

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

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NATURAL LAND INSTITUTE,

*Plaintiff,*

v.

THE GREATER ROCKFORD AIRPORT AUTHORITY,

THE GREATER ROCKFORD AIRPORT AUTHORITY  
BOARD OF COMMISSIONERS,

MICHAEL P. DUNN,  
EXECUTIVE DIRECTOR OF THE GREATER  
ROCKFORD AIRPORT AUTHORITY,

UNITED STATES DEPARTMENT OF  
TRANSPORTATION,

FEDERAL AVIATION ADMINISTRATION,

PETE BUTTIGIEG, SECRETARY OF THE UNITED  
STATES DEPARTMENT OF TRANSPORTATION,

STEVE DICKSON, ADMINISTRATOR OF FEDERAL  
AVIATION ADMINISTRATION,

UNITED STATES DEPARTMENT OF INTERIOR,

UNITED STATES FISH AND WILDLIFE SERVICE,

DEB HAALAND, SECRETARY OF UNITED STATES  
DEPARTMENT OF INTERIOR,

MARTHA WILLIAMS, ACTING DIRECTOR OF  
UNITED STATES FISH AND WILDLIFE SERVICE,

*Defendants.*

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Case No. \_\_\_\_\_

**PLAINTIFF'S COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is an action seeking declaratory and injunctive relief prohibiting any and all activities that will adversely affect the environmental resources associated with Bell Bowl Prairie in Winnebago County, Illinois. Proposed and scheduled roadwork and expansion for a Midfield Cargo Development (the “Proposed Action”) on the publicly-owned Chicago Rockford International Airport (“RFD” or “Airport”)<sup>1</sup>, which is operated by the Greater Rockford Airport Authority (“GRAA”), scheduled to begin on November 1, 2021, will *permanently destroy* Bell Bowl Prairie.

2. Illinois is known as the “Prairie State” because most of it was a natural grassland at the time of statehood. Since then, almost all of Illinois’ prairie has been plowed under except on land that was too steep, rocky, sandy, gravelly, or wet to cultivate. The steep, gravelly slope at Bell Bowl Prairie is what kept the prairie there from being farmed or otherwise destroyed until now.

3. Only one-hundredth of one percent - *0.01%* - of the original Illinois prairie remains in good condition. At most, it is estimated that only 18.4 acres of dry gravel prairie (such as Bell Bowl Prairie) is in good condition in the entire state. Native prairie such as Bell Bowl Prairie is so highly valued because it is vanishingly rare.

4. Bell Bowl Prairie has a number of rare and unusual plants. Two of the plants are so rare that they are listed by the State of Illinois as endangered: Prairie Dandelion and Large-Flowered Beardtongue.

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<sup>1</sup> The Airport also proposes a Northwest Cargo Development. That development does not impact Bell Bowl Prairie.

5. Bell Bowl Prairie is also home to the endangered Rusty Patched Bumble Bee (the “Bee”). The Bee was sighted as recently as August of this year at Bell Bowl Prairie. Once common throughout the midwestern United States, the Bee has disappeared from the vast majority of its native range and now stands on the brink of extinction, owing to habitat loss and destruction.

6. In 2017, the U.S. Fish and Wildlife Service (“USFWS”) listed the Bee as an “endangered species” under the Endangered Species Act. *See* Endangered Species Status for Rusty Patched Bumble Bee, 82 Fed. Reg. 3186, 3205 (Jan. 11, 2017).

7. The Bee once occupied grasslands and tallgrass prairies of the Upper Midwest, but most grasslands and prairies have been lost, degraded, or fragmented by conversion to other uses. The Bee needs areas that provide nectar and pollen from flowers, nesting sites (underground and abandoned rodent cavities or clumps of grasses), and overwintering sites for hibernating queens (undisturbed soil). As pollinators, Rusty Patched Bumble Bees contribute to our food security and the healthy functioning of our ecosystems.

8. The GRAA’s planned roadwork and expansion of the Proposed Action into Bell Bowl Prairie will further jeopardize the existence of the Rusty Patched Bumble Bee and destroy its habitat.

9. This complaint is necessitated by the failure of all of the named Defendants to protect Bell Bowl Prairie and its endangered or threatened flora and fauna. Contrary to both the letter and spirit of applicable federal and state statutes, the Defendants have violated the detailed regulatory framework set out to protect such precious resources as Bell Bowl Prairie and its endangered flora and fauna, including the Bee. Defendants have failed to consider proper alternatives for meeting the purposes of the Proposed Action that would not destroy Bell Bowl Prairie.

10. Defendants have also ignored the methodology and regulatory framework that requires a supplemental environmental assessment given the recent discovery of the Bee on Bell Bowl Prairie and the need for further review of viable and obvious less-harmful alternatives to the destruction of Bell Bowl Prairie given the Bee's presence at the Prairie.

11. Bell Bowl Prairie will be permanently destroyed—starting November 1, 2021—unless Defendants are stopped from proceeding with construction until further environmental and other regulatory assessment is performed, and alternative plans considered.

## **PARTIES**

### **The Plaintiff**

12. Plaintiff Natural Land Institute (“NLI”) is a member-supported, not-for-profit organization dedicated to preserving land and natural diversity for future generations. Since 1958, NLI has protected, managed, and restored 18,000 acres throughout Illinois and southern Wisconsin. These include prairies, forests, wetlands, and river corridors. Serving as a regional land trust, NLI accepts donations of properties, buys lands, manages natural areas, and helps landowners establish legal agreements that permanently limit harmful use and development. The mission of NLI is to create an enduring legacy of natural land in northern Illinois for people, plants, and animals. The role of NLI includes both advocacy for land preservation and land use planning and direct action to preserve areas by acquisition, either on its own or in conjunction with other organizations and agencies, or by working with landowners to voluntarily encumber their land with a conservation easement to protect its conservation values in perpetuity. NLI is headquartered in Rockford, Illinois.

13. Since 1958, NLI and its members have been dedicated to preserving land and natural diversity for future generations throughout Illinois and southern Wisconsin, including

forests, wetlands, river corridors, and prairies. Its mission is “to create an enduring legacy of natural land in northern Illinois for people, plants, and animals.”

14. NLI brings this lawsuit on behalf of its management, its employees and its approximately 700 members who have helped manage and care for Bell Bowl Prairie for decades. Many of these members regularly observe, visit, study, or otherwise enjoy threatened and endangered species at Bell Bowl Prairie. Leaving the habitat of such species without habitat protection harms the interests of these members and the public in viewing listed species, including the federally-listed endangered Bee, now and in the future, and benefiting from their existence. *See* Ex. A (Declaration of John White), Ex. B (Declaration of Zachary Grycan), Ex. C (Declaration of Jennifer Kuroda).

15. NLI and its members derive aesthetic, recreational, professional, economic, and personal benefits from the Bee and its habitat as well as the various flora on Bell Bowl Prairie. *Id.* Defendants’ failure to protect Bell Bowl Prairie decreases the Bee’s chances of survival and recovery, thereby harming NLI members’ interests in enjoying and protecting the Bee. These injuries are caused by the Defendants’ violations of the National Environmental Policy Act (“NEPA”), the Administrative Procedure Act (“APA”), the Illinois Endangered Species Protection Act,<sup>2</sup> as well as the GRAA’s agreement with NLI for custody and management. The violations and breaches are redressable through the relief requested by NLI.

### **The Defendants**

16. Defendant The Greater Rockford Airport Authority (“GRAA”) is a public, municipal corporation duly created, organized, and existing under the laws of Illinois, pursuant to 70 Ill. Comp. Stat. Ann. 5, *et seq.*, with administration offices at 60 Airport Drive, Rockford, Illinois

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<sup>2</sup> NLI intends to amend its Complaint to address, among other possible claims, claims under the Endangered Species Act, 16 U.S.C. §§ 1531, *et seq.*

61109. Formed in 1946, GRAA has four jurisdictions who appoint a seven-member Board of Commissioners. The establishment, continued maintenance, and operation of the Airport and its facilities are in the public interest, and such purposes are declared to be public and governmental in nature and essential to the public interest under Illinois law. According to the GRAA's 2022 Annual Budget and Appropriation Ordinance, one of the objectives of the GRAA is to "[p]rotect and enhance the environment."

17. Defendant The Greater Rockford Airport Authority Board of Commissioners is composed of seven members. The Mayor of the City of the Rockford appoints three members, the County Board Chairman of Winnebago County appoints two members, the Mayor of Loves Park appoints one member, and the Village President of Machesney Park appoints one member. The Board of Commissioners is responsible for setting policies and ordinances governing the operations at RFD, which are carried out or enforced by a professional staff.

18. Defendant Michael P. Dunn ("Dunn") is the Executive Director of the GRAA, and is sued in that capacity. As the Executive Director, Dunn is responsible for overseeing the staffing of departments and the day-to-day operations of the Airport. Dunn reports to the Board of Commissioners of the GRAA.

19. Defendant United States Department of Transportation ("DOT")<sup>3</sup> is the agency of the United States responsible for issuing an environmental finding to allow approval of the RFD's Airport Layout Plan for the GRAA's Proposed Action. DOT is charged with implementing and ensuring compliance with federal Acts and regulations, including but not limited to the National Environmental Policy Act ("NEPA"). It is subject to the Administrative Procedure Act ("APA") and other federal laws.

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<sup>3</sup> Together the United States Department of Transportation, Federal Aviation Administration, Secretary Buttigieg and Administrator Dickson are referred to as the "FAA Defendants."

20. Defendant Federal Aviation Administration (“FAA”) is a federal agency within the United States Department of Transportation. FAA is charged with implementing and ensuring compliance with federal Acts, including but not limited to NEPA. FAA is subject to the APA and other federal laws.

21. Defendant Pete Buttigieg is named solely in his official capacity as Secretary of the United States Department of Transportation. In that capacity, Secretary Buttigieg is responsible for the administration, operations, and activities of the Department of Transportation, including the Federal Aviation Administration, and for the federal government’s compliance with NEPA and the APA.

22. Defendant Steve Dickson is named solely in his official capacity as Administrator of the Federal Aviation Administration. In that capacity, Dickson is responsible for compliance under NEPA and the APA for the Proposed Action on Bell Bowl Prairie.

23. Defendant United States Department of Interior (“DOI”)<sup>4</sup> is the agency of the United States that is an entity responsible for consultation under the Endangered Species Act of 1973 (“ESA”). DOI is charged with implementing and ensuring compliance with federal Acts and regulations, including but not limited to NEPA and ESA. It is subject to the Administrative Procedure Act (“APA”) and other federal laws.

24. Defendant United States Fish and Wildlife Service (“USFWS”) is a federal agency within the United States Department of Interior. USFWS is charged with implementing and ensuring compliance with federal Acts, including but not limited to NEPA and ESA. USFWS is subject to the APA and other federal laws.

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<sup>4</sup> Together, the United States Department of Interior, United States Fish and Wildlife Service, Secretary Haaland, and Acting Director Williams are referred to as the “USFWS Defendants”.

25. Defendant Deb Haaland is named solely in her capacity as Secretary of the United States Department of the Interior. In that capacity, Haaland is responsible for the administration, operations and activities of the Department of Interior, including USFWS, and for compliance with NEPA, ESA, and the APA.

26. Defendant Martha Williams is sued in her official capacity as Acting Director of the USFWS. Through delegation of authority from the Secretary of the Department of the Interior, Williams is legally responsible for the failure to protect Bell Bowl Prairie.

### **JURISDICTION AND VENUE**

27. NLI brings this action under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370e, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, 28 U.S.C. § 2201 (Declaratory Judgment Act), 28 U.S.C. 2202 and Fed. R. Civ. P. 65 (Injunctive and Temporary Relief), 28 U.S.C. § 1361 (mandamus actions), and state law claims for which there is jurisdiction under 28 U.S.C. § 1367. NLI intends to amend this Complaint for further relief in the proper course of law and time to seek relief under the Endangered Species Act (“ESA”), 16 U.S.C. § 1532, *et seq.*, which provides for sixty days written notice prior to commencing an action under the ESA. *See* 16 U.S.C. § 1540(g).

