ILLINOIS DEPARTMENT OF NATURAL RESOURCES

# Illinois Department of **Natural Resources**

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Bruce Rauner, Governor
Wayne A. Rosenthal, 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 TriStar Property Associates, LLC (hereinafter referred to as TSPA) for incidental take of Illinois chorus frog (*Pseudacris illinoensis*) and ornate box turtle (*Terrapene ornata*). The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that the taking is incidental to activities associated with the construction of the commercial development Gateway Commerce Center East located northeast of the intersection of Interstate 255 and Interstate 270 in Edwardsville, Illinois in Madison County.

### Procedural History

The Department received a conservation plan prepared by SCI Engineering, Inc., for TSPA on February 19, 2015, as a request for authorization for the incidental take of Illinois chorus frog and ornate box turtle. The Department requested additional information to make the conservation plan complete as prescribed by 17 Ill. Adm. Code 1080. The final Conservation Plan was approved by the Department on March 1, 2016. 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 stated and apparent purpose of this proposed action is the construction of the commercial development Gateway Commerce Center East in Edwardsville, Illinois in Madison County. A general description of these construction activities includes the installation of sewer and water main lines, construction of a sanitary sewer pump station and associated infrastructure, several large commercial buildings with associated parking lots, roads to facilitate property access, placement of culverts, and several detention lakes. The commercial development site encompasses 652 acres currently in agriculture. Nineteen acres of the project area, located near the eastern site boundary, contain sandy soil and are considered the most potentially suitable habitat on the site for the Illinois chorus frog and the

ornate box turtle. However, either species could be encountered migrating across the project area. TSPA anticipates that the taking of Illinois chorus frog and ornate box turtle could occur as a result of permanent habitat modification or degradation, which may lead to death or injury to the listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. Take could also occur as a result of direct impact to frogs and turtles traveling through the construction site during subsurface utility installation, excavation for the construction of structures, the use of construction equipment, and vehicle traffic. Potential indirect impacts to the species include increased noise, vibration, and lighting; soil compaction and fill of ephemeral depressions; introduction of petroleum distillates and road salt; and hydrological alterations due to increased impervious surface. The take of Illinois chorus frog and ornate box turtle that could result from these activities is not the purpose of TSPA's project, 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 minimization and mitigation measures were included in TSPA's conservation plan.

   To meet the "maximum extent practicable" standard, additional minimization and/or mitigation measures may be required beyond those proposed by TSPA, based on the life history needs of the Illinois chorus frog and the ornate box turtle. **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:

   TSPA has provided adequate funding assurance to the Department to support and implement the Conservation Plan and any additional minimization and mitigation measures included in this agreement.

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:

   The **Illinois chorus frog** is listed as a threatened species in Illinois because of its limited range and threats to its habitat such as conversion to agricultural uses and development. The species has no formal federal conservation status, but the status of the Illinois chorus frog is currently under review by the U.S. Fish and Wildlife Service.

Illinois chorus frogs are found in areas of sandy soil. The frogs spend most of the year buried in the ground, emerging only to move to ephemeral, fishless ponds with emergent or dead vegetation where they mate and lay their eggs during February and March. Like other frogs, Illinois chorus frogs go through development as tadpoles and then metamorphose into young frogs by late May to mid-June. The young frogs have been shown to migrate up to 0.9 km (2,953 feet) from breeding ponds to burrowing sites. They are able to move short distances and feed while buried. The fossorial habits of the Illinois chorus frog make surveys of their populations difficult except during the breeding season. The success of breeding varies greatly between years depending on precipitation patterns and the persistence of the breeding ponds.

The Illinois chorus frog is found at scattered locations in central, southwest, and extreme southern portions of Illinois. The range of the species is believed to be similar to historic times, but the abundance of the species within that range has diminished. Illinois chorus frogs also occur in parts of Missouri and Arkansas. The Illinois Natural Heritage Database includes 18 element occurrence records for the Illinois chorus frog that are classified as extant. Those populations are found in Alexander, Cass, Logan, Madison, Mason, Menard, Morgan, Scott and Tazewell Counties. The Madison County population is considered one element occurrence record made up of 32 reported locations of either individuals or calls.

