

STATE OF VERMONT  
SUPERIOR COURT  
ENVIRONMENTAL DIVISION

NRB v Lawrence and Brigit Robinson

23-ENV-00142

AOD ORDER

The Assurance of Discontinuance, signed by the Respondent(s) on on this the 9th day of November, 2023 and filed with the Superior Court, Environmental Division, on on this the 19th day of December, 2023, is hereby entered as an order of this Court, pursuant to 10 V.S.A. 8007(c).

Electronically signed January 12, 2024 in Burlington, Vermont pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

Thomas G. Walsh, Judge  
Vermont Superior Court, Environmental Division

STATE OF VERMONT

Superior Court

Environmental Division  
Docket No.

Natural Resources Board,  
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

Lawrence and Brigit Robinson,  
Respondents

**VIOLATIONS**

*Failure to comply with Permit Conditions 2, 8, 9, and 21 of Land Use Permit 4C0692-11.*

*Failure to obtain a Land Use Permit amendment pursuant to Act 250 Rule 34(A)*

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of 10 V.S.A. § 8007, the Natural Resources Board ("Board") and Lawrence and Brigit Robinson (collectively "Respondents") hereby enter into this Assurance of Discontinuance ("Assurance"), and stipulate and agree as follows:

**STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS**

1. This Assurance applies to lands identified in Book 252, Pages 662-666 of the land records of the Town of Charlotte, Vermont, where the deed to the land or the permit is recorded.
2. The Respondents own approximately 3.31 acres located at 295 Meadowside Road (A.K.A. Lot 1), identified in the Town of Charlotte, Vermont (the "Project Tract") which is subject to Act 250 Land Use Permit Series 4C0692 (collectively, the "Permit"). The Project Tract is identified by School Property Account Number (SPAN) 138-043-11960.
3. On September 22, 2017, the Board's District 4 Environmental Commission issued

Land Use Permit (LUP) Amendment 4C0692-11 to Clark W. Hinsdale III (at that time, owner of the Project Tract) et al. The LUP amendment included authorization for the construction of a single family residence on the Project Tract.

4. Condition 2 of LUP Amendment 4C0692-11 states: *"The Project shall be completed, operated and maintained in accordance with: the conditions of this permit; and the permit application, plans, and exhibits on file with the District Environmental Commission and other material representations. The approved plan is: "Boundary Adjustment Plat," dated October 2016, last revision January 19, 2017 (Exhibit 003)."*
5. Exhibit 003 ("Boundary Adjustment Plat," dated October 2016, last revision January 19, 2017) of LUP Amendment 4C0692-11 depicts the proposed single family dwelling location (labeled "Possible Building Location") on the Project Tract. No other existing or proposed building structures are presented on the plan.
6. Condition 8 of LUP Amendment 4C0692-11 states: *"No change shall be made to the design, operation or use of this project without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required."*
7. Condition 9 of LUP Amendment 4C0692-11 states: *"No further subdivision, alteration, and/or development on the tracts of land approved herein shall be permitted without a permit amendment issued by the District Commission or a jurisdictional opinion from the District Coordinator that a permit is not required."*
8. Condition 11 of LUP Amendment 4C0692-11 states: *"The conditions of this permit and the land uses permitted herein shall run with the land and are binding upon and enforceable against the Permittees and their successors and assigns."*
9. Exhibit 010 of LUP Amendment 4C0692-11 is an Entry of Appearance of the Agency of Natural Resources (ANR) Office of Planning, dated September 1, 2017. The Entry of Appearance included comments summarizing ANR's Fish and Wildlife Department's (FWD) review of the application for LUP Amendment 4C0692-11, highlighting the Project Tract's existence within a potential summer range of the endangered Indiana Bat. The comments went on to present the



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potential risk to Indiana Bat life and safety if removal of trees on the Project Tract were to occur during times of the year the bats may be present (April 2 through October 31). To alleviate this potential for deleterious effects on the necessary bat habitat, a protective condition was requested and subsequently included in the LUP Amendment as Condition 21.

