

Alert

Northern Long-Eared Bat Endangered Species Act Listing Will Have Immediate Consequences for Ongoing Development Projects

June 26, 2015

The northern long-eared bat was recently listed as a federally threatened species by the United States Fish and Wildlife Service ("USFWS"). **If you are currently working on a project that requires the permanent clearing of more than one acre of forest, this listing decision has immediate legal consequences.**

The northern long-eared bat listing became effective on May 4, 2015, and a corresponding "4(d) Rule" issued by the USFWS of the same date imposes seasonal forest clearing restrictions in the entirety of Maryland, the District of Columbia, and Virginia. Virtually any project that is not in an urbanized area and which requires the permanent clearing of more than one acre of forest is subject to the 4(d) Rule.

On June 25, 2015, the U.S. Army Corps of Engineers (the "Corps") issued Special Public Notice: 15-39, effectively incorporating the requirement of the 4(d) Rule as an additional special condition for any permit issued by the Corps (the "Notice"). The Notice applies to all holders of any Corps permits, including all projects that have received authorization in the form of an Individual Permit, a General Permit, and authorizations to disturb wetlands and other "Waters of the United States" under the Maryland State Programmatic General Permit 4 ("MDSPGP-4"). Note that the USFWS 4(d) Rule applies to all projects requiring permanent clearing of more than one acre of forest, regardless of whether the project holds a Corps permit.

The Notice applies to all projects where the work authorized under the applicable permit has not been completed as of June 25, 2015. The new permit condition requires the permit holder to complete USFWS Chesapeake Bay Field Office's online project screening process.

If the screening tool indicates that there may be northern long-eared bats present and the project includes permanent tree clearing of a contiguous area one acre or greater, the permit holder must provide a letter of commitment to the Corps prior to performing any additional work. The letter must state that the permittee will commit to either:

- clearing only between September 1 and April 15; or
- conducting summer habitat surveys to determine whether the bats are present.

If the permittee elects to conduct surveys, no seasonal restrictions are imposed. Projects located in urban areas without contiguous forest greater than one area are exempt from the new special conditions.

Linowes and Blocher's Environmental Practice Group is continuing to review the northern long-eared bat listing given its likely impacts upon residential and commercial development projects. To the extent that you have any questions or would like more information regarding the Special Public Notice, do not hesitate to contact:

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