

EXHIBIT 2



United States Department of the Interior



FISH AND WILDLIFE SERVICE

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IN REPLY REFER TO:

FWS/LIAFO

November 14, 2022

Bobb Beauchamp
Environmental Protection Specialist
Chicago Airports District Office
Federal Aviation Administration
2300 East Devon Avenue, #320
Des Plaines, Illinois 60018

Dear Mr. Beauchamp:

This letter responds to your request for concurrence found in the Biological Assessment (BA) received on October 21, 2022, for construction activities associated with the Midfield Air Cargo Development at Chicago Rockford International Airport (Airport), and impacts to the federally endangered rusty patched bumblebee (RPBB) (*Bombus affinis*). The project area is located within the existing airport property in Rockford, Winnebago County, Illinois. The U.S. Fish and Wildlife Service (Service) previously reviewed the biological assessment (BA) received on June 22, 2022. We have reviewed the revised BA and have the following comments.

Consultation Background

The Federal Aviation Administration (FAA) consulted with our office under Section 7 of the Endangered Species Act as a part of the Environmental Assessment for the proposed project in 2018. No critical habitat was listed within the project site for the Indiana Bat, Northern Long-eared Bat, RPBB, Prairie Bush-clover, or Eastern Prairie Fringed Orchid; therefore, FAA assumed no impacts would occur. On August 8, 2021, an observation was made of the RPBB within the Bell Bowl Prairie area at the Airport.

On April 18, 2022, the FAA provided the Service with a draft BA for review and concurrence, and on June 16, 2022, the Service requested the FAA provide a final version, which we subsequently received on June 22, 2022. On August 4, 2022, we provided the FAA with clarification on the RPBB consultation guidance. Based on the guidance clarification, the FAA prepared a revised Final Biological Assessment referenced above.

We have reviewed the revised BA, with specific interest to section 4.1.1, and agree with its analysis and findings; we therefore adopt the BA and incorporate it by reference herein.

Changed Conditions

Based on the August 8, 2021, identification of RPBB within the project area, the Airport modified project actions to be more protective of rusty patched bumble bee resources. The Airport revised project plans to the extent that impacts to the RPBB are not likely to occur from the project. We agree that, as stated in the BA, Section 5, significantly larger habitat complexes suitable for rusty patched bumble bee foraging, nesting, and overwintering exist within 10 km of the Action Area, which are likely preferable to the species due to available habitat conditions, proximity of the HPZs to one another and larger flight and foraging corridors.

These complexes overlap with four other HPZs and are located along the Fox and Kishwaukee river corridors, as well as managed and protected natural areas including several parks within the Winnebago Forest Preserve system. The Action Area is equivalent to approximately 0.8% of the foraging and nesting habitat available within a 10 km radius. The best apparent habitat complex within a HPZ is located approximately 5.5 km to the west and includes approximately 108 acres of foraging, 726 acres of nesting, and 1,438 acres of overwintering habitat, based on the analysis described in Section 2.2.5 of the BA. The complex is partially within Severson Dells Forest Preserve, Funderburg Forest Preserve, an active prairie restoration site, Levi and Ester Fuller Memorial Forest Preserve, and Howard Colman Hall Creek Preserve.

It is, therefore, reasonable to assume that because of the landscape context of the Action Area and the proximity of preferable and larger habitat complexes, this Action's removal of foraging and nesting habitat within the Action Area would not be expected to rise to an adverse effect and is considered to be an insignificant and discountable effect. Our review of this BA included consideration of the current overall declining status of the RPBB and the inferred condition of the species within the action area (environmental baseline). We then assessed the effects of the proposed action and the potential for cumulative effects in the action area on individuals, the affected populations, and the species as a whole.

Based on the analysis presented in the BA and the implementation of the conservation measures described below, and included in the BA, the Service concurs with the FAA's determination that the revised proposed actions are "not likely to adversely affect" the RPBB. Should FAA or the Airport modify the project, or new information indicate federally listed species may be affected, consultation should be reinitiated.

