

County Engineers Workshop 2015

February 4, 2015

Little River Casino and Resort

Manistee, Michigan

Stumbling Blocks for Local Agency Projects

MDOT Local Agency Program (LAP)

Bruce Kadzban, PE – Rural & Enhancement Unit Manager

Teresa Vanis – Local Agency Program Real Estate Coordinator

Discussion Topics

Northern Long Eared Bat and Tree Removal

Real Property Acquisition Issues

NORTHERN LONG EARED BAT



- Photo courtesy yahoo.com

NORTHERN LONG EARED BAT

Eastern and north central United States and most of Canada

Bat habitat generally

- in caves (year-round), and
- standing trees
 - alive or dead
 - generally 3" diameter and greater (warm weather months)

NORTHERN LONG EARED BAT



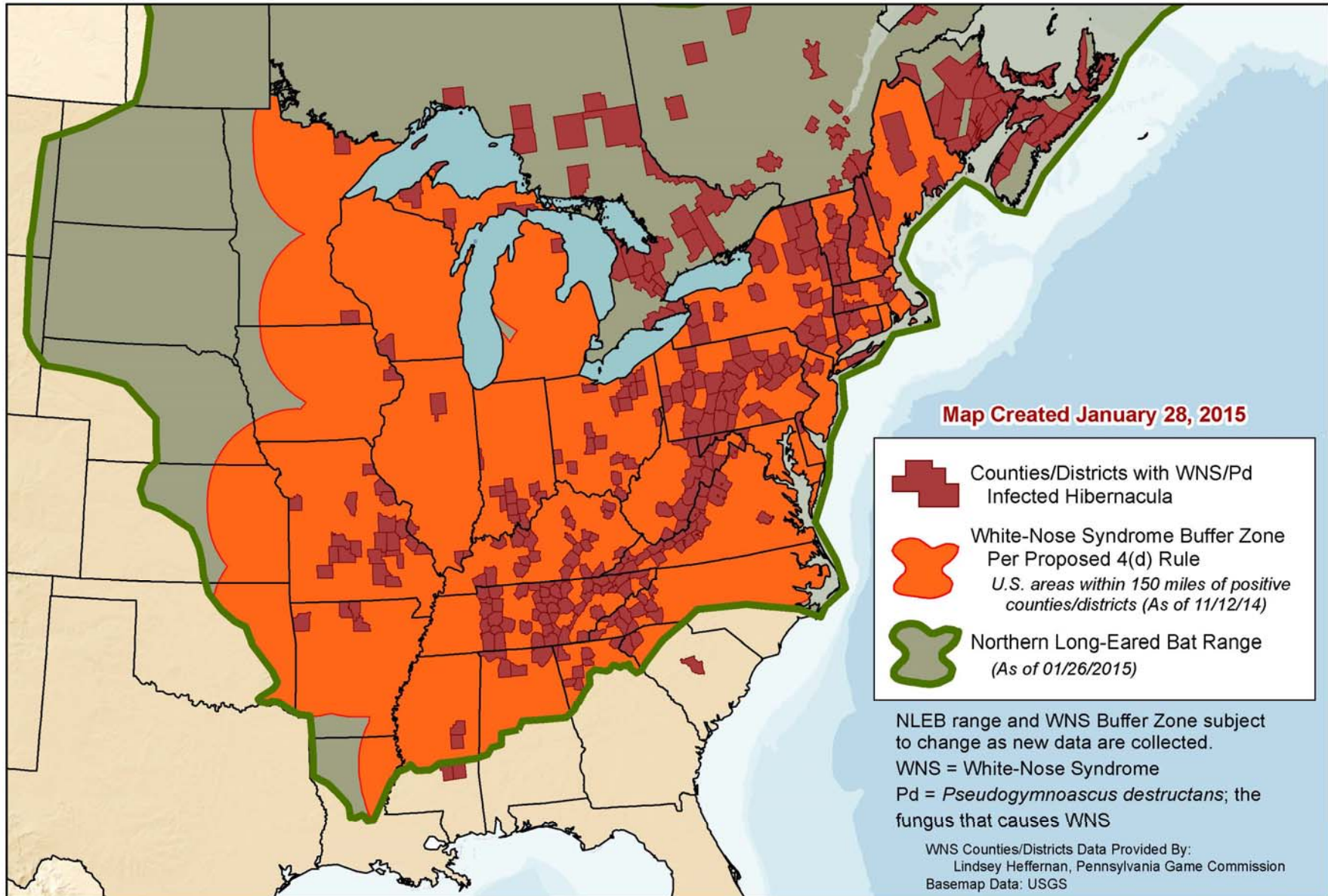
- Photo courtesy animaltourism.com



U.S. Fish & Wildlife Service

Northern Long-Eared Bat Proposed 4(d) Rule

White-Nose Syndrome Buffer Zone Around WNS/Pd Positive Counties/Districts



NORTHERN LONG EARED BAT

White Nose Syndrome is adversely affecting the Northern Long Eared Bat

Population declined by up to 99 percent from pre-white-nose syndrome levels at many hibernation sites.

Bat was proposed to be listed as an endangered species, on October 2, 2013, extended several times, to April 2, 2015.

