

BILL TO ENACT REVISIONS TO CHAPTER 49 REGARDING THE COMPOSITION AND DUTIES OF THE RUSTIC ROADS ADVISORY COMMITTEE



Rustic Roads logo used on brown street signs and RRAC correspondence

Description

The proposed bill enacts recommendations from the Rustic Roads Functional Master Plan Update regarding the composition and duties of the Rustic Roads Advisory Committee. The master plan update is currently under review by the Montgomery County Council.

Completed: 05-04-2023

MCPB
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05-11-2023

Montgomery County
Planning Board
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REVIEW BASIS

Chapter 49, Streets and Roads



Summary:

- The Rustic Roads Functional Master Plan Update proposes changes to Chapter 49 regarding the composition and duties of the Rustic Roads Advisory Committee.
- The County Council has already held a public hearing on the Master Plan Update and intends to hold work sessions on the plan in June 2023.
- Council staff has requested a draft bill to enact the proposed changes to the Committee in order to introduce the bill to Council. Council staff aims to consider both the Master Plan Update and the implementing language in the draft bill simultaneously.

TABLE OF CONTENTS

SECTION 1: BACKGROUND	3
RATIONALE FOR INTRODUCTION.....	3
SECTION 2: BILL ANALYSIS.....	3
BILL AS INTRODUCED	3
RRAC MEMBERSHIP.....	4
MEMBER DUTIES.....	6
SECTION 3: LEGISLATIVE ANALYSIS.....	9
RACIAL EQUITY AND SOCIAL JUSTICE	9
SECTION 4: CONCLUSION	10
ATTACHMENTS	10

SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

The Planning Board Draft of the Rustic Roads Functional Master Plan Update (“RRFMP Update”) was approved by the Planning Board on February 9, 2023 and transmitted to the County Council on February 24, 2023. The County Council held a public hearing for the plan April 18, 2023.

The original *Rustic Roads Functional Master Plan* was approved in 1996, but the Rustic Roads Program itself was established three years earlier via Article VII of Chapter 49, Streets and Roads (now “Article 8”). In addition to describing the qualifying criteria by which a road is designated rustic or exceptional rustic, this legislation also established the Rustic Roads Advisory Committee (RRAC). The RRAC advises on rustic road designations, improvements to roads in the Program, and other matters related to protecting roads in the Program.

The Planning Board Draft of the RRFMP Update includes two recommended changes to the RRAC that require an amendment to Chapter 49 to implement. One recommendation proposes changes to the number of members and the membership criteria of the Committee, while the other proposes clarifications to the Committee’s duties.

After this bill has been introduced at County Council, the Council will hold a public hearing on the bill. This will be followed by work sessions by the Transportation & Environment Committee and the full Council. It is anticipated that work sessions for the RRFMP Update will be held beginning in June 2023. Council staff desires that this bill “catch up” to the RRFMP Update so that the work sessions for the two items can be combined and proceed through the Council’s approval process simultaneously.

GENERAL APPROVAL

Staff recommends that the Planning Board approve transmittal of the attached bill to County Council so that the bill may be introduced. Staff also recommends that the Planning Board waive their typical review of the bill after it has been introduced at the County Council if there are no significant changes to the proposed bill.

SECTION 2: BILL ANALYSIS

BILL AS INTRODUCED

The “Implementation” chapter of the February 2023 Planning Board Draft of the RRFMP Update contains two recommended changes to the membership of the RRAC (pp. 58-59). Both recommendations require a change to County Code Section 49-80, which specifies membership criteria of the RRAC, how they are to be appointed and confirmed, and the Committee’s duties.

The bill proposes revisions to the composition and duties of the Rustic Roads Advisory Committee. Very broadly, the number of members on the Committee is proposed to change from seven to nine and the membership criteria for members is being revised to enable a more diverse Committee. Current duties performed by Committee members are also being codified in Chapter 49. Because the bill has not yet been introduced in the County Council, it has not been assigned a bill number.

