

**MANDATORY REFERRAL NO. MR2024016 AND FOREST  
CONSERVATION PLAN NO. F20250220 CHABERTON  
SUGARLOAF CONTINUANCE ADDENDUM**

**Description**


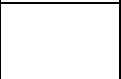

Proposal to construct a Solar Collection System over 2MW in the Agricultural Reserve located at 20597 Darnestown Road, Dickerson, MD. The Planning Board held a public hearing on September 5, 2024. At the hearing, the Board members voted for a continuance of the Mandatory Referral so the Applicant could address some of the Board's concerns.

COMPLETED: 12/30/2024

PLANNING BOARD HEARING DATE: 1/9/2025

MCPB ITEM NO. 9

## Planning Staff

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### LOCATION

20597 Darnestown Road, Dickerson, MD 20842

### MASTER PLAN, ZONE

1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan* (AROS)

### PROPERTY SIZE

52.46 Acres

### APPLICATION

Chaberton Energy Holdings, Inc.

### ACCEPTANCE DATE

July 1, 2024

### REVIEW BASIS

Md. Land Use Article, Section 20-301, et seq. and Chapter 22A

## Summary:

- The Planning Board held a hearing on September 5, 2024 for the Chaberton Sugarloaf Mandatory Referral.
- The Planning Board voted for a continuance of the Mandatory Referral for the Applicant to address the use of agrivoltaics, the FCP, the Fire Department Access and the Stormwater Management Concept Plan.
- This addendum only addresses comments and issues raised from the Planning Board Hearing on September 5, 2024, including the submittal and review of a Forest Conservation Plan.
- Staff recommends denial of the Mandatory Referral and transmittal of comments to Public Service Commission (PSC) and approval of the associated Forest Conservation Plan.
- The Applicant is proposing a ground-mounted Solar Collection System over Two (2) Megawatts (MW) in size, primarily on Class II soils, with an agrivoltaics business plan.

## SECTION 1 – EXECUTIVE SUMMARY

This Mandatory Referral Application No. MR2024016 is for a 4 MW Solar Collection System in the AR zone, primarily on Class II prime agricultural soils, as defined by the United States Department of Agriculture. A Mandatory Referral is required of all public and private utilities, and this Mandatory Referral is being reviewed within the Public Service Commission (PSC) Certificate of Public Convenience and Necessity (CPCN) process for a ground-mounted solar installation of over 2 MW. The Mandatory Referral is an efficient and effective way of allowing an Applicant to interact with a local jurisdiction and community on a PSC solar project. The PSC will take into consideration input from a local jurisdiction, but the PSC may preempt local land use and zoning authority if the PSC deems the local regulations to result in an effective ban on solar in the local jurisdiction.

- On September 5, 2024, the Planning Board held a Public Hearing for Mandatory Referral No. MR2024016. At the Public Hearing, the Planning Board voted for a continuance to allow the Applicant additional time to submit a Forest Conservation Plan and to work with staff to better address the use of agrivoltaics; Fire Department Access; and the Stormwater Management Concept Plan.

The Applicant is not submitting revised plans but has submitted additional materials to address the concerns above. The Applicant filed for the Forest Conservation Plan on September 25, 2024, finalized the Fire Department Access Plan that was previously submitted and coordinated review of the Stormwater Management Plan with the Department of Permitting Services Water Resources. The Applicant also coordinated with the Montgomery County Office of Agriculture to submit an Agrivoltaics Plan for review with the Application. The Agrivoltaics Plan is an outline and business plan for how the Applicant will promote and support agriculture underneath and/or around the solar array. The plan includes the possibilities of crop production, grazing animals, or an apiary. The plan details how the Applicant will allow farmers to use the land free of charge in exchange for the farmer's help to maintain the land around the solar arrays. The Applicant will provide training how to work around solar arrays and will require the farmer to take part in a solar-related safety and operations training. If the farmer has grazing animals, they must obtain an American Solar Grazing Association (ASGA) certification.

