

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****Endangered and Threatened Wildlife and Plants: Notice of Availability and Opening of Comment Period for an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Delmarva Fox Squirrel in Association with Home Port on Winchester Creek Development Project, Queen Anne's County, Maryland**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Waterman Realty Company, Winchester Creek Limited Partnership has applied to the U.S. Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The application has been assigned permit number TE006310-0. The proposed permit would authorize the incidental take of a Federally endangered species, the Delmarva fox squirrel (*Sciurus niger cinereus*) known to occur on property owned by the Applicant in Grasonville, Queen Anne's County, Maryland. The proposed taking is incidental to the planned housing and road construction and subsequent occupancy activities of Home Port on Winchester Creek Housing Development on approximately 56 acres owned by WCLP. The permit would be in effect for 50 years.

The Service announces the receipt of the WCLP ITP application and the availability of the proposed Home Port on Winchester Creek Housing Development Habitat Conservation Plan and draft Implementing Agreement which accompanies the ITP application, for public comment. In addition, the Service also announces the availability of a draft Environmental Assessment for the proposed issuance of the incidental take application and signing of the agreement. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act of 1969 regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the DFS. The final

NEPA and permit determinations will not be completed until after the end of the comment period and will fully consider all public comments received during the comment period.

The Service specifically requests comments on the appropriateness of the "No Surprises" assurance contained in this application, should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). In the event of unforeseen or extraordinary circumstances affecting the DFS, WCLP will not be required to provide additional mitigation measures. If the Service makes a finding of extraordinary circumstances, which warrants requiring additional mitigation or compensation, the primary responsibility rests with the Federal government. The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments on the permit application, HCP, IA and EA should be sent to the Chesapeake Bay Field Office (see **ADDRESSES**) and should be received on or before February 1, 1999.

ADDRESSES: Persons wishing to review the permit application, HCP, EA, and IA may obtain a copy by writing the Service's Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401. Requests for the documentation must be in writing to be processed. Written data or comments concerning the permit application, EA, HCP, and/or IA should also be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, Annapolis, Maryland. Please refer to permit #TE006310-0 when submitting comments. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30). Requests for the documentation of the "No Surprises" policy should be addressed to the U.S. Fish and Wildlife Service, Region 5, 300 Westgate Center Drive, Hadley, Massachusetts, 01035-9589, ATTN: Endangered Species Program.

FOR FURTHER INFORMATION CONTACT:

Mr. John Wolflin or Ms. Keren Giovengo, Chesapeake Bay Field Office (see Addresses above), 410-573-/4574/4538.

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to "incidentally take" listed species, if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

The DFS is a southeastern subspecies of *Sciurus niger*, a species found naturally throughout the eastern United States. Historically, DFS were distributed throughout the Delmarva peninsula and into southeastern Pennsylvania and southern New Jersey, but these squirrels now persist naturally in only four Maryland counties: Queen Anne's, Talbot, Dorchester, and Kent (historic transplant). Although quantitative population data are scant, DFS may be locally abundant in mature pine and mixed hardwood forest in these counties; however, this species is typically observed in low densities, and populations may be adversely affected by reductions in numbers of only a few individuals.

In addition to remnant natural populations, DFS translations have figured prominently in the recovery program, and DFS have been reintroduced to 17 sites within their historical range. Although it appears that squirrel colonies have been successfully established at 11 of these sites, more assessment and investigation is needed to verify their status.

Owing to the disappearance of the DFS from 90% of its former range, the DFS was listed as Federally endangered on March 11, 1967 (32 FR 4001). Although exact causes are unknown, the dramatic decline is attributed to habitat destruction primarily through forest management practices and urbanization (residential and commercial development) throughout its range. Historically, overhunting of DFS may have been an additional cause.

Two DFS sightings has been documented on the Home Port on Winchester Creek Housing Development

site. In addition, DFS sightings have been documented directly adjacent to the site on adjacent property. Additional documented occurrences of DFS in the nearby area are approximately 1–3 miles away on private land within Grasonville and adjacent Queenstown, Maryland.

The WCLP has applied to the Service for an incidental take permit pursuant to Section 10(a) of the Act. The Applicant proposes to implement an HCP for the DFS that will allow the home and road construction and subsequent occupancy activities in DFS habitat. The Applicant's proposed development may result in take, as defined in the Act and its implementing regulations, of listed species. Authorized take would only affect DFS; take of other federally-listed species is specifically excluded from the proposed action. This permit would authorize the incidental take of DFS at Home Port on Winchester Creek Housing Development through otherwise lawful activities, specifically the planned home and road construction and subsequent occupancy activities, occurring in DFS habitat. The HCP and permit would be in effect for 50 years upon issuance. Included in the application is an HCP detailing the activities that would result in incidental take and describing measures that mitigate, minimize and monitor the amount of take. The application also includes an IA and EA. Homeowners that undertake such actions will be included under the WCLP's proposed permit that will authorize the incidental take.

