

November 14, 1994

Colonel Andrew M. Perkins, Jr.
District Engineer
Norfolk District, Corps of Engineers
Fort Norfolk, 803 Front Street
Norfolk, VA 23510-1096

Attn: Greg Culpepper
Regulatory Branch

Re: Dominion Leasing, Permit Application

94-5466-07, City of Chesapeake, Virginia

Dear Colonel Perkins:

This responds to your September 21, 1994 letter (received October 5, 1994) requesting formal consultation under Section 7(a)(2) of the Endangered Species Act (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), regarding impacts of the Department of the Army (DOA) permit application 94-5466-07 by Dominion Leasing on the Dismal Swamp southeastern shrew (Sorex longirostris fisheri), a Federally listed threatened species. It should be noted that the shrew has not been documented at the project site. However, the applicant has chosen to assume that this shrew is present. This letter constitutes the U.S. Fish and Wildlife Service's (Service) biological opinion on this permit application as required by Section 7(b) of the Endangered Species Act.

SCOPE OF THE BIOLOGICAL OPINION

The permit applicant, Dominion Leasing, has applied for a Federal permit to construct an inmate release facility south of U.S. Routes 58/460 approximately 2,000 feet east of Truitt Road in the City of Chesapeake, Virginia. The applicant plans to construct the facility by clearing a 6.88-acre wooded area that contains 0.21 acres of wetlands. Within the cleared area, the applicant plans to construct the jail facility, a paved parking area, and recreation yards (50% paved for a basketball court). Any portion of the 6.88-acre area not built on or paved will be maintained as a lawn. The applicant has agreed to set aside 14.0 acres of wetlands intermixed with patches of upland that provide appropriate habitat for the shrew immediately adjacent to the project site. In addition, the applicant has set aside 3.09 acres of wetlands that also appear to be appropriate habitat for the shrew.

CONSULTATION HISTORY

05-19-94 The Service received the Corps' request to review this project for impacts to the Dismal Swamp southeastern shrew.

06-02-94 The Service sent the Corps a letter recommending a survey for the Dismal Swamp southeastern shrew.

06-29-94 The Service received a Pre-discharge Notification for this project that included a statement indicating that the applicant had chosen to assume that shrews are present at the project site.

07-15-94 The Service sent the Corps a letter outlining the information that the Corps' should send to the Service to initiate formal consultation.

08-08-94 The Service participated in a site visit with the Corps.

10-05-94 The Service received the Corps' request to initiate formal consultation.

10-19-94 The Service received a copy of an October 6, 1994 letter from Goodman, Segar, Hogan, and Hoffer realtors to the Corps indicating that the applicant is considering not going forward with the project.

Based on subsequent discussions with the Corps, the Service has agreed that if Dominion Leasing decides not to build an inmate release facility, this biological opinion may be used for the same type of development at the same location. Any new project at this site must remain within the 6.88 acres proposed for clearing and development by the current applicant. In addition, any new applicant will be expected to permanently protect the 17.09 acres of shrew habitat and wetlands as proposed by the current applicant. If any new development involves a discharge, contaminants, industrial runoff, etc. and/or the 17.09 acres will not be permanently protected, formal consultation must be reinitiated.

BIOLOGY AND STATUS OF THE DISMAL SWAMP SOUTHEASTERN SHREW

The Dismal Swamp southeastern shrew is a small mammal that weighs less than 0.2 ounces and measures approximately 4 inches in length. Its distribution is considered to be coincidental with the boundaries of the historic Dismal Swamp, an extensive contiguous wetland complex that once occupied most of the low-lying land between Norfolk, Virginia and the Albemarle Sound in North Carolina. Historically, this wetland complex was maintained in a variety of successional stages (such as marshes, canebrakes, pocosins, and forest) by natural fires. The original Dismal Swamp ecosystem has been greatly reduced in size as a result of urban development and the clearing and draining of land for agriculture. Most of the remaining wetlands are now forested. About 197,680 acres of these wetlands still remain, more than half of which are preserved by the Service as the Great Dismal Swamp National Wildlife Refuge, created in 1974. The Service is attempting to restore some of the vegetational and successional diversity to the portion of the Dismal Swamp ecosystem within the National Wildlife Refuge.