28. This Court has subject matter jurisdiction pursuant to 5 U.S.C. §§ 701-706 (judicial review under APA); 28 U.S.C. § 2201. This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361 which grants federal district courts “original jurisdiction of all civil actions arising under the . . . laws . . . of the United States” and “any action in the nature of mandamus to compel an officer . . . of the United States or any agency thereof to perform a duty owed to the plaintiff.” The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over all other claims.



29. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(b)(1)-(2) and (e) because the Bell Bowl Prairie located on the RFD is within the Western Division of the Northern District of Illinois.

30. The federal agencies have waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

### **STATUTORY AND REGULATORY FRAMEWORKS**

#### **The National Environmental Policy Act (“NEPA”)**

31. NEPA’s central goals are “[t]o declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; [and] to enrich the understanding of the ecological systems and natural resources important to the Nation . . . .” 42 U.S.C. § 4321.

32. NEPA requires that “Federal agencies consider the environmental impacts of their actions in the decision-making process” and “provide a detailed statement on proposals for major Federal actions significantly affecting the quality of the human environment. . . . The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process.” 40 C.F.R. § 1500.1(a).

33. As the Nation’s environmental policy, Congress has declared that “it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in

productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.” 42 U.S.C. § 4331(a).

34. “Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.” 42 U.S.C. § 4331(c).

35. Pursuant to 42 U.S.C. § 4342, Congress created the Council on Environmental Quality (CEQ) to promulgate regulations applicable to all federal agencies consistent with the intent and purposes of NEPA. *See* 40 C.F.R. § 1500 *et seq.* NEPA is binding on all Federal agencies. *Id.* § 1500.3(a).

36. Under NEPA, federal, state, and local agencies are authorized to cooperate with one another in preparing environmental documents. 40 C.F.R. § 1506.2. Federal, state and local agencies as well as any applicants and the public are also required to be involved in preparing the environmental assessments and implementing NEPA. 40 C.F.R. §§ 1501.5(e), 1506.6. Agencies shall further consult with other agencies concerning concurrence on statutory determinations. 40 C.F.R. § 1501.1(b)(2).

37. All agencies of the Federal Government shall also “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources[.]” 42 U.S.C. § 4332(E).

38. NEPA regulations permit federal agencies, such as the FAA, to set forth their own policies and procedures for implementation and compliance with NEPA. *See* 40 C.F.R. § 1500.6. The FAA’s policies and procedures for implementing NEPA, in addition to those found in the NEPA regulations, are found in FAA Order 1050.1F and the FAA’s implementing instructions for airport actions are found in FAA Order 5050.4B.

39. In determining the appropriate level of review under NEPA, when the proposed action is not categorically excluded, federal agencies are required to determine whether the proposed action “[i]s not likely to have significant effects or the significance of the effects is unknown and is therefore appropriate for an environmental assessment” or “[i]s likely to have significant effects and is therefore appropriate for an environmental impact statement.” 40 C.F.R. § 1501.3.

40. Environmental assessments (“EA”) assess the proposed action’s environmental impacts and determine whether those impacts require a more extensive review in the form of an environmental impact statement. 40 C.F.R. § 1508.1(h). “In considering whether the effects of the proposed action are significant, agencies shall analyze the potentially affected environment and degree of the effects of the action. . . . In considering the potentially affected environment, agencies should consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources, such as listed species and designated critical habitat under the Endangered Species Act. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend only upon the effects in the local area. In considering the degree of the effects, agencies should consider the following, as appropriate to the specific action: (i) Both short- and long-term effects. (ii) Both beneficial and adverse effects. (iii) Effects on public health and safety. [and] (iv) Effects that would violate Federal, State, Tribal, or local law protecting the environment.” 40 C.F.R. § 1501.3(b).

41. In preparing the EA, coordination with agencies, industry groups, and the affected community are required to ensure that the “issues of greatest public concern” are addressed. FAA Order 5050.4B, Paragraph 704.a.

42. “The FAA must advise and assist the applicant during preparation of the EA, and must independently evaluate and take responsibility for the EA to ensure that: (1) the applicant’s

potential conflict of interest does not impair the objectivity of the document; and (2) the EA meets the requirements” of FAA Order 1050.1F. FAA Order 1050.1F, Paragraph 2.2-1.d.

43. An EA must be “a ‘concise document’ that takes a ‘hard look’ at expected environmental effects of a proposed action.” FAA Order 5050.4B, Paragraph 700. To meet NEPA’s “hard look” requirement, the agency must examine the relevant data and articulate a satisfactory explanation for its action. This includes requiring that environmental impacts are discussed in sufficient detail. “The EA must show that FAA took the required ‘hard look’ at these impacts to support an FAA decision to prepare a FONSI or an EIS.” FAA Order 5050.4B, Paragraph 706.f.

44. “The EA must discuss, in comparative form, the reasonably foreseeable environmental impacts of the proposed action, the no action alternative, and any other alternatives being considered in detail. . . . The discussion of environmental impacts must focus on substantive issues and provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI.” FAA Order 1050.1F, Paragraph 6-2.1.f. The factors that must be considered include: Unique characteristics of the geographic area (e.g., proximity to historic or cultural resources, parks, prime farmlands, wetlands, wild and scenic rivers, ecologically critical areas); Adverse impacts on properties listed or eligible for listing in the National Register of Historic Places; Loss or destruction of significant scientific, cultural, or historical resources; Adverse impacts on endangered or threatened species or critical habitat; Whether an action threatens a violation of Federal, state, or local law or requirements imposed for the protection of the environment; Impacts that may be both beneficial and adverse. A significant impact may exist even if the Federal agency believes that on balance the impact will be beneficial; The degree to which the effects on the quality of the human environment are likely to be highly controversial; and Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance cannot be

avoided by terming an action temporary or by breaking it down into component parts.” FAA Order 1050.1F, Paragraph 4-3.2.

45. “The focus of this analysis is on resources that would be directly, indirectly, and cumulatively affected. The analysis should include consideration of possible conflicts with the objectives of Federal, regional, state, tribal, and local land use plans, policies, and controls for the area concerned, as well as any other unresolved conflicts concerning alternative uses of available resources.” FAA Order 1050.1F, Paragraph 6-2.1.f.

46. The EA should include information on existing and planned land uses and zoning for a number of items, including federally-listed threatened, or endangered species as well as information on state-listed species as well as historic, archeological, or cultural resources on or eligible for inclusion on the National Register of Historic Places (NRHP). FAA Order 5050.4B, Paragraph 706.e.(3)(e), (g).

47. Proposed alternatives must be considered, and “[g]enerally, the greater degree of impacts, the wider range of alternatives that should be considered.” FAA Order 1050.1F, Paragraph 6-2.1.d.

48. If, after completing an EA, the agency concludes that an EIS is not required, it will issue a “finding of no significant impact” (“FONSI”). 40 C.F.R. § 1501.6. However, if an EA results in a finding that an action will likely have significant effects on the human environment, then the agency must prepare an EIS. 40 C.F.R. § 1501.3.

49. FAA Order 1050.1F, Paragraph 9-3 and FAA Order 5050.4B, Paragraph 1402 identify when a supplemental environmental assessment must be prepared and the required contents for the supplement.

50. FAA Order 1050.1F, Paragraph 9-3 provides in relevant part that: “The responsible FAA official must prepare a supplemental EA, draft EIS, or final EIS if either of the following occurs:

(1) there are substantial changes to the proposed action that are relevant to environmental concerns, or  
 (2) *there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts . . .*” (emphasis added). “Significant information is information that paints a dramatically different picture of impacts compared to the description of impacts in the EA or EIS. The FAA also may prepare supplements when the purposes of NEPA will be furthered by doing so . . . . If a supplement changes a FONSI or a ROD, the FAA must issue a new FONSI or ROD.” *Id.*

51. FAA Order 5050.4B, Paragraph 1402.b. provides: “Text at 40 CFR 1502.9(c) discusses the need for supplementing EISs. Based on that regulation, the following situations require FAA to supplement EAs and EISs. (1) The airport sponsor or FAA makes substantial changes in the proposed action that could affect the action’s environmental effects. or (2) Significant new changes, circumstances or information relevant to the proposed action, its affected environment, or its environmental impacts becomes available.”

52. The supplement to the environmental assessment must be approved or disapproved and used in the decision-making process to issue a new FONSI or other document. FAA Order 5050.4B, Paragraph 1402.d.

### **Illinois Endangered Species Protection and Illinois Natural Areas Preservation Acts**

53. In Illinois “[i]t is the public policy of all agencies of State and local governments to utilize their authorities in furtherance of the purposes of th[e] [Illinois Endangered Species Protection Act] by evaluating through a consultation process with the Department [of Natural Resources] whether actions authorized, funded, or carried out by them are likely to jeopardize the continued existence of Illinois listed endangered and threatened species or are likely to result in the destruction or adverse modification of the designated essential habitat of such species . . . and where a State or local agency

does so consult in furtherance of this public policy, such State or local agency shall be deemed to have complied with its obligations under the “Illinois Endangered Species Act”, provided the agency action shall not result in the killing or injuring of any Illinois listed animal species, or provided that authorization for taking a listed species has been issued under Section 4, 5, or 5.5 of this Act.” 520 Ill. Comp. Stat. Ann. 10/11(b).

54. Likewise, the Illinois Natural Areas Preservation Act provides that: “All areas within the State except those that are expressly designated by law for preservation and protection in their natural condition are liable to be altered by human activity. Natural lands and waters together with the plants and animals living thereon in natural communities are a part of the heritage of the people. They are of value for scientific research, for teaching, as reservoirs of natural materials not all of the potential uses of which are now known, as habitats for rare and vanishing species, as places of historic and natural interest and scenic beauty and as living museums of the native landscape wherein one may envision and experience primeval conditions in a wilderness-like environment. They also contribute generally to the public health and welfare and the environmental quality of the State. It is therefore the public policy of the State of Illinois to secure for the people of present and future generations the benefits of an enduring resource of natural areas, including the elements of natural diversity present in the State, by establishing a system of nature preserves, protecting nature preserves and gathering and disseminating information regarding them, providing for appropriate use of nature preserves that will not damage them, establishing and maintaining a register of natural areas and buffer areas, providing certain forms of protection and control of registered natural areas and registered buffer areas and otherwise encouraging and assisting in the preservation of natural areas and features.” 525 Ill. Comp. Stat. Ann. 30/2.

55. A consultation process among the Illinois Department of Natural Resources and other State and local agencies and governments under the Illinois Endangered Species Act has been implemented under Part 1075 of the Illinois Administrative Code concerning the impacts on State endangered and threatened species and Natural Areas. Ill. Admin. Code tit. 17, § 1075.10. In order to promote the conservation of threatened and endangered species and Natural Areas, it is the policy of Illinois to avoid adverse impacts to those species and Natural Areas. *See id.* An “adverse impact” is defined as a direct or indirect alteration of the physical or biological features of the air, land or water that may affect the survival, reproduction or recovery of a listed species or that may diminish the viability of a natural area.” Ill. Admin. Code tit. 17, § 1075.20. A “natural area” includes “any area of land in public or private ownership that is registered under the Natural Areas Act or is identified in the Illinois Natural Areas Inventory.” *Id.*

56. Consultation is required when “[a]ny construction, land management or other activity authorized, funded or performed by a State agency or local unit of government that will result in a change to the existing environmental conditions and/or may have a cumulative, direct or indirect adverse impact on a listed species or its essential habitat or that otherwise jeopardizes the survival of that species and/or may have a cumulative, direct or indirect adverse impact on a Natural Area,” including but not limited to: “the alteration, removal, excavation or plowing of non-farmed, non-cultivated areas, or dredging of soil, sand, gravel, minerals, organic matter, vegetation, or naturally occurring materials of any kind . . . or the grading or removal of materials that would alter existing topography. . . .” Ill. Admin. Code tit. 17, § 1075.30(a).

