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Sent via Email, if available, and Certified Mail Return Receipt Requested

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Re: Notice of Intent to Sue for Violations of the Endangered Species Act Regarding the Longmeadow Parkway, Huntley Road to Illinois Route 62, Kane County, Illinois¹

¹ This highway project is also referred to as the "Longmeadow Parkway Fox River Bridge Corridor."

On behalf of the Center for Biological Diversity (“Center”), I hereby provide notice, pursuant to Section 11(g) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(A)(i), that the U.S. Department of Transportation, Federal Highway Administration (“FHWA”), the Illinois Department of Transportation (“IDOT”), the U.S. Army Corps of Engineers, and Kane County Division of Transportation (collectively, “FHWA/IDOT”) are in violation of Section 7 of the ESA, 16 U.S.C. § 1536, and the ESA’s consultation regulations, 50 C.F.R. Part 402, concerning the Longmeadow Parkway (Huntley Road to Illinois Route 62) in Kane County, Illinois. Specifically, the Center intends to file suit alleging violations of Section 7 of the ESA because: 1) FHWA/IDOT failed to request and engage in formal ESA Section 7 consultation on the likely adverse effects on the rusty patched bumble bee (*Bombus affinis*) caused by their funding, authorization, construction, and operation of the Longmeadow Parkway; and 2) FHWA/IDOT failed to ensure their funding, authorization, construction, and operation of the Longmeadow Parkway do not jeopardize the continued existence of the rusty patched bumble bee by relying on the U.S. Fish and Wildlife Service (“FWS”) July 19, 2017 Letter of Concurrence to satisfy their ESA Section 7 obligations. Although not required by law, this letter also provides notice to FWS that its July 19, 2017 Letter of Concurrence is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the ESA, and that the Center also intends to file suit against FWS pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. Ch. 7.

The Center for Biological Diversity (“Center”) is a national, non-profit, conservation organization with more than 1.5 million members and online activists dedicated to protecting diverse native species and habitats through science, policy, education, and law. The Center’s Native Pollinators campaign ties together modern domestic land-use issues, such as urban sprawl and the Longmeadow Parkway project, in the context of pollinator conservation to provide relevant information and action opportunities to our members and supporters who are rightfully concerned about the health of native pollinators. Center members and staff actively are working to identify rusty patched bumblebees and are working to protect their habitat from pesticides and habitat destruction.

I. LEGAL BACKGROUND

Congress enacted the ESA in 1973 to provide for the conservation of endangered and threatened fish, wildlife, plants, and their natural habitats.² The ESA is was enacted, in part, to provide a “means whereby the ecosystems upon which endangered species and threatened species depend may be conserved...[and] a program for the conservation of such endangered species and threatened species....”³

The ESA imposes substantive and procedural obligations on all federal agencies, including delegates of the Federal Highway Administration, to ensure that their programs and activities are in compliance with the ESA.

² 16 U.S.C. §§ 1531, 1532.

³ 16 U.S.C. §§ 1531-1544; 16 U.S.C. § 1531(b).

The ESA vests primary responsibility for administering and enforcing the statute with the Secretaries of Commerce and the Interior. The Secretaries of Commerce and the Interior have delegated this responsibility to the National Marine Fisheries Service and the FWS respectively.⁴ FWS has responsibility for actions that may affect the rusty-patched bumble bee.

In order to fulfill the substantive purposes of the ESA, federal agencies are required to engage in consultation with FWS to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the adverse modification of habitat of such species . . . determined . . . to be critical”⁵ Through consultation under Section 7, agencies work with FWS to determine whether their actions will jeopardize listed species’ survival, or adversely modify designated critical habitat, and, if so, identify ways to modify the action to avoid that result.⁶

Section 7 consultation is required for “any action [that] may affect listed species or critical habitat.”⁷ Agency “action” is broadly defined in the ESA’s implementing regulations to include “(b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air.”⁸

For each federal action, the agency must ask the FWS whether any listed or proposed species may be present in the area of the agency action.⁹ If listed or proposed species may be present, the agency must prepare a “biological assessment” to determine whether the listed species may be affected by the proposed action.¹⁰

