



Illinois Department of Natural Resources

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

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 the LTF Construction Company, LLC (hereinafter referred to as LTF) for the incidental take of the State-threatened Banded Killifish (*Fundulus diaphanus*). The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that this taking is incidental to activities associated with the filling of a pond at 880 Old Rand Road in Lake Zurich, Lake County, Illinois.

Procedural History

A Conservation Plan prepared by Hey and Associates, on behalf of LTF, was submitted to the Department on May 15, 2019, as a request for authorization for the incidental take of Banded Killifish. The Department requested additional information on May 28, 2019, to make the Conservation Plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on May 31, 2019. The final Conservation Plan was accepted as complete by the Department on June 7, 2019. 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 fill a pond to facilitate grading for the construction of a fitness center, associated pool and deck area, and parking and driveways. This includes filling the pond with earthen material to create a level surface for the pool/deck area and parking. Prior to any site impacts the pond will be protected with a silt fence, while other construction is underway. All fish will be removed from the pond using seine nets and other means. The small manmade pond will then be drained via pumping to help facilitate the collection of fish. Fish will be transported to a relocation site. Proposed activities may result in direct burial or crushing of, noise and vibration disturbance to, or relocation mortality of the Banded Killifish.

Total estimated area of impact within species habitat for the immediately proposed actions is **0.98 acres**. The Department concurs that the take of Banded Killifish that could result from the proposed project is not the purpose of LTF'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 LTF's Conservation Plan.

To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by LTF, based on the life history needs of the Banded Killifish. **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.

LTF states that funding will be provided to support minimization actions and mitigation as part of the overall construction project.

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.

Banded Killifish (*Fundulus diaphanus*)

Banded Killifish is an Illinois state-threatened fish species.

Habitat: Banded Killifish is a small, freshwater fish found in quiet waters. They are usually found over sand, gravel, or detritus covered bottoms with patches of submerged aquatic vegetation. They are a non-migratory schooling fish that tend to stay in the shallows during the day and retreat to deeper areas at night.

Reproduction: Spawning may occur from May to July. Eggs are released in clusters and attach to plants in quiet weedy pools. They hatch in 11-12 days. Banded Killifish become sexually mature after one year.

Population: Banded Killifish population decline has occurred because of increased stream siltation, turbidity, and pollution.

Range in Illinois: In Illinois, Banded Killifish are found in the Fox, Kankakee, Chicago, Illinois, and Des Plaines River basins. Banded Killifish are found in 14 of 102 Illinois counties. There are currently 68 extant Element Occurrence Records for Banded Killifish in the Illinois Natural Heritage Database.

Incidental Take Authorizations: The Department has seven (7) previously issued or pending Incidental Take Authorizations for Banded Killifish. This is the fourth authorization for the taking of Banded Killifish in Lake County. Types of projects include pipeline maintenance, lake management, and structure repair or construction. There are four other Incidental Take Authorizations pending or executed for projects located within 25 miles of LTF's project. These include aquatic vegetation control projects four (4) miles northwest and 17 miles north of the proposed project, a water intake structure 19 miles northeast, and a water control structure 25 miles southeast. None of the previously reviewed projects have connectivity to the currently proposed project.

Based on the amount of habitat impacted by this project, the number of known occurrences of Banded Killifish in Illinois, an assessment of the potential effect of this project on individual species 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 LTF 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 LTF's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on June 11, 2019, and in the *Daily Herald* on June 11, 18, and 27, 2019. A copy of the Conservation Plan was deposited at the Ela Area Public Library, where it was available for public review. The deadline for public comment was July 27, 2019. No comments were received from the public.

Authorization

It is the determination of the Department that the measures to be implemented by LTF will adequately minimize and mitigate the anticipated taking of Banded Killifish associated with the pond fill in Lake Zurich, Lake County, Illinois. Further the Department has concluded that the taking authorized herein will not reduce the likelihood of survival or recovery of Banded Killifish 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 LTF 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 LTF 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 LTF has failed to comply with any of these terms and conditions or has been responsible for the taking of Banded Killifish beyond that which is incidental to the pond fill in Lake Zurich, Lake County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between LTF 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 Banded Killifish; 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. **LTF 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 LTF 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, and an IDNR Endangered Species Permit as authorized under 17 Illinois Administrative Code 1070.
7. The relocation of non-listed aquatic life is hereby authorized by the Department with signature of this agreement per the Illinois Fish and Aquatic Life Code (515 ILCS 5/1-150) and 17 Illinois Administrative Code 860.
8. LTF shall notify the Department's Endangered Species Program by email correspondence of construction commencement and completion of the project. A **project status report** shall be submitted to the Department within **90 days** following completion summarizing the implementation of minimization and mitigation measures and evaluating the effectiveness or status of those measures and shall include a project photo log. The report shall also include a map of the project location, as well as the relocation recipient location; identification of species and number of listed and non-listed species relocated from the project footprint; description of any injuries or mortalities; and the disposition of any individuals that were injured or killed.
9. 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). Pre-construction, LTF shall maintain silt fences around the pond until fish are relocated. Once this take authorization is executed, LTF shall conduct a relocation of all fish in the pond to a site or sites pre-approved by the Department. Landowner permissions shall be secured by LTF. Any Banded Killifish mortalities during relocation shall be preserved in 95% ethanol to support the future collection of genetic material. Preserved individuals shall be offered for deposit into a research collection at the Illinois Natural History Survey and/or The Field Museum.
10. LTF shall conduct, or cause to be conducted, a thorough survey for Banded Killifish within the relocation site(s) in **Year 1** following the relocation:
 - a. The fish assemblage survey shall utilize methodologies approved by the Department.
 - b. The survey shall be conducted outside the spawning season of May to July.
 - c. A report including, but not limited to, the survey methodology utilized, a map of the survey extent, effort expended (temporal and spatial), recorded abundance of each species encountered, and a qualitative description of

survey area characteristics (e.g., substrate, habitat composition). Photos (which include distinguishing characteristics) of State-listed species shall be included with the report.

- d. **A survey report in readable pdf format with complete metadata shall be provided to the Department within 90 days of completion.**

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

- a. LTF shall provide funding in the amount of **\$5,200** to the Illinois Wildlife Preservation Fund, to be earmarked to bring conservation benefit to the Banded Killifish.
- b. Mitigation shall be provided **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 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

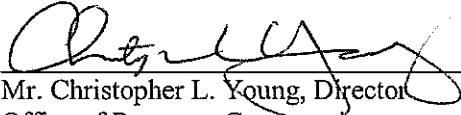
(217)557-8243
DNR.ITAcordinator@illinois.gov

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

8/19/19
Date

For LTF Construction Company, LLC:



Mr. Chase Norton
Project Manager

8/19/2019
Date