

# Illinois Department of Natural Resources

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<http://dnr.state.il.us>

Rod R. Blagojevich, Governor

Joel Brunsvold, 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, Part 1080), authorization is hereby granted to the Illinois Department of Transportation (hereinafter referred to as IDOT) and the City of Dixon (hereinafter referred to as Dixon) for the incidental take of the state- threatened black sandshell (*Ligumia recta*). The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that this taking is incidental to activities associated with the replacement of the Peoria Avenue bridge (FAU 5497) over the Rock River in Dixon, Lee County, Illinois<sup>1</sup>.

### Procedural History

A conservation plan, public notice, and IDOT's request for incidental take of the black sandshell were received by the Department on December 10, 2004. Public notice of IDOT's request for authorization of incidental take was published in the Edwardsville Intelligencer on December 16, 2004, and in the Dixon Telegraph on December 16, 23 and 31, 2004. Public comments on IDOT's conservation plan were accepted by the Department until January 29, 2005. One comment was received from the public urging the initiation of bridge replacement as soon as possible. That comment was forwarded to IDOT for their consideration.

### 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 only be incidental to, the carrying out of an otherwise lawful activity:

The stated and apparent purpose of this proposed action is to replace the Peoria Avenue bridge over the Rock River in order to provide a safe passage for the traveling public. The take that could result from this project is not the purpose of IDOT's or Dixon's

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<sup>1</sup>The project location is further described as: NE1/4, Sec. 5, T21N, R9E and SE1/4, Sec. 32, T22N, R9E, Fourth Principal Meridian.

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 their project on the black sandshell. IDOT plans to limit construction activities to the smallest practicable area for in-stream work and to remove materials placed in the river for causeway construction upon completion of the bridge replacement. Debris that falls into the river during removal of the existing bridge deck and piers will also be removed.

On-site mitigation for the taking of black sandshells that is likely to occur as a result of this project is not considered feasible by IDOT or the Department. As compensation for the anticipated take, IDOT has proposed to conduct or support surveys for black sandshells in other parts of the Rock River drainage. Efforts will focus on the Kishwaukee River, Leaf River, Kyte River, and portions of the Rock River upstream of Dixon. Approximately 20-25 sites will be sampled in an attempt to determine the presence or absence of black sandshells in these areas. If sufficient numbers of black sandshells can be found, life history information such as size class distribution, age, sex ratios and evidence of recruitment will be collected.

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

Minimization measures are part of the construction plan for the Peoria Avenue bridge and funding is included in the project budget. IDOT provides financial support for a team of researchers from the Illinois Natural History Survey. Members of that team will conduct the surveys for black sandshells as compensation for the incidental take at Dixon.

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 in Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois:

The Peoria Avenue construction project consists of the replacement of the bridge over the Rock River. Construction will require the placement of two rock causeways on the downstream side of the existing bridge. Each causeway will be approximately 40 feet wide and 167 feet in length, temporarily filling approximately 0.3 acre of the river. The causeways will remain in place for approximately 11 months. The concrete deck of the existing bridge will be broken and dropped into the river. Concrete debris will be removed from the river bed. Approximately 1.1 acres of river bed will be directly affected by the deposition and removal of concrete debris. Eight existing concrete piers will be removed and four new piers will be constructed. Removal and construction of piers will be within the same area affected by bridge demolition.

The black sandshell is on the Illinois list of endangered and threatened species because of their limited distribution in the state and the reduction in their range and abundance relative to the species' historic status. Numerous collections of the black sandshell have been made from the Rock River in the past 25 years including one live individual found at the project site during pre-project surveys conducted by the Illinois Natural History Survey. Black sandshells are typically found in small numbers, suggesting that the species occurs at a low density in the Rock River.

It is anticipated that the construction of rock causeways and deposition and removal of concrete debris in the Rock River will result in the death of any black sandshells that occupy the 1.4 acres of river bed that will be directly affected by these activities. Changes in current patterns and sediment deposition may result from the placement of the rock causeways. These changes could have negative effects on black sandshells in areas subjected to increased scouring or increased sediment deposition.

