



August 20, 2010

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**RE: Environmental Assessment for Proposed Easton Airport Runway Extension**

Ms. Lutz,

The Center for Biological Diversity (“Center”) submits these comments under the National Environmental Policy Act (“NEPA”) on the draft Environmental Assessment (“EA”) for the proposed runway extension for the Easton/Newman Field Airport in Easton, Talbot County, Maryland.

The Center is a non-profit, public interest, conservation organization dedicated to the protection of native species and their habitats through applying sound science, policy and environmental law. The Center is concerned with the affects the proposed runway extension will have on threatened and endangered species and their habitat, particularly the Delmarva Peninsula fox squirrel, a species listed as endangered under the Endangered Species Act (“ESA”).

The Center expects the Federal Aviation Administration (“FAA”) and Talbot County to fully comply with NEPA and with the ESA by assessing the impacts of the proposal and formally consulting with the expert agency, the Fish and Wildlife Service (“FWS”) on the affects of the proposal on threatened and endangered species. Those laws include the following requirements:

**NEPA Requirements**

NEPA is “our basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). The statute “is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* at 1500.1(c). In light of these purposes and policies, the FAA and Talbot County must address and disclose all environmental impacts, including the real threats to the Delmarva Peninsula fox squirrel and any other threatened or endangered species resulting from the construction and operation of the proposed airport runway expansion in an Environmental Impact Statement (“EIS”).

(1) Environmental Impact Statement (“EIS”)

“NEPA requires federal agencies to prepare an environmental impact statement for any action that will significantly affect the environment.” 42 U.S.C. § 4332(C). The EIS must consider (i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action would it be implemented. *Id.* The EIS “ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger [public] audience that may also play a role in both the decision-making process and implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349, 109 S.Ct. 1835, 1845 (1989).

(2) Alternatives

The alternatives section is the “heart” of an EIS. 40 C.F.R. § 1502.14; *see also* 42 U.S.C. § 4332(2)(E). As it considers the proposed action, the GSA must “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.* at § 1502.14(a); *see also* 36 C.F.R § 219.12(f). The EIS must present environmental impacts of the proposed action and reasonable alternatives “in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public.” 40 C.F.R. § 1502.14. The NEPA process must “identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” *Id.* at § 1500.2(f).

(3) Affected Environment

The EIS must “describe the environment of the area(s) to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. This should include the present status and distribution of sensitive, threatened and endangered species that use or depend on affected lands.

(4) Environmental Effects

The “environmental consequences” section of an EIS “forms the scientific and analytic basis” for the comparison of alternatives. 40 C.F.R. § 1502.16. This discussion must include “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented.” *Id.* This section must include discussions of both direct and indirect effects and their significance, along with the

environmental effects of the alternatives. *Id.*; also see 36 C.F.R. § 219.12 (g). The level of detail in an EIS may depend on the nature and scope of the proposed action (*see California v. Block*, 690 F.2d 753, 761 (9th Cir. 1982)), but must provide sufficient detail to foster informed decision-making. *See Citizens for Better Forestry v. U.S. Dep't of Agriculture*, 481 F. Supp. 2d 1059, 1086 (N.D. Cal. 2007). An EIS must include a “reasonably thorough discussion of the significant aspects of the probable environmental consequences.” *N. Alaska Env'tl. Ctr. v. Lujan*, 961 F.2d 886, 890 (9th Cir. 1992) (quoting *Block*, 690 F.2d at 761).

## **ESA Requirements**

The proposed airport runway expansion will affect, and is likely to adversely affect, the endangered fox squirrel. Therefore, the FAA and Talbot County are obligated to formally consult with FWS to ensure that proposal “is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).

Basing conclusions about the presence of Delmarva Peninsula fox squirrels on surveys from 1999 and 2000, as the draft EA says the EIS will do, is entirely unacceptable. The intervening 11 years represents several generations of fox squirrels as well as significant changes to the character of the habitat in the proposed project area as the forest matured. As noted in the Forest Stand Delineation for Easton Airport report from April 2008, the forest stands in the project area are particularly suited to small mammals, including the endangered fox squirrel. The area contains mature trees and open ground cover, the precise habitat requirements for fox squirrels.

Recent photo surveys at the Hunt Ray Farm outside of Ruthsburg in Queen Annes County MD, at the time a proposed site for a State Department training facility, found heavy use of squirrels, even in small forested areas, where FWS had thought squirrels were not present. New photo surveys are necessary to accurately determine all areas currently occupied by fox squirrels, including Area D. FWS survey protocol requires two seasons of surveys to demonstrate that squirrels are not present. If the FAA and the County do not conduct new squirrel surveys, presence of the squirrels must be assumed in all habitat in the project area, including Area D.

The ESA prohibits the “take” of endangered species. 16 U.S.C. § 1538(a)(1)(B). “Take” includes harming and harassing, as well as killing members of the species. *Id.* at §1532(19). The FAA and Talbot County must consult with the FWS on the affects of the proposal on threatened and endangered species including the fox squirrel. Delmarva Peninsula fox squirrels have been observed at and adjacent to the proposed site. In addition to the impacts of destroying occupied habitat, impacts caused by increased noise, light and vehicle traffic must be assessed.

The 2007 Recovery Plan for the fox squirrel identifies vehicular strikes as a serious threat to the species. Increasing the capacity of the Easton Airport will surely increase vehicular traffic in this rural location, leading to additional strikes. Other impacts, including, but not limited to noise and light disturbance and degradation of habitat that is not entirely destroyed are also likely.

## Mitigation Measures

Details about the proposed conservation easements, including the location and suitability of habitat in the proposed mitigation sites, must be provided to the public. An EIS is not complete unless it contains “a reasonably complete discussion of possible mitigation measures.”

*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352, 109 S.Ct. 1835, 104 L.Ed.2d 351 (1989). This requirement is implicit in NEPA’s demand that an EIS must discuss “any adverse environmental effects which cannot be avoided should the proposal be implemented.”

*Id.* at 351-52 (quoting NEPA, 42 U.S.C. § 4332(C)(ii)); *see also* 40 C.F.R. § 1502.16(h) (stating that an EIS must contain “[m]eans to mitigate adverse environmental impacts”).

Mitigation must address not only the loss of occupied and potentially suitable unoccupied habitat on the project site, but also direct take of fox squirrels by vehicle strike, and take by noise and light impacts.

## Conclusion:

The Center will continue to actively participate in the NEPA process for the Easton Airport runway expansion proposal. We look forward to an EIS that fully addresses all of the impacts of the proposed runway expansion on any threatened or endangered species the project may affect, including the Delmarva Peninsula fox squirrel. The proposed destruction of 32.4 acres of occupied fox squirrel habitat, a species already limited to a mere ten percent of its historic range, is a significant environmental impact. We expect the EIS to provide the requisite full range of reasonable alternatives to the proposed action, including a no action alternative, and to consider the cumulative impacts of development affecting the endangered fox squirrel. We also expect the FAA and Talbot County to initiate formal consultation with the FWS regarding the threatened and endangered species present at the site and/or potentially affected by the proposal, including the fox squirrel, to conduct timely species surveys, and to produce a Biological Opinion and provide full information on proposed mitigation for public comment.

Thank you for considering these comments. Please feel free to contact me at 202.591.5215 to discuss the proposal in further detail.

Sincerely,



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