



# Illinois Department of Natural Resources

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Pat Quinn, Governor  
Marc Miller, Director

## **Authorization for Incidental Take and Implementing Agreement**

Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5) and the regulations adopted to implement the Act (17 Ill. Adm. Code 1080), authorization is hereby granted to the Illinois Department of Transportation (hereinafter referred to as IDOT) for the incidental take of the marsh rice rat (*Oryzomys palustris*). The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that this taking is incidental to activities associated with roadway relocation of the Herrin to Johnston City Road in Williamson County, Illinois (FAS 903 and FAU 9588).

### **Procedural History**

In 2001, the IDOT requested that the Illinois Natural History Survey (INHS) conduct surveys for endangered and threatened mammals within the FAS 903 and FAU 9588 project corridor. INHS reported the capture of seven marsh rice rats in the project area in their Survey Memorandum dated October 1, 2002. IDOT prepared a conservation plan per the Act and submitted it on November 12, 2013, to the Department as a request for authorization for the incidental take of the marsh rice rat. After addressing the Department's identification of discrepancies, the final conservation plan was received on December 9, 2013. The final public notice was received on January 10, 2014. The public notice period, as well as the public comment, will be detailed under #6 of the Compliance section below.

### **Compliance with the Illinois Endangered Species Protection Act**

The Act includes six criteria which must be satisfied for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each criteria are listed below.

1. The taking will not be the purpose of, but will be only incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is roadway relocation of 1.8 miles of the Herrin-Johnston City Road between Fifth Street and Christmas Tree Road in Herrin, Williamson County for improved safety, as described in the conservation plan. The proposed project will consist of the roadway relocation with a new bridge structure. The project activities will consist of grading and placing sub-base layers and the proposed surface, including shoulders. New roadside ditches will not be cut. Proposed work within the channel includes driving piles for new abutments, placement of riprap for

scour protection, and incidental grading along the stream banks within the existing State right-of-way. The take that could result from this project is not the purpose of IDOT's activities, but is incidental to the carrying out of an otherwise lawful activity.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking:

The conservation plan prepared by IDOT describes measures that will be taken to minimize the potential adverse effects of the project on the marsh rice rat. IDOT will minimize roadside slopes and place guardrail through the area of the structure to reduce the affected area. IDOT will implement best management practices (BMP) included in the Storm Water Pollution Prevention Plan (SWPPP), including seeding of all disturbed areas draining to the stream.

IDOT estimates that 3.1 acres of suitable marsh rice rat wetland habitat will be impacted by siltation, stream channelization, debris, debris removal, or substrate removal. The applicant proposes to create 7.9 acres of wetland habitat suitable for marsh rice rats, by removing the existing roadway embankment and reducing it to an elevation consistent with that of existing wetland areas. INHS will conduct monitoring of the site until it is deemed suitable by the Department. IDOT will also provide 7.8 acres of wetland compensation offsite.

Additional measures, based on the life history needs of the marsh rice rat, may be required under the Authorities section below.

3. The parties to the conservation plan will ensure that adequate funding for the conservation plan will be provided.

This project will be funded by both the State of Illinois and the Federal Highway Administration. The estimated cost of the preferred roadway realignment alternative is \$4,745,000. IDOT has included in the projects estimated budget expenses for implementing BMPs from the SWPPP. Project costs include funding for design and implementation of erosion and sediment control measures and mitigation and monitoring requirements. Additional practices and measures necessary to deal with changed and unforeseen circumstances are typically funded through change order and force account practices. By law, the erosion and sediment control plan must be in place for the life of the project, as well as the requirements of the Incidental Take Authorization (ITA). All of the above discussed measures shall be funded directly by and through the IDOT. IDOT exclusively abides by the National Environmental Policy Act and all associated state and federal environmental laws in carrying out the mission of performing the most environmentally sensitive methods of planning and engineering.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of 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.

The marsh rice rat is listed as a threatened species in Illinois because of its limited range in the State and the continuing loss of its preferred wetland habitats. The marsh rice rat is a semi-aquatic, nocturnal species with an approximate lifespan of one year. The species is capable of breeding at seven weeks of age, gestation is approximately 25 days, and litters range from one to seven individuals.

In 2002, INHS conducted live-trapping surveys in areas of suitable marsh rice rat habitat and identified the presence of seven marsh rice rats within the project area, including a reproductive female. The marsh rice rats were occupying the edge between a marsh and a floodplain forest. While it is likely that the marsh rice rats that may be present at the time of construction will disperse away from earth-moving activity, it is possible that some individuals, particularly young in the nest, could be incidentally taken.