The Applicant proposes the construction and subsequent occupancy of Home Port on Winchester Creek Housing Development in Grasonville, Maryland, for economic purposes. The design of the development project consists of 16 residential homes on approximately 56 acres of mixed forested/agricultural habitat. Approximately 25 acres of the site is forested, with approximately 27 acres of the site in agricultural habitat. The project site is bordered on the shoreline by a forested buffer with the majority of acreage in the interior of the property consisting of agricultural fields. A large stand of mature forest lies in the southern corner of the property and includes both upland and nontidal wetlands.

The anticipated incidental take will be limited to the permanent loss of habitat on 0.50 acres, and the degraded/disturbed habitat on 9.6 acres, with species present, being harmed or harassed. In addition, anticipated incidental take will be limited to harm of up to 15 DFS within the 50-year ITP

period, that may be associated with vehicular strikes associated with any construction and subsequent residential occupancy activities within the subject property.

The WCLP has agreed to implement the following measures to minimize, mitigate and monitor impacts that may result from incidental take of the DFS: (a) implement an education and public awareness program for construction workers, contractors, and homeowners: (2) implement a maximum speed limit of 15 mph for vehicles and equipment (includes construction workers, contractors, and homeowners: (3) request the installation of DFS road signs, three-way stop signs, and two-way stop signs in order to minimize potential vehicles strikes of DFS: (4) maintain specified areas adjacent to road sides/edges and forest edges as an open area for purpose of providing visibility and deterrence to DFS movement to minimize vehicle strike: (5) record Deeds of Open Space and Environmental Easements, a Declaration of Covenants, Conditions and Restrictions, 1A and the Record Plat in the land records of Queen Anne's County that establishes specific limits of disturbances and sets buffers for forested habitat for each lot to protect DFS from human disturbances: (6) implement, enforce, and obey regulations pertaining to restraint and control of domestic pets to minimize harassment or mortality of DFS: (7) have a contact representative on site during construction activities and an additional contact representative with the Homeowner's Association. In addition fencing (temporary during construction activities, permanent for home occupancy activities) will be erected in order to establish specific limits of disturbance and buffers: (8) report dead and/or injured DFS to USFWS: (9) if necessary, relocate any DFS found in construction area: (10) prohibit trash dumping except into containers, igniting open-air fires, discharge of firearms on site during construction, and unleashed pets on site during construction activities: (11) prohibit unleashed domestic pets outside of residences or fences: and (12) prohibit small game hunting (excluding waterfowl). In addition, WCLP proposes to fund the maintenance and restoration or enhancement of approximately 5 acres of suitable DFS habitat in the HCP area, contribute to a trust fund and other long-term mechanism to ensure successful implementation of restoration activities, and to place under conservation restrictions approximately

31 areas of off-site habitat as identified in the HCP.

The EA considers the environmental consequences of three alternatives, including the proposed action, a no-action alternative, and a no-take determination alternative. The proposed action alternative is the issuance of a permit under Section 10(a) of the Act that would authorize incidental take of the DFS that may occur in the habitats of Home on Winchester Creek Development, and implementation of the HCP and IA as submitted by the Applicant. The proposed action would require the Applicant to implement their HCP. The HCP provides mitigation measures for the proposed incidental taking including habitat enhancement, permanent protection of an off-site parcel, and contribution to a trust fund. The HCP provides a funding mechanism for these mitigation measures. Under the no-action alternative, the Applicant would not develop the proposed development site in Queen Anne's County and thus avoid the take of DFS. No ITP would be deemed necessary or issued. The no-take determination alternative would entail impacts as those described for the proposed action, however, "taking" of DFS would occur without minimization or mitigation of take. Thus, the number of DFS taken would be unrestricted and eventual reduction in the local population would be likely.

The Service provides this notice pursuant to section 10(c) of the Act. The Service will evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the evaluation of the permit application, the NCP, EA, IA and comments submitted thereon, will be used in the final analysis to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the WCLP for the incidental take of DFS during the proposed construction and subsequent occupancy of Home Port on Winchester Creek Housing Development. We will make the final permit decision no sooner than 30 days from the date of this notice.

Dated: December 28, 1998.

Ronald E. Lambertson,

Regional Director, Region 5.

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