



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 Gilberts Development LLC (hereinafter referred to as Gilberts) for the incidental take of the State-endangered Blanding's Turtle (*Emydoidea blandingii*) which may result from the continued development of an existing residential neighborhood known as The Conservancy of Gilberts. The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that the taking is incidental to activities associated with the construction of the residential and townhome development known as The Conservancy within the Village of Gilberts, Kane County, Illinois. The residential neighborhood is 300 feet west and across railroad tracks from Freeman Kame Nature Preserve, a site designated on the Illinois Natural Areas Inventory (INAI #1474) and dedicated by the Illinois Nature Preserves Commission.

Procedural History

The Department received a Conservation Plan prepared by V3 Companies, Ltd. on behalf of Gilberts on January 4, 2018, as a request for authorization for the incidental take of Blanding's Turtle. The Department requested additional information on February 5, and August 7, 2018, as well as March 7, and July 31, 2019 to make the Conservation Plan complete as prescribed by Ill. Adm. Code 1080.10. That additional information was received by the Department on July 17, 2018, as well as January 29, July 1, and September 5, 2019. The final Conservation Plan was accepted as complete by the Department on September 16, 2019. The public notice period will be detailed under #6 of the Compliance sections below.

In the 2020 revision to the Illinois List of Endangered and Threatened Species list, the Illinois Endangered Species Protection Board agreed with the data that supported recovery and subsequent removal of the Iowa Darter from the Illinois List. For that reason, although the species was presented in the Conservation Plan, it will not be contemplated in this agreement.

Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria that 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 only be incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is to continue the construction and development of residential housing and townhomes within the Village of Gilberts in Kane County, Illinois. Construction activities include but are not limited to mass grading, trench excavation for utilities, home and townhome construction, and road and stormwater infrastructure construction. Total area of impact to potential Blanding's turtle habitat is estimated to be **372.50 acres**.

Take of Blanding's Turtles could occur as a result of being crushed by heavy equipment or roadway traffic, sedimentation within and downstream of the project site, dispersal due to noise and vibration, and other temporary disturbances during construction. The take of Blanding's Turtles that could result from this project is not the purpose of Gilberts' 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 minimization and mitigation measures were included in Gilberts' Conservation Plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by Gilberts, 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:

Gilberts has ensured in the Conservation Plan that adequate funds exist to carry out conservation planning, monitoring, management, and restoration as they relate to the Blanding's Turtle nesting area and other project natural areas. These activities are also required as a condition of the US Army Corps of Engineers (USACE) Regional Permit for the project. Performance securities will be required by the USACE. Gilberts is setting aside funding for the establishment, management, and monitoring of Blanding's Turtle and the habitat with the homeowner association property manager. Gilberts understands that if any additional activities are planned at the facility that may affect Blanding's Turtles, or other endangered or threatened species, coordination with the Department will be required.

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 reptile species.

Habitat: The Blanding's Turtle is a semi-aquatic turtle species 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 also known to leave the water to travel between ponds and for females to lay eggs. Blanding's Turtle enters a period of dormancy during the winter, during which they remain buried in the muddy bottoms of deep marshes, backwater pools, and streams.

Reproduction: Blanding's Turtle is a long-lived species, not reaching sexual maturity until 14-20 years of age. 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, road and railroad mortality, and nest predation. 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 performing efforts to supplement the wild populations.

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

Incidental Take Authorizations: The Department has 24 previously issued or pending Incidental Take Authorizations for Blanding's Turtle. This is the third authorization to be granted for the potential take of Blanding's Turtle in Kane County. The first was granted for a bridge over Mill Creek in Campton Hills. The second was to NICOR for a pipeline replacement project. Previous projects in other counties included residential or commercial developments, highway and bridge construction, the construction of an athletic field, wind turbine installation, 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:

These measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and the signature of a representative from Gilberts 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 Gilberts' request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on September 30, 2019 and in the *Northwest Herald* (local newspaper) for the weeks of September 30, October 7, and October 16, 2019. A copy of the Conservation Plan was deposited at the Randall Oaks Library, where it was available for public review. The deadline for public comment was November 15, 2019. No comments were received from the public.