RRAC MEMBERSHIP

The first of these changes, recommendation #28 in the plan, is intended to facilitate a more diverse Committee and to lighten the workload of individual Committee members.

CURRENT RRAC MEMBERSHIP CRITERIA

The current text of Section 49-80 (a) is as follows:

Membership. The County Executive must appoint, subject to confirmation by the County Council, a Rustic Roads Advisory Committee. The Committee has 7 voting members. Each member must be a resident of the County. The Executive should appoint:

- (1) 3 members who are owner-operators of commercial farmland earning 50 percent or more of their income from farming, one of whom is a representative of the Agricultural Advisory Committee;*
- (2) one member who knows rural preservation techniques through practical experience and training;*
- (3) one member who knows roadway engineering through practical experience and training;*
- (4) one member who represents civic associations located in the Agricultural Reserve; and*
- (5) one member who represents civic associations in areas located outside the Agricultural Reserve where there are rustic roads.*

INCREASING THE NUMBER OF MEMBERS

The RRFMP Update recommends changing the number of Committee members from seven (7) to nine (9).

FARMER MEMBERS AND AAC REPRESENTATIVE

The current membership criteria specify that three of the members be owner-operators of commercial farmland who earn at least half their income from farming. One of these three members is intended to represent Montgomery County's Agricultural Advisory Committee (AAC).

The new criterion keeps the number of farmer members at three but removes the requirement that the farmers own the land they work. This allows for a farmer who leases farmland to be considered for the Committee.

The member representing the AAC is now in addition to the three farmer members, and under the new requirement must be recommended by the AAC, whereas before it was at the sole discretion of the County Executive to select a farmer member to represent the AAC. The requirement that the AAC recommend their own representative arose because many of the commodity farmers in the area raised concerns that their voice had been diminished on the RRAC. The AAC's representative may be but need not be a farmer.

RURAL PRESERVATIONIST AND ROADWAY ENGINEER MEMBERS

The revised bill retains the members who know rural preservation techniques and roadway engineering through practical experience and training.

CIVIC ASSOCIATION REPRESENTATIVE MEMBERS

The current criteria include two members who represent civic associations: one who represents civic associations within the Agricultural Reserve and one who represents civic associations outside the Reserve. The new bill removes the requirement that two of the members represent civic associations. There did not seem to be a compelling reason to require that RRAC members also be members of other civic associations and it was unclear how they were intended to represent those other civic associations.

AT-LARGE MEMBERS

Instead of the two civic association representatives, the new bill specifies that there will be three at-large members drawn from other users of rustic roads. Several examples are given, but it is ultimately at the discretion of the County Executive to appoint and the County Council to confirm appropriate Committee members.

PROPOSED REVISIONS TO RRAC MEMBERSHIP CRITERIA

The proposed text for Section 49-80 (a) to implement the recommended changes is as follows:

Membership. The County Executive must appoint, subject to confirmation by the County Council, a Rustic Roads Advisory Committee. In making appointments, the Executive should strive to achieve diversity on the Committee in support of racial equity and social justice. The Committee

has nine voting members. Each member must be a resident of the County. The Executive should appoint:

- (1) three members who operate commercial farmland earning 50 percent or more of their income from farming;
- (2) one member who is a representative of the Agricultural Advisory Committee and has been recommended to the Executive by the AAC;
- (3) one member who knows rural preservation techniques through practical experience and training;
- (4) one member who knows roadway engineering through practical experience and training; and
- (5) three at-large members to be drawn from other users of rustic roads. Examples of the at-large members include, but are not limited to: a table crop farmer who does not earn more than 50 percent of their income from farming; an expert in tourism or historic sites along the roads; a member of a religious institution on a rustic road; an operator of an agritourism business, such as a winery, brewery, farm stand, or recreation or entertainment venue on a rustic road; or a person who regularly uses the roads to engage in or reach places for outdoor recreation, such as to bike, boat, kayak, hike, fish, ride horses, or go birding.

