

Testimony from the Climate Coalition Montgomery County

Submitted by Karen Metchis

July 9, 2024

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: Jacket., Case Number: 9726

Date Filed: 03/05/2024

The Climate Coalition Montgomery County (the Coalition) appreciates the opportunity to comment on the above referenced Certificate of Public Convenience (CPCN) application, and we trust that the PSC will seriously consider the important points we make, below. In addition to our stated positions, this letter documents the challenges to rural farming that our Coalition argues would be lost by approving the proposed projects.

Summary of Testimony, with details following:

1. The Climate Coalition Montgomery County opposes both the Chaberton Sugarloaf and Chaberton Ramiere CPCN applications which propose to install solar arrays larger than 2 megawatts in the Montgomery County Agricultural Reserve, particularly on prime Class II agricultural soils, and we request that the PSC deny both applications.
2. The Chaberton solar facilities' proposed siting on prime soil including Classes I and II, combined with standard solar construction practices, threaten to compact and strip topsoil, and threaten to destroy prime farming soil during construction.
3. The health of soils is essential to a resilient planet. In fact, the U.S. Global Change Research Program (USGCRP) warns us about the impacts of climate change on agriculture and emphasizes that preservation of soils is key to not only crop production but also to every ecosystem service that we depend upon.
4. Solar companies' offers to landowners are resulting in escalating rents and land prices, and threatening early termination of farmers' long-term leases as landowners respond to the immediate cash gain from solar firms. Solar firms have begun targeting low cost farmland by offering land rents ranging from \$1,700/acre to \$5,000/acre annually, compared with tenant farmers' average rental payments of \$120/acre.
5. The Montgomery County Agricultural Reserve stands as a national model, often cited as "the most successful farmland preservation program" in the country. It is unique and unlike any other agricultural land in Maryland and is therefore deserving of special protection.
 - a. *The Transferable Development Rights program provides tax benefits and compensation to landowners for loss of equity.*
 - b. *The Building Lot Termination Program has successfully protected against the risk of sprawl.*
 - c. *Land Link connects landowners with new farmers, helping them find affordable land for farming, but rising competition with commercial enterprises makes this more challenging.*
6. The Climate Coalition Montgomery County supports the expansion and development of solar photovoltaic (PV) and other solar energy projects throughout Montgomery County, including Smart Solar

Siting of PV facilities on rooftops, brownfields, and other already-urbanized sites, along with the continued appropriate development of PV facilities on land in the Agricultural Reserve, in balance with farming and in compliance with Montgomery County's ZTA 20-01.

7. Over-riding ZTA 20-01 enables companies to intentionally circumvent long-standing and well-honed agreements that support both solar power generation and agriculture.
8. We urge you to not allow large solar arrays to be placed on our prime agricultural Class I and II soils.

1. The Climate Coalition Montgomery County opposes both the Chaberton Sugarloaf and Chaberton Ramiere CPCN applications which propose to install solar arrays larger than 2 megawatts in the Montgomery County Agricultural Reserve, particularly on prime Class II agricultural soils, and we request that the PSC deny both applications.

The Climate Coalition Montgomery County (the Coalition) represents 20 local organizations and several individuals who work to help Montgomery County take action to achieve its climate change goals. The County's goals include reducing greenhouse gas (GHG) emissions 80% by 2027 and 100% by 2035 as well as to build resilience to impacts of climate change especially for vulnerable County residents. Achieving both goals can sometimes appear to conflict, as in the case of both Case Number 9726 (Chaberton Sugarloaf) and Case Number 9733 (Chaberton Ramiere). Weighing the balance to meet both goals requires taking a long vision, as both the reduction of GHG emissions and the building of resilience will unfold over a long horizon.

The Montgomery County Agricultural Reserve (the Reserve) is a long-standing land use plan that has been in existence for more than 40 years to protect the primacy of agriculture in this important part of the County.

In 2020/21, the County engaged a stakeholder workgroup to address a proposal to build large scale solar in the Reserve. Montgomery's Ag-Solar zoning law, Zoning Text Amendment (ZTA) 20-01, is the result of that collaboration of 60+ local and state organizations and stakeholders to craft a balanced solar policy for our Ag Reserve.

