



Audubon Society
Northern Virginia



SIERRA
CLUB

Great Falls Group

March 14, 2022

Via email Rodney.Lusk@fairfaxcounty.gov

The Honorable Rodney Lusk
Lee District Supervisor
Franconia Governmental Center
6121 Franconia Road
Alexandria VA22310

Dear Supervisor Lusk:

This letter is sent on behalf of the Audubon Society of Northern Virginia, the Friends of Accotink Creek, the Potowmack Chapter of the Virginia Native Plant Society, the Audubon Naturalist Society, and the Great Falls Group of the Sierra Club.

We truly appreciate your meeting with us, listening to our concerns about the environmental impacts of the Cinder Bed Road Bikeway, and visiting the project area. Your willingness to tramp through the muddy woods with us, leaping over the stream in a single bound (and in street shoes) shows admirable concern for the views of all of your constituents.

Although we are disappointed that you have decided to support the bikeway through Cinder Bed Woods, we are heartened that you support reform of the Active Transportation planning process. In our view, the current process is fundamentally flawed: it has led to an environmentally destructive and expensive trail, caused divisive conflict between active transportation advocates and environmental advocates late in the design process, and created unnecessary controversy, headaches and difficult choices at the 11th hour, long after planning was into its final stages. We want to learn from this experience and we are ready to support your reform effort in any way we can.

Although we appreciate your efforts to mitigate the effects from the project, we remain opposed to its construction along the proposed route. We want to raise several concerns for your consideration, specifically, failure to comply with the National Environmental Policy Act (NEPA), which we believe led to inadequate analysis of potential impacts on and inadequate protections for rare natural resources, as well as a mis-application of a Corps of Engineers Nationwide Permit.

To summarize, our requests are that Fairfax County Department of Transportation (FCDOT):

1. Prepare an Environmental Assessment.
2. Prepare an alternatives analysis.
3. Do a wetlands delineation during the growing season.

4. Do a field survey for the federally-threatened Small Whorled Pogonia during the growing season (June 1 to July 29).
5. Do an assessment of state-threatened or endangered species, specifically the Wood Turtle, which likely has habitat in the area.

**The project impacts require review in a
NEPA Environmental Assessment.**

Because the Cinder Bed Road Bikeway receives federal funding, the project is covered by NEPA. The Virginia Department of Transportation (VDOT) granted the project a Programmatic Categorical Exclusion under NEPA on July 19, 2021.

There are varying levels of analysis required under NEPA: Environmental Impact Statement (EIS), Environmental Assessment (EA), and Categorical Exclusion (CE). Council on Environmental Quality regulations at 40 C.F.R. Part 1508, upon which the Federal Highway Administration (FHWA) regulations implementing NEPA are based, specify that a categorically excluded action is one that does not “individually or cumulatively have a significant effect on the human environment . . . and for which . . . neither an environmental assessment nor an environmental impact statement is required.” Implementing FHWA regulations at 23 C.F.R. 771.117 specify that actions qualifying as CEs “do not involve significant environmental impacts; . . . do not have a significant impact on any natural, cultural, recreational, historic or other resource; . . . or do not otherwise, either individually or cumulatively, have any significant environmental impacts.”

Construction of bicycle and pedestrian lanes, paths and facilities are categorized under the FHWA regulations as actions that “normally would be classified as a CE,” but which require appropriate environmental studies to determine if a CE is appropriate when there are significant environmental impacts (e.g., impacts to endangered or threatened species) or substantial controversy on environmental grounds.

Although this project will have significant environmental impacts and there is substantial controversy on environmental grounds (which was evident from public comments received in 2015 and 2021), VDOT granted the CE. We believe the CE was granted in error, based on significant environmental impacts which, we believe, have not been adequately investigated. We recommend the reviewing agencies, before proceeding further, prepare an EA pursuant to the guidelines in 23 CFR 771.119 and 40 CFR 1508.9. In addition to evaluating environmental impacts of a proposal, such a document would provide a concise discussion not only of the impacts of the proposed project but also the alternatives, information that has not been made publicly available to date.

There are significant environmental impacts.

Significant environmental impacts can be anticipated from the project. The full scope of the potential impacts, both along the proposed project site and along alternative paths for the project, should be outlined in an EA.