57. Any proposed action shall not commence until the completion of the consultation process as required under Part 1075, including but not limited to the preparation of agency action reports. *See* Ill. Admin. Code tit. 17, § 1075.40.



58. Incidental taking may not be authorized if the taking will, among other circumstances, reduce the likelihood of the survival or recovery of the endangered or threatened species within Illinois, the biotic community, or the habitat essential to the species' existence and unless a biological opinion issued by the USFWS or a conservation plan is submitted, which includes but is not limited to: "(1) a description of the impact that the proposed taking is likely to have on one or more species on the Illinois list; (2) the steps the applicant or other parties will take to minimize and mitigate that impact and the funding that will be available to implement those steps, including but not limited to bonds, insurance, or escrow; (3) what alternative actions to the taking the applicant considered and the reasons why those alternatives will not be used; (4) data and information to assure that the proposed taking will not reduce the likelihood of the survival or recovery of the endangered species or threatened species in the wild within the State of Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois; (5) an implementing agreement that specifically names, and describes the obligations and responsibilities of, all the parties that will be involved in the taking as authorized by the permit; and (6) any other measures that the Department may require as being necessary or appropriate for purposes of the plan." 520 Ill. Comp. Stat. Ann. 10/5.5(a)-(c); *see also* Ill. Admin. Code tit. 17, § 1080.10.

59. The public must be informed on any application for incidental taking before a decision is made on the application, 520 Ill. Comp. Stat. Ann 10/5.5(c)(6), and must be informed on the actions of the Department of Natural Resources under Part 1075. Ill. Admin. Code tit. 17, § 1075.70.

60. A writ of mandamus shall issue for violations of the Illinois Endangered Species Protection Act. 520 Ill. Comp. Stat. Ann. 10/11(b).

**The Administrative Procedure Act (“APA”)**

61. Pursuant to the APA, any person who has suffered legal wrong because of agency action, or is adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. 5 U.S.C. § 702.

62. Under 5 U.S.C. § 706, “the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” A reviewing court is also required to:

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; [or]
  - ...
  - (D) without observance of procedure required by law.”

*Id.* § 706(1)-(2).

**STATEMENT OF FACTS**<sup>5</sup>

63. Bell Bowl Prairie is publicly owned by the GRAA.

64. NLI was given custody and responsibility of Bell Bowl Prairie by the GRAA as part of a Master Plan and Resolution passed November 1, 1977 for Bell Bowl Prairie (the “Agreement”) on a 5-year renewal basis. That Agreement provides, in pertinent part, as follows:

“BE IT RESOLVED, that the Greater Rockford Airport Authority shall make every effort possible to preserve as a nature preserve the area outline [sic] in red on the map attached to this resolution so long as the preservation of the same as a nature preserve shall not interfere with the necessary operation of the Airport.

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<sup>5</sup> Many of these facts derive from documents produced by State agencies in response to open record requests and Freedom of Information Act (“FOIA”) requests. Many of these documents were produced with widespread redactions. As many of these documents are not privileged, NLI currently is not in a position to understand why the documents were redacted. Certain requests are still outstanding and all documents subject to open record and FOIA requests have not been received.

BE IT FURTHER RESOLVED, that the Airport Authority will make every effort to operate the airport without the necessity of using any portion of said area.

BE IT FURTHER RESOLVED, that with regards to any future planning and development of the airport, every effort will be made by the Airport Authority to plan and develop in such a way as to preserve as much, if not all, of said area as possible.

...

BE IT FURTHER RESOLVED, that the Greater Rockford Airport Authority directs its staff and legal counsel to draft an agreement for management and access of and to said area to the Natural Land Institute, an Illinois not-for-profit corporation, for maintenance as a nature preserve; said agreement to be on a 5-year basis with renewal unless terminated by either party, to be subject to such terms and conditions as shall adequately provide for the present and future operations of the airport, and to be subject to approval of the Greater Rockford Airport Authority.”

65. Stated objectives of the Agreement include:

- (i) “Preserv[ing] Bell Bowl Prairie as an example of a dry gravel prairie of the Winnebago Section of the Northeastern Morainal Natural Division of Illinois.”
- (ii) “Protect[ing] the prairie’s rare and endangered plant species.”
- (iii) “Provid[ing] management that will assure the perpetuation of the prairie in as near natural condition as possible.”

...

- (v) Provid[ing] perpetual protection for the prairie against intrusion.”

61. The Agreement further provides that “[a]ll future planning will take the prairie’s preservation into consideration . . . **the GRAA will refrain from mowing, earthmoving or other destructive work without first contacting the Natural Land Institute.**” (emphasis added).

62. Since the late 1970’s, NLI, along with other third parties, have managed Bell Bowl Prairie. The management actions taken by NLI have included periodic controlled burns, brush removal and control, invasive species control, and plant inventory. In 1994, a plan, which included the appointment of a prairie manager selected by GRAA and NLI and financial assistance from

GRAA, was developed for restoration and conversation of Bell Bowl Prairie. The plan addressed conservation and restoration efforts of degraded portions of the prairie, removal of invasive species, and prescribed burnings. The most recent management actions by NLI and its volunteers have taken place on or about July 2021.

63. Bell Bowl Prairie is and was included on the original Illinois Natural Areas Inventory (INAI #0916) in 1978 as a Category I, high-quality natural community. *See* Illinois Natural Areas Inventory (INAI) sites, [https://www2.illinois.gov/sites/naturalheritage/DataResearch/Documents/INAICountyList\\_sept2021.pdf](https://www2.illinois.gov/sites/naturalheritage/DataResearch/Documents/INAICountyList_sept2021.pdf) (last accessed October 25, 2021). Specifically, it was recognized for presence of a grade B Dry Gravel Prairie. It was further recognized as a category II site for presence of the state-endangered prairie dandelion. Subsequent site visits documented the large-flowered beard-tongue, also state-endangered. Another botanical survey in 2009 confirmed the grade B prairie was still present.

64. In 2019, GRAA proposed construction on Bell Bowl Prairie in order to expand RFD and the Midfield Air Cargo Development. Based on the Final EA, the Midfield Cargo Development includes construction of taxiways, apron, and associated airfield infrastructure. The project includes grading, drainage, storm sewers, detention facilities to accommodate proposed impervious surfaces, employee and truck parking facilities, and access roads and intersection improvements to accommodate a new one million square foot cargo facility.

65. GRAA was required by the FAA to prepare an EA report in conformance with the applicable section of the FAA's Order 5050.4B, NEPA "Implementing Instructions for Airport Actions," dated April 26, 2006 and FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," dated July 16, 2015.

66. GRAA/RFD's project consultant, Crawford, Murphy & Tilly, Inc. ("CMT"), prepared the Final EA in conjunction with the FAA and the Illinois Department of Transportation ("IDOT") for the GRAA.

67. The Final EA was issued on November 25, 2019 by the FAA. The Final EA states the following: "An area on the Airport, formerly known as the Bell Bowl Prairie, has been removed from the Illinois Natural Inventory (INAI). GRAA, as part of its established pursuit of sustainable resources, is aware of the need to preserve natural areas for Rockford/Winnebago County and will enter into an agreement with the Forest Preserves of Winnebago County to support the preservation of natural areas. This commitment will be conducted in a manner consistent with FAA guidelines regarding hazardous wildlife attractants and the Airport's Grant Assurances."<sup>6</sup>

68. The FAA effectively approved the Proposed Action, including construction of the expansion and roadways, in a Finding of No Significant Impact ("FONSI") signed on November 25, 2019.

69. Prior to November 25, 2019, on August 23, and 27, 2018, ENCAP Incorporated, on behalf of CMT, investigated the area of the Proposed Action, including the Midfield Cargo Development, for the presence of regulated surface water resources.

70. In a letter from ENCAP, Inc. dated August 30, 2018 to CMT, which is contained within the Final EA, ENCAP notes that "Wetlands 1 and 2 contain flowering forbs and therefore may support habitat for the Rusty Patched Bumble Bee. Additionally the northern portion of the site has been planted with Alfalfa and other flowering plants, and therefore may also support habitat for the RPBB. In order to determine the potential presence or habitat of the Rusty Patched

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<sup>6</sup> On August 31, 2021, GRAA acknowledged that this statement was inaccurate and that, in fact, Bell Bowl Prairie had not been removed from the list and that such removal had only been requested by GRAA. Additionally, upon information and belief, no agreement has been entered into with the Forest Preserves of Winnebago County.

Bumble Bee, ENCAP, Inc. recommends that further consultation and coordination with the USFWS be initiated prior to and during project permitting, in order to obtain guidance for this listed species. The on-site Bell Bowl Prairie INAI Site supports habitat for the Prairie Bush Clover. Although, during the wetland delineation and plant inventory for the Prairie this species was not found, a formal survey for the species has not been conducted. ENCAP, Inc. recommends that further consultation and coordination with the USFWS be initiated prior to and during project permitting in order to obtain guidance for this listed species.”

71. Nearly two years later, on August 8, 2021, an Illinois Department of Natural Resources (“IDNR”) biologist located the Bee on Bell Bowl Prairie for the first time. Thus, the Bee’s presence on Bell Bowl Prairie had not been substantively considered prior to the issuance of the November 25, 2019, EA and FONSI.

72. On August 9, 2021, the Illinois Nature Preserves Commission (“INPC”) notified IDNR of a report that major earth moving activity was occurring in close proximity to Bell Bowl Prairie.

73. On August 9, 2021, IDNR requested information regarding the planned airport expansion. The same day, IDOT informed IDNR that **“They plan to wipe that place out.”** (emphasis added).

74. On August 10, 2021, IDNR notified IDOT that the Bee had been located on Bell Bowl Prairie. IDNR determined that a new consultation was required with IDNR and USFWS because of the Bee.

75. On August 11, 2021, internal email was sent within IDOT regarding the Bee, which included the following: “IDNR notified this office yesterday that a Rusty Patched Bumble Bee has

been located at the Bell Bowl Prairie INAI. As noted below from CMT, construction on the midfield has not been initiated and will require new consultation with IDNR and USFWS.”

76. On August 12, 2021, IDNR notified USFWS that the Bee was found at Bell Bowl Prairie. IDNR also informed USFWS that the dry gravel prairie “is **slated for destruction**, potentially in the coming days.” (emphasis added). IDNR requested that USFWS “partner with the Department to ask that the Airport Authority consider all alternatives to destruction.”

77. On August 13, 2021, IDNR sent a letter to IDOT to begin consultation with regard to the Bee. The letter stated that “**much of the Bell Bowl Prairie INAI site will be destroyed.**” (emphasis added). The letter also stated that “[d]ue to the unique quality and rare nature of the Bell Bowl Prairie INAI site, as one of the few remaining Dry Gravel Prairie Communities in Illinois, the Department also recommends that impacts to this INAI site should be avoided to the extent practicable.”

78. Regarding the Bee, the August, 13, 2021, IDNR letter to IDOT stated as follows: “[O]n August 8, 2021, the state and federally-listed **Rusty-Patched Bumble Bee (*Bombus affinis*)** was identified within the Bell Bowl Prairie INAI site. To avoid impacts to the Rusty-Patched Bumble Bee, the Department recommends any work that disturbs the ground or may remove flowering plants be done between November 1st and April 1st to prevent impacts to foraging bees. Be advised, coordination with the U.S. Fish and Wildlife Service may be necessary for this species and is separate from state regulations due to its federal status.” (emphasis in the original).

79. On August 20, 2021, IDNR, IDOT and representatives of CMT/GRAA met to discuss the Bee and the planned construction in Bell Bowl Prairie. Following the discussion, IDNR emailed GRAA as follows: “The IDNR hopes to continue working closely with you on the road development. Please begin consideration now of an alternative to reconfigure the potential

“Conceptual Cargo Development” to avoid any additional impact to the Bell Bowl Prairie Illinois Natural Areas Inventory site, a public trust resource. . . . we hope you will represent our concern for this rare and natural community in your discussions with the Airport Authority.”

80. On August 25, 2021, IDOT inquired of IDNR whether USFWS had been contacted regarding the sighting of the Bee on Bell Bowl Prairie and stated that IDOT was “[t]rying to get things lined up for consultation with USFWS.” IDNR recommended that “it would be best” if IDOT sent the record of the Bee’s sighting to USFWS.