The Department has 22 authorizations for incidental take of Illinois chorus frogs either pending or executed, two of which are located in Madison County. Project types include pipelines, electric transmission lines, dredged material placement, road construction, a wind farm, and a water treatment plant. For most projects, the primary threat of take is digging up Illinois chorus frogs that are within the soil at the construction site. Frogs can also be crushed by heavy machinery, trapped and buried in trenches, or affected by habitat alterations. Measures implemented to minimize or mitigate the take of Illinois chorus frogs in previous projects have included excavation of breeding ponds, limitation of the area affected by construction, use of exclusionary fencing to exclude frogs from construction areas during their breeding season movement to ponds, inspection of trenches to detect entrapment of frogs, and avoidance of disturbance to breeding ponds. Some recipients of authorization for incidental take of Illinois chorus frogs have provided financial support for habitat acquisition, habitat restoration, and/or research to enhance the conservation of the species.

TSPA has delineated **19 acres** of habitat suitable for the Illinois chorus frog burrowing within the site boundary. No breeding records occur within the site boundary.

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The ornate box turtle is listed as a threatened species in Illinois due to habitat loss, habitat fragmentation, road mortality, and popularity in the pet trade industry. This small terrestrial turtle prefers sand prairie habitat, although it has been

documented using agricultural fields. Water sources nearby are important for thermoregulation and for hydration after emergence from brumation. In Illinois, the ornate box turtle has been known to brumate from late October to early April underground at a depth of approximately one foot ranging up to three feet during extremely cold winters, but the turtle will emerge with warm temperature fluctuations. Clutches of 4-6 eggs are laid in shallow underground nests in June. Dispersal has been shown to range from less than an acre to more than 80 acres. In general, the species occupies a small home range and, it displays high site fidelity. The ornate box turtle's life span is estimated at 30 years. The species does not become reproductively mature until approximately age ten; however reproductive maturity in ornate box turtles seems more highly correlated with size than with age. The ornate box turtle has been shown to be difficult to locate through visual encounter surveys due to their cryptic habits.

The Department's Natural Heritage Database documents 53 element occurrence records of ornate box turtles that are classified as extant across 28 of Illinois' 102 counties. Two element occurrence records exist for Madison County made up of four reported locations of individuals. According to the data, ornate box turtles inhabit managed cool and warm season grasses, mix of agricultural fields and prairie, old field at woodland edge, hay field, degraded sand prairie, high-quality short grass prairie, dry-mesic sand savanna, and mowed fescue roadside. Statewide, the Department has six authorizations for incidental take of ornate box turtle either pending or executed, two of which are located in Madison County. Project types included two wind farms, a water transmission main, and a carbon dioxide sequestration pipeline. Measures implemented to minimize or mitigate the take of ornate box turtles in previous projects have included limitation of the area affected by construction, use of exclusionary fencing to exclude turtles from construction areas, and inspection of trenches to detect entrapment of turtles. Some recipients of authorization for incidental take of ornate box turtle have provided financial support for habitat acquisition, habitat restoration, and/or research to enhance the conservation of the species.

No records for ornate box turtle occur within the site boundary.

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Based on the life history needs of both species, the number of known element occurrence records in the State, an assessment of the potential impact to individuals that make up the element occurrences in the vicinity of the project footprint, the conservation measures outlined herein, 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 the project will not reduce the likelihood of survival or recovery of the Illinois chorus frog or the ornate box turtle 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.

