

Racial Equity and Social Justice (RESJ) Impact Statement

BILL 25-22: FOREST CONSERVATION – TREES

SUMMARY

The Office of Legislative Oversight (OLO) anticipates Bill 25-22 could have a negligible impact on racial equity and social justice (RESJ) in the County given the Bill does not address tree cover disparities in BIPOC communities and could only minimally impact affordable housing development in Commercial Residential (CR) zones.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements is to evaluate the anticipated impact of legislation on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF BILL 25-22

Originally enacted in 1992, the County's Forest Conservation Law aims to protect, plant, and maintain trees and forests.^{3,4} Per the law, trees and forest cover constitute an important natural resource, as trees:⁵

- Filter groundwater, reduce surface runoff, help alleviate flooding, and supply necessary habitat for wildlife;
- Cleanse the air, offset the heat island effects of urban development, and reduce energy needs; and,
- Improve the quality of life in a community by providing for recreation, compatibility between different land uses, and aesthetic appeal.

Other laws for conserving trees in the County include the Tree Canopy Law and the Roadside Tree Law.⁶ Generally, the Forest Conservation Law applies to properties over 40,000 square feet when a sediment control permit is required or when subdivision occurs.⁷ The Forest Conservation Law has resulted in the planting and protection of more than 15,000 acres of forest in the County.⁸

Since its enactment, the County's Forest Conservation Law has required planting of 2,861 acres of new forest and mitigation for the clearing of 4,400 acres of forest.⁹ In November 2021, the Montgomery County Planning Department launched the 'No Net Loss of Forest' initiative with the goal of bringing the acreage of forest planted and acreage of forest cleared closer together for the County as a whole.¹⁰ As a result of this initiative at the request of the Planning Board, Bill 25-22 was introduced on September 13, 2022 to revise the County's Forest Conservation Law (Chapter 22A, Forest Conservation – Trees).¹¹ A resolution to approve revisions for corresponding forest conservation regulations was also introduced on the same day.¹²

In July 2022, OLO published a RESJ impact statement (RESJIS) for Bill 13-22, Buildings – Comprehensive Building Decarbonization,¹³ which also considers the effect of climate change on BIPOC communities. OLO builds on Bill 13-22's RESJ analysis for this RESJIS.

RESJ Impact Statement

THE CLIMATE GAP, TREE COVER, AND RACIAL EQUITY

As explained in the County's Forest Conservation Law, trees and forest cover provide numerous benefits to residents. In urban settings, trees also play an important role in mitigating and adapting to the effects of climate change.¹⁴ Climate change has far-reaching harmful consequences on public health, community assets, and the economy that will impact all residents.¹⁵ BIPOC residents, especially those who are low-income, are disproportionately harmed by climate change, yet have the fewest resources to respond and adapt to its consequences.¹⁶

The term "climate gap" refers to the unequal impact that climate change has on BIPOC and low-income communities. As noted by researchers at the University of Southern California, the climate gap means that BIPOC and low-income communities will experience more illness and deaths during extreme heat waves, breathe dirtier air, pay more for basic necessities, and likely have fewer job opportunities.¹⁷ Drivers of the climate gap include racial inequities in housing, education, employment, and healthcare.¹⁸

The remainder of this section provides background on the role of government in fostering the climate gap, data on the environmental risk experienced by BIPOC residents, and data on tree cover disparities in the County.

Drivers of the Climate Gap. Inequities that drive the climate gap originate from a history of land and wage theft that enriched a subset of White people at the expense of BIPOC and low-income people. Slavery, the Indian Removal and Homestead Acts, and occupational segregation have undermined the economic development of people of color,¹⁹ increasing their vulnerability to disruptions like climate change.

Government actions segregating BIPOC residents, undermining their ability to build wealth and live in adequate housing, have also contributed to the climate gap. Redlining, racial covenants, and exclusionary zoning – along with policies and practices of the Federal Housing Administration, the Social Security Act, GI Bill, and the Department of Transportation – have all played a role in creating or solidifying residential segregation.²⁰ Housing for BIPOC and low-income residents has often been located near polluting facilities and infrastructure.²¹ BIPOC residents have also been concentrated into densely populated neighborhoods with fewer trees and larger amounts of impervious surfaces, making them more vulnerable to effects of excessive heat and flood events exacerbated by climate change.²²

Government efforts to cultivate and protect White wealth by segregating BIPOC residents and excluding them from comparable wealth-building opportunities has resulted in the siting of BIPOC communities in or adjacent to environmentally hazardous areas. As such, government has played a significant role in developing the climate gap.

