

Illinois Department of Natural Resources

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JB Pritzker, Governor
Colleen Callahan, 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 Fox Waterway Agency (hereinafter referred to as FWA) for the incidental take of the State-endangered Blanding's Turtle (*Emydoidea blandingii*). The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that the taking is incidental to activities associated with mechanical or hydraulic dredging in the Fox River Chain O' Lakes. The exact method of dredging will depend on the individual site within the area. This dredging shall occur in multiple locations of the Fox River Chain O' Lakes and interconnected lakes and channels from the Wisconsin/Illinois border south to the Algonquin Dam in Algonquin, IL, just south of IL Route 62. Per the Fox Waterway Agency Act (615 ILCS 90), the FWA has a responsibility to perform dredging to improve navigation, boat access, and reduce the resuspension of sediment due to boat traffic. Dewatered sediments are placed and managed in the existing sediment storage and dewatering facilities at Cooper's Farm and Ackerman Island in Lake and McHenry Counties, IL. A portion of the project area is also located within the Channel Lake Illinois Natural Areas Inventory Site (INAI #0673) due to its recognition as an outstanding example of glacial lakes in Illinois and due to the presence of specific suitable habitat for endangered and/or threatened species.

Procedural History

A Conservation Plan prepared by FWA was submitted to the Department on November 17, 2016, as request for authorization for the incidental take of Blanding's Turtle. The Department requested additional information on November 18, 2016; September 27, 2018; January 28, 2019; and December 27, 2019, to make the Conservation Plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on December 16, 2016; August 27, 2018; November 7, 2018; June 25, 2019; and August 11, 2020. The final Conservation Plan was accepted as complete by the Department on August 20, 2020. The public notice period and public comments 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 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 to perform maintenance hydraulic or mechanical dredging and debris removal at selected sites named in the

Conservation Plan as part of an ongoing Dredging for Navigation Program. This program uses mechanical dredging activities to remove accumulated sediment from navigational channels using an amphibious excavator and floating barge to carry materials to shore for offloading into trucks, and hydraulic dredging with a cutterhead dredge to remove soft sediment and pump a sediment-water slurry via pipeline into the existing Sediment Storage and Dewatering facilities at Cooper's Farm and Ackerman Island, along with isolated geotextile tubes for smaller access channels. The exact method used depends on the characteristics of the site.

Additionally, the second purpose of this proposed action is to remove dewatered sediments from the storage facilities at Cooper's Farm and Ackerman Island and redistribute those sediments to the upland soil processing facility or another approved upland placement location.

Total estimated area of impact is **250 acres** distributed across 132 individual sites in the Fox River Chain O' Lakes area and prioritized for potential dredging over the next five (5) years. The Department concurs that the take of Blanding's Turtles that could result from the proposed project is not the purpose of FWA'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:

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by FWA, based on the life history needs of the Blanding's Turtle. **All required minimization and mitigation measures are presented under the Authorization section below.**

3. The parties to the Conservation Plan will ensure that adequate funding for the Conservation Plan will be provided:

Proposed avoidance, minimization and mitigation were included in FWA's Conservation Plan. FWA will be responsible for and will maintain adequate funding in their annual and ongoing operating fund to support and implement all mitigation activities described in the Conservation Plan

The Department accepts this provision as assurance that adequate funding will be available to carry out the terms of the Conservation Plan.

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.

Blanding's Turtle (*Emydoidea blandingii*) is an Illinois State-endangered semi-aquatic turtle species.

Habitat: Blanding's Turtles can be found in water bodies such as creeks, marshes, and ponds that are adjacent to sandy upland areas. They spend most of their time in water, though they are known to leave the water to travel between ponds and for females to lay eggs. Blanding's Turtles enter a period of dormancy during the winter, during which they remain buried in the muddy bottoms of deep marshes, backwater pools, and streams.

Distribution: Blanding's Turtles are found east of the Rocky Mountains in North America. In the United States, they are found from South Dakota and Nebraska to the Atlantic Ocean coastal states of New England. They range from Missouri and Illinois north into Canada's Ontario, Québec, and Nova Scotia provinces. Records are not known from Delaware, Connecticut, or Rhode Island.

Reproduction: Blanding's Turtles are long-lived, not reaching sexual maturity until 14-20 years old. Mating likely occurs in April or early May, and nesting takes place from early June to early July. Eggs are typically laid in well-drained, sandy soil in a sunny upland area, and females may travel up to a mile over land to their nesting location. Clutch sizes are varied, ranging from 10-26 eggs per nest, and females only lay one clutch of eggs per year. Since nests are typically far from water, hatchlings must travel long distances after emerging from their nest, subjecting them to increased threat of predation, road mortality, and desiccation.

Population: The decline of Blanding's Turtle populations can be largely attributed to habitat loss and degradation. With high levels of egg and juvenile mortality and low reproductive potential, Blanding's Turtle populations have had difficulty recovering. There are several captive breeding programs for this species in Illinois making efforts to supplement the wild populations.

