

springer cows and 800 calves;" a 600 ft. x 300 ft. manure lagoon with the capacity to store 40 million gallons of livestock waste, contaminated storm water and wastewater—wastes that will be land applied in the Fall and Spring on 1,400 acres of surrounding land in Newton County. Natural Prairie's Petition also identifies Lawler Ditch as the only "stream or watercourse" running through the proposed CAFO site, and described the land application sites as having "Gt" soil types (Granby loamy fine sand) and "0-2%" slopes.²

2. On November 22, 2016, the Newton County Board of Zoning Appeals ("BZA") held a public hearing on Natural Prairie's Petition wherein agents of Natural Prairie provided additional information about the CAFO Site, and the CAFO's design and operations.³ At that hearing, Mr. Will De Jong and Natural Prairie's environmental consultant answered BZA members' questions about manure management, site drainage, groundwater use and monitoring, mortality management, odor control and waste disposal. Specifically, they represented that "there will be a groundwater monitoring program to ensure neighbors are not affected," that the CAFO's "wells will be 50-60 feet deep [and] a good distance from neighbors," that "manure will be incorporated" and that "there will be no adverse effects" or "negative impact on surrounding properties" because the CAFO "must remain in good standing with IDEM."⁴

3. At the close of the November 22nd public hearing, the BZA voted on Natural Prairie's Petition with two members voting for and two members voting against the

² See Natural Prairie's Petition for Special Exception Use (Aug. 22, 2016). Bogus Island ditch also runs through the CAFO site. And as discussed below, Natural Prairie has filled that ditch without a permit to do so. In addition, soil maps indicate that there are sandy soils with 6-15% slopes in certain areas of the CAFO site.

³ BZA Meeting Minutes (Nov. 22, 2016).

⁴ *Id.*

Petition.⁵ Those that voted against the Petition found that granting it would “be injurious to the appropriate use of neighboring property due to the total number of cows (4,300 including calves) as well as the manure they would generate” and due to concerns that the CAFO would adversely affect “the water table, water quantity and water quality” in the area. BZA attorney advised Natural Prairie that it could re-apply.⁶

4. Natural Prairie did not re-apply. Instead, on March 28, 2017 the BZA held a second public hearing on Natural Prairie’s initial Petition submitted on August 22, 2016.⁷ At that hearing, attorney for the BZA did not mention the BZA vote denying Natural Prairie’s Petition but instead stated that there was “no outcome” on the Petition at the November 22, 2016 hearing and that the instant hearing was “just a continuation” of the prior hearing.⁸ However, when a BZA member asked whether the conditions proposed at the prior hearing still applied, the BZA attorney answered that they did not because “this is a blank slate tonight” and “this is a new petition.”⁹

5. At the March 28th hearing, Mr. Will De Jong of Natural Prairie again discussed the CAFO’s site, design and operations, but this time made the following representations:

a) Natural Prairie would not need to incorporate manure because it would not be applying raw manure on the ground.¹⁰ Instead, “95-97% of the manure” would be contained and processed using “Trident Technology” to recover nutrients, leaving “low nutrient water” that will be stored in the lagoon and sprayed on fields;¹¹

⁵ *Id.*

⁶ BZA Meeting Minutes (Nov. 22, 2016).

⁷ BZA Meeting Minutes (March 28, 2017).

⁸ Audio Recording of BZA hearing of March 28, 2017 at ~12:28.

⁹ *Id.* at ~54:50 and ~1:00 (Also concerning, after the first hearing the County Commissioners removed Pat Tebo, one of the two BZA members that voted against the Special Exception and, on information and belief, may have pressured Tom Bober into changing his vote to avoid losing his position).

¹⁰ *Id.* at ~32:00.