The environmental resources in the Newington Conservation Site are extensive but only partially documented. It is a natural heritage resource [designated by Virginia’s Department of Conservation and Recreation \(DCR\)](#). Natural heritage resources are defined as “the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.” The area is designated

a natural heritage resource due to the “vulnerable” [Coastal Plain / Outer Piedmont Acidic Seepage Swampsⁱ](#). This community type is considered globally uncommon to rare by the network of Natural Heritage programs. Its distribution is limited to small patches on the Atlantic Coastal Plan and eastern Piedmont from extreme southeastern New York to southeastern Virginia. Many stands have been damaged or destroyed by hydrologic alterations from development. The Acidic Seepage Swamps on the site are not fully represented in the DCR map, because their full extent has yet to be inventoried or mapped. The bikeway would go right through the northernmost section of vulnerable and rare Acidic Seepage Swamp. Also present in the Newington Conservation Site, but not documented by DCR, are “critically imperiled” [Magnolia Bogsⁱⁱⁱ](#), a globally rare habitat unique to the fall zone in the Mid-Atlantic. WRA did not map these significant resources in their surveys of the area, another indication of the lack of thorough environmental assessment which has characterized this project. The project crosses extensive forested wetlands and is entirely in the floodplain and the Resource Protection Area. The identified resources are sensitive to any modification of the hydrology through soil disturbance and compaction in the area, both of which are reasonably anticipated effects from installation of piers and use of heavy equipment.

A separate forthcoming letter from Rod Simmons (Plant Ecologist for the City of Alexandria, Associate of Virginia DCR, Division of Natural Heritage, and Environmental Consultant for Fairfax County Park Authority) will address the rare natural heritage resources found on the site.

Because of the sensitivity of the resources and their rarity, any adverse impact is significant.

We also are concerned that WRA wetlands delineation may understate the total area potentially affected. WRA concluded there would be impacts to 0.48 acres of wetlands and 251 linear feet of streams based on field studies conducted in February 2018 and January 2020. Its survey was relied upon by the Corps of Engineers in its desktop review. However, to ensure that all three wetlands parameters—hydric soils, hydrology, and hydrophytic vegetation—are observed and recorded accurately, the field assessment must be conducted within the growing season—not the winter, when these field studies were done. Understating the wetlands area would understate potential environmental impacts. In addition, because the anticipated use of Corps of Engineers Nationwide Permit 23, which depends in part on the acreage affected (as well as a CE), an accurate survey should be used. A project that impacts 0.50 acres or more does not qualify for the Nationwide Permit. This project is only 0.02 acres under that threshold, well within human error. A second look should be taken at the extent of wetlands on the site when they are properly delineated during the growing season.

There is substantial opposition.

In 2015, Friends of Accotink Creek [voiced opposition^{iv}](#) to construction of a trail through the area. In 2021, letters of opposition from [Audubon Society of Northern Virginia^v](#) (writing on behalf of its more than 5,000 members), [Friends of Accotink Creek^{vi}](#), and others were sent during the public comment period following the only public meeting that the FCDOT held for this project, on May 10, 2021. FCDOT had every reason to know there was substantial opposition on environmental grounds yet proceeded in its consultation with VDOT indicating that it anticipated none.

Federal and state listed species may be present and adversely affected.

We do not agree with the statement in your February 24, 2022 email to us: “Federal regulations required that the project staff study environmental impacts to rare species, and [a comprehensive report found direct impacts](#)

to be minimal.” FCDOT’s determinations concerning threatened and endangered species are inadequate in large part because they were not done during the growing season, or the season when the species might be observed on the site. WRA conducted a threatened and endangered species project review that considered the impacts on five federal- and state-listed species: Northern long-eared bat, Small whorled pogonia, Rusty-patched bumblebee, Wood turtle, and Tri-color bat. We take exception to conclusions regarding the Small Whorled Pogonia and state threatened or endangered species, such as the Wood turtle.

The Virginia Department of Conservation and Recreation (DCR) [recommended](#)ⁱ an inventory of the Small Whorled Pogonia during the growing season (June 1 to July 29). WRA conducted a pedestrian survey on a single day (February 21, 2020) to identify habitat for the Small Whorled Pogonia, and concluded that no suitable habitat was present and no further field study was needed. Other expert ecologists dispute this, and have identified Small Whorled Pogonia habitat in the project area, based on the character of the area and presence of indicator species such as Indian cucumber, partridgeberry, and New York fern. No additional field survey for Small Whorled Pogonia was conducted, despite DCR’s recommendation.

