

## Illinois Department of Natural Resources

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

Rod R. Blagojevich, Governor

Sam Flood, Acting 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 Neumann Homes, Inc. (hereinafter referred to as Neumann) for the incidental take of Blanding's turtles (*Emydoidea blandingii*). The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that this taking is incidental to activities associated with the construction of the Meadows of West Bay (formerly Neupointe Shores) residential development on 462 acres located on Greenwood Road, Wonder Lake, McHenry County, Illinois<sup>1</sup>.

#### Procedural History

A conservation plan prepared by Raisanen & Associates, Inc. on behalf of the PA Family Trust, then owners of the subject property, was received by the Department on January 12, 2005. After the site was purchased by Neumann, Raisanen & Associates, Inc. provided a revised conservation plan and draft public notice on August 25, 2005. A revised public notice was received by the Department on September 12, 2005. Public notice of Neumann's request for authorization of incidental take was published in the Edwardsville Intelligencer on September 15, 2005 and in The Northwest Herald, a newspaper of general circulation in the vicinity of the project site, on September 15, 22 and 29, 2005. Public comments on Neumann's conservation plan were accepted by the Department until October 29, 2005. No comments were received from the public during the specified comment period. On November 7, 2005, the Department requested additional information on several aspects of the conservation plan including protection of turtle nesting berms, planting mixes to be used in restored areas and other details of restoration plans. Raisanen & Associates' response to that request was received by the Department on November 14, 2005.

#### Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which must be satisfied for the authorization of incidental take on an endangered or threatened species. These criteria and the Department's determination for each are listed below.

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<sup>1</sup>The subject property is located in the North ½ of Section 11 and North ½ of Section 12, Township 45 North, Range 7 East, McHenry County, Illinois.

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 construct a residential development with appurtenances such as stormwater detention basins and wastewater treatment facilities. The take that could result from this project is not the purpose of Neumann'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:

The conservation plan prepared by Neumann describes the construction of a residential development on 462 acres. Approximately 80 acres will remain in open space consisting of 25 acres of existing wetlands on the southern portion of the site, 2.35 acres of restored wetlands, 18 acres of restored buffer along Tryon Creek, and approximately 20 acres of vegetated space associated with wastewater spray areas, turtle nesting berms, and stormwater detention basins.

To minimize the potential effects of development on Blanding's turtles, Neumann installed wire-backed silt fence to reduce the likelihood that turtles would enter those portions of the site that will be developed for residential use. As the site is developed, Neumann will provide educational materials about the possible presence of Blanding's turtles to residents. Those materials will include identification aids and a contact number for reporting any Blanding's turtles found in developed areas to the McHenry County Conservation District (hereinafter referred to as the District). To reduce the likelihood of predation on young Blanding's turtles that may make use of the detention ponds, no game fish will be stocked into these ponds.

Mitigation measures to be implemented on the site include restoration of native plant communities on buffer areas along Tryon Creek and in degraded wetlands on the site and the construction of two sand and gravel berms that may serve as nesting habitat for Blanding's turtles. Native vegetation will also be established within and on the edges of the stormwater detention basins. Tryon Creek and the restored riparian buffer may provide passage for Blanding's turtles between other habitats found to the north and south of the project site.

Undeveloped wetland and buffer areas south of Wonder Lake Road will be deeded to the Village of Wonder Lake and will be given long-term protection by a conservation easement held by The Land Conservancy of McHenry County. Wetland and buffer areas north of Wonder Lake Road will be deeded to the Meadows of West Bay Shores Homeowners' Association and a conservation easement for these areas will be held by the Village of Wonder Lake. Long-term management will be assured through the inclusion of a commitment to management and a funding mechanism in the covenants and restrictions of the homeowners' association.

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

plan will be provided:

Neumann will assure funding for wetland and buffer areas and mitigation through a 5-year bond in the amount of \$566,500. Beyond the 5-year commitment made by Neumann, the Meadows of West Bay Homeowners' Association will be responsible for funding conservation measures. The commitment to continue funding is included in the covenants and restrictions of the homeowners' association.

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:

Blanding's turtles historically occurred across the northern half of Illinois in wet prairies and wetlands. As land use has changed, the species has been reduced to scattered small populations, mostly in northeast Illinois. Blanding's turtles have been found to the north and the southwest of this project site in wetlands identified by the District as regionally significant remnant natural communities. The species has not been documented on the project site, but the presence of Blanding's turtles in the immediate vicinity suggests that turtles could use the project site as nesting habitat or simply to pass between suitable wetland habitat on nearby parcels.

To assess the potential presence of Blanding's turtles on the site, Neumann Homes, Inc. retained Raisanen & Associates, Inc. to perform weekly monitoring of the site to evaluate the potential presence of Blanding's turtles. At the time that the wire-backed silt fence was constructed, monitoring began. The interiors and exteriors of the silt fence were investigated in case potentially trapped turtles were observed trying to leave the site. The everyday monitoring event was performed on April 25, 2005 through April 29, 2005. Transects across the subject property were also conducted during the monitoring efforts.

Weekly inspections of the site continued from April 29, 2005 through July 29, 2005. At the conclusion of the monitoring efforts performed by Raisanen & Associates, Inc., no Blanding's turtles were documented to be located on the site.

To evaluate the potential presence of Blanding's turtle habitat, Neumann Homes, Inc. retained herpetologist Tom Anton to evaluate the potential presence of Blanding's turtle habitat at the site. Mr. Anton noted that Wonder lake proper was degraded due to shoreline development and lack of emergent vegetation, but stated that potential habitat for Blanding's turtles does exist at the site.