¹¹ *Id.* at ~22:00-28:00 and ~51:00.

b) Natural Prairie's water wells would tap into the shallow, sand aquifer that most of the area's residential wells also draw on. However, neighboring wells would not be drawn down because the shallow aquifer recharges quickly and, therefore, the "cone of influence" would be very narrow because the more shallow the well, the less area of impact;¹²

c) the CAFO's water usage, estimated at "35-55 gallons per day per cow," would be no more than the historical usage at the site;¹³

d) Natural Prairie's permit application submitted to IDEM calculates that it will have 215 days of manure storage and will be required to have an emergency response plan to fix any contamination problems.¹⁴

6. Based on these representations, the BZA voted unanimously to grant Natural

Prairie's Petition subject to nine conditions including, in relevant part, the following:

a) the Special Exception and all operations within the scope of the Special Exception shall be conditioned on Natural Prairie obtaining all required federal, state and local permits and approvals;

b) the number of animals is limited to those authorized by Natural Prairie's IDEM permit;

c) the Special Exception will not run with the land such that if Natural Prairie decides not to construct the CAFO, the land will revert back to its original zoning;

d) Natural Prairie will have to re-apply for a Special Exception if it ceases to operate as an organic dairy; and

¹² Audio Recording of BZA hearing (March 28, 2017) at ~36:00-40:00 (notably, this conflicts with information provided to IDEM about wells at the CAFO site which tap into the deeper limestone aquifer, not the shallow, sand aquifer). Also, Natural Prairie's statement about the "cone of influence" is at minimum imprecise, and likely incorrect. See Exhibit A: Expert Report of Martin Risch, Hydrologist, retired from USGS.

¹³ Audio Recording of BZA hearing (March 28, 2017) at ~51:00 (that means daily water usage for Natural Prairie's 4,350 cattle is estimated to be 152,320-239,250 gallons per day or approximately 55.6 million - 87.3 million gallons per year). Accordingly, Natural Prairie will meet the regulatory definition of a "significant groundwater withdrawal facility" (SWWF) that "has the capability of withdrawing at least one hundred thousand (100,000) gallons of ground water in one (1) day." Ind. Code § 14-25-4-6. Contrary to Mr. De Jong's representation that this rate of water withdrawal is no more than historic rates, of the 56 registered SWWF facilities in Newton County, the Natural Prairie site is not one of them. See DNR data available at <https://www.in.gov/dnr/water/4841.htm>.

¹⁴ Audio Recording of BZA hearing (March 28, 2017) at ~33:50 and ~52:20-54:00.

e) the Special Exception is subject to the BZA's annual review.¹⁵

7. On May 16, 2017, Natural Prairie submitted its application to the Indiana Department of Environmental Management ("IDEM") for a Confined Feeding Operation Approval ("CFO Approval"). On October 11, 2017, IDEM granted the application.¹⁶ In all material respects the CAFO approved by IDEM is the same as that described in Natural Prairie's application for a Special Exception Use (i.e., type and number of animals, site location, confinement barns, manure lagoon and storage capacity,¹⁷ depth of wells to the deeper limestone aquifer, not the shallow aquifer as Mr. De Jong stated at the second hearing). Notably absent, however, from Natural Prairie's IDEM application and the CFO Approval issued is the use of "Trident Technology"—or any other nutrient recovery technology for that matter—as Natural Prairie emphatically stated to the BZA would be used.¹⁸

8. Thereafter, the IDEM CFO Approval issued to Natural Prairie was administratively appealed to the Office of Environmental Adjudication ("OEA") by a Newton County resident concerned that the CAFO, as approved, fails to comply with Indiana's CFO laws and regulations at Ind. Code § 13-18-10, *et. seq.*, and 327 IAC 19, *et.*

¹⁵ *Id.* at ~56:00-1:12.

¹⁶ Exhibit B: IDEM CFO Approval for CFO ID#6980 (Oct. 11, 2017) (notably, Natural Prairie represented to the BZA at both public hearings that it had already submitted its application to IDEM).

¹⁷ The CFO Approval indicates that the dimensions of the manure lagoon will be 500' x 1000' x 12' (roughly the equivalent of 3 football fields) which is substantially larger than the 600' x 300' lagoon Natural Prairie described in its application for the Special Exception.

¹⁸ This is especially concerning given that BZA member, Tom Bober, who had initially voted against the Special Exception changed his vote based on Natural Prairie's representation that it would be using this technology. Specifically, Mr. Bober stated, "I feel better about it [the Special Exception] tonight with the explanation of your manure processing because I was under the impression last time that it was going to be all raw manure [applied to land]. This makes more sense." Audio Recording of BZA hearing (March 28, 2017) at ~1:10.

seq.¹⁹ Natural Prairie moved to dismiss that administrative appeal arguing in relevant part that:

Continuing to litigate [the neighbor's appeal] is placing Natural Prairie's legally approved twenty-seven million dollar (\$27,000,000) project at jeopardy. This delay prejudices Natural Prairie's ability to comply with contractual obligations it has incurred to construct the dairy operation and its obligations to fulfill milk production contracts. It entered into these contracts under the assumption the dairy project would be operational by the end of the year. Every month that this resolution is delayed, Natural Prairie loses hundreds of thousands of dollars, and will eventually be forced to ship its perishable products across the country to fulfill orders, rather than ship from its Indiana location.²⁰

9. After the OEA denied the motion to dismiss,²¹ Natural Prairie's concerns about financial losses and meeting its contractual obligations appeared to change. Specifically, Will De Jong claimed that Natural Prairie was now "taking the time to listen and understand people's concerns"²² and, on May 7, 2018, voluntarily withdrew its IDEM CFO Approval having "decided not to construct the dairy operation as currently approved."²³ Mr. De Jong also claimed that Natural Prairie "wants to be a good neighbor and good environmental steward" which is why "we are doing not only what is required of

¹⁹ Exhibit C: Amended Petition for Administrative Review, *In re: Objection to the Issuance of CFO Approval to Natural Prairie*, OEA Cause No. 17-W-J-4975 (March 7, 2018).

²⁰ Exhibit D: Natural Prairie's Reply Brief in support of its Motion to Dismiss at p. 12 (March 22, 2018).

²¹ Exhibit E: OEA Order Denying Natural Prairie's Motion to Dismiss (March 29, 2018).

²² Quoting Will De Jong during interview on Lake Shore Public Radio with Chris Nolte on *Regionally Speaking* (April 24, 2018) at <http://lakeshorepublicradio.org/post/regionally-speaking-tuesday-april-24-2018#stream/0>.

²³ Exhibit F: Natural Prairie's Request for Exiting the Confined Feeding Approval Program and Request for Approval Voidance to Joe Williams, IDEM Section Chief Confined Feeding Permits Section (May 7, 2018); Exhibit G: IDEM's CFO Approval Termination Letter (May 10, 2017).

us with respect to rules and regulations but also taking the time to see where we can go beyond what is required.”²⁴

10. As presented below, Natural Prairie’s claims ring hollow given its material misrepresentations to the BZA to obtain the Special Exception, the many regulatory deficiencies in the IDEM CFO Approval now withdrawn by Natural Prairie on which the Special Exception is based, and the serious threats to public health and the environment posed by Natural Prairie’s insistence on constructing and operating a massive dairy CAFO in one of the most sensitive, ecological areas of the State.

BASIS FOR RESCINDING THE SPECIAL EXCEPTION

11. Section 5.20(4) of the Newton County Ordinance provides the BZA with authority to rescind a Special Exception granted to a confined feeding operation “if, after a public hearing, the Board finds that the confined feeding operation is causing a violation of any . . . condition of approval by the Board.”

12. Natural Prairie’s decision not to construct the dairy operation as currently approved by the Special Exception and IDEM’s termination of the CFO Approval for that formerly planned CAFO, violate two conditions of the Special Exception: (1) the Special Exception is conditioned on Natural Prairie obtaining and maintaining all required federal, state and local permits and approvals; and (2) the Special Exception does not run with the land, reverting back to the land’s original zoning if Natural Prairie decides, as it has, not to construct the CAFO as approved by the Special Exception. Thus, the BZA should rescind the Special Exception for this reason alone.

²⁴ <http://lakeshorepublicradio.org/post/regionally-speaking-tuesday-april-24-2018#stream/0>

13. Also, in violation of the Special Exception condition that Natural Prairie obtain all required federal, state and local permits, Natural Prairie has begun land disturbing activities at the CAFO Site and has filled a section of Bogus Island Ditch without obtaining the required state permits under 327 IAC 15-5 and Section 404 of the Clean Water Act.

14. But even without these violations of the Special Exception's conditions, the BZA should rescind the Special Exception because it contemplates design, construction and operation of a CAFO that is no longer in the works. Natural Prairie made numerous representations to the BZA that any pollution concerns and related adverse effects on nearby landowners would be addressed by the IDEM permit it had applied for, that was subsequently approved by IDEM, and is now void. Since Natural Prairie changed its plans, IDEM has terminated the permit it issued and is requiring Natural Prairie to submit a new permit application detailing the company's changed plans. The BZA should do the same to ensure that whatever new plans Natural Prairie has in mind will meet Newton County's requirements for a Special Exception.

