Authorization for Incidental Take and Implementing Agreement

Pursuant to the Illinois Endangered Species Protection Act (520 ILCS 10/5.5), on behalf of the Wal-Mart Corporation (WMC) authorization for the incidental take of the State listed eastern massasauga rattlesnake (*Sistrurus c. catenatus*) and Kirtland's snake (*Clonophis kirtlandii*) in Clinton County, Illinois [associated with the Wal-Mart Super Center Development Project in Carlyle, Illinois; as described/shown in the final conservation plan received by the Department on 23 June 2007] 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 construction of the Wal-Mart Super Center in Clinton County, Illinois.

Prior to the field investigation, data sources were consulted to identify areas of potential habitat for each species included in the Conservation Plan.

The sources included:
-USGS 1:24,000 Scale Topographic Maps
-Wetlands Delineation Arial Photographs at 1":500' scale taken in 1998, 1955, and 1938.

A habitat assessment survey was conducted by Mr. Ben Jellen (private scientific consultant) on 24 February 2007 and consisted of walking the entire Wal-Mart Super Center proposed project area, emphasizing the riparian grassland corridor along the southern border of the site. This survey was conducted to locate suitable habitat for the target species. No intensive species surveys for either target species were conducted during the habitat assessment.

This assessment revealed that the habitat structure of the proposed site was predominately agricultural; however, 0.08 hectares of suitable habitat for both *S. c. catenatus* and *C. kirtlandii* was documented along the riparian grassland corridor at the southern boundary of the proposed site. The mesic portion of the riparian grassland corridor contained crayfish burrows, which provides suitable overwintering refugia for *S. c. catenatus* and *C. kirtlandii*, and upland portions of grassland corridor contain rodent burrows providing suitable foraging and gestating habitat for *S. c. catenatus*.

An automobile dealership is located to the adjoining south of the proposed site. Cultivated cropland is located to the adjoining west and north of the site and Illinois Route 127, McDonald's Restaurant and several residences are located to the east of the site. Due to the vegetative structure and the surrounding landscape (agricultural and commercial), the habitat quality at the proposed site is marginally suitable compared to other, more contiguous parcels around the lake (Carlyle), such as South Shore State Park and Eldon Hazlet State Park.

Procedural History

Terracon Consulting Engineers and Scientists (on behalf of WMC) prepared a conservation plan for the Wal-Mart Super Center Development Project in Carlyle, Illinois as described by the Illinois Endangered Species Protection Act (520 ILCS 10/5.5). That plan and WMC's request for authorization for incidental take of the eastern massasauga rattlesnake (*Sistrurus c. catenatus*) and Kirtland's snake (*Clonophis kirtlandii*) in Clinton County, Illinois were received by the Illinois Department of Natural Resources (Department) on 23 June 2007. Public notice of WMC's request for authorization of incidental take of these State listed species was published in the Edwardsville Intelligencer (Official State newspaper), Breese Journal, and the Carlyle Union-Banner (Clinton County) on July 25, 2007, as well as on August 1, 2007 and August 8, 2007. Public comments on WMC's conservation plan were accepted by the Department until September 10, 2007. No comments were received by the public during the period of July 25, 2007 through September 10, 2007.

Target Species
Eastern Massasauga (*Sistrurus c. catenatus*) - (Illinois) State Endangered
Kirtland's Snake (*Clonophis kirtlandii*)- State Threatened

PROJECT DESCRIPTION: Quadrant of the intersection of William Road and Illinois Route 127 in Carlyle, Illinois. Wal-Mart has proposed construction of a Wal-Mart Super Center on approximately 22.2 acres, north of the existing Wiegman Ford dealership. The site consists of portions of two parcels of land:

A. Parcel Number 08-07-12-400-004, which is currently owned by Weigman Motor Company and;
B. Parcel Number 08-07-12-400-005, which is currently owned by Carlyle Lake Crossings LLC

Wal-Mart is the contract purchaser for both of the above parcels. As part of the construction, a new public road, Gateway Avenue, will be constructed from Illinois 127 west approximately 1,400 feet to provide access to the new Super Center, as well as the undeveloped property remaining to the west. Gateway Avenue will cross an unnamed riparian grassland corridor tributary to Carlyle Lake. Approximately 480 feet of the riparian grassland corridor will be disturbed by the road construction. Approximately 330 feet of riparian grassland corridor located on the site and to the adjoining right of way east of the site will be left in its existing state.

