval by PSC Weighs Local Zoning and Planning Against Benefits of Solar Energy

As part of its review of a CPCN application, the PSC must give "due consideration" to "the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station...is proposed to be located[.]" PUA § 7-207(e)(1). A "generating station" refers to a generating unit or facility with, in relevant part, a capacity that exceeds two MW of alternating current. *Id.* at Sec. 7-207(a)(4). Recently, Maryland courts have affirmed that under the plain language of PUA § 7-207, "the PSC is the ultimate decision-maker and approving authority of generating stations. Local government is a participant in the process and has an advisory role...whose recommendations, and local planning and zoning regulations must be duly considered but leaves the PSC responsible for reaching the final balance that includes local planning and zoning as one of several factors." *Bd. of Cnty. Comm'rs of Wash. Cnty., Md. v. Perennial Solar, LLC*, 464 Md. 610, 643-44, 212 A.3d 868, 887-88 (Md. App. Ct. 2019) (internal citations omitted). Indeed, "the General Assembly and the Court of Appeals have clarified that the [PSC] has plenary authority to decide where solar generating stations may be sited," and "while the [PSC] must accord the local county's recommendation, zoning, and comprehensive planning 'due consideration,' they are by no means binding on the [PSC]." *Frederick Cnty. v. Md. Pub. Serv. Comm'n*, No. 668, 2022 WL 17578907, at *25 (Md. Ct. Spec. App. Dec. 12, 2022).

Chaberton is not aware of any basis for the position stated in the Staff Report that the PSC may approve a CPCN over the negative recommendation of a county only if the county has effectively banned solar. Instead, the PSC's duty is to weigh the multiple factors under consideration, including the recommendations, zoning and planning of the local jurisdiction, and decide whether approval of a

particular solar project, on balance, is in the public interest. Examples of this balancing process can be seen in past PSC decisions on solar power applications. In *Biggs Ford Solar Center, LLC*, Case No. 9430, the Public Utility Law Judge (“PULJ”) approved a CPCN for a 15-acre solar project over the objections of Frederick County. See Proposed Order of PULJ, Case No. 9430, Phase II, issued August 27, 2020.² Frederick County appealed the decision to the PSC, which upheld the approval. See PSC Order No. 89668, Case No. 9430, issued November 24, 2020. The PSC quoted the PULJ’s conclusions following a weighing of the competing interests between the provision of renewable energy and the County’s interest in preserving farmland:

Finally, in addition to verifying the Commission’s preemption authority, the *Perennial* Decision [see citation above] highlighted the Commission’s duty to ensure compliance with the RPS [discussed below]. In order to meet the 14.5% solar carve-out by 2020, large solar facilities must continue to be part of the equation in order to meet the RPS’s goal as rooftop solar installations alone are not sufficient. Allowing a jurisdiction to effectively ban utility-scale solar facilities through zoning ordinances would be both unreasonable and counter-productive.

Consistent with the Phase I Proposed Order, I find that the Project is not consistent with the County’s zoning. However, I give no weight to this factor as Bill No. 17-07 is effectively a *de facto* ban on utility-scale projects, which is not in the overall public interest. In light of the facts and circumstances of this case, especially my finding related to the application of Bill No. 17-07, I find it appropriate to exercise the Commission’s preemption authority over the County’s zoning ordinance.

PSC Order 89669 at 11, quoting PULJ Proposed Order at 87 (internal citations omitted).

While the PULJ in *Biggs Ford* considered Frederick County’s effective ban on utility-scale solar a persuasive point in favor of approving the CPCN, this does not make the existence of a *de facto* ban the only circumstance when a CPCN can be approved over a county’s objections. The PSC in *Biggs Ford* (i) concluded that the PULJ gave due consideration to the County’s recommendations before correctly deciding to exercise the PSC’s preemption authority; (ii) affirmed the PULJ’s decision to rely on statewide RPS targets (discussed below) in evaluating the application; and (iii) cited a finding by the General Assembly that the benefits of electricity from renewable energy resources accrue to the public at large. PSC Order 89669 at 11. Finally, the PSC concluded that the PULJ correctly considered the application in its entirety and determined that the public interest furthered by approving the application

² Under the CPCN process, a PULJ issues a proposed order that becomes final after 30 days unless an appeal is noted with the PSC or the PSC modifies or reverses the proposed order or initiates further proceedings. See PULJ Proposed Order at 93.

outweighed the consideration due to Frederick County’s contrary recommendations. PSC Order 89669 at 14.

Montgomery County’s regulatory approach to solar power projects bears some similarity to Frederick County’s rules as discussed in the *Biggs Ford* case. Montgomery County bans solar power generation facilities over two MW, and its prohibition of solar projects on Class 1 and 2 agricultural soils in the Ag Reserve – the area with the overwhelming majority of the County’s open land – creates a *de facto* ban on non-accessory use solar facilities less than two MW. See Montgomery County Zoning Code Sect. 59.3.7.2. Montgomery County’s highly restrictive regulation of solar power weighs in favor of the PSC approving a CPCN for Sugarloaf, as it did in the *Biggs Ford* case, due to the public benefits of solar power generation and Maryland’s forward-thinking goals for renewable energy and solar power.