Environmental Risk. Nationally, BIPOC and low-income communities are frequently located near pollution sources, such as major roadways, toxic waste sites, landfills, and chemical plants.²³ Public health concerns related to air pollution include cancer, cardiovascular disease, respiratory diseases, diabetes, obesity, and reproductive, neurological, and immune system disorders.²⁴

The County's Climate Action Plan shows that communities with high concentrations of BIPOC and low-income residents (greater than 25 percent for each) are located in areas of the County with higher levels of traffic and air pollution.²⁵ Further, between 2017 and 2019, Black residents had the highest rates of emergency room visits for chronic lower respiratory diseases (including asthma) at 1,594 visits per 100,000, followed by Latinx residents (923 visits per 100,000) and White residents (526 visits per 100,000).²⁶

RESJ Impact Statement

Disparities in Tree Cover. Research suggests that tree cover is not equitably distributed in BIPOC communities. A meta-analysis of 42 studies considering the relationship between urban forest cover and race found evidence of significant race-based inequity in urban forest cover.²⁷ Further, a more recent study of 37 metropolitan areas exploring the relationship between redlining and urban tree canopy found that former “D” graded areas, which were mostly inhabited by BIPOC, have on average 23% tree canopy, half the amount of former “A” graded areas (43%), which were characterized by U.S.-born White residents.

In 2021, American Forests – a national non-profit focused on forest conservation – published neighborhood-level Tree Equity Scores for 4,000 municipalities throughout the country. Tree Equity Scores factor in the gap between existing tree canopy and target tree canopy in individual neighborhoods, and are weighted to prioritize the need for tree planting based on the following neighborhood characteristics:²⁸

- Income: Percentage of population below 200% of poverty
- Employment: Unemployment rate
- Race: Percentage of people who are not white non-Hispanic
- Age: Ratio of seniors and children to working-age adults
- Climate: Urban Heat Island severity
- Health: Prevalence of poor mental, physical, respiratory, and cardiac health (composite index)

A lower Tree Equity Score indicates a greater priority for closing the tree canopy gap in a given neighborhood.

American Forests calculated an overall Tree Equity Score of 96 for Montgomery County.²⁹ Table 1 below shows the distribution of scores for 495 neighborhoods in unincorporated areas of the County where a Tree Equity Score was calculated, along with select characteristics of those neighborhoods.

Table 1: Distribution of Neighborhood Tree Equity Scores in Montgomery County and Select Characteristics

Tree Equity Score	Number of neighborhoods	Tree Canopy % (Average)	% BIPOC Residents (Average)	% People in Poverty (Average)	Average Temperature on Hot Summer's Day
59 or Less Score	1	28.1%	87.5%	41.5%	90.4
60-69 Score	4	22.9%	67.5%	28.1%	87.7
70-79 Score	9	27.9%	63.0%	29.7%	87.9
80-89 Score	11	30.8%	50.6%	13.7%	86.9
90-99 Score	43	40.4%	56.5%	16.8%	84.1
100 Score	427	56.5%	49.4%	15.5%	82.9

Source: 2021 Tree Equity Score Data, American Forests.

Table 1 demonstrates 14 neighborhoods in the County with Tree Equity Scores of less than 80 that are higher priority for tree planting. On average, these neighborhoods have between 22.9 percent and 28.1 percent tree canopy, compared to 56 percent in neighborhoods with a score of 100. Further, the average temperature on a hot summer's day in these higher priority neighborhoods is between 4.8 and 7.5 degrees higher than the average in neighborhoods with a 100 score.

RESJ Impact Statement

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of Bill 25-22 on RESJ in the County, OLO recommends the consideration of two related questions:

- Who are the primary beneficiaries of this bill?
- What racial and social inequities could passage of this bill weaken or strengthen?

For the first question, OLO considered who could benefit from the increased forest conservation proposed by this Bill. In the last 10 years, development has resulted in a net loss of 112 acres of forest, with the Forest Conservation Law requiring planting of 693 acres and mitigation for the clearing of 805 acres of forest.³⁰ Bill 25-22 primarily works to increase forest conservation requirements towards the goal of minimizing forest loss.

Changes to forest conservation requirements proposed through this Bill would apply in varying ways to areas throughout the County, including CR zones, medium-density residential areas, and institutional development areas. Of note, the Planning Board decided not to propose changes to forest conservation requirements in higher-density land use categories, with the intent of continuing to incentivize urban redevelopment in these areas.³¹

Given the broad reach, OLO estimates that all County residents would benefit from the increased forest conservation proposed through this Bill, including BIPOC residents. OLO anticipates property developers/owners will bear the increased costs of forest conservation associated with implementing this Bill, and White and affluent residents disproportionately account for property developers/owners in the County.³² However, they too will yield benefits from increased forest conservation in the County, so their costs are likely offset by their benefits, at least in the long-term.