Authorization

It is the determination of the Department that the measures that will be implemented by Gilberts will adequately minimize and mitigate the anticipated taking of Blanding's Turtle incidental to activities associated with the continuation of construction and development of residential housing and townhomes within the Village of Gilberts in Kane County, Illinois. Further, the Department has concluded that the take authorized herein will not reduce the likelihood of survival or recovery of the Blanding's Turtle 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 Gilberts 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 Gilberts in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **seven (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 Gilberts 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 activities associated with the continuation of construction and development of residential housing and townhomes within the Village of Gilberts in Kane County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between Gilberts and the Department. The Illinois Endangered Species Protection Board shall be notified of any 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 Blanding's Turtle; 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. **Gilberts 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 species, potential habitat, and species management practices.
6. Biological consultants employed by Gilberts and/or staff of the FPWC shall hold the necessary permits for work with non-listed and listed species; these include 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.
7. Gilberts shall notify the Department's Endangered Species Program by email correspondence of the commencement and completion of the continuation of residential construction in the Village of Gilberts. A **project status report** shall be submitted to the Department **by January 31 of each calendar year**, summarizing the implementation of minimization, mitigation, construction progress including number of residential units, roadways, and sidewalks/trails, and restoration measures (including vegetative success) and evaluating the effectiveness 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 and/or translocated from the project footprint including a description of any injuries or mortalities and the disposition of any individuals that were injured or killed.

8. 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 (photograph, map, and GPS coordinates).
9. Gilberts shall conduct, or cause to be conducted, the following construction or post-construction efforts:
 - a. A pre-construction Blanding's Turtle survey was conducted in May 2019 by The Ecological Consulting Group. The survey found no evidence indicating the presence of Blanding's Turtles within the project boundaries.
 - b. Pre-construction efforts, which will be ongoing until each project phase is complete, includes coordination of the exact construction schedule with the Village of Gilberts and the Forest Preserve District of Kane County (FPDKC) for all project phases.
 - c. Silt/exclusionary fencing shall be installed surrounding active construction areas to prevent silt from entering the wetland and to exclude the Blanding's Turtle from the construction area. Fencing shall be inspected daily and regularly maintained from March to November to ensure that the fence is working properly. When inspecting the silt fence, the monitor shall check for Blanding's Turtles in proximity to the fence and in active construction areas.
 - d. Before and during silt fence placement, staff shall inspect the area for Blanding's Turtle. During construction, the work site shall be daily monitored for the species. Any Blanding's Turtle found within or near the construction site shall be relocated to suitable habitat by permitted FPDKC staff.
 - e. Any trenches shall be covered or backfilled daily with inspection prior to backfilling to check for the presence of Blanding's Turtles or other animals that may have fallen in the trench.
 - f. To reduce the chance a Blanding's Turtle will get trapped in the street, turtle mountable curbs will be installed in areas that have a high chance of turtle movement. These areas will include all curbs near the *Blanding's Turtle Mitigation Area / Wetland Mitigation Area* and at any roadways near wetland or water crossings.
 - g. Post construction, a permanent fence will be installed between the *Blanding's Turtle Mitigation Area / Wetland Mitigation Area* and the residential development to reduce the chance of take.
 - h. Turtle signs will be placed on roadways that have an increased chance of turtle crossing to reduce the chance of an incident.
 - i. Ecologists working on the vegetation management in the turtle nesting area will be in contact with wildlife biologists from the FPDKC to determine if Blanding's Turtles are nesting in the area each year.
 - j. If nesting is occurring, machinery shall not enter the area during May through October. Selective mowing and herbicide application will be conducted very cautiously. During the first three (3) years of restoration, mowing typically occurs monthly from May to September. During these events, an ecologist shall assess the area being mowed before the machinery enters the area.