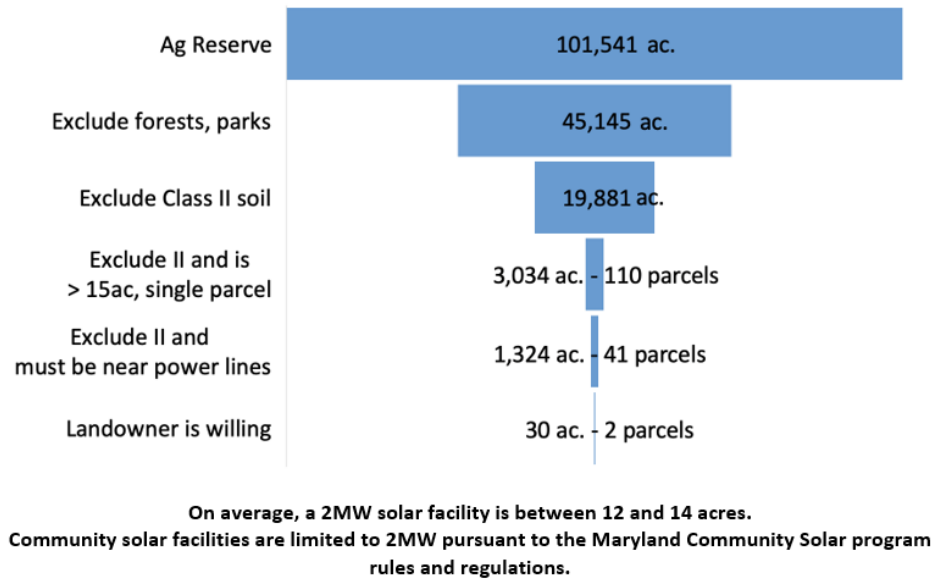
In *Morgnec Road Solar, LLC*, Case No. 9499, the PSC affirmed the PULJ’s order granted a CPCN for a 45-MW solar project in Kent County over the county’s objections. See PSC Order No. 90200, Case No. 9499, issued April 27, 2022. The PSC noted a conflict between the mandates of Maryland energy and environmental policy, such as the RPS, and some local preferences to prevent nearby construction of renewable energy facilities. PSC Order 90200 at 13. The PSC noted that it has repeatedly affirmed that due consideration and weighing of the several considerations outlined in PUA Section 7-207(e) “favors mitigation of local impacts, rather than rejection, in order to allow otherwise well-supported projects that conflict with local zoning and planning to go forward.” PSC Order 90200 at 13.

5. Montgomery County Solar Energy Policy Should Support a Realistic Amount of Community Solar to Support State Goals and Environmental Justice.

In fall 2023, the Montgomery County Council adopted Zoning Text Amendment (“ZTA”) 20-01, which established parameters severely limiting the land available for community solar projects in the Ag Reserve. The ZTA required the Planning Department to prepare an impact report two years later assessing the impact of solar installations on the natural environment, agriculture, carbon emissions and the electricity grid.

The Planning Department issued a report on December 28, 2023 noting that two solar projects had been approved in the Ag Reserve in the previous two years, covering about 20 acres of land. The report suggested that the very small number of projects approved in the Ag Reserve in a two-year span is not due to the restrictive parameters in the zoning code, but to difficulty getting connections approved by the electric companies. Interested stakeholders such as Chaberton did not have the opportunity to contribute or respond to this report. Based on Chaberton’s experience, solar projects are not being proposed under the County’s conditional use process *primarily* because of the prohibition of solar on Class 1 and 2 prime agricultural soils. When taken into account with all the other environmental considerations (e.g. forested areas, parks, steep slopes, streams, wetlands, etc.), industry research in 2020 (submitted to the Montgomery County Council via letter on September 22, 2020 during discussions leading to ZTA 20-01 and attached here as Exhibit B) estimated that only 1.3% (41 parcels) of the Ag Reserve would theoretically be available to two-MW solar projects. Of those parcels, based on projected landowner interest, industry estimated only two projects would be built. Interestingly, that is

exactly what has played out. If the class I/II soil constraint were not present, additional project locations would be available.



Graphic from September 22, 2020 Industry Letter to County Council

One of the two solar projects that was approved in the two years after ZTA 20-01 was proposed by the landowner, not by a solar company that identified the location. This underscores how incredibly difficult it is for a solar company to identify sites that have the physical characteristics necessary for solar to be viable (including open, unforested land, no wetlands or steep slopes, and proximity to existing electrical transmission lines with sufficient available capacity) but do *not* have any prime agricultural soil, which is typically found in locations similar to those that work for solar - relatively flat land without wetlands or steep slopes. In addition, technological improvements in the rapidly-evolving solar power industry now make it possible to generate more than two MW on the same acreage that previously generated two MW or less, making more projects subject to a CPCN requirement rather than the County’s conditional use requirement.

