

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

## ZTA 23-08: TRANSFERABLE DEVELOPMENT RIGHTS – CEMETERY

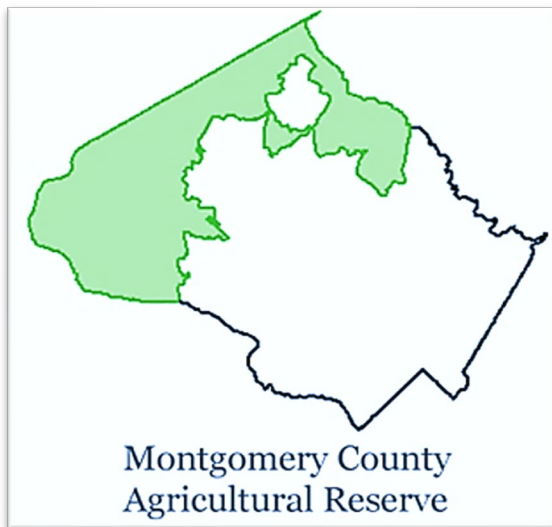
### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment ZTA 23-08, Transferable Development Rights (TDR) – Cemetery would have little or no impact on racial equity and social justice (RESJ) in the County.

### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> 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.<sup>2</sup>

### PURPOSE OF ZTA 23-08



Source: Montgomery Planning

The purpose of ZTA 23-08 is to allow a property owner in the Agricultural Reserve (AR) zone to expand a cemetery onto land that currently has a TDR.<sup>34</sup>

The Agricultural (Ag) Reserve in Montgomery County is a 93,000-acre designated land use zone that preserves farmland and rural open space in the northwestern part of the County.<sup>5</sup> It was created in 1980 with the intent to prevent urban sprawl, protect farmland, and limit development.<sup>6</sup> The Ag Reserve allows development only under the standard method with a density of 25 acre per dwelling unit.<sup>7</sup> As observed on the map to the left, the Ag reserve is a contiguous rural area covering nearly a third of the County. It includes rural areas along with the larger rural communities of Damascus and Poolesville; small crossroad communities such as Beallsville, Sunshine, and Dickerson; and areas with mixed open land and housing.<sup>8</sup>

The Transferable Development Rights program is a zoning mechanism that grants property owners in the Ag Reserve one development right, or “TDR”, for each five acres of land. Property owners can receive compensation by selling their TDRs to landowners or developers who can use them to develop at a higher density in designated areas in the County.<sup>9</sup>

Under the current zoning ordinance, a cemetery is allowed in the AR zone by approval of a conditional use application. However, the use is prohibited on an AR zoned lot or parcel that has a recorded Transfer of Development Rights easement.<sup>10</sup> If adopted, ZTA 23-08 would allow certain parcels in the AR zone that have recorded TDRs to be used for expansion of cemeteries. ZTA 23-08 was introduced on November 7, 2023

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### RACIAL INEQUITIES IN PROPERTY OWNERSHIP IN THE AGRICULTURAL RESERVE

Understanding the RESJ impact of ZTA 23-08 requires understanding the local history of racial inequity in land use that has fostered racial disparities in property ownership in the County and in the Ag Reserve in particular. Indigenous peoples affiliated with the Piscataway Conoy Tribal Nation lived in the area known as Montgomery County when Europeans first colonized the area in the 1600's.<sup>11</sup> This includes the Accohannock Indian Tribe, the Assateague Peoples Tribe, the Nause-Wawash Band of Indians, the Piscataway Conoy Confederacy and Sub-Tribes, the Cedarville Band of Piscataway Indians, the Pocomoke Indian Nation, and the Youghiogheny River Band of Shawnee Indians.<sup>12</sup>

In 1688, the earliest colonial land grants began to carve up the land and names were attached to large tracts that formed the spatial basis for a plantation economy reliant upon enslaved African labor that lasted until the Civil War. Under British and U.S. governments, the forced dispossession of land from Native peoples followed a "logic of economic profit and racial hierarchy that became institutionalized through law, establishing a thread of racial capitalism, which carries through to the more contemporary forms of racial exclusion in housing."<sup>13</sup>

In 1790, Montgomery County had 18,000 residents: about two-thirds were White and the remainder primarily Black and enslaved. Tobacco was the dominant crop and local transportation networks combined with the emergence of small towns and hamlets helped to support the antebellum economy. The Civil War and the collapse of the plantation system reconfigured the County.<sup>14</sup> Racially- and class-segregated communities began emerging, which remained mostly rural and agricultural well into the 20<sup>th</sup> Century. White towns with names like Rockville, Poolesville, and Gaithersburg developed, while a small network of African American communities composed of people of African descent who were free before the Civil War and formerly enslaved people emerged in the former plantation landscape.<sup>15</sup>

