



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Raleigh Field Office

Post Office Box 33726

Raleigh, North Carolina 27636-3726

November 30, 2006

David Lewis
City Manager
City of Boiling Spring Lakes
9 East Boiling Spring Road
Boiling Spring Lakes, NC 28461

Dear Mr. Lewis:

Thank you for your letter of November 15, 2006, requesting that "the U.S. Fish and Wildlife Service (Service) prepare a study to determine the improvement to the red-cockaded woodpecker habitat given the implementation of the new Tree Ordinance before forcing the City of Boiling Spring Lakes to incur the significant cost of preparing a habitat conservation plan and mitigation." I will use the opportunity afforded by your letter to clarify some obvious confusion that persists within the Boiling Spring Lakes Board of Commissioners and city management. I will attempt here to explain what the Tree Ordinance does and does not accomplish with respect to red-cockaded woodpecker conservation, and elaborate on what the Service and our partners are doing to address those needs left unmet by city leaders.

The Tree Ordinance recently approved and enacted by the Board of Commissioners is certainly an important tool for slowing the loss of pine forest within the City limits, and its effective implementation should limit the clearing of red-cockaded woodpecker habitat within the City. It specifically requires Service review and approval prior to cutting or clearing on undeveloped properties within the City that support habitat for red-cockaded woodpeckers. As such, effective implementation of the Tree Ordinance should prevent unauthorized clearing of red-cockaded woodpecker habitat on undeveloped lots within city limits. This is a good and important step and I again congratulate the City for taking this action.

The Tree Ordinance will not enhance woodpecker habitat because it does not address the need to continually manage longleaf pine forest to maintain its suitability for woodpeckers, nor will it halt or mitigate the continued decline of the red-cockaded woodpecker population within the city. Contrary to the statement made in your letter, the red-cockaded woodpecker population in the city has declined and will continue to decline unless additional proactive steps are taken.

While unauthorized clearing of red-cockaded woodpecker habitat has been a concern, it is at best half the problem with which we must deal. As you must be aware, the number of people in Boiling Spring Lakes involved in unauthorized clearing of red-cockaded woodpecker habitat has been relatively small compared to the number of your residents who are doing their level best to

comply with the law and are seeking authorization to remove mature pine trees from their property so that they may build their homes.

Section 10 of the Endangered Species Act provides a process whereby the Service can authorize activities that result in the loss of endangered species habitat; however, this process is not well suited to dealing with large numbers of small property owners. Indeed, for owners of single family lots the Section 10 (Habitat Conservation Planning or HCP) process tends to be complicated, time consuming and expensive. Under the existing process, individual land owners must determine the effects of their activities on endangered species, identify and fully fund appropriate mitigation for those effects and prepare and submit extensive documentation to the Service, which we must then review for compliance with our regulations prior to providing the landowner an Incidental Take Permit (ITP). The existence of the Tree Ordinance does not alter this process; nor does it eliminate the need for landowners to engage this process in order to obtain an ITP from the Service.

As we have discussed over the past year, there are ways to streamline and simplify the HCP process for the single family lot owner. I view this as imperative and the current situation as unacceptable. As I see it, the option that provides the greatest benefit to the red-cockaded woodpecker while also being the quickest and least expensive to the landowners is a Citywide HCP. Under the Citywide HCP option the City would implement a plan that would mitigate for the anticipated loss of red-cockaded woodpeckers due to construction activities within the City (which the Tree Ordinance does not do). The Service would issue the City an ITP that would authorize any "incidental take" of woodpeckers associated with authorized construction activities. Individual landowners would be protected under the City's ITP when they receive a clearing or building permit from the City. The mitigation would be funded by whatever mechanism the City deems appropriate so long as we are assured the mitigation would be adequately funded. In the examples we have shared with you over the past year, these costs were spread over the entire affected community such that the cost per landowner was relatively low. This option is also quicker for the individual landowner, due to the fact that the City controls the process and there is no need for individual landowners to coordinate their activities with the Service.

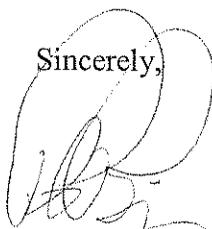
The other option we have discussed is an "Umbrella HCP." Under this option the Service would identify the mitigation requirements and appropriate sites and prepare the various documents associated with the HCP. However, the difference between the Citywide and the Umbrella HCP is that each individual landowner would need to apply for and receive an ITP from the Service and pay their share of the mitigation costs in addition to obtaining a clearing or building permit from the City. The process is quicker than the standard HCP process because the Service has prepared the environmental documentation and determined the mitigation requirements on behalf of the landowners up front. However, it is not as expeditious for the landowner as the Citywide HCP because the Service must still issue individual ITPs to each landowner; a process that would likely take 30 to 90 days per property. It is also likely that the mitigation costs would be spread over a smaller segment of the community, so the costs per landowner would likely be greater than it would under a Citywide HCP. Finally, because the Service is in control of the HCP and ITP process, city leaders would have less influence over the process than would be the case under a Citywide HCP.

As I have stated repeatedly in public forums over the past year, I can not "force" the City to pursue a Citywide HCP. What I can do, and what I will continue to do, is to advocate for the solution that is in the best interest of woodpeckers and provides the best value and service to taxpayers.

I am determined to resolve this issue. As such, my office is preparing an Umbrella HCP with the help of our partners The Nature Conservancy and the North Carolina Wildlife Resources Commission. We are also supporting efforts by area realtors to bring additional resources to bear on the issue. Once the Umbrella HCP is drafted, we will be happy to meet with city leaders and interested stakeholders again to explain how the Umbrella process would work and to show precisely how it would differ from both the standard process and a Citywide HCP, including differences in time and costs to landowners. Should city leaders decide at some point to engage the process, the work done by the Service and our partners on the Umbrella HCP could be easily folded into a Citywide HCP. So all options continue to remain open and we continue to welcome the City as a partner, but we are moving forward.

I hope this information proves helpful to you and the Board of Commissioners as you continue to consider this issue. It is my understanding that Steve Candler has requested some time on the agenda at the upcoming City Commission meeting. While I do not want to take up any valuable time on the agenda, I do intend to be in attendance to hear what Steve has to say and to answer any questions you or the commissioners may have. I look forward to seeing you then, and as always feel free to call me at any time at 919-856-4520, extension 11.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Benjamin", written over a circular stamp or seal.

Pete Benjamin
Field Supervisor