In its 2023 legislative session, the state legislature established a Solar Incentives Task Force. The Task Force issued a report in April 2024 (the “State Task Force Report”)³ that describes extensive research and recommends several steps to increase solar energy generation in Maryland. The State Task Force Report notes that Maryland is the only state to have enacted legislation calling for a 60-percent reduction in greenhouse gases by 2031. State Task Force Report at 1. The State Task Force Report further cites the Maryland Renewable Energy Portfolio Standard (the “RPS”), created pursuant to

³ State Task Force Report available at: <https://energy.maryland.gov/SiteAssets/Pages/SolarTaskForce/The%20Task%20Force%20To%20Study%20Solar%20Incentives%20Final%20Report.pdf>

Public Utilities Article Sect. 7-703, which establishes a goal to derive 52.5% of the State's energy from renewable sources by 2030, as well as a requirement to derive 14.5% of annual renewable energy from solar power by 2030. *See* State Task Force Report at 15. Task Force staff estimated that approximately 25,000 – 35,000 acres of land, including farmland, grayfields, brownfields and parking lots, will be required to meet the RPS requirement for solar power. This is consistent with a 2020 report issued by the Governor's Task Force on Renewable Energy Development and Siting that estimated that between 2020 and 2030, 29,000 acres of land will be used by utility-scale solar power generation, of which 90 percent will be farmland – equivalent to less than two percent of Maryland's farmland. *See* State Task Force Report at 21. That averages to roughly 1,000 acres of farmland per county. Currently, Montgomery County has approximately 20 acres of ground-mounted solar on farmland, a small fraction of the per-county expectation and significantly less than in other counties such as Somerset, Garrett and Queen Anne's, which lead the State in ground-mounted solar. As one of the wealthiest counties in the State and a jurisdiction with a keen interest in environmental justice, Montgomery County should be prepared to contribute its fair share of available land, largely farmland, for solar power generation. This is particularly true given that the County adopted zoning that names 1,800 acres as a target maximum acreage for solar projects in the Ag Reserve. If solar projects continue to be limited to locally-approved projects at the current rate of 10 acres per year, it will take nearly 180 years to reach that limit.

The Sugarloaf project and others that are making their way through the CPCN process are an opportunity for Montgomery County to choose not to stand in the way of a reasonable amount of community solar in the Ag Reserve at a scale that is approved at the state level, while leaving intact its existing zoning parameters for smaller projects approved at the county level. The County's ability to make recommendations on each project individually would allow the County, for example, to keep a count of how much acreage has been approved for dual solar/agrivoltaics use in the Ag Reserve and inform the PSC when and if the Zoning Code's 1,800-acre limit on solar in the Ag Reserve is reached. (Chaberton considers it very unlikely that solar projects will occupy anything close to 1,800 acres in the Ag Reserve, even if the Class I/II soils restriction is removed.)

Montgomery County's leaders have voiced support for solar energy as part of the County's response to the global climate crisis. A 2020 poll of local residents showed 67% support for solar power in the Ag Reserve, provided that it occupied no more than two percent of farmland. The County's Zoning Code, however, has a ban on solar facilities over two MW and a *de facto* ban on solar facilities under two MW in the Ag Reserve except those small enough to be accessory uses. Choosing not to stand in the way of a reasonable amount of community solar in the Ag Reserve through CPCN projects would allow the County to make a meaningful contribution to Maryland's need for solar power and to promote environmental justice for residents of Montgomery County (through a guaranteed discount on electricity prices to low and moderate income solar power subscribers) and the State (by allowing Montgomery County to host its proportionate share of utility-scale solar).

Chaberton requests that the Planning Board recommend to the County Council transmittal of the comments that follow to the PSC:

August 29, 2024

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“The Montgomery County Council requests that in considering the CPCN application of Chaberton Solar Sugarloaf LLC, Case No. 9726 ML 310345, the Public Service Commission take into account the following:

1. The Application does not comply with the Comprehensive Plan for Montgomery County, Thrive Montgomery 2050.
2. The Application is contrary to the goals of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan*.
3. The Application conflicts with the intent and requirements of Montgomery County’s Agricultural Reserve (AR) Zone.”

We look forward to discussing this application with you further at the September 5 hearing.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: 

Françoise M. Carrier

cc: Patrick Butler, Upcounty Division Chief
Mark Beall, Planner IV
Ryan Boswell, Chaberton
Katie Griffin, Chaberton

Troutman Pepper Hamilton Sanders LLP
Troutman Pepper Building, 1001 Haxall Point, 15th Floor
Richmond, VA 23219



troutman.com

Andrew J. Flavin
andy.flavin@troutman.com

August 28, 2024

VIA E-FILING

Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
6 Saint Paul Street, 16th Floor
Baltimore, MD 21202

Re: Chaberton Solar Sugarloaf I LLC's Application for a Certificate of Public Convenience and Necessity to Construct a 4.0 MW Solar Photovoltaic Generating Facility in Montgomery County, Maryland – Case No. 9726

Dear Mr. Johnston:

Please find enclosed for electronic filing the Supplemental Direct Testimony of Ryan Boswell on behalf of Chaberton Solar Sugarloaf I LLC.

Please do not hesitate to contact me if you have any questions.

Best regards,

/s/ Andrew J. Flavin

Enclosures

cc: Mr. Michael Doniger
Reason Abajuo, Esq.
Mr. Ryan Boswell
Ms. Katie Griffin
Marc D. Machlin, Esq.
Viktoriiia De Las Casas, Esq.

Certificate of Service

I, Andrew J. Flavin, hereby certify that on August 28, 2024, true and correct copies of Chaberton Solar Sugarloaf I LLC's Supplemental Direct Testimony of Ryan Boswell were filed electronically with the Commission and served via electronic mail on counsel for all parties of record in Case No. 9726.

