

Appeals disagreed. *See Gerber v. Norton*, 294 F.3d 173, 175, 178–84 (D.C. Cir. 2002). The Court of Appeals held that the failure to allow additional formal opportunity to comment once provided with the map violated the ESA and therefore remanded the matter to the District Court with instructions to remand to the agency. *See id.* at 184.

The second issue is whether the Service satisfied its statutory issuance criteria. A summary of this issue follows: Section 10(a)(2) of the ESA, 16 U.S.C. 1539(a)(2), specifies the requirements for issuance of an incidental take permit. This provision is broken into two distinct subsections. One sets forth the required components of an application from which the Service can judge whether an applicant's submission is complete. *See* Section 10(a)(2)(A), 16 U.S.C. 1539(a)(2)(A). The other provides the issuance criteria by which the Service must evaluate and approve an application package once it has determined the submission is complete. *See* section 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B).

While the District Court ruled the Service had adequately justified all of its requisite findings, the Court of Appeals agreed with Plaintiffs/Appellants that the service had violated the ESA by failing to independently make the requisite finding that the developer would minimize and mitigate the impacts of the taking to the maximum extent practicable as required under § 10(a)(2)(b)(ii), 16 U.S.C. 1539(a)(2)(b)(ii). The Court of Appeals held that the Service's finding concerning whether the impacts of the taking from the project would be minimized and mitigated to the maximum extent practicable was made improperly. Specifically, the Court held that the Service did not make its own independent finding as to whether a possible project change identified in the record (the "Reduced Take Alternative") was practicable.

The Service has now conducted its own independent analysis, which is reflected in the draft document entitled "Draft—Assessment of Practicability of the Reduced Take Alternative on Remand". This document evaluates the practicability of additional minimization measures discussed in the Reduced Take Alternative in the Home Port HCP and the practicability of measures considered as alternatives in the Environmental Assessment. The Service has independently evaluated the operative constraints on these measures, which include local governmental processes and permitting, costs and time delays. While the Service was

previously aware of many of these constraints, no analysis was presented in detail in any document.

Accordingly, the Service makes available for public review and comment: (1) A map of the offsite mitigation land proposed by the applicant to mitigate for impacts to the Delmarva fox squirrel from the Home Port development in accordance with 16 U.S.C. 1539(a)(2)(B); and (2) a revised analysis of the statutorily mandated finding under 16 U.S.C. 1539(a)(2)(B)(ii), that "the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking".

#### Public Comments Solicited

The Service solicits written comments on the offsite mitigation land proposed by the applicant and a more detailed analysis of the practicability of the reduced take alternative. All comments received by the date specified above will be considered prior to completion of a revised decision document on remand.

Dated: April 18, 2003.

**Richard O. Bennett,**

*Acting Regional Director.*

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#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

[OR 120 5882 CD99; 3–0159]

##### Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (RAC) Meeting as identified in section 205 (f) (2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

**SUMMARY:** The BLM Coos Bay District RAC will be meeting on May 30, 2003 from 9 a.m. until 12:30 p.m. at the BLM Coos Bay District Office. The Coos Bay District Office is located at 1300 Airport Lane in North Bend, Oregon. The purpose of this meeting will be to review the progress of previously funded projects, elect a new Chairperson, present the RAC with this year's projects to be reviewed for funding, and provide an opportunity for dialogue between the RAC, the Bureau, and the public.

**FOR FURTHER INFORMATION CONTACT:** Sue Richardson, District Manager, at 756–

0100 or Glenn Harkleroad, District Restoration Coordinator, at 751–4361 or [glenn\\_harkleroad@or.blm.gov](mailto:glenn_harkleroad@or.blm.gov). The mailing address for the BLM Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

#### SUPPLEMENTARY INFORMATION:

Additional information about the Coos Bay RAC and a meeting agenda can be found at <http://www.or.blm.gov/coosbay>.

Dated: May 2, 2003.

**Sue E. Richardson,**

*Coos Bay District Manager.*

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#### DEPARTMENT OF LABOR

##### Employment and Training Administration

##### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

##### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.