



# Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271  
www.dnr.illinois.gov

Bruce Rauner, Governor  
Wayne A. Rosenthal, 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 Level 3 Communications, LLC (hereinafter referred to as Level 3) for the incidental take of the Franklin's ground squirrel (*Poliocitellus franklinii*). The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that this taking is incidental to activities associated with a fiber optic network enhancement as a part of the St. Louis to Chicago Fiber Optic Network. The permit coverage area is generally City of Nilwood, south of Girard in Macoupin County, north to the City of Barr in Sangamon County, Illinois.

### **Procedural History**

The Department received a conservation plan prepared by TDC<sup>2</sup> on behalf of Level 3 on April 28, 2017, as a request for authorization for the incidental take of the Franklin's ground squirrel. The Department requested additional information on May 5, 2017, to make the conservation plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on May 15, 2017. The Department again requested additional information on June 7, and July 11, 2017. A conservation plan was approved by the Department on July 19, 2017. 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 placement of a new 216-count fiber optic cable into an existing duct system previously installed underground in the right of way by Level 3 within and immediately adjacent to Union Pacific railroad right-of-way in Sangamon County. Fiber optic cable installation activities involve moving equipment and trucks along mowed private land as much as possible to reach 10 hand holes. Excavation equipment will create a 4-foot by 4-foot area directly above the hand hole, removing 8-12 inches of top soil to uncover the tops of each existing hand hole. Exposed hand holes will be restored to as good or better condition. For hand holes requiring splicing of cables, restoration will be conducted when splicing and testing are

completed. The proposed activities may result in injury or mortality due to heavy equipment use or indirectly harassment by human presence, noise, vibration, and increased traffic disturbances to Franklin's ground squirrel. Total estimated area of impact for species foraging and burrowing habitat is **1.08 acres**. The Department concurs that the take of Franklin's ground squirrel that could result from this project is not the purpose of Level 3'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:

Proposed avoidance, minimization and mitigation were included in Level 3's conservation plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by Level 3, based on the life history needs of the Franklin's ground squirrel. **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.

Level 3 states that the funds for the proposed plan have cleared the budgeting and funding processes internal to Level 3. They indicate that all funds have been set aside, allotted to the project, and are readily available per the project 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.

Franklin's ground squirrels are fossorial mammals that spend 90 percent of their lives underground in burrows. Burrow systems may be extensive with multiple entrance holes. They are usually constructed on a sloped landscape, such as a berm or embankment, to facilitate drainage and prevent flooding. Franklin's ground squirrels typically hibernate in their burrow from September to April. They emerge from hibernation in late April or early May. Once out of hibernation, they actively forage aboveground during the day and return to their burrows at night. Litters of 6-9 pups are born in the burrows from late May to mid-June, after which the juveniles can also be seen aboveground. Adults may go back into hibernation as early as July, while the juveniles will remain active until late September or October. During the early fall, juvenile males will typically disperse to a different population or may attempt to colonize new areas.

The Franklin's ground squirrel is listed as a threatened species in Illinois because of a reduction in abundance and geographic range. Historically, the species was known from many locations in the northern two-thirds of Illinois. The species' range suggests that it is tied to tallgrass prairie, but it is often found at habitat edges between grasslands and woodlands, forests, thickets and wetlands. Most recent records in Illinois are from railroad corridors, fence rows, and roadsides. In Illinois, it has been found that cover of smooth brome (*Bromus inermis*) is positively related to the presence of Franklin's ground squirrels. Franklin's ground squirrels will not use mowed areas.

There are currently 16 extant element occurrence records for Franklin's ground squirrel in the Illinois Natural Heritage Database. Those occurrences are at scattered locations in 12 counties, from Effingham County in south-central Illinois to Cook and DuPage counties in the northeast. A lack of recent records from west-central and northwest Illinois, where historical records do exist, reinforces the conclusion that the species has experienced a reduction in range. The largest population of Franklin's ground squirrels in Sangamon County is along the Sangamon Valley Trail in Springfield.

The Department has nine (9) authorizations pending or executed for incidental take of Franklin's ground squirrels. Previous authorizations were for a pipeline project, two trail projects, the construction of government and commercial buildings, and an electric transmission project. This is the fifth authorization to be granted for potential taking of Franklin's ground squirrel in Sangamon County. Previous authorizations have required that the project site be surrounded by silt fencing to preclude entry of Franklin's ground squirrels, as well as trapping and relocation of squirrels within the fenced project site to other areas of suitable habitat. Habitat restoration and follow-up monitoring of habitat conditions have also been required.

Based on the amount of habitat impacted by this project, the number of known occurrences of the Franklin's ground squirrel, 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 the 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 is 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 Level 3 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 Level 3's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on July 27, 2017, and in the *Illinois Times* (Sangamon County newspaper) on July 27, August 3, and 10, 2017. A copy of the conservation plan was deposited at the Auburn Library, where it was available for public review. The deadline for public comment was September 11, 2017. No comments were received from the public.