/s/ Andrew J. Flavin
Andrew J. Flavin

**BEFORE THE PUBLIC SERVICE
COMMISSION OF MARYLAND**

IN THE MATTER OF THE APPLICATION
OF CHABERTON SOLAR SUGARLOAF I
LLC FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
CONSTRUCT A 4.0 MW SOLAR
PHOTOVOLTAIC GENERATING
FACILITY IN MONTGOMERY COUNTY,
MARYLAND

Case No. 9726

**SUPPLEMENTAL DIRECT TESTIMONY
OF
RYAN BOSWELL
ON BEHALF OF
CHABERTON SOLAR SUGARLOAF I LLC**

August 28, 2024

Initial Direct Testimony Submitted on:

June 19, 2024 (Case No. 9726 ML 310345)

1 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND TITLE.**

2 A. My name is Ryan Boswell, Vice President of Development for Chaberton Energy Holdings
3 Inc. (“Chaberton Energy”), the parent company of Chaberton Solar Sugarloaf I LLC (the
4 “Applicant”). My business address is 1700 Rockville Pike, Suite 305, Rockville,
5 Maryland, 20852.

6 **Q. WHAT SUPPLEMENTAL TESTIMONY WOULD YOU LIKE TO SUBMIT?**

7 A. I have an update that specifically addresses the Applicant’s position with respect to
8 agrivoltaics, otherwise known as dual harvest practices. The Applicant is voluntarily
9 committing to incorporate agrivoltaic practices as part of the Project, such that the site will
10 generate both clean electricity and agricultural products. The Applicant has solicited
11 proposals from industry leaders in agrivoltaic strategies and is in the process of evaluating
12 which providers are best suited to partner on this endeavor. While the Applicant cannot
13 provide specific details of the agrivoltaic plan at the time of this filing, the Applicant can
14 commit to maintaining meaningful agricultural use of the site in parallel with the operations
15 of the Project. The Applicant proposes that as part of a CPCN for the Project, the
16 Commission include a licensing condition similar to the PPRP’s recommended licensing
17 condition #11b in Case No. 9714 (see ML #311390). This licensing condition would
18 (among other things) require the Applicant to submit an Agrivoltaics Plan to the Maryland
19 Department of Agriculture (“MDA”) at least 30 days prior to operation of the Project and
20 submit an updated Agrivoltaics Plan to MDA at least every five years after the
21 commencement of operation, or whenever a change occurs in the agrivoltaics activity.

22 **Q. IS A COMMUNITY SOLAR ENERGY GENERATING STATION A PRUDENT**
23 **USE OF THE AGRICULTURAL LAND AT THIS SITE?**

1 A. Yes. The Project supports state mandates for renewable energy, including Maryland's
2 Renewable Portfolio Standard ("RPS"). The *Final Report* from Maryland's Task Force to
3 Study Solar Incentives, published in April 2024 and included as **Appendix A** to this
4 Supplemental Direct Testimony, estimates that up to 35,000 acres of land (a large portion
5 of which will be farmland) will be needed to achieve the State's current RPS requirement
6 to generate at least 14.5 percent of its electricity from solar sources by 2030.¹ Since the
7 passage of zoning reforms in 2020 that significantly restricted community solar
8 development in the Montgomery County Agricultural Reserve, there is limited ability for
9 County-sited solar projects to contribute meaningfully to the State's solar energy
10 requirements. Instead, these zoning restrictions have shifted disproportionately the
11 responsibility of hosting renewable energy infrastructure to other localities, while also
12 constraining County residents' access to significant cost savings through community solar
13 subscriptions. Because the Applicant voluntarily committed to agrivoltaics, the Project
14 (and the County) can contribute to the State's ambitious renewable energy mandate while
15 not sacrificing all agricultural productivity of the Project site.

16 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL DIRECT TESTIMONY?**

17 A. Yes.

¹ See Appendix A at 14-16, 21.

September 22, 2020

Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Dear Council President Katz and Councilmembers:

Maryland-Delaware-Virginia Solar Energy Industry Association (MDV-SEIA) and the Coalition for Community Solar Access (CCSA) appreciates the opportunity to submit industry analysis of the proposed amendments of USDA Class I, II, and III soil and USDA Class I and II soil restrictions. Our analysis of the proposed restrictions show development of solar facilities will be essentially prevented under these amendments in the ZTA 20-01 legislation.

As an industry, we collectively evaluated the list of available parcels for solar development, provided by the Montgomery County Planning Department. We found the removal of USDA Class I, II, and III soils would result in 2MW or less of solar and the removal of USDA Class I and II would result in at most 82MW and likely only 4MW. Both scenarios will put Montgomery County far behind your clean energy goals of 80% renewable by 2027.