Range in Illinois: Blanding's Turtles are most often found in northern Illinois and sporadically found throughout the central part of the state. They have been observed the last ten (10) years in 21 of 102 counties. There are currently 90 extant Element Occurrence Records for Blanding's Turtles in the Illinois Natural Heritage Database.

Incidental Take Authorizations: The Department has 24 pending or issued Incidental Take Authorizations for Blanding's Turtles. This is the tenth authorization granted for Blanding's Turtles in Lake and/or McHenry County. Previous projects included residential or commercial developments, highway and bridge construction, wind energy facilities, the construction of an athletic field, and the construction and maintenance of electrical lines.

Based on the amount of habitat impacted by this project, the number of known occurrences of the Blanding's Turtle in Illinois, an assessment of the potential effect of this project on individual Blanding's Turtles in the project footprint, the conservation methods included in this authorization for take and the conservation plan, and the understanding that vulnerability and recovery information on the species

remains limited; it is the conclusion of the Department that the taking anticipated as a result of this project will not reduce the likelihood of survival or recovery of the species in the wild within the State of Illinois, the biotic community of which the species are a part, or the habitat essential to the species' existence in Illinois.

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 the signature of a representative from FWA indicates their 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 FWA's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on September 2, 2020, and the *Northwest Herald* on September 2, 9, and 17, 2020. A copy of the Conservation Plan was deposited at the Fox Waterway Agency and the Fox Lake District Library. The deadline for public comment was October 17, 2020. No comments were received from the public.

Authorization

It is the determination of the Department that the measures to be implemented by FWA will adequately minimize and mitigate the anticipated taking of Blanding's Turtles associated with the dredging in Lake and McHenry Counties, Illinois. Further, the Department has concluded that the taking authorized herein will not reduce the likelihood of survival or recovery of Blanding's Turtles 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 Conservation Plan submitted by FWA 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 Rules for the Incidental Taking of Endangered and Threatened Species [Ill. Adm. Code 1080.40(b)], this authorization is issued subject to the following terms and conditions, which may include additions or modifications to the minimization and mitigation measures proposed by the FWA in the Conservation Plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **ten (10) years** from the date of the Department signature, unless terminated by written agreement of both parties.

Notwithstanding the above paragraph, due to the length of this Authorization, the Department reserves the right to reassess the terms of this Authorization every five (5) years. If during reassessment the Department determines that the Blanding's Turtle has become more imperiled than when the species and impact analyses were initially conducted, the Department may request an amendment to this Authorization or additional mitigation by FWA. If the Department and FWA cannot reach an

agreement, this Authorization will be terminated. Termination of this Authorization under this provision does not prevent FWA from applying for a new Incidental Take Authorization for this project.

This authorization may be revoked pursuant to the Act and Ill. Adm. Code 1080.80(b) if the Department finds that FWA has failed to comply with any of these terms and conditions or has been responsible for the taking of Blanding's Turtle beyond that which is incidental to the mechanical or hydraulic dredging in the Fox River Chain O' Lakes, and the existing sediment storage and dewatering facilities at Cooper's Farm and Ackerman Island in Lake and McHenry Counties, IL.

2. The effective period of this authorization may be altered by mutual written agreement between FWA and the Department. The Illinois Endangered Species Protection Board shall be notified 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 affected, 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. This authorization may only be transferred upon approval and written authorization by the Department.
4. Notification to all on-site personnel shall be provided on the sensitive biological resources in the area; the identification of the Blanding's Turtles; regulations protecting the species; where the species might be found; avoidance areas; travel restrictions for equipment; how to report sightings or incidents that may involve take; the importance of avoiding take of the species; and response protocol if the species are found, including the chain of response personnel. **FWA shall submit a copy of the education materials to the Department.**
5. The Department reserves the right of entry by its staff or representatives to inspect potential habitat and species management practices.
6. Biological consultants employed by FWA shall hold the necessary permits for work with non-listed and listed species; these include, but may not be limited to: an Illinois Department of Natural Resources (IDNR) Scientific Collection Permit as authorized under 17 Illinois Administrative Code 520, a Herptile Scientific Permit as authorized under 17 Illinois Administrative Code 885, and an IDNR Endangered Species Permit as authorized under 17 Illinois Administrative Code 1070. Gloves shall always be worn when handling any species and properly disinfected or discarded between individuals to decrease the risk of pathogen transmission.
7. FWA shall notify the Department's Endangered Species Program by email correspondence of annual commencement and completion of the dredging project. An **annual project status report** shall be submitted to the Department within **90**

days following completion of the annual dredging effort summarizing the implementation, minimization efforts, mitigation progress, and restoration measures and evaluating the effectiveness or status of those measures and shall include a project photo log. The report shall also include a map and GPS coordinates of any listed species found within the project footprint, description of any injuries or mortalities, and the disposition of any individuals that were injured or killed.

8. FWA shall provide a specific list of sites that are targeted for completion each year prior to May 1. This list shall include a GIS shapefile that clearly delineates approximate working limits and be provided to the Department Ecological Compliance Assessment Tool (EcoCAT) and the Incidental Take Authorization Coordinator.

