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VIA EMAIL (Nigel.Cooney@usdoj.gov, tlester@aghllaw.com)

August 25, 2022

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Thomas J. Lester
AGHL Law
6735 Vistagreen Way, Suite 110
Rockford, IL 61107

Re: ***Natural Land Institute v. The Greater Rockford Airport Authority, et al.***
(N.D. Ill. 21-cv-50410)

Nigel & Tom:

I write regarding the hearing scheduled for August 31, 2022. The Court has advised that, at the hearing, "the parties should be prepared to discuss the possibility of mediation." Dkt. 73 at 2. In particular, the Court encouraged the parties to attempt to resolve this case, stating:

> The issues in this case are extremely important. At stake on one side is the continued existence of a natural treasure and an endangered bee and plants. On the other side is massive economic development in a community that desperately needs it. Those are competing goods. A reasonable person might believe that this type of dilemma would best be resolved through negotiation, not litigation. In the Court's experience, oftentimes, facts and circumstances exist in the background—unknown to the Court or even the opposing party—that make the all-or-nothing litigation determination less than ideal. If those facts and circumstances exist in this situation, the Court is more than willing to help the parties attempt to find a solution.

Id. at 2-3. NLI agrees with the Court and agrees to mediate the parties' dispute, with or without the Court's help as would be most useful. If Defendants also agree with the Court, please advise me accordingly.

In the interim, I have enclosed a report from Geosyntec Consultants ("Geosyntec"), dated July 29, 2022. Geosyntec reviewed the FAA's April 2022 Biological Assessment ("BA") and the designs discussed within it. The intent of Geosyntec's review was to identify feasible design alternatives that would minimize or avoid impacts to the remaining high-quality sections of the Bell Bowl Prairie, as well as minimize impacts to adjacent lower quality prairie segments. In addition to its report, Geosyntec and NLI's other design-team consultants can provide valuable input in resolving this litigation in future meetings with Defendants' design team.

I also still seek additional information and clarification regarding the August 4, 2022, letter (the "Letter") from Kraig McPeek (USFWS) to Bobb Beauchamp (FAA). As I requested in my correspondence to Nigel, dated August 8, 2022:

> First, the Letter refers to the final biological assessment ("BA") it received from the FAA on June 22, 2022. Please send me that final BA as soon as possible for NLI's review.
>
> Second, the letter is characterized as a "further respon[se] to [the FAA's] request to initiate formal consultation." Does this mean that Section 7 formal consultation has yet to be initiated?
>
> Third, the letter refers to the USFWS's "ongoing review of the BA." When does the USFWS estimate its review of the BA will be complete?
>
> Fourth, in the May 5, 2022, letter (the "May 5 Letter") from the USFWS to the FAA, the USFWS stated that it "understand[s] that any and all proposed ground disturbance, including all surface vegetation removal by scraping, will be done after October 15, 2022, and will be completed by March 15, 2023." Does that remain USFWS' understanding?
>
> Fifth, the May 5 Letter asserts that "[n]o ground disturbing vegetation removal is proposed during the Rusty Patched Bumble Bee's active season." Does that assertion remain accurate?
>
> Sixth, the May 5 Letter estimates that the USFWS "expect[s] to provide [the FAA] with [its] biological opinion no later than September 1, 2022." Does that remain the USFWS' current estimate? If not, what is USFWS' current estimate as to when it will provide the FAA its biological opinion?

Seventh, can you confirm that no insecticides have been used or will be used on Bell Bowl Prairie during the Section 7 consultation process?[1]

Please let me know if NLI can expect answers to these requests prior to the hearing.

Very truly yours,

von BRIESEN & ROPER, s.c.

s/ Joseph M. Russell
Joseph M. Russell

cc: Monica V. Mallory (monica.mallory@usdoj.gov)
Devin B. Noble (dnoble@aghllaw.com)

Enclosures

[1] In addition to this question, please also inform me if insecticides have been applied to areas adjacent to Bell Bowl Prairie.

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July 29,2022

Kerry Leigh
Executive Director
Natural Land Institute
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Rockford, IL 61104

Subject: **Review of:**
Draft Biological Assessment for The Rusty Patched Bumble Bee (April 2022)
For Midfield Cargo Development at the Chicago Rockford International Airport

Dear Ms. Leigh:

We performed this review as the request of NLI. Our review was limited principally to the alternatives analysis (Section 1.7) of the draft biological assessment (DBA) and on the roadway design criteria (Section 1.5) as they relate to the design alternatives.