## SECTION 2 - RECOMMENDATIONS

#### MANDATORY REFERRAL NO. MR2024016

Staff recommends denial of the Mandatory Referral and the transmittal of the following comments to the Applicant and the Public Service Commission (PSC) regarding Case No. PSC - 9726:

1. The proposed project exceeds the 2MW limit in the AR Zone, established by the Zoning Ordinance.
2. The proposed solar project is on Class II soils, which is specifically prohibited in the AR Zone by the Zoning Ordinance.
3. The Application conflicts with the stated intent and requirements of the Agricultural Reserve (AR), specifically or including the primary use of the land should be a farming use.
4. If agrivoltaics are not utilized, the Application does not comply with *Thrive Montgomery 2050*. However, the updated Application to provide agrivoltaics generally aligns with the Comprehensive Plan for Montgomery County, *Thrive Montgomery 2050* by allowing solar while better preserving and promoting agriculture as the primary use overall in the Agricultural Reserve.
5. If agrivoltaics are not utilized, the Application does not comply with the 1980 Preservation of Agriculture and Rural Open Space Functional Master Plan. However, the updated Application and commitment to agrivoltaics is in general conformance with the goals of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan* by allowing solar while better preserving and promoting agriculture as the primary use overall in the Agricultural Reserve.

#### FOREST CONSERVATION PLAN NO. F2025022

Staff recommends approval of the Forest Conservation Plans with Conditions.

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. The Applicant must relabel all sheets of the plan as Final Forest Conservation Plan and clearly show all areas of environmental buffers and forest retention in Category I conservation easement.
5. Before the start of any demolition, clearing, grading, or construction for this development Application the Applicant must:
  - a. Record a Category I Conservation Easement over all areas of forest retention 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. The Book/Page for the easement must be referenced on the record plat.

- b. Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.

### SECTION 3 - COMMUNITY OUTREACH

After Staff accepted the Mandatory Referral for review, Montgomery Planning notified local civic and homeowners' associations and other interested parties of this proposal. As of the date of this addendum, Staff and the Planning Board Chair have received one email in opposition to the proposed Application. The primary concerns of the opposition lack of conformance with the Master Plan and General Plan, and not meeting the requirements of the Zoning Ordinance. These concerns were similar concerns Staff has raised.

### SECTION 4 - MANDATORY REFERRAL ANALYSIS

Mandatory Referral review is guided by the Montgomery Planning Mandatory Referral Review Uniform Standards ("Uniform Standards") (December 2022), and the authority granted through the Maryland Land Use Article, Section 20-301, et.seq. As set forth in Sections 20-301 and -302, the Montgomery County Planning Board has jurisdiction over mandatory referral projects presented by Montgomery County government, municipal corporations or special taxing districts, and the Montgomery County Board of Education/Montgomery County Public Schools, for (i) acquiring or selling land; (ii) locating, constructing or authorizing a road, park, public way or ground, public building or structure, or publicly owned or privately owned public utility; or (iii) changing the use of or widening, narrowing, extending, relocating, vacating or abandoning any of the previously mentioned facilities. The Planning Board, or its Staff pursuant to the adopted Uniform Guidelines, must review such projects and transmit comments on the proposed location, character, grade, and extent of the activity.

As described in the Uniform Standards, the Planning Board, or its Staff, considers all relevant land use and planning aspects of the proposal including, but not limited to, the following:

- 1. *whether the proposal is consistent with the County's General Plan, functional plans such as the master plan of highways, environmental guidelines, the***

***approved and adopted area master plan or sector plan, and other public plans, guidance documents, or programs for the area;***

Thrive Montgomery 2050

While farming will no longer be the primary use on the Property, the updated proposal (Attachment E) and commitment by the Applicant to utilizing agrivoltaics brings the Project more into conformance with *Thrive Montgomery 2050* (General Plan).

The General Plan recommends maintaining agriculture as the primary land use in the Agricultural Reserve, through policies, regulations, easements, and incentives that maintain a critical mass of farmland (page 74).

The General Plan also recommends maximizing benefits of the Agricultural Reserve through policies designed to ensure the continued viability of farming as an economically productive and sustainable activity, discourage sprawl, facilitate a broad range of outdoor recreation and tourism activities (page 74).

The updated proposal will potentially have less of an impact on removing farmland by promoting and encouraging agriculture underneath and around the solar arrays. Some of the proposed farming activities may include crop production, grazing, and apiary and pollinator crops.

1980 Preservation of Agriculture and Rural Open Space Functional (AROS) Master Plan

In 1980, the Montgomery County Council made one of the most significant land-use decisions in county history by approving and adopting the *Preservation of Agriculture and Rural Open Space Functional Master Plan*, which established the 93,000-acre Agricultural Reserve. Heralded as one of the best examples of farmland policies in the country, the Agricultural Reserve encompasses almost a third of the county's land resources along the county's northern, western, and eastern borders.