If an agency determines that its action “may affect” but is “not likely to adversely affect” a listed species or its critical habitat, the regulations permit “informal consultation,” during which FWS must concur in writing with the agency’s determination.¹¹ If the agency determines that its action is “likely to adversely affect” a listed species or critical habitat, or if FWS does not concur with the agency’s “not likely to adversely affect” determination, the agency must engage in “formal consultation,” as outlined in 50 C.F.R. § 402.14 (“General Formal Consultation”).¹² An agency is relieved of the obligation to consult on its actions only where the action will have “no effect” on listed species or designated critical habitat. Effects determinations are based on the direct, indirect, and cumulative effects of the action when added to the environmental baseline and other interrelated and interdependent actions.¹³ Interrelated actions are those that are part of a larger action and depend on the

⁴ 50 C.F.R. § 402.01(b).

⁵ 16 U.S.C. § 1536(a)(2) (“Section 7 consultation”).

⁶ 50 C.F.R. § 402.14(a).

⁷ 50 C.F.R. § 402.14.

⁸ 50 C.F.R. § 402.02.

⁹ 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

¹⁰ *Id.*

¹¹ 50 C.F.R. § 402.14(a)-(b).

¹² 50 C.F.R. §§ 402.02, 402.14(a).

¹³ 50 C.F.R. § 402.02 (definition of “effects of the action”).

larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration.¹⁴

To complete formal consultation, FWS must provide the agency with a “biological opinion” explaining how the proposed action will affect the listed species or habitat.¹⁵ If FWS concludes that the proposed action “will jeopardize the continued existence” of a listed species, the biological opinion must outline “reasonable and prudent alternatives.”¹⁶ FWS may also “suggest modifications” to the action (called reasonable and prudent measures) during the course of consultation to “avoid the likelihood of adverse effects” to the listed species even when not necessary to avoid jeopardy.¹⁷

If the biological opinion concludes that the action is not likely to jeopardize the continued existence of a listed species, and will not result in the destruction or adverse modification of critical habitat, FWS must provide an “incidental take statement,” specifying the amount or extent of such incidental taking on the listed species, any “reasonable and prudent measures” that FWS considers necessary or appropriate to minimize such impact, and setting forth the “terms and conditions” that must be complied with by FHWA/IDOT to implement those measures.¹⁸

Taking of listed species without the coverage of an incidental take statement is a violation of Section 9 of the ESA.¹⁹ Section 9 of the ESA prohibits any person, including federal agencies, from taking any endangered or threatened species.²⁰ The term “take” is defined broadly to include “harass, harm, pursue, hunt, shoot, wound, trap, kill, capture, or collect, or to attempt to engage in any such conduct.”²¹ “Harm” is further defined as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”²² Thus, an action which indirectly (e.g. habitat modification) or directly causes a decline in the population of an endangered species harms that species.

The ESA requires agencies to use the best scientific and commercial data available when consulting about whether federal actions may jeopardize listed species or adversely modify critical habitat.²³ Accordingly, an action agency must “provide the Service with the best scientific and commercial data available or which can be obtained during the consultation for an adequate review of the effects that an action may have upon listed species of critical habitat.”²⁴ Likewise, “[i]n formulating its biological opinion...the Service will use

¹⁴ *Id.*

¹⁵ 16 U.S.C. § 1536(b); 50 C.F.R. § 402.14.

¹⁶ 16 U.S.C. § 1536(b)(3)(A).

¹⁷ 50 C.F.R. § 402.13.

¹⁸ 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

¹⁹ 16 U.S.C. § 1538(a)(1)(B).

²⁰ 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. § 17.21(c).

²¹ 16 U.S.C. § 1532(19); 50 C.F.R. § 17.3.

²² 50 C.F.R. § 17.3.

²³ 16 U.S.C. § 1536(a)(2).

²⁴ 50 C.F.R. § 402.14(d).

the best scientific and commercial data available.”²⁵ If the action agency fails to discuss information that would undercut the consultation, it is legally flawed.²⁶

Until completion of appropriate consultation, FHWA/IDOT are prohibited from making any irreversible or irretrievable commitment of resources with respect to the Longmeadow Parkway which may foreclose the formulation or implementation of any reasonable and prudent alternative measures.²⁷ The purpose of Section 7(d) is to maintain the status quo pending the completion of consultation. Section 7(d) prohibitions remain in effect throughout the consultation period and until the agency has satisfied its obligations under Section 7(a)(2) that the action will not result in jeopardy to the species or adverse modification of its critical habitat.

