

Illinois
Department of
Natural Resources

One Natural Resources Way • Springfield, Illinois 62702-1271

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Rod R. Blagojevich, Governor

September 14, 2006

Karen C. Kabbes, P.E., D.WRE
Kabbes Engineering, Inc.
1250 South Grove Avenue - Suite 105
Barrington, Illinois 60010

RE: *Incidental Take Authorization - Conservation Plan Review (Greater/River Redhorse)
Wilson Street/Donovan Bridge Replacement over Fox River, Batavia-Kane County, Illinois*

Dear Karen:

Pursuant to the Illinois Endangered Species Protection Act (520 ILCS 10/5.5) the City of Batavia's authorization for the incidental take of the State endangered Greater Redhorse (*Moxostoma valenciennesi*) and the State threatened River Redhorse (*Moxostoma carinatum*) in Kane County, Illinois [associated with the Wilson Street/Donovan Bridge Replacement over the Fox River in Batavia] is hereby granted, subject to the terms and conditions described in the attached Authorization and Implementing Agreement. The Illinois Department of Natural Resources has determined that this authorized take is incidental to the Wilson Street/Donovan Bridge Replacement over the Fox River in Batavia, Illinois in Kane County.

Please have an authorized City of Batavia Official(s) sign the last page of both copies of the Authorization and Implementing Agreement and return **both** copies to my the attention. Upon receipt, I will have the agreements signed and return one (1) fully executed copy to you for your official records. This authorization shall be effective once signed by the Department.

Thank you for your cooperation and assistance during the incidental take preparation and review process. Please do not hesitate to contact our office at (217)782-6384 with any questions or comments you may have regarding this authorization agreement.

Sincerely,

Joseph A. Kath
Terrestrial Endangered Species Project Manager
IDNR-Office of Resource Conservation

Enclosures

Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (520 ILCS 10/5.5) the City of Batavia's authorization for the incidental take of the State endangered Greater Redhorse (*Moxostoma valenciennesi*) and the State threatened River Redhorse (*Moxostoma carinatum*) in Kane County, Illinois (as described/shown in the conservation plan received by the Department on 23 June 2006) is hereby granted, subject to the terms and conditions described in the attached Authorization and Implementing Agreement. The Illinois Department of Natural Resources has determined that this authorized take is incidental to the replacement of the Wilson Street/Donovan Bridge over the Fox River - Batavia, Illinois in Kane County.

Procedural History

The City of Batavia-COB (acting through its environmental consultant, Kabbes Engineering, Inc.) prepared a conservation plan as described by the Illinois Endangered Species Protection Act (520 ILCS 10/5.5). That plan and COB's request for authorization for incidental take of the greater redhorse and the river redhorse were received by the Illinois Department of Natural Resources (Department) on 23 June 2006. Public notice of COB's request for authorization of incidental take of the greater redhorse and river redhorse was published in the Edwardsville Intelligencer (Official State newspaper) and the Daily Herald (widespread Northeastern Illinois Suburban distribution) on June 26, 2006, as well as on July 3, 2006 and July 10, 2006. Public comments on COB's conservation plan were accepted by the Department until July 10, 2006. No comments were received by the public during the period of June 26, 2006 through July 10, 2006.

Compliance with the Endangered Species Protection Act

The Illinois Endangered Species Protection Act includes six (6) criteria which must be met for the authorization of incidental take of an endangered or threatened species. These criteria and the Department's determination for each criteria 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 remove and replace the Wilson Street/Donovan Bridge across the Fox River in downtown Batavia, Illinois. The existing Wilson Street Bridge is a filled spandrel, 3-span arch bridge which was built in 1911. It is the only Fox River crossing in the City of Batavia. The current two-way average daily traffic on the bridge is 24,600. The bridge arches are in poor condition showing signs of progressive deterioration. The current bridge railing is also in poor condition most notable on the south side of the bridge. The current rail is most likely ineffective in keeping vehicle or people from falling in the river. Portions of the rail support base are deteriorating and falling into the waterway below. Consequently, based on structural condition, the structure requires total replacement. Because of the important transportation link this bridge offers, it was decided through a public process to rebuild the bridge in stages so as to allow continued traffic use of the bridge during construction. The City's police department is located at City Hall along the Fox River and uses the bridge to access public safety calls on the east side of town. Likewise, the bridge is used to bus children

back and forth to school daily on the opposite sides of the City. Plans were prepared and funding secured for bridge reconstruction to occur in calendar year 2007. When plans were made for the bridge removal and subsequent reconstruction, there were no threatened and endangered species issues in the area.