81. On August 27, 2021, IDOT informed the office of Illinois State Senator Steve Stadelman as follows: “The L&E Section coordinates the NEPA process for Division of Aeronautics (DOA) projects. This is a proposed improvement by the Greater Rockford Airport Authority (GRAA) to add a northwest air cargo apron expansion and construction of infield taxiways, apron, and associated airfield infrastructure to the Chicago Rockford International Airport. . . .Recently a new consultation was begun with IDNR since the pervious consultation had expired after over two years. As part of the new survey,<sup>7</sup> IDNR identified the presence of the state- and federally-listed Rusty-Patched Bumble Bee (RFBB) within the Bell Bowl Prairie INAI site. As a result, IDNR recommends any work which might disturb habitat of the RPBB be done during the RPBB hibernation period between November 1 and April 1. GRAA objected to the November date. The Friday, 8/20/21 meeting referenced below was between L&E and IDNR to see if an earlier work date was acceptable for work which might disturb the foraging of the [Bee] as well as related issues. IDNR also noted the Bell Bowl Prairie INAI site is one of very few remaining Dry Gravel Prairies left in Illinois.”

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<sup>7</sup> The phrase “new survey” appears to be inaccurate from the record as the IDNR was not surveying for the Bee.



82. On the same day, the office of Senator Stadelman asked IDOT the following questions: “Has construction at GRAA stopped as a result of the ‘consultation’ or is it ongoing? A phone call from a residential property owner in the area earlier this week indicated the project was progressing and **the prairie was in jeopardy of becoming a total loss**. . . When construction at GRAA is complete, will anything remain of Bell Bowl Prairie? Will there be an INAI site left, albeit smaller? If a reasonable part remains, what might be done to further protect Bell Bowl . . . one of the last Dry Gravel Prairies in Illinois going forward?” (emphasis added).

83. On August 27, 2021, GRAA’s consultant, CMT, reported to IDOT as follows: “Based on the Illinois Department of Natural Resources (IDNR) letter dated August 13, 2021, we understand new information has been provided regarding the Midfield development project at Chicago Rockford International Airport (Airport). IDNR has reported an occurrence of the state and federally listed rusty patched bumble (RPBB) within the Bell Bowl prairie INAI site located within the Sponsor’s Proposed Action (SPA) as evaluated in an Environmental Assessment approved by the Federal Aviation Administration (FAA) on November 25, 2019. The habitat available in the project area is expected to be RFBB foraging rather than overwintering habitat. While IDNR recommends avoiding ground or vegetation disturbance prior to November 1<sup>st</sup> or after April 1<sup>st</sup> to prevent impacts to foraging bees, the USFWS indicates the overwintering period of the rusty patched bumble bee in the project area is October 10 through April 10. To prevent impacts to foraging RPBB, the Airport plans to avoid ground or vegetation disturbance within the Bell Bowl Prairie INAI site until October 10, 2021, when the RPBB is expected to be overwintering outside of the SPA. Approximately 0.8 acres of the prairie will be impacted in fall 2021 with the construction of an airport access roadway. The remainder of the prairie within the

SPA will be kept mowed to prevent the presence of foraging (food) sources for the RPBB....Please advise on the status of the consultation with USFWS...”

84. On September 9, 2021, the INPC reported to IDNR that they had not “heard much since our conference call with the airport consultants. This makes me wonder . . . . October 10, I believe is the date they recently suggested the RPBB issue is no longer valid according to USFWS recommendations. This is when they will begin building the access road through the prairie. . . . IDNR Consultation remains ‘open.’” IDNR responded that “[a]n on-site meeting was to be coordinated by requesting access through . . . the Director of Operations at the Airport. . . I have reached out to Amazon twice to seek their assistance in reconfiguration of the building footprint and have not yet received a response.”

85. On September 17, INPC emailed IDNR that “October 10 will be ‘D-Day’ when the bulldozers move in to construct the road” into Bell Bowl Prairie . . . .We will need someone from the airport authority and/or consult to show us exactly where the road will traverse the prairie . . . . [t]he IDNR should know the status (ecological condition) of this INAI to **document what is being destroyed.**” (emphasis added).

86. On September 20, 2021, IDNR emailed a board member of the Sinnissippi Audubon Society as follows: “I received your inquiry about this issue at Bell Bowl Prairie and will try to give you an explanation of the issue. Bell Bowl Prairie is registered as an Illinois Natural Areas Inventory (INAI) site. . . . The landowner has every right to do whatever they want to an INAI . . . As far as our legal experts have determined, the landowner is within their legal rights to do as they will with this property. In this case the outcome is unfortunate. We have been coordinating with the airport to consider other options, but at the end of the day, **it appears**

**unlikely that the airport will reconsider. I promise this is not the outcome any of us wanted,** but we can only work within the authorities we are given.” (emphasis added).

87. Upon information and belief, on September 20, 2021, IDOT issued a Natural Resources Review (“NRR”) memo.

88. On September 20, 2021, IDNR informed INPC and NLI as follows: “Because the airport agreed to the recommendations we offered, IDOT closed consultation with the NRR through the MOU they have with us. We left the consultation open on our end to facilitate conversation, but I think **it would be inaccurate to infer an open consultation would delay this project past the November 1<sup>st</sup> date that was agreed.**” (emphasis added).

89. On September 21, 2021, USFWS sent IDOT a letter which included, in pertinent part, as follows: “We have reviewed the September 20, 2021, Natural Resources Review (NRR) memo seq. 22034 – Rockford International Airport, Winnebago County, Illinois, and have the following comments. The proposed project involves construction of a new Air Cargo Development on the south side of the airport. New buildings, aircraft parking, aprons, taxiways and employee parking will be constructed. All work will remain on airport property. The improvement will not require land acquisition, in-stream work or tree removal. Land cover in the vicinity of the proposed improvement is primarily agricultural land with a large active commercial airfield to the north. ILDOT has reviewed the list of threatened or endangered species which may be present in Winnebago County and has determined that there may be suitable habitat in the project area for the Rusty Patched Bumble Bee. A mowing date restriction, referenced in the NRR, will be included to avoid direct impacts to this species. We concur with your determination that the project is not likely to adversely affect this species with the mowing restriction in place. Adverse impacts to wetlands are not expected. The NRR adequately addresses the potential

impacts of the project alternatives on fish and wildlife resources and federally listed threatened and endangered species in the project area. This precludes the need for further action on this project as required under Section 7 of the Endangered Species Act of 1973, as amended. Should this project be modified or new information indicate endangered species may be affected, consultation should be initiated.”

90. On September 22, 2021, IDNR reported to INPC that “USFWS concurred with our work restrictions date of no work until November 1<sup>st</sup> and that collecting plant material will not adversely affect the bee.”

91. On September 24, 2021, the GRAA informed IDOT that, “[t]o avoid impacts to the Rusty-Patched Bumble Bee, the Greater Rockford Airport Authority will begin construction in this area on November 1, 2021.” Within that letter, the GRAA also granted permission to IDNR to take the Large-flowered Beard Tongue and Prairie Dandelion from Bell Bowl Prairie.

92. On September 27, 2021, IDOT’s NRR Update stated as follows: “The Illinois Natural Heritage Database contains records of the State-listed Large-Flowered Beard Tongue (LFBT), Prairie Dandelion and recently discovered Rusty Patched Bumble Bee (RPBB) record of 8/16/21. The LFBT, Prairie Dandelion and RPBB have been identified within the limits of the Illinois Natural Inventory site the Bell Bowl Prairie. . . .The area of impact is a designated prairie with foraging resources which is absent of over-wintering habitat for the RPBB. To avoid impacts to foraging bees we propose that any work shall occur after November 1<sup>st</sup> and the area of impact be mowed at 6” or less throughout the duration of construction. Adhering to these commitments we conclude the activities will not likely adversely affect the RPBB. We cross-referenced the preferred habitat of each of the listed species with our knowledge of the project area and determined that the proposed improvement will have no effect on those species.”

93. On October 1, INPC emailed IDNR and NLI as follows: “Due to the unique quality and rare nature of the Bell Bowl Prairie (INAI) site, as one of the few remaining Dry Gravel Prairie Communities in Illinois, the Department also recommends that impacts to this INAI site be avoided the extent practicable. . . . We do not know the full build-out plans and whether portions of Bell Bowl Prairie can remain intact and in place (impact avoidance).”

94. On October 6, 2021, IDNR conducted a botanical survey on approximately 0.8 acres of land within the Bell Bowl Prairie, which is the area where the planned roadway across the INAI site is to be constructed. 65 plant species were identified, including a significant number of rare and conservative species. However, because of the timing of the survey and seasonal dormancies, some plant species, such as the State listed endangered Prairie Dandelion, may not have been identified. The survey team made the following recommendation: “The remaining portions of the Bell Bowl Prairie INAI site should be protected from any equipment or other activities that would cause damage...**The remaining portions of the Bell Bowl Prairie INAI site should be surveyed, assessed, and protected to the fullest extent practical given the unique and irreplaceable nature of this dry gravel prairie in Illinois.**” (emphasis added).

#### **Life Cycle and Habitat Needs of the Rusty Patched Bumble Bee**

95. The Rusty Patched Bumble Bee (*Bombus affinis*) is a unique and prolific pollinator named for the rusty reddish patch on its abdomen. It uses “buzz pollination,” meaning it vibrates its body to release pollen from flowers. This technique makes the species a more effective pollinator than honey bees for many native plants, as well as for crops like tomatoes, cranberries, and peppers.

96. The Bee's life cycle shapes the species' habitat needs. Like many species of bumble bee, all workers and male rusty patched bumble bees in a colony die each fall, leaving a single hibernating queen to carry the colony over to the following year.

97. Rusty Patched Bumble Bees are among the first bee species to emerge from hibernation each spring, and among the last to enter hibernation each fall. To survive, the Bees collect pollen and nectar from nearby flowers; floral resources must, therefore, be available throughout the species' lengthy active season.

98. Because many plants flower for only a portion of the Bee's active season, the species relies on a broad diversity of flowering plants for sustenance. Floral diversity is especially crucial for the Bee because it is a short-tongued species, meaning it can only forage from a subset of plant species with more easily accessible nectar.

99. In addition, the formation of the Rusty Patched Bumble Bee colonies is affected by the number of fertile males and whether the landscape is conducive to their dispersal. The Bee typically disperses over one kilometer, but the landscape must be "permeable and free of hazards" for males to find and mate with unrelated females with reproductive capacity. U.S. Fish & Wildlife Service, Rusty Patched Bumble Bee (*Bombus affinis*) Species Status Assessment: Final Report, Version 1 17 (2016) (Status Assessment), <https://ecos.fws.gov/ServCat/DownloadFile/120109> .

100. Consistent with the Bee's life cycle, USFWS has identified a number of habitat features that the Bee needs to survive. These include "areas that support sufficient food (nectar and pollen), undisturbed nesting habitat in proximity to floral resources, and overwintering habitat for hibernating queens," as well as "a constant and diverse supply of blooming flowers to meet its nutritional needs." 85 Fed. Reg. at 54,282.

101. In its guidance documents, USFWS has outlined the species' habitat needs with even greater specificity. It has identified various habitat categories (e.g., upland grassland), specified the uses that the Bee has for each habitat category (i.e., nesting, wintering, foraging), noted seasonal variations in the use of each habitat category; and provided examples of discrete habitat types that fall within each habitat category (e.g., "native tallgrass prairie, including remnants and restored/reconstructed native prairie"). U.S. Fish & Wildlife Service, Rusty Patched Bumble Bee (*Bombus affinis*): Endangered Species Act Section 7(a)(2) Voluntary Implementation Guidance, Version 2.1 9 (2019) (Section 7 Guidance), <https://bit.ly/3azKHly>.

**Habitat Destruction and Degradation Threaten the Bee's Survival and Recovery**

102. The Rusty Patched Bumble Bee was once common throughout grasslands and prairies in much of the Midwest and Northeast United States, ranging northward into Canada. It was found in 29 states, the District of Columbia, and two Canadian provinces.