The joint analysis between MDV-SEIA and CCSA found the available parcels for Class I and II restrictions for 220MW are not all viable for solar development, this is illustrated in the table below. Parcel viability requires the land to be within 0.25 miles from a utility line and that line is available to accept 2MW of power for interconnection to the grid. Only 68MW of the 220MW under the Class I and II restrictions are workable. There are 14MW of parceled land that should be considered marginally viable because they are located between 0.25 and 0.40 miles from a suitable power line or have obstacles limiting the usable area of the property. For parcels beyond 0.25 miles, the projects are often financially not feasible due to prohibitive interconnection costs. It is important to note, all interconnection upgrades and costs are paid for by the developers. Interconnection costs can only be accurately determined after an interconnection analysis is performed by the Electric Distribution Companies (EDCs). Under Class I and II restrictions, we predict the County would gain at most 82MW of clean energy generation, only if all parcels are cost effective and actually viable for development.

Is Parcel Viable?	Parcel Count (Lower-than-Class-II)	Reasons for parcel not being viable	Parcel Count (Lower-than-Class-II)
No	69	Farther than 0.4 miles to electrical line	58
Marginal	7	Existing assets on land (house, nursery, etc.)	9
Yes	34	Oaks Landfill existing project	2
Total	110	Sum	69

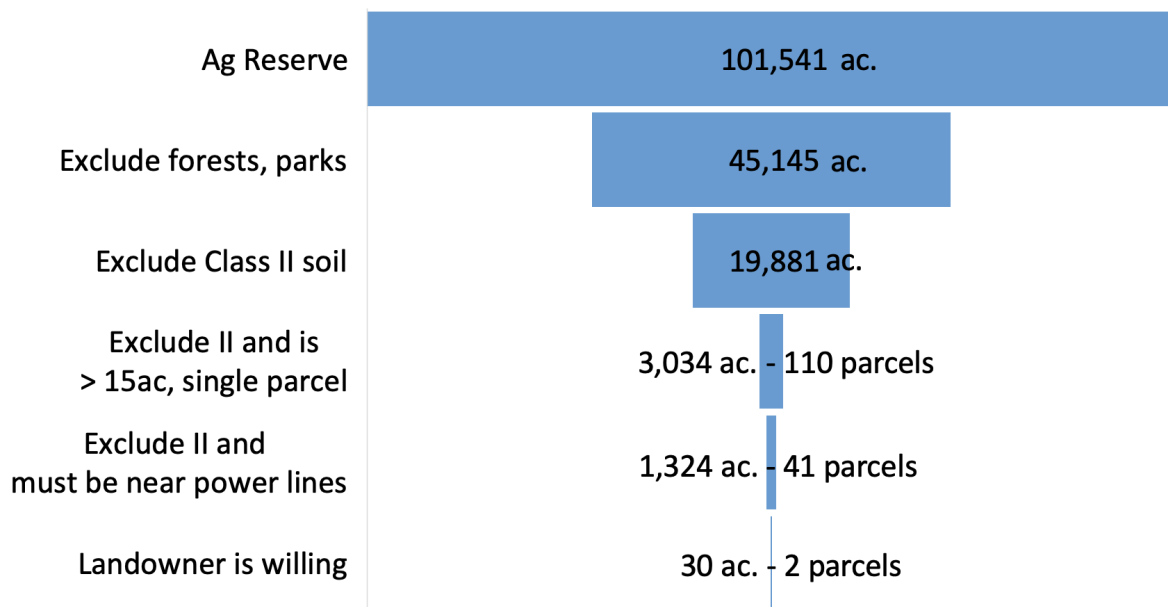
MDV-SEIA and CCSA do not see changes to future market economics that would make more parcels viable under these restrictions. For example, interconnection costs are determined by the EDCs and it is unlikely these costs will decrease. The declining cost of solar panels has flattened as the panel technology has

matured. Incentives on the federal and state level are diminishing and developers will be unable to safely harbor equipment past this year as a result of the expiring federal investment tax credits. Furthermore, the Maryland Community Solar and Net Metering programs are expected to be reached by 2025.

There are many other factors that affect the viability of a parcel, and the likelihood that a parcel would eventually host a solar facility:

1. **Farmer or Landowner interest.** There are many determinants influencing a farmer or landowner’s interest in hosting a facility - they must consider the terms of the lease and the economic incentives associated with leasing a small portion of their land. On average, 1 in 20 farmers or landowners are interested in the arrangement. Using this ratio, only 4MW of the 82MW of viable and marginally viable parcels would actually be developed.
2. **Electrical line hosting capacity.** Power lines have limitations and a typical line can only handle one Community Solar project. For example, we found 6 parcels along what we term the "Clarksburg Rd. line", however the line can only handle 1, or possibly 2 projects (if smaller in size than 2 MW).
3. **Co-location restrictions.** The Maryland Community Solar program does not allow projects on adjacent parcels.

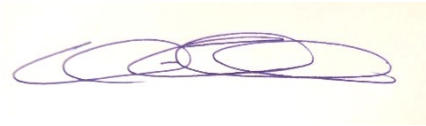
The overall impact on the number of acres or parcels available under the USDA Class I and II restrictions is shown in the below diagram and the attached spreadsheet contains the analysis methodology. Our analysis uses industry standard criteria to assess the viability of a parcel.



On average, a 2MW solar facility is between 12 and 14 acres. Community solar facilities are limited to 2MW pursuant to the Maryland Community Solar program rules and regulations.