The stakeholders developed a compromise between farmers (including the American Farmland Trust), solar advocates, and the concerned community which the County Council adopted as ZTA 20-01. The ZTA allows arrays up to 200% of on-farm needs without condition. It also strikes a balance that allows up to 2 Megawatts on prime Class III soils as well as lower quality soils (IV to VII) but preserves the most precious Class I and Class II soils for the Reserve's intended goal – to preserve farmland and support farming. There are no restrictions on solar installations in Montgomery County outside of the Ag Reserve.

Spurred by ZTA 20-01, two Community solar installations have already reached the construction phase in the Reserve, along with 50+ farms installing farm accessory solar power generation facilities (e.g. on barns).¹

¹ Communication from Mike Scheffel, Montgomery County Office of Agriculture to Caroline Taylor, Montgomery Countryside Alliance.

2. *The Chaberton solar facilities' proposed siting on prime soil including Classes I and II, combined with standard solar construction practices, threaten to compact and strip topsoil, and threaten to destroy prime farming soil during construction.*

Solar industry representatives have acknowledged that topsoil management practices during the site construction phase remain a persistent challenge². Soil handling for construction of solar facilities may include stripping the topsoil and grading. The topsoil that is stripped may or may not be re-applied later. We've also learned that a sand layer may be applied to the soil at solar sites.³

We know from similar construction projects in other industries, that the underlying subsoil will be compacted in many locations by heavy construction equipment. This is a problem particularly in Montgomery County with our clay-rich subsoils of the Appalachian Piedmont. These practices tend to destroy soil structure, reduce soil carbon storage, decrease deep infiltration of rainwater; decrease groundwater recharge, and emit soil carbon to the atmosphere.

3. *The health of soils is essential to a resilient planet. In fact, the U.S. Global Change Research Program (USGCRP) warns us about the impacts of climate change on agriculture and emphasizes that preservation of soils is key to not only crop production but also to every ecosystem service that we depend upon.*

Climate change—especially shifts in precipitation, air temperature, and soil moisture—is disrupting agricultural production and food systems and is projected to reduce the availability and affordability of nutritious food. Impacts are distributed unevenly, with farmworkers, subsistence-based communities, and rural populations facing increasing risks. Opportunities that leverage agroecological approaches can limit emissions from agriculture and improve the resilience of rural communities.

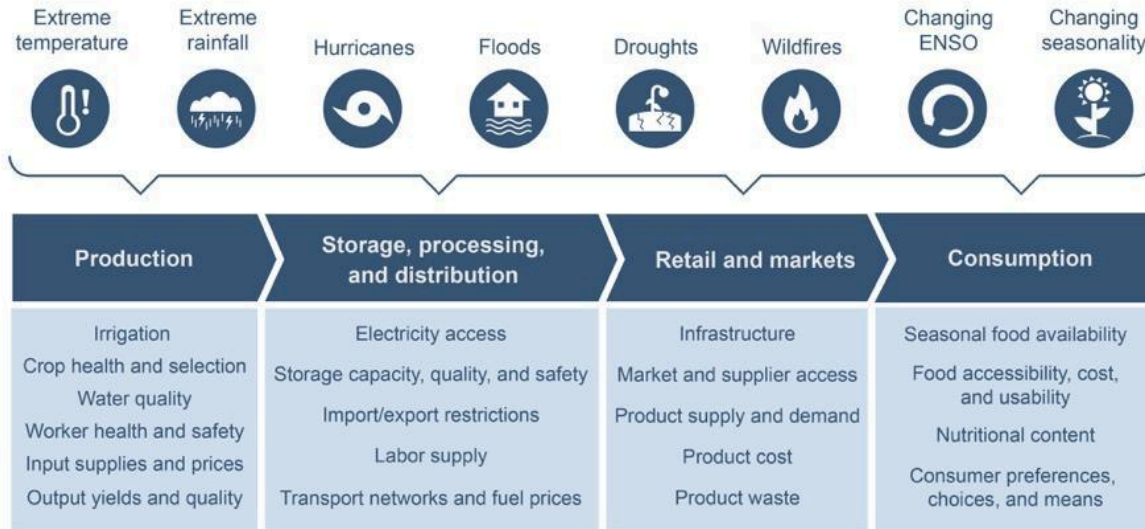
[\(https://nca2023.globalchange.gov/chapter/11/\)](https://nca2023.globalchange.gov/chapter/11/)

USGCRP has documented trends and indicators of the nationwide challenges as both rural and urban communities struggle to be resilient to the effects of climate change, and documents the challenges to rural farming that our Coalition argues would be lost by approving the proposed projects. Local agriculture is increasingly important considering the climate-driven losses of productive farming elsewhere, including losses in California and Florida.