103. Since the 1990s, the Bee has disappeared from about 87 percent of its historical range; the number of documented populations has similarly declined by at least 88 percent. The colonies and populations (which typically are made up of tens to hundreds of colonies) that remain are subject to continued stress, and many are in poor health.

104. The Bee historically occupied flower-rich grassland and tall-grass prairies throughout its range. Since settlement of the continent by Europeans, an estimated 99.9 percent of grassland in the United States has disappeared.

105. Much of this habitat loss has occurred as a result of agricultural intensification, fire suppression, and urbanization.

106. Habitat loss is one of the “primary causes attributed to the decline” of the Bee, 82 Fed. Reg. at 3186, and has “established negative effects on bumble bees” generally. 85 Fed. Reg. at 54,283.

107. Habitat loss and degradation continues to threaten remaining populations of the Bee. U.S. Fish & Wildlife Service, Draft Recovery Plan for the Rusty Patched Bumble Bee (*Bombus affinis*) 1 (2019) (Draft Recovery Plan), <https://bit.ly/3axYi4v>.

108. It is well-established that habitat loss reduces diversity and abundance of Bee species. “Given that several kilos of food are needed to support a single nest, . . . the amount of habitat needed to support a population is likely quite large.”

109. USFWS has explained that “even slight changes in resource availability could have significant cumulative effects on colony development and productivity,” Status Assessment 50. Indeed, “even slight improvements in resource availability could . . . improve the bees’ resilience to other stressors, such as pesticides and pathogens.” 85 Fed. Reg. at 54,284.

110. Restoring and maintaining large population sizes is crucial because smaller populations are inherently more vulnerable to extirpation.

111. And quantity of habitat alone is not the only important factor for the Bee’s survival and recovery; habitat quality—including factors like the diversity of floral resources, the degree of contamination by pesticides, and the proximity to areas needed during different life stages—is significant as well. In addition, habitat connectivity helps existing populations to disperse and locate unrelated mates.

112. Habitat loss also exacerbates the Bee’s susceptibility to other ongoing threats, such as pathogens and disease. Bees that lack sufficient habitat may suffer from nutritional deficiencies, decreasing their ability to fight off parasites and disease.



**Habitat Protection is Critical to the Bee's Survival and Recovery**

113. USFWS identifies habitat protection as a key component of its recovery and finds that “recovery needs to resemble its natural abundance and distribution to ensure long-term persistence.” Draft Recovery Plan 4; *see also* Status Assessment 17 (“Population viability requires healthy demographics and sufficient habitat to support a healthy demography . . .”).

114. That plan outlines a number of key objectives to “halt[]” and “revers[e]” declines and “ultimately secur[e] the long-term viability of the species.” Draft Recovery Plan 3. The first listed objective is to “[p]revent[] further loss of populations,” in part, by “improving quality and quantity of habitat” and “ensuring appropriate connectivity between populations.” *Id.* The fourth objective includes “[a]meliorating primary pervasive threats, including . . . habitat loss.” *Id.* The fifth is to “[p]rotect[] populations and their habitats.” *Id.* (emphasis added). In all, three of the five objectives involve protection or restoration of habitat.

115. The Draft Recovery Plan also sets out broad categories of actions that are “necessary to achieve the recovery vision for the rusty patched bumble bee.” *Id.* at 7. One pillar of the Service’s proposed recovery actions is “[m]anag[ing] and protect[ing] habitat.” *Id.* at 8. Another is minimizing exposure to pesticides, an important component of which is “habitat restoration or land acquisition.” *Id.*

**Reasonable Alternatives to the Proposed Action**

116. There are a number of site designs and engineering approaches that could substantially reduce the required footprint of the Proposed Action, and thereby reduce the need to impact Bell Bowl Prairie. *See* Ex. D (Declaration of Domenico D’Alessandro).

117. All of the parking lots (and perhaps a portion of the roadways) could be designed with permeable paving. Storm water detention for the entire site could potentially be

accommodated by over-sizing the storage in the void spaces in the permeable paving sub-base, thereby eliminating the need for a stand-alone detention basin.

118. Onsite landscape areas could be considered for rain gardens and bioswales, thereby providing an opportunity to infiltrate and filter polluted runoff before it is routed to detention storage underlying the permeable paving.

119. Consideration could also be given to utilizing green roofs for proposed buildings to reduce storm water runoff and associated detention basin capacity.

120. Design criteria could be evaluated to look for opportunities to reduce the size and dimensions of parking lots and roadways. In particular, it is known that roadway width criteria and parking lot sizing (e.g., the number of parking stalls and their dimensions) often are very conservative leading to over-sized facilities.

121. These green infrastructure design approaches would then allow space for the building to be sited to avoid impacts to Bell Bowl Prairie. These types of green infrastructure and innovative site design approaches are broadly referenced in the Kishwaukee Corridor Green Infrastructure Plan that was developed for the multi-thousand acre landscape immediately east of RFD. This plan also discusses the economic benefits and tradeoffs in implementing green infrastructure design approaches. These green infrastructure policies and site design concepts were widely shared with local government officials from Rockford, Winnebago County and neighboring jurisdictions and the concepts are relevant to the Proposed Action.

122. NLI challenges the legal and factual bases of Defendants' justifications for its failure to consider reasonable alternatives that protect Bell Bowl Prairie from destruction as well as the Defendants' conduct in further jeopardizing the existence of endangered and threatened fauna and flora, including the Bee.

**CLAIMS FOR RELIEF**

**COUNT I**  
**NEPA VIOLATIONS**

123. NLI realleges and incorporates by reference all the allegations set forth in this Complaint, as though fully set forth below.

124. The FAA, through coordination and actions by other Federal and State agencies, including the USFWS and the GRAA, performed a major Federal action for the purpose of NEPA by issuing the Final EA and FONSI, dated November 25, 2019, which was an environmental finding allowing approval of the Airport Layout Plan for the GRAA's Proposed Action.

125. The action was a final agency action under the APA, 5 U.S.C. § 704.

126. To be eligible to receive federal assistance to construct eligible portions of the proposed improvements and receive approval of the Airport Layout Plan, the GRAA is required by the FAA to prepare an EA in conformance with NEPA, its implementing regulations, and FAA's policies and procedures under NEPA.

127. The FAA Defendants, USFWS Defendants, and GRAA violated NEPA and its implementing regulations in their actions through coordination and consultation with one another, including without limitation as those actions relate to the Bee's discovery on Bell Bowl Prairie, and the FAA's decision to not prepare an EIS or a supplemental EA. Specifically, the actions violated NEPA and the FAA's own policies, including without limitation by:

- (a) Failing to ensure adequate consultation and coordination with other Federal agencies, including without limitation, the USFWS, for several flora and fauna, including but not limited to the Rusty Patched Bumble Bee and the Prairie Bush-Clover;

- (b) Failing to ensure adequate consultation and coordination with State agencies, including without limitation, the IDOT, the IDNR, and the Illinois Historic Preservation Agency, regarding environmental effects and impact of the Bee's presence on the Bell Bowl Prairie;
- (c) Failing to encourage and facilitate public involvement in decisions, which are of substantial environmental controversy, including, but not limited to, by failing to adequately solicit comments in a manner designed to inform persons or organizations, such as NLI, who may be interested in or affected by the Proposed Action given the presence of the Bee at Bell Bowl Prairie, including but not limited to public notice on whether any decision was made to prepare a supplemental environmental assessment;
- (d) Failing to ensure an independent evaluation and assess potential conflicts of interest regarding the decisions affecting the Bell Bowl Prairie;
- (e) Failing to properly identify and assess alternatives, such as those described in this Complaint, of the Proposed Action in effort to avoid, minimize, or mitigate the adverse effects of the Proposed Action, including focusing on factors including but not limited to the unique characteristics of the geographic area (e.g., proximity to ecologically critical areas, such as Bell Bowl Prairie); adverse impacts on properties that may be eligible for listing in the National Register of Historic Places; loss or destruction of significant scientific, cultural, or historical resources; adverse impacts on endangered or threatened species, such as the Rusty Patched Bumble Bee and the Prairie Bush-Clover, or critical habitat; whether an action threatens a violation of Federal, state, or local law or requirements imposed for the protection

of the environment; impacts that may be both beneficial and adverse; the degree to which the effects on the quality of the human environment are likely to be highly controversial; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

- (f) Failing to properly assess and take a hard look at the significant direct, indirect, and cumulative environmental effects of the Proposed Action, including but not limited to the affected impact and degree of short and long term effects;
- (g) Failing to prepare a required supplemental environmental assessment or perform a more extensive environmental impact statement for the Proposed Action at Bell Bowl Prairie given the recently discovered presence of the Bee at Bell Bowl Prairie, which is a significant new circumstance relevant to environmental concerns bearing on the Proposed Action and its impacts; and
- (h) Otherwise disregarding the requirements of NEPA and its implementing regulations, including, but not limited to, failing to follow procedural requirements related to the preparation of the Final EA and its documents as well as the FAA's FONSI decision to allow approval of the GRAA's Airport Layout Plan in the Proposed Action.

128. As a result of these errors, FAA Defendants, USFWS Defendants, and GRAA disregarded and failed to promote efforts consistent with NEPA's policies and its implementing regulations.

129. The violations and disregard of NEPA and its implementing regulations constitutes an abuse of discretion by the FAA Defendants and the USFWS Defendants and the actions are

arbitrary and capricious in violation of the APA, 5 U.S.C. § 706(2), or otherwise not in accordance with the law.

**COUNT II**  
**VIOLATIONS OF ILLINOIS ENDANGERED SPECIES PROTECTION ACT**

130. NLI realleges and incorporates by reference all the allegations set forth in this Complaint, as though fully set forth below.

131. Bell Bowl Prairie is a publicly owned INAI site operated by the GRAA and managed by NLI.

132. Dunn, as executive director for GRAA, notified IDOT to take Illinois listed endangered or threatened flora, including the Large-flowered Beard Tongue, and Prairie Dandelion.

133. Upon information and belief, Dunn, as executive director, does not have the sole authority on behalf of GRAA, a publicly owned, municipal corporation, to grant permission to take Illinois listed endangered or threatened species without further approval and input from GRAA, the GRAA Board of Commissioners, and the public.

134. The FAA Defendants, the GRAA, the GRAA Board of Commissioners, and Dunn failed to properly follow and ensure compliance with the required consultation process under Part 1075 for Bell Bowl Prairie, including without limitation by:

- (a) failing to address the direct, indirect, and cumulative effects and impacts for several Illinois fauna and flora listed on the Illinois List, pursuant to Parts 1010 and 1050 of title 17 of the Illinois Administrative Code, including but not limited to the Bee and the Prairie Bush-Clover, Large-flowered Beard Tongue, and Prairie Dandelion;
- (b) failing to properly engage in the required consultation process under Part 1075;

- (c) failing to allow and complete proper surveys of fauna and flora that are listed on the Illinois List;
- (d) failing to obtain proper authorization to take flora listed on the Illinois List, pursuant to 520 Ill. Comp. Stat. Ann. 10/3; and
- (e) failing to properly inform the public, including NLI, on the application and decision for taking of fauna and flora under the Illinois List.

135. The FAA Defendants, the GRAA, the GRAA Board of Commissioners, and Dunn's actions are likely to jeopardize the continued existence of the Illinois listed endangered or threatened species and are likely to result in the destruction or adverse modification of essential habit, including Bell Bowl Prairie, where the Rusty Patched Bumble Bee, Prairie Bush-Clover, Large-flowered Beard Tongue, and Prairie Dandelion are present or believed to be present.

136. A writ of mandamus to the FAA Defendants, the GRAA, the GRAA Board of Commissioners, and Dunn is proper for addressing the violations of the Illinois Endangered Species Protection Act, prohibiting the take of Illinois listed endangered or threatened species, and requiring the completion of proper surveys of those endangered or threatened species that are believed to be or are known to be present on Bell Bowl Prairie.

