



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 Mounds Production Company, LLC (hereinafter referred to as MPC) for the incidental take of the State-endangered Spotted Dusky Salamander (*Desmognathus conanti*). The Illinois Department of Natural Resources (hereinafter referred to as Department) has determined that the taking is incidental to activities associated with clay mining at the OIL-DRI Tucker Mine in Pulaski County, Illinois. The Tucker Mine is an extension of ongoing mining activity west of Illinois Route 37, MPC will move northward from the LeFevre/Mager Mine, for which a previous Incidental Take Authorization (ITA) for the potential take of Spotted Dusky Salamander was issued (DNR ITA file #127). This mine is approximately 200 feet southeast of one of the non-contiguous parcels designated the Conant Site Illinois Natural Areas Inventory site (INAI#1199) for specific habitat suitable for state-listed species.

Procedural History

The Department received a Conservation Plan prepared by MPC on February 6, 2019, as a request for authorization for the incidental take of Spotted Dusky Salamander. Due to the Department's concern for meeting ITA issuance standards in the Act, staff first developed a predictive habitat model to identify potential habitat. Department staff conducted surveys within both historic and modeled habitat. Based on the current species presence data collected, on July 16, 2019, the Department's Endangered Species Program issued a formal opinion that the take of this population will not significantly reduce the survivability of Spotted Dusky Salamander in the wild in the State of Illinois. Additional information was requested by the Department on February 21 and May 12, 2020, to make the Conservation Plan complete as prescribed by Ill. Adm. Code 1080.10. Additional information was received by the Department on May 8 and June 2, 2020. The final conservation plan was approved by the Department on June 2, 2020. The public notice period will be detailed under #6 of the Compliance section below.

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 creation of the Tucker Mine 1.5 miles north of Olmsted by use of ploughing or earthmoving (removing cover crops or other surface vegetation) with

bulldozers, excavators, and front-end loaders, mining Porter Creek Clay, and associated activities. This site contains critical habitat for Spotted Dusky Salamander in a forested stream corridor that runs through the property, and onto another parcel, which is not being mined at this time. This stream corridor is located at the Southwest portion of the parcel, and contains the most easily extracted clay source and proposed starting point for creating access routes.

The associated activities will result in the extirpation of a Spotted Dusky Salamander population from this location.

Total estimated area of impact of this activity is 21 acres, of which **2.51 acres** is critical habitat for Spotted Dusky Salamander. The Department concurs that the take of Spotted Dusky Salamander that could result from the proposed project is not the purpose of MPC'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 measures were included in MPC's conservation plan.

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

MPC owns and is responsible for the long-term management of the property. MPC will obtain a bond that would cover the reclamation costs of the Tucker Mine.

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 are a part, or the habitat essential to the species' existence in Illinois:

Spotted Dusky Salamander (*Desmognathus conanti*) is an Illinois State-endangered salamander species.

Habitat: Spotted Dusky Salamanders can be found under logs, rocks, moss, and

leaf litter at the edge of streams during the day. They are more active at night, and during their breeding season. During fall, larvae congregate in the water in groups while remaining active and feeding. Home ranges average 1.4 square meters, generally individuals do not move more than 0.49 m a week.

Distribution: Their overall range includes the northern two-thirds of Louisiana, much of Mississippi and Alabama, northern Georgia, northwestern South Carolina, most of Tennessee, southwestern Kentucky, and southernmost Illinois.

Reproduction: Spotted Dusky Salamanders breed in early spring to mid-summer. Females lay eggs in the summer. Preferred nesting sites are under rocks on the banks of a stream, an average of 65 cm from the water's edge, and are generally as close to the soil as possible. Females stay with the clutch of 8-45 eggs for 46-61 days until hatching begins. Eggs mature in early autumn, and the larvae make their way to the water where they metamorphose the following spring. Males reach sexual maturity at 35 mm in length, or roughly 2 years old, and females reach sexual maturity at 40 mm in length, or roughly 3 years old.

Population: The primary threats to Spotted Dusky Salamander populations are siltation, pollution, and habitat degradation.