Within the historic Dismal Swamp boundaries, the shrew is likely to exist at highest densities in early successional wetland habitats, such as cane stands; shrub-dominated areas; and young, open forests which retain a fairly dense herbaceous understory. The shrew is also known to occur at high densities within cleared right-of-ways, such as those used for utility lines, as these areas often contain early successional wetland habitats such as scrub-shrub wetlands. Mature wetland forests also provide habitat diversity important to the integrity and dynamic structure of the shrew population as a whole. Rose (1983) found that the shrew was most abundant in mid-successional, 12 to 15 year-old regenerating forests having a dense understory, moist organic soils, and moderate leaf litter. The main reasons for the shrew's decline are habitat loss; habitat modification, primarily draining and drying of wetlands; and interbreeding with the common upland subspecies (Sorex longirostris longirostris) (Rose and Padgett 1991).

Recently, new evidence suggests that the Dismal Swamp southeastern shrew may occur throughout the coastal plain of North Carolina, at least as far south as Wilmington (U.S. Fish and Wildlife Service 1994). However, until this can be substantiated through additional distribution and taxonomic studies, the shrew will remain on the Service's list of endangered and threatened wildlife and plants. As such, the shrew, and its habitat, will continue to receive protection pursuant to the Endangered Species Act until it is removed from this list.

EFFECTS OF THE FEDERAL ACTION ON THE DISMAL SWAMP SOUTHEASTERN SHREW AND ITS HABITAT

In evaluating the effects of the Federal action under consideration in this consultation, 50 CFR 402.2 and 402.14(g)(3) require the Service to evaluate the direct effects of the action on the species. Direct impacts to the shrew associated with this project include the potential for killing shrews by construction vehicles and heavy equipment while clearing vegetation and constructing the facility, parking areas, and recreational area. Shrews are also likely to be killed during stockpiling of materials. Typically, the Dismal Swamp southeastern shrew stays under the leaf litter and does not burrow underground, and thus may be crushed by vehicles, heavy equipment, and heavy materials. Additionally, the shrew will be directly affected by the permanent loss of 6.88 acres of habitat.

BIOLOGICAL OPINION

The Dismal Swamp southeastern shrew is threatened primarily due to habitat loss and alteration and the potential for interbreeding. Given the small amount of habitat (6.88 acres) and the small proportion of the total shrew

population that will be affected by this project, and that 17.09 acres of shrew habitat immediately adjacent to the project area and contiguous with other historic Dismal Swamp habitat will be permanently protected, it is the opinion of the Service that this project is not likely to jeopardize the continued existence of the Dismal Swamp southeastern shrew. No critical habitat has been designated for this species, therefore, none will be affected.

INCIDENTAL TAKE

Sections 4(d) and 9 of the Endangered Species Act, as amended, prohibit taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering. Harass is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering. Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are nondiscretionary, and must be implemented by the Corps so that they become binding conditions of any permit issued to the applicant in order for the exemption in 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity that is covered by this incidental take statement. If the Corps fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit, the protective coverage of 7(o)(2) may lapse.

Amount and Extent of Take

Because the population density and total habitat of the Dismal Swamp southeastern shrew within the project area has not been determined and the actual number of shrews that will be killed during clearing of vegetation, project construction, and stockpiling of equipment is unknown, the amount of take shall be defined by the areal extent of the potential habitat affected. This incidental take statement authorizes the taking of Dismal Swamp southeastern shrews within the 6.88-acre project site at the location described in the Scope of the Biological Opinion section resulting from vegetation removal, clearing and construction activities, stockpiling of materials, and permanent loss of habitat.

Reasonable and Prudent Measures

In order to be exempt from the prohibitions of Section 9 of the Endangered Species Act, the Corps and the applicants must comply with the following reasonable and prudent measures. These terms and conditions must be incorporated as binding conditions of any DOA permit issued by the Corps. These measures are mandatory.

1. The following measures will be taken during clearing, construction, and maintenance activities associated with the project:
 - a. No ground disturbance or vegetation clearing will occur outside the 6.88-acre project area.
 - b. No use of vehicles or heavy equipment will occur outside the 6.88-acre project area.
 - c. No placement of fill material or stockpiling of materials will occur outside the 6.88-acre project area.
 - d. All work in wetlands will be done on mats where practicable, preferably during the driest period of the year (May-October).
 - e. No use of broad scale or aerial herbicide or pesticide applications in wetlands.
2. The following measures will be taken to permanently protect the 17.09- acre area containing appropriate shrew habitat:

a. The 17.09 acres must be put into a perpetual conservation easement to be held by a third party. A list of organizations that hold such easements is attached. However, there are likely many other organizations that are qualified to hold this easement.

b. The following activities are prohibited within the 17.09-acre conservation easement:

1. Ditching; draining; diking; damming; filling; excavating; plowing; mining; drilling; removal of topsoil or any material, such as leaves, resting on the soil surface; construction of roads or structures; and any alteration of the topography of the land in any manner, except for habitat restoration or management for the Dismal Swamp southeastern shrew or other Federal or State listed or candidate species.

