



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Ecological Services  
6669 Short Lane  
Gloucester, VA 23061

February 13, 2003

Mr. and Mrs. Peter W.D. Wright  
P.O. Box 1008  
Deltaville, Virginia 23043

RE: Section 10(a)(1)(B) Permit  
Application, Eagle Nest VAMI-0101,  
Middlesex County, Virginia

Dear Mr. and Mrs. Wright:

This is in reference to your application for a Federal Fish and Wildlife License (Form 3-200-56), dated January 27, 2003, and undated Habitat Conservation Plan (HCP), for incidental take of the bald eagle associated with the proposed construction of three houses in Middlesex County, Virginia. Your application package was received on January 29, 2003.

The U.S. Fish and Wildlife Service (Service) and the Department of the Interior's Northeast Office of the Solicitor have reviewed your permit application to determine whether it contains all of the information we need to publish the required *Notice of Receipt* in the Federal Register. Your HCP is a well written first draft and we commend you for it, and we would like to continue to work with you to ensure the document contains all of the information the Service needs in order to provide for meaningful public review and to address the findings our agency must make in determining whether your proposed project meets the issuance criteria of Section 10 of the Endangered Species Act.

Before the Service can certify your application package as complete and publish the Federal Register notice, we will need further information from you. One of the aspects of our permit review process is whether the impacts to listed species have been minimized to the maximum extent practicable. You indicated in the HCP that part of your impact minimization is that you have reduced the number of home sites from eleven to three. The Service must document the level of impact minimization in our determination of compliance with permit issuance criteria. To do so, your HCP should include the zoning map of the property, required setbacks required under any state or local regulations (such as the Chesapeake Bay Preservation Act), any other easements that would limit construction locations, and any soil surveys or "perc tests" that show how many houses could be built on the site based on the number of available drain fields. In other words, we will need information on the maximum number of houses that could be built on this site based on all applicable current local and state laws and regulations, irrespective of how many lots were "platted" by a previous owner. The number of houses that could be legally built should then be compared to the number of houses you propose to build. You should also include information in the Alternatives section of the HCP on an alternative that would involve the construction of one home located as far away from the eagle nest as possible, and the economic and other implications

to you of this alternative.

To fully identify your proposed Habitat Conservation Plan for the Federal Register public notification process, we will need a map showing the location and size of the property on which you have proposed to place a conservation easement as part of project mitigation. We also request that you indicate on this map the zoning of all property within 750 feet of the lots you propose to protect via easement (since you indicate the closest house is currently about 750 feet from the two small lots you own). This will allow us to determine the suitability of that measure in providing mitigation habitat for the loss of this eagle nesting territory.

The Service and the Office of the Solicitor are concerned that the mitigation you have proposed may not provide sufficient compensation to offset the loss of an eagle nesting territory. During meetings in November and December 2002, we had discussed with you several options for compensation that would likely meet the Service's permit issuance criteria. One option would be to work with a willing landowner to place a conservation easement on nearby property suitable as a potential eagle nesting site. A second option would be to work with a willing landowner to place a conservation easement on property around an existing eagle's nest. The third option was to establish a fund that would be used to acquire or create eagle nesting habitat. With respect to the first option, we had discussed that the two small lots you own at the head of "Stingray Pond" appeared to provide suitable nesting habitat, if sufficient additional property around your lots could be protected via a conservation easement. For option two, we had provided you with a list of organizations who may be able to work with you to see if a willing landowner could be found to place a conservation easement on an existing eagle nest. For both of these options, we did not envision land acquisition by you. Rather, the cost of the compensation would be the legal and administrative costs associated with establishing a voluntary conservation easement on privately owned land. The Service believes these options would best compensate for the loss of eagle nesting habitat that would likely occur as a result of the construction of three houses at your project site. The Service will need to have information provided in your HCP as to whether you have pursued these options and their practicability.

The third option was to establish a fund that would protect, create or enhance bald eagle habitat. Your HCP proposes to provide \$1500 to a source recommended by the Virginia Department of Game and Inland Fisheries. If you wish the Service to consider this aspect of your HCP, we would need a letter from the Virginia Department of Game and Inland Fisheries providing the name of the organization that would receive any funds, what the funds would be used for, and assurances from the organization that the funds would be used for eagle habitat conservation in Virginia.

Your letter of January 28, 2003 points to the Service's 1996 *Habitat Conservation Planning Handbook and 2000 Addendum* (HCP Handbook) as providing guidance on the importance of consistency in applying mitigation standards. The Service's more recent Section 10 permits for the take of bald eagle in the southeast (those not involving litigation) have involved habitat protection as a primary component of the HCPs. In those cases, the habitat protection and any funds for eagle conservation were not prorated based on the number of houses to be constructed, but rather, were based on the biological requirements needed to offset project impacts. The Service will need further information in your HCP that provides justification of how the payment of \$1500 will compensate for the loss of an eagle nesting territory, which we have estimated to generally be an area, at a minimum, of no less than 9 acres (approximately 350 linear feet in radius) around a bald eagle nest. While it is true that some pairs of bald eagles have tolerated

human disturbance and habitat loss extremely close to their nest site, this is not the case for most eagle pairs in the Chesapeake Bay. The Service and the Virginia Department of Game and Inland Fisheries continue to use the 2001 *Bald Eagle Protection Guidelines for Virginia*, which considers an area within 750 feet of a nest as the "primary management zone" for protection of bald eagles from incidental take. In order to meet the Service's permit issuance criteria, your HCP must show how your proposed mitigation and compensation plan addresses the loss of a nesting territory and the habitat requirements of the eagle.

In your letter of February 6, 2003, you asked whether the Service would be able to meet our policy guidelines, which indicate processing times for low-effect HCPs will generally be under three months from the receipt of a complete permit application. As you know, the Service staff person who would have worked on this permit application, Eric Davis, has been called into active duty status in the U.S. Marine Corps for a period of one year. While the Service will process your application as expeditiously as possible, Mr. Davis's departure has significantly impacted the workload of this office. We do not have sufficient funds to replace Mr. Davis, and his normal duties are being divided among a number of staff in this office, who already have their own workloads. We are making the processing of your application a high priority, but there are also workload constraints by the staff in our Regional Office and Office of the Solicitor, who have a major role in the HCP permit process. Please note that the time frames given in the HCP Handbook are processing times once a complete permit application is forwarded to our Regional Office. Although the time frames are guidance, not regulation, we will strive to meet these targets.

We will also need a copy of the review from the Virginia State Historic Preservation Officer (SHPO) regarding properties on or eligible for inclusion on the National Register of Historic Places or potential archaeological resources on your project site. Please forward the SHPO's review to this office once you have received it. The public notice of your application would not be delayed, but no permit could be issued until the requirements of the National Historic Preservation Act are met. You may wish to contact Dr. Eaton's office to find out the status of their review.

The Service will be pleased to continue to work with you to develop an HCP that we believe would meet the issuance criteria for a Section 10 permit. By developing an HCP that includes the information we have discussed in this letter, the overall processing time will be expedited. Please contact me at (804) 693-6694, ext 103 to discuss this in more detail. You may also contact Glenn Smith, our Regional HCP Coordinator, at (413) 253-8627, and Robin LePore of the Office of the Solicitor at (617) 527-3400.

Sincerely,



Karen L. Mayne  
Supervisor  
Virginia Field Office

cc: Jeff Cooper, VDGIF, Fredericksburg, VA  
Ray Fernald, VDGIF, Richmond, VA