The Agricultural Reserve and its accompanying Master Plan, zoning elements, and the 2020 *Agritourism Study* were designed to protect and promote farmland and agriculture. Along with a sustained commitment to agriculture through the County's Office of Agriculture, this combination of tools helps retain more than 500 farms that contribute nearly \$300 million to Montgomery County's annual economy. This is a notable achievement in an area so close to the nation's capital, where development pressure remains perpetual and intense.

The updated proposal (Attachment E) for utilizing agrivoltaics, brings the Project more into conformance with the *1980 AROS Master Plan*. The updated proposal will potentially have less of an impact on removing farmland by utilizing agrivoltaics throughout the solar arrays. Some of the proposed farming activities will include crop production, grazing, and/or apiary and pollinator crops.

## Climate Action Plan

The Montgomery County Climate Action Plan (CAP), issued by the County Executive in 2021, is Montgomery County's strategic plan to cut greenhouse gas (GHG) emissions 80% by 2027 and 100% by 2035 compared to 2005 levels.

The CAP details the effects of a changing climate on Montgomery County and includes numerous strategies to reduce climate-related risk to the County's residents, businesses, and the built and natural environment. The CAP recommends solar photovoltaic in both the public and private sectors. It acknowledges that the "County is exploring creation of a demonstration "agrivoltaics" project, which co-locate solar with agricultural production (such as grapes or table crops), pollinator habitat, beekeeping, or animal grazing" (p.124).

The revised application contributes to achieving the County's carbon reduction goals with the solar photovoltaic proposal and a commitment for agricultural production underneath and around the solar installation.

### **2. *whether the proposal is consistent with the intent and the requirements of the zone in which it is located;***

The Property is zoned Agricultural Reserve (AR), and the intent of the requirements in the AR zone is to preserve farming and other agricultural uses. The additional materials and commitments from the Applicant make the project more consistent with the intent and requirements of the AR zone.

A Solar Collection System is a Limited Use in every zone in Montgomery County, including the AR zone if the system produces under 200% of onsite energy consumption.

A Solar Collection System producing over 200% of what is consumed onsite in the AR zone requires a conditional use. Section 59.3.7.2.B.2 prohibits a Solar Collection System over two (2) MW and the proposed systems is four (4) MW in size. Additionally, to ensure that agriculture remains the primary use in the Agricultural Reserve, when allowed as a Conditional Use in the AR zone, Section 59.3.7.2.B.2.a.i states a Solar Collection System is prohibited in USDA Soil Classification Category I or Category II and the proposed project is primarily on Category II soils. Class II soils are productive soils for farming and the Applicant is now proposing agrivoltaics such as crop production, animal grazing, or apiary and pollinator crops.

Solar projects allowed as a Conditional Use in the AR zone are required to regenerate and improve non-prime agricultural soils in the Agricultural Reserve, by ensuring the area under the solar facility must be actively used for farming or agricultural purposes by either: pollinator-friendly plantings under the Maryland Pollinator-Friendly Designation Program; planted, managed, maintained, and used for grazing farm animals; and/or, planted, managed, maintained, and used for any other agrivoltaics plant material.

These requirements do not constitute an effective ban on solar in Montgomery County, as solar is a Limited Use in every zone in Montgomery County, and a Conditional Use in the AR zone only when onsite energy production exceeds 200% annual onsite energy usage, with the only prohibition on solar projects in Montgomery County on Class I and II soils, and projects over 2MW in the AR Zone. These restrictions are designed to preserve the little amount of productive agricultural soils in Montgomery County.

As stated previously, Montgomery County's Agricultural Reserve is a prized, valuable, and finite resource. It is a significant economic driver in terms of commodity farming, food systems, and agritourism, and provides opportunities for diverse communities to access and remain in farming. These standards were developed after a lengthy public process and are intended to promote Solar Collection Systems on agricultural land in Montgomery County, while also promoting and preserving agriculture as the primary use and industry within the Agricultural Reserve.

The Applicant has been working with the Office of Agriculture (OAG) on the submitted agrivoltaics plan. If this project is approved by the PSC, the Applicant must be required to have a farming activity as proposed in the agrivoltaics plan, and this activity must be approved and coordinated with the Montgomery County Office of Agriculture (OAG). Additionally, the Applicant must provide a report to the OAG and M-NCPPC showing the farming activity or the means of promoting agriculture if farming is not taking place on site.

