



# Illinois Department of Transportation

Office of Highways Project Implementation / Bureau of Local Roads & Streets  
2300 South Dirksen Parkway / Room 205 / Springfield, Illinois / 62764

November 3, 2022

## **CIRCULAR LETTER 2022-28**

### **NORTHERN LONG EARED BAT – ENDANGERED SPECIES DESIGNATION**

COUNTY ENGINEERS / SUPERINTENDENTS OF HIGHWAYS  
METROPOLITAN PLANNING ORGANIZATIONS - DIRECTORS  
MUNICIPAL ENGINEERS / PUBLIC WORKS DIRECTORS / MAYORS  
TOWNSHIP HIGHWAY COMMISSIONERS  
CONSULTING ENGINEERS

#### **PURPOSE & POLICY:**

The purpose of this Circular Letter is to provide advanced notice and information to our Local Public Agency (LPA) and all industry partners of the forthcoming change in classification of the Northern Long Eared Bat (NLEB) by the U.S. Fish and Wildlife Service (USFWS) to an endangered species, so as to adjust schedules, construction work and procedures in an advanced and expedited manner.

The tree clearing restrictions to preserve the habitat of NLEB, which have been in-place for Districts 2 to 9, and part of District 1, will soon be expanded to now include the entire State of Illinois. Tree clearing restrictions for the rest of the state are not expected to change and will remain in force. For clarity, tree clearing is allowed from November 1 through March 30 in all areas of the state. Trees in the right-of-way can be removed or trimmed because of safety concerns at any time.

LPAs must be aware that the commitments to protect the NLEB are legally binding for Federal and State funded projects. Failure to comply with the commitment may result in a loss of project funding, as with other similar requirements.

#### **BACKGROUND AND USFWS DETERMINATIONS:**

On March 22, 2022, USFWS proposed to reclassify the NLEB from “threatened” to “endangered” under the Endangered Species Act (ESA). The NLEB, currently listed as threatened, faces extinction due to the range-wide impacts of white-nose syndrome, a deadly disease affecting cave-dwelling bat species across the continent. The proposal to change the status of the NLEB comes after USFWS’s in-depth review of the species found that the bat continues to decline and now meets the definition of endangered under the ESA. These changes are expected to be formally announced in November 2022, and are projected to go into full effect near the end of December 2022.

As a result of the NLEB reclassification, the USFWS will rescind the NLEB 4(d) rule and associated 4(d) rule ESA programmatic consultation for threatened species. Projects that were cleared using the NLEB 4(d) rule will require additional ESA Section 7

consultation. The FHWA is working with USFWS to update the Range-wide Programmatic Consultation for Indiana Bat and Northern Long-eared Bat to address the NLEB endangered status.

Upon notification of the proposed rule in March 2022, the Department has worked both internally (Bureaus of Local Roads & Streets, and the Bureau of Design and Environment), and with USFWS and FHWA, to understand the impacts of these changes, and to communicate at the appropriate time of the impacts of this reclassification.

It is understood that all IDOT District 1 projects will now be required to go through the full ESA evaluation and permitting process, utilizing the Programmatic Biological Opinion for Transportation Projects in the Range of the Indiana Bat and Northern Long-Eared Bat. To assist District 1, the Bureau of Design and Environment (BDE) Natural Resources Unit (NRU) are currently updating the District 1 Natural Resources Review Memoranda regarding applicable projects.

It is anticipated that the Proposed Rulemaking will have no foreseeable impact to IDOT Districts 2 thru 9, as this Programmatic Biological Opinion has already been utilized in Districts 2 through 9 for several years.

**IMPACTS TO PROJECT SCHEDULING:**

The most notable impact to project scheduling will be a required commitment for a tree clearing restriction to protect the NLEB. Applicable projects include the following:

- Projects involving tree clearing:
  - Trees 3 (three) inches or greater in diameter at breast height shall not be cleared between April 1 and September 30
  - Those projects that are within 2-½ miles of a recorded NLEB site, the tree clearing restriction shall be April 1 through October 31
  - For clarity, tree trimming and clearing of hazards can occur at any time.
  
- Projects involving bridge or culvert work:
  - A Bridge Bat Assessment (BBA) must be completed for any work on a bridge that penetrates or is below the surface of the deck or involves expansion joints
  - A BBA must be completed for any culvert or storm sewer work that is 48 inches or taller
  - BBA must be conducted within 2 (two) years prior to the start of the construction or maintenance work on any bridge project
  - Projects exceeding 2 (two) calendar years that have not gone to construction will require an updated BBA
  - Projects will not be allowed to proceed to letting or be awarded without a currently valid required BBA
  - For clarity, bridge inspection work can occur regardless of the signs of bat presence, but it is highly recommended that prior to bridge inspection work a BBA is completed and filed with the District Office

Importantly, if an LPA has a project that cannot start construction until after April 1<sup>st</sup>, they must take the necessary and proactive steps to ensure that all trees have been removed prior to the April 1<sup>st</sup> deadline. These measures include using either LPA own work forces, or by contract, to remove the trees.

Further, if the BBA finds evidence of bat presence on a bridge, there must be a commitment to start bridge demolition prior to April 1<sup>st</sup> to make the bridge inhabitable to the bat. If the bridge work cannot start prior to April 1<sup>st</sup>, the LPA may be required to undertake suitable measures to fill any nesting areas on or within the bridge.

**EFFECTIVE DATE AND TRANSITION PERIOD:**

While the final Proposed Rulemaking remains forthcoming very soon, and with the understanding that no transition period is currently being proposed; it is highly suggested that the LPA apply the requirements described within this Circular Letter so as to not cause delay or work stoppage, as the BDE NRU will be adopting the effect of the proposed ruling effective immediately.

**ADDITIONAL INFORMATION CAN BE FOUND ON THE WEBSITES BELOW.**

- [Proposal to reclassify northern long-eared bat as endangered | U.S. Fish & Wildlife Service \(fws.gov\)](#) –press release
- [Northern Long-eared Bat \(Myotis septentrionalis\) | U.S. Fish & Wildlife Service \(fws.gov\)](#) - umbrella website for more NLEB information
- [State and Federally listed bats occurring in IL, 17 IAC 1010.30, list of IL Endangered and threatened fauna, May 28, 2020, <https://www.ilga.gov/commission/jcar/admincode/017/017010100000300R.html>](#)

**APPLICABILITY:**

These procedures apply to all projects using State or Federal funds, requires a Federal permit, and/or if the project requires IDOT review.

Any questions regarding this Circular Letter, and its information should be directed to Mr. William Raffensperger, Local Studies and Plans Engineer at (217) 785-1676, or by email at [William.Raffensperger@illinois.gov](mailto:William.Raffensperger@illinois.gov).

Sincerely,

Handwritten signature in blue ink, appearing to read 'G.A. Tapas'.

George A. Tapas. P.E, S.E  
Engineer of Local Roads and Streets

cc: Rick Johnson, Illinois Association of County Engineers  
Brad Cole, Illinois Municipal League  
Jerry Crabtree, Township Officials of Illinois  
Arnold Vegter, Township Highway Commissioners of Illinois