For the second question, OLO considered the effect this Bill could have on addressing racial disparities in tree cover. Since the Bill primarily intends to minimize forest loss – not necessarily to increase existing forests – it would likely not increase existing tree cover in BIPOC communities.

Of note, the existing Forest Conservation Law allows for landscaping to meet afforestation or reforestation requirements anywhere in the County.^{33,34} This Bill would maintain this allowance for Equity Focus Areas (EFAs),³⁵ with the intent of allowing for as much tree planting as possible within these communities; outside of EFAs, landscaping could only be used to meet afforestation requirements. Since the Bill maintains an existing allowance for EFAs, this will likely not change behavior with regards to tree planting within these communities, unless they are located in zones where the Bill is changing forest conservation requirements (e.g., CR zones, medium-density residential areas).

Changing forest conservation requirements in CR zones could increase the cost of affordable housing development in these areas. A decrease in affordable housing would disproportionately harm BIPOC residents, as they experience higher levels of housing insecurity.³⁶ To offset the potentially negative impact of increasing forest conservation requirements on affordable housing in CR zones, Planning Department staff recommends the Council consider offering subsidies to affordable housing developers to help meet these requirements.³⁷ Yet, OLO anticipates at best a small impact of increased forest conservation requirements on the supply of affordable housing units in CR zones.

Taken together, OLO anticipates Bill 25-22 could have a negligible impact on RESJ in the County, since the Bill does not address tree cover disparities in BIPOC communities and the potential impacts on affordable housing development in CR zones would be small.

RESJ Impact Statement

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.³⁸ OLO finds Bill 25-22 would not negatively impact RESJ in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Ibid

³ “Montgomery County Forest Conservation Law,” Montgomery Planning, Updated November 8, 2021.

<https://montgomeryplanning.org/planning/environment/forest-conservation-and-trees/montgomery-county-forest-conservation-law/>

⁴ *Forest* means a biological community dominated by trees and other woody plants (including plant communities, the understory, and forest floor) covering a land area which is 10,000 square feet or greater and at least 50 feet wide. See Chapter 22A Forest Conservation – Trees, Sec. 22A-3 Definitions.

⁵ Chapter 22A Forest Conservation – Trees, Sec. 22A-2 Findings and Purpose, Montgomery County Code.

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-131305#JD_22A-2

⁶ “Tree Laws, Programs and Committees,” Department of Environmental Protection, Accessed September 16, 2022.

<https://www.montgomerycountymd.gov/green/trees/laws-and-programs.html>

⁷ *Sediment control permit* means a permit required to be obtained for certain land disturbing activities. *Subdivision* is the division or assemblage of a lot, tract, or parcel of land into one or more lots or parcels or other divisions for the purpose, whether immediate or further, of sale or development. See Chapter 22A Forest Conservation – Trees, Sec. 22A-3 Definitions.

⁸ “Staff Report: ‘No Net Loss of Forest’ Amendments to the Forest Conservation Law & Regulations,” Bill 25-22, Forest Conservation – Trees, Montgomery County Council, Introduced September 13, 2022.

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2766_1_22451_Bill_25-2022_Introduction_20220913.pdf

⁹ Ibid

¹⁰ “No Net Loss of Forest Initiative”

¹¹ Bill 25-22, Forest Conservation – Trees

¹² Statutes also referred to as codes, are laws written and enacted by the legislative branch of government (e.g., Montgomery County Council). Regulations also referred to as rules, are written by agencies (e.g., Montgomery County Planning Department) to implement laws passed by the legislature.

¹³ Racial Equity and Social Justice Impact Statement for Bill 13-22, Office of Legislative Oversight, Montgomery County, Maryland, July 7, 2022. <https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/Bill13-22.pdf>

RESJ Impact Statement

¹⁴ Hannah Safford, et al, “Urban Forests and Climate Change,” Climate Change Resource Center, U.S. Forest Service, United States Department of Agriculture, August 2013. <https://www.fs.usda.gov/ccrc/topics/urban-forests>

¹⁵ “Montgomery County Climate Action Plan: Building a Healthy, Equitable, Resilient Community,” Department of Environmental Protection, Montgomery County, Maryland, June 2021. <https://www.montgomerycountymd.gov/green/Resources/Files/climate/climate-action-plan-printer-friendly.pdf>

¹⁶ Ibid

¹⁷ Rachel Morello-Frosch, et al, *The Climate Gap: Inequities in How Climate Change Hurts Americans and How to Close the Gap*, Dornsife Center, University of Southern California, May 2009. <https://dornsife.usc.edu/pere/climategap/>

¹⁸ Health Equity and Climate Change, “Climate Change, Health, and Equity: A Guide for Local Health Departments,” American Public Health Association, 2018. https://www.apha.org/-/media/Files/PDF/topics/climate/Guide_Section2.ashx

¹⁹ “Turning the Floodlights on the Root Causes of Today’s Racialized Economic Disparities: Community Development Work at the Boston Fed Post-2020,” Federal Reserve Bank of Boston, December 2020. <https://www.bostonfed.org/publications/community-development-field-notes/2020/racialized-economic-disparities.aspx>

²⁰ Kilolo Kijakazi, et al, “The Color of Wealth in the Nation’s Capital,” The Urban Institute, November 2016. <https://www.urban.org/research/publication/color-wealth-nations-capital>

²¹ Richard Rothstein, *The Color of Law* (Liveright, 2017)

²² Louis R. Iverson and Elizabeth A. Cook, “Urban Forest Cover of the Chicago Region and Its Relation to Household Density and Income,” Urban Ecosystems, 2000 (cited in Zero Cities Project, Equity Assessment Tool). <https://www.fs.usda.gov/treesearch/pubs/21911>

²³ Joel D. Kaufman and Anjum Hajat, “Confronting Environmental Racism,” Environmental Health Perspectives, May 2021. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8137098/>

²⁴ “Air Pollution and Your Health,” National Institute of Environmental and Health Sciences, Last Reviewed June 24, 2022. <https://www.niehs.nih.gov/health/topics/agents/air-pollution/index.cfm>

²⁵ “Montgomery County Climate Action Plan”

²⁶ “Health in Montgomery County, 2010-2019: A Surveillance Report on Population Health,” Department of Health and Human Services, Montgomery County, Maryland, April 2022. <https://www.montgomerycountymd.gov/HHS/Resources/Files/Health%20in%20Montgomery%20County%202010-19.pdf>

²⁷ Shannon Lea Watkins and Ed Gerrish, “The Relationship Between Urban Forests and Race: A Meta-Analysis,” Journal of Environmental Management, February 2018. <https://urbanforestry.indiana.edu/doc/publications/2018-watkins-UF-race.pdf>

²⁸ “Tree Equity Score Methodology,” Tree Equity Score, American Forests, Accessed September 26, 2022. <https://www.treeequityscore.org/methodology/>

²⁹ Municipality Tree Equity Score Report for Montgomery County, Tree Equity Score, American Forests, Accessed September 26, 2022. <https://www.treeequityscore.org/reports/place/montgomery-county-md/#12.01/39.11584/-77.15947>

³⁰ “Staff Report: ‘No Net Loss of Forest’ Amendments to the Forest Conservation Law & Regulations”

³¹ Letter from Planning Board Chair to Council President, Bill 25-22, Forest Conservation – Trees

³² See OLO RESJ Statements for Bills 38-21, 39-21, and 46-21 for discussion and data on racial inequities in homeownership, economic development, and entrepreneurship in the County:

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill38-21.pdf>;

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill39-21.pdf>;

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/2021/Bill46-21.pdf>

³³ Generally: *landscaping* refers to onsite planting of trees, shrubs and other plants that are not necessarily considered to be forest; *afforestation* refers to planting of forest when little to no forest has been cleared; *reforestation* refers to replanting of forest when forest has been cleared. See Chapter 22A Forest Conservation – Trees, Sec. 22A-3 Definitions.

³⁴ Because of the definition of *forest* (see note 4) it may not always be feasible to meet afforestation and reforestation requirements by planting forest on a project’s site. Thus, afforestation and reforestation requirements are often met through on-site landscaping and/or planting forest off-site.

³⁵ Equity Focus Areas, developed by the Planning Department, are census tracts within the County that are characterized by high concentrations of lower-income households, people of color, and people who may also speak English less than very well. More information: <https://montgomeryplanning.org/planning/equity-agenda-for-planning/the-equity-focus-areas-analysis/>

³⁶ Racial Equity and Social Justice Impact Statement for Bill 22-22, Office of Legislative Oversight, Montgomery County, Maryland, July 29, 2022. <https://montgomerycountymd.gov/OLO/Resources/Files/resjis/2022/BillE22-22.pdf>

RESJ Impact Statement

³⁷ “Staff Report: ‘No Net Loss of Forest’ Amendments to the Forest Conservation Law & Regulations”

³⁸ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council