**3. *whether the nature of the proposed site and development, including but not limited to its size, shape, scale, height, arrangement, design of structure(s), massing, setback(s), site layout, and location(s) of parking is compatible with the surrounding neighborhood and properties;***

The surrounding properties are all agricultural uses with low-density housing. The Project will meet the required setbacks for the use in the Zoning Ordinance. Parking is neither required nor proposed with the Subject Application. The Fire Department Access Plan (Attachment F) was approved by MCDPS Fire and Rescue as part of the resubmittal. The Applicant is proposing fire department access into and along the southwest property line of the Site. The four (4)-Megawatt size proposed is double what would be allowed through the conditional use for a Solar Collection System. The solar arrays will tilt to a height of around nine (9) feet which will not be seen from Darnestown Road.

**4. *whether the locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient;***

The proposed Solar Collection System will be located away from Darnestown Road. The fenced area will be abutting an approved Forest Bank (The FCE shown previously) along the northeast and northwest sides of the Property. The Applicant has provided an approved Fire



Department Access Plan (Attachment F). The Project will access Darnestown Road from an existing driveway that is shared with the properties to the northeast and southwest. The Applicant has submitted a Stormwater Management Concept Plan with the Department of Permitting Services, Water Resources Section. The plan is not yet approved. The Stormwater Management Concept Plan must be approved prior to filing for building permits through the Department of Permitting Services.

- 5. Whether the proposal has an approved NRI/FSD and a preliminary SWM Concept Plan, and meets the requirements of the Forest Conservation Law (Chapter 22A of the County Code). Forest Conservation Plan, if applicable, must be approved by the Planning Board, either before or at the time of the Board’s mandatory referral review and action on the project. Unlike the mandatory referral review by the Board, the conditions of the Forest Conservation Plan are binding on all county projects and require a Resolution of Approval.**

The Final Forest Conservation Plan No. F20250220 (“FFCP”) shows 15.63 acres existing forest on the Property. The Site does not propose any forest clearing or impact to significant or specimen trees. The Subject Property has Property has no afforestation/reforestation requirement; a full analysis is provided below.

The Subject Property is subject to Chapter 22A of the County Code. As conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law. The Subject Property has no planting requirements.

- 6. Whether alternatives or mitigation measures have been considered for the project if the proposal is inconsistent with the General Plan or other plans and policies for the area, or has discernible negative impacts on the surrounding neighborhood, the transportation network, the environment, historic resources (including burial sites) or other resources.**

As stated previously, the Project is more substantially in conformance with *Thrive Montgomery 2050* and the 1980 *AROS Master Plan* than the original submittal. Staff requested the Applicant explore integrating and a stronger commitment to an agrivoltaics solar application and the Applicant has now provided an agrivoltaics plan (Attachment E) potentially utilizing crop production, grazing, or apiary and pollinator crops in coordination with the Office of Agriculture.

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## Environment

### ENVIRONMENTAL GUIDELINES

*All Forest Conservation Law, Chapter 22A requirements are satisfied.*

The Final Forest Conservation Plan satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's Environmental Guidelines. Please refer to Section 5 below for the analysis and findings for the Preliminary/Final Forest Conservation Plan.

## FOREST CONSERVATION

### Natural Resource Inventory/Forest Stand Delineation Plan

The Natural Resource Inventory/Forest Stand Delineation ("NRI/FSD") 420250100 for this Property was approved on September 16, 2024. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is 52.46 acres. The Subject Property is located within the Little Monocacy watershed and classified as a Use Class I-P watershed by the State of Maryland. The NRI/FSD identified 15.63 acres of forest on the Subject Property. The Site contains specimen or significant trees and multiple stream channels on the northwestern end of the Property. There are floodplains and Stream Valley Buffer onsite.

### Forest Conservation Plan

The Applicant has submitted a Final Forest Conservation Plan No. F20250220 ("FFCP") (Attachment B). The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department's approved Environmental Guidelines.

The Subject Property is zoned AR and however based on the land use of commercial/Industrial it is assigned a Land Use Category of Commercial and Industrial use area ("CIA") as defined in Section 22A-3 of the Montgomery County Forest Conservation Law ("FCL") and in the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 15% and a conservation threshold of 15% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 52.74-acre Total Tract minus 6.31 acres land to remain agricultural, for a total Net Tract area of 46.43 acres.

The plan shows 16.06 acres of existing forest and no forest clearing. The 16.06 acres to retained must be placed in a Category I conservation easement.

The Subject Application results in no afforestation/reforestation requirement.