15. Section 5.20(5) of the Newton County Zoning Ordinance states that:

Any person or persons believing that such permitted confined feeding operation in Newton County is being operated in violation of any law of the State of Indiana, rule or regulation as to confined feeding, or that the operation is endangering public health or safety, or is contrary to the public welfare, or is injurious to the appropriate use of neighboring property, or in violation of the Ordinances of Newton County, upon payment of a filing fee of one hundred dollars (\$100.00) to the Auditor of Newton County, may file a verified complaint with the secretary of the Newton County Plan Commission setting forth a designation or description of the lands involved, the lands in which complainants have an interest, the above matters of which they have complaint, together with such supplementary maps, schedules and other information as they may desire.

As detailed herein, the Special Exception issued to Natural Prairie should be rescinded under Section 5.20(5) because it: (a) is based on material misrepresentations of fact and possible improper influence in violation of the Newton County Zoning Ordinance and Indiana's zoning and planning laws; and (b) approves a CAFO that violates Indiana's confined feeding laws, endangers public health, and is injurious to the appropriate use of neighboring property.

Description of the Lands Involved

16. The CAFO buildings and waste lagoon approved by the Special Exception will be in sections 7 and 8 of T30N, R9W north of CR W400N between CR N600W to the west and CR N400W to the east. Sections 5 and 6 are also owned by Natural Prairie and, according to the now terminated IDEM CFO Approval, are the intended locations where Natural Prairie will land apply the millions of gallons of animal waste generated at the CAFO and collected in its outdoor waste lagoon. This 4-square mile area is located next to the Kankakee Sands bison habitat owned by the Nature Conservancy to the east and south, with the DNR's Willow Slough Indiana Fish and Wildlife Area further south.²⁵ As such, the CAFO at this location is out of place and will be a permanent hindrance and detriment to unified conservation for the area.

17. In addition, the CAFO Site and waste application areas are entirely in the lakebed of the former Beaver Lake, which was the largest natural lake in Indiana until it was drained in the late 1800's by constructing Beaver Lake Ditch to the Kankakee River.²⁶ These former lakebed soils are hydric (wetland) types that are seasonally inundated in the

²⁵ Exh. A.

²⁶ Exh. A.

root zone and where ponding and flooding frequently occur.²⁷ Indeed, soil testing by Natural Prairie demonstrates the presence of hydric soils and a water table “at or near soil surface” in some locations and “at or above soil surface” in others.²⁸ Contrary to Natural Prairie’s representations to the BZA, these conditions expose the water table (i.e. the shallow, sand aquifer) on which area residents rely for their drinking water to certain surface contamination.²⁹

18. The CAFO Site in sections 7 and 8 contains two major drainage ditches, not just one as Natural Prairie represented to the BZA. The first is Lawler Ditch which conveys water from and across the property in a northward direction to Beaver Lake Ditch which flows to the Kankakee River. South of the CAFO site is Riner Houseworth Ditch which connects to Lawler Ditch at an undefined flow divide and then to J.C. Murphy Lake in the Willow Slough State Fish and Wildlife Area.³⁰ The second ditch not disclosed by Natural Prairie is Bogus Island Ditch, in the eastern part of the CAFO property, which conveys water from the property eastward and northward to Beaver Lake Ditch and then to the Kankakee River.³¹ Finally, the waste application sites in Section 6 convey water from and across the property via Redden Ditch which flows east into Lawler Ditch.³² Combined with the presence of a network of subsurface tiles, hydric soils, the seasonal high water table

²⁷ See Exh. B. at 66-98, Soil Borings Report by John McQuestion and Tim Monaghan of Soil Solutions, Inc. (Jan. 18, 2017) (identifying hydric soils and ponding); see also Exhibit H: Photos of flooding at the site following recent rains in February, 2018.

²⁸ Exh. B. at 66-98.

²⁹ Exh. A.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

and ponding, there is a high potential for chronic waste contamination of these large drainage ditches from the CAFO as approved by the Special Exception.³³

Lands in Which Complainants Have an Interest

19. Roy and Arlene Barnes (“the Barnes”) are long-time residents of Newton County having resided at 5584 N U.S. Highway 41, Lake Village, Indiana for more than thirty (30) years. The Barnes home and property are within one mile, due east of the CAFO approved by the Special Exception and less than a half mile from Bogus Island Ditch which flows toward their property from the CAFO Site. The Barnes rely on the shallow, sand aquifer that is threatened by the CAFO for their drinking water. Because of their proximity to the CAFO, the Barnes’ quality of life, health and property value will be adversely affected as discussed more fully below.