II. FACTUAL BACKGROUND

A. The Rusty Patched Bumble Bee

FWS listed the rusty patched bumble bee (*Bombus affinis*) as endangered, meaning it is in danger of becoming extinct,²⁸ on March 21, 2017. This species, which was once widely found in the upper Midwest and Northeastern United States was described by FWS as “so imperiled that every remaining population is important for the continued existence of the species”²⁹

The numbers of rusty patched bumble bees have sharply declined throughout its range, declining by an estimated 91 percent since the mid- to late-1990s. Most of its grassland and prairie habitat has been lost, degraded, or fragmented by conversion to other uses, including highways and other developments. Other threats to the bumble bee include exposure to pesticides, effects of climate change, effects of extremely small populations, disease, and a combination of these factors.

Rusty patched bumble bees are pollinators that contribute to the healthy functioning of our ecosystems and contribute to our food security. Bumble bees are keystone species necessary for native wildflower reproduction and for creating seeds and fruits that feed wildlife, including songbirds. Bumble bees are also important pollinators of crops such as cranberries, blueberries, plums, and apples.

The rusty patched bumble bee has been observed in a variety of habitats, including prairies, woodlands, marshes, and gardens. It lives underground throughout the year as solitary queens or in colonies that the queen initiates in the spring. Throughout its active season, early spring (at least beginning of April) to mid-Fall (September/October),³⁰ it is essential that the bumble bee have access

²⁵ 50 C.F.R. § 402.14(g)(8).

²⁶ See *Ctr. for Biological Diversity v. B>M*, 698 F.3d 1101, 1127-28 (9th Cir. 2012).

²⁷ 16 U.S.C. § 1536(d).

²⁸ 16 U.S.C. § 1532(6).

²⁹ U.S. Fish & Wildlife Service, Survey Protocols for the Rusty Patched Bumble Bee (*Bombus affinis*), Version 1.2 (June 6, 2017) at 1 (“FWS Survey Protocols”).

³⁰ U.S. Fish and Wildlife Service, 2017. The Rusty Patched Bumble Bee (*Bombus affinis*), Interagency Cooperation under Section 7(a)(2) of the Endangered Species Act Voluntary Implementation Guidance, Version 1.1 at 8-9 (“FWS *Bombus* ESA Guidance”).

to diverse and abundant floral resources to forage for nectar and pollen.³¹ Key features of its habitat include the diverse and abundant flowering plants near areas that are “predominantly free from ground-disturbing activities that may function as overwintering sites for hibernating queens.”³² Other bumble bee species typically forage within 0.6 miles of their nests.³³ Overwintering habitat “may typically be in uncompacted and often sandy, moss-covered soils,” often in abandoned rodent nests, and it has been found in soft soil under a layer of leaf litter.³⁴

FWS proposed to list the rusty patched bumble bee on September 22, 2016.³⁵ FWS listed the bumble bee as endangered on January 11, 2017,³⁶ which became effective on March 21, 2017.

B. The Longmeadow Parkway

The Longmeadow Parkway Fox River Bridge Corridor project consists of the construction of a new highway between Huntley Road and Illinois Route 62 and a new bridge crossing over the Fox River in Kane County. The project is approximately 5.6 miles with another 3.7 miles of intersection road improvements. The project will impact eleven wetlands for a total of 4.16 acres and will impact approximately 5,765 trees. It will also bisect the open space of Brunner Family Forest Preserve and traverse mostly undeveloped properties from the western terminus of Sections B-2, C and D (at Forest Drive west of Karen Drive) to the Fox River, as well as undeveloped properties on the eastern side of the Fox River.

FHWA issued a Final Environmental Impact Statement (“FEIS”) for the project in November 2001 and a Record of Decision (“ROD”) in May 2002 for Fox River Bridge Crossings in Kane County. On July 26, 2016, FHWA/IDOT submitted a Reevaluation Environmental Assessment to assess impacts of new information and circumstances of the project, now named the Longmeadow Parkway. FHWA/IDOT requested that FHWA issue a Finding of No Significant Impact (FONSI), which it did on November 22, 2016. None of these evaluations consider the impacts of the Longmeadow Project on the rusty patched bumble bee.