10. Condition 21 of LUP Amendment 4C0692-11 states: *“The cutting or trimming of trees for the activities authorized herein is prohibited unless carried out during winter months, from November 1 to April 1, or with prior written approval from the Department of Fish and Wildlife. Exhibit #010 (September 1, 2017 ANR Entry of Appearance).”*
11. On September 28, 2021, the Respondents acquired the Project Tract from Clark W. Hinsdale III.
12. On October 11, 2021, the Respondents received Zoning Permit 21-243-ZP for the construction of a 2,400 square foot residence with attached 2-car garage on the Project Tract.
13. On June 10, 2022, the Respondents received Wastewater System and Potable Water Supply Permit WW-138-1702-1 from ANR’s Drinking Water and Groundwater Protection Division for a proposed 4-bedroom house and 1-bedroom accessory dwelling on the Project Tract.
14. On January 17, 2023, the Respondents filed LUP Amendment Application 4C0692-11A for after-the-fact authorization of the as-built 1-bedroom accessory dwelling and a boundary line adjustment between the Project Tract and adjacent 231 Meadowside Road.
15. Act 250 Rule 34(A) states, in relevant part: *“A permit amendment shall be required for any material change to a permitted development or subdivision, or administrative change in the terms and conditions of a land use permit. Commencement of construction on a material change to a permitted development or subdivision without a permit amendment is prohibited.”*
16. Act 250 Rule 2(C)(6) defines “material change” as: *“any cognizable change to a development or subdivision subject to a permit under Act 250 or findings and*

*conclusions under 10 V.S.A. § 6086b, which has a significant impact on any finding, conclusion, term or condition of the project's permit or which may result in a significant adverse impact with respect to any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10)."*

17. On February 10, 2023, ANR's Office of Planning filed with the Board's District 4 Environmental Commission an Entry of Appearance for LUP Amendment Application 4C0692-11A, requesting an extension of the comment period to accommodate DFW's request for additional information pertaining to the tree clearing that had occurred on the Project Tract during the construction activities presented in the 4C0692-11A application. The Entry of Appearance reiterated the Project Tract's existence within the potential summer range of the endangered Indian Bat (as previously conveyed in ANR's September 1, 2017 Entry of Appearance for LUP Amendment Application 4C0692-11).
18. On March 8, 2023, FWD contacted the Board's Enforcement Office, reporting that (based on its review) approximately eight (8) trees had been cleared from the Project Tract during October 2022, outside the allowable November 1 to April 1 period.
19. The Board alleges that the Respondents violated Conditions 2, 8, and 9 of LUP Amendment 4C0692-11 by commencing further development (construction of an accessory dwelling and associated improvements) without first obtaining the required LUP amendment.
20. The Board alleges that the Respondents violated Condition 21 of LUP Amendment 4C0692-11 by removing trees from a potential summer range of the Indiana Bat outside the allowable November 1 to April 1 time period.
21. Respondents admit the factual findings described above, solely for purposes of resolving this case.
22. The Board alleges that the above conduct is in violation of land use permits issued in LUP Series 4C0692 pursuant to 10 V.S.A. Chapter 151, including the requirement contained therein to obtain District Commission approval prior to further development of the Project Tract as well as causing potential harm to Indiana Bat necessary habitat.

23. The Board further alleges that the failure to obtain a permit amendment for the construction of the accessory dwelling and associated improvements is a violation of Act 250 Rule 34(A).
24. The parties now resolve the above claims and agree that this settlement will avoid the costs and uncertainties of litigation, is a just resolution of the disputed claims and is in the public interest.

### AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

- A. The Respondents shall comply with Permit series 4C0692.
- B. No later than **30 days** following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall pay, by separate checks, the following:
  1. Pursuant to 10 V.S.A. Ch. 201, a civil penalty in the amount of **\$2,000.00** for the violations noted herein, by check made payable to the "State of Vermont."

In lieu of this civil penalty and pursuant to 10 V.S.A. §8007(b)(2), Respondents may instead contribute **\$748.00** to a Supplemental Environmental Project (SEP), which will fund the printing of 5,000 informational brochures that will serve to educate the public on the recognition, protection, and enhancement of Indiana Bat habitat (the SEP is more fully described in Exhibits A and B, attached hereto). In this case, the check shall be made payable to "Vermont Fish and Wildlife Department" (the Recipient) and sent to:

Attn: Megan Duni  
Vermont Agency of Natural Resources  
Fish and Wildlife Department  
1 National Life Drive, Davis 2  
Montpelier, Vermont 05620



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If, at the end of the 30-day period following the entry of this Assurance as an Order by the Environmental Court, the SEP payment has not been paid by the Respondents, the original civil penalty amount of \$2,000.00 shall be immediately due and payable to the State of Vermont.

