**Section 1075.40 Consultation Process**

As authorized by Section 11(a) of the Illinois Endangered Species Protection Act (Ill. Rev. Stat. 1991, ch. 8, par. 341) [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 provide 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)