In April, 2017, an interested citizen group, Stop Longmeadow, filed a complaint that included a claim that FHWA/IDOT violated Section 7 of the ESA because they failed to engage in consultation on the effects of the project on the rusty patched bumble bee.³⁷

On June 30, 2017, following the complaint and after construction had begun on the project, IDOT submitted a Biological Assessment (“BA”)³⁸ of the effects of Sections B-2, C, and D of the

³¹ *Id.* at 8.

³² *Id.* at 9.

³³ *Id.*

³⁴ *Id.* at 9-10.

³⁵ 81 Fed. Reg. 65324 (Sept. 22, 2016).

³⁶ 82 Fed. Reg. 3186 (Jan. 11, 2017).

³⁷ *Stop Longmeadow v. U.S. Dep’t of Transp., et al.*, Case No. 16-cv-05435 (N.D. Ill.).

³⁸ IDOT 2017. Longmeadow Parkway Fox River Bridge Corridor Biological Assessment (June 30, 2017).

Longmeadow Parkway Fox River Bridge Corridor³⁹ on the rusty patched bumble bee, the Northern long-eared bat, and the Eastern prairie fringed orchid. IDOT determined that the project may affect, but is not likely to adversely affect, the rusty patched bumble bee. IDOT based this determination on an evaluation of “the limits of the proposed improvement” or within the “project corridor” for the presence of potentially suitable habitat for the rusty patched bumble bee. IDOT characterized the habitat assessment as showing “most” of the proposed “construction corridor” being classified as “low-Potential Habitat and No Habitat.” To avoid or minimize impacts during construction, IDOT proposed to clear forested areas and to mow weekly the grassed areas within the project construction limits between October 15 and March 14, which is the bumble bee’s active season, and to prohibit parking or staging outside the project construction limits between the east side of IL 31 and the Fox River.

On July 19, 2017, FWS concurred with IDOT’s “may affect, not likely to adversely affect” determination for the rusty patched bumble bee for Sections B-2, C, and D. FWS suggested that IDOT include in their roadside planting mix for the project corridor forbs that could provide nectar resources throughout the growing season.

III. ESA VIOLATIONS

FHWA/IDOT are in violation of the ESA because 1) they failed to request and engage in formal ESA Section 7 consultation on the likely adverse effects on the rusty patched bumble bee (*Bombus affinis*) caused by their funding, authorization, construction, and operation of the Longmeadow Parkway, and 2) they failed to ensure their funding, authorization, construction, and operation of the Longmeadow Parkway do not jeopardize the continued existence of the rusty patched bumble bee by relying on the U.S. Fish and Wildlife Service (“FWS”) July 19, 2017 Letter of Concurrence to satisfy their ESA Section 7 obligations. Each of these violations is demonstrated by the failure of FHWA/IDOT and FWS to consider during the consultation pertinent and legally-required factors, as follows.

FHWA/IDOT did not evaluate the appropriate action area. The “action area” includes “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.”⁴⁰ “The action area for the rusty patched bumble bee is not limited to the ‘footprint’ of the action, but encompasses the biotic, chemical, and physical impacts to the environment resulting directly or indirectly from the action.”⁴¹ FHWA/IDOT inappropriately restricted the evaluation in the Biological Assessment (“BA”) to “the limits of the proposed improvement for the presence of potentially suitable [rusty patched bumble bee] habitat,” *i.e.*, limited to “bee habitat assessment within the project corridor.”⁴²

The direct and indirect effects of the project on the rusty patched bumble bee likely extend well beyond the project corridor to include effects from lights, noise, pollution and dust from construction and the operation of the Parkway once constructed. Importantly, the project will bisect important

³⁹ In the BA, IDOT refers to the project as “the Corridor.”

⁴⁰ 40 C.F.R. § 402.02.

⁴¹ FWS *Bombus* ESA Guidance at 4.

⁴² IDOT 2017. Longmeadow Parkway Fox River Bridge Corridor Biological Assessment – Informal Consultation at 6.

undeveloped habitat with known sightings of the rusty patched bumble bee about 1500 feet south of the corridor in a fen area with “sufficient floral resources and habitat structure to support this species.”⁴³ Not only does the bumble bee likely range half of a mile to forage, it likely disperses long distances, up to 6.2 miles, to find mates or find suitable overwintering sites in the fall.⁴⁴ FHWA/IDOT did not evaluate any of these potential direct or indirect effects on the bumble bee, which is known to occur in the area, or its habitat outside the project corridor.

