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Comment 1 NRDC is very concerned by the tremendous environmental destruction that would result from building a new airport, as proposed by the Panama City-Bay County Airport and Industrial District (“Airport Sponsor” or “Sponsor”), at the West Bay site, as well as the substantial adverse environmental impacts that would incur from the connected actions of redeveloping the existing airport site and the development of the 70,000 acres surrounding the West Bay site, which would be spurred by building the proposed airport. Building a new airport would ultimately destroy over 9,000 acres of wetlands, bury close to 22,000 linear feet of streams, and destroy valuable habitat for threatened, endangered, and species of concern such as the American alligator, eastern indigo snake, gopher tortoise, Florida black bear, flatwoods salamander, and wading birds. Redevelopment of the existing airport, as contemplated, could destroy seagrass beds that serve as important habitat for threatened and endangered seaturtles, and harm other species. Indeed, the impacts of redevelopment of the existing airport could be quite severe to the natural environment, but because the Federal Aviation Administration (“FAA”) has not met its legal obligations to analyze these impacts and consult with U.S. Fish and Wildlife Service (“FWS”), we do not have a solid sense of what the full impacts could be.

Response The substance of this comment suggests that the proposed action (relocation of the airport) and redevelopment of the existing airport site and secondary development surrounding the relocated airport are connected actions under the meaning of the CEQ regulations 40 CFR Section 1508.25(a)(1).

Regarding the first claim, redevelopment of the existing airport site after PFN has been relocated is not a connected action because it is not a federal action or approval. Redevelopment of the existing airport site is not, standing alone, subject to NEPA review as it is not part of the proposed project evaluated in the EIS nor is it a “major federal action”. Rather, it is a local decision outside of FAA’s purview and approval authority. As a result, redevelopment of the existing site cannot be a connected action within the meaning of the CEQ regulations. However, there is a relationship between the proposal to relocate PFN and the future federal decisions regarding transfer of the Airport Sponsor’s federal grant obligations to the relocated airport, decommissioning of the Existing Site facilities and release for disposal of the Existing Site for non-aeronautical use (referred to herein as “decommissioning and release”). In other words, future decisions regarding decommissioning and release would not be necessary absent FAA approval to relocate PFN to the West Bay Site. Therefore, the actions to approve relocation of PFN, and the separate actions to effectuate decommissioning and release¹, may be connected actions.

FAA also recognizes that without FAA decommissioning and release actions, there could be no redevelopment of the existing site. Although decommissioning and release do not have any direct environmental impacts, redevelopment impacts are indirect impacts of decommissioning and release. In light of this information, the FAA disclosed the indirect impacts of decommissioning and release in the DEIS based on the best information regarding redevelopment available at that time. (See Sections 2.2.2 and Chapter 5 of the DEIS). As disclosed in the FEIS at Section 5.1, further revision to these impacts was disclosed using a composite redevelopment scenario based on the RFP and accompanying Redevelopment Report issued by the Airport Sponsor in October 2006. At this time, there is no approved

¹ Decommissioning and release cannot be approved or effectuated until such time as the relocated airport is fully constructed and ready to receive aircraft operations, and the existing airport is no longer needed for aviation purposes. Therefore, the decisions on decommissioning and release will not be ripe for several years.

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Response
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plan for redevelopment. As explained in the FEIS, the three scenarios presented in the RFP and Redevelopment Report represent only three proposals of a potentially limitless number of redevelopment options, any of which might be approved. Even when a final redevelopment option is selected, that decision is outside of the purview and authority of the FAA. Thus, FAA has effectuated all possible NEPA disclosure regarding decommissioning and release and the indirect redevelopment impacts as of the current time. Once FAA's decisions regarding decommissioning and release are ripe for review and approval, and more reliable information is available regarding the redevelopment plan that will be presented to local authorities for approval, additional NEPA evaluation will be undertaken.

Regarding the secondary development of the areas surrounding the relocated airport, under the CEQ regulations this is not a connected action. Per the CEQ regulations, a connected action is a federal action that 1) automatically triggers other actions which may require environmental impact statements, 2) cannot or will not proceed unless other actions are taken previously or simultaneously, or 3) are interdependent parts of a larger action and depend on the larger action for their justification. See 40 C.F.R. §1508.25(a)(1). Under all three scenarios for identifying federally connected actions, each individual action being considered "connected" must be a federal action subject to NEPA review. For actions that are not under federal action or control, the description of "connected action" does not apply. Rather, such actions are properly considered under indirect or cumulative impact analyses.