20. Steven Cowley, a resident of Newton County since 2009, built his home on 10.8 acres at 5764 W. 800 N, in Lake Village, Indiana. Mr. Cowley’s home and property are approximately two miles due north of the CAFO approved by the Special Exception. Mr. Cowley’s drinking water well draws from the shallow, sand aquifer which is threatened by the CAFO. And, because of his proximity to the CAFO, Mr. Cowley’s quality of life, health and property value will be adversely affected as discussed more fully below.

21. Joyce Davis is a long-time resident of Newton County having resided at 8737 N. 600 W, in Lake Village, Indiana since 1994. Ms. Davis’ 20 acre property and home are approximately 2.75 miles due north of the CAFO approved by the Special Exception. Her

³³ *Id.*

drinking water well also draws from the shallow, sand aquifer which is threatened by the CAFO. Because of Ms. Davis' proximity to the CAFO, her quality of life, health and property value will be adversely affected as discussed more fully below.

22. Thomas and Debra Cutts ("the Cutts"), residents of Newton County since 2013, live on 7.8 acres at 8757 N. 384 W., Lake Village Indiana. The Cutts' home and property are approximately 2.75 miles north-northeast of the CAFO approved by the Special Exception. Lawler Ditch which flows north from the CAFO, runs through the Cutts' property. And, their drinking water well, which draws on the shallow, sand aquifer threatened by the CAFO is within 175 feet of Lawler Ditch. Because of their proximity to the CAFO, the Cutts' quality of life, health and property value will be adversely affected as discussed more fully below.

The CAFO Approved by the Special Exception Endangers Public Health

23. The public health threats from the Natural Prairie CAFO as approved by the Special Exception stem largely from the tremendous amount of "manure" it will generate which, by regulatory definition can include not only "liquid or solid animal excreta" but also livestock production wastes such as "excess drinking water, clean up water, contaminated livestock truck or trailer wash-water, milking parlor wastewater . . . [and] silage leachate," among other constituents.³⁴ Indeed, based on Natural Prairie's calculations, the CAFO will generate 147,443 gallons of this waste each day, and more than 53.8 million gallons each year.³⁵ Put another way, the CAFO as approved will generate 40

³⁴ See Indiana's CFO rule definition of "manure" at 327 IAC 19-2-25.

³⁵ Exh. B at 128.

times the amount of urine and feces as that produced by the entire human population of Newton County (14,000 people).³⁶

24. The shallow, sand aquifer on which area residents rely for drinking water is highly susceptible to surface contamination. This aquifer underlies the CAFO, its massive waste lagoon, and waste disposal sites approved by the Special Exception exposing area drinking water wells, including those of Complainants, to dangerous nitrate, ammonia and pathogens contained in manure thereby posing a serious public health threat.³⁷

25. Because these wastes will be collected and stored in a massive, outdoor anaerobic lagoon, the wastes will decompose, putrefy and release dangerous gases including hydrogen sulfide, ammonia, particulate matter, endotoxin³⁸ and other harmful emissions into the ambient air.³⁹ Indeed, a Purdue University study of air emissions at a dairy CAFO in Indiana found that ammonia emissions were released at a rate of between 18 and 75 grams per day per cow.⁴⁰ That means, the Natural Prairie CAFO with 4,350 cows will emit as much as 719.4 pounds of ammonia into the air every day, far more than the

³⁶ Based on government data indicating that the median daily excretion rate of feces and urine reported for humans is 1.51 liters (0.4 gallons) per day versus an average dairy cow that Natural Prairie estimates will produce 16 gallons of urine and feces/day.

³⁷ Exh. A.

³⁸ See Heederik, D., et. al., *Health effects of airborne exposures from concentrated animal feeding operations*, Environmental Health Perspectives 115:298-302 (2007); see also S. Gibbs, et. al., *Isolation of Antibiotic-Resistant Bacteria From the Air Plume Downwind of a Swine Confined or Concentrated Animal Feeding Operation*, Environmental Health Perspectives 114:1032-1037 (2006).

³⁹ Claudia Copeland, *Air Quality Issues and Animal Agriculture: A Primer*, U.S. Congressional Research Service, (RL32948; Dec. 22, 2014); C. Hribar, *Understanding Concentrated Animal Feeding Operations and Their Impact on Communities* (2010); Iowa State University and University of Iowa College Study Group, *Concentrated Animal Feeding Operations Air Quality Study* (2002).

⁴⁰ Purdue University, *National Air Emissions Monitoring Study: Emissions Data From Two Free Stall Barns and a Milking Center at a Dairy Farm in Indiana-Site IN5B*, Final Report (2010).

regulatory threshold applicable to other industries.⁴¹ However, unlike other industries, CAFOs are still entirely exempt from regulation under the Clean Air Act.⁴²

26. The resulting stench from these gasses can be unbearable, but even more concerning are the serious health effects they can create. For instance, one of the most dangerous gasses produced, hydrogen sulfide, can be harmful even at low levels. It is a potent neurotoxin that can cause damage to the brain and nervous system. People exposed to concentrations of even 0.1-1 parts per million (ppm), display neurobehavioral dysfunction, including abnormal balance and delays in verbal recall. Its effects are irreversible and can also include skin rashes, seizures, comas, and even death.⁴³

27. Like hydrogen sulfide, ammonia is a noxious gas that poses serious health risks. Ammonia has an acrid, repellant odor at levels above 0.7 ppm. It causes eye irritation beginning at 4 ppm and irritation of the nose and throat above 25 ppm. Ammonia can also trigger asthma attacks in some asthmatics,⁴⁴ which is particularly concerning for children who attend the nearby Lake Village Elementary School and North Newton High School. Indeed, one study confirmed that children with asthma had decreased measured lung function with increasing ammonia levels in the air.⁴⁵ Consistent with that finding, another study found that children who attended a school located 1/2 mile from a much smaller

⁴¹ Note: the regulatory threshold is typically 100 tons (200,000 lbs)/year.

⁴² U.S. EPA, *Eleven Years After Agreement, EPA Has Not Developed Reliable Emission Estimation Methods to Determine Whether Animal Feeding Operations Comply With Clean Air Act and Other Statutes* (Sept. 19, 2017) https://www.epa.gov/sites/production/files/2017-09/documents/epa_oig_20170919-17-p-0396.pdf.

⁴³ Agency for Toxic Substance and Disease Registry, *ToxFaqs: Hydrogen Sulfide* (2014); National Ag Safety Database, *Manure Gas Dangers Fact Sheet* (2002); KH Kilburn, *Evaluating Health Effects from Exposures to Hydrogen Sulfide: Central Nervous System Dysfunction*, *Environmental Epidemiology and Toxicology* (1999).

⁴⁴ Agency for Toxic Substance and Disease Registry, *ToxFaqs: Ammonia*, (2014).

⁴⁵ C. Loftus, et.al., *Ambient Ammonia Exposures in an Agricultural Community and Pediatric Asthma Morbidity*, *Epidemiology* 26:794-801 (2015).

CAFO than the Natural Prairie CAFO showed a prevalence of physician-diagnosed asthma in 19.7% of cases whereas only 7.3% of children exhibited asthma symptoms from the control school more than 10 miles away.⁴⁶

28. Other adverse human health effects from CAFO emissions are well documented. In addition to nausea, headache and vomiting, more than 30% of CAFO workers report serious respiratory problems.⁴⁷ One study found that people living within a two-mile radius of a small, 4,000-hog CAFO reported more respiratory and other symptoms than a control group of people not living near the CAFO.⁴⁸ Another study showed that people living near CAFOs reported more confusion, tension, depression, and fatigue than did those not living nearby.⁴⁹ Thus, the Natural Prairie CAFO's noxious and dangerous air emissions which are wholly unaddressed/uncontrolled by federal or state regulation pose a substantial public health threat to nearby residents, including Complainants.

29. In addition, the CAFO approved by the Special Exception and its waste lagoon will be adjacent to the Kankakee Sands bison habitat and viewing area, and its waste disposal sites will be near the Willow Slough Fish and Wildlife area, the Beaver Lake Prairie Chicken Refuge, tributaries of the Kankakee River and other natural areas which area residents, including Complainants, frequently enjoy for outdoor recreation. As such, the

⁴⁶ J. Kline and S. Sigurdarson, *School Proximity to Concentrated Animal Feeding Operations and Prevalence of Asthma in Students*, Chest (2006).

