



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, Maryland 21401
<http://www.fws.gov/chesapeakebay>

November 8, 2023

Maria Teresi
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 21201

RE: NAB-1991-01204: Chesapeake Terrace Rubble Landfill – Not Likely to Adversely Affect Northern Long-eared Bat; Odenton, Anne Arundel County, MD

Dear Ms. Teresi:

This letter responds to the U.S. Army Corps of Engineers' (Corps) Biological Assessment and request for concurrence for the Chesapeake Terrace Rubble Landfill project submitted to the U.S. Fish and Wildlife Service (Service) on October 30, 2023. The Service has reviewed the project description and evaluation of effects to northern long-eared bat (NLEB; *Myotis septentrionalis*) and is providing the following comments in accordance with Section 7 of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

National Waste Managers, Inc. (NWM) proposes to construct the Chesapeake Terrace Rubble Landfill, a non-hazardous solid waste acceptance facility on three contiguous properties totaling 481.65-acres in Odenton, Anne Arundel County, Maryland, and has received a Department of the Army permit from the Corps authorizing unavoidable impacts to 3.66 acres of jurisdictional non-tidal wetlands. The Corps granted an extension of time on June 3, 2022, that extended the permit authorization through December 31, 2028. On January 30, 2023, NLEB was reclassified from federally listed threatened to endangered under the Endangered Species Act, and therefore, the Corps has re-initiated Section 7 consultation with the Service.

The project will construct 16 solid waste disposal cells, 4 stormwater management and leachate capture basins, private access roads, operation buildings, and equipment washout stations that will disturb 178.76 acres of land including 157.19 acres of forest. The project action area does not overlap with any known hibernacula buffers, and the property is a former sand and gravel mine, so no suitable hibernacula habitat is available on the site.

NWM has agreed to adopt conservation measures to avoid and minimize adverse effects to NLEB. No tree clearing activities will occur during the active season (April 1 through November



14) to avoid removal of occupied roost trees and therefore, direct affects to NLEB. In addition, 113.81 acres of existing and to be restored wetlands have been protected under a conservation easement to mitigate wetland impacts, and another 103.5 acres of predominantly forested wetlands will remain undisturbed to maintain suitable roosting habitat on-site and along the Little Patuxent River corridor.

Based on the project description and evaluation of effects, the Service concurs the project may affect, but not likely to adversely affect the NLEB. Should project plans change or additional information on the distribution of NLEB becomes available, this determination may be reconsidered.

This consultation only applies to NLEB. Other candidate and proposed species that may occur in the project action area are the monarch butterfly (*Danaus plexippus*) and tricolored bat (*Perimyotis subflavus*). On December 15, 2020, the Service determined listing the monarch butterfly is warranted but precluded by higher priority listing actions. With this finding, the monarch butterfly becomes a candidate species, and the Service will review its status annually. A final listing determination and proposed rule, if warranted, is anticipated by September 30, 2024. There are no requirements to consult on candidate species under Section 7 of the Endangered Species Act. On September 14, 2022, the Service published a proposed rule to list tricolored bat as endangered. If these or other species occurring in the project action area becomes listed, additional Section 7 consultation will be required.

This response relates only to federally protected threatened or endangered species under our jurisdiction. For information on the presence of other rare species, you should contact Lori Byrne of the Maryland Wildlife and Heritage Service at (410) 260-8573.

We appreciate the opportunity to provide information relative to fish and wildlife issues and thank you for your interests in these resources. If you have any questions or concerns about this consultation, please feel free to contact Raymond Li at 410-573-4522 or email at ray_li@fws.gov.

Sincerely,

Acting for Genevieve LaRouche
Field Supervisor