

**MEMORANDUM**

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 22-02, Water Quality - Trails - Location

Bill 22-02, Water Quality - Trails - Location, sponsored by Councilmember Ewing, was introduced on June 18, 2002.

Bill 22-02 would prohibit any County department or agency, including the Maryland-National Capital Park and Planning Commission, from locating or constructing a hard-surface trail in certain sensitive areas, such as stream valleys, wetlands, and steep slopes. The bill does not prohibit all hard-surface trails or bikeways in the County, as some letter-writers apparently have been informed (see ©2, lines 3-11), and would not affect existing trails.

A joint Planning, Housing, and Economic Development Committee/Transportation and Environment Committee worksession on this bill is tentatively scheduled for September 19.

This packet contains:	<u>Circle #</u>
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Bill No. 22-02  
Concerning: Water Quality - Trails -  
Location  
Revised: 4-25-02 Draft No. 1  
Introduced: June 18, 2002  
Expires: December 18, 2003  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmember Ewing

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**AN ACT** to:

- (1) prohibit the location or construction of certain trails in certain sensitive areas; and
- (2) generally amend the law regarding the location of trails and the protection of water quality in the County.

By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control, and Storm Water Management  
Section 19-55

<b>Boldface</b>	<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:*

1           **Sec. 1. Section 19-55 is amended as follows:**

2   **19-55.        [Reserved] Trails - Location.**

3           **(a)    A County department or agency, including the Maryland-National**  
4                    Capital Park and Planning Commission, must not locate, plan, or  
5                    construct a hard-surface trail in any:

- 6                    (1)   stream or stream buffer;
- 7                    (2)   wetland;
- 8                    (3)   100-year flood plain;
- 9                    (4)   habitat of a threatened or endangered species;
- 10                   (5)   steep slope; or
- 11                   (6)   special protection area designated under Section 19-62(a).

12           **(b)    As used in this Section:**

- 13                   (1)   trail means any path intended for human passage, on foot or by  
14                            any other means of transportation, except a road suitable for  
15                            motor vehicle travel;
- 16                   (2)   hard-surface means any surface, such as asphalt, brick, stone,  
17                            concrete, gravel, or compacted soil, that significantly restricts the  
18                            absorption of water into the underlying soil.

19   *Approved:*

20   \_\_\_\_\_  
Steven A. Silverman, President, County Council

\_\_\_\_\_  
Date

21   *Approved:*

22   \_\_\_\_\_  
Douglas M. Duncan, County Executive

\_\_\_\_\_  
Date

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

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Mary A. Edgar, CMC, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

Bill 22-02

### *Water Quality - Trails - Location*

**DESCRIPTION:** Prohibits any County department or agency, including the Maryland-National Capital Park and Planning Commission, from locating or constructing a hard-surface trail in certain sensitive areas, such as stream valleys, wetlands, and steep slopes.

**PROBLEM:** Building hard-surface trails in sensitive areas can increase runoff and erosion and reduce water quality.

**GOALS AND OBJECTIVES:** To restrict the planning and building of trails in sensitive locations.

**COORDINATION:** Planning Board, Department of Environmental Protection

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** To be researched.

**SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905

**APPLICATION WITHIN MUNICIPALITIES:** Applies only to County agencies.

**PENALTIES:** Not applicable



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

May 6, 2002

The Honorable Blair Ewing  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Dear Mr. Ewing: 

We share your concerns regarding the impacts of hard surface trails on environmentally sensitive areas. However we believe that any policy or regulation that is directed at the stewardship of sensitive areas in our County park system must be balanced with the public right to access parks for recreation. We believe the key to responsible stewardship is finding the right balance between recreation and the protection, preservation, and best management of the park system's natural and cultural resources.

We are not apposed to the responsible stewardship of County parks, but rather to the one-size-fits-all approach of the proposed legislation. Clearly, not all areas of the park system are equal in their environmental or cultural sensitivity. Nor are all recreational needs equal across the County's 21 planning areas. Just as population density and land-use vary across Montgomery County, the environmental and cultural value of our public parks varies across the park system. By in large we attempt to address the public right to access parks for recreation in areas where we serve the greatest public need with the least amount of negative impact to important natural and cultural resources.

From our viewpoint, the proposed legislation would largely prohibit the planning and construction of hard surface trails throughout the County park system. No doubt, paved or gravel cart paths on public and private golf courses as well as the County's bikeway system would be similarly affected. As written, the legislation would also preclude use of previously disturbed gravity sewer corridors for future hard-surface trails. And given that the proposed definition of *hard surface* includes *compacted soil*, our heaviest use natural surface trails – which are often open to mountain bike and equestrian use – would not be permitted as well. In the alternative, the legislation would mandate the use of boardwalk, which raise the costs of stream valley trails considerably.