⁴⁷ KJ Donham, *The Concentration of Swine Production: Effects on Swine Health, Productivity, Human Health and the Environment*, Veterinary Clinics of North America: Food Animal Practice (2000).

⁴⁸ KM Thu, et al., *A Control Study of the Physical and Mental Health of Residents Living Near a Large-Scale Swine Operation*, Journal of Agricultural Safety and Health (1997).

⁴⁹ S. Wing and S. Wolf, *Intensive Livestock Operations, Health and Quality of Life Among East North Carolina Residents*, Environmental Health Perspectives (2000).

CAFO's unregulated air pollution will also limit Complainants' and other people's ability to enjoy recreating in those natural areas.

The CAFO Approved by the Special Exception Will Reduce Nearby Property Values

30. Study after study has confirmed that proximity to a CAFO can reduce the value of a home by as much as 88% depending on distance from the CAFO and prevailing winds.⁵⁰ Degradation in air quality which impacts homeowners' enjoyment and use of their property has a measurable, direct, and statistically significant impact on property values.⁵¹ One study found that "only landfills have a worse effect [than CAFOs] on adjacent property values" and that "a sewage treatment plant has a less depressing effect on nearby housing prices [than a CAFO]."⁵² Even Indiana's own Purdue University found in conducting a literature review that:

Market prices for homes are expected to decline the closer the home is to the CAFO. A downwind home will realize a significantly larger decline in value relative to a home upwind that is the same distance from the CAFO. These potential inequities . . . indicate that communities and operators must choose to site CAFOs in a manner that either minimizes differential impacts on home values or compensates those individuals disproportionately impacted.⁵³

⁵⁰ Hamed, Mubarek, et. al., *The Impacts of Animal Feeding Operations on Rural Land Values*, Univ. of Missouri-Columbia Community Policy Analysis Center Report R-99-02 (May 1999).

⁵¹ See Kiel & Boyle, *Hedonic Studies of the Impact of Environmental Externalities*, Journal of Real Estate Literature 9-2, 117-144 (2001); see also D. Aiken, *Property Valuation May Be Reduced by Proximity of Livestock Operation*, Cornhusker Economics, Dept. of Agricultural Economics, University of Nebraska-Lincoln (May 2002) (finding odors from a CAFO with 5,200 sows diminished values of residential properties within ¾ mile by 30%); K. Milla, et. al., *Evaluating the Effect of Proximity to Hog Farms on Residential Property Values: a GIS-Based Hedonic Price Model Approach*, URISA Journal, 17(1):27-32 (2005).

⁵² A. Ready, et. al., *The Impact of Open Space and Potential Local Disamenities on Residential Property Values in Berks County, Pennsylvania*, American Journal of Agricultural Economics 87:314-326 (May 2005).

⁵³ R. Keeney, *Community Impacts of CAFOs: Property Values*, Purdue Extension, Purdue University (2008).

31. This loss in property value may affect tax assessments and therefore Newton County tax revenues.⁵⁴ In addition, Natural Prairie will not be required to pay for the damage it causes to county roads and infrastructure from substantially increased truck traffic—or for the health costs, accidents and environmental damage the CAFO will cause. Instead, these are all financial drains and burdens that will be imposed on the County and nearby residents.

The CAFO Approved by the Special Exception is Based on Material Misrepresentations and Possible Improper Influence

32. As detailed above, Natural Prairie made numerous conflicting statements and outright misrepresentations to the BZA about what it was proposing as to: (a) the depth of wells and in turn which aquifer—the shallow sand aquifer versus the deep limestone aquifer—it will draw on to meet the CAFO’s substantial water supply needs; (b) the significant impact the CAFO will have on area residential wells both as to depletion and contamination of the aquifer; (c) hydrological conditions including the number of surface waters at the Site; (d) the size of its manure lagoon; and (e) most notably, that Natural Prairie would be using “Trident Technology” to process and treat manure such that only “low nutrient water” will be stored in the lagoon and sprayed on fields. This representation, which changed at least one BZA member’s vote,⁵⁵ was categorically not true. Natural Prairie’s application to IDEM and the IDEM CFO Approval make no mention of this

⁵⁴ See e.g., National Public Radio, *Bartholomew County CAFO Neighbors Win Property Tax Cuts* (July 21, 2017) at <http://wbaa.org/post/bartholomew-county-cafo-neighbors-win-property-tax-cuts#stream/0>.