Considering the above challenges in solar siting, our analysis indicates that the Class I and II soil restrictions will only permit 1 or 2 projects to be developed for a total of 2MW to 4MW of solar generation. The Class I, II, and III soil restrictions will prevent all development, making the ZTA 20-01 ineffective. In order to achieve the county's ambitious clean energy goals, 300MW of solar generation is needed before 2027 in the Agricultural Reserve. As a result, the solar industry is united in our recommendation to find ways to merge the economic benefits associated with community solar development with the needs of the farming community. The time is now to move forward with ZTA-20-01 without Class II and III soil restrictions, to ensure Montgomery County can continue to be a leader in combating climate change. We look forward to working with you and all stakeholders to find a solution to these critical issues.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Murray', is centered on a white background.

David Murray, Executive Director

Leslie Ann Elder, Mid-Atlantic Director

CCSA



MDV-SEIA



From: [Doug Boucher](#)
To: [MCP-Chair](#)
Cc: [Katie Griffin](#); [Amea Bearne](#); [John Miller](#); [Charlotte Boucher](#)
Subject: Written testimony of Douglas and Charlotte Boucher for September 5 hearing (MR2024016)
Date: Tuesday, August 27, 2024 11:16:06 AM
Attachments: [CBoucher-Planning Board Testimony - Chaberton Sugarloaf Community Solar Project-MR2024016.docx](#)
[DBoucher-Planning Board Testimony - Chaberton Sugarloaf Community Solar Project-MR2024016.docx](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Dear Friends,

Attached is our written testimony (two files) for the September 5th hearing on project MR2024016. We each plan to attend the hearing in person and will be testifying orally as well.

Please let us know of any questions you may have.

Douglas and Charlotte Boucher

--

Doug Boucher

douglas.h.boucher@gmail.com

White Acres Farm
20507 Darnestown Road
Dickerson, MD 20842-9285
USA
(202) 492-7376 (cell)

Testimony – Montgomery County Planning Board Hearing
Chaberton Solar Sugarloaf 1 – MR 2024016

Submitted by Charlotte Boucher
27 August 2024

My name is Charlotte White Chakan Boucher. White was my mother's maiden name, and I am proud to bear it because in her generation, there were no male offspring. Except for me, our family name has died out. I still live on White Acres farm, however, a property that was once part of the larger farm called Inverness on which my grandfather grew up. Grandpa bought around 160 acres of his father's land when he married in 1916 and started his own dairy business. Inverness was the White family home from the 1830's until the 1950's when Grandpa's elder brother, having no children of his own, sold it.

I grew up heavily influenced by my grandparents, Max and Ellen White. I spent my summers on the farm, attended St. Peter's Episcopal Church with them, and learned to love my heritage so intensely that the great dream of my adult life was to return to live on the farm. In 1993, my brother and I inherited land that had been in the family almost 200 years. Five years later my dream came true: my husband and I came to spend the rest of our lives on White Acres.

My grandparents were devoted to their family, their work, and their community. They taught me the values of respect and responsibility: respect for others and for the land and animals that enabled us to lead happy, healthy lives; responsibility for caring for our family and our community and for passing on to the future the rich, productive land that has provided us so many blessings.

Grandpa was one of the original directors of the Upper Montgomery County Volunteer Fire Department, a Vestryman at Saint Peter's, a leader in the Maryland Milk Producers' Association; Grandma worked at the church, sang in the choir, baked for the cake raffle at the Firemen's Carnival. Both of them lived lives of service and inspired me to turn my love of their home – now my home - into positive activities that benefit my family and my neighbors.

This is the context in which I envision a community solar project on our farm, partnering with Chaberton, a company based in Rockville and dedicated to providing clean energy for us and our neighbors. Our project will continue our commitment to our land's health and productivity, harvesting the sun's rays instead of crops grown to feed livestock. It will provide a haven for pollinators, so important to the future of agriculture. It will leave no permanent damage or scars on the land; at any time the array could be dismantled and the land immediately planted with crops.

Most importantly, a solar array will benefit our community now and in the future. We would be foolish to ignore the need for clean, renewable energy and the imperative to address the dangers of climate change in as many ways as possible. I take my duty to the land and to our community very seriously. My children and grandchildren know how deep

their roots go and how important it is to nurture the environment that has nurtured our family for so many years. They deserve to inherit the clean and gentle air at White Acres and enjoy, as I have, the blessings of a farm well-cared for.

Thank you.

Charlotte Boucher

20507 Darnestown Road
Dickerson MD 20842

charlotte.w.boucher@gmail.com

Testimony – Montgomery County Planning Board Hearing
Chaberton Solar Sugarloaf 1 – MR 2024016

Submitted by Dr. Douglas H. Boucher
27 August 2024

Introduction

I appreciate the opportunity to submit testimony concerning Chaberton's application to develop a 4 MW community solar project on our land in Dickerson, Maryland. As my wife Charlotte explains in her testimony, we have lived on our family farm since 1997, and the land has been passed down in her family since the 1830s. We feel a deep attachment to this land and a duty to use it not only for our own benefit, but also for our community and for future generations.

Since my expertise is as an ecologist and a climate scientist, I'd like to focus my testimony on questions that relate to those subjects. I have a Ph.D. in ecology and evolutionary biology (University of Michigan, 1979) and worked for 40 years in university-level teaching and research on biology and natural resource management. I have published over 100 scientific papers, and before retiring in 2018 I spent a decade as Director of Climate Research and Analysis at the Union of Concerned Scientists. My focus throughout my career was on agricultural and forest ecology, including how they relate to the challenge of climate change.