The Illinois Natural Heritage Database documents 40 element occurrence records of varying numbers of individuals of marsh rice rats across 13 southern Illinois counties (Massac, Pulaski, Saline, Johnson, Williamson, Franklin, Alexander, White, Hamilton, Union, Perry, Jackson, and Pope). Seven element occurrence records for Williamson County range from one to 191 in numbers of individuals captured. According to the data, marsh rice rats are inhabiting roadside ditches, wetlands with emergent vegetation such as common reed, reed canary grass (*Phalaris arundinacea*), and cattail (*Typha*), small streams and ponds adjacent to open fields, grasses, shrubs or woodlands. Standing water and dense cover are often noted, as well as an occasional association with non-native, invasive vegetation. Statewide, the Department has issued three previous Incidental Take Authorizations for marsh rice rats, one in Alexander County, one in Saline County, and one in Union County. The Department is in receipt of two of the projects' post-construction surveys and marsh rice rats have recolonized both of the project areas that have completed restoration.

Based on the life history needs of the species, the number of known element occurrence records in the State, an assessment of the potential impact to individuals that make up the element occurrence in this project footprint, and the conservation measures outlined herein, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the State-threatened marsh rice rat.

5. Any measures required under Section 5.5(b)(6) of the Act will be performed.

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and official IDOT signatures on this authorization indicate its commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application.

Public notice of IDOT's request for authorization of incidental take was published in the Breeze Courier (official state newspaper) on January 15, 2014, and in the Southern

Illinoisan (Williamson, Jackson, Franklin, Johnson, Perry, Randolph, Saline, and Union Counties) on January 15, 22, and 29, 2014. Public comments were accepted by the Department until February 28, 2014. No public comments were received.

### Authorization

It is the determination of the Department that the measures that will be implemented by IDOT will adequately minimize and mitigate the anticipated taking of marsh rice rats due to roadway relocation of the Herrin to Johnston City Road project in Williamson County, Illinois. Further, it is the Department's opinion that the take authorized herein will not diminish the likelihood of the survival of the marsh rice rat 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.

All terms and conditions included in the aforementioned conservation plan submitted by IDOT to the Department are incorporated into this agreement by reference and are made a part thereof.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5] and the Administrative Rule for the Incidental Taking of Endangered and Threatened Species [Ill. Adm. Code 1080.40(b)], this authorization is issued subject to the following additional terms and conditions, which may include modifications to #2 in the Compliance section above:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of 7 years from the date of the Department signature, unless terminated by written agreement of both parties.

This authorization may be revoked pursuant to the Act and Ill. Adm. Code 1080.80(b) if the Department finds that IDOT has failed to comply with any of these terms and conditions or has been responsible for the taking of marsh rice rats beyond that which is incidental to roadway relocation activities on the Herrin to Johnston City Road project in Williamson County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between IDOT and the Department. In this event, the Department shall notify the Illinois Endangered Species Protection Board of such alteration.

Any substantive changes, including but not limited to a change in the project footprint or a change in the State-listed species which could potentially be impacted, will require that a new conservation plan be submitted to the Department to initiate the review and public notice process as required by the Act.

3. Incidental Take Authorizations are non-transferrable.
4. Mitigation settlement dollars to the Department earmarked for the benefit of the State-listed species are non-refundable, including in events of revocation or termination.

5. IDOT shall notify the Department upon commencement of the project.
6. IDOT shall conduct, or cause to be conducted, a thorough survey of suitable marsh rice rat habitat within one week prior to habitat destruction to locate any individuals or nests that may contain juveniles. If the threatened species is located, a qualified ecological consultant shall exhaustively live-trap the individuals and relocate them to suitable habitat outside of the work area, identified prior to trapping. Drift fences will be used to prevent marsh rice rat from recolonizing the project area during the construction phase.

At such time that this authorization is in effect, IDOT shall provide the Department with their intended methodology and timing for the surveying and relocation of marsh rice rats. IDOT shall identify suitable marsh rice rat habitat as release locations in the vicinity and provide the Department with supporting documentation including maps. The Department shall pre-approve proposed sites suitable for marsh rice rat relocation. At a minimum, areas suitable for marsh rice rat relocation must contain semi-permanent hydrology with emergent vegetation and grass buffer as close to the project area as practical and preferably on IDOT existing right of way that will not be impacted by the project. All relocations of marsh rice rats shall be reported to the Department within 48 hours of any action. Supporting documentation, including maps, shall be submitted to:

Jenny Skufca, Endangered Species Project Manager  
Illinois Department of Natural Resources  
One Natural Resources Way  
Springfield, IL 62702  
(217)557-8243  
[jenny.skufca@illinois.gov](mailto:jenny.skufca@illinois.gov)

The Department's Endangered Species Program shall provide all reports required under this agreement to the Illinois Endangered Species Protection Board and to the Department's Natural Heritage Database.

