

TITLE 17: CONSERVATION
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
SUBCHAPTER c: ENDANGERED SPECIES

PART 1075

CONSULTATION PROCEDURES FOR ASSESSING IMPACTS OF AGENCY ACTIONS
ON ENDANGERED AND THREATENED SPECIES AND NATURAL AREAS

Section

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AUTHORITY: Implementing and authorized by Section 11(b) of the Illinois Endangered Species Protection Act [520 ILCS 10/11] and Section 17 of the Illinois Natural Areas Preservation Act [525 ILCS 30/17].

SOURCE: Adopted at 14 Ill. Reg. 19839, effective December 3, 1990; amended at 19 Ill. Reg. 594, effective January 9, 1995; recodified by changing the agency name from Department of Conservation to Department of Natural Resources at 20 Ill. Reg. 9389; amended at 37 Ill. Reg. 11359, effective July 5, 2013.

Section 1075.10 Purpose

The purpose of this Part is:

- a) To establish a consultation process between the Department and agencies of State and local governments of Illinois concerning impacts on State endangered and threatened species and Natural Areas by actions authorized, funded, or carried out by those agencies which are authorized by Section 11(b) of the Illinois Endangered Species Protection Act [520 ILCS 10/11] and Section 17 of the Illinois Natural Areas Preservation Act [525 ILCS 30/17].
- b) To provide a consultation procedure designed to assist agencies of State and local governments in the evaluation of proposed actions for the purpose of addressing the adverse impacts to endangered or threatened flora or fauna as listed by the Illinois Endangered Species Protection Board, or to the essential habitat of such

species or to Natural Areas.

- c) To promote the conservation of threatened and endangered species and Natural Areas by establishing the following policy: the avoidance of adverse impacts is a priority of action; when avoidance is not practicable, adverse impacts should be minimized; and when practicable alternatives do not exist and an adverse impact is likely to occur, compensation shall be requested.
- d) This Part provides details for the following:
 - 1) actions requiring review and those exempted;
 - 2) filing of the Agency Action Report;
 - 3) filing of the Detailed Action Report;
 - 4) preparation of the biological opinion;
 - 5) emergencies;
 - 6) public involvement opportunities; and
 - 7) alternative action guidelines.

(Source: Amended at 19 Ill. Reg. 594, effective January 9, 1995)

Section 1075.20 Definitions

The following terms will be used throughout this Part:

"Act" – the Illinois Endangered Species Protection Act [520 ILCS 10].

"Action" – construction, land management or other activities that are authorized, funded or performed in whole or in part by agencies of State and local governments and that will result in a change to the existing environmental conditions or may affect listed endangered or threatened species or their essential habitat or natural areas.

"Adverse Impact" – a direct or indirect alteration of the physical or biological features of the air, land or water that may affect the survival, reproduction or recovery of a listed species or that may diminish the viability of a natural area.

"Agency" – all State agencies and units of local government and their political

subdivisions, agencies, boards, committees and commissions.

"Agency Action Report" – a report submitted to the Department by agencies proposing actions requiring consultation. The information required to be submitted shall be sufficient to determine the presence or absence of a threatened or endangered species or natural area in the vicinity of the proposed action.

"Applicant" – the agency or third party consulting with the Department. A third-party applicant is a non-governmental party consulting with the Department on behalf of an agency because the third-party is seeking financial support, funding, authorization or other approval from the agency.

"Authorized" or "Authorization" – any permitting, licensing, zoning or other administrative approval provided by an agency.

"Biological Opinion" – the component of the Detailed Action Report prepared by the Department, when a valid record of an occurrence for a threatened or endangered species or natural area exists within the vicinity of a proposed action. This opinion will conclude whether the action will jeopardize the listed species present, destroy or adversely modify their essential habitat, or adversely modify a natural area.

"Carried Out" – conducted by, or on behalf of, an agency or its agents through contract, agreement or other legal arrangement.

"Conservation" – utilization of all methods and procedures necessary to bring any endangered or threatened species to the point at which the protection provided by the Act are no longer necessary. These methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, habitat acquisition, habitat management restoration, and maintenance and propagation.

"Consultation" – process of review of actions of governmental and third party actions pursuant to Section 11(b) of the Act and Section 17 of the Natural Areas Act.