**COUNT III**  
**BREACH OF AGREEMENT**  
**(AS TO GRAA AND DUNN)**

137. NLI realleges and incorporates by reference all the allegations set forth in this Complaint, as though fully set forth below.

138. NLI was given custody and responsibility of the publicly owned Bell Bowl Prairie by the GRAA as part of a Master Plan and Resolution passed November 1, 1977 for Bell Bowl Prairie (the "Agreement") on a 5-year renewal basis.

139. The Agreement providing for NLI's management and custodial preference of Bell Bowl Prairie was never terminated.

140. Under the Agreement, GRAA, as a public entity, agreed to, among other things, to:

- (i) "Preserv[ing] Bell Bowl Prairie as an example of a dry gravel prairie of the Winnebago Section of the Northeastern Morainal Natural Division of Illinois."
- (ii) "Protect[ing] the prairie's rare and endangered plant species."
- (iii) "Provid[ing] management that will assure the perpetuation of the prairie in as near natural condition as possible."
- ...
- (v) "Provid[ing] perpetual protection for the prairie against intrusion."

141. GRAA also agreed to "refrain from mowing, earthmoving or other destructive work without first contacting the Natural Land Institute."

142. Earthmoving and other destructive work has occurred and is planned is to occur on November 1, 2021 on Bell Bowl Prairie.

143. GRAA and Dunn have breached the Agreement by failing to contact NLI concerning its Proposed Action that will result in total destruction of Bell Bowl Prairie.

144. GRAA and Dunn have failed to abide by other terms of the Agreement related to Bell Bowl Prairie.

145. NLI has been and will be damaged if construction for the Proposed Action takes place on November 1, 2021.



**COUNT IV**  
**DECLARATORY AND INJUNCTIVE RELIEF**

146. NLI realleges and incorporates by reference all the allegations set forth in this Complaint, as though fully set forth below.

147. NLI seeks declaratory and injunctive relief, pursuant to federal law, the APA and the Illinois Endangered Species Protection Act, to avoid the total destruction of Bell Bowl Prairie and the critical habit for the Bee.

148. Pursuant to the APA, NLI has suffered legal wrong because of agency action, and has been adversely affected or aggrieved by agency action by the FAA Defendants and the USFWS Defendants within the meaning of NEPA and its implementing regulations, and NLI is entitled to judicial review. 5 U.S.C. § 702.

149. NLI seeks the Court to compel agency action by the FAA Defendants and the USFWS Defendants in the form of a supplemental environmental assessment or other proper environmental review and survey, which the FAA Defendants and the USFWS Defendants have unlawfully withheld or unreasonably delayed in performing as it relates to Bell Bowl Prairie and the Rusty Patched Bumble Bee.

150. NLI seeks the Court declare and hold unlawful the FAA Defendants' and the USFWS Defendants' agency actions, findings, and conclusions as it relates to Bell Bowl Prairie, which such actions, findings, and conclusions are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and without observance of procedure required by law. *Id.* § 706(1)-(2).

151. NLI further seeks to enjoin and restrain the GRAA, the GRAA Board of Commissioners, and Dunn under federal and state law.

152. NLI has suffered an immediate and irreparable injury, loss, and damage as a result of the Proposed Action on Bell Bowl Prairie and the construction that has occurred on Bell Bowl Prairie by the GRAA.

153. Without the requested temporary restraining order and injunctive relief requested, NLI and the public will continue to suffer immediate and irreparable injury, loss and damage due the total destruction of Bell Bowl Prairie, including but not limited to the harmful environmental effects to the Bee and its habitat.

### **PRAYER FOR RELIEF**

WHEREFORE, Natural Land Institute (“NLI”) respectfully requests that the Court enter judgment for NLI and provide the following relief:

- (1) Declare that the FAA’s Final Environmental Assessment and FONSI, dated November 25, 2019 is no longer valid, and is in violation of NEPA, its implementing regulations and FAA’s policies and procedures;
- (2) Declare that the FAA’s and the USFWS’s findings as they relate to the environmental assessment of the Bell Bowl Prairie, including the Rusty Patched Bumble Bee and various flora, are arbitrary and capricious under the APA, and contrary to NEPA, its implementing regulations, FAA’s policies and procedures, and the Illinois Endangered Species Protection Act;
- (3) Order that the FAA Defendants and the USFWS Defendants perform a supplemental environmental assessment and other further required environmental reviews of Bell Bowl Prairie, including but not limited to environmental surveys regarding the Rusty Patched Bumble Bee and the Prairie Bush-Clover;

- (4) Preliminarily and permanently enjoin and restrain the FAA Defendants and the GRAA from any further action under the Proposed Action until all federal and state agencies have fully complied with the requirements under NEPA, its implementing regulations, and the FAA's policies and procedures, including providing an adequate opportunity for public hearing and comment and consideration of the reasonable alternatives to the Proposed Action that do not amount to total destruction of Bell Bowl Prairie;
- (5) Preliminarily and permanently enjoin and restrain the GRAA, the GRAA Board of Commissioners, and Michael P. Dunn, as Executive Director of the GRAA, from any and all takings of flora and fauna under the Illinois Endangered Species Protection Act and from the construction of the Midfield Cargo Development that may result in takings, including but not limited to the expansion of associated roadways, until a supplemental environmental assessment and other further required environmental reviews of Bell Bowl Prairie, including but not limited to environmental surveys regarding the Rusty Patched Bumble Bee and the Prairie Bush-Clover, are performed at an appropriate seasonal time;
- (6) Preliminarily and permanently enjoin and restrain the GRAA, the GRAA Board of Commissioners, and Michael P. Dunn, as Executive Director of the GRAA, from violating the agreements with NLI;
- (7) Award NLI its costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and Fed. R. Civ. P. 54(d); and
- (8) Award NLI any other relief that is just, proper, and equitable.

Respectfully submitted this 26<sup>th</sup> day of October, 2021.

*s/ Joseph M. Russell*

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Derek J. Waterstreet, WI State Bar No. 1090730<sup>8</sup>  
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E-mail: Ettinger.Albert@gmail.com

*Attorneys for Plaintiff Natural Land Institute*

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<sup>8</sup> Application for admission to the General Bar of the United States District Court for the Northern District of Illinois to be submitted.

The ILND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See instructions on next page of this form.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff  
(Except in U.S. plaintiff cases)

(c) Attorneys (firm name, address, and telephone number)

**DEFENDANTS**

County of Residence of First Listed Defendant

(In U.S. plaintiff cases only)

Note: In land condemnation cases, use the location of the tract of land involved.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Check one box, only.)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government not a party.)
- ☐ 4 Diversity  
(Indicate citizenship of parties in Item III.)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (For Diversity Cases Only.)

(Check one box, only for plaintiff and one box for defendant.)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Check one box, only.)

CONTRACT	TORTS	PRISONER PETITIONS	LABOR	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<table border="0"><tr><td><b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel &amp; Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury 362 Personal Injury - Medical Malpractice</td><td><b>PERSONAL INJURY</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</td></tr></table>	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty  <b>Habeas Corpus:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark 880 Defend Trade Secrets Act of 2016 (DTSA)  <b>FEDERAL TAXES</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Arts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability					
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))		

**V. ORIGIN** (Check one box, only.)

- ☐ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION** (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)**VII. PREVIOUS BANKRUPTCY MATTERS** (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)**VIII. REQUESTED IN COMPLAINT:**

☐ Check if this is a class action under Rule 23, F.R.C.V.P.

Demand \$

CHECK Yes only if demanded in complaint:

Jury Demand: ☐ Yes ☐ No

**IX. RELATED CASE(S) IF ANY** (See instructions):

Judge

Case Number

**X. Is this a previously dismissed or remanded case?**

☐ Yes ☐ No If yes, Case #

Name of Judge

Date: \_\_\_\_\_

Signature of Attorney of Record \_\_\_\_\_

Authority for Civil Cover Sheet

The ILND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use  
**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the  
**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

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**NATURAL LAND INSTITUTE,**

**Plaintiff,**

**v.**

**Case No.**

**PETE BUTTIGIEG, et al.,**

**Defendants.**

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**DECLARATION OF JOHN WHITE**

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I, John White, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to these facts. As those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.

2. I am a member of the Natural Land Institute.

3. I am a plant ecologist and nature preservationist living in Urbana, Illinois. I have worked professionally in the natural areas field since 1971, when I joined the staff of the Illinois Nature Preserves Commission.

4. Between 1974 and 1978, I designed and directed the Illinois Natural Areas Inventory, a systematic and thorough survey of the state to find land and water areas that merit protection because of their high quality and rarity. This project was the first of its kind in the nation, and it received two national awards for its innovative methods and excellent results.



5. The system for identifying significant natural areas in Illinois is based primarily on three documents: “The Natural Divisions of Illinois” (I am one of its six authors), “Classification of Natural Communities in Illinois” (I am senior author), and the *Illinois Natural Areas Inventory Technical Report* (I am sole author). When the Natural Areas Inventory was updated beginning in 2009, I prepared more than a thousand pages of instructions and I trained the field staff.

6. From 1980 through 1989, I was part of the science program at the headquarters of The Nature Conservancy. My positions were Director of Site Surveys, National Ecologist, and then Chief Ecologist when national and international operations were consolidated. I helped establish or oversee programs to identify significant natural areas in all 50 states and seven other countries.

7. Since 1990 I have run my own small business, gathering and using information to help landowners make decisions about the protection and management of wild areas and rare species.

8. One of my specialties is historical ecology, learning about the past as it affects the present. I have written a draft manuscript of more than a million words about the historical ecology of Illinois. I am recognized as the foremost authority on the environmental history of the Illinois prairie. <<https://www.youtube.com/watch?v=fjLEWAVplnI>>

9. Recently a past president of the Illinois Native Plant Society said of me, “Jack knows more about Illinois botany than any person past or present.” I would qualify this by saying only that I know more details than anyone else about the life history of Illinois prairie plants. I can say this because I have spent more than a thousand hours in the past five years with my nose close to the ground, scrutinizing and documenting thousands of individual prairie plants and following

each of them as they sprout, grow, flower, and die throughout the growing season and from year to year.

10. This effort is part of a larger endeavor to understand the ecology of prairies in Illinois and beyond. Since 2015 I have devoted most of my waking hours – eight to 15 hours a day, usually seven days a week – to studying prairie ecology. This work has produced new information and insights that are relevant to Bell Bowl Prairie.

11. I first became familiar with Bell Bowl Prairie in 1972, when George Fell, head of the Illinois Nature Preserves Commission, told me about his efforts to persuade the Greater Rockford Airport Authority to protect this patch of prairie at the airport. The prairie was so important, one of the first instructions that George gave to a new staff member was to read the preservation plan for Bell Bowl Prairie, including the resolution by the airport's board of commissioners that committed to protection of the prairie.

12. Illinois is known as the Prairie State because most of it was a natural grassland at the time of statehood. Since then almost all of the prairie has been plowed under except on land that is too steep, rocky, sandy, gravelly, or wet to cultivate. The steep, gravelly slope at Bell Bowl is what kept the prairie there from being farmed.

13. Most of the prairie in Illinois that escaped the plow was destroyed by overgrazing or has grown up with trees. Only one-hundredth of one percent of the original Illinois prairie remains in good condition. I calculated this statistic when I wrote the final report for the Illinois Natural Areas Inventory in 1978.

14. The dry gravel prairie community such as at the Rockford airport is among the rarest of the rare. The Illinois Natural Areas Inventory found 18.4 acres of dry gravel prairie in good condition in the entire state.

15. Not all dry gravel prairies are the same, though: they vary ecologically in different parts of the state. Earlier I mentioned the “Classification of Natural Communities” and the “Natural Divisions of Illinois” that form a basis for natural area assessment in Illinois. Specifically, the natural community at Bell Bowl is classified as *Dry Gravel Prairie of the Winnebago Drift Section of the Northeastern Morainal Natural Division*.