In this case, with respect to future development surrounding the relocated airport, the FAA has no authority or purview over such development. These are purely local decisions and do not require FAA action or approval. Thus, such development actions are not properly described as connected actions. Rather, development surrounding the relocated airport properly belongs, and has been included in, the FAA's analysis of indirect and cumulative impacts. The FAA has presented this analysis based on the best information available regarding future development surrounding the West Bay Site in Section 5.26 of the FEIS.

The FAA believes that it has fully analyzed the direct, indirect, and cumulative impacts associated with the alternatives analyzed in the FEIS including impacts associated with decommissioning and release. This includes consultation regarding the West Bay site alternatives and coordination with USFWS regarding redevelopment of the existing airport site. The FAA also analyzed the cumulative impacts associated with development surrounding the relocated airport site based on the best available information. For example, the FAA's Biological Assessment included a detailed discussion of potential cumulative effects to listed species which included consideration of the West Bay Sector Plan. See Appendix T of the FEIS.

The comment contains the Commentor's characterization of environmental impacts disclosed in the EIS. These characterizations are the opinion of the Commentor, however, an accurate description of the impacts is contained in Chapter 5 of the FEIS. However, the FAA would like to take this opportunity to respond to factual error contained in the comment regarding wetlands. At completion of the development at the West Bay Site being approved in this ROD, 596.2 acres of wetlands would be impacted, not 9,000 acres as suggested by the Commentor.

The statement that the FAA has not met its legal obligations to analyze impacts associated with redevelopment at the existing airport site and to consult with the USFWS is a legal conclusion to which a response is not necessary.

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Comment 2 NRDC provides these comments to highlight the deficiencies in the FAA and U.S. Army Corps of Engineers' ("Corps") NEPA analysis in the FEIS in addition to the concerns that we raised in our comments on the draft EIS. Our main concerns are: 1) the FAA adopted the Sponsor's purpose and need; 2) the Corps deferred to the Sponsor's purpose and need, rejecting the public's need; 3) the FEIS fails to consider the proper scope of environmental impacts, including the impacts of redeveloping the existing airport site and developing the land around the proposed airport; 4) the alternatives analysis does not recognize that the existing site is environmentally preferable; 5) a vague plan for ultimate build out after 50 years is used to justify impacts from a limited first phase; and 6) the Corps' alternatives analysis fails to follow the Clean Water Act's 404(b)(1) guidelines.

Response Please see responses to Comments 3 through 70 below.

Comment 3 NRDC incorporates, by reference, the comments that we made on the DEIS and the U.S. Army Corps of Engineers' ("Corps") draft section 404 Clean Water Act permit. (footnote 1) We have enclosed a copy of our comments on the draft 404 permit.

Response The FAA acknowledges receipt of the Commentor's June 2, 2005 letter on the USACE Section 404 Clean Water Act permit which was attached to NRDC's comments on the FEIS dated July 3, 2006. The USACE has informed the FAA that it will provide substantive responses to the comments contained in the June 2, 2005 letter when it separately issues a decision on the Section 404 permit.

Comment 4 At the outset, we emphasize that the existing Panama City-Bay County Airport is adequate to serve the region for the foreseeable future and thus there simply is no demonstrated need to expand the existing airport, much less approve building a new airport with a 8,400 foot runway at the West Bay site.

Response Section 3.4.1 of the FEIS documents that the existing airport is not sufficient to meet aviation demand in the service area or FAA safety and design standards.

Comment 5 A new airport simply is not needed to obtain more air service. The "Feasibility Study" completed in 2000 forecasted 217,000 passengers emplaned in 2005 (up from 168,000 in 1999), with further growth to 323,000 enplanements by 2020. However, the actual enplanements for 2005 was only 190,000, and future growth is problematic because both airlines serving the existing airport are in bankruptcy. Building a bigger runway will not bring more airline traffic (and larger airplanes) because economics drives these decisions for the airline industry. With many flights only partially filled currently, sending a larger sized aircraft will not increase passenger traffic. In fact, since 9/11, flights from the existing airport to four major cities have been dropped altogether and the twenty-five daily flights have fallen to approximately twelve flights a day.

Response The forecasts from the Airport Sponsor's 2000 Feasibility Study are not relevant to the EIS. The Airport Sponsor's forecasts of aviation demand were updated and provided to the FAA in January 2004 for use in the EIS. The first forecast year in the updated forecast is 2008. The FAA has used both the FAA's TAF and the Airport Sponsor's forecast to analyze a full range of potential environmental impacts in the EIS.