### Authorization

It is the determination of the Department that the measures to be implemented by Level 3 will adequately minimize and mitigate the anticipated taking of Franklin's ground squirrel as a result of fiber optic network enhancement, in particular the Level 3 Communications St. Louis to Chicago Fiber Optic Network segments in Sangamon County, Illinois. Further the Department has concluded that the taking authorized herein will not reduce the likelihood of survival or recovery of Franklin's ground squirrel 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 Level 3 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 Level 3 in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **five (5) 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 Level 3 has failed to comply with any of these terms and conditions or has been responsible for the taking of Franklin's ground squirrel beyond that which is incidental to fiber optic network enhancement in Sangamon County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between Level 3 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 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. The Department and Level 3 understand that Level 3 is currently in the process of being acquired such that Level 3 and the Department recognize an impending need for Level 3 to transfer this authorization post-acquisition. As such, the Department and Level 3 agree to meet post-acquisition for the Department to consider, in its lawful discretion, the Department and Level 3 mutually agreeing to Level 3 transferring this authorization.
4. The Department reserves the right of entry by its staff or representatives inspect potential habitat and species management practices.
5. Biological consultants employed by Level 3 shall hold the necessary permits for work with non-listed and listed species; these include an Illinois Department of Natural Resources Scientific Collection Permit and an Illinois Department of Natural Resources Endangered Species Permit.
6. Level 3 shall notify the Department's Endangered Species Program by email correspondence of construction commencement and completion of the fiber optic network enhancement within the permit coverage area. A project status report shall be submitted to the Department within **90 days** following completion summarizing the implementation of minimization, mitigation, and restoration measures and evaluating the effectiveness of those measures and shall include a project photo log.
7. All on-site personnel shall be educated on the sensitive biological resources in the area, the identification of Franklin's ground squirrel, regulations protecting the species, where the species might be found, avoidance areas, travel restrictions for equipment and vehicles, 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. **Level 3 shall submit a copy of the education materials to the Department.**
8. Any discoveries of additional State-listed species beyond those identified in this agreement shall be reported to the Department within 48 hours accompanied by location information, including photograph and GPS coordinates.
9. Level 3 shall conduct, or cause to be conducted, the following pre-construction or construction efforts:
  - a. Vehicles and machinery will take the least impactful path of ingress and egress as identified prior to construction through consultation with a species expert.
  - b. Construction staging will take place on private mowed land adjacent to the right-of-way whenever possible.
  - c. After ensuring that no Franklin's ground squirrel individuals are in the impact footprint, construction fencing with embedded silt screen shall be placed in a square approximately 4-foot by 4-foot directly around the area of construction activity and remain in place until all activity at each site is completed, usually no more than 24 hours.



- d. Wherever practical, shovels and hand tools shall be used for excavation.
  - e. Once activity is completed at each site, soil and surrounding terrain shall be restored as good or better condition prior to excavation.
  - f. Soil shall not be allowed to accumulate into piles to avoid attraction of Franklin's ground squirrel burrowing activity.
  - g. Soil shall be scattered if conditions do not allow for immediate restoration.
  - h. Should additional excavation be required, restoration shall be performed immediately upon completion of corrective action.
10. Level 3 shall conduct, or cause to be conducted, post-construction monitoring, including trapping, for Franklin's ground squirrel one year following project completion within all impacted suitable habitat locations. **A report including, but not limited to, the survey methodology utilized and a map of the species locations and any burrows shall be provided to the Department within 90 days of completion of the survey.**
11. Mitigation to the maximum extent practicable is required by the Act. Mitigation requirements for this authorization are as follows:
- a. In lieu of onsite mitigation, Level 3 shall commit **\$2,160** to the Illinois Wildlife Preservation Fund for efforts bringing conservation benefit to Franklin's ground squirrel.
  - b. The mitigation shall be provided to the Department **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, real estate values, and/or impact analysis relevant to the project site's proposed conceptual design elements available at the time of review.

12. 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

(217)557-8243

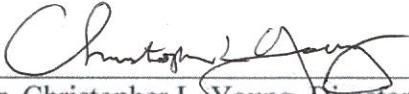
[DNR.ITAcoordinator@illinois.gov](mailto:DNR.ITAcoordinator@illinois.gov)

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.

13. The Level 3 official identified below is authorized to execute this agreement. Execution by Level 3 indicates acceptance of all terms and conditions described in this authorization.
14. The execution of this agreement does not waive or excuse the responsibilities of Level 3 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 Level 3 Communications:*



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



Mr. Bret Vincent  
Project Manager

*Oct 3, 2017*

Date Signed

*9/29/2017*

Date Signed