- k. Herbicide application will follow the manufacturer's label. In aquatic areas, herbicides approved for aquatic use will be applied. Common chemicals include triclopyr and glyphosate that have specific formulations that are aquatic approved.
 - l. New homeowners shall be informed of the potential presence of the listed Blanding's Turtle and best management practices (BMP) to minimize encounters. This information will include the life history, legal protections in place protecting the species, how to protect a nest, how to limit predator attraction in the vicinity of Blanding's Turtles, pet control, and cautious driving. **Homeowner education material shall be provided to the Department.**
 - m. The low-density prairie shall be maintained in order to allow for ongoing and future nesting. Habitat restoration will occur surrounding the wetlands and buffers in the development to increase suitable habitat.
 - n. Wetland buffers and BMPs will be managed to meet USACE vegetative performance. Management practices will include chemical and mechanical weed control to reduce populations of non-native species and increase native species coverage and diversity.
 - o. Generally, herbicide application will include backpack selective herbicide application. In the event of mowing or non-selective boom spraying, areas will be meander surveyed for the presence of Blanding's Turtles before machinery enters the project area.
 - p. Currently the FPDKC monitors the population of breeding Blanding's Turtles in the *Blanding's Turtle Mitigation Area* and surrounding areas. The developer's ecological consultant will work closely with the FPDKC to ensure that the incidental take potential is reduced as much as possible.
 - q. Once construction is complete, ongoing monitoring in conjunction with the Village of Gilberts and the FPDKC will be conducted from 2021-2025.
10. Post-construction monitoring:
- a. Additional Visual Encounter Surveys and trapping surveys shall be conducted during species active periods in the 2nd and 5th year of the 5-year monitoring period. Surveys shall take place in April through July and shall be consistent with the turtle surveys previously conducted. A letter report of the methods and **findings shall be submitted to the Department by January 31** of each calendar year of this agreement. Annual surveying shall be funded by Gilberts. In addition, other wetland areas north of the project area shall be surveyed to determine current usage by Blanding's Turtles.
 - b. Gilberts shall fully cooperate with FPDKC on any potential Blanding's Turtle telemetry efforts.
11. Mitigation to the maximum extent practicable is required by the Act. Mitigation requirements for this authorization are described as follows:
- a. Nineteen (19) lots which were originally slated for development near the known turtle nesting area were removed from the plans and established as the *Blanding's Turtle Mitigation Area* to avoid impacts to Blanding's Turtles in that area.

- b. An additional four (4) lots were originally removed along the *Wetland Mitigation Area* to increase the wetland buffer in this area.
- c. Fifty-one (51) single-family home lots were replaced with sixteen (16) townhome buildings to further increase the wetland buffer along the *Wetland Mitigation Area*.
- d. Within the development, in total, 64.7 acres of wetland shall be restored and managed.
- e. Gilberts shall fund the restoration, management, and monitoring of the **11.3-acre *Blanding's Turtle Mitigation Area***. After completion of the development, the area shall be transferred in fee-simple title to and protected under a conservation easement in perpetuity with the FPDKC.
- f. Gilberts shall fund the restoration, management, and monitoring of the **8.01-acre *Wetland Mitigation Area***. The area shall be protected under a conservation easement in perpetuity with the FPDKC.

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

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

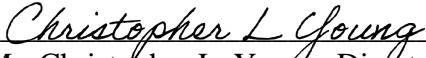
Illinois Department of Natural Resources
Office of Resource Conservation
Endangered Species Program – Incidental Take Authorization Coordinator
One Natural Resource Way
Springfield, IL 62702-1271

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

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. Gilberts official identified below is authorized to execute this agreement. Execution by Gilberts 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 Gilberts 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:

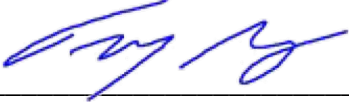


Mr. Christopher L. Young, Director
Office of Resource Conservation

Nov. 16, 2020

Date

For Gilberts Development, LLC:



Mr. Troy Mertz
Owner

11-16-2020

Date