After 5 years, FWA shall provide a status of the priority list to determine to what extent the 132 originally identified sites have been completed. **This information shall be included in the annual progress report during year 5.** If additional sites are planned, that have not been contemplated in this ITA the Department reserves the right to conduct impact analyses, which may also require that FWA submit a new Conservation Plan to the Department to initiate the review and new public notice process as required by the Act.

9. Notification of any Blanding's Turtles present during the performance of the project shall be reported electronically to the Department within 48 hours of discovery accompanied by location information (photograph, map, and GPS coordinates). Discoveries of nests will require additional protections and notifications to the Department's Endangered Species Recovery Specialist. After notification to the Recovery Specialist, the protocol outlined in the Conservation Plan shall be followed, including possible nest/egg relocation.
10. Any discoveries of additional State-listed species beyond those identified in this agreement **halts work** and shall be reported to the Department within 48 hours accompanied by location information.
11. FWA shall conduct, or cause to be conducted, the following pre-construction, construction, and/or post-construction efforts:
 - a. Dredging shall take place a minimum of ten (10) feet from the shoreline or banks to avoid the littoral zone.
 - b. Prior to, and during, dredging, debris removal, and construction, trained FWA personnel shall visually survey the site for the presence of Blanding's Turtles.
 - c. When used, mechanical dredging shall use an amphibious excavator and a floating barge to carry excavated sediment to shore for offloading to trucks.
 - d. When used, hydraulic dredging with a cutterhead dredge to remove soft sediment and pump a sediment-water slurry via pipeline to the existing Sediment Storage and Dewatering Facilities at Cooper's Farm and/or Ackerman Island, or into geotextile tubes.
 - e. Any portions of trees removed from the water may be placed along the bank or shore areas that are uninhabited by people, and not in emerging wetland

habitat. All other debris shall be transferred to appropriate facilities for disposal.

- f. Dry sediments shall be removed from the Cooper's Farm or Ackerman Island storage and dewatering facilities and loaded onto low ground pressure trucks and hauled offsite for use in the FWA upland soil processing facility or another facility approved by FWA during the winter months.
- g. If Blanding's Turtles are observed in the soil processing facility or the storage facility, exclusionary fencing may be required.
- h. All disturbed areas shall be returned to their natural habitat pre-construction, with the exception of the existing sediment storage and dewatering facilities at Cooper's Farm and Ackerman Island in Lake and McHenry Counties, IL.

12. FWA shall conduct, or cause to be conducted, the following post-construction monitoring throughout the term of this agreement:

A report summarizing the results of active Blanding's Turtle monitoring for each year will be prepared by FWA and submitted to the Department. The report shall include, but not limited to, a description of the survey methodology utilized including date, time, habitat description, photographs, and a map of monitoring locations and the locations of Blanding's Turtles shall be provided to the Department **within 90 days of completion of each monitoring effort.**

13. Mitigation to the maximum extent practicable is required by the Act. Mitigation requirements for this authorization are as follows:

- a. FWA has agreed to a mitigation package of \$30,000 to be paid in 10 annual installments equally distributed between the existing Blanding's Turtle Recovery Programs in Lake County (Lake County Forest Preserve District) and McHenry County (McHenry County Conservation District). The mitigation recipients may prescribe alternative annual payment arrangements, as agreed between the FWA and the Districts (e.g. the entire annual payment may be provided to one District).
- b. FWA shall provide evidence annually to the Department confirming the payments.
- c. Additionally, FWA commits to continuing habitat preservation via shoreline stabilization and habitat creation via island development.
- d. The first annual installment of mitigation shall be initiated **within 90 days of execution of this agreement.** Mitigation payments are nonrefundable, including events of revocation or termination.

Mitigation values are based on the Department's best current understanding of the species life history needs and impact analysis relevant to the project's proposed conceptual design elements available at the time of review.

14. All reports, notifications, and other project documentation shall be submitted to:

Illinois Department of Natural Resources
Office of Resource Conservation
Endangered Species Program – Incidental Take Authorization Coordinator
One Natural Resource Way
Springfield, IL 62702-1271

DNR.ITAcoordinator@illinois.gov
(217)557-8243

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.

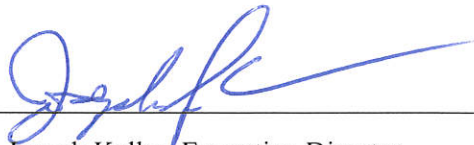
15. The FWA official identified below is authorized to execute this agreement. Execution by FWA indicates acceptance of all terms and conditions described in this authorization.
16. The execution of this agreement does not waive or excuse the responsibilities of FWA to comply with other Federal, State, or local regulations, including but not limited to obtaining any required permits for the execution of this project.

For the Illinois Department of Natural Resources:

For the Fox Waterway Agency:

Christopher L Young

Mr. Christopher L. Young, Director
Office of Resource Conservation



Mr. Joseph Keller, Executive Director
Fox Water Agency

02/11/2021

Date

2/11/2021

Date