FHWA/IDOT ignored known and recent occurrence of rusty patched bumble bees. The rusty patched bumble bee was sighted and positively identified about a quarter mile (1500 feet) south of the project corridor in 2012 on Brunner Family Forest Preserve.⁴⁵ On August 9, 2017, an expert entomologist sighted the rusty patched bumble bee, within the same occurrence area as the 2012 sighting, and reported the sighting to FWS.⁴⁶ On August 31, 2017, the same entomologist sighted the rusty patched bumble bee north of the prior sightings, westward of the southern intersection of Western Avenue (IL-31) and Lundstrom Lane on Brunner Family Forest Preserve. Importantly, this sighting also appears to be within what IDOT identified as the “B-2 Construction Limits” and in an area IDOT asserts is “Zero-Potential Zone” for rusty patched bumble bee habitat.

The rusty patched bumble bee may forage within half of a mile of its nest site, meaning, the bumble bees identified south of the project corridor could be nesting within the corridor and were foraging south of it, or could be nesting south of it and range into the corridor to forage. And, as discussed above, the bumble bee may disperse up to 6.2 miles to find mates or overwintering habitat. FHWA/IDOT did not consider the effects on rusty patched bumble bees that have been sighted close to the project corridor and that are likely to use the project corridor for foraging, overwintering, or nesting.

FHWA/IDOT relies on a habitat evaluation as a proxy for whether the rusty patched bumble will be adversely affected by the project, but the proxy must “mirror reality,” and the reality is that the rusty patched bumble bee has been identified in the action area. Yet, FHWA/IDOT did not evaluate the direct or indirect effects on the bumble bee, relying instead on conclusions of a habitat survey of limited scope.⁴⁷ Reliance on the habitat survey rather than acknowledging the presence of this endangered species in the project area is a fatal flaw of the informal consultation for a species that is “so imperiled that every remaining population is important for the continued existence of the species . . .”⁴⁸

⁴³ Illinois Natural History Survey, 2017. Botanical Survey Results, *Bombus affinis*, Habitat Evaluation Longmeadow Parkway, Illinois Department of Transportation Project Area, Kane County, Illinois at 5 (“Habitat Evaluation”).

⁴⁴ FWS Survey Protocols at 31.

⁴⁵ *Id.*

⁴⁶ Email communication from Allen Lawrance to Kristopher Lah (Aug. 28, 2017).

⁴⁷ See, e.g., *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1066 (9th Cir. 2004) (when habitat is used as a proxy, the results must “mirror reality”).

⁴⁸ U.S. Fish & Wildlife Service, Survey Protocols for the Rusty Patched Bumble Bee (*Bombus affinis*), Version 1.2 (June 6, 2017) at 1 (“FWS Survey Protocols”).

The FHWA/IDOT relied on an inadequate habitat evaluation. High-potential habitat has floral resources for at least a substantial part of the growing season and structural characteristics that could provide nesting opportunities, including land areas that are adjacent and contiguous, forming a habitat mosaic.⁴⁹ The assessment concluded there was no high-potential habitat, yet the assessment did not do a thorough site inventory of the upper slopes of the Raging Buffalo Snowboard Ski Park because conditions “were not conducive.” This area has abundant floral resources, especially in late summer/early fall and retains seep communities, plus, adjacent wooded habitats have structural characteristics (dead/down trees and ground/soil-substrate) that may provide nesting opportunities. A brief survey of this hill conducted by Center staff in August of 2017 revealed abundant bumble bee populations. These attributes meet the definition of high-potential habitat. The project will have significant adverse effects on what is likely high-potential habitat because FHWA/IDOT will place Longmeadow Parkway excavation material (524,000 cubic yards) on the Raging Buffalo Snowboard Ski Park, thereby adversely affecting the floral resources available to the bumble bee.⁵⁰ FHWA/IDOT did not consider these adverse effects.