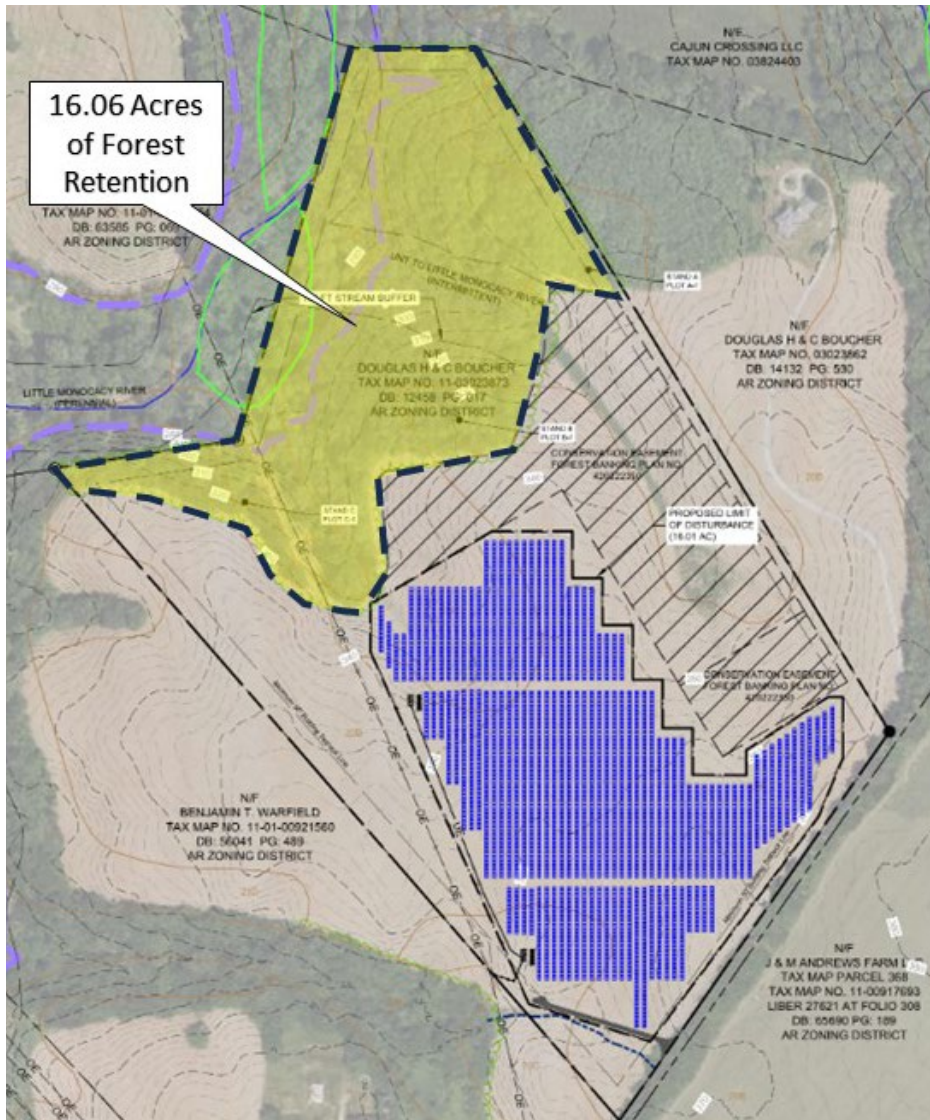


Figure 1: Proposed Category I Conservation Easement

## STORMWATER MANAGEMENT

The Applicant has applied for the Stormwater Management Concept Plan (#293586). The Stormwater Management Concept Plan has been through two review cycles with DPS Water Resources Section as of the date of this Addendum but is not yet approved.

## SECTION 5 - CONCLUSION

Staff still recommends denial of the Subject Application and requests approval for the transmittal of comments to the Applicant and the Public Service Commission (PSC). Staff is recommending denial because the Applicant is placing the Solar Collection System on Class II soils which are prime soils

best for crop production, food production and other farming activities. This does not constitute an effective ban on solar as solar is a Limited Use in every zone in Montgomery County, and a Conditional Use in the AR zone, with the only prohibition on solar projects in Montgomery County on Class I and II soils, and projects over 2MW in the AR Zone.

## SECTION 6 - ATTACHMENTS

*Attachment A: Mandatory Referral Plan*

*Attachment B: Forest Conservation Plan*

*Attachment C: Community Correspondence*

*Attachment D: Agrivoltaics Program*

*Attachment E: Staff Report for the September 5, 2024, Public Hearing*