

# Illinois Department of Natural Resources

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Rod R. Blagojevich, Governor

## Authorization for Incidental Take and Implementing Agreement

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Pursuant to the Illinois Endangered Species Protection Act (Act) (520 ILCS 10/5.5), authorization is hereby granted to PAR Development, Inc. (hereinafter referred to as PAR) for the incidental take of the state-threatened Blanding's turtle, *Emydoidea blandingii*, at the site of the Lake Pointe Business Park (also known as Lake Pointe Center Subdivision or Lake Pointe Center) at the northeast corner of the intersection of Huntley-Algonquin Road and Lakewood Road in Lake in the Hills, McHenry County, Illinois<sup>1</sup>. The Illinois Department of Natural Resources (hereinafter referred to as the Department) has determined that this taking is incidental to the construction and operation of Lake Pointe Business Park.

### Procedural History

On behalf of PAR, Christopher B. Burke Engineering Ltd. (hereinafter referred to as CBBEL) prepared a conservation plan as described by the Act. That plan and PAR's request for authorization of incidental take of Blanding's turtles were received by the Department on April 11, 2002. Revisions to the plan were received by the Department on May 24, 2002, and September 17, 2002. Public notice of PAR's request for authorization of incidental take was published in the Edwardsville Intelligencer on September 16, 2002, and in the Northwest Herald on September 16, 23 and 30, 2002. Public comments on PAR's conservation plan were accepted by the Department until October 30, 2002. Comments were received from two public agencies and two individuals. Those comments were forwarded to CBBEL for analysis. The analysis of comments was received by the Department on November 12, 2002. Following additional discussions by phone, representatives of the Department, the Illinois Nature Preserves Commission, McHenry County Conservation District (hereinafter referred to as the District), U.S. Army Corps of Engineers, CBBEL and PAR met on January 13, 2003 to discuss the terms and conditions of this authorization. Revised project drawings depicting measures agreed to at the January 13 meeting were received by the Department on January 17, 2003.

### Compliance with the Illinois Endangered Species Protection Act

The Act includes six criteria which 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 and operation of a

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<sup>1</sup> The subject property is further described as the south 660.00 feet of the west 660.00 feet of the north half of the northeast quarter and the west half of the west half of the south half of the northeast quarter of Section 26, Township 43 North, Range 7 East of the third principal meridian, in McHenry County, Illinois

retail development at the northeast corner of the intersection of Huntley-Algonquin Road and Lakewood Road in Lake in the Hills, McHenry County, Illinois. This development will include one anchor store near the intersection of the referenced roads and 10 additional lots for retail development and parking east and north of the anchor store. While measures will be in place to minimize the likelihood of Blanding's turtles entering the developed area, it is anticipated that up to two turtles may be taken per year as a result of encounters with motor vehicles or becoming stranded in the developed area. This potential take is not the purpose of PAR's activities, but is incidental to the carrying out of an otherwise lawful activity.

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

PAR has and will continue to institute measures to minimize the take of Blanding's turtles and mitigate any take that may occur. The original development plan for the Lake Pointe Business Park included an additional lot (Lot 12) in the northeast portion of the site. This lot has been eliminated from the development plan in order to provide a large wetland detention basin and to increase the distance between the developed portion of the site and Exner Marsh. Stormwater that drains from the developed site will flow through a multi-stage system to remove debris, sediment and contaminants. A barrier curb will be constructed along the eastern boundary of the development to prevent passage of Blanding's turtles onto the paved parking areas. Fencing will be built along that same boundary to prevent the deposition of trash into the wetland detention areas and/or Exner Marsh. That fence will include small gaps to allow any Blanding's turtles that may find their way into the developed area to move back to Exner Marsh. PAR will construct six nesting sites in the vicinity of Exner Marsh to replace any nesting habitat that may now exist on the development site (nesting by Blanding's turtles has not been documented on the Lake Pointe site).

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

PAR has committed to provide adequate funding to implement the minimization and mitigation measures described in the conservation plan during construction and early stages of operation of the Lake Pointe Business Park. It is anticipated that responsibility for maintenance of structural measures, monitoring and any needed adaptive management measures will be assumed by a non-profit commercial association composed of the tenants of Lake Pointe Business Park. A Declaration of Easements and Protective Covenants, Conditions and Restrictions has been prepared which commits the members of the commercial association to carry out the terms and conditions of this authorization.

4. Based on the best available scientific data, the Department has determined that the taking will not reduce the likelihood of survival or recovery of the endangered species or threatened species in the wild in Illinois, the biotic community of which the species is a part, or the habitat essential to the species' existence in Illinois:

Research conducted by the District has found that Exner Marsh provides habitat for the largest population of Blanding's turtles known in McHenry County, Illinois. The Exner Marsh population is estimated at 70 individuals, with probably fewer than 40 sexually mature turtles.

Blanding's turtles are primarily aquatic, but move to upland areas near their wetland habitats for nesting. Radio-tracking studies at Exner Marsh have shown that turtles move as much as one-

quarter mile from the marsh to nest. As development has continued around Exner Marsh, potential nesting habitat has become severely limited. No nests of Blanding's turtles have been found in the area that will be developed as Lake Pointe Business Park.

The risk of lethal take of Blanding's turtles during construction of Lake Pointe Business Park will be minimized by the placement of barriers, e.g., silt fencing, around the construction site and making contractors and construction personnel aware of the possible presence of turtles. If any turtles are encountered within the construction zone, the District will assist in the relocation of the turtle to a safe area.

It is anticipated that the construction of barrier fencing and curbing will make the entry of a Blanding's turtle into the Lake Pointe Business Park a rare event. Signs within the development will inform the public of the possible presence of the turtles and provide information on how to contact the District if a turtle should be found.

The Lake Pointe Business Park site does not currently include the sand and gravel substrates that are preferred by Blanding's turtles for nesting. Placement of mounds of sand and gravel at six sites near Exner Marsh will provide potential nesting habitat for Blanding's turtles. Those created nesting sites will be monitored to determine if Blanding's turtles are in fact finding and using them.

It is the Department's opinion that the minimization and mitigation measures proposed by PAR will not reduce the likelihood of survival or recovery of Blanding's turtles in the wild in Illinois, the biotic community of which Blanding's turtles are a part or the habitat essential to the species' existence in Illinois.

5. Any measures required under Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 1080.40(b)] will be performed:

Additional measures are listed below under "Authorization." This authorization is, by definition, subject to those terms and conditions and PAR's signature on this authorization indicates their commitment to performing those measures.

6. The public has received notice of the application and has had the opportunity to comment before the Department made any decision regarding the application:

Public notice of PAR's request for authorization of incidental take was published in the Edwardsville Intelligencer on September 16, 2002, and in the Northwest Herald on September 16, 23 and 30, 2002. Public comments on PAR's conservation plan were accepted by the Department until October 30, 2002. Comments were received from two public agencies and two individuals.

#### Authorization

It is the determination of the Department that the measures to be implemented by PAR at the project site will adequately minimize and mitigate the anticipated taking of Blanding's turtles associated with the construction and operation of Lake Pointe Business Park. Further, it is our opinion that the take authorized herein will not diminish the likelihood of the survival or recovery of the Blanding's 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.

Pursuant to Section 5.5 of the Illinois Endangered Species Protection Act [520 ILCS 10/5.5 - Section 1080.40(b)], this authorization is issued to PAR 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 15 years from the date of execution, unless terminated pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.80).
2. Upon formation of a Lake Pointe Center merchants association, this authorization may be transferred to that association. PAR shall make all charter members of the association aware of their obligation to assure implementation and enforcement of the terms and conditions of this authorization. The Department and District shall be informed of the transfer of this authorization within 30 days of the transfer and shall be provided with the name, address, phone number, fax number and e-mail address of the person or persons responsible for conducting the business of the association.
3. PAR shall erect and maintain, or cause to be erected and maintained, a physical barrier to turtle movement, e.g., silt fencing, along the east and north boundaries of their property before any earth moving or other construction activity is initiated on the site. This barrier shall be maintained until such time that staff of the District and/or Department notify PAR that it is no longer necessary to prevent movement of Blanding's turtles into that portion of the development outside of the designated lots.
4. Before the barrier described in Item 3 above is removed, PAR shall erect and maintain, or cause to be erected and maintained, a physical barrier to turtle movement, e.g., silt fencing, along the east, northeast and north boundaries of that portion of the Lake Pointe Business Park slated for development as commercial facilities or as parking space. This barrier shall be maintained until such time that the perimeter fencing and curbing described below is in place.
5. The Department and District shall provide a protocol (copy attached to this authorization) for responding to any encounters with turtles on the site during construction. PAR shall assure that this protocol is provided to all contractors who will be present on the site and shall include adherence to this protocol in the terms of contracts issued for development activity on the site.
6. PAR shall construct and maintain, or cause to be constructed and maintained, two wetland detention basins to receive stormwater runoff from the developed portion of the site. Those basins and the movement of stormwater between them and from them to Exner Marsh shall be as depicted in the revised Tentative Plat/Preliminary Engineering Plan prepared by Haeger Engineering and dated January 16, 2003.
7. PAR shall install and maintain, or cause to be installed and maintained, a Continuous Deflective Separator (CDS) system on each stormwater drain that empties into Wetland Mitigation/Detention Basin A or Wetland Detention Basin B. Maintenance of these systems shall include removal of accumulated debris on a schedule adequate to prevent discharge of trash or debris into Basin A or B.
8. PAR shall install and maintain, or cause to be installed and maintained, concrete curbing along the east, northeast and north boundary of the developed portion of the site to prevent movement

of Blanding's turtles into the developed area. The location of this curbing is depicted on the revised Tentative Plat/Preliminary Engineering Plan prepared by Haeger Engineering and dated January 16, 2003.

9. PAR shall install and maintain, or cause to be installed and maintained, a chain link or similar fence along the east, northeast and north boundary of the developed portion of the site to prevent wind-blown debris from entering Exner Marsh or the detention basins. The debris fence shall include 6-inch high and 8-foot wide gaps on 100-foot centers to allow return of Blanding's turtles to Exner Marsh and/or the detention basins and adjacent uplands. The location and configuration of this fence is depicted on the revised Tentative Plat/Preliminary Engineering Plan prepared by Haeger Engineering and dated January 16, 2003.

10. PAR shall provide all necessary materials (sand and gravel) for establishment of six artificial turtle nesting areas at locations recommended by the District. PAR shall also place those materials according to specifications provided by the District. The District shall assume responsibility for placement of appropriate vegetation on the artificial nesting sites and maintenance of that vegetation. PAR shall allow District staff access to artificial nesting sites on PAR property for purposes of maintenance and monitoring.

11. The District shall conduct annual monitoring of the artificial nesting areas to determine the level of use by Blanding's turtles and the success of any nesting attempts. The Department shall provide necessary permits and authorizations to allow this monitoring and shall assist the District when practical.

12. PAR shall conduct, or cause to be conducted, searches for Blanding's turtles twice annually for five years following completion of development of the Lake Pointe site. Areas to be searched will include the Lake Pointe site and the Boulder Ridge Golf Course. The fence line between the commercial development and the detention ponds, the artificial nesting areas, the detention and mitigation areas, the commercial area (parking lots and any vegetated islands), along the rights-of-way of Huntley-Algonquin Road and Lakewood Road and the entire golf course will be examined for the presence of turtles. Any turtle(s) of any species found shall be held in a suitable container in a shaded area while the District is promptly notified of the capture. The District shall provide personnel to properly gather necessary data and to assure proper release of the turtle(s).

13. PAR shall install and maintain, or cause to be installed and maintained, informational signs around the perimeter of and within the developed area as well as around the perimeter of Boulder Ridge Golf Course and at Tee #1 of that course. These signs shall include wording to make employees and customers aware of the possible presence of Blanding's turtles and procedures for reporting any turtles that are found. Format and wording of the signs will be determined with the approval of the Department and the District. Text on the signs will be in both English and Spanish.

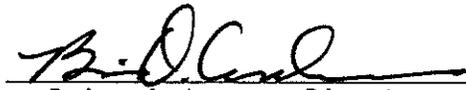
14. The District shall provide an annual report to the Department on turtles found within the Lake Pointe Business Park and Boulder Ridge Golf Course. The report shall include, but not be limited to, the species and numbers of turtles found, the condition of each turtle when found, the location of each turtle when found, and the disposal of each turtle.

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

16. This authorization may be revoked pursuant to Section 5.5 of the Illinois Endangered Species Protection Act (520 ILCS 10/5.5 - Section 1080.80) if the Department finds that PAR has failed to comply with any of these terms and conditions or has been responsible for the taking of Blanding's turtles beyond that which is incidental to the construction and operation of Lake Pointe Business Park in McHenry County, Illinois.

17. The PAR and District officials identified below are authorized to execute this agreement. Execution of this agreement indicates acceptance by all parties of the terms and conditions as described in this document.

For the Illinois Department of  
Natural Resources

  
\_\_\_\_\_  
Brian Anderson, Director  
Office of Resource Conservation

4/13/03  
Date

For PAR Development, Inc.

  
\_\_\_\_\_  
Signature

David R. Plate Vice President  
Printed Name and Title

4/14/03  
Date

For the McHenry County  
Conservation District

  
\_\_\_\_\_  
Signature  
CRAIG D. HUBERT  
EXECUTIVE DIRECTOR  
Printed Name and Title

6-5-03  
Date

## REPORTING AND HANDLING OF TURTLES FOUND AT THE LAKE POINTE COMMERCIAL CENTER

If a turtle is found on the Lake Pointe site, the following procedures should be followed.

1. Stop any activity that could harm the turtle.
2. Capture the turtle by hand and place it in a clean container, such as a plastic garbage can or plastic bucket, and place the container in a shady location.
3. Mark the spot at which the turtle was found with a stake or flag.
4. Immediately contact the McHenry County Conservation District at (815)728-8307 or (815)790-0353 to report the presence of the turtle.
5. Follow any additional instructions from the Conservation District.

McHenry County Conservation District staff will come to Lake Pointe to collect information about the turtle and release it in a safe location.

THANK YOU FOR YOUR COOPERATION