⁵⁵ Referring to Tom Bober who changed his vote against the CAFO stating, “I feel better about it [the Special Exception] tonight with the explanation of your manure processing because I was under the impression last time that it was going to be all raw manure [applied to land]. This makes more sense.” Audio Recording of BZA hearing (March 28, 2017) at ~1:10.

technology or any other similar manure processing technology. Due to these misrepresentations, the BZA was prevented from accurately assessing whether Natural Prairie's proposed CAFO meets the requirements for a special exception, in violation of the Newton County Ordinance.

33. Furthermore, on information and belief, the Special Exception may be the product of improper influence. After the first hearing, the County Commissioners removed Pat Tebo, one of the two BZA members who voted against the Special Exception and, appear to have pressured Tom Bober into changing his vote to avoid losing his BZA position. If so, such a communication would be in direct violation of Ind. Code §36-7-4-920 which prohibits communications with any member of the BZA "with intent to influence the member's action" in voting on an application for a special exception.

The CAFO Approved by the Special Exception Violates Environmental Laws

34. The Special Exception allows Natural Prairie to construct, operate and maintain a CAFO with waste management systems, structures and operations that:

- a) fail to meet required setback distances from surface waters and on-site water wells in violation of 327 IAC 19-12-3;
- b) pose severe risks of contamination to surface and groundwater and human health in violation of 327 IAC 19-3-1(d);
- c) are allowed to be constructed less than two feet above the water table in violation of 327 IAC 19- 12-2(a)(3);
- d) are allowed to be constructed in soil types expected to have a seasonal high water table, without lowering the water table below the bottom of the CAFO's waste management systems in violation of 327 IAC 19-12-2(a)(5);
- e) lack drainage systems to effectively collect and drain the groundwater in violation of 327 IAC 19-12-4(o);

f) will not minimize nonpoint source pollution entering waters of the state in violation of 327 IAC 19-3-1(b);

h) will not minimize leaks and seepage, prevent manure releases or spills or ensure compliance with water quality standards in violation of 327 IAC 19-3-1(d);

i) will not prevent discharges to surface waters of the state in violation of 327 IAC 19-12-4(b) and 327 IAC 15-16; and

j) will allow application of untreated waste to land parcels within a former lakebed with hydric soils and a high water table where ponding and flooding frequently occur thereby authorizing land application in a manner that will not prevent runoff and will threaten waters of the state in violation of 327 IAC 19-3-1.

WHEREFORE, all the foregoing reasons, the BZA should exercise its authority under Section 5.20 of the Newton County Ordinance and, following a public hearing, rescind the Special Exception issued to Natural Prairie.

DATE: May 25, 2018

Respectfully submitted,



Kim E. Ferraro, Attorney No. 27102-64
Hoosier Environmental Council
541 South Lake Street
Gary, IN 46403
219/46-0104

VERIFICATION

I affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge and belief.



Kim E. Ferraro, Attorney for Complainants

VERIFICATION

I affirm under penalties of perjury that the foregoing representations within my lay understanding, excluding legal and expert matters, are true and correct to the best of my knowledge and belief.



Roy Barnes

VERIFICATION

I affirm under penalties of perjury that the foregoing representations within my lay understanding, excluding legal and expert matters, are true and correct to the best of my knowledge and belief.



Arlene Barnes

VERIFICATION

I affirm under penalties of perjury that the foregoing representations within my lay understanding, excluding legal and expert matters, are true and correct to the best of my knowledge and belief.



Steven Cowley

VERIFICATION

I affirm under penalties of perjury that the foregoing representations within my lay understanding, excluding legal and expert matters, are true and correct to the best of my knowledge and belief.



Joyce Davis

VERIFICATION

I affirm under penalties of perjury that the foregoing representations within my lay understanding, excluding legal and expert matters, are true and correct to the best of my knowledge and belief.



Thomas Cutts

VERIFICATION

I affirm under penalties of perjury that the foregoing representations within my lay understanding, excluding legal and expert matters, are true and correct to the best of my knowledge and belief.



Debra Cutts