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# TURNAGAIN COMMUNITY COUNCIL

c/o Federation of Community Councils  
1057 West Fireweed Lane, Suite 100  
Anchorage, Alaska 99503

## DRAFT Comments for Council Vote at November 3, 2022 Meeting

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TO: Fish Creek Trail Connection Project Manager  
FROM: Turnagain Community Council  
DATE: November 3, 2022  
RE: Fish Creek Trail Routes, Comments on Environmental Regulatory Matters

To whom it may concern:

The Turnagain Community Council (TCC) is submitting comments on regulatory compliance matters related to the Fish Creek Trail Project. Specifically we are offering comments here about: 1. NEPA compliance using a Categorical Exclusion; and 2. Section 404 of the Clean Water Act. We recognize and support the comments submitted by the Great Land Trust on conditions of applicable conservation easements; and public comments about the Fish Creek Trail project that have been shared with the Council. One of the challenges the TCC and members of the public face in making comments is that number and significant difference in the route alternative presented by the project team and their potential impacts makes it difficult at this time under understanding the most appropriate process for NEPA and Section 404 compliance.

Our comments are as follows:

**1. NEPA/Categorical Exclusion.** We think it is not clear at this time that the Fish Creek Trail Project qualifies for a Categorical Exclusion (CE) for NEPA review. Given the controversy and potential significance of impacts associated with many of the alternative routes under consideration, it seems that preparation of an Environmental Assessment (EA) is the most appropriate path for compliance with NEPA. We have not seen any justification from the project team as to why a CE is appropriate, other than getting access to a Class Action Consultation Form that appears to be prepared in 2017 and signed in 2020 for the AMATS Fish Creek Connection Project. The form addresses a limited number of impacts, and analysis and lack of rationale for conclusions regarding significance is woefully inadequate

TCC would like to see the current rationale for concluding that a CE is sufficient for the project, and the analysis of potential significance of impacts and controversy associated with all the routes under consideration. Without this information, TCC would have to insist that this project must proceed through a full EA and a Finding of No Significant Environmental Impact (FONSI). If the project requires a 404 permit, the Army Corps of Engineers should be a lead or cooperating agency in the preparation of such an EA and FONSI (see more detailed comments later in this submittal).

**A. Assertion of a CE Regardless of the Alternative Route.** During our field visit to the site on August, a project team member mentioned that NEPA compliance for the Fish Creek Trail project would be completed with a CE. In a reply to comments submitted by Jamie Linxswiler on October 1 the project team asserted that “regardless of the alternative selected, the State has already determined that a Categorical Exclusion is appropriate for this project.”

In both instances no details were provided concerning the basis for that determination or documentation provided. A number of the alternative routes put forward have a high degree of controversy and impacts at this point in time that cannot be dismissed as insignificant (Alternative S1 on west side of the railroad tracks, Alternative N1, and the far northern portion of N3). We would

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appreciate receiving a copy of the documentation justifying this assertion of a CE. Being adequate for NEPA compliance.

**B. The Prior CE Predates Any Public Comments Raising Environmental Issues and Does Not Consider the Currently Proposed Routes Depicted on the Project's Website.** The prior CE was completed at least two years ago, in relation to a project proposal that had not yet received any public review and comment, and that only contained 3 "possible routes." In contrast, the current proposal contains 8 alternate routes. Only 1 of the 3 routes in the 2020 CE (abutting or on the AKRR ROW) appears to be the same as any of the 8 alternate routes now proposed by DOTPF for the Fish Creek Trail. The 2020 CE did not address at all the other 7 currently proposed alternate routes and is not adequate for NEPA review for the current proposals.

**C. The Potential for Significant Impacts Do Not Satisfy DOTPF's Requirements for a CE.** Any DOTPF CE is governed by Chapter 3 of the DOTPF Environmental Procedures Manual. There are two primary requirements for a CE stated at Section 3.2 of the Environmental Procedures Manual.

Section 3.2 defines a CE as a "category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementation of these regulations and for which neither an [EA] nor an [EIS] is required."