I know that I don't need to tell you about the urgency of the climate crisis -- the greatest challenge that our society faces in the 21st century. It will require a rapid phaseout of fossil fuels and their replacement with clean energy sources such as solar and wind throughout the global economy. My wife and I have recognized this need for many years and have tried to do our part – not just as teachers and citizens, but also as the owners of a beautiful 77 ½ acre farm in rural Montgomery County.

What We've Done So Far

Over the 27 years that we have lived on White Acres Farm (named for Charlotte's grandfather, Max White), we have taken several steps to reduce our greenhouse gas emissions and increase natural carbon sequestration. In 2003 we bought our first hybrid car, and that same year we began a reforestation project on 4 acres of our land. In 2012 we converted our HVAC to a geothermal heat pump system, and in 2014 we chose to receive our electricity from 100% wind power. Last year, based on the successful reforestation of the 4 acres over 20 years, we began a second, larger reforestation project on 10 more acres. Now, we want to lease 18 acres of our farmland to Chaberton Energy for a community solar project.

Some of these steps have saved us money (the hybrid car, the geothermal system), others have cost us money (the 4-acre reforestation and the wind power), and while we are still considerably in the red with the 10-acre reforestation, we hope that it will eventually pay us back the investment we've made. But the more important point is that, whether profitable or not, these were the right things to do.

There's another reason that we want to work with Chaberton to create the community solar project, and it has to do with climate justice. Charlotte and I feel that we are extremely privileged to own and live on our farm. Living in the Agricultural Reserve puts us among a small group of Montgomery County residents (4%) who are wealthier, whiter and have greater per-capita emissions than the rest of the county. We feel that with that privilege comes a responsibility: to use our land in a way that benefits our neighbors and our natural environment.

The community solar project will contribute much more to solving the climate challenge than any of the steps we have taken thus far. The hybrid car, the geothermal system, the 100% wind power and the reforestation projects all contributed to reducing our carbon footprint – but the community solar farm will reduce it not only for us, but for about 575 other families as well. It will provide clean energy at an affordable price for all, and with a discount for the low- and moderate-income families who will make up at least 40% of its subscribers.

If we're not allowed to have community solar on our farm, we will continue to contribute by reforesting our remaining open land, as we have done for 21 years already. But the reduction in greenhouse gas emissions that we could make with reforestation will be far less than what we could do with community solar – about 1/50th as much. Furthermore, it won't make any contribution to climate justice, since forest sequestration removes carbon dioxide from the atmosphere but doesn't do anything to reduce the emission of particulates, VOCs and other pollutants, whose major burden falls on communities of color. Thus, it doesn't reduce the damage to health from asthma, cancer and other diseases associated with burning fossil fuels.

Montgomery County's ZTA 20-01

These reasons, in broad terms, are why we want to lease 18 acres of our land for community solar. But since my decades of experience in agricultural and forest ecology have given me some detailed knowledge of soil types, I'd like to go a little more in depth on a question that is closely related to soil mapping. This is why the application is directed to the PSC and its CPCN process, rather than to Montgomery County under ZTA 20-01?

There are three ways to answer this question, and the first is very simple. The county's Planning Department clearly stated in its December 2023 report on the ZTA, that our project would be illegal if it were smaller than 2 MW, because part of the land it uses would be of soil capability class 2. Chaberton Energy can read the soil maps just as well as the Planning Department can, and there's no reason for them to go through the county's lengthy and expensive "conditional use" process, when the Planning Department has already told them in no uncertain terms that their application will be rejected because it violates the ZTA's soil limitations.

The second reason is that it has already been more than three and a half years since ZTA 20-01 became law, and it's more and more obvious that it has failed. The number of community solar projects built under the ZTA is literally zero. There are only two projects that have even been approved. These total 15 acres, compared to the goal of 1800 acres of community solar established by the ZTA.. Just as Chaberton, the Planning Department and I can read the soil maps, so can all the other potential solar developers. They are not going to waste thousands of dollars going through an application process that is certain to end in rejection.

The third reason has to do with the relationship between soil type and slope in Montgomery County, and indeed in most of the state of Maryland. If you look at the soil types that are Capability Class 2, and thus illegal to use for solar under ZTA 20-01, you'll see that they are practically all the ones that have slopes between 3 and 8%. In other words, the class 2 exclusion will only allow community solar projects that are located exclusively on slopes steeper than 8%. Additionally, the ZTA explicitly prohibits the use of land with a slope greater than 15%. The combination of these two soil constraints means that for approval, a project must occupy only land with a slope between 8 and 15% -- none with a lesser slope, and none with a greater slope. Since 45% of the county is soils of capability class 2, very few areas of the county can meet this constraint – and this is before one takes into consideration all the additional constraints (e.g. no stream valleys, no forest, etc.) and additional requirements (e.g. it must be able to connect to a three-phase line, the landowner must be willing to lease it, etc.)

Montgomery County's Agricultural Reserve is in Maryland's Piedmont region. Our landscape is rolling countryside, with a combination of hills and valleys sloping in all four cardinal directions (N, E, S, W). But as you move across the landscape between patches with different slope directions – say, from north to south or from east to west – you can't help but go through a transition zone that is flat. Thus, it will include class 2 soil, and therefore will make the whole project illegal under ZTA 20-01.