In fall of 2005, the Kane County Forest Preserve approved a contract for removal of the South Batavia Dam, downstream of the bridge. The dam removal was completed in January of 2006. The Greater Redhorse (*Moxostoma valenciennesi*), a state listed endangered species, and the River Redhorse (*Moxostoma carinatum*), a state listed threatened species, have been found downstream of the dam site on the Fox River. Since the dam has been removed it is possible that the Greater Redhorse and the River Redhorse will move upstream to spawn.

2. The parties to the conservation plan will, to the maximum extent practicable, minimize and mitigate the impact caused by the taking.

The Greater Redhorse and River Redhorse have been found on the Fox River south of the South Batavia Dam. It is possible that with the removal of the dam, they will use the Fox River up to the North Batavia Dam, the next obstruction, for spawning habitat. The two species spawn in the spring from approximately April 1 to June 15th. Information published by the Michigan Natural Features Inventory, a service of the Michigan State University Extension, suggests the River Redhorse has been observed spawning in southern Michigan in April when the water temperature is 22-24 degrees C. In northern Michigan, spawning occurs in early June when water temperatures are 20 to 23 degrees C (Michigan Natural Features Inventory, 2006). River Redhorse prefer to spawn in shallow gravel areas (Michigan Natural Features Inventory, 2006). Wisconsin Department of Natural Resources information suggests the Greater Redhorse spawns in Wisconsin in May and June in rapid waters on gravel, sand or rubble (Wisconsin DNR, 2003).

The potential for a taking to occur is during construction of an in-water cofferdam (or similar structure) immediately before, during, and immediately after the spawning season. There is a concern that constructing the cofferdam immediately before, during, and immediately after the spawning season in the river could kill adult fish. It is assumed that adult fish are more likely to be injured by in-water construction activities during spawning periods when they are otherwise distracted. As adult fish are the key to reproduction, protecting adult fish during in-water construction during the spawning period is a critical part of this conservation plan.

Three (3) separate cofferdams are expected to be needed, at different times, to allow for the safe demolition and re-construction of the bridge. All in-water work for this project shall occur outside of the spawning period (April 1 - May 1). Construction involving the bridge's superstructure, as well as pre-placed instream elements (e.g. cofferdams built of foundations/framework placed prior to or after the above listed exclusionary period (April 1- May 1) is acceptable. Please note that if due to unforeseen circumstances (i.e. inclement weather, high water, etc.) in-water work will need to occur during the spawning period, the City of Batavia will employ the services of a qualified fisheries consultant to ensure the safe removal of fish from the construction area. The qualifications of this consultant(s) are subject to review and approval by IDNR personnel. IDNR personnel have the authority to be on-site and provide guidance, and if so desired actual field assistance, during such an event.

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

Because of the important transportation link this bridge offers, it was decided through a public process to re-build the bridge in stages so as to allow continued traffic use of the bridge during construction. The City's police department is located at City Hall along the Fox River and uses the bridge to access public safety calls on the east side of town. Likewise, the bridge is used to bus children back and forth to school daily on the opposite sides of the City. Plans were prepared and funding secured for bridge reconstruction to occur in calendar year 2007. Per the Conservation Plan: "As a unit of local government, the City of Batavia has adequate funding to undertake (all) measures proposed". The Wilson Street Bridge is located on the Fox River in Sec. 22 of Township 8E, Range 39 N of the 3rd PM in Kane County in downtown Batavia. The bridge is owned by the City of Batavia, Illinois.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of the 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 potential for a taking to occur is during construction of an in-water cofferdam immediately before, during, and immediately after the spawning season. There is a concern that constructing the cofferdam immediately before, during, and immediately after the spawning season in the river could kill adult fish. It is assumed that adult fish are more likely to be injured by in-water construction activities during spawning periods when they are otherwise distracted. As adult fish are the key to reproduction, protecting adult fish during in-water construction during the spawning period is a critical part of this conservation plan.

Three (3) separate cofferdams are expected to be needed, at different times, to allow for the safe demolition and re-construction of the bridge. All in-water work for this project shall occur outside of the spawning period (April 1 - May 1). Construction involving the bridge's superstructure, as well as pre-placed instream elements (e.g. cofferdams built of foundations/framework placed prior to or after the above listed exclusionary period (April 1- May 1) is acceptable. Please note that if due to unforeseen circumstances (i.e. inclement weather, high water, etc.) in-water work will need to occur during the spawning period, the City of Batavia will employ the services of a qualified fisheries consultant to ensure the safe removal of fish from the construction area. The qualifications of this consultant(s) are subject to review and approval by IDNR personnel. IDNR personnel have the authority to be on-site and provide guidance, and if so desired actual field assistance, during such an event.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - 17 IL. Adm. Code Part 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 official City of Batavia signature(s) 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:

The City of Batavia-COB (acting through its environmental consultant, Kabbes Engineering, Inc.) prepared a conservation plan as described by the Illinois Endangered Species Protection Act (520 ILCS 10/5.5). That plan and COB's request for authorization for incidental take of the greater redhorse and the river redhorse were received by the Illinois Department of Natural Resources (Department) on 23 June 2006. Public notice of COB's request for authorization of incidental take of the Greater Redhorse and River Redhorse was published in the Edwardsville Intelligencer (Official State newspaper) and the Daily Herald (widespread Northeastern Illinois Suburban distribution) on June 26, 2006, as well as on July 3, 2006 and July 10, 2006. Public comments on COB's conservation plan were accepted by the Department until July 10, 2006. No comments were received by the public during the period of June 26, 2006 through July 10, 2006.

Authorization

It is the determination of the Department that the measures to be implemented by the City of Batavia [all in-water work for this project shall occur outside of the spawning period (April 1 - May 1)] will adequately minimize and mitigate for the possible taking of the State endangered Greater Redhorse (*Moxostoma valenciennesi*) and the State threatened River Redhorse (*Moxostoma carinatum*) in Kane County, Illinois [associated with the Wilson Street/Donovan Bridge Replacement over the Fox River in Batavia].

Construction involving the bridge's superstructure, as well as pre-placed instream elements (e.g. cofferdams built of foundations/framework placed prior to or after the above listed exclusionary period (April 1- May 1) is acceptable. Please note that if due to unforeseen circumstances (i.e. inclement weather, high water, etc.) in-water work will need to occur during the spawning period, the City of Batavia will employ the services of a qualified fisheries consultant to ensure the safe removal of fish from the construction area. The qualifications of this consultant(s) are subject to review and approval by IDNR personnel. IDNR personnel have the authority to be on-site and provide guidance, and if so desired actual field assistance, during such an event.

Further, it is our opinion that the restrictions authorized herein would not diminish the likelihood of the survival of the Greater Redhorse (*Moxostoma valenciennesi*) and the State threatened River Redhorse (*Moxostoma carinatum*) 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 - 17 IL. Adm. Code Part 1080.40(b)], this authorization is issued subject to the following additional terms and conditions:

The City of Batavia will assume responsibility for the implementation of this plan. The responsible person and contact information for the City is Noel Basquin, P.E., City Engineer, 100 N. Island Avenue, Batavia, IL 60510. Progress reports will be provided to the IDNR designee (Mr. Joseph Kath) on a monthly basis, starting March 15th, 2007 and ending no later than June 15th, 2009 indicating the status of in-water construction.

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of three (3) years [commencing at the start of the construction of the first (of three) proposed cofferdams), unless terminated pursuant to Section 5.5. of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - 17 IL. Adm. Code Part 1080.80].

2. If deemed necessary by Department staff, the City of Batavia may be asked to (and therefore shall) provide resources to assist the IDNR in monitoring of the river before and after the bridge re-construction to determine the presence and number of Greater Redhorse and River Redhorse in the area. If the IDNR is unable to be involved in the process, the City shall have individuals knowledgeable in fish sampling to conduct that analysis. All reports shall be provided to Mr. Joseph Kath of the Department within 45 days of sampling.

3. Based upon a post construction analysis of the project site by IDNR Fisheries Biologists and/or IDNR staff, the City of Batavia may be instructed by the Department to (and therefore shall) install measures (upon completion of the bridge) to assist in fishery spawns, including building in-stream structures in the vicinity of the bridge for spawning and protection of young. These scope and design of these conservation measures shall be coordinated with Department staff before implementation.

4. The effective period of this authorization may be altered by mutual agreement between the City of Batavia and the Department.

5. This authorization may be revoked pursuant to Section 5.5 of the Act if the Department finds that the City of Batavia has failed to comply with any of these terms and conditions or has been responsible for the take of any State endangered Greater Redhorse (*Moxostoma valenciennesi*) and/or State threatened River Redhorse (*Moxostoma carinatum*) in Kane County, Illinois, associated with the Wilson Street/Donovan Bridge Replacement over the Fox River in Batavia.

6. The City of Batavia official identified below is authorized to execute this agreement. Execution by the City of Batavia indicates acceptance of all terms and conditions described in this document.

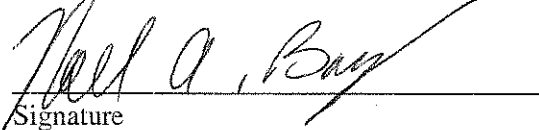
For the IL. Department of Natural Resources



Mike Conlin, Acting Director
Office of Resource Conservation

9.14.06
Date Signed

For the City of Batavia, Illinois (Kane County)


Signature

NOEL A. BAXQUIN CITY ENGINEER
Please print name and official title

9/19/06
Date Signed