Thousands of citizens enjoy hiking, jogging and biking every weekend on the C&O Canal, the Capital Crescent Trail and the Rock Creek and Sligo Creek hiker-biker trails. As noted in our 1997 Park, Recreation, and Open Space Survey for Montgomery County, the top recreational activities by far are walking and bicycling in parks, often to enjoy nature. We do not want to deny citizens the opportunity to use hard surface trails in other urban and suburban areas of the County, particularly if new facilities can be built in stream valleys that have been severely impacted by the construction of gravity sewer lines or other public utilities. Further, we believe it is unrealistic to assume that reasonable access to the beauty, peace, and solitude of our stream valley parks could be afforded to the handicapped, disabled, and elderly, or to families with young children in strollers on a low impact style natural surface trail system. We are not arguing for the opportunity to plan and construct hard-surface trail systems in every one of Montgomery County's major stream valleys. But we do want to ensure that there is reasonable access to a hard-surface trail system in those areas of Montgomery County with the greatest number of potential trail users. The key to providing public access to parks in an environmentally responsible way is always balance.

Balancing the protection and preservation of natural and cultural resources while concurrently providing a variety of recreational activities for our park users is perhaps the greatest challenge we face as stewards of the County park system. Toward this end, our staff have assembled and mapped an extensive amount of information on natural and cultural resources over the past decade. This information includes the location of rare, threatened, and endangered species of plants and animals, the relative size and health of their populations, and threats to their continued existence. Monitoring efforts allow staff to update this information on a somewhat regular basis. Not surprisingly, our staff continue to find that these important resources occur not just in areas defined as stream buffers or on steep slopes (for example), but rather that they are scattered across the County in both stream valley and upland settings. Accordingly, we are not prepared to say that hard surface trails should never be built in an area defined as a stream buffer, wetland, 100-year floodplain, habitat of a threatened or endangered species, steep slope, or special protection area. Nor are we prepared to say that recreational improvements can go anywhere outside of these defined areas. Rather, the balance we strive for can only occur on a case-by-case basis given full consideration for the recreational benefit and associated environmental or cultural impacts of any proposed site improvement.

Every five years, M-NCPPC prepares the Park, Recreation, and Open Space (PROS) Master Plan. This important functional plan, which was last updated in 1998, provides broad policy guidance for the acquisition, planning, development, and management of County parks. Within the context of our next revision to the PROS Plan, we would be open to up-dating our trail planning and decision-making process. We admit that both our current PROS Plan and the

Countywide Trails Plan (1998) are somewhat deficient in this regard. Recent memoranda dealing with a *Process for Council Review of Park Planning Documents and the Countywide Park Trails Plan* (Attachment A) and the *Muddy Branch Stream Valley Park Trail Plan* (Attachment B), have captured some of this information and our commitment to balance. However, we believe that the public and policy decision makers would benefit from a full understanding of the recreational, environmental, financial, and policy trade-offs associated with planning, constructing, maintaining, and policing hard surface trails and natural surface trails in stream valleys and on uplands. Once there is a clear understanding of the various trade-offs, a formal decision-making process could be agreed upon and incorporated into the next PROS Plan. We propose that the *Process for Planning, Designing, and Building Hard Surface Trails* and the *Process for Planning, Designing, and Building Natural Surface Trails* (Figures B-1 and D-2, respectively, in Attachment B) is a good first step towards achieving this important objective.

What is missing from the proposed legislation on *Trail Location* is the issue of balance; more specifically, balance between the stewardship of natural and cultural resources and recreation in County parks. Whether you proceed with the proposed legislation, or choose to support our proposal to address the matter through an up-coming revision to the PROS Plan, we look forward to working with you on this important issue.

Sincerely,



Charles R. Loehr  
Director

Attachments

cc: Steven A. Silverman  
Montgomery County Planning Board Members  
Donald K. Cochran  
James Caldwell  
Albert J. Genetti

ENV & ENERGY



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CC  
SB  
LI

RECEIVED COUNCIL

COUNTY-WIDE RECREATION ADVISORY BOARD 73 MAY 10 P 1 : 48

May 9, 2002

The Honorable Steve Silverman  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850



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Dear Mr. Silverman:

The County-wide Recreation Advisory Board has been informed of Council member Blair Ewing's proposed amendment to Section 19-55 of the Montgomery County Code, regarding hard surface trails. While we applaud Mr. Ewing's strong support of environmental policies, we feel that the wording of his amendment is too restrictive and would greatly limit the public's access to and use of County parks. This amendment would apply to most County parkland and would prohibit nearly all kinds of pedestrian, biking and equestrian trails, and also the cart paths on golf courses, but excludes roads suitable for vehicular traffic.

Environmental protection is by its nature a relative pursuit and must be balanced with other civic benefits, such as the passive recreational enjoyment of our public parks. Mr. Ewing's proposal seeks to legislatively regulate public access to and recreational use of our County's natural heritage. Existing Maryland-National Capital Park and Planning Commission's (MNCPPC) policy provides processes to preserve parks and green space, and allows significant public input on all proposed changes on a case by case basis. It is the responsibility of the Planning Board and the Council to weigh public benefits and decide the appropriate balance. We ask for your careful consideration before you proceed on Mr. Ewing's amendment.

Sincerely,

*George G. Schlapo*  
George G. Schlapo  
Chair

GS:sah

cc: Arthur Holmes, Jr., Chair, MNCPPC  
Donald Cochran, Director, Parks  
Greg Bayor, Director, Recreation

Department of Recreation

12210 Bushey Drive • Silver Spring, Maryland 20902-1099  
240/777-6800, TDD 240/777-6891, FAX 240/777-6803

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