Aviation demand forecasts are developed to represent overall trends in aviation activity—passenger and cargo enplanements and aircraft operations. Activity during a particular year may be above or below the forecast activity, based on specific short-

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- Response Con't** term occurrences, such as the loss of service by a particular carrier. Thus the deviations from forecasted activity levels identified in the comment do not detract from the purpose or need of the project. In addition, airline bankruptcy does not indicate that service will cease in a given market. As airlines exit and enter markets there will be short-term fluctuations in airport operations in a given market. Such fluctuations do not necessarily reflect long-term trends in the aviation industry in general or in any particular market. The size of the aircraft and frequency of operations and market destinations are business-based decisions made by individual airlines and the FAA plays no role in those decisions.
- Comment 6** Furthermore, the existing 6,300 foot runway is safe and adequate for foreseeable future traffic over the 20-year future planning period utilized by the FAA in making future airport construction decisions. It would be a mistake to plan outside of the FAA's planning period because FAA has limited resources that are applied to its highest priorities and future technology may not even require long runways.
- Response** Section 3.4.1 of the FEIS documents that the existing airport is not sufficient to meet aviation demand in the service area or FAA safety and design standards. Although the airport is currently deemed to be safe it does not meet all FAA safety and design standards. After a number of serious aircraft incidents at several airports in the United States, the FAA initiated a national program in 1999 to bring all commercial service airports adhering to 14 CFR Part 139, *Certification of Airports*, into conformity with the required RSAs lateral to, and off of, all runway ends. The national program was recently included as part of the 2006 Appropriations Bill (Pub. L. 109-115, Div. A, Title I, November 30, 2005, 119 Stat. 2401) and requires certificated airports to comply with the FAA design standards for runway safety areas as cited in 14 CFR Part 139.
- Comment 7** While we fundamentally disagree with the FAA and Corps' premise that the existing airport is not adequate to meet air travel needs, we provide our comments below on the Final Environmental Impact Statement for the proposed relocation of the Panama City-Bay County International Airport.
- Response** See the responses to the comments below.
- Comment 8** Despite the FAA's clear statement that it independently evaluated the purpose and need for the airport distinct from the Sponsor's proffered purpose and need, the fact that the FAA evaluated alternatives based on their ability to expand and provide flexibility demonstrates that the FAA has adopted the Sponsor's stated purpose and need in lieu of the FAA's purpose and need. The FAA cannot fulfill its NEPA obligations by simply looking to what is preferred by the Sponsor. *See Van Abbema v. Fornell*, 807 F.2d 633 (7th Cir. 1986) ("the evaluation of 'alternatives' mandated by NEPA is to be an evaluation of alternative means to accomplish the general goal of an action; it is not an evaluation of an alternative means by which a particular applicant can reach his goals.").
- Response** Although the FAA is responding to the Airport Sponsor's proposed project, the FAA is also independently responding to its goals as set forth under the NPIAS. See Section 2.5.1 of the FEIS. The FAA is also responding to statutory mandates to establish and enhance a safe and efficient use of the nation's airspace, regulating civil and military operations in navigable airspace, and recognizing the effects of airport capacity expansion projects on airport noise. See Section 2.5.2 of the FEIS. Therefore, the Commentor is incorrect in suggesting that the FAA has simply looked to what is preferred by the Airport Sponsor.

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Comment 9 NEPA requires the Corps to evaluate alternatives that are reasonable and feasible to accomplish the underlying purpose and need of not only the applicant, but also the public. *See* 33 C.F.R. Part 325, Part B. While the Corps indicated that it will “exercise independent judgment in defining the purpose and the need both from the applicant’s and the public’s perspective,” FEIS, Vol. 1, 3, 11.1, at 3-61, the Corps impermissibly ignored the purpose and need in favor of the obviously narrow and biased purpose and need put forward by the project sponsor to help ensure that the Corps and the FAA would approve the Sponsor’s proposed project. Indeed, the Corps’ stated that it “accepts that the purpose and need to accomplish the goals of the Airport Proposed Project include the initial development of an 8,400-foot primary runway with a 5,000-foot crosswind runway.” FEIS Vol. 1, 3.12.7, at 3-68.