The Carlyle Lake region is home to the largest known Illinois population of the (State) endangered eastern massasauga (*Sistrurus c. catenatus*) and the nearest element of occurrence record (EOR) in the Illinois Natural Heritage Database for *S. c. catenatus* is 750 east from the proposed development site. The only record of the Kirtland's snake (*Clonophis kirtlandii*) in Clinton County, Illinois is an unvouchered specimen with the following location information: "near Carlyle Lake" (Bavetz, 1984).

The proximity of the proposed development site to a known *S. c. catenatus* site, the potential occurrence of *C. kirtlandii* in the area, and a riparian grassland corridor which is situated along the southern periphery of the site (which may provide suitable habitat for both *S. c. catenatus* and *C. kirtlandii*) prompted a habitat assessment survey. A Draft Conservation Plan was submitted to IDNR for review on 30 March 2007. A follow-up meeting between representatives of Wal-Mart and IDNR was conducted on 4 April 2007 to discuss the Draft Conservation Plan. Comments provided by IDNR during the 4 April 2007 meeting have been considered in the final Conservation Plan. Wal-Mart has also considered comments provided by IDNR in a letter to the City of Carlyle dated 13 April 2007, regarding the proposed project.

The Carlyle Lake region is home to the largest known Illinois population of the endangered eastern massasauga (*Sistrurus c. catenatus*) and the nearest element of occurrence record (EOR) in the Illinois Natural Heritage Database for *S. c. catenatus* is 750 east from the proposed development site. The only record of the Kirtland's snake (*Clonophis kirtlandii*) in Clinton County, Illinois is an unvouchered specimen with the following location information: "near Carlyle Lake" (Bavetz, 1984).

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:

Wal-Mart has proposed construction of a Wal-Mart Super Center on approximately 22.2 acres, north of the existing Wiegman Ford dealership. The site consists of portions of two parcels of land:

A. Parcel Number 08-07-12-400-004, which is currently owned by Weigman Motor Company and;
B. Parcel Number 08-07-12-400-005, which is currently owned by Carlyle Lake Crossings LLC

Wal-Mart is the contract purchaser for both of the above parcels. As part of the construction, a new public road, Gateway Avenue, will be constructed from Illinois 127 west approximately 1,400 feet to provide access to the new Super Center, as well as the undeveloped property remaining to the west. Gateway Avenue will cross an unnamed riparian grassland corridor tributary to Carlyle Lake. Approximately 480 feet of the riparian grassland corridor will be disturbed by the road construction. Approximately 330 feet of riparian grassland corridor located on the site and to the adjoining right of way east of the site will be left in its existing state.

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

At the direction of IDNR, Wal-Mart considered each the following mitigation measures:
A. Assist in funding of restoration/enhancement/construction of a possible wildlife laboratory at Carlyle Lake, or;
B. Purchase of land for Massasauga/Kirtland's snake habitat near Carlyle Lake.
Wal-Mart proposed a one-time donation be made to IDNR for Massasauga and Kirtland's snake restoration to be used in funding for a possible wildlife laboratory in the Carlyle Lake area. It is understood that both the Massasauga and Kirtland's snake habitat restoration/enhancement program (i.e. possible wildlife laboratory) are existing programs within the IDNR and ACOE (US Army Corps of Engineers). The amount to be donated was specifically negotiated between Wal-Mart and IDNR.