Note especially the addition of the following sentence within the introductory text to the membership criteria:

In making appointments, the Executive should strive to achieve diversity on the Committee in support of racial equity and social justice.

The new membership criteria do not guarantee that new Committee members will add to the diversity of the group, but the much larger pool of those eligible to serve—essentially anyone who uses a rustic road—should help with the county’s racial equity and social justice goals.

MEMBER DUTIES

The second of the two changes to the RRAC in the RRFMP Update is intended to clarify the duties of the Committee. The change is intended to codify activities that the RRAC is already undertaking, primarily due to tasks specified in the Executive Regulations regarding rustic roads. The following is the text of recommendation #29 in the plan:

To clarify the duties of the Rustic Roads Advisory Committee, the County Council should revise Section 49-80 to specify the additional duties that are to be performed by the RRAC, namely:

- *reviewing and providing comments on subdivision applications when the requirements of the Subdivision Regulations conflict with the Rustic Roads law or Executive Regulations;*
- *reviewing and providing comments on proposed improvements to rustic roads; and*
- *reviewing and providing comments on proposed signs within the right-of-way of a rustic road.*

CURRENT RRAC MEMBER DUTIES

The current text of Section 49-80 (e) is as follows:

Duties. *The Committee must:*

- (1) *promote public awareness and knowledge of the County rustic roads program;*
- (2) *review and comment on classification of rustic roads and exceptional rustic roads;*
- (3) *review and comment on Executive Regulations and other County policies and programs that may affect the rustic roads program; and*
- (4) *report on June 1 of each even numbered year to the Executive, the Council, and the Planning Board on the status of the rustic roads program.*

The four duties listed above are the only duties specified in Chapter 49 that the Committee must carry out. Examples of the RRAC performing these tasks:

- (1) The RRAC's information booth at the Ride the Reserve event is an example of the Committee promoting the program.
- (2) Area master plan updates and the current Functional Master Plan Update are examples of when the Committee would be asked to review and comment on the classification of rustic and exceptional rustic roads.
- (3) The Executive Regulations regarding maintenance of and along rustic roads has not been revised since 1996, but there are occasionally other county policies and programs that affect rustic roads that the Committee is expected to review and comment on. The revisions to County Code to implement the Complete Streets Design Guide is a recent example of carrying out this duty. We are also suggesting updates to the Executive Regulations as part of this Master Plan.
- (4) The Committee has published numerous biennial reports that are available on the [RRAC website](#).

PROPOSED ADDITIONAL DUTIES

The proposed additional duties recommended in the RRFMP Update are duties which have already been assigned to the Committee in other places in County Code or the Executive Regulations but which are not explicitly called out in Section 49-80 (e). Each is described below.

Reviewing and providing comments on subdivision applications

Chapter 50, Subdivision of Land, does not explicitly require a review by the Rustic Roads Advisory Committee for any application, although rustic roads are mentioned in the chapter a few times. However, Planning Staff always requests a courtesy review of subdivision plans when located on a rustic road. Planning Staff and the Planning Board appreciate and value the RRAC's input on regulatory applications with respect to their potential impacts to rustic roads. Planning Staff and the Planning Board consider recommendations from the RRAC when determining substantial conformance with the *Rustic Roads Functional Master Plan*.