FHWA/IDOT relied on arbitrary habitat area delineations. Originally, the habitat evaluation determined that the area immediately west of the Fox River within the Brunner Family Forest Preserve is Medium to High-Potential habitat. This was based on combining a woodland component and an adjacent prairie restoration component and treating it as one habitat area in the assessments conducted on April 21, 24, and 25, and on June 1, 2017.⁵¹ But, on June 26, 2017, the woodland and prairie restoration components were treated and scored separately. However, high-potential habitat can include land areas that are adjacent and contiguous, forming a habitat mosaic.⁵² Separately, the woodland habitat scored 73 and the prairie restoration scored 94, meaning each was determined to be Low to Medium-Potential habitat, whereas if they were treated as one because they are adjacent, this area likely would have been High-Potential habitat. Notably, this area is directly in the path of the project where it crosses the Fox River. The area is also due north of the sightings of the rusty patched bumble bee in 2012 and 2017 and south of the August 31, 2017 sighting. There is no explanation for this change in habitat area delineation, which resulted in downgrading important habitat to “Low to Medium-Potential” in order to arbitrarily conclude the project is not likely to adversely affect the rusty patched bumble bee.

In addition, the determination that the area westward of the southern intersection of Western Avenue (IL-31) and Lundstrom Lane on Brunner Family Forest Preserve and on Raging Buffalo Snowboard Ski Park is “Zero-Potential Zone” for rusty patched bumble bee habitat is arbitrary given the failure to conduct a full survey, mentioned above, and the presence of the bumble bee in this area at the end of August, 2017.

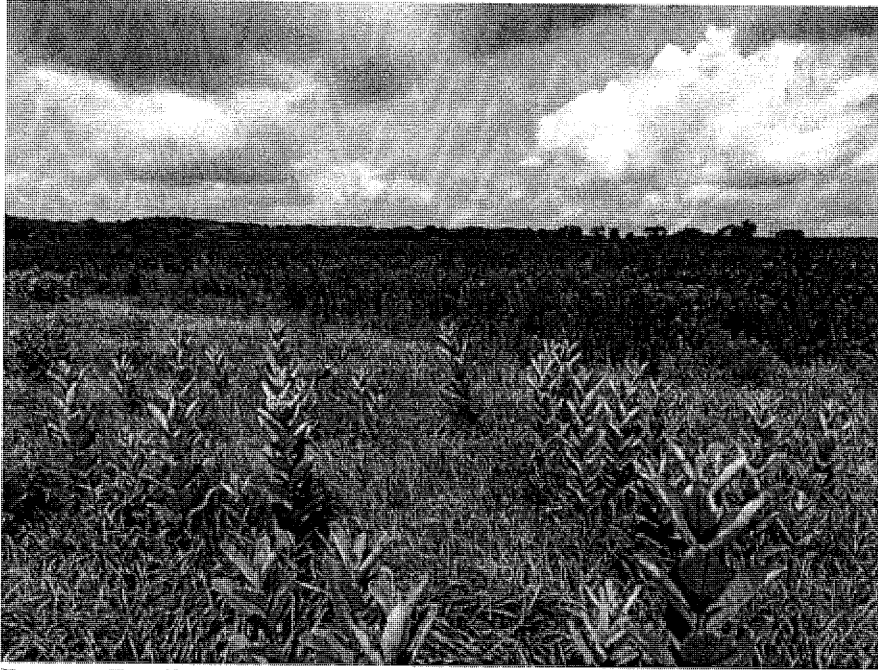
⁴⁹ Habitat Evaluation at 4.

⁵⁰ FHWA 2016. Finding of No Significant Impact, Longmeadow Parkway, Huntley Road to IL Route 62, Kane County, Illinois at 19.

⁵¹ Habitat Evaluation, attached “Site Summary” at internal page 4.

⁵² Habitat Evaluation at 4.

In addition, the field work for the habitat assessment was conducted on April 21, 24, and 25, and on June 1, 2017 (other than the arbitrary re-assessment on June 26 of the Brunner Family Forest Preserve habitat area west of the Fox River discussed above). An assessment carried out this early in the season fails to capture the abundant floral resources that exist in these habitat areas in late summer and early fall. For example, Center staff visited the Brunner Family Forest Preserve and the Raging Buffalo Snowboard Ski Park in August of 2017, which contained abundant floral resources depicted below.