"Cumulative Effects" – direct and indirect effects of a proposed action, together with the identifiable effects of actions that are interrelated or interdependent with the action. Indirect effects are those that are caused by the action but are later in time or farther in distance. Interrelated actions are those that are a part of a larger action. Interdependent actions are those that have independent utility apart from the action.

"Department" – means the Department of Natural Resources.

"Detailed Action Report" – a written report that is prepared by an agency when a threatened or endangered species or natural area has been identified within the vicinity of a proposed action. This report shall contain sufficient information to make a judgement regarding the potential adverse impacts to a listed species or its essential habitat or a natural area.

"EcoCAT" – the Department's on-line consultation application process.

"Essential Habitat" – the physical and biological environment that is required to maintain viable populations of a listed species in order to ensure the survival and recovery of that species.

"Funded" – receipt of any grant, loan, loan guarantee, bond or other public financing provided by an agency.

"Jeopardize" – to engage in an action that would reduce the likelihood of the survival or recovery of a listed species or would result in the destruction or adverse modification of the essential habitat of such a species or would result in the destruction or adverse modification of a natural area.

"Listed Species" – any species of plant or animal that has been listed as endangered or threatened by the Illinois Endangered Species Protection Board or the U.S. Fish and Wildlife Service.

"Natural Area" – any area of land in public or private ownership that is registered under the Natural Areas Act or is identified in the Illinois Natural Areas Inventory.

"Natural Areas Act – Illinois Natural Areas Preservation Act [525 ILCS 30].

"Vicinity" – the area surrounding the action, as determined by the life history requirements of the species of concern or proximity to a natural area.

(Source: Amended at 37 Ill. Reg. 11359, effective July 5, 2013)

Section 1075.30 Actions Reviewed and Exempted

- a) Actions Requiring Review for Consultation - Any construction, land management or other activity authorized, funded or performed by a State agency or local unit of government that will result in a change to the existing environmental

conditions and/or may have a cumulative, direct or indirect adverse impact on a listed species or its essential habitat or that otherwise jeopardizes the survival of that species and/or may have a cumulative, direct or indirect adverse impact on a Natural Area shall be evaluated through the consultation process. This includes but is not limited to the following:

- 1) the alteration, removal, excavation or plowing of non-farmed, non-cultivated areas, or dredging of soil, sand, gravel, minerals, organic matter, vegetation, or naturally occurring materials of any kind;
 - 2) the changing of existing drainage characteristics or sedimentation patterns;
 - 3) the grading or removal of materials that would alter existing topography;
 - 4) the creation of new, or the increase in existing permanent barriers to the movement of wildlife, such as dam construction;
 - 5) a discharge of pollutants into the air, water, or on the land;
 - 6) the application of chemicals to the air, water, or on the land;
 - 7) preliminary plats, plans and permits; and
 - 8) an application for rezoning from a non-urban classification to an urban classification (e.g. from agricultural to residential) or a change from one urban classification to another on land not used in its entirety for the original classification.
- b) Actions Not Requiring Review - Actions authorized, funded or performed by State agencies or local units of government not resulting in a land-disturbing activity or not directly or indirectly affecting an endangered or threatened species or a Natural Area are not required to be evaluated by the consultation process. Such actions shall involve activities not listed in Section 1075.30(a) (e.g. acquisition of equipment or rehabilitation of an existing structure).
- c) Actions Exempted - The following actions are exempt from the consultation process unless it is evident that there will be an adverse impact to a listed species or its essential habitat or to a Natural Area:
- 1) mowing within maintained highway rights-of-way;
 - 2) routine resurfacing and application of oil and gravel to existing roads and highways that do not require widening of the road or shoulder;