Response *The USACE provided this response.*
The USACE exercised independent judgment in defining the purpose and need from both the Applicant’s (Airport Sponsor) and the public’s perspective. In defining the purpose and need the USACE took into consideration the needs of the Applicant and the general public in terms of economic considerations and benefits to the local community. The USACE considered the public’s need for safe and efficient air transportation and relied on the FAA’s expertise with regards to development of aviation facilities. The USACE also considered local and regional land use planning efforts that included public involvement prior to the adoption of the West Bay Sector Plan and the Airport and West Bay DSAPs. Therefore, the USACE did take into consideration the public’s perspective in defining the purpose and need. The USACE’s determination of the overall project purpose considered allowances for expansion of air transportation services including international charter operations. The 8,400 foot runway as proposed by the Applicant would accommodate international charter operations.

Comment 10 However, the non-binding referendum held in Bay County in 2004 demonstrates that the public rejected the need for a new airport at the West Bay site. The nonbinding referendum posed the following question: “Do you approve of a new airport at West Bay, *at no cost to the taxpayers?*” (emphasis added). The “No’s” prevailed by 54%-46% despite this wording, which intended to skew the referendum vote in support of a new airport. The FEIS fails to even mention the nonbinding referendum.

Response *The USACE provided this response.*
The USACE acknowledges that there was a non-binding referendum reflecting the difference of opinions of the members of the public who voted. Further consideration of the public interest will be addressed in the statement of findings and record of decision to be prepared by the USACE.

Comment 11 The 8,400 foot alternative at the existing site would have greater impacts than the 6,800 foot alternatives at the existing site with respect to the residential relocations and noise. Yet, despite these distinct differences, the Corps grouped all of the existing site alternatives into a single existing site alternative for purposes of its evaluation. In the process, the Corps failed to give adequate consideration to reasonable and feasible alternatives to the existing site.

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- Response** *The USACE provided this response.*
As stated in its response to Comment 8 above, the USACE's determination of the overall project purpose considered allowances for expansion of air transportation services including international charter operations. The 8,400 foot runway as proposed by the Applicant would accommodate international charter operations. Therefore, the 8,400 foot runway alternative is the only reasonable and feasible alternative at the Existing Site from the USACE's perspective. Since it would be the most impacting on the human environment of any of the FAA's alternatives at the Existing Site, the Corps chose to lump all the alternatives at the Existing Site for ease of review.
- Comment 12** Furthermore, the Corps plainly stated that the only reason why it even considered the no action alternative was because NEPA and the CEQ regulations require its consideration. *See* FEIS, Vol. 1, 3.12, at 3-62, 3-69. Clearly, the Corps' statement of purpose and need and its application in the Corps' analysis of alternatives is so narrow as to rule out *any* alternatives to the sponsor's proposed project. As a result, the Corps evaluation of alternatives fails to meet the requirements of NEPA, the Clean Water Act, and is otherwise arbitrary and capricious.
- Response** *The USACE provided this response.*
This FEIS only addresses the USACE's responsibilities regarding this project under NEPA. The USACE's responsibilities under the Clean Water Act will be addressed in the statement of findings and record of decision to be prepared by the USACE.
- Comment 13** As we emphasized in our separate coalition letter to Virginia Lane and Gordon Hambrick, dated June 26, 2006, the FEIS does not cover the appropriate scope of environmental impacts that will result from the proposal to relocate the Panama City Airport to the West Bay site. The proposal to build a new airport at the West Bay site involves both redeveloping the existing airport site and spurring further development surrounding the new airport. However, the effects of these actions have not been analyzed and taken into consideration in the alternatives analysis as required by NEPA.
- Response** See the detailed responses to the comments below and response to Comment 1 above. In response to the comment that the proposal to relocate the airport involves both redeveloping the existing airport site and spurring further development surrounding the new airport, as stated in the FEIS neither of these actions are part of the proposed action being considered in the FEIS. Rather, assuming the FAA's decommissioning and release of the existing site is a connected action, the FEIS has considered the indirect impacts of those future decisions based on the best currently available information. Disclosure of such indirect impacts consists primarily of redevelopment impacts. See Chapter 5 of the FEIS. With respect to secondary development surrounding the relocated airport, such development is appropriately considered in the indirect or cumulative impact sections of the FEIS (See Section 5.26).
- Comment 14** Neither redeveloping the existing airport, nor developing the land around a new airport at the West Bay site has independent utility. Rather, both redevelopment of the existing airport and development of the 70,000 acres surrounding the proposed West Bay airport site are connected to building a new airport at the West Bay site.