Brunner Family Forest Preserve, Photo 1

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Brunner Family Forest Preserve, Photo 2



Brunner Family Forest Preserve, Photo 3



Brunner Family Forest Preserve, Photo 4



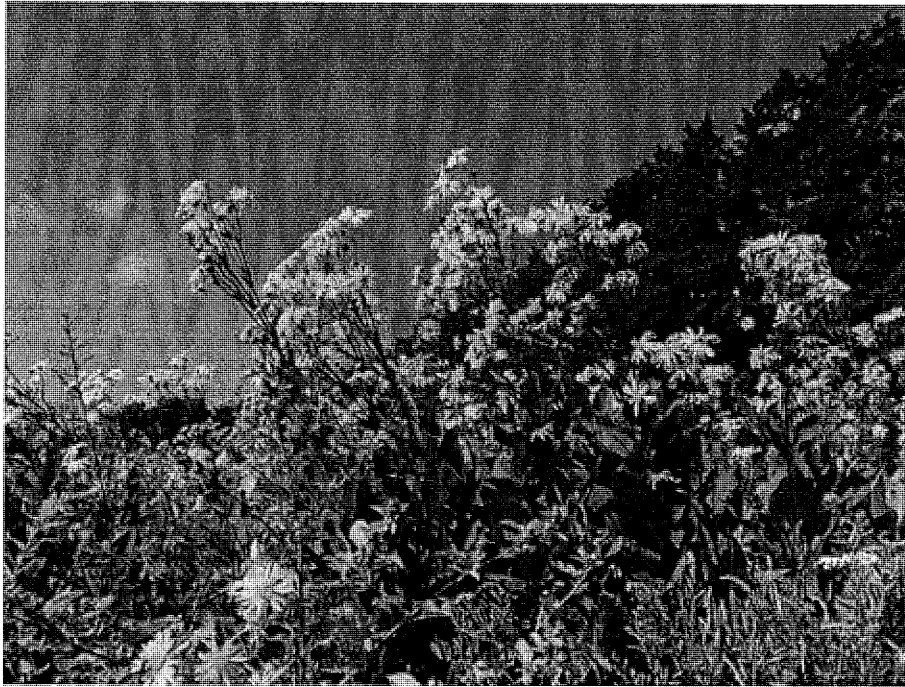
Brunner Family Forest Preserve, Photo 5



Brunner Family Forest Preserve, Photo 6



Brunner Family Forest Preserve, Photo 7



Raging Buffalo Snowboard Ski Park, Photo 1



Raging Buffalo Snowboard Ski Park, Photo 2

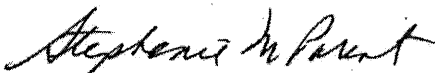
FHWA/IDOT mitigation destroys additional rusty patched bumble bee habitat. FHWA/IDOT proposed mowing floral resources during construction as a conservation measure and afterward will continue to mow along the highway. Mowing may avoid direct take of bumble bees, but it is also destruction of habitat that will have direct and indirect adverse effects on the rusty patched bumble bee that the agencies did not take into consideration in reaching the effects determination.

FHWA/IDOT did not evaluate other adverse effects within the project corridor. The project will destroy 28.7 acres of forested area (5.765 trees), then trees will be planted (2:1) within the Longmeadow Parkway right-of-way and other public land. The rusty patched bumble bee is one of the first bumble bees to emerge in early spring and “may be dependent on woodland spring ephemeral flowers because of their early emergence.”⁵³ Because of this dependence, the bumble bee “may overwinter in woodland areas near these important foraging resources.”⁵⁴ Moreover, after removal of the forested area, the soils will be compacted, destroying potential overwintering sites. FHWA/IDOT did not evaluate these adverse effects of the project on the rusty patched bumble bee.

CONCLUSION

We would prefer to resolve this matter without the need for litigation within the 60-day timeframe. If you would like to discuss this opportunity, or if you have any questions, please contact me. However, if FHWA/IDOT does not act to correct the violations described in this letter, the Center will pursue litigation.

Sincerely,



Stephanie M. Parent
Senior Attorney
Environmental Health Program
Center for Biological Diversity

cc:

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⁵³ FWS *Bombus* ESA Guidance at 10.

⁵⁴ *Id.*