**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)