Direct take of Blanding's turtles on the Meadows of West Bay site could occur by crushing of individual animals by movement of heavy equipment and other vehicles during and after construction. Indirect take could occur by disruption of turtle movement patterns by physical barriers.

Development of the Meadows of West Bay includes restoration of native vegetation along Tryon Creek and the creation of numerous stormwater detention basins. These areas may provide habitat suitable for use by Blanding's turtles for passage between nearby wetlands or short-term foraging. Two sand and gravel berms will be constructed to provide potential nesting habitat for Blanding's turtles. Nesting has not been previously documented on the site. Educational materials provided to residents will decrease the likelihood of turtles being harmed by persons unaware of the rarity of the species and the importance of protecting any turtles that may use the site.

It is anticipated that any take of Blanding's turtles at Meadows of West Bay will be minimal, likely two or fewer turtles per year. This level of take is not expected to reduce the likelihood of the survival or recovery of Blanding's turtles in 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 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 Neumann'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 Neumann's request for authorization of incidental take was published in the Edwardsville Intelligencer on September 15, 2005 and in The Northwest Herald, a newspaper of general circulation in the vicinity of the project site, on September 15, 22 and 29, 2005. Public comments on Neumann's conservation plan were accepted by the Department until October 29, 2005. No comments were received from the public during the specified comment period.

#### Authorization

It is the determination of the Department that the measures that will be implemented by Neumann will adequately minimize and mitigate the potential loss of a small number of Blanding's turtles (*Emydoidea blandingii*) as a result of the construction of a residential development. Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival of this species in the wild within the State of Illinois, the biotic community of which those species are 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 ten (10) 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. Neumann shall transfer ownership of wetland and buffer areas south of Wonder Lake Road, as depicted on the Wetland and Buffer Impact and Mitigation, Enhancement and BMP Plan (dated July 28, 2005) to the Village of Wonder Lake. These areas will be placed under a conservation easement held by The Land Conservancy of McHenry County and managed by The Land Conservancy of McHenry County to maintain native vegetation and water quality.
3. Neumann shall transfer ownership of wetland and buffer areas north of Wonder Lake Road, as depicted on the Wetland and Buffer Impact and Mitigation, Enhancement and BMP Plan (dated July 28, 2005) to the Meadows of West Bay Homeowners' Association. These areas will be placed under a conservation easement held by the Village of Wonder Lake. Funding for long-term management of these areas shall be provided by the homeowners' association.
4. Neumann and/or the Meadows of West Bay Homeowners' Association shall conduct, or cause to be conducted, surveys of aquatic areas within the Meadows of West Bay to detect the presence of Blanding's turtles, also noting their use of the site. Surveys shall include the Tryon Creek corridor and the eleven stormwater detention basins on the site. The survey methods and schedule shall be developed by Neumann and approved by the Department before any activities that may result in the incidental take of Blanding's turtles are initiated on the project site.
5. The District shall provide a protocol for responding to any encounters with turtles on the site during construction. Neumann shall assure that this protocol is provided to all contractors who will be present on the site and shall include adherence to this protocol in the terms of contracts issued for development activities on the site.
6. Neumann shall construct, or cause to be constructed, two turtle nesting berms at the locations shown on the Wetland and Buffer Impact and Mitigation, Enhancement and BMP Plan (dated July 28, 2005). Neumann and/or the Meadows of West Bay Homeowners' Association shall allow access to these berms by personnel of the District for purposes of monitoring the use of the berms by Blanding's turtles.
7. Neumann shall provide informational materials to buyers of property in the Meadows of West Bay to familiarize those buyers with the potential presence of Blanding's turtles within the Meadows of West Bay and to make buyers aware of the procedure for notifying the District of the presence of turtles within the development.

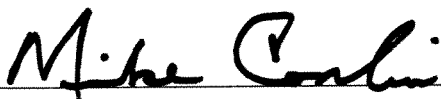
8. This authorization for incidental take is valid only for take associated with an otherwise lawful activity. If any required license, permit or authorization from the Department or any other federal, state or local agency is denied, this authorization is null and void. Activities that may result in incidental take shall not be initiated until all required licenses, permits or authorizations have been issued. If any required license, permit or authorization is revoked by the Department or any other federal, state or local agency, this authorization shall be null and void.

9. The effective period of this authorization may be altered by mutual agreement between Neumann and the Department.

10. This authorization may be revoked pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520ILCS 10/5.5 and Ill. Adm. Code Part 1080.80) if the Department finds that Neumann has failed to comply with any of these terms and conditions or has been responsible for the taking of Blanding's turtles beyond that which is incidental to the construction of the Meadows of West Bay residential development in Wonder Lake, McHenry County, Illinois.

11. The Neumann official identified below is authorized to execute this agreement. Execution by Neumann indicates acceptance of all terms and conditions as described in this document.

For the Illinois Department of  
Natural Resources



Mike Conlin, Director  
Office of Resource Conservation

6.23.06

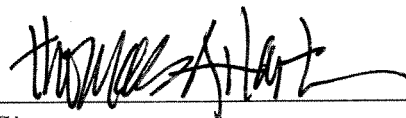
Date Signed

APPROVED FOR EXECUTION

Date: 6-22-06

Legal Counsel: Stenkaush

For Neumann Homes, Inc.



Signature

Thomas A. Hartz VP Land Acquisition

Printed Name and Title

June 1, 2006

Date Signed

For the McHenry County  
Conservation District

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date Signed

For The Land Conservancy of  
McHenry County

*Lisa Haderlein*  
\_\_\_\_\_  
Signature

*Lisa Haderlein, Executive*  
\_\_\_\_\_  
Printed Name and Title

*Director*

*6/5/06*  
\_\_\_\_\_  
Date Signed