2. Pursuant to 10 V.S.A. §8010(e)(2), the amount of \$589.58 to reimburse the Natural Resources Board for the costs of this enforcement action by check made payable to the "State of Vermont."
  3. The amount of \$15.00 for the purpose of paying the recording fee for the filing of a notice of this Assurance in the Town of Charlotte land records, by check made payable to the "Town of Charlotte, Vermont."
- C. Without formally admitting or denying wrongdoing or liability, Respondents agree to this settlement of the violations alleged above to resolve all outstanding disputes.
- D. Respondents agree that the violations alleged are deemed proved and established as a "prior violation" in any future state proceeding that requires consideration of Respondents' past record of compliance, such as permit review proceedings and calculating civil penalties under Title 10, section 8010.
- E. No later than 30 days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, the Respondents shall mail the Board notarized, written acknowledgement of receipt of the Court's Order.
- F. All payments and documents required by this Assurance shall be sent to the following address unless otherwise noted:
- Natural Resources Board  
10 Baldwin Street  
Montpelier, Vermont 05633-3201
- G. Respondents are jointly and severally liable for all obligations under this Assurance.
- H. Respondents shall not deduct, nor attempt to deduct, any payment made to the

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State or a SEP pursuant to this Assurance from Respondents' reported income for tax purposes or attempt to obtain any other tax benefit from such payment.

- I. Recipient of the afore-described SEP funds agrees:
  1. to provide the Board a final accounting of all receipts and expenditures of funds paid by Respondent within thirty (30) days of the completion of the SEP; and;
  2. that SEP funds may not be used for litigation or lobbying purposes, nor may they be used in the preparation or presentation of matters before any state agency or board.
  
- J. In the event that this Assurance allows the Respondents to fund a SEP in lieu of the payment of a civil penalty, if the Respondents publish by any means, directly or indirectly, the identity or result of an SEP that Respondents have funded, the Respondents shall also include in that publication a statement that the SEP is a product of the settlement of an environmental enforcement action brought by the Natural Resources Board.
  
- K. The State of Vermont and the Natural Resources Board reserve continuing jurisdiction to ensure compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein.
  
- L. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondents' continuing obligation to comply with applicable state or local statutes, regulations or directives.
  
- M. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
  
- N. Pursuant to 10 V.S.A. § 8007(d), the Respondents shall not be liable for additional civil or criminal penalties with respect to the specific facts set forth herein, provided that the Respondents fully comply with this Assurance.



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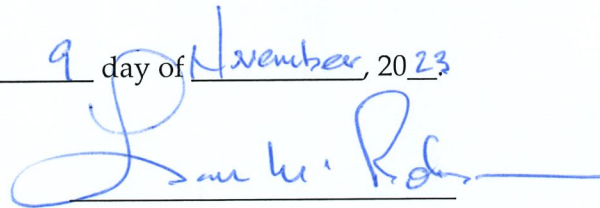
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- O. The Board reserves the right to make reasonable extensions of any deadline contained herein, upon prior request by the Respondents, for good cause beyond either Respondent's control.
- P. This Assurance sets forth the complete agreement of the parties, and except as provided herein, may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division.
- Q. Alleged representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such alleged representations shall have no legal force or effect.
- R. When this Assurance is entered as a judicial order, violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in further enforcement action, including contempt proceedings, the imposition of injunctive relief, and/or the imposition of penalties, including penalties under 10 V.S.A. chapters 201 and/or 211.
- S. This Assurance is subject to the provisions of 10 V.S.A. §§ 8007 and 8020.

**SIGNATURES**

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated at Shelburne Twp  
Chittenden Vermont, this 9 day of November, 2023  
County.



Lawrence Robinson, Individually

Brigit Robinson

Brigit Robinson, Individually

STATE OF VERMONT  
COUNTY OF Chittenden, ss.

BE IT REMEMBERED that on the 9th day of November, 2023, personally appeared Brigit + Lawrence Robinson signer(s) of the foregoing instrument who is/are known to me or who satisfactorily established *his/her/their* identity to me and acknowledged the same to be *his/her/their* free act and deed.

Rebecca L. Edson  
Notary Public  
State Of Vermont  
My Commission Number: 157.0014704  
My Commission expires 01/31/25

Before me,  
Rebecca L. Edson  
Notary Public  
My Commission Expires: 01/31/25

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The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

Dated in Montpelier, Vermont, this 18th day of December, 2023

Natural Resources Board

By: Sabina Haskell  
Sabina Haskell, Chair

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As to Paragraph I, only (SEP Recipient):

Dated in Montpelier, Vermont, this 19<sup>th</sup> day of December, 2023.