²https://www.chesapeake.org/stac/wp-content/uploads/2024/01/FINAL_Report_Solar-Development_24_001-1.pdf

³ <https://www.reuters.com/info-pages/transcript/9356e138-03f8-11ef-a782-874084676f9d/>

Example Effects of Climate Change on the Food Supply Chain



Climate change has cascading and compounding effects on all stages of the food supply chain. Extreme events fueled by climate change (first row, icons) can affect each stage of the food supply chain (second row, dark blue), resulting in compounding and cascading effects on the food system (third row, light blue).

Adapted with permission from Davis et al. 2021.

<https://nca2023.globalchange.gov/chapter/11/#fig-11-10>

Furthermore, the USGCRP has underscored that preservation of soils is key to not only crop production but also to every ecosystem service that we depend upon.⁴

- Solar companies' offers to landowners are resulting in escalating rents and land prices, and threatening early termination of farmers' long-term leases as landowners respond to the immediate cash gain from solar firms. Solar firms have begun targeting low cost farmland by offering land rents ranging from \$1,700/acre to \$5,000/acre annually, compared with tenant farmers' average rental payments of \$120/acre.*

Approving the Chaberton projects opens the floodgate to expanding the footprint and market presence of solar firms in the Reserve. Small and start-up farmers seeking to rent land have already been hurt, by forcing them to compete with deep-pocket solar firms for the few available farm leases. *(See Appendix I for samples of offer letters.)*

This influx of lucrative solar lease offers in the Reserve over the past several years, has contributed to a dearth of farmland for lease at any price; has discouraged small start-up farmers when they can't find affordable land for lease and has displaced existing farmers through rising land rents and loss of land access when leases are terminated or simply not renewed. It is this twin need – to preserve our prime soils and to expand - not erode - the vibrancy of our farming economy here including land access for start-up farmers, that drives our concern and the reason why we oppose the Chaberton facilities' proposals.

⁴ <https://nca2023.globalchange.gov/chapter/11/-fig-11-2>

5. The Montgomery County Agricultural Reserve stands as a national model, often cited as “the most successful farmland preservation program” in the country. It is unique and unlike any other agricultural land in Maryland and is therefore deserving of special protection.

According to the Agricultural Services Division of the Montgomery County Department of Economic Development: “The majority of Montgomery County farms are family-run operations, many reaching back several generations.” Fifty percent of the county’s farmers work full time in farming and 10,000 people are employed in farming enterprises.⁵

Three programs in particular support landowners and agriculture.

- a. The Transferable Development Rights program provides tax benefits and compensation to landowners for loss of equity.

Before the Reserve was created in 1980, the density for land that is now the Reserve allowed one dwelling unit per five acres of land. Following establishment of the Reserve, density limits were reduced to allow one dwelling unit per 25 acres. To compensate landowners for this loss of equity, the County established the Transferable Development Rights (TDR) program. The TDR program is a zoning mechanism that grants property owners in the Reserve one development right for each five acres of land. Property owners can then receive compensation by selling TDRs to landowners or developers who can use them to develop at a higher density in designated areas elsewhere in the County (see [map](#)).

To receive compensation through the TDR program, property owners must first create a TDR, then sell the TDR to another party to achieve increased residential density in another part of the County, and grant a perpetual easement to the County that severs that development right from the property. A property owner may sell a single TDR for each five acres of land, minus one TDR for each existing dwelling unit on the AR zone property. Property owners in the Reserve that have participated in the TDR program have been paid to keep their land in open space/agriculture and were required to grant a perpetual easement to the County that severs that development right from the property.

Furthermore, property owners in the Reserve are taxed at a lower rate than residential and commercial properties elsewhere in the County. This agricultural use assessment allows a property in the Ag Reserve to be taxed at the agricultural rate, rather than the “highest and best use” rate (i.e., residential). This lower property tax rate helps to keep farming affordable in Montgomery County and benefits farmers; however, it means other property owners outside the Reserve must make up the difference (in addition to bearing the burden of greater development density from the TDR program). This is an equity issue in which some County residents bear more of the cost than those in the Reserve. This is understandable if it is in service to agreed-upon County policy. That would not be the case if the PSC overrides County policy. Thus, if Reserve property owners are allowed to have solar arrays inconsistent with ZTA 20-01 and receive the considerable lease payment income, out of fairness they should not be allowed to enjoy the lower agricultural use assessment and perhaps should pay a higher tax assessment.

⁵ See: <https://www.montgomerycountymd.gov/agservices/ag-facts.html>

b. The Building Lot Termination Program has successfully protected against the risk of sprawl.

In 2008, the County also established a Building Lot Termination (BLT) program to further limit non-agricultural residential development in the Reserve.⁶ Without the TDR program, the Reserve would have developed into “ranchette” suburban sprawl (one house per five acres) and there would be little agriculture in the County today. Changes that allow non-agricultural uses will set a precedent that could ultimately result in the loss of open space and agriculture forever.

c. Land Link connects landowners with new farmers, helping them find affordable land for farming, but rising competition with commercial enterprises makes this more challenging.

Land Link matches emerging farmers with farmland here in our Reserve - but competition from deep-pocket non-farming entities including solar firms, is already taking available farm leases and squeezing farmers out. We must alleviate this situation and help more emerging farmers start up farms here - not open the door wider to stiffer competition from large-scale solar in the Reserve, which will further drive up farmland prices and farmland rents, and would further reduce the number of small farms available for lease.

The net result of the proposed Chaberton projects would be to expand and accelerate the loss of existing small producing farms in the Reserve and discourage new start-up farms; such losses would be particularly devastating to high-skill/low-wealth farmers from diverse communities.

Over the past few years, about 40 farmers seeking to come to Montgomery County to farm applied through Land Link for help in accessing available land, many of them women, people of color, veterans, and immigrants. Since 2011, Land Link has matched over 500 acres of local farmland with new and expanding farmers. With 12 - 20 farmers applying to access land through Land Link each year but only about 4 landowners offering land each year, many applicant farmers are waiting longer than a year to find the right place, and often are taking land that is less suitable than desired. Some new farmers, discouraged by the lack of available land for affordable lease terms, have given up the search for farmland here and are looking at other counties in Maryland. We can turn this situation around by doing more to support land access for new and expanding farmers, including enforcing ZTA 20-01 that strikes the right balance between farming and local food production and production of solar energy in the Reserve.⁷

Please see these sites for more on the history and management of the Montgomery County Agricultural Reserve: <https://www.mocoalliance.org/history-of-the-ag-reserve.html> and <https://montgomeryplanning.org/planning/agricultural-reserve/>

⁶ see https://www.montgomerycountymd.gov/OLO/Resources/Files/2023_reports/OLOREport2023-1.pdf

⁷ Email on Land Link statistics from MCA staff member Kristina Bostick to Diane Cameron, 6/18/2024: Out of the 40 farmers applying for land, the number of who have found a farm here to lease varies each year, but we are making an average of 3 matches per year (between 12 and 20 farmers apply each year). Over the past 5 years we average a 15-20% match rate. Landowners joining the program are far more anemic - an average of 4 join per year - making the case for keeping the playing field level with competing uses. That being said, many [farmers] are waiting longer than a year to find the right place and often are taking land that is less suitable than desired (size, water, ability to have housing, livestock).

6. The Climate Coalition Montgomery County supports the expansion and development of solar photovoltaic (PV) and other solar energy projects throughout Montgomery County, including Smart Solar Siting of PV facilities on rooftops, brownfields, and other already-urbanized sites, along with the continued appropriate development of PV facilities on land in the Agricultural Reserve, in balance with farming and in compliance with Montgomery County’s ZTA 20-01.

When it comes to proposed land use changes to our Reserve, we believe energy solutions must be weighed against other important climate change considerations and values, e.g., local food and fiber production, clean groundwater and surface water supplies, cooling and cleansing the air, biodiversity, and sequestration of carbon in soils.

The American Farmland Trust has developed principles for Smart Solar Siting that we support for Montgomery County: (1) accelerate renewable energy development through prioritizing of solar siting on the built environment (e.g. already-urban sites) and brownfield sites; (2) strengthen farm viability; and (3) safeguard land for farming and ranching.^{8,9}

Montgomery County is still in the beginning stages of solar PV adoption in our urban and suburban areas, with 3% of homes in the county installing rooftop solar as of 2021 (i.e., of more than 300,000 homes in Montgomery County, about 8,400 had solar panels on their rooftops as of 2021¹⁰); and is likely closer to 5% in 2024. The potential for smart solar siting remains otherwise largely untapped.¹¹ Rather than easily yield to demands to open up the Reserve to solar, we urge the State of Maryland to increase incentives and technical support for Smart Solar Siting projects in urban areas.

7. Over-riding ZTA 20-01 enables companies to intentionally circumvent long-standing and well-honed agreements that support both solar power generation and agriculture.

It concerns us that the PSC is considering overriding the County’s zoning in favor of private companies seeking opportunistic loopholes that undermine intended social benefit. It would set a dangerous precedent whereby protections adopted by one part of government for a social benefit are taken away by another part.¹² Once this precedent is set, other parties who disagree with County zoning will seek to have it overridden by another part of government – and perhaps more insidious is the likelihood that solar companies will circumvent ZTA 20-01 by ensuring their installations are greater than 2MW. In fact, the Chaberton Ramiere CPCN application boldly notes:

“The Project being developed by Chaberton Solar Ramiere LLC will satisfy all land use and zoning requirements established by the County with the exception of the prohibition of Solar Collection Facilities on class I/II soils and greater than 2 MW AC in the Agricultural

⁸ Montgomery County ranks second in the state behind Prince George’s County for both the number of solar facilities and solar capacity (MWs) (see PSC [Renewable Energy Portfolio Standard Report - Data for Calendar Year 2022](#), pps 36-37).

⁹ Smart Solar Siting: See [smart solar](#) and

https://farmland.org/wp-content/uploads/2023/02/AFT_Smart-Solar-Handout-General-D.pdf

¹⁰ <https://marylandmatters.org/2021/07/23/county-adds-tool-for-one-day-processing-of-solar-panel-permits/>

¹¹ 2020 DEP presentation titled "Solar in Montgomery County",

<https://www.montgomerycountymd.gov/climate/Resources/Files/climate/solar-presentation-2-26-20.pdf>

¹² Sadly, we saw the Governor and General Assembly take away the PSC’s power to review back-up generators at data centers. Data centers are high energy demand facilities and diesel generators emit greenhouse gases - trends that are in themselves contrary to the need to control greenhouse gases.

Reserve. Development of the Project began as early as 2020 and was originally intended to be a 1 MW AC project prior to the County's Zoning Text Amendment. As the project size was increased for the CPCN submission, the project premises have not been expanded."

This strategy was corroborated in a presentation by **Lightstar (Solar +Farming Maryland** <https://mda.maryland.gov/Documents/11.29.23%20Solar%20Summit%20Presentation%20.pdf>) at the Maryland 2023 Agri-Solar Summit:

- In Maryland, community solar projects are less than or equal to 5 megawatts. Agrivoltaics can co-locate up to 10MW.
- Permitting occurs through the Public Service Commission (PSC) for projects above 2MWs to obtain a Certificate of Public Convenience and Necessity (CPCN).
- Below 2 MWs may permit locally or elect to permit via the PSC if project does not conform to local law.
- *County-level permitting is extremely restrictive in some areas. Many developers are now exclusively using the PSC process.*

8. [We urge you to not allow large solar arrays to be placed on our prime agricultural Class I and II soils.](#)

We ask the PSC to recognize the critical importance of the need to "preserve the Reserve" in its entirety and for its initial purpose. Maryland-National Capital Park and Planning Commission's prescient first sentence of the first goal of its 1964 land use plan¹³ states: "Land should be treated as one of our most precious possessions, using efficiently what we need..., and conserving the [Reserve] for the unforeseeable future." The most prudent stewardship of this otherwise unforeseeable future is to keep the Reserve for farming, both for the land and for the expertise of its caretakers.

Respectfully,

The Climate Coalition Montgomery County - signatories to this testimony

Ask the Climate Question (ACQ)
Biodiversity for a Livable Climate
Environmental Justice Ministry Cedar Lane Unitarian Universalist Church
Ecosystems Study Group
Green Sanctuary Committee of the UU Church of Silver Spring
Montgomery Countryside Alliance
Safe Healthy Playing Fields
Sugarloaf Citizens' Association
Transit Alternatives to Midcounty Highway Extended (TAME) Coalition
The Climate Mobilization MoCo (TCM)
Takoma Park Mobilization – Environment Committee (TPMEC)
Zero Waste Montgomery County

¹³ <http://montgomeryplanning.org/planning/master-plan-list/general-plans/wedges-corridors-general-plan-1964/>