Wal-Mart considered the land purchase option, but believes that locating, negotiating, and obtaining such property would be more challenging and time consuming than a straight forward monetary donation. Wal-Mart also proposed that a one-time donation be made towards education programs for the Massasauga and Kirtland's snake in the Carlyle area, however it is understood that IDNR and/or ACOE already have such educational programs in place. As stated above, the amount to be donated was negotiated between Wal-Mart and IDNR.

*See Also: Authorization Section of this document for more details.

Habitat Requirements/Species Status:
A. Eastern massasauga rattlesnake
Habitat Requirements
Sistrurus c. catenatus ranges from central New York and southern Ontario southwestwardly to south-central Illinois (Ernst and Ernst 2003). Throughout this range, *S. c. catenatus* inhabits a variety of habitats including coniferous forests, floodplain forests, peatlands, wetlands, fens, and mesic prairie grasslands (Ernst and Ernst 2003). At Carlyle Lake, *S. c. catenatus* primarily occupies fallow grasslands with a patch forb distribution and adjacent floodplain forest or savanna (Jellen et al. 2007). Specific requisites are necessary for populations to persist, which, in Illinois, include overwintering refugium (typically terrestrial crayfish burrows), prey (typically rodents), and gestation sites (typically areas with sparse canopy cover.) Female *S. c. catenatus* use rodent burrows during gestation and it is thought that mammal burrows provide an ideal microhabitat for thermoregulation (Nallueau 1979), function as a retreat from predators (Keenlyne 1972, Klauber 1972, Brown 1982), and may provide neonates suitable overwintering refugia (Jellen and Kowalski in press).

Species Status in the Action Area
Habitat degradation and human persecution have extirpated populations of *S. c.catenatus* throughout much of its range, leaving only small, isolated populations (Greene and Campbell 1992, Reinert and Bushar 1992, Szymanski 1998). These factors have resulted in its consideration as a candidate species for federal protection under the United States Endangered Species Act of 1973 (U.S. Fish and Wildlife Service 1999). *Sistrurus c. catenatus* is listed as endangered in Illinois and the number of populations has declined from 24 in 1961 (Smith 1961) to as few as six by 1999 (Figure 8; Phillips et al. 1999). As of

2007, there are only three (3) known populations remaining in Illinois and three (3) historic sites of potential *S. c. catenatus* occurrence (Dreslik pers. com.). The occurrence of *S. c. catenatus* in Clinton County, in particular the southern Carlyle Lake region, is well-documented (Dreslik 2005) and represents the largest known concentration in Illinois (Dreslik pers. com.). *Sistrurus c. catenatus* occurs along a narrow band of habitat surrounding the southern portion of Carlyle Lake (Dreslik 2005) and the closest EOR (Governor's Run Golf Course) is only 750 m from the Wal-Mart Super Center proposed site.

B. Kirtland's snake

Habitat Requirements

Clonophis kirtlandii is considered a prairie peninsula species (Conant 1978). The bulk of its range occurs in the north-central Midwest and extends from central Illinois eastward through Ohio and occupies a disjunct region in western Pennsylvania (Hulse et al. 2001, Ernst and Ernst 2003). The southern limit occurs in northern Kentucky and the northern most populations are located in southern Michigan (Wright and Wright 1957, Conant and Collins 1998, Hulse et al. 2001). It is considered a species of possible occurrence in Missouri (Johnson 1987) and Wisconsin (Hoy 1883).

Key habitats for *C. kirtlandii* consist primarily of open, wet areas in association with crayfish burrows, including wet meadows and prairies, swamp-forest habitats, woodland clearings, and the grassy edges of waterways (Conant and Collins 1998, Hulse et al.2001). On the range periphery, it may be found in more heavily wooded habitats (Conant 1943, Ernst and Ernst 2003). *Clonophis kirtlandii* are encountered in damp habitat remnants and vacant lots in urban settings than in undeveloped areas (Smith 1961, Minton 1972, McCoy 1982, Conant and Collins 1998).