The intent of the review was to identify feasible design alternatives that would minimize or avoid impacts to the remaining high-quality sections of Bell Bowl Prairie, as well as minimize impacts to adjacent lower quality prairie segments.

The review was performed by Dennis Dreher and Dawn Brook. Brief qualifications are provided below.

Dennis Dreher is a senior consultant with over 40 years experience in environmentally sustainable planning and design. His experience includes successfully leading environmental planning, design, and permitting for several large commercial and intermodal projects. He also was the lead author of the Kishwaukee River Corridor Green Infrastructure Plan and has previously advised the Natural Land institute on matters related to green infrastructure and sustainable development ordinances.

Dawn Brook, PE, is a professional civil engineer with over 20 years of experience in the area of land development. Her experience includes project management, site civil design, local and state permitting, and construction management. Ms. Brook has extensive experience in large scale development projects in the private industry for site civil improvements such as industrial, Class I railroads, and intermodal facilities. She has coordinated and led multi-disciplined teams for private and public clients.

Overview

The Draft Biological Assessment (DBA) was prepared by the U.S. Department of Transportation, Federal Aviation Administration and submitted to the U.S. Fish and Wildlife Service on April 18, 2022. It was submitted as part of a request to initiate formal consultation under Endangered Species Act Section 7 for the proposed Midfield Air Cargo Development at the Chicago Rockford International Airport.

The DBA presents and evaluates six design alternatives with respect to their impacts on the Bell Bowl Prairie (BBP), particularly remaining high quality areas. These alternatives are compared with respect to modeled vehicle crashes within the 20 year design horizon. All alternatives also are evaluated as to whether they meet the project purpose and need by providing the airfield and landside improvements that would accommodate the forecast air cargo operations. In addition, the evaluation narrative notes that some alternatives also impact existing utilities and the "MRO facility" parking lot.

Alternative 1 is the original action proposed in 2019. The remaining alternatives all eliminate a detention basin proposed in the original action that significantly impacted BBP and incorporate other roadway designs that have varying impacts on the prairie. One alternative also moves the main cargo building to further reduce prairie impacts.

Alternatives Evaluation

Section 1.7 of the DBA describes the alternatives, and they are summarized in Table 1 below. Following are analyses, comments, and suggestions regarding alternatives that address the goal of the NLI to protect all of the high-quality areas of BBP and to optimize overall prairie protection. The alternatives are listed in order of suggested preference.

Alternative 3: With respect to NLI goal, only Alternative 3 accomplishes avoidance of the remaining 5.2 acre high quality prairie. It also protects the most prairie overall (11.8 acres). This alternative includes a northern roadway alignment (through degraded prairie) and also moves the main cargo building and associated parking to the east to avoid the northern sector of the high-quality prairie. The DBA notes that this alternative does not meet the purpose and need of the project due to the inability to "provide the 1 million square foot cargo building to support the forecasted air cargo volume." However, the DBA provides no rationale as to why the cargo building has been reduced in size. In fact, it appears that there is considerable room to the east of the proposed footprint to accommodate the original building size (and potentially a partially relocated midfield apron, if necessary) in an area that is designated, in part, "existing roads and buildings to be removed."

Alternatives 4 and 5: These alternatives would eliminate direct roadway impacts to the high quality prairie. They propose to reroute the roadway to the east and southeast, respectively. These options would preserve 4 acres of high-quality prairie, and 6.7 acres of prairie in total.

However, these alternatives are described as not conforming to the "IDOT BLRS Recommendations for Roadway Radius and Superelevation". More specifically, the DBA refers to "avoidance of minimum curve radii and maximum superelevation (roadway banking) in areas subject to ice and snow." The report does not further elaborate on this conclusion. Several factors should be considered to address this identified obstacle.

- Section 1.5 of the DBA indicates the standard speed limit is 30 mph within the City of Rockford. However, the City of Rockford Engineering Design Manual also states for new roadways lower design speed should be discussed with City Engineer. A lower design speed would lower the allowable minimum curve radii.
- It is notable that the maximum stated superelevation is 2% for this roadway, as noted in Section 1.5 of the DBA. For context, the IDOT Bureau of Local Roads and Streets (BLRS) manual allows superelevation of up to 4.0% for new construction and 6.0% for reconstruction and also allows for lower design speeds.

Alternatives 4 and 5 are predicted, based on modeling, to have 14 and 15.7 crashes per the 20 year design horizon (i.e., less than 1 per year). This compares to 5.6 crashes in the preferred action (Alternative 2) and 47.6 in the no build alternative. The DBA alternatives analysis does not discuss any other safety options, such as reducing the assumed 30 mile per hour speed limit (as noted above) or implementing more innovative snow and ice practices such as pavement anti-icing or deicing, that could significantly lower the predicted accident rate.

Alternative 6: This alternative 6 proposes to bridge the prairie, thereby avoiding direct impacts to 4 acres of high-quality prairie, and 6.7 acres of prairie in total. However, the bridge would have an 'indirect' impact of shading the high-quality prairie (0.7 acres). The bridge also may adversely affect other ecological functions such as grassland bird habitat.

Alternative 2: This is the alternative recommended by the applicant. It features a road directly through the prairie. It would allow retention of 3.6 acres of high quality prairie, and 6.2 acres of prairie in total. However, the remaining prairie would be severely fragmented.

Alternative 1: This reflects the original action based on the 2019 proposal. Only 0.9 acres of the high-quality prairie, and 2.4 acres of prairie in total, would be retained as a result of combined road, building, and detention basin incursions.

TABLE 1: ALTERNATIVES SUMMARY

Evaluation Factor	No Action	Alt 1: Original Action (2019)	Alt 2: Action	Alt 3: Northern Alignment	Alt 4: Eastern Alignment	Alt 5: Southeastern Alignment	Alt 6: Bridge Alignment
Meets Purpose and Need	No	Yes	Yes	No	Yes	Yes	Yes
Prairie Impact	0 acres	13.2 acres	9.3 acres	3.6 acres	8.7 acres	8.7 acres	8.7 acres direct 0.7 acres indirect
Prairie Retention	15.5 acres	2.4 acres	6.2 acres	11.8 acres	6.7 acres	6.7 acres	6.7 acres
Midfield Entrance Road Safety							
Crashes per 20 Year Design Horizon	47.6	5.6	5.6	8.4	14	15.7	7.5
Conforms to IDOT BLRS Recommendations for Roadway Radius and Superelevation*	NA	Yes	Yes	Yes	No	No	Yes

*The Illinois Department of Transportation Bureau of Local Roads and Streets Design Manual recommends avoidance of minimum curve radii and maximum superelevation in areas subject to ice and snow. The City of Rockford, Illinois averages 35 inches of snow per year.

Conclusions and Recommendations

Alternative 3 (as modified to address the capacity constraints stated by the applicant) is, by far, the best individual option for avoiding prairie impacts. If alternatives can be combined, and the roadway design limitations of alternatives 4 and 5 can be overcome with the remedies suggested above, the ideal design alternative would be to combine the moving of the cargo building with an option involving an eastern or southeastern road location. This would both avoid the high quality prairie and maximize overall prairie protection.

In addition to the consideration of project design alternatives, other mitigations should be addressed to minimize indirect impacts to the prairie. For example, to the extent feasible, salt spray from pavement deicing operations should be minimized by using innovative practices and/or installing seasonal barrier screens. Additionally, a landscaped buffer zone around the protected prairie should be clearly delineated and a plan developed for buffer and prairie access, long-term

protection, and ecological stewardship. Some of these items are addressed in Section 5.1: Conservation Measures. It is recommended that ecologists from NLI and its partners review this section thoroughly with respect to the long term objectives of protecting the ecological viability of Bell Bowl Prairie.

It should be noted that this review did not look at other factors -- e.g., potential chemical spills and potential indirect impacts – that are discussed in Chapter 4.

Redesign of the proposed project, whether it conforms to the applicant's recommended alternative or to a preferred design that minimizes impacts to the prairie, would involve coordination with stakeholders, updating drawings and stormwater calculations, and revising permit applications, as necessary. The review process for each agency varies thus making it difficult to anticipate a schedule.

Sincerely,

Dennis Dreher

Dawn C. Brook

Dennis Dreher
Senior Consultant

Dawn C. Brook, PE
Senior Consultant