7. All personnel working in the vicinity of marsh rice rat habitat shall receive educational materials including identification information, protected status of the species, and protocol in place for when the species is encountered, living or dead. A copy of the educational flyer shall be provided to the Department. The Department shall be informed of any sighting and provided approximate location information within 48 hours of such sighting.
8. IDOT will use sediment and erosion control measures to minimize impact including silt fencing, straw dikes, riprap, check dams, mulches, vegetative sediment filters, and retention ponds as described in the SWPPP. All vegetative measures will utilize native species.

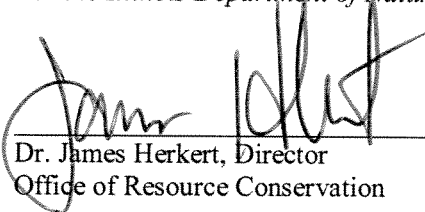
9. When considering IDOT linear roadway projects, the Department utilizes the mitigation calculations agreed to in the Interagency Wetlands Policy Act [20 ILCS 830] and associated Administrative Code for Implementation Procedures for the Interagency Wetlands Policy Act [17 Ill. Adm. Code 1090]. For high-quality wetlands and those containing records of State-listed species, the Department utilizes a 5.5:1 ratio for determining mitigation of suitable habitat impacted [2.76 acres of wetlands impacted x 5.5 = 15.18 acres]. For lesser quality wetlands containing no records of State-listed species, the Department utilizes a 1.5:1 ratio for determining mitigation of habitat impacted [0.358 acres of wetlands impacted x 1.5 = 0.537 acres]. Total mitigation acreage required is [15.18 acres + 0.537 acre = 15.7 acres] 15.7 acres of suitable marsh rice habitat. Optimal habitat for marsh rice rat includes at least 95 meters of grassland buffer from the edge of mitigation wetland. Due to the linear configuration of road projects, the available “buffer” is deemed by the Department to be acceptable. The Department recognizes that IDOT proposes to mitigate with 7.9 acres of wetland created on-site and 7.8 acres of wetland compensation off-site. Therefore, the 15.7 acres of suitable habitat proposed by IDOT fully meets the mitigation requirement.

Wetlands and upland grassland buffers shall be planted in native Illinois vegetation. A species list of native vegetation to be planted shall be provided to the Department. Mapping of the locations of identified habitat or proposed habitat with buffer demarcation shall be provided to the Department. Non-native, invasive species control shall occur within habitat areas for the duration of the authorization. Upon restoration all mitigation sites shall be protected in perpetuity through a Declaration of Restrictive Covenants, which shall be recorded with the property deed.

10. Upon completion of the restoration, IDOT shall conduct, or cause to be conducted, re-surveys for marsh rice rats within all suitable habitat to determine what effect the project has had on the local population. Surveys will also be conducted at off site mitigation wetlands. Surveys shall be conducted in year two and year five following restoration. Reports shall be submitted to the Department within 90 days of completion of the surveys.
11. Upon completion of the habitat restoration, IDOT shall conduct, or cause to be conducted, surveys of vegetation during the growing season in all areas with suitable marsh rice rat habitat. Surveys documenting the success of the vegetation establishment shall be performed in year two and year five following restoration. Monitoring reports shall be submitted to the Department within 90 days of completion of surveys.
12. Any taking of State-listed plants requires the express written permission of the landowner. The Herrin to Johnston City Road project area contains element occurrence records for the State-endangered dull meadow beauty (*Rhexia mariana*). This agreement does not authorize the taking of any State-listed plants.

13. The IDOT officials identified below are authorized to execute this agreement. Execution by IDOT indicates acceptance of all terms and conditions described in this document.
14. The Department has the right to enter and inspect the project area with 24-hour notice to IDOT for the duration of the authorization.
15. The execution of this agreement does not waive or excuse, in any way, the responsibilities of IDOT to comply with other Federal, State, or local regulations, including but not limited to obtaining requisite permits.

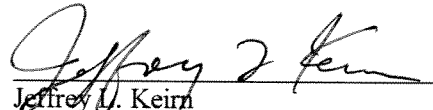
*For the Illinois Department of Natural Resources*

  
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Dr. James Herkert, Director  
Office of Resource Conservation

\_\_\_\_\_  
Date Signed

6/27/14

*For the Illinois Department of Transportation*

  
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Jeffrey L. Keirn  
Deputy Director of Highways,  
Region 5 Engineer, IDOT

\_\_\_\_\_  
Please print name and official title  
Jeffrey L. Keirn, Deputy Director of Highways

\_\_\_\_\_  
Date Signed

6/13/2014