Sufficient data on the spatial ecology of *C. kirtlandii* is lacking and the dearth of encounters prevents an accurate determination of activity patterns and/or seasonal requirements (Genoways and Brenner 1985, Hulse et al. 2001). However, throughout the active season, *C. kirtlandii* is associated with crayfish burrows. It is not known if these burrows are also used solely for hibernation or if short seasonal movements occur; however, the large number of individuals struck by vehicles suggest seasonal movements (Minton 1972).

Species Status in the Action Area

Clonophis kirtlandii is considered imperiled throughout its range (Levell 1997) and is threatened in Illinois (Herkert 1994). Once known from 23 Illinois counties, *C. kirtlandii* currently is thought to occupy 11 (Illinois Natural Heritage Database 2003). Historically in Clinton County, Illinois, *C. kirtlandii* is known from one unvouchered EOR submitted by L. A. Wilsmann in June 1971 with the only location information being "near Carlyle Lake" (Bavetz, 1984). Unsuccessful surveys for *C. kirtlandii* were conducted by Bavetz (1993) at four localities in the Carlyle Lake region, including Eldon Hazlett State Park located approximately 6 km northeast of the Super Wal-Mart proposed site. However, the most reliable method for detecting *C. kirtlandii* is the use of wood or corrugated tin cover objects placed over crayfish burrows (Dreslik pers. com).

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

As a point of reference, Wal-Mart has applied for a 404/401 Joint Application from the USACOE and the Illinois Environmental Protection Agency (IEPA). Wal-Mart has applied for and has obtained approval from the City of Carlyle to cross the on-site stream with the proposed Gateway Avenue.

Financial assurance for all mitigation activities and programs proposed herein will be provided by the full faith and credit of Wal-Mart Stores, Inc. Wal-Mart Stores, Inc. is a public company based in the United States and is currently the world's largest retailer. Wal-Mart operates Wal-Mart discount stores, super centers, Neighborhood Markets and Sam's Club locations in the United States. The Company operates in Argentina, Brazil, Canada, China, Costa Rica, El Salvador, Guatemala, Honduras, Japan, Mexico, Nicaragua, Puerto Rico and the United Kingdom. Wal-Mart employs 1.8 million associates worldwide and more than 1.3 million in the United States, making it not only the largest private employer in the U.S., but the largest in Mexico and one of the largest private employers in Canada as well. Wal-Mart's common stock is listed on the New York Stock Exchange under the symbol WMT. Net sales for the first quarter of fiscal year 2008 were $85.387 billion. Income from continuing operations for the quarter was $2.826 billion. Additional financial information concerning Wal-Mart can be accessed at www.walmartstores.com.

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:

Because of the negative results of the organismal surveys, (on days/times coinciding with positive organismal surveys by INHS personnel), the marginal quality habitat present on the site, and context of the surrounding landscape, we believe this proposed action will most likely not reduce the likelihood of the survival of *S. c. catenatus* and/or *C. kirtlandii* in the wild within the state of Illinois.

The possible incidental take may occur through direct construction-related mortality, vehicular related mortality, and/or through indirect mortality as a result of suitable habitat loss from alteration and degradation. However, because of the negative results of the organismal surveys [on days/times coinciding with positive organismal surveys by the Illinois Natural History Survey (INHS) personnel], the small amount of marginally suitable habitat present on the site, and state of the surrounding landscape, we believe the potential for incidental take from the proposed project is most likely low.

If in the future, it becomes apparent that either of the target species are consistently being identified on the site, the conservation plan (and Incidental Take Authorization - ITA) will be re-evaluated and appropriate measures will be taken as necessary.

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 WMC's signature(s) on this authorization indicates their commitment to performing those measures.

Although the actual risk of a take is low as a result of the proposed project, the potential for an "incidental take" of the Eastern massasauga rattlesnake and Kirtland's snake does nevertheless exist. This take may occur through vehicular traffic on a new public road, Gateway Avenue, from Illinois 127 west approximately 1,400 feet to provide access to the new Super Center. Gateway Avenue will cross an unnamed riparian grassland corridor tributary to Carlyle Lake. Approximately 480 feet of the riparian grassland corridor will be disturbed by the road construction. Approximately 330 feet of riparian grassland corridor located on the site and to the adjoining right of way east of the site will be left in its existing state. While the risk of an "incidental take" of these species by vehicular traffic does exist, the risk resulting from the proposed project is most likely not significantly increased over the current conditions. No direct construction related mortality or mortality through general degradation of the surrounding habitat is expected to occur within the breeding and/or non-breeding portions of the respective species life cycles.

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:

Terracon Consulting Engineers and Scientists (on behalf of WMC) prepared a conservation plan for the Wal-Mart Super Center Development Project in Carlyle, Illinois as described by the Illinois Endangered Species Protection Act (520 ILCS 10/5.5). That plan and WMC's request for authorization for incidental take of the eastern massasauga rattlesnake (*Sistrurus c. catenatus*) and Kirtland's snake (*Clonophis kirtlandii*) in Clinton County, Illinois were received by the Illinois Department of Natural Resources (Department) on 23 June 2007. Public notice of WMC's request for authorization of incidental take of these State listed species was published in the Edwardsville Intelligencer (Official State newspaper), Breese Journal, and the Carlyle Union-Banner (Clinton County) on July 25, 2007, as well as on August 1, 2007 and August 8, 2007. Public comments on WMC's conservation plan were accepted by the Department until September 10, 2007. No comments were received by the public during the period of July 25, 2007 through September 10, 2007.

PROBABLE EFFECTS OF THE PROPOSED ACTION:

A riparian grassland corridor is situated along the southern border of the site. The remainder of the site is cultivated farmland. This project will result in the loss and further degradation of 0.19 acres of marginal quality *S. c. catenatus* and *C. kirtlandii* habitat along the riparian grassland corridor. The habitat loss will occur as a result of the proposed construction of an access roadway (Gateway Avenue) to the proposed site from William Road to the adjoining south/southeast of the site. In addition, the project may impact suitable foraging and gestating habitat on the remaining portion of the site.

The direct effects on habitat are two-fold:
1) Direct construction-related effects; and,
2) Effects of long-term suitable habitat loss. Take may occur through direct mortality of individuals and/or indirectly by negatively altering suitable habitats.

Authorization

It is the determination of the Department that the measures to be implemented by the Wal-Mart Corporation (WMC) will adequately minimize and mitigate for the anticipated taking (disturbance/harassment) of a small number of the State listed eastern massasauga rattlesnake (*Sistrurus c. catenatus*) and Kirtland's snake (*Clonophis kirtlandii*) in Clinton County, Illinois [associated with the Wal-Mart Super Center Development Project in Carlyle, Illinois]. Further, it is our opinion that the take (disturbance/harassment) authorized herein would not diminish the likelihood of the survival of either these aforementioned species 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:

1. This authorization is effective upon signature of the Department and shall remain in effect for a period of 5 (five) years after the first day of official public opening of the Carlyle, Illinois Wal-Mart Super Center, 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. The following measures shall be implemented with regards to the Wal-Mart Super Center Development Project in Carlyle, Illinois:

A. Organismal Survey Measures

As a point of reference, in order to conserve the target species, if encounters were made during the organismal surveys described previously, individuals would have been removed from the site, and incorporated into a captive breeding program.

Note that organismal surveys were conducted during the spring egress period, under appropriate weather conditions, and on days and times coinciding with INHS personnel organismal surveys for *S. c. catenatus* in the Carlyle Lake region. An initial organismal survey was conducted on 21 March 2007, before vegetation was removed by "weed-eaters" on the mild morning of 22 March 2007. Additional organismal surveys were conducted on 24 and 25 March and 21 and 22 April 2007 for 10.5 person-hours of surveying. Neither target species were encountered on the proposed site during the organismal surveys. Methods included visual encounter surveys focusing on the riparian grassland along the southern border, turning thatch cover and other surface debris for *C. kirtlandii*, and illuminating crayfish burrows to potentially view *S. c. catenatus* and *C. kirtlandii* that had not yet emerged or were seeking refuge.

B. Engineering Measures

The following minimization measures will/shall be implemented:

1. The Gateway Avenue alignment has been adjusted so it crosses the riparian grassland corridor once instead of three times as originally planned;

2. Consideration is underway to relocate the temporary construction access north of the property to avoid crossing the riparian grassland corridor during construction;

3. The remaining 330 feet of riparian grassland corridor from the Gateway Avenue running east to Illinois 127 will be left undisturbed in its natural state;

4. Construction activity in the riparian grassland corridor will be limited to occur outside the spring egress period (late March to early April) of the target species;

5. During the construction phase, the area along the riparian grassland corridor and the upland pad area will be kept clear of vegetative cover to decrease the likelihood that the species in question would move into the site because of increased risks (i.e., increased exposure during movement);

6. Permanent barriers are proposed along the south side of the site to capture trash and debris and prevent such items from potentially being blown into and collecting in the riparian grassland corridor;

7. Management and enhancements of the riparian grassland corridor with plantings of native vegetation shall occur. Wal-Mart will seek guidance from an IDNR biologist in developing a planting design;

8. The proposed stormwater management system for the site will include the following features;

- Wet-bottom basins will act as bio-filters and prevent roadway grit from washing directly into the riparian grassland corridor.
- A vegetative swale is proposed at the outlet to the east retention basin; and
- Native vegetation within buffer areas of each retention basin.

9. A mowing regimen will be maintained to ensure that grasses are not allowed to exceed six inches in height. Depending on construction schedule, mowing of grassy areas on the site would begin by late March. Prior to each mowing, grassy areas will be visually inspected for the presence of snakes;

10. It is proposed that the snow removal program incorporated at the site will include only limited use of sodium chloride (salt) for snow melting purposes. The snow removal program will focus on snow plowing as a means of snow removal on the site. In addition, bulk salt storage for site snow removal is not intended for the site;

11. Because Wal-Mart does not typically use pesticides as part of its standard site maintenance, there is no need for any specific changes to such maintenance protocols to avoid impacts to species or habitat due to use of pesticides; and

Printed on recycled and recyclable stock

12. Construction activities involving land clearing and heavy equipment shall be limited to the 16 May through 15 October period. A toed-in silt fence shall be erected around the entire site and proposed entrance access route by mid September, prior to the ingress period and prior to the commencement of grading operations on the site. Erection of a toed-in silt fence will act as a physical barrier and discourage snakes from migrating onto the site during their movement towards hibernation areas. The silt fence shall remain on the site until 17 May, after the hibernation period has ended. The proposed toed-in silt fence activities are further discussed below (Section C below).

C. Installation of Toed-In Silt Fence

A toed-in silt fence shall be erected around the site perimeter and proposed entrance access route prior to September 15. A second linear section of silt fence shall occur along the riparian corridor for the length of the site. Construction personnel shall be trained to visually identify the target species prior to commencing work on the site. Training will be conducted by a representative of ACOE and/or IDNR. Funnel traps shall be placed along the outside and inside perimeter of the silt fence upon silt fence completion. The funnel traps shall be inspected by trained personnel daily. Should either target species be visually identified in the traps or along the fence, trained personnel shall notify local ACOE/IDNR office personnel, who will capture the snake.

D. The ACOE has a standard protocol for responding to sightings of the target species. This protocol as provided by ACOE includes the following steps:

1) Immediately call the following contact people, in the order listed, until someone is reached:
a. John Bunnell, IDNR, Eldon Hazlet State Park. (618) 594-3015
b. Jim Birdsell, IDNR, Eldon Hazlet State Park (618) 594-3015
c. Joe Smothers, Corps of Engineers, Carlyle Lake (618) 594-2484
d. Scott Ballard, IDNR Natural Heritage, Marion (618) 993-7023
e. Diane Tecic, IDNR Natural Heritage, Granite City (618) 931-6251
2) Stop any activities that could harm the snake (for example, heavy equipment operation within a few meters of the snake).
3) If the snake moves away, let it go, but follow at a safe distance until it stops again or it goes into an inaccessible area (thick brush, movement underground, etc.).
4) Mark the area where the snake was initially seen and where it was last seen or be able to point-out these positions to the contact person. Wait as near as possible to the snake or its last observed position until the contact person arrives.
5) With help from the contact person, fill out a massasauga/kirtland data sheet as completely as possible.

E. In the event of a documented "incidental take" of any of the species covered by this Conservation Plan, as a direct result of the construction or operation of the Wal-Mart Super Center Development Project in Carlyle, Illinois, WMC shall notify the Illinois DNR (Attn: Joseph Kath at 217/785-8764 or via e-mail: Joe.Kath@illinois.gov) within 24 hours of discovery.

Printed on recycled and recyclable stock

3. The following Monitoring Measures shall be implemented with regards to the Wal-Mart Super Center Development, in Carlyle - Clinton County, Illinois.

Visual observation schedule during site construction shall involve: Prior to on-site construction, personnel shall be trained by IDNR/ACOE to visually identify the target species. Dedicated construction personnel shall conduct periodic visual surveys for the target species during construction phase, as appropriate. Should the target species be identified during the construction phase, ACOE/IDNR will be notified immediately. The ACOE standard response protocol will be implemented as described in this document.

Wal-Mart shall develop a training program, in which employees will be made aware that the target species have been documented in the vicinity. Employees will be trained to report any snake sightings on the site to designated Wal-Mart personnel, who will be properly trained to visually identify the target species. Should either of the target species be identified on the site, the designated personnel will be responsible for reporting identified target species to the ACOE/IDNR according to the ACOE response protocol described in this document.

If in the future, it becomes apparent that either of the target species are consistently being identified on the site, the conservation plan (and ITA as applicable) shall be re-evaluated and appropriate measures will be taken as necessary.

4. The following Party Responsibilities shall be in effect with regards to the Wal-Mart Super Center Development, in Carlyle - Clinton County, Illinois.

WMC and its various consultants (i.e. Terracon - but not exclusively limited to this firm) will be responsible for overseeing all minimization, monitoring, and mitigation efforts identified within the Conservation Plan. WMC and its various consultants will be responsible for planning, contract execution and construction supervision for the entire project.

5. Wal-Mart shall make a one-time donation of **$25,000.00** specifically to the "Illinois DNR Wildlife Preservation Fund" within 6 months of the final/official IDNR signature date on this document for Massasauga and Kirtland's snake habitat restoration/enhancement and/or to be used for a possible wildlife laboratory in the Carlyle Lake area. It is understood that both the Massasauga and Kirtland's snake habitat restoration/enhancement program and the possible wildlife laboratory are existing programs with IDNR and ACOE. The above amount to be donated was negotiated between Wal-Mart and the IDNR.

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

Printed on recycled and recyclable stock

7. This authorization may be revoked pursuant to Section 5.5 of the Act if the Department finds that WMC has failed to comply with any of these terms and conditions or has been responsible for the take of any State Listed Species beyond that which is incidental to the construction of the Wal-Mart Super Center Development Project in Carlyle, Illinois, Clinton County.

8. The Wal-Mart Corporation official(s) identified below is/are authorized to execute this agreement. Execution by an official from any one of these organizations indicates acceptance of all terms and conditions described in this document.

For the IL. Department of Natural Resources

Mike Conlin

Mike Conlin, Acting Director
Office of Resource Conservation

2.26.08
Date Signed

Wal-Mart Stores, Inc.,
For the Wal-Mart Corporation (WMC)

Signature

Michael E. Gardner
Regional Vice President
Please print name and official title

1/1/08
Date Signed

Approved as to legal terms only
by
Wal-Mart Legal Team
Date: 1-7-08

Printed on recycled and recyclable stock