

ASK AN ATTORNEY

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What does a developer need to do when it believes there might be a threatened or endangered species near its future real estate development site?

The presence of threatened or endangered (T&E) species, and the identification of the habitats that support them, are becoming more prevalent on private property because of the increased observation and reporting of sightings, and improved data recording by the applicable governmental agencies. Conflicts between these species and land developments are also becoming more common, and oftentimes create permitting delays, as governmental agencies require the developer to eliminate the potential for harm to the T&E species from the proposed development. For example, the presence of a T&E species in a wetland makes state wetland permitting in both NJ and PA even more difficult and time-consuming!



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To properly address the suspected presence of a T&E species on or near a real estate development site, the developer, with the assistance of technical experts and experienced counsel, must develop an in-depth understanding of the situation. First, the developer must acquire all available information regarding the individual T&E species that is the cause of concern. For example, has there been a recent confirmed sighting of an individual T&E species from a reputable source, or does the development site merely represent an ecosystem that "could" support the T&E species? If the latter situation exists, further sci-

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entific investigation may be warranted to uncover information supporting the lack of habitat or protected individuals on the development site. If that conclusion is reached, and the applicable agencies agree, then no further work with respect to T&E species is required.

Second, if it is determined that the site includes habitat for and/or the actual presence of the T&E species, then the developer must form an understanding of the lifecycle of the particular T&E species of interest, as well as know the exact regulatory protections afforded the species. Knowing the lifecycle of the T&E species allows the developer and its technical team to develop specific mitigation measures or design changes that eliminate adverse

impact to the species, which is generally the standard imposed by the permitting agencies. For example, there may only be seasonal restrictions on certain activities imposed by the government to protect the T&E species, and modifying the phasing of the proposed project may eliminate the potential for impacts. Having experienced counsel who understands the applicable regulations, as well as the agencies which enforce them, is also important for the timely resolution of T&E issues.

The suspected presence of a T&E species on a potential real estate development site does not necessarily mean disaster. However, this situation does require increased attention from a team of individuals

well versed in these issues in order to increase the possibility of a successful project.

Jonathan Rinde is a partner with Manko, Gold, Katcher & Fox, LLP. Formerly, Rinde performed technical environmental studies and wetland assessments for private and public projects as environmental manager at a consulting engineering firm. His practice includes matters relating to the environmental aspects of real estate development and management, water, waste and air regulation and permitting, wetlands regulations, brownfields redevelopment, military base conversions, business transactions, and environmental litigation. ■