16. According to the most recent information available to me from the Illinois Natural Areas Inventory, the approximately 5 acres of high quality prairie at Bell Bowl may be the only remaining intact example of this specific natural community in the state: that is, the only high quality remnant of Dry Gravel Prairie of the Winnebago Drift Section of the Northeastern Morainal Natural Division. There may be more of this community across the state line in Wisconsin, and there may be a fraction of an acre elsewhere in Illinois; I would need to conduct a thorough resurvey to ascertain the current status of the community. In any event, this community is clearly so rare that it is nearly extinct.

17. Native prairie such as at Bell Bowl is so highly valued because it is vanishingly rare. A high quality, old-growth prairie is the Midwest equivalent of a cathedral redwood grove – only far, far rarer.

18. Bell Bowl Prairie is such a rare natural community, one may seriously question why it even exists – and why it happens to be in the “V” formed by the two runways at Rockford’s airport.

19. The humid climate of Illinois is so favorable to the growth of trees that the state would be completely forested if certain ecological factors did not prevent trees from growing up and replacing the prairie. Bell Bowl Prairie exists because of a highly unusual, very localized

combination of topographic and soil conditions that make the site extremely dry and inhospitable to trees.

20. At Chicago Rockford International Airport, the prairie is on a steep, southwest-facing bluff; it is oriented so that it receives the full drying effect of the strongest sunlight during the warmest time of the day. Because of its unique topography, Bell Bowl Prairie receives more solar radiation than anywhere else around. Here too, the steep southwest-facing bluff is exposed to desiccation by the prevailing southerly and westerly winds.

21. These topographic factors alone are not sufficient to prevent woods from growing up. In addition Bell Bowl's gravelly, exceedingly calcium-rich soil favors prairie over trees. The gravel makes the soil extra dry, and calcium is in such high concentrations that it inhibits the growth of most woody plants.

22. In the long term, even all these factors together will not prevent a prairie in Illinois from eventually becoming a forest. The one overriding factor that maintained prairie vegetation instead of forest was periodic fires. In the distant past, people burned off the landscape often enough to maintain prairies. In recent decades the Greater Rockford Airport Authority has permitted the Natural Land Institute to burn the prairie. Without this protective care, the prairie would have grown up in brush by now.

23. Bell Bowl Prairie and Chicago Rockford International Airport are together where they are for one reason: a massive deposit of gravel that was laid down by torrents of water pouring down the Rock River valley when the last continental glacier melted thousands of years ago. The prairie is on a steep side of the deposit, and the airport was built to take advantage of the level, well-drained, elevated surface on the top of the deposit.

24. A key aspect of Bell Bowl Prairie's rarity is its quality. A patch of prairie that has escaped degradation by invasive species, earthmoving, and other disturbances is exceptionally rare. About five acres of Bell Bowl Prairie, directly in the path of a planned road, is such a high quality area.

25. With my first step onto this area last month, I spotted New Jersey Tea, a prairie plant that I have never, ever seen growing naturally except on land that has never been plowed. Also there within the span of a yard were False Toadflax, Leadplant, and Prairie Cinquefoil – all of which are expected to occur only in an intact, high quality plant community.

26. I knelt and fingered through one-hundredth square meter of the prairie, a 4-by-4-inch square; in an area the same size and shape as the bottom of a half-gallon milk carton, I found nine different kinds of plants. Such extraordinarily high species diversity is a hallmark of truly high quality, primeval prairie, a community that developed over a very long time without disruption.

27. Bell Bowl Prairie has a number of rare and unusual plants. This prairie is the only known place in Illinois where two rare species of windflower can be found together in the wild: the delicate Carolina Anemone and the beautiful Pasque Flower. Prairie Smoke, a member of the rose family, is at Bell Bowl too; it grows as far north as the Yukon Territory, and it is at the absolute southernmost margin of its vast range at Bell Bowl.

28. Several of Bell Bowl's plants are common on the Great Plains but rare in Illinois. These plants occur at Bell Bowl because its dry soil is similar to their western habitat. Two of the plants are so rare that they are listed by the State of Illinois as Endangered: Prairie Dandelion and Large-flowered Beardtongue.

29. Western prairie plants spread into the Illinois during a period of hotter and dryer climate that began about 8,000 years ago and ended about 5,000 years ago. Since then the climate has moderated, and this suite of western plants has gradually died out everywhere except on the very driest soil. Without Bell Bowl and a few other tiny refuges, we would have no living proof that these species ever occurred so far east on the continent – and we would have no such evidence of the last major episode of global warming.

30. Among the plants that have been reported from Bell Bowl Prairie are 12 western species that can no longer be found growing there. These species are not included in the list of Bell Bowl's native plants. It would be extraordinary for so many rare western species to naturally occur together at Bell Bowl, so far from the Great Plains.

31. Some of the questionable plants may have spread into the area during World War I when Bell Bowl was part of Camp Grant, a U.S. Army training area. It has been suggested that seeds of western plants were unintentionally brought to Bell Bowl when the Army shipped horses from the Great Plains; seeds could have been in hay or manure. I have not yet been able to find evidence that horses were imported in this manner, and there is good evidence that the Army did not use Bell Bowl Prairie as a horse pasture.

32. It may be that some of these enigmatic western plants were indeed indigenous to Bell Bowl. If so, the flora of Bell Bowl Prairie is even more marvelous than some botanists dare to imagine.

33. Now Bell Bowl Prairie is slated for excavation and burial as part of an airport expansion. Even if the facilities are redesigned to spare the prairie, one might question whether such a small prairie remnant surrounded by development would be a viable nature preserve in the long term. The answer is yes. Research by myself and other ecologists shows that small, isolated,

high quality prairie remnants are highly resistant to degradation and loss of species if they are properly cared for.

34. In recent decades, more and more land has been seeded with native prairie plants, creating what are called restorations. Such efforts will never truly restore and replicate a natural prairie that has developed in-place over thousands of years. It is critical that natural prairie remnants be protected and maintained; among other benefits, these areas serve as models and seed sources for restoration efforts.

35. It has been suggested that destruction of Bell Bowl Prairie could be partially mitigated by moving plants, salvaging would otherwise be buried or removed by construction. I estimate that roughly 7 to 15 percent of the plants might survive such an effort. The transplanted prairie would lose its high diversity of species, which is a hallmark of our native prairies and a primary reason for protecting them. Furthermore, the most sensitive species would be largely or entirely lost. Most important, it simply is not possible to move a prairie and maintain any semblance of its ecological integrity.

36. Any consideration of a plant “rescue” effort must not cloud the fact that the natural habitat that supports an endangered species is as important as the species itself. The habitat needs to be preserved in-place and intact. If the goal is to preserve a prairie by moving it, then the effort will be a 100% failure from the start.

37. If I can expand my research to include a dry prairie in northern Illinois, I would choose Bell Bowl Prairie as my study site. This opportunity will be forever lost if the prairie is destroyed. To deliberately obliterate this vestige of our prairie heritage would be a crime against nature and an irretrievable loss to society.

38. In 1977 the Board of Commissioners of the Greater Rockford Airport Authority resolved that it “shall make every effort possible” to preserve Bell Bowl Prairie so long as it “shall not interfere with the necessary operation of the Airport.” Now for the greater good, I am asking that the Greater Rockford Airport Authority make a further effort to preserve the prairie.

39. Bell Bowl Prairie can be spared by redesigning the airport expansion and by building “green infrastructure” next to the prairie – perhaps even showcasing the prairie. This will be more expensive than “business as usual” in the short term – but worth the price for a priceless prairie.

40. My plea for preservation is not an unfounded “land grab” attempt and it is not knee-jerk opposition to development. It is a plea to preserve the precious and irreplaceable. This is an opportunity for the Greater Rockford Airport Authority to build a model environmental facility and to take the lead into the future.

Pursuant to 28 U.S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of October, 2021, at Urbana, Illinois.

  
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John White



# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

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**NATURAL LAND INSTITUTE,**

**Plaintiff,**

**v.**

**Case No.**

**PETE BUTTIGIEG, et al.,**

**Defendants.**

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**DECLARATION OF ZACHARY GRYCAN**

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I, Zachary Grycan, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to these facts. As those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.

2. I am the Director of Stewardship at Natural Land Institute (NLI), one of the plaintiffs in this case. I've been employed by NLI since July of 2015. Natural Land Institute is a non-profit organization headquartered in Rockford, Illinois. Our mission is to create an enduring legacy of natural land in northern Illinois for people, plants, and animals. We own and manage 3,150 acres and presently hold another 3,770 acres in conservation easements. Since 1958 we have worked to protect roughly 18,000 acres of open spaces in the state of Illinois. NLI is supported by memberships from approximately 700 individuals, as well as funding from private foundations, and grants from entities both public and private. The majority of our activities take place in Winnebago County and our membership is likely serviced by the Chicago-Rockford International

Airport which has engaged in expansion activities that now threaten the survival of Bell Bowl Prairie through the placement of road/s and the construction of buildings and parking lots. I and Natural Land Institute, our members, and partnering agencies and organizations consider the survival of Bell Bowl Prairie an integral part of the conservation of several endangered species as well as an entire ecosystem pushed to the brink of extinction in what has been described as one of the fastest and most dramatic landscape level conversions in recorded history. The severity of loss of the tallgrass prairie ecosystem at large has been compared to the loss of tropical rainforests, of which both are still ongoing and have led to what is now widely considered to be one of six mass extinction events in our planet's history.

3. It is no secret that my personal interests lie in healthy ecosystems and in recovered populations of endangered and threatened wildlife. Our own species' well-being and food production network relies on the pollinators that are now disappearing as a result of such activities proposed, commenced, and now temporarily halted at Bell Bowl thanks to a cease-work order that ends on November 1<sup>st</sup> of 2021. Bell Bowl Prairie is no stranger to the impacts of human alterations on the landscape. The deep intricacies of interconnected and co-dependent biodiversity that can still be witnessed, studied, and learned from within the few remaining pieces of a once vast network spanning an estimated 22 million acres across our state, evolved over thousands of years of interactions with indigenous peoples. Ecologists refer to our prairies as disturbance driven, meaning that on some level disturbance is required for the survival of the plant and animal communities that comprise the known life in our region. One such disturbance is fire which, today, is implemented as controlled burning. Fire is critical in the maintenance of our prairies, wetlands, and woodlands. Fire is set using techniques understood by indigenous peoples which settlers also quickly adopted to maintain game habitat and hold back brush encroachment. In the 1960's Bell

Bowl Prairie was threatened by another form of disturbance, one which surpassed all others before it in scope and severity. A well-documented series of events unfolded where the Rockford Airport Authority wished to extend runways and borrow gravel for construction which threatened to excavate the prairie out of existence. NLI founder, George Fell, his wife Barbara, and others concerned for the well being of this pristine remnant curtailed such activities at the time by convincing the public of the prairie's importance. In 1977 the airport engaged in a management agreement that allowed Natural Land Institute to act as the custodian for Bell Bowl Prairie. Below is a photograph of a group I accompanied late this summer to survey the prairie and enjoy its beauty, enough cannot be said for the aesthetic quality of remnant prairies when gazed upon at close range.



4. Since the 1970's staff, board members, and volunteers from Natural Land Institute and staff from other land management agencies, including the Illinois Nature Preserves Commission, Illinois Department of Natural Resources, Forest Preserves of Winnebago County (FPWC), Rockford Parks District, Boone County Conservation District (BCCD), and Byron Forest Preserve District have collectively participated in the management of Bell Bowl Prairie with some level of activity occurring every year in the form of brush removal and reduction, and later, invasive species control as introduced species with no natural predators proliferated throughout the region. This management occurred at the expense of NLI and its partners. I'm proud that I have personally participated in the removal of invasive species at Bell Bowl Prairie. What's more is this year I was able to organize additional resources for the prairie by enlisting the help of AmeriCorps Service Members for additional invasive species control. Below is a photograph taken of a collective workday in 2015 of NLI and its partner agencies teaming up to control brush encroachment in the prairie.