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Response The substance of this comment suggests that the proposed action (relocation of the airport) and redevelopment of the existing airport site and secondary development surrounding the relocated airport are connected actions under the meaning of the CEQ regulations 40 CFR Section 1508.25(a)(1). Neither redevelopment of the existing site nor future development in the area surrounding the relocated airport are connected actions to the current federal approvals. See response to Comment 1 above for further explanation.

Comment 15 To meet the agencies' obligations under the National Environmental Protection Act ("NEPA") to take a "hard look" and fully evaluate the environmental effects of building a new airport at a greenfield site in West Bay, the FAA and Corps must fully evaluate the cumulative environmental impacts of building a new airport in a greenfield and redeveloping the existing airport site. See 40 C.F.R. § 1508.8. The circumstances here further demonstrate that the FAA must prepare a SEIS to fully evaluate the environmental impacts of redevelopment of the existing airport site.

Response The FAA has fully evaluated direct, indirect, and cumulative impacts related to the relocation of the Panama City-Bay County International Airport which constitutes the "hard look" required by NEPA. The FAA disclosed the cumulative impacts of relocation to the West Bay Site, including the environmental impacts of potential development surrounding the West Bay Site. (See Section 5.26 of the FEIS). In regard to decommissioning and release of the existing airport site, and its indirect impacts (redevelopment of the existing airport site), the FAA disclosed the potential impacts based on the best available information at the time of the Draft EIS. (See Section 2.2.2 and Chapter 5 of the DEIS). This information was refined and expanded in the Final EIS, after the release of the *Redevelopment Report* and the greater detail that became available in that report. At this time, there is no approved plan for redevelopment. As explained in the FEIS, the three scenarios presented in the RFP and Redevelopment Report represent only three proposals of a potentially limitless number of redevelopment options, any of which might be approved. Even when a final redevelopment option is selected, that decision is outside of the purview and authority of the FAA. Thus, FAA has effectuated all possible NEPA disclosure regarding decommissioning and release and the indirect redevelopment impacts as of the current time. Furthermore, there is no legal requirement for the FAA to delay issuing a decision on the proposed relocation of the airport in anticipation of future FAA action that is not ripe for decision at this time (decommissioning and release). Similarly, there is no legal requirement for the FAA to delay action on the proposed relocation of the airport pending completion of local decisionmaking regarding the ultimate uses of the existing airport site when and if it is redeveloped. Once a final plan is developed and approved by local authorities and action by the FAA on decommissioning and release of the existing airport is ripe, additional NEPA evaluation would be required. Therefore, the FAA does not believe that this information would meet the CEQ standard for the development of a Supplemental EIS or affect the FAA's analysis of alternatives considered in the EIS. Finally, the FAA offered the opportunity for public comment on this information with publication of the Final EIS and the information was available to the federal decisionmaker in keeping with the spirit of NEPA.

Comment 16 In the event that the FAA decides to forego additional analysis of the impacts of redevelopment of the existing airport site and development of the 70,000 acres surrounding the proposed West Bay airport site and issues a ROD that finds that neither site is environmentally superior, its ROD will be arbitrary and capricious and otherwise contrary to law.