The assessment of state-listed species also appears to be cursory or inadequate. The [WRA technical memorandum](#)^{vii} does not describe any efforts to find any of the state-threatened or endangered species, such as the Wood turtle.

There has been no alternatives analysis

For projects that do not qualify for Programmatic Categorical Exclusion—and we believe this project does not, for reasons stated above—the NEPA process requires an analysis of alternatives, including a no-build alternative. While we do not want to oppose active transportation trails, proper siting of them is critical. Without an alternatives analysis, it is impossible to ensure a trail has been sited properly to avoid significant environmental impacts. We believe that it was inappropriate not to consider alternatives given the significance of the natural resources at stake in this site.

We have modified the Alternatives Comparison (dated 2/16/22) that was handed out at our recent site visit, to include an additional alternative which we believe meets FCDOT’s stated objective and would be far less environmentally harmful than the current proposed alignment. See [Modified Alternatives Comparison](#)^{viii}.

There has been no demand analysis

You state in your 2/24 email that “This trail will improve our active transportation network and reduce the number of cars on our streets by giving residents alternatives to driving.” And yet there is no evidence to support that conclusion, because no demand analysis was done.

Again, we appreciate your efforts to work with the project sponsors to mitigate adverse environmental impacts, such as by requiring a comprehensive invasive species management plan. However, we do not believe that the potential environmental impacts have been properly assessed according to NEPA requirements. At a minimum, we believe the project requires an EA to document conditions in the field, both along the proposed project path and available alternatives. Those analyses should be made available for public review.

Thank you for your consideration.

Sincerely,

/x/Betsy Martin
Director, Audubon Society of Northern Virginia

/x/Philip Latasa
Friends of Accotink Creek

/x/Alan Ford
President, Potowmack Chapter
Virginia Native Plant Society

/x/Renee Grebe
NOVA Conservation Advocate, Audubon Naturalist Society

/x/Ann Bennett
Land Use, Climate, and Energy, Sierra Club Great Falls Group

Cc:

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Rene Hypes, Natural Heritage Project Review Coordinator, DCR, Rene.hypes@dcr.virginia.gov .
The Honorable Don Beyer, U.S. House of Representatives.

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- ⁱ July 29, 2020, letter from René Hypes, Natural Heritage Project Review Coordinator, at <https://drive.google.com/file/d/1HadobpKiaxRgsmUzqB-406wJTSGOgmZ1/view>
- ⁱⁱ [https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.686944/Acer rubrum - Nyssa sylvatica - Magnolia virginiana - Viburnum nudum var nudum - Osmunda cinnamomea Swamp Forest](https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.686944/Acer_rubrum_-_Nyssa_sylvatica_-_Magnolia_virginiana_-_Viburnum_nudum_var_nudum_-_Osmunda_cinnamomea_Swamp_Forest)
- ⁱⁱⁱ [https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.732427/Nyssa sylvatica - Magnolia virginiana - Rhododendron viscosum - Toxicodendron vernix - Smilax pseudochina Swamp Woodland](https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.732427/Nyssa_sylvatica_-_Magnolia_virginiana_-_Rhododendron_viscosum_-_Toxicodendron_vernix_-_Smilax_pseudochina_Swamp_Woodland)
- ^{iv} <https://www.accotink.org/2015/LongBranchTrail.htm>
- ^v May 17, 2021, letter from Tom Blackburn and Betsy Martin, Audubon Society of Northern Virginia, at <https://drive.google.com/file/d/1nhchPEWT5IU6vs1VLV0n3rrm1SuBvPWd/view>
- ^{vi} May 15, 2021 letter from Primary Conservator, Friends of Accotink Creek, at <https://drive.google.com/file/d/1nhchPEWT5IU6vs1VLV0n3rrm1SuBvPWd/view>
- ^{vii} July 9, 2021 (revised Feb. 4, 2022), Technical Memorandum (Threatened and Endangered Species Project Review) to VDOT from Caleb Parks, Senior Project Environmental Planner, Whitman, Requardt and Associates, at https://drive.google.com/file/d/14eHeqZZnb1p_8Ku-JLMLG82jQtvX1efD/view
- ^{viii} Modification of Cinder Bed Road Bikeway Alternative Comparison dated February 16, 2021, at https://drive.google.com/file/d/1YQAKLuOHTe85j7mb6_w1JI_2w7wd2b7M/view