The only action by the RRAC specified in Chapter 50 is in Section 4.3, which describes the technical review of subdivision applications. Subitem 5.c states:

*Rustic roads. In approving a preliminary plan, the Board must not require improvements that are contrary to Chapter 49, Article 8 or Executive Regulations governing rustic roads. The Board may waive any requirement of Sections 4.3.E.2.b and 4.3.E.3.b that is incompatible with the rustic road or substitute any alternative requirement that is consistent with the goals of the rustic roads law. The Board may only require those improvements that retain the significant features of the road identified by the Council for preservation. If the Board is otherwise directed by this Section to require improvements that are contrary to the rustic roads law or Executive Regulations, the Board must consider the recommendations of the **Rustic Roads Advisory Committee** and evaluate the feasibility of trip reduction and alternative road improvements to the local roadway network. If the Board determines that no feasible alternative exists, it may require improvements that are necessary for traffic safety or operational requirements.*

In this case, Chapter 50 states that the Planning Board must not require improvements as part of the review of subdivision applications that would be contrary to the Rustic Roads legislation in Chapter 49, Article 8 or the Executive Regulations governing rustic roads. This allows the Board to waive a requirement that would be incompatible with a rustic road or substitute an alternative requirement that is not. It is only when the subdivision regulations require an improvement that is contrary to the Rustic Roads law or Executive Regulations that the Board would seek the advice of the RRAC and take other actions if feasible. This situation rarely arises, but the proposed bill adds this responsibility to the list of the RRAC's duties.

Reviewing and providing comments on proposed improvements to rustic roads

Several items outlined in the Executive Regulations found in [COMCOR 49.79.01 Rustic Roads](#) specify actions to be taken by the Rustic Roads Advisory Committee.

49.79.01.03 Application Process and Eligibility Analysis

B. Eligibility and Project Development

1. Citizen or Department of Public Works and Transportation [former name of MCDOT] Initiated Improvements

Upon receipt of a request for improvements to a rustic or exceptional rustic road, or whenever improvements are initiated by the Department of Public Works and Transportation, the Department must assess the area proposed for improvements by conducting an engineering study. The study will identify possible improvements consistent with these regulations, that are appropriate for the road.

*The **Rustic Roads Advisory Committee** will review the Department of Public Works and Transportation proposal at their next scheduled meeting and forward comments to the*

Director, Department of Public Works and Transportation. Upon approval of the project by the Director of Department of Public Works and Transportation, the project will follow the current Capital Improvements Project process, including Mandatory Referral requirements.

If MCDOT is to undertake improvements to a rustic road, they must request a review by RRAC. Only after such review should a Mandatory Referral application be submitted to the Planning Board for review. The proposed bill adds this responsibility to the list of the RRAC's duties.

Reviewing and providing comments on proposed signs within the right-of-way of a rustic road

The final activity being added by the bill relates to signs along rustic roads. Again, from the Executive Regulations:

49.79.01.04 Maintenance and improvement guidelines

I. Maintenance of Rustic and Exceptional Rustic Roads

C. Signs

1. Identification of Rustic Roads and Exceptional Rustic Roads

*Free standing signs identifying roads as rustic or exceptional rustic roads will not be permitted in the right-of-way. The Department of Permitting Services will submit any proposal for special signs within the right-of-way, such as those identifying a historic site or scenic opportunity, to the **Rustic Roads Advisory Committee** for review and comment and to the Agricultural Advisory Committee for review and comment on impacts to agricultural operations.*

This requires DPS to submit signs within rustic road rights-of-way to the Committee for review. The proposed bill adds this responsibility to the list of the RRAC's duties.

SECTION 3: LEGISLATIVE ANALYSIS

RACIAL EQUITY AND SOCIAL JUSTICE

For all bills introduced to the County Council, the Director of the Office of Legislative Oversight must provide a statement to the Council describing any racial equity or social justice impact the bill may have. As mentioned above, the proposed changes to the membership of the RRAC are intended to allow for more diversity on the Committee by broadening the membership criteria beyond the current narrow criteria. For example, Asian and African immigrant farmers who grow table crops for local ethnic communities but who do not make the majority of their income from farming could be considered to serve on the Committee. Allowing the County Executive to appoint three at-large members who are general users of rustic roads will greatly expand the pool of eligible members to include those with more diverse racial or socioeconomic backgrounds.