2. Cutting, destruction, or removal of trees or other vegetation, dead or alive, except as necessary for disease control or habitat restoration or management for the Dismal Swamp southeastern shrew or other Federal or State listed or candidate species.

3. Dumping ashes, trash, garbage, or other unsightly or offensive materials.

4. Changing the topography of the property by placing soil or other substances or materials, such as landfill or dredged material, on the property.

c. The conservation easement document must also state that neither transfer of ownership or possession shall in any way compromise the preservation goal and the obligation to protect this area in accordance with the requirements of this easement shall pass on to all future owners.

d. The Service and Corps must receive and approve the language in the conservation easement before any Corps permits are issued for this project. The Service and the Corps must be given at least 30 days to review the conservation easement language.

e. The conservation easement must be signed and given to the easement holder before any clearing or construction begins at the project site.

f. Copies of the signed conservation easement must be sent to the Service and the Corps within 14 days of signing.

Reporting and Monitoring Requirements

The applicant is required to notify the Service before initiation of construction and upon completion of the project at the address given below. All additional information to be sent to the Service should be sent to the following address:

Virginia Field Office
U.S. Fish and Wildlife Service
P.O. Box 480
White Marsh, VA 23183
(804) 693-6694

Upon locating a dead specimen, initial notification must be made to the following Service Law Enforcement office:

Division of Law Enforcement
U.S. Fish and Wildlife Service
P.O. Box 187
Yorktown, VA 23690
(804) 890-0003

Care should be taken in handling dead specimens to preserve biological material in the best possible state. In conjunction with the preservation of biological materials for a dead animal, the finder has the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

REINITIATION OF FORMAL CONSULTATION

This concludes formal consultation on this Federal action. As required by 50 CFR 402.16, reinitiation of formal consultation by the Corps is required if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may impact listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, all activities that are causing such take must cease pending reinitiation.

The Service appreciates this opportunity to work with the Corps in fulfilling our mutual responsibilities under the Endangered Species Act. Please contact Cindy Schulz of this office at (804) 693-6694 if you require additional information or wish to discuss our comments further.

Sincerely,

Karen L. Mayne
Supervisor
Virginia Field Office Literature Cited

Rose, R. K. 1983. A study of two rare mammals endemic to the Virginia/North Carolina Dismal Swamp. Prepared for U.S. Fish and Wildlife Service. Newton Corner, MA.

Rose, R. K. and T. M. Padgett. 1991. Southeastern shrew. In Terwilliger, K., ed. Virginia's endangered species. McDonald and Woodward Publishing Company. Blacksburg, VA.

U.S. Fish and Wildlife Service. 1994. Dismal Swamp southeastern shrew (Sorex longirostris fisheri) recovery plan. Hadley, MA. 49pp.
Organizations That Hold Conservation Easements

The Nature Conservancy, Virginia Chapter
619 E. High Street, Suite 2
Charlottesville, VA 22901
(804) 295-6106

Virginia Outdoors Foundation
221 Governor Street
Richmond, VA 23219
(804) 786-5539

Trust for Public Lands
Chesapeake Lands Project
666 Pennsylvania Avenue S.E., Suite 401
Washington, DC 20003
(202) 543-7552

National Audubon Society
1725 I. Street N.W., Suite 602
Washington, DC 20006
202-223-8210

Conservation Inc.
P.O. Box 11027
Norfolk, VA 23510

Department of Conservation and Recreation
Virginia Division of Natural Heritage
1500 East Main Street, Suite 312
Richmond, VA 23219
(804) 786-7951

Inclusion of names on this list does not constitute endorsement by the U.S. Fish and Wildlife Service or any other U.S. Government agency (11-08-94).

(CSchulz:10/26/94)
(filename:dominion.bo)

bcc: DARD-ES(FO), Region 5
(Attn: Debbie Mignogno)
Supervisor, CBFO
Andy Moser, CBFO
VDGIF, Richmond, VA
(Attn: Ray Fernald)
VDCR, Natural Heritage, Richmond, VA
(Attn: Steve Roble)
Service, Law Enforcement, Yorktown, VA
(Attn: Dan Hurt)
Raleigh Field Office, NC
(Attn: David Horning)