Range in Illinois: Spotted Dusky Salamander reaches the northern extent of its range in Southern Illinois, where populations are confined to seepage springs in sands, gravels, and Porter Creek Clay of the Cretaceous Hills Section of the Coastal Plain Natural Division. These areas are restricted to Pulaski County, Illinois. Spotted Dusky Salamanders are currently extant in 2 of 102 Illinois counties, Johnson and Pulaski. There are 7 extant Element Occurrence Records for Spotted Dusky Salamanders in the Illinois Natural Heritage Database.

Incidental Take Authorizations: There has been one Incidental Take Authorization executed for the potential take of Spotted Dusky Salamander in the State of Illinois. The previous ITA was issued for a different tract at the same mine in Pulaski County.

Based on the amount of habitat impacted by this project, the number of known occurrences of the Spotted Dusky Salamander in Illinois, an assessment of the potential effect of this project on the listed species in the project footprint, the conservation measures included in this authorization for incidental 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 MPC 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 MPC's request for authorization of incidental take was published in the *Breeze Courier* (official state newspaper) on June 8, 2020. The notice was also published in *The Gazette-Democrat* on June 8, 14, and June 28, 2020. A copy of the conservation plan was deposited at the MPC office, and information posted at Mound City Public Library, notifying the public where a hard copy would be available for review. The deadline for public comment was July 29, 2020. Comments were received from the public. The applicant provided analysis and response, per Ill. Adm. Code 1080.30.

Authorization

It is the determination of the Department that the measures that will be implemented by MPC will adequately mitigate the anticipated taking of Spotty Dusky Salamander associated with the construction and operation of a mine in Pulaski County, Illinois. MPC is unable to minimize impacts. Further, the Department has concluded that the taking authorized herein will not reduce the likelihood of survival or recovery of the Spotted Dusky Salamander 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 MPC 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 MPC in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **twenty (20) 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 MPC has failed to comply with any of these terms and conditions or has been responsible for the taking of the Spotted Dusky Salamander, beyond that which is incidental to activities associated with the mine construction and operation in Pulaski County, Illinois.

2. The effective period of this authorization may be altered by mutual written agreement between MPC 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 Spotted Dusky Salamander; regulations protecting the species; where the species might be found; and response protocol if individuals are found, including the chain of response personnel. **Mounds Production Company 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 MPC 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, 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.
7. MPC shall **notify the Department's Endangered Species Program by email correspondence of construction commencement and completion of habitat removal.** A **project status report** shall be submitted to the Department within **90 days** of groundbreaking summarizing the status of mitigation, and shall include a habitat removal photo log. The report shall also include a map and GPS coordinates of habitat removal and note 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. 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. Minimization to the maximum extent practicable is required by the Act. MPC will remove all Spotted Dusky Salamander suitable habitat. Therefore, MPC will not conduct, or cause to be conducted, any construction or post-construction efforts to minimize or monitor impacts to the population of Spotted Dusky Salamander at this project location.

Based on biologists' review of the genetics research and the most up-to-date understanding of the status of the species in the State of Illinois, MPC shall not perform any relocation of individual Spotted Dusky Salamanders from this population to any other local population.

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

- a. MPC shall submit compensatory mitigation in the amount of **\$30,371** to the Illinois Audubon Society earmarked to bring conservation benefit to the known population of the species at the Hartman Spring Nature Preserve.
- b. Confirmation of this mitigation payment shall be provided to the Department **within 90 days groundbreaking at the Tucker Mine.**

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

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

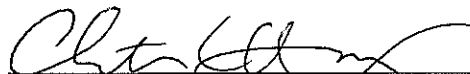
Illinois Department of Natural Resources
Office of Resource Conservation
Endangered Species Program – Incidental Take Authorization Coordinator
One Natural Resource Way
Springfield, IL 62702-1271

(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.

- 12. The MPC official identified below is authorized to execute this agreement. Execution by MPC indicates acceptance of all terms and conditions described in this authorization.
- 13. The execution of this agreement does not waive or excuse the responsibilities of MPC 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

10/30/2020
Date

For Mounds Production Company:



Mr. Tracy Smitley
Central Region Manufacturing Manager

10-27-20
Date