In 1890, the County's population totaled 27,185 residents with White people accounting for 64 percent of the population and Black persons accounting for the remaining 36 percent.<sup>16</sup> Between 1900 and 1960, the County's population grew 11-fold from 30,451 to 340,928 residents as it became a suburban bedroom community to Washington, D.C.<sup>17</sup> With exclusionary zoning, redlining, racial covenants, and racial steering almost all the population growth in the County occurred exclusively among White households. For example, between 1940 and 1960 the White population increased more than four-fold from 74,986 to 327,663 residents.<sup>18</sup> Yet, during this time frame, the County's Black population only increased from 8,926 to 13,265 residents.<sup>19</sup>

The Black population in the County stagnated during suburbanization because Black people were prevented from owning and renting homes in most parts of the County. Black people were limited to residing in the County's historically Black communities that increasingly became "rural ghettos" that lacked running water and paved streets while the County made extensive infrastructure investments in White communities.<sup>20</sup> Moreover, pressured by encroaching White suburbanization and industry, many rural Black communities in the County began disintegrating and experienced land loss, disinvestment, and displacement.<sup>21</sup> By 1960, Black people accounted for only three percent of County residents.<sup>22</sup>

Overall, Black people were systemically excluded from benefiting from the County's exponential growth and increasing property values resulting from suburbanization. It is within this context that the Ag Reserve became policy and cemented racial segregation within its borders as many historically Black rural communities within it had been depopulated by 1980 and the requirements of the AR zone effectively prohibits the development of new affordable multi-family housing units within it. As such, few Black residents benefit from TDRs or reduced development in the Ag Reserve despite Black people historically accounting for a third of the County's population when its economy was primarily agricultural and nearly a fifth of the population today. Data on farm operators and producers also shows that other communities of color are under-represented as property owners in the Ag Reserve.

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Approximately 70 percent of the County's 93,000-acre Agriculture Reserve is used for farm operations.<sup>23</sup> In 2017, there were 558 farms operating in the County that employed more than 10,000 persons and generated \$281 million in revenue.<sup>24</sup> A total of 1,026 farm producers operated among the 558 farms in the County. Among farm producers:<sup>25</sup>

- 93 percent were White (953 producers);
- 3 percent were Latinx (27 producers);
- 3 percent were Multiracial (26 producers);
- 2 percent were Black (22 producers);
- 2 percent were Asian (21 producers); and
- Less than one percent were Native American/Indigenous (4 producers).

Conversely, among County constituents in 2022, White people accounted for 42 percent of the population, Latinx people accounted for 20 percent of the population, Black people accounted for 19 percent of the population, Asian people accounted for 15 percent of the population, and Indigenous people accounted for less than one percent of the population.<sup>26</sup> Thus, White people are over-represented among farm producers in the County compared to their share of County constituents while Black, Indigenous, and Other People of Color are under-represented among farm producers.

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### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-08 on racial equity and social justice, OLO considers two related questions:

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

White people accounting for 93 percent of farm producers in the County in 2017 suggests that they are over-represented among property owners in the Ag Reserve and could potentially benefit from ZTA 23-08. They would likely be the primary beneficiaries of this ZTA allowing the expansion of existing cemeteries in the AR zone on properties with recorded TDRs. Yet, the number of properties within the Ag Reserve with cemeteries and recorded TDRs is unknown as is the number of eligible properties that would likely take advantage of this ZTA. Moreover, the number of eligible properties that could expand existing cemeteries because of this ZTA is likely very small. As such, OLO anticipates that ZTA 23-08 will have little to no impact on racial and social inequities in the County.

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### RECOMMENDED AMENDMENTS

Bill 44-20 amending the County's Racial Equity and Social Justice Act<sup>27</sup> requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments. OLO anticipates that ZTA 23-08 will have little to no impact on existing disparities in property ownership by race and ethnicity in the County. As such, OLO does not offer recommended amendments.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

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### CONTRIBUTIONS

OLO staffer Elsabet Tefaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this racial equity and social justice impact statement.

