

CLIENT ALERTS

Developers Beware! Northern Long-Eared Bat Listed as Threatened Species

4.7.2015

Opting not to list the northern long-eared bat as endangered as originally proposed in its October 2, 2013 proposed rule, the U.S. Fish and Wildlife Service (F&WS) instead listed the northern long-eared bat as “threatened”. Facing a deadline for the listing, the F&WS also issued an interim 4(d) rule providing for the incidental take exemptions as originally proposed, while opening the comment period to consider additional exemptions down the road in a final rule.

The interim 4(d) rule prohibits purposeful takes except from human structures and permitted captures, handling and related activities. Incidental takes, that is, removal or disturbance of the bat not as the intended purpose but rather, incidental to an otherwise lawful purpose, in areas not affected by white-nose syndrome are exempt. In areas affected by white nose syndrome, including areas within a designated buffer zone (which includes pretty much of the state of Michigan), incidental takes related to forest management practices, maintenance and limited expansion of transportation and utility rights-of-way, native prairie management, and minimal or hazardous tree removal are exempt from incidental take permit requirements as long as you follow certain conservation measures. If you have a documented northern long-eared bat hibernacula or roost tree on or near your property or project, you must

- not conduct activities within .25 miles of known, occupied hibernacula
- not cut or destroy any known, occupied roost tree from June 1-July 31
- not clear cut within .25 miles of a known, occupied roost tree from June 1- July 31

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Developers and others contemplating tree removals are urged to plan ahead and proceed with caution. Not observing bats on or near the property does not mean you are in the clear. Any hibernacula with just one documented observation of northern long-eared bats will continue to be considered “known hibernacula” as long as it and its surrounding habitat remains suitable for the bat. Similarly, a documented roost tree will remain a “known roost” as long as the tree and surrounding habitat remain suitable for northern long-eared bats. Moreover, you cannot rely on prior surveys or assessments conducted related to the Indiana bat, as there are differences in hibernacula and roosting habits between the two species. Unlike Indiana bats, the northern long-eared bat roosts singly or in small groups, making it easy to miss roosting bats. Unlike the Indiana bat, the northern long-eared bat also moves between hibernacula throughout the winter, again providing for an opportunity to miss bat occupied hibernacula. The northern long-eared bat also roosts in trees with diameters more variable than Indiana bats.

It is important to determine what documentation exists on bat hibernacula and roosts in and around your project before you commence any activity that may disturb the bats or their habitat. If your project has federal involvement (e.g., permits, HUD financing, etc.) F&WS is likely to be asked to weigh in. In addition, consistent with its recent protocol to solicit F&WS input on the Indiana bat in issuing wetland and stream permits, the Michigan Department of Environmental Quality is also likely to request input from F&WS on the northern long-eared bat if trees are to be removed or bat habitat potentially impacted.

If you would like more information about the foregoing or any other environmental or energy law needs, please feel free to contact one of the following members of Butzel Long’s Energy & Sustainability Practice Team lawyers:

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