Affected bats have been identified in Michigan, by MDNR and others

HOW THIS AFFECTS FEDERAL AID PROJECTS

Need to protect the bat's habitat

Federal transportation funds

- not generally used for caves
- used for tree removal

TREE REMOVAL WITH FEDERAL TRANSPORTATION FUNDS

NEED TO PROTECT THE BAT'S HABITAT

CASE 1 – now, through April 30, 2015

Tree removal allowed, with no consequences, when bats aren't using the trees

Local agency can complete its NEPA certification

TREE REMOVAL WITH FEDERAL TRANSPORTATION FUNDS

NEED TO PROTECT THE BAT'S HABITAT

CASE 1 – October 1 through March 31

Tree removal is allowed and reimbursable, with no consequences, because bats aren't using the trees

Local agency can complete its NEPA certification

TREE REMOVAL WITH FEDERAL TRANSPORTATION FUNDS

NEED TO PROTECT THE BAT'S HABITAT

CASE 2 – May 1 through September 30, annually

Tree removal is allowed and reimbursable **ONLY** if the US Fish & Wildlife Service (USFWS) approved the local agency's bat habitat survey

TREE REMOVAL and Northern Long Eared Bat

DETAILS, DETAILS, DETAILS.....

Presence / absence survey period

BAT SURVEY AND REPORT COMPLETED BY A QUALIFIED BIOLOGIST,

forwarded to USFWS, and

NEPA CERTIFICATION

- 18-24 months
- survey when bats would be expected to be present (May – September)
- Complete the survey, “last year for this year”
- Very limited number of Qualified Biologists
- No known surveys approved by USFWS last year, for local projects this year

SPECIAL PROVISION
FOR
TREE REMOVAL

(local agency)

1 of 1

(date)

a. Description. This work consists of removing all tree three inches in diameter and greater, as required for the project as defined in section 202 of the 2012 Michigan Department of Transportation (MDOT) Standard Specifications for Construction.

Due to the possible existence of federally protected species within the project area, the contractor shall complete all tree removals required for the project, as defined in section 202 of the 2012 MDOT Standard Specifications for Construction, between October 1, 2015 and March 31, 2016.

b. Materials. None specified.

c. Construction. Construction work shall be in accordance with the requirements of section 202 of the 2012 MDOT Standard Specifications for Construction.

d. Measurement and Payment. Tree removals as designated in the contract will be paid for per subsection 202.04 of the 2012 MDOT Standard Specifications for Construction and applicable special provisions, if completed between October 1, 2015 and March 31, 2016. Work associated with Tree Removal outside of those dates will not be paid for and may subject the contractor to penalties and additional costs, including assessment of liquidated damages and being held with default of contract.

TREE REMOVAL and Northern Long Eared Bat

DETAILS, DETAILS, DETAILS.....

SPECIAL PROVISION

Applies to all trees, 3-inches and greater, removed between May 1 and September 30

- Affects Clearing, Machine Grading, Station Grading
- Applies to all standing timber, live and dead
- DOES NOT APPLY to stumps, downed trees

MDOT Tree Removal Pay Item – applies to all trees 6-inches and greater

TREE REMOVAL and Northern Long Eared bat

DETAILS, DETAILS, DETAILS.....

SOME LOCAL AGENCIES OPTING

TO CLEAR TREES NOW, BEFORE APRIL 30, NOT USING FEDERAL AID

OTHER LOCAL AGENCIES OPTING TO USE FEDERAL AID, BUT

CHANGING PROGRESS CLAUSE, TREE REMOVAL IN WINTER 2015,

CONSTRUCTION IN 2016

REAL ESTATE 101

COUNTY ENGINEERS WORKSHOP

Teresa Vanis

MDOT – Real Estate

The Bill of Rights

Ratified December 15, 1791

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

*A reminder to be ever vigilant in the protection of these rights
Presented in loving memory of Cortiss Lamont 1902-1995*

National Emergency Civil Liberties Committee
New York, NY 10010

Property Owner Rights

Apply to....

- ⦿ Permanent Fee
- ⦿ Permanent Easements
- ⦿ Temporary Permits

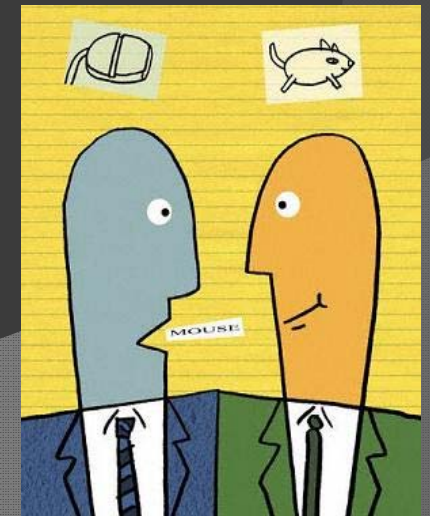


Real Estate File Requirements

- Title Evidence
- Appraisal, market study, valuation analysis
- Written good faith offer to property owner
- Executed and recorded deeds or easements
- Executed temporary permits
- Memos of negotiation

Addressing Common Misconceptions

- ◉ Waiver of Appraisals
 - Owner is waiving their right to an appraisal
 - Just compensation must still be determined
- ◉ Donations
 - Must first be offered compensation first
 - Must be documented in your file
- ◉ Mutual Benefits
 - Work directly benefits the property owner
 - Must be documented in your file



More Common Misconceptions

⦿ Reversionary Clauses

- Permanent right-of-way cannot have reversionary clauses

⦿ Temporary Rights

- Property owners are entitled to compensation

⦿ Paying for Real Estate

- “If you don’t have money to do it right, you don’t have money to do it at all!”

Don't lose your funding!

- You can lose PART or ALL of the funding for a particular parcel

OR

- You can lose PART or ALL of your project funds



EVEN IF THERE IS NO FEDERAL PARTICIPATION IN ROW

Contact Information

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Stumbling Blocks for Local Agency Projects

Questions?

Thank You!