- 3) construction activities required for the maintenance or repair of existing structures;
 - 4) actions in those areas with a Department-approved management plan, where the proposed actions are consistent with the Plan and are undertaken to maintain or improve natural ecosystem conditions or to re-establish pre-settlement vegetation conditions. This includes such actions as prescribed burns, spot application of herbicides, brush clearing and other appropriate natural resource management activities. Where a listed species is known to be present, management for its survival and recovery shall be a priority;
 - 5) actions within highway rights-of-way, unless specifically notified by the Department, that adjoin land used for agricultural or urban purposes, except those portions of the right-of-way adjacent to borrow pits, railroads, streams, wetlands, lakes, or other natural areas and open space;
 - 6) maintenance of existing lawns, yards and ornamental plantings;
 - 7) annual, routine cultivation of existing agricultural lands; and
 - 8) change of zoning requests for land currently zoned, developed, and used in its entirety for commercial, industrial or residential purposes.
- d) Memorandums of Understanding - the Department may enter into an agreement with an agency, referred to as a Memorandum of Understanding (MOU) which allows the development of an expedited review process, the review of comprehensive plans and natural resource ordinances, or exempts from the consultation process those actions commonly performed by that agency and that have no adverse impact to a listed species or its essential habitat or a Natural Area.
- 1) The Memorandum of Understanding shall expire in 1 to 3 years, based on the type of activity or the frequency with which it is performed. At the time of renewal, the agency shall submit a report evaluating the following:
 - A) whether the actions exempted avoided, minimized or created an adverse impact to a listed species and its essential habitat or a Natural Area; and
 - B) if the technology of the exempted action has changed to such an extent that the action should no longer be exempted.

- 2) The Memorandum of Understanding shall be available for review from the Department upon request.
- e) If more than two years elapses between the review and approval of the proposed action and implementation, the Department shall have an opportunity to review the Agency Action Report again to determine whether a listed species or Natural Area is present.
- f) Compliance with this Part does not relieve the agency from applicable state or federal laws or regulations.

(Source: Amended at 19 Ill. Reg. 594, effective January 9, 1995)

Section 1075.40 Consultation Process

As authorized by Section 11(a) of the Illinois Endangered Species Protection Act [520 ILCS 10/11] and by Section 17 of the Illinois Natural Areas Preservation Act [525 ILCS 30/17], state and local units of government shall evaluate, through a consultation process with the Department, whether actions authorized, funded, or carried out by them, as defined in Section 1075.30, are likely to jeopardize the continued existence or recovery of Illinois listed endangered or threatened species or are likely to result in the destruction or adverse modification of the essential habitat of such species or are likely to result in the adverse modification of a Natural Area. The proposed action shall not commence until the completion of the consultation process. This consultation process shall consist of the following:

- a) After identifying a specific action included in Section 1075.30, an agency shall complete and submit the Agency Action Report to the Department. This shall be submitted as early in the planning process as may be practicable and prior to approval of preliminary plat, design, permit, plan, or project approval. The purpose of this report is to identify the specific location of the project in order to determine if a listed species or Natural Area is located within the vicinity of the proposed action. The Agency Action Report shall include but not be limited to the following:
 - 1) name and address of agency proposing the action;
 - 2) the responsible person within that agency;
 - 3) the precise location of the proposed action in sufficient detail to determine the presence or absence of a listed species or Natural Area;
 - 4) a brief description of the proposed action; and

- 5) the starting and ending dates of the proposed action.
- b) The Department shall review the Agency Action Report and determine whether a valid record of occurrence for a listed species or a Natural Area exists within the vicinity of the proposed action. The agency shall receive one of two responses from the Department within 30 calendar days of receipt of the Agency Action Report:
- 1) If no listed species or their essential habitat or Natural Areas have been identified in the vicinity of the proposed action, a letter will be sent indicating that further consultation is not necessary.
 - 2) If a listed species or a Natural Area is identified within the vicinity of the project, the agency will be sent a letter explaining the continuation of the consultation process and a Detailed Action Report.
- c) The agency shall complete the Detailed Action Report, and submit it to the Department. Sufficient information must be provided about the proposed action to determine the potential indirect, direct and cumulative adverse impacts to the listed species present or its essential habitat or to the Natural Area. The Detailed Action Report shall include, but is not limited to the following components:
- 1) name and address of agency proposing the action;
 - 2) responsible person within the agency;
 - 3) a detailed map indicating the precise location of the proposed action;
 - 4) a detailed description of the proposed action, including any direct or indirect alteration or destruction of the vegetation, changes anticipated to air or water quality, alteration of the topography, or any other detail that might jeopardize the listed species or its essential habitat or cause adverse modification of the Natural Area;
 - 5) starting and ending dates of the proposed project; and
 - 6) discussion of alternatives which were considered.
- d) Upon completing the portion of the Detailed Action Report involving the proposed project, the agency shall provide background information on the listed species or Natural Area present. The direct and indirect effects of the proposed action on the listed species and its essential habitat or on the Natural Area

including cumulative effects shall be analyzed by the agency. The Department shall assist units of local government, upon request, if the unit of local government does not have the expertise to provide the required data and does not have the resources to procure outside experts.