To sum up: this project didn't go through the county process because the Planning Department had made it clear that it would be rejected. In fact, almost all potential projects will be rejected if submitted under ZTA 20-01, which is why there are no built projects and practically no applications after more than 3 ½ years. And until an act of God or a massive tectonic shift fundamentally changes our Piedmont landscape, that situation isn't going to change.

Slides on Food Security and Climate Justice

Two other issues relevant to community solar in the Agricultural Reserve are whether it is a threat to food security (it is not) and how it impacts climate justice (positively). I'm including two slides on each of these issues, which provide tables, graphs and summaries using data from the 2022 and 2017 *Census of Agriculture* published by the U.S. Department of Agriculture, as well as other official sources. They show that:

- a) Montgomery County farms mostly produce livestock feed – corn, soybeans, hay and pasture occupy 70% of its farmland. That livestock is now overwhelmingly horses for recreation, not animals used for meat and dairy. There is no threat to food security, since only 1.2% of the county's land is used to produce crops for human consumption.
- b) The benefits of community solar, providing clean energy with at least 40% of subscribers being low- or moderate-income families, go especially to communities of color. The costs that may be paid, from possible increases in rental rates for farmland, will fall mostly on the wealthiest White farmers.

Food Security?

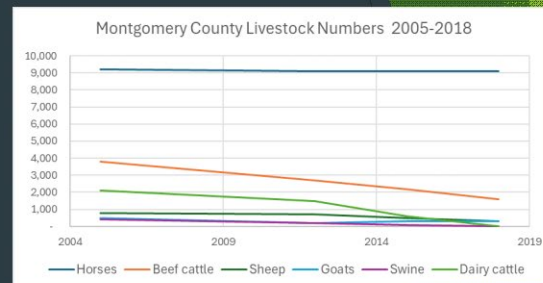
- ▶ 70% of the Ag Reserve is used to grow **livestock feed**
- ▶ Only 1.2% is used for table crops
- ▶ Farmland acreage **increased by 6%** from 2017 to 2022
 - ▶ About $\frac{3}{4}$ of this increase went into soybeans, and $\frac{1}{4}$ into pasture

	% of farmland harvested	
	2017 (%)	2022 (%)
Corn	21%	19%
Soybeans	22%	26%
Hay and other forages	14%	11%
Pastureland	14%	14%
TOTAL	70.7%	70.2%
Vegetables	0.7%	0.6%
Orchards	0.5%	0.5%
Berries	0.1%	0.1%
TOTAL	1.3%	1.2%
Total Farmland (acres)	65,537	69,759

Source: USDA-NASS, 2022 Census of Agriculture
County Data section
Tables 1, 25, 26, 28, 31, 32

Food Security?

- ▶ The predominant kind of livestock, by far, is horses
- ▶ Beef cattle numbers have declined by more than half since 2005
- ▶ Dairying, formerly the main kind of farming in the county, has essentially disappeared



Sources:
Montgomery County, MD (2020)
Community Greenhouse Gas Inventory,
Inventory Inputs tab

Montgomery County Dairy Mooseum,
Data Committee (2018)

Climate Justice - Who Benefits?

- ▶ Community Solar provides **clean energy** to the majority of county residents who can't put solar on their rooftops
 - ▶ E.g. renters (1/3 of county households), apartment dwellers, those who can't afford the upfront costs (\$ 10,000-\$ 20,000), etc.
- ▶ Provides clean energy at a discount to Low and Moderate Income households -- who must make up at least 40% of their subscribers
- ▶ Provides additional farm income, which is particularly important to the county's smaller farms (average farm size is 120 acres)
- ▶ Montgomery County is far behind in providing these benefits to its families, with only 2.24 MW of community solar operating vs. for example Prince George's County which has 20.88 MW

Climate Justice - Who pays the (possible) costs?

- ▶ Farmland ownership in Montgomery County is extremely unequal
 - ▶ The largest 5% of farmers (those with 500 acres or more) have 61% of the farmland
 - ▶ Between 2017 and 2022, the largest 5% of farmers increased their land by 4,576 acres, while the remaining 95% lost 354 acres
 - ▶ The largest farms are also those who rent the largest amounts of land
 - ▶ Only 26% of farmers rent any land at all
 - ▶ But they have 257 acres, on the average
 - ▶ The 74% of farmers who only farm their own land, have only 38 acres, on the average
 - ▶ Black and Hispanic farmers have much smaller farms (averages of 18 ½ acres and 42 acres respectively, vs. 124 acres for White farmers)
- ▶ So even if rental costs increase (for which there is no evidence), it will be the largest White farmers who pay the great majority of the costs

Source: USDA-NASS (2024) *Census of Agriculture 2022*

Thank you very much for considering Chaberton's application for a community solar project on our farm. We ask you to approve it so that we can use our land for climate mitigation and for the cause of climate justice. We simply want to do the right thing: for ourselves, for our children and grandchildren, for our community and for the future of the Earth.

Respectfully submitted,

Douglas H. Boucher

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Dickerson, MD 20842

douglas.h.boucher@gmail.com