5. Any measures required under Section 5.5(b)(6) of the Act will be performed:

   These measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and the signature of a representative of TSPA indicates an acceptance of and 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 TSPA's request for authorization of incidental take was published in the Edwardsville Intelligencer and the Breeze Courier (official State newspaper), out of Taylorville, on March 4, 2016. The notice was also published on March 11 and March 18. The closing date for public comments was April 16, 2016. Two comments were received from the public by the closing date. The comments were transmitted to TSPA on April 12 and April 19. An analysis of the comments was received by the Department on April 25, 2016. Further comments were received after the comment period had closed.

**Authorization**

It is the determination of the Department that the measures to be implemented by TSPA will adequately minimize and mitigate the anticipated taking of the Illinois chorus frog and the ornate box turtle incidental to activities associated with the construction of the Gateway Commerce Center East in Madison County. Further, the Department has concluded that the take authorized herein will not reduce the likelihood of survival or recovery of the Illinois chorus frog or the ornate box turtle 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.

All terms and conditions included in the aforementioned conservation plan submitted by TSPA to the Department are incorporated into this agreement by reference and 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 the applicant in the conservation plan:

1. This authorization is effective upon the signature of the Department and shall remain in effect for a period of **fifteen (15) 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 TSPA has failed to comply with any of these terms and conditions or has been responsible for the taking of the Illinois chorus frog or the ornate box turtle beyond that which is incidental to activities

associated with the construction of the Gateway Commerce East Center in Madison County.

2. The effective period of this authorization may be altered by mutual written agreement between TSPA 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 Illinois endangered or threatened 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 is non-transferable.

4. TSPA shall develop materials to educate on-site personnel on the sensitive biological resources in the area, the identification characteristics of Illinois chorus frog and ornate box turtle, the regulations protecting the species, where the species might be found, avoidance areas, how to report sightings or incidents that may involve take, and the importance of avoiding take of the species. TSPA shall submit a copy of the education materials to the Department.

5. The Department reserves the right of entry to inspect potential habitat and species management practices.

6. Biological consultants employed by TSPA shall hold the necessary permits for work with non-listed and listed species; these include an IDNR Scientific Collection Permit and an IDNR Endangered Species Permit.

7. TSPA shall notify the Department's Endangered Species Program of construction commencement and completion of the Gateway Commerce Center East commercial development. It is understood that the development is expected to occur in phases. Notification of each phase is required.

8. **If any Illinois chorus frogs and/or ornate box turtles are found in any condition in the project area during any phase of construction, TSPA representatives shall immediately notify the local District Heritage Biologist at 618-363-5818 for retrieval and/or relocation to suitable habitat.** The Department shall be provided location information (photograph and GPS coordinates) of any State-listed species sighting within 48 hours.

   Observations of migrating congregations of Illinois chorus frogs within travel corridors and work areas during breeding season shall be reported to the Department and impact to congregations during migration shall be avoided.

9. TSPA shall conduct, or cause to be conducted, the following pre-construction or construction efforts:
   a. Where groundbreaking occurs, all measures of erosion control shall be implemented and monitored for effectiveness.
   b. Prior to construction, exclusionary fencing shall be installed around the perimeter of the construction site and inspected daily to ensure proper installation. The purpose of the fencing is to exclude frogs and turtles from the construction site; therefore, it should remain in place from February to November.
   c. Trenches dug as a result of this project shall be covered at the end of each work day. Before starting work each day, trenches and excavations shall be routinely inspected to ensure no frogs or turtles have fallen in and become trapped.
   d. Exclusionary curbing shall be installed around any areas subject to vehicular traffic to keep turtles out.
   e. Light fixtures that direct downward so that light is not visible from outside of the development site shall be installed. Perimeter parking lot lights will shine back toward the buildings, as municipal regulations require.

10. The commercial development may not interfere with the land management practices on the neighboring parcel to the east owned by the Department and known as the Sand Road Wetland Compensation Site. This includes, but is not limited to, prescribed burning, which is a necessary management tool to maintain the high-quality sand prairie and ephemeral wetland habitat complex known to support both the Illinois chorus frog and ornate box turtle.

11. **Within 60 days of each phased construction completion**, TSPA shall provide the Department with a project status report summarizing the implementation of minimization, mitigation, and restoration measures and evaluating the effectiveness of those measures. If any Illinois chorus frogs or ornate box turtles were encountered during the project, this report shall also include a map of where the species were found, a description of any injuries or mortalities, and the disposition of any individuals that were injured or killed.

12. TSPA shall conduct, or cause to be conducted, the following post-construction surveys efforts in Year 3, 6, 9, and 12 after construction is initiated:
   a. Nighttime audible call surveys for Illinois chorus frog no earlier than thirty minutes after sunset shall be performed by qualified contractors twice (approximately 15 days apart) within the same breeding season (March to May). Surveys shall be conducted when the temperature is above 0° C and wind speed is below 30 km/hr. Illinois chorus frog survey data sheets shall reflect date, location, time, air temperature, humidity, wind speed, moon visibility, precipitation, survey duration, other noise, water presence/absence, estimated number of individuals calling, and a notation of whether the call emanates from within the project site or outside of boundary (note direction).

b. Survey locations should include, but not be limited to, the northernmost area of the site, the area adjacent to the Department-owned property, and the easement area. No less than three additional survey locations shall be chosen within the central and southern zones of construction impact.
c. **A report detailing survey methods and results shall be submitted to the Department within 60 days of survey completion.**

13. As avoidance, minimization, and mitigation of potential impacts to the species:
    a. TSPA shall delineate a 40-foot-wide by 2,685-foot-long buffer area along the northeastern boundary of the site, totaling approximately 2.47 acres, and shall maintain the buffer in native herbaceous vegetation,
    b. TSPA shall locate elongated detention basins for stormwater along the entire eastern boundary at the western edge of the buffer area (see a. above) encompassing approximately 6,700 feet in length and varying in width from 60 to 600 feet.
    c. TSPA has delineated 14.22 acres on-site containing sandy soils comprising potential Illinois chorus frog and ornate box turtle habitat. TSPA shall place the specified acres into a perpetual conservation easement. TSPA shall provide a donation of $15,000 to be used for restoration of the area. The site is to be restored and maintained as suitable habitat for the Illinois chorus frog and the ornate box turtle. A restoration plan shall be pre-approved by the Department and activities shall include the removal of woody vegetation, control of invasive plant species, and planting of native sand prairie species. An easement agreement shall be executed no more than 60 days from execution of this agreement. TSPA shall provide the Department with a copy of the perpetual conservation easement agreement. **A report summarizing the restoration activities at the easement site, including photographs, should be submitted to the Department in the Year 3 and Year 6.**

14. Mitigation to the maximum extent practicable is required by the Act. TSPA shall provide $100,000.00 in compensatory mitigation payable to The Nature Conservancy, for The Nature Conservancy or their assignees to acquire and/or restore suitable habitat for the Illinois chorus frog and the ornate box turtle in Madison County. Mitigation settlement dollars are earmarked for the conservation benefit of the State-listed species potentially impacted. Mitigation payments are non-refundable, including in events of take authorization revocation or termination. A Memorandum of Understanding shall be executed and mitigation payment made no more than 60 days from execution of this agreement.

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

15. TSPA shall submit reports on all surveys within 60 days of survey completion.

16. All reports and other documentation required by this authorization shall be submitted to:

    Illinois Department of Natural Resources
    Endangered Species Program
    Incidental Take Authorization Coordinator
    One Natural Resources 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.

17. The TSPA official identified below is authorized to execute this agreement. Execution by TSPA indicates acceptance of all terms and conditions described by this authorization.

*For the Illinois Department of Natural Resources*:

Dr. James Herkert, Director
Office of Resource Conservation

6-15-16
Date

*For TriStar Property Associates, LLC:*

Mr. Michael Towerman
President

Michael Towerman, Manager
Printed Name and Title

6-9-16
Date