SECTION 4: CONCLUSION

Typically, when the County Council introduces a bill affecting matters relevant to Montgomery Planning or the Planning Board, the Council sends the bill to the Department for review and comments. Because this bill is originating with Montgomery Planning and will be sent to the Council by the Board and the timeframe for getting the bill “caught up with” the RRFMP Update for Council’s work sessions, Staff recommends that the Planning Board waive their typical review of the bill once introduced unless substantive changes to the bill are made by the Council.

Staff therefore recommends that the Planning Board approve transmittal of the attached bill to County Council so that the bill may be introduced and that the Planning Board waive their typical review of the bill after it has been introduced at the County Council if there are no significant changes to the proposed bill.

ATTACHMENTS

Proposed Bill

Bill No. xx-23
Concerning: Rustic Roads Advisory
Committee
Revised: _____ Draft No. _____
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. 49, Laws of Mont. Co. _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By:

AN ACT to:

- (1) amend Chapter 49 to revise the composition of the Rustic Roads Advisory Committee; and
- (2) specify additional duties of the Rustic Roads Advisory Committee; and
- (3) generally amend Chapter 49 regarding the Rustic Roads Advisory Committee.

By amending

Montgomery County Code
Chapter 49, Streets and Road
Section 49-80

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 49-80 is amended as follows:

Article 8. Rustic Roads Program

* * *

Sec. 49-80. Rustic Roads Advisory Committee

(a) *Membership.* The County Executive must appoint, subject to confirmation by the County Council, a Rustic Roads Advisory Committee. In making appointments, the Executive should strive to achieve diversity on the Committee in support of racial equity and social justice. The Committee has [7] nine voting members. Each member must be a resident of the County. The Executive should appoint:

(1) [3] three members who [are owner-operators of] operate commercial farmland earning 50 percent or more of their income from farming[.];

(2) one [of whom] member who is a representative of the Agricultural Advisory Committee and has been recommended to the Executive by the AAC;

~~[(2)]~~(3) one member who knows rural preservation techniques through practical experience and training;

~~[(3)]~~(4) one member who knows roadway engineering through practical experience and training; and

~~[(4)]~~ one member who represents civic associations located in the Agricultural Reserve; and

(5) one member who represents civic associations in areas located outside the Agricultural Reserve where there are rustic roads.]

(5) three at-large members to be drawn from other users of rustic roads. Examples of the at-large members include, but are not limited to: a table crop farmer who does not earn more than 50 percent of their income from farming; an expert in tourism or historic sites along the roads; a

28 member of a religious institution on a rustic road; an operator of an
29 agritourism business, such as a winery, brewery, farm stand, or
30 recreation or entertainment venue on a rustic road; or a person who
31 regularly uses the roads to engage in or reach places for outdoor
32 recreation, such as to bike, boat, kayak, hike, fish, ride horses, or go
33 birding.

34 * * *

35 (e) *Duties.* The Committee must:

- 36 (1) promote public awareness and knowledge of the County rustic roads
- 37 program;
- 38 (2) review and comment on classification of rustic roads and exceptional
- 39 rustic roads;
- 40 (3) review and provide comments on subdivision applications when the
- 41 requirements of the Subdivision Regulations conflict with this Article
- 42 or the Executive Regulations;
- 43 (4) review and provide comments on proposed improvements to rustic
- 44 roads;
- 45 (5) review and provide comments on proposed signs within the right-of-
- 46 way of a rustic road;
- 47 ~~[(3)]~~(6) review and comment on Executive Regulations and other County
- 48 policies and programs that may affect the rustic roads program; and
- 49 ~~[(4)]~~(7) report on June 1 of each even numbered year to the Executive, the
- 50 Council, and the Planning Board on the status of the rustic roads
- 51 program.

52 * * *

53 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
54 date of County Council adoption.

55 *Approved:*

56

Evan Glass, President, County Council

Date

57 *Approved:*

58

Marc Elrich, County Executive

Date

59 *This is a correct copy of Council action.*

60

Judy K. Rupp, Clerk of the Council

Date