Relocation of freshwater mussels from areas to be affected by construction activities has often been used to reduce the scale of incidental take of mussels. Relocation of black sandshells from the area that will be affected by replacement of the Peoria Avenue bridge was considered as a means to minimize the effects of this project, but is considered impractical because of the depth and current velocity in the area and the likelihood that very few black sandshells could be found using standard survey methods.

The loss of the number of black sandshells that are likely to occur within the area that will be affected by this project will not reduce the likelihood of survival or recovery of the endangered species or threatened species in the wild in Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois. The compensation measure proposed by IDOT will enhance the knowledge of the status and distribution of the black sandshell in Illinois and may provide life history information that will enable better planning for recovery of the species in the state.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 1080.40(b)], will be performed:

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and IDOT's signature on this authorization 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 IDOT's request for authorization of incidental take was published in the Edwardsville Intelligencer on December 16, 2004, and in the Dixon Telegraph on December 16, 23 and 31, 2004. Public comments on IDOT's conservation plan were accepted by the Department until January 29, 2005. One comment was received from the public urging the initiation of bridge replacement as soon as possible. That comment was

forwarded to IDOT for their consideration.

### Authorization

It is the determination of the Department that the measures that will be implemented by IDOT and Dixon will adequately minimize and mitigate the anticipated taking of black sandshells. Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival of the black sandshell 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.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 and Ill. Adm Code Part 1080.40(b)], this authorization is issued subject to the following additional terms and conditions:

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of eight (8) years from the date of the Department signature, unless terminated pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 and Ill. Adm. Code Part 1080.80).
2. Dixon shall provide supervision of all phases of the replacement of the Peoria Avenue (FAU 5497) bridge over the Rock River at Dixon to assure that the minimal area of river bottom is directly disturbed by activities associated with bridge replacement. Dixon shall inform all contractors of the need to limit disturbance of the river bottom to that area necessary to complete the bridge replacement in a safe manner.
3. IDOT shall conduct, or cause to be conducted, surveys of freshwater mussels in portions of the Kishwaukee, Kyte, Leaf and/or Rock rivers or tributaries of those rivers at which the presence of black sandshells is thought to be likely. At least 20 sites shall be sampled using a consistent sampling protocol approved by the Department. Surveys shall be designed to determine if black sandshells are present and to collect life history information, e.g., size class distribution, age, sex ratios and evidence of recruitment. Surveys shall be completed no later than December 31, 2008. All data and information collected as a result of these surveys shall be provided to the Department in a final report within 90 days of completion of the surveys. If surveys extend over more than one year, a brief annual progress report shall be provided to the Department.
4. The effective period of this authorization may be altered by mutual agreement between IDOT, Dixon and the Department.
5. This authorization may be revoked pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 and Ill. Adm. Code Part 1080.80) if the Department finds that IDOT and/or Dixon has failed to comply with any of these terms and conditions or has been responsible for the taking of black sandshells beyond that which is incidental to the replacement of the Peoria Avenue bridge over the Rock River in Lee County.

TOTAL P.06

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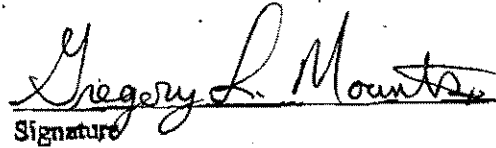
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6. The IDOT and Dixon officials identified below are authorized to execute this agreement. Execution by IDOT and Dixon indicates acceptance of all terms and conditions as described in this document.

For the Illinois Department of  
Natural Resources

For the Illinois Department of  
Transportation



Mike Conlin, Director (Acting)  
Office of Resource Conservation

Signature

2.2.05

Date Signed

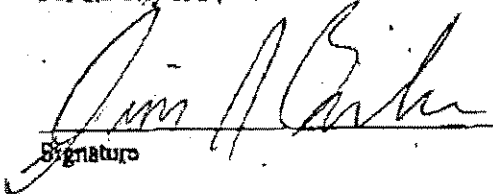
Gregory L. Mounts

Printed Name and Title

2-2-05

Date Signed

For the City of Dixon



Signature

James G. Burke, Mayor

Printed Name and Title

February 1, 2005

Date Signed