Section 3.2 also defines a CE as applying only to "actions which do not:

- Induce significant impacts to... land use in the area
- Have a significant impact on natural... resources
- Have significant impacts on travel patterns
- Otherwise, either individually or cumulatively, have any significant impacts."

Several Turnagain residents have stated concerns with this project's potential impacts

- (i) on this unique urban wilderness and last remaining undeveloped estuary in Anchorage;
- (ii) on its land use as wildlife habitat for nesting sandhill cranes, moose bear and fox among other species;
- (iii) blocking or impeding wildlife travel patterns;
- (iv) creating visual impacts;
- (v) creating significant changes to the Turnagain neighborhood;
- (vi) on residential land use associated with the visual and habitat impacts from clearing trees for specific trail routes;
- (vii) the potential to create public safety problems associated with allowing an increased homeless population occupying the area, including wildfire dangers, and changes in travel patterns of Anchorage's homeless populations within the estuary

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It should be noted that number of commenters (primarily affected homeowners) oppose the project in any form.

Without adequate analysis, these effects indicate this project “individually or cumulatively has a significant effect on the human environment,” which it contradicts requirements stated in Section 3.2 concerning impacts on land use, natural resource and travel patterns and has other significant impacts. These potential impacts may prevent use of a CE under DOTPF’s regulations and Manual and require completion of an EA and FONSI to determine significance of potential environmental impacts.

**D. There Are “Unusual Circumstances” Present Which Bar the Use of a CE.** DOTPF provisions 3.2.1 also state a CE cannot be used where there are “Unusual Circumstances,” which “include:

- Significant environmental impacts
- Substantial controversy on environmental grounds

It is apparent from the public comments that this project will have the potential for “significant environmental impacts” and is facing “substantial controversy on environmental grounds.” These represent “unusual circumstances” that prevent the use of a CE and requires an EA and FONSI to determine its environmental impacts.

Finally, the prior CE states it is issued in reliance on 23 CFR § 771.117(c)(3) (which states “[c]onstruction of bicycle and pedestrian lanes, paths, and facilities...” “...normally do not require any further NEPA approvals by the FHWA”). However, the “normal” exclusion for “bicycle and pedestrian lane and facilities” in this case is secondary to the other provisions of Chapter 3 of the DOTPF Environmental Procedures Manual—the environmental impacts, the environmental controversy, and the “Unusual Circumstances” override the “normal” NEPA treatment of walking and bicycle trails.

**E. Documentation of a CE is Required.** Section 3.3 addresses processing of a CE and requires a CE documentation form used to ... “ensure that the project does not involve unusual circumstances that require an EA or EIS”. This documentation must be completed, and must address the impacts identified in the public comment process, as part of the process of allowing a CE. Based on conversations and emails, it appears that a determination to use a CE has already been made, regardless of the route selected, including routes not identified at the time of the prior CE. If documentation justifying a CE has already been completed TCC requests that it be made available to the public for its review, and we would appreciate receiving a copy of this documentation.

**2. Section 404 Wetlands Permit.** Finally, it is unclear as to whether some of the alternatives of the Fish Creek Trail project are required to obtain an individual Section 404 permit from the U.S. Army Corps of Engineers to allow any construction involving discharges in these wetlands. To do so the Project must demonstrate that it has avoided to the maximum feasible extent any wetlands in its route selection, and that the Project’s benefits outweigh its damages to the wetlands values of the Estuary. The Fish Creek Estuary is Class A wetlands requiring an individual Section 404 permit from the Corps of Engineers. While some of the alternatives will likely affect wetlands, other have been identified may avoid wetlands and wetland impacts. TCC would like to see the documentation regarding the project’s need for an individual Section 404 permit.

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If an EA is required by the project, the Corps of Engineers should be the lead or cooperating agency, because the project's primary environmental impacts are most likely to be on the wetlands.

Thank you for considering our comments, and we look forward to receiving the documentation requested.

Sincerely,

Anna B. Brawley  
Turnagain Community Council President

Cathy L. Gleason and Jon Isaacs, Co-Chairs  
Turnagain Community Council Land Use Committee