Agency of Natural Resources

By:



Chris Herrick, Commissioner  
Fish and Wildlife Department

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**EXHIBIT A**

Supplemental Environmental Project Proposal

Composed by Alyssa Bennett, Small Mammals Biologist, Vermont Department of Fish and Wildlife  
5 July 2023

“A Landowner’s Guide to Indiana Bat Habitat Stewardship” is an informational brochure on how to manage forested areas on private lands. This guide provides a background on the federal and state endangered status of this bat species and outlines how to identify, conserve, and enhance its habitat needs. The guide includes actions that landowners can take that are often compatible with other forest management practices. Most importantly, it instructs landowners on how to avoid harming bats during forest management by identifying and retaining trees that bats could be concentrated and vulnerable in when roosting. Trees are regularly cut in the Champlain Valley where Indiana bats are highly concentrated in the spring through summer. Many landowners are unaware that they could potentially harm bats that concentrate in roost trees in colonies of up to 350 females with their flightless young. Printing this brochure and sharing it widely in the Champlain Valley with landowners and forest managers could directly benefit Indiana bat conservation by teaching them how to identify potential roost trees and avoid directly harming bats in them. Brochures will be distributed through town offices, libraries, conservation commissions, county foresters, and forest management outreach organizations like Women Owning Woodlands and Vermont Coverts.

**EXHIBIT B**

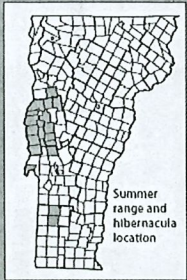
“A Landowner’s Guide to Indiana Bat Habitat Stewardship” Brochure  
 Vermont Department of Fish and Wildlife

**Meet the Indiana Bat**

The Indiana bat (*Myotis sodale*) is a state and federally endangered species. It weighs about three tenths of an ounce, or approximately the weight of three pennies, with a body about the size of your thumb. Indiana bats live an average of 15 years and produce a single pup each summer. Female bats form maternity colonies where they congregate to bear and raise their pups from early May to late June.



THE CONSERVATION BANK OF VERMONT, INC.

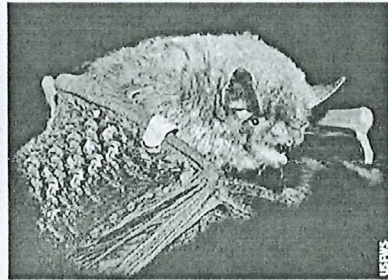


Summer range and hibernacula location

Their summer range in Vermont is limited to the southern Champlain Valley, from West Haven to Hinesburg. From late fall through early spring, Indiana bats hibernate in caves and mines.

**Conserving Indiana Bats is Important**

- ◆ Bats help control insects, eating over 1,000 mosquitoes, moths, and other nighttime insects per hour!
- ◆ Bats are an important part of a healthy ecosystem and environment.
- ◆ The Indiana bat is one of two federally endangered animals found in Vermont.
- ◆ Indiana bat populations have become increasingly vulnerable due to White Nose Syndrome, a mysterious syndrome affecting bats in the northeastern U.S.
- ◆ Successful recovery of Indiana bat populations in Vermont will eliminate the need for additional and perhaps more costly species protection measures.
- ◆ Management for Indiana bat habitat can accommodate common forest management goals.

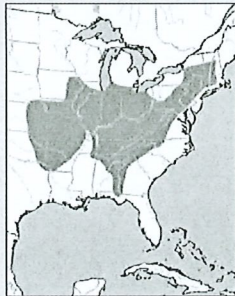


USFWS

**Endangered Status**

In 1967, the Endangered Species Act officially listed the Indiana bat as federally endangered due to a declining population. Habitat loss and degradation, human disturbance in caves, and pesticide use contributed to this decline.

State and federal wildlife agencies are working to protect their habitat and educate people about their conservation to prevent the extinction of the Indiana bat. The Indiana bat is protected under state and federal endangered species laws.



Indiana bat range in North America

MAP SOURCE: NATURESERVE



Agency of Natural Resources • Fish & Wildlife Department  
 103 South Main Street, 10 South • Waterbury, VT 05671-0501  
[www.vtfishandwildlife.com](http://www.vtfishandwildlife.com) • (802) 241-3700

**A Landowner's Guide to Indiana Bat Habitat Stewardship**

*Your forest is their future*

© MERLIND LITTLE, BAT CONSERVATION INTERNATIONAL

**VERMONT**  
 FISH & WILDLIFE DEPARTMENT  
[www.vtfishandwildlife.com](http://www.vtfishandwildlife.com)  
 (802) 241-3700



## Understanding Indiana Bat Habitat

### Maternity Colony Habitat



Indiana bat roosting under the loose bark of a tree.

Maternity colony habitat is habitat used by a colony of reproductive female Indiana bats. This habitat will include Roost Trees and the colony's associated Foraging Habitat.

#### Roost Trees

During the summer, bats are active at night and roost (sleep) during the day. The Indiana bat roosts under the loose

bark of mature trees, unlike the more common little brown bat that roosts in man-made structures like buildings and bridges. Female Indiana bats also bear and raise their young in roost trees.

#### Roost trees may include:

- ◆ Dead or dying trees of any species.
- ◆ Live trees with loose bark such as shagbark hickory and black locust.

Other characteristics that make a tree attractive to Indiana bats as a potential roost tree include:

- ◆ Direct solar radiation on the tree's bark.
- ◆ Trunk diameters greater than eight inches.
- ◆ Located within a cluster of trees with similar characteristics.



Indiana bat roost tree.

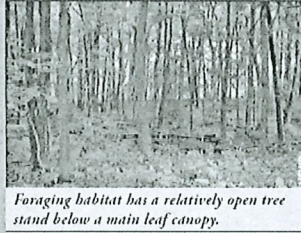
### Foraging Habitat

Foraging habitat, where bats feed on insects, is another important maternity colony habitat component.

Bats typically forage within 2-1/2 miles of their roost trees. Indiana bats forage and travel in forested stands, along forest edges and hedgerows, and near or along open water and wetlands.

Quality foraging habitat is characterized by:

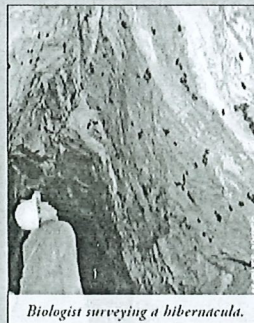
- ◆ Relatively open stand conditions below a main canopy of trees with trunks ten inches or greater in diameter.
- ◆ Connectivity with other forest blocks, wetlands, or streams.



Foraging habitat has a relatively open tree stand below a main leaf canopy.

### Hibernacula Habitat

The caves and mines that bats use for winter hibernation are called hibernacula. Forested areas surrounding a hibernaculum also serve as important habitat. All Indiana bats use these areas in the fall prior to hibernation and upon leaving for their summer range in the spring. Forested areas surrounding a hibernaculum should be managed to enhance and maintain roost trees and foraging habitat.



Biologist surveying a hibernacula.

## Managing Your Forest

You can manage your forest to maintain and enhance Indiana bat habitat as part of a multiple use forest management approach that accommodates other common forest management goals. However, you should keep in mind that Indiana bats generally favor older forests that include large dead and dying trees.

Such forest conditions are consistent with managing for restoring and retaining natural communities that support a variety of plant and animal species—particularly those species that become more vulnerable as the Champlain Valley's forests are converted to other land uses.

### Maternity Colony Habitat Management

- ◆ Assume Indiana bats are present in all lands within the summer range of Indiana bats—southern Champlain Valley, from West Haven to Hinesburg.
- ◆ Maintain and enhance roost trees.
  - ✓ Keep all trees with diameters over eight inches that are dead or dying, or that have loose bark under which bats might roost.
  - ✓ Remove individual or groups of trees adjacent to potential roost trees to allow for solar radiation.
- ◆ Restrict harvesting to when bats are hibernating, between November 1 and April 1, unless potential roost trees are identified and left uncut.
- ◆ Minimize or avoid forestland conversion to maintain foraging habitat and forest connectivity between woodlots.
- ◆ Keep forested buffers at least 25 feet wide along streams, ponds, lakes and wetlands.
- ◆ Manage your forest under the supervision of a forester using Indiana bat management guidelines.

### Hibernacula Habitat Management

Lands within or adjacent to towns containing Indiana bat hibernacula should be managed to maintain and enhance roost trees and foraging habitat.