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- Response** See response to Comments 1 and 15 above. With respect to the reference to the ROD, this comment is a legal conclusion to which the FAA believes a response is not necessary.
- Comment 17** Below, we explain why the FAA and Corps must take further action before issuing their Record of Decision to meet their legal obligations under NEPA. We urge the FAA and Corps to take further action to comply with their obligations under NEPA before issuing their Record of Decision.
- Response** The FAA and USACE have met their legal obligations under NEPA and no further documentation prior to the ROD is required.
- Comment 18** There are significant new circumstances and information regarding the environmental impacts associated with redeveloping the existing Panama City-Bay County Airport site, which are crucial to providing a complete and objective analysis of environmental impacts of the West Bay site alternatives. In October, 2005, while the FEIS was being prepared, the Airport Sponsor released a *Redevelopment Report*, which includes three comprehensive redevelopment scenarios. At the same time, the Airport Sponsor formally solicited requested for proposals to purchase the existing airport site on terms that allow the Sponsor to use the proceeds of the sale as collateral for debt to finance construction of a new airport at the West Bay site with a 8,400 foot runway. This information was neither disclosed, nor analyzed in the draft EIS.
- Response** The Commentor is correct that the Airport Sponsor released a *Redevelopment Report* in October 2005 and that this post-dated the release of the Draft EIS. However, the Commentor is incorrect in stating that potential environmental impacts associated with decommissioning and release, including indirect impacts (redevelopment of the existing site), were omitted from the Draft EIS. The FAA was aware of the intent to redevelop the existing airport site and disclosed this information in the DEIS based on the best available information at the time. (See Section 2.2.2 and Chapter 5 of the DEIS). This information was refined and expanded in the Final EIS, after the release of the *Redevelopment Report* and the greater detail that became available in that report. Therefore, the FAA does not believe that this information would meet the CEQ standard for the development of a Supplemental EIS or affect the FAA's analysis of alternatives considered in the EIS. Finally, the FAA offered the opportunity for public comment on this information with publication of the Final EIS and the information was available to the federal decisionmaker.
- The Commentor is correct that the Airport Sponsor intends to use the proceeds from the sale of the existing airport site to assist in the financing for the relocation of the airport. However, this is irrelevant to environmental consequences of the proposal and therefore does not require discussion in the FEIS.
- Comment 19** Redevelopment of the existing airport is not severable from the construction of a new airport at the West Bay site because the Airport Authority is relying, in part, on the sale of the existing airport site in order to finance the construction of a new airport. In addition, the FAA plainly states that if any of the West Bay site alternatives are selected, the existing airport site would be redeveloped. Furthermore, the FEIS emphasizes the opportunity costs associated with not building a new airport at the West Bay site, including the lost opportunity to redevelop the existing airport, even treating this as an adverse impact when considering the adverse impacts of the existing site alternatives. *See, e.g.* FEIS, Vol. I, 5.54 at 5-48. EPA's comments on the draft EIS explicitly recognize that "(t)he fate of the existing site is a *connected action* that is important to the overall project." FEIS Vol. III, EPA comments on DEIS at 4

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Comment 19 (emphasis added). Nevertheless, the FAA has failed to fully assess the impacts of
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Response See response to Comments 1, 14, 15 and 18 above.

Comment 20 While the FAA concedes in the FEIS that the sale and redevelopment of the existing airport site is relevant to its environmental analysis, the FAA improperly ignores the substantial environmental impacts from redevelopment of the existing site, even though such redevelopment would obviously occur within the 2008-2018 time frame of its analysis. The FEIS merely “discloses” a number of the substantial environmental impacts to aquatic resources and wildlife that would result from plans to redevelop the existing airport site in the FEIS, but the FAA has not fully evaluated the impacts to aquatic resources, has not consulted with the U.S. Fish and Wildlife Service about impacts to threatened and endangered species, and the FEIS fails to include these impacts as impacts that would result from any of the West Bay site alternatives in its comparison of alternatives.

Response The FAA analyzed the indirect environmental impacts associated with decommissioning and release, including redevelopment of the existing airport site, based on the best information available at the time of publication of the FEIS. See Sections 5.12.1.4 and 5.12.2.4 of the FEIS for discussion of potential impacts to federal and state-listed species respectively. The Commentor is incorrect in stating that FAA did not contact USFWS regarding indirect impacts, particularly redevelopment of the existing site, which will occur as a result of future federal action on decommissioning and release. The FAA coordinated with the USFWS regarding the fact that no redevelopment proposal has been accepted by the Airport Sponsor and submitted for review by appropriate regulatory agencies. As a result, the FAA, in coordination with USFWS determined the following:

- 1) The potential impacts to listed species resulting from the decommissioning and release of the existing site and its subsequent redevelopment could not be assessed at this time.
- 2) The ultimate redevelopment of the existing airport site is not certain therefore, is not ripe for consultation at this point.

Regarding impacts to aquatic resources, the FAA also coordinated with the NMFS. The FAA’s actions related to transfer of the Airport Sponsor’s federal grant obligations to the relocated airport, decommissioning of the Existing Site facilities and release for disposal of the Existing Site for non-aeronautical use are not activities that require on-the-ground activities that may adversely affect aquatic resources, such as EFH. Therefore, NMFS concluded that the release and decommissioning by itself should not impact EFH and would not trigger the Magnuson-Stevens Act. See Appendix S of the FEIS. Although redevelopment of the existing airport site is not a part of the Airport Sponsor’s proposed project, the FEIS includes reasonably foreseeable impacts of that redevelopment based on the best available information.

Comment 21 The FAA makes it clear that the FEