

# Montgomery County Planning Board

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

September 24, 2024

MCPB No. 24-081  
Forest Conservation Plan No. F20240620  
Dickerson Power Plant  
Date of Hearing: September 5, 2024

## RESOLUTION

WHEREAS, under Montgomery County Code Chapter 22A, the Montgomery County Planning Board is authorized to review forest conservation plan applications; and

WHEREAS, on December 27, 2023, Terra Energy, LLC (“Applicant”) filed an application for approval of a Preliminary forest conservation plan on approximately 679.11 acres of land located North of Martinsburg Road and West of Darnestown Road, Dickerson (“Subject Property”) in the Dickerson Policy Area and 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan* area; and

WHEREAS, Applicant’s Forest conservation plan application was designated Preliminary Forest Conservation Plan No. F20240620, Dickerson Power Plant (“Forest Conservation Plan” or “Application”);<sup>1</sup> and

WHEREAS, following review and analysis of the Application by Planning Board Staff (“Staff”) and other governmental agencies, Staff issued a memorandum to the Planning Board dated August 23, 2024, providing its analysis and recommendation for approval of the Application, subject to certain conditions (“Staff Report”); and

WHEREAS, on September 5, 2024, the Planning Board held a public hearing on the Application and voted to approve the Application subject to conditions, on the motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 4-0; Chair Harris, Vice Chair Pedoeem, Commissioners Hedrick and Linden in favor with Commissioner Bartley absent.

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<sup>1</sup> Unless specifically indicated otherwise, the Board has reviewed the preliminary Forest Conservation Plan and set forth conditions under which the Staff can approve the final Forest Conservation Plan without further Board action. Therefore, for purposes of this Resolution, whether or not indicated, the Board’s action is with regard to the preliminary Forest Conservation Plan.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board APPROVES Forest Conservation Plan No. F20240620 on the Subject Property, subject to the following conditions:<sup>2</sup>

1. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
2. The Applicant must plant the variance tree mitigation plantings on the Subject Property with a minimum size of 3 caliper inches totaling 36.75 caliper inches. Planting locations to be shown on the Final Forest Conservation Plan.
3. Applicant must submit a Final Forest Conservation Plan for review and approval before obtaining a Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for this Subject Property or with the next development application to be submitted.
4. The Final Forest Conservation Plan must be consistent with the approved Preliminary Forest Conservation Plan.

BE IT FURTHER RESOLVED that having given full consideration to the recommendations of its Staff as presented at the hearing and/or as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Planning Board FINDS, with the conditions of approval, that:

1. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code Chapter 22A, and ensures the protection of environmentally sensitive features.*

A. Forest Conservation

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

The entire subject property is 679.11 acres and is covered by two land use types under Chapter 22A. The property is composed of 239.32 acres of Commercial and

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<sup>2</sup> For the purpose of these conditions, the term "Applicant" shall also mean the developer, the owner, or any successor in interest to the terms of this approval.

Industrial Area (CIA) and 439.79 acres of Agricultural Resource Area (ARA). Each land type has a separate Forest Conservation worksheet.

#### Commercial and Industrial Area (CIA)

The Applicant has deducted 4.75 acres from the 239.32 total tract area for existing utility rights-of-way (ROW), leaving a net tract area of 234.57 acres. The Applicant proposes to remove 18.19 acres of forest and retain 55.06 acres of forest. Based on the land use category, CIA, and the forest conservation afforestation and reforestation thresholds (15% and 15% respectively) the worksheet does not result in a planting requirement.

#### Agricultural Resource Area (ARA)

The Applicant has deducted 21.45 acres from the 439.79 total tract area for existing utility rights-of-way (ROW), leaving a net tract area of 418.34 acres. The Applicant proposes to remove 0.72 acres of forest and retain 343.15 acres of forest. Based on the land use category, ARA, and the forest conservation worksheet's afforestation and reforestation thresholds (20% and 55% respectively) the proposal does not generate a planting requirement.

### B. Forest Conservation Variance

Section 22A-12(b)(3) of the Forest Conservation Law identifies certain individual trees as a high priority for retention and protection ("Protected Trees"). Any impact to these Protected Trees, including removal or any disturbance within a Protected Tree's critical root zone ("CRZ"), requires a variance under Section 22A-12(b)(3) ("Variance"). Otherwise, such resources must be left in an undisturbed condition.

This Application will require the removal or CRZ impact to four Protected Trees as identified in the Staff Report. In accordance with Section 22A-21(a), the Applicant requested a Variance, and the Board agrees that the Applicant would suffer unwarranted hardship by being denied reasonable and significant use of the Subject Property without the Variance.

The Board makes the following findings necessary to grant the Variance:

1. *Granting the Variance will not confer on the Applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the removal and impacts of the trees is due to the location of the trees and necessary site design requirements. The Applicant proposes removal of the 4 trees with mitigation. Therefore, granting of this variance is not a special

privilege that would be denied to other applicants.

2. *The need for the Variance is not based on conditions or circumstances which are the result of the actions by the Applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this specific use

3. *The need for the Variance is not based on a condition related to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

4. *Granting the Variance will not violate State water quality standards or cause measurable degradation in water quality.*

The variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP proposes to provide mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees.

Mitigation for the Variance is at a rate that approximates the form and function of the Protected Trees removed. The Board approves the replacement of Protected Trees at a ratio of approximately 1 inch replaced for every 4 inches removed. No mitigation is required for Protected Trees impacted but retained.

BE IT FURTHER RESOLVED that this Resolution constitutes the written opinion of the Planning Board in this matter, and the date of this Resolution is

**September 24, 2024**

(which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED that any party authorized by law to take an administrative appeal must initiate such an appeal consistent with the Maryland Rules for the judicial review of administrative agency decisions.

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Hedrick, seconded by Commissioner Linden, with a vote of 4-0-1; Chair Harris, Vice Chair Pedoeem, and Commissioners Hedrick, and Linden, voting in favor of the motion, Commissioner Bartley abstaining, at its regular meeting held on Thursday, September 19, 2024, in Wheaton, Maryland and via video conference.



Artie L. Harris, Chair  
Montgomery County Planning Board