5. Bell Bowl Prairie is home to 150 species of plants, 95 species of birds, untold numbers of beneficial pollinators and other insects, numerous mammals, and at least 3 species of reptiles and amphibians. It contains two plants endangered in the state of Illinois, is utilized by two endangered species of birds, and one federally endangered insect. I personally have photographed the Rusty Patched Bumble Bee, and have witnessed the charm of the prairie's diverse plant and animal community. On just 25 acres, surrounded by a bustling cargo airport, all of this life has managed to survive, even as similar areas have been lost all around. At the time of the federal land surveys in the 1830's Bell Bowl Prairie was one piece of a 36 square-mile grassland complex containing stretches of the Rock and Kishwaukee Rivers. Post-settlement the area was home to Camp Grant, where many soldiers in the first and second world war were housed and trained. The prairie literally dodged a bullet, when it survived this period of time, and the training and sacrifice

of the soldiers at Camp Grant helped shape our country and our world's history. The care and attention Bell Bowl Prairie has received over the years can be demonstrated in its appearance. The photo below from 2009 almost gives the impression of what those initial land surveyors may have looked upon when they walked through the area in 1837.



6. Natural Land Institute and its partners are willing to commit to the management of Bell Bowl Prairie in a way that will continue to allow the place to persist as a truly unique and pristine natural area, isolated though it may be. I believe that this site is similar to several remnant prairies in our region that are isolated by development, but continue to support endangered species as well as many other viable populations of various forms of biodiversity. One clear example of



which I am quite familiar with is Freeport Prairie, which is 6 acres in size, routinely experiences controlled burns and invasive species control, contains endangered species, an equivalent level of biodiversity all the while surrounded on all sides by commercial and industrial development.

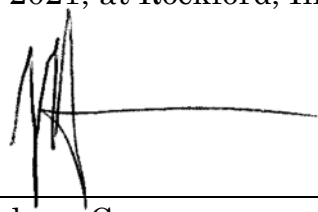
7. Illinois is known as the prairie state and the prairie was responsible for building the soil which supports the “breadbasket” of America. Although soil conservation methods have improved, there is no way to insure the pollination of our crops or the health of our streams, or quality of our air without maintaining our high-quality natural areas that remain in order to serve as hosts and homes for all of the life that might provide services on which we depend. To destroy a high-quality remnant prairie like Bell Bowl Prairie would be equivalent to removing a piston from an engine and later wondering why the engine wasn’t running properly when we absolutely needed it to run. The Midfield Expansion plans as they are currently depicted, and as is becoming more apparent on the ground every day will destroy this prairie and the life that it harbors. On a moral level I feel this project is unjust, on an ecological level it is abhorrent, on an economic level it short-sighted. We are entirely capable and must be willing to accept that we must set aside spaces for the life forms that lack the ability to vote or attend board meetings.

8. If the court grants the relief that is being requested in this litigation, I am certain that we will have saved something irreplaceable, we will have avoided something unconscionable, and we will have engaged in a path of long-term sustainability through the continued management of this prairie. I am holding out hope that the Greater Rockford Airport Authority will not be allowed to destroy Bell Bowl Prairie, and that Natural Land Institute will be allowed to manage the prairie alongside its regional conservation partners in perpetuity.

Pursuant to 28 U.S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Executed this 22nd day of October, 2021, at Rockford, Illinois.

A handwritten signature in black ink, appearing to be 'Zachary Grycan', written over a horizontal line.

Zachary Grycan

# **EXHIBIT C**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

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**NATURAL LAND INSTITUTE,**

**Plaintiff,**

**v.**

**Case No.**

**PETE BUTTIGIEG, et al.,**

**Defendants.**

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**DECLARATION OF JENNIFER KURODA**

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I, Jennifer Kuroda, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to these facts. As those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.

2. I am a member of the National Audubon Society and current president of the board for Sinnissippi Audubon, a local chapter of the National Audubon Society. I have served as the board president since 2014. The Sinnissippi Audubon Society was founded in 1972 and is committed to wildlife preservation in the Rockford, Illinois region. Our chapter has over 400 members who live near, and regularly visit Bell Bowl Prairie. In addition, I am the current president of the board for the Audubon Council of Illinois. I have served as the board president since 2018. This council represents eleven chapters of the National Audubon Society and 52,000 members statewide. I, Sinnissippi Audubon Society, and the Audubon Council of Illinois have a strong interest in conservation of endangered and threatened species and the habitats these species

have in the areas that could be impacted by the Chicago-Rockford International Airport expansion. We support halting construction until a more thoughtful plan can be developed that best represents the interests of all stakeholders.

3. I have many personal interests in healthy ecosystems, including those that exist within Illinois' prairies. I have lived, explored, recreated, and volunteered in the Winnebago County and Rockford, Illinois region for over 30 years. I have walked, photographed, and birdwatched at Bell Bowl Prairie, as well as participated in bird counts over the years. As a private citizen volunteer, I have monitored Eastern Bluebird, American Kestrel, and Peregrine Falcon nesting boxes, led informational tours about birds in our area, and participated in bird surveys and tracking, among other activities. Many times these activities like the annual Winnebago County Spring Bird Count took place at Bell Bowl Prairie.

4. I have lived in Rockford, Illinois continuously since 1989. The Bell Bowl Prairie is eleven miles from my house. I feel like it is part of home and community. I feel responsible to protect it.

5. I have volunteered with Sinnissippi Audubon Society to protect birds and their habitat for many years in this area. In 2018, I worked with the City of Rockford to proclaim it Year of the Bird in recognition of the 100<sup>th</sup> anniversary of the Migratory Bird Treaty Act to commemorate the importance of protecting migratory and nonmigratory birds and their habitat in cities throughout the state. The photo below was taken August 20, 2018 at the city council meeting where the proclamation was read and received. From left to right: Sinnissippi Board member, Jack Armstrong, Rockford mayor, Tom McNamara, Sinnissippi Audubon president, Jennifer Kuroda, and National Campaigns Manager for Audubon, Talya Tavor.



In addition, on October 4, 2021, the City Council of the City of Rockford, Illinois and the Mayor of the City of Rockford, Illinois adopted a bird city resolution. I worked with the city on this resolution, which recognizes that birds and their habitats are declining throughout Illinois and are facing a growing number of threats in both their summer and winter habitat. It is a call to action for city leaders to protect and conserve birds in our community.

6. While visiting Bell Bowl Prairie, I always hope for the opportunity to observe such rare and vulnerable species like the Illinois State Threatened Black-billed Cuckoo or Illinois State Endangered Loggerhead Shrike. Knowing that these species have been sighted at this location is evident of the high quality of habitat Bell Bowl Prairie provides for birds. The photo below is of a Loggerhead Shrike taken at Bell Bowl Prairie by a friend and follow birder, John Longhenry.



7. In recent years, I have observed numerous grassland birds such as the Bobolink, a long-distance migrant, at Bell Bowl Prairie. Grassland birds that call Bell Bowl Prairie home are among the fastest declining species of birds in North America. Grassland species like the Bobolink have lost 53% of their population over the past 50 years. (Rosenberg et al. 2019) These species have suffered due to conversion of natural lands to agriculture, urban development, and habitat fragmentation. This prairie is a place that grassland birds rely on for their breeding habitat in the summer. Remnant prairies like Bell Bowl often have higher plant diversity and presence of rare plant species that in turn harbor rare insects, securing a diversity of food options for birds who undergo some of the longest migrations in the western hemisphere. When a remnant prairie is destroyed, there is no scientific way of replicating that assemblage of plants, animals, and soil biota anywhere else. Once it is gone, it is gone forever. The photo below is of a pair of Bobolinks taken at Bell Bowl Prairie by a friend and fellow birder, John Longhenry.



8. In the fall of 2020, I went to Bell Bowl Prairie with a local falconer to observe several American Kestrels that also call the airport home. These small falcons use Bell Bowl Prairie to hunt for other birds and small rodents. Data collected from migration counts, the U.S. Geological Survey's Breeding Bird Survey, and nest-box monitoring programs indicate declines nearing 50% in American Kestrel populations in North America. Some of the leading reasons for their decline include loss of habitat, less food, and fewer nesting spots. If Bell Bowl Prairie is destroyed, these kestrels will have one less place to hunt for food.

9. On my visit on September 17, 2021, I was disheartened to see how the airport construction was beginning to encroach into Bell Bowl Prairie. While there, I was able to observe a pair of Red Tailed Hawks flying over the prairie and scanning below for prey. The dry gravel hill prairie is the perfect habitat for rodents, which hawks consume as prey. I also observed an Eastern Meadowlark and Killdeer. The Eastern Meadowlark is another grassland species on the decline in the State of Illinois.

10. On my most recent visit on September 23, 2021, I was able to accompany botanist John Jack White, who provided an opportunity to learn about the high level of biodiverse plant life at Bell Bowl Prairie. It was an overwhelming and emotional experience as it became much more clear what could be lost if the airport continues with its expansion through the prairie. The proposed development of this prairie would jeopardize the existence of one of the most threatened ecosystems in the world.


11. If the airport expansion is allowed to destroy Bell Bowl Prairie, my visits there would end. It would also end the opportunity for many species of birds to use this prairie for their survival, including several that are considered threatened and endangered. There are only 18.4 acres of this specific type of prairie in the State of Illinois, which does not leave much if five more acres are removed forever. Just recently, 23 species of birds and wildlife were removed from the endangered species list and officially declared extinct by the U.S. Fish and Wildlife Service. It is our responsibility to ensure the remaining habitats of threatened grassland birds are preserved and enhanced, not destroyed.

12. If this Court grants the requests in this litigation, I am optimistic that Bell Bowl Prairie will be protected from the harm and destruction of the airport expansion. I am holding hope that the laws protect threatened and endangered birds and plants will be upheld and the airport will not be allowed to destroy these species' home. I hope in my heart that people, including my own children, will be able to enjoy places like Bell Bowl Prairie and the incredible amount of diversity that exists there for many years to come.



Pursuant to 28 U.S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of October, 2021, at Rockford, Illinois.

A handwritten signature in black ink, appearing to read 'JK', is written above a horizontal line.

Jennifer Kuroda

# **EXHIBIT D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

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**NATURAL LAND INSTITUTE,**

**Plaintiff,**

**v.**

**Case No.**

**PETE BUTTIGIEG, et al.,**

**Defendants.**

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**DECLARATION OF DOMENICO D'ALESSANDRO**

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I, Domenico D'Allessandro, hereby declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to these facts. As those matters which reflect an opinion, they reflect my personal opinion and judgment on the matter.
2. I am a regenerative design consultant.
3. Note: this is a concept plan, not a construction plan.
4. The way the concept was created was to copy the footprints from the plan proposed by the airport authority. This assures that their requested operational needs are met.
5. The exercise involved shifting and recomposing the footprints to align with Beltline Road.
6. Major changes to the airport authority's plan include:
7. Replacing the proposed 16+ acres employee open parking lot with a parking garage.

8. Removing the three designated stormwater dry bottom management basins and treat the runoff with new technology of porous paving and use of underground cisterns. This is being done in airports elsewhere in the world. A guide is available on how to accomplish this.
9. The upfront costs associated with these changes can be recuperated over time, whereas the employee parking and stormwater basins will be an economic drain on the airport in perpetuity.
10. This alternative plan will match and increase the number of cargo aircraft accommodate in the current airport proposal, thus making it a more profitable choice.
11. The proposed road that is scheduled to cut through the heart of the high quality 8,000-year-old remnant ecosystem on November 1st is not needed for this expansion.
12. A service road that may be needed to connect the truck yard to the Midfield Cargo Building #1 proposed additional expansion can easily be realigned to go around the prairie boundaries. Although alternatives on redeveloping the areas east of the prairie may prove fruitful.
13. AND WE SAVE THE 8,000-YEAR-OLD ECOSYSTEM THAT SHOULD BE TREATED AS A REGIONAL, STATE AND NATIONAL TREASURE.
14. This concept plan was produced without the cooperation of the Chicago Rockford airport staff in a week's time and lacks in refined detail. The main purpose is to show that at least one alternative can save the prairie and still provide required services.

Pursuant to 28 U.S. C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of October, 2021, at Rockford, Illinois.

  
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Domenico D'Alessandro