It is our understanding that the following conservation measures will be listed in the Written Re-Evaluation of the 2019 Environmental Analysis to be completed by FAA after the completion of consultation with the USFWS and Illinois Department of Natural Resources (ILDNR). The Written Re-Evaluation is the NEPA process the FAA uses to determine if the conclusions reached within the original NEPA document stand or if supplemental NEPA documentation must be completed. These conservation measures will be listed as Airport responsibilities. Any failure to complete these

measures could put the Airport in grant assurance violation. The Service appreciates this commitment to carry out the conservation measures identified and outlined in the BA. We also list those measures here:

1. Ground disturbance activities within the Action Area will occur during a consecutive calendar period from October 15 to March 15 to prevent floral resources from blooming and nesting of the rusty patched bumble bee within the Action Area.
2. No construction parking or staging shall occur within the 6.2 acre prairie remaining after the Action
3. Erosion control shall be implemented as specified in the Stormwater Pollution Prevention Plan.
4. The Action has been redesigned to avoid impact to 6.2 acres (3.6 acres high quality and 2.6 acres degraded) of existing Bell Bowl Prairie. The 6.2 acres will remain after the Action.
 - a. To prohibit encroachment during construction, the 6.2 acre remaining prairie shall be demarcated by posted signs and temporary silt fence around the perimeter of the prairie during construction in the Action Area.
 - b. No construction work or other disturbance shall occur within the 6.2 acre remaining prairie. All temporary sedimentation and erosion control and signs shall be removed.
5. Routine maintenance of the 6.2 acre remaining prairie will be added to the Airport's Asset Management System and will include the following activities:
 - a. During the first winter season post-construction (October 15 – March 15) woody encroachment will be removed mechanically in a manner as to not disrupt the prairie substrate. Heavy machinery shall not be used.
 - b. Vegetation shall be mowed once annually after the bumble-bee active flight season (October 15 – March 15) to discourage woody plant establishment and encourage herbaceous growth.
 - c. Targeted spot treatment with herbicide will be used as needed to limit woody plant establishment. The herbicide shall be applied on the cut stumps following label instructions and shall not be broadcast sprayed.
 - d. Every three years, woody encroachment shall be monitored and removed mechanically as necessary between October 15 and March 15 in a manner as to not disrupt the prairie substrate. Heavy machinery shall not be used.
6. Insecticide use will not be permitted within the 6.2 acre remaining prairie or in the adjacent mowed and hay field areas

Conclusions

On July 5, 2022, the U.S. District Court of the Northern District Court of California vacated the 2019 regulations implementing section 7 of the Endangered Species Act (ESA). On September 21, 2022, the Ninth Circuit Court of Appeals granted a request to stay the U.S. District Court of Northern

California's July 5, 2022, order that vacated the 2019 ESA regulations. As a result, the 2019 regulations are again in effect, and the Service has relied upon the 2019 regulations in issuing our written concurrence on the action agency's "may affect, not-likely-to-adversely-affect" determination. However, because the outcome of the legal challenges to the 2019 ESA regulations is still unknown, we considered whether our substantive analyses and conclusions would have been different if the pre-2019 regulations were applied in this informal consultation. Our analysis included the prior definition of "effects of the action." We considered all the "direct and indirect effects" and the "interrelated and interdependent activities" when determining the "effects of the action." We then considered whether any "effects of the action" that overlap with applicable ranges of listed species would be wholly beneficial, insignificant, or discountable to the species. As a result, we determined the substantive analysis and conclusions would have been the same, irrespective of which regulations applied.

As previously stated, our conclusions are based on our independent review of the Revised BA and our findings that the BA is considers the appropriate statutory and regulatory factors and is supported by the best available scientific data. We therefore concur with FAA's determination that the project, as described in the Revised BA with incorporation of the conservation measures, is not likely to adversely affect the RPBB and will have no effect on the Indiana bat (*Myotis sodalis*), northern long-eared bad (*Myotis septentrionalis*), Hine's emerald dragonfly (*Somatochlora hineana*), eastern prairie fringed orchid (*Platanthera leucophaea*), or the prairie bush clover (*Lespedeza leptostachya*).

We provide the above comments in accordance with the Endangered Species Act, as amended. Thank you for the opportunity to provide comments. If you have any questions or concerns regarding these comments, please feel free to contact Heidi Woeber at (309) 757-5800, ext. 209 or heidi_woeber@fws.gov.

Sincerely,



Kraig McPeck
Field Supervisor
Illinois and Iowa Field Office

Cc:
ILDNR (Holtrop)
Greater Rockford International Airport (Dunn, Oakley)
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