- e) Upon completion, the agency shall submit the Detailed Action Report to the Department for the formulation of a biological opinion as to whether the proposed action, taken with its cumulative effects, will jeopardize the listed species present or have an adverse impact on its essential habitat or cause adverse modification of the Natural Area. The biological opinion shall be completed within 60 calendar days of receipt of a completed Detailed Action Report. The biological opinion shall result in one of the following conclusions:
- 1) the action may promote the conservation of a listed species or its essential habitat or enhance the protection of the Natural Area, in which case the consultation process is terminated;
 - 2) the action is not likely to jeopardize a listed species or its essential habitat or cause adverse modification of the Natural Area, in which case the consultation process is terminated; or
 - 3) the proposed action is likely to jeopardize a listed species or its essential habitat or cause adverse modification of the Natural Area, in which case the consultation process shall continue.
- f) If the biological opinion concludes that the proposed action is likely to have an adverse impact, recommendations to avoid these impacts shall be provided to the agency by the Department.
- g) A meeting shall be scheduled with representatives of the agency and the Department to discuss practicable alternatives to the proposed action that would avoid, minimize, or compensate for the impacts.
- h) After the consultation meetings have taken place to discuss practicable alternatives, the agency shall notify the Department in writing, stating its decision to proceed, modify, or forgo the action, and which, if any, of the alternatives included in the Detailed Action Report it is adopting.
- i) If the Department disagrees with the agency's decision, it shall notify the agency in writing within 10 days.
- j) It is desirable that disagreements which arise over an agency's response or procedural questions be resolved quickly and at the lowest possible level of

agency involvement. For most actions, areas of disagreement should be resolved by middle and upper level management of the Department and agency involved. However, where there is failure to reach agreement, it may be necessary to refer the matter to the agency head for resolution.

(Source: Amended at 19 Ill. Reg. 594, effective January 9, 1995)

Section 1075.50 Special Circumstances

- a) When a particular action involves more than one agency, these agencies may, upon notification to the Department, fulfill their consultation requirements through a single lead agency. Factors relevant in determining appropriate lead agency include the time sequence in which agencies would become involved in the action, the magnitude of their respective involvement, and their relative expertise with respect to the environmental effects of the action.
- b) In the case of complex actions, where the Department and the agency determine that additional information is needed concerning the listed species or Natural Area and/or the action, the period for the agency to prepare the Detailed Action Report, and the Department to formulate the biological opinion, may be extended by mutual agreement. During this extension, an agency shall make no irreversible or irretrievable commitments of resources that would foreclose implementation of any reasonable and prudent alternative prior to issuance of a biological opinion.
- c) The consultation process shall be modified for the review of rezoning applications (See Section 1075.30(a)(8)):
 - 1) The Agency Action Report shall be submitted for review as required in Section 1075.40(a).
 - 2) If no listed species or Natural Area is known to be present, a letter of notification of the termination of the consultation process shall be sent within thirty days.
 - 3) If a listed species or Natural Area is identified, the information shall be provided for consideration in the decision to grant the request for rezoning. This information shall be made a matter of public record.
 - 4) The consultation process shall not proceed until development of that parcel is under consideration. At that time, the agency shall submit to the Department a Detailed Action Report and continue the consultation process as defined in Section 1075.40(c) through (j).

- d) The consultation process shall be initiated or a terminated consultation process shall be reopened by the Department or the agency if:
 - 1) New information reveals effects of the identified action that may adversely affect a listed species or its essential habitat or a Natural Area in a manner not previously considered; or
 - 2) The proposed action is subsequently modified such that it may adversely affect a listed species or its essential habitat or a Natural Area in a manner which was not considered in the consultation process; or
 - 3) Additional listed species or their essential habitat or Natural Areas are identified within the vicinity of the action.

(Source: Amended at 19 Ill. Reg. 594, effective January 9, 1995)

Section 1075.60 Emergencies

Two types of emergency conditions may exist that require special treatment:

- a) Where emergency circumstances pose an immediate threat to human life, or severe loss of property is imminent from situations involving acts of God, disasters, casualties, or national defense or security emergencies, and action must be taken immediately, the agency can proceed without notifying the Department prior to taking action. The consultation process shall be initiated as soon as practicable after the emergency is under control, but not to exceed 30 calendar days. The agency shall submit a Detailed Action Report, which shall include information on the nature of the emergency actions, the justification for requiring immediate action, and any adverse impacts to a listed species or its essential habitat or a Natural Area that may have resulted. The Department shall evaluate such information and issue a biological opinion, including the information and recommendations given during the emergency consultation.
- b) Where emergency circumstances pose a threat to human life or loss of property and the action must commence within 30 days, the agency may request permission to commence the action without undergoing the consultation process prior to the action. The agency shall contact the Department prior to commencing the action and explain the nature of the problem. The Department shall determine whether a listed species or Natural Area is present within the vicinity of the action and notify the agency in writing. One of two courses of action shall then be taken:
 - 1) if no listed species or their essential habitats or Natural Areas are present,

the action may commence and the consultation process is terminated; or

- 2) if a listed species or its essential habitat or a Natural Area is present within the vicinity of the project, alternatives shall be discussed to avoid or minimize the adverse impacts prior to commencement of the action.

(Source: Amended at 19 Ill. Reg. 594, effective January 9, 1995)

Section 1075.70 Public Involvement

Provisions shall be made to inform the public of the actions of the Department under this Part and to consider public comment. This may include, but is not limited to maintaining a list, as funds permit, by the Department for those persons wishing to receive notification of those projects involved in the consultation process under Section 1075.40(b)(2).

Section 1075.80 Alternative Action Guidelines

Alternative Action Guidelines - In order to assist state and local agencies in evaluating and selecting alternatives to proposed actions that adversely affect listed species or their habitat or Natural Areas, the Department may prepare Alternative Action Guidelines for alternatives to a range of actions common to these agencies. These Guidelines shall propose practicable alternatives to actions affecting a listed species or Natural Area, while at the same time maintaining the project purpose to the greatest extent possible. These Guidelines shall serve to encourage the consideration of alternatives prior to initiation of the consultation process. They shall be made available upon request to all units of government as they are prepared.

(Source: Amended at 19 Ill. Reg. 594, effective January 9, 1995)

Section 1075.90 Consultation Fee

The purpose of this Section is to establish procedures for collecting fees from applicants for consultation services in accordance with Section 805-555 of the Department of Natural Resources (Conservation) Law [20 ILCS 805/805-555].

- a) **Applicability.** This Section applies to each application for consultation services submitted to the Department pursuant to Section 11(b) of the Act and Section 17 of the Natural Areas Act, except for those applications for consultation services submitted by, or on behalf of, an agency of State or federal government.
- b) **Amount of Fee.** Each application for consultation services must include a fee in the amount of \$500.
- c) **Manner of Payment**

- 1) Applicants must pay the consultation fee when initiating the consultation request.
 - 2) For consultation requests submitted through the Department's EcoCAT system, the fee must be paid using credit card or electronic funds transfer through the EcoCAT system in the manner identified by the EcoCAT system.
 - 3) Applicants unable to use a credit card or electronic funds transfer to pay the fee using the EcoCAT system must submit a certified check, cashier's check or money order to the Department before the consultation request will be completed.
 - 4) Applicants submitting consultation requests in any manner other than through the Department's EcoCAT online evaluation system must pay the fee using a certified check, cashier's check or money order.
 - 5) Payment shall not include any other fees or payments due to the Department for any purpose other than the fee due under this Section.
- d) **Prohibition Against Refund.** Except as provided in subsection (e), no fee remitted to the Department under this Section shall be refunded in whole or in part at any time or for any reason.
- e) **Applications Not Containing the Entire Fee.** Applications not containing the entire fee will be considered incomplete and the Department will not undertake the requested consultation. Any partial payment will not be deposited or processed by the Department and will be returned to the applicant.

(Source: Added at 37 Ill. Reg. 11359, effective July 5, 2013)