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<sup>1</sup> 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>

<sup>2</sup> Ibid

<sup>3</sup> Ndou, Livhu. Montgomery County Council, Agenda Item #3A, October 17, 2023

[https://montgomerycountymd.granicus.com/MetaViewer.php?view\\_id=169&event\\_id=15931&meta\\_id=165992](https://montgomerycountymd.granicus.com/MetaViewer.php?view_id=169&event_id=15931&meta_id=165992)

<sup>4</sup> The Montgomery County Zoning Ordinance (2014) defines Transfer of Development Rights (TDRs) as the conveyance of development rights, as authorized by law, to another tract of land and the recordation of that conveyance.

<sup>5</sup> American Planning Association. 2017 National Planning Excellence Award: Planning Landmark-Montgomery County’s Agricultural Reserve

<https://www.planning.org/awards/2017/agriculturalreserve/>

<sup>6</sup> Ibid.

<sup>7</sup> American Legal Publishing. Chapter 59 Montgomery County Zoning Ordinance (2014). Agricultural. Section 4.2.1. Agricultural Reserve Zone (AR). A child lot above the density of one dwelling unit per 25 acres is also allowed in the AR zone.

[https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md\\_zone2014/0-0-0-2471](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-2471)

<sup>8</sup> Montgomery County, Maryland. Montgomery Planning. Agricultural Reserve

<https://montgomeryplanning.org/planning/agricultural-reserve/>

<sup>9</sup> Carrizosa, Natalia and Aron Trombka. 2023. OLO Report-2023-1 Transferable Development Rights and Building Lot Termination Programs in Montgomery County. January 7.

[https://www.montgomerycountymd.gov/OLO/Resources/Files/2023\\_reports/OLORReport2023-1.pdf](https://www.montgomerycountymd.gov/OLO/Resources/Files/2023_reports/OLORReport2023-1.pdf)

<sup>10</sup> American Legal Publishing. Chapter 59 Montgomery County Zoning Ordinance (2014). Section 3.1.5. Transferable Development Rights.

[https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco\\_md\\_zone2014/0-0-0-744](https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-744)

<sup>11</sup> David S. Rothstein, Baltimore and Ohio Railroad, Metropolitan Branch Bridge 9A (Talbot Avenue Bridge), Silver Spring, Maryland – Written Historical and Descriptive Data. Historic American Engineering Record (HAER No. MD-195), National Park Service, U.S. Department of the Interior, 2019

<sup>12</sup> RESJAC Position Statement on Land Acknowledgement, Racial Equity and Social Justice Advisory Committee, Montgomery County, Maryland <https://www.montgomerycountymd.gov/boards/sites/RESJ/land-acknowledgement.html>

<sup>13</sup> Roots, Race & Place: A History of Racially Exclusionary Housing in the San Francisco Bay Area, Haas Institute for a Fair and Inclusive Society Public Education Report, UC Berkeley, June 2021 <https://belonging.berkeley.edu/sites/default/files/2021-09/Oct22019enews.html>

<sup>14</sup> Rothstein

<sup>15</sup> Ibid

<sup>16</sup> Montgomery Planning, Attachment A: Working Draft of the Mapping Segregation Report: Racial Restrictive Covenants, Black Homeownership, and HOLC Loans in the Downcounty Planning Area, December 1, 2022 <https://montgomeryplanning.org/wp-content/uploads/2022/12/Mapping-Segregation-Staff-Report-Attachment-A.pdf>

<sup>17</sup> Montgomery History, How Montgomery County Grew in the 1950’s, Online Exhibit, May 5, 2021

<https://montgomeryhistory.org/exhibit/how-montgomery-county-grew-in-the-1950s/>

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Rothstein

<sup>21</sup> Ibid

<sup>22</sup> Montgomery Planning, Attachment A

<sup>23</sup> Montgomery County 2017 Ag Census Fact Sheet. Montgomery County Maryland Government

<https://montgomerycountymd.gov/agservices/Resources/Files/2017AGCensusMCFactSheetFINAL.pdf>

<sup>24</sup> Montgomery County Office of Agriculture Website. Ag Facts

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

<sup>25</sup> 2017 Census of Agriculture. County Profile. Montgomery County, Maryland.

[https://www.nass.usda.gov/Publications/AgCensus/2017/Online\\_Resources/County\\_Profiles/Maryland/cp24031.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Maryland/cp24031.pdf)

<sup>26</sup> Demographic and Housing Estimates, Table DP05, American Community Survey, 2022 – 1 year estimates for Montgomery County, Maryland, DP05, <https://data.census.gov/table/ACSDP1Y2022.DP05?q=DP05&g=050XX00US24031>

<sup>27</sup> Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

[https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682\\_1\\_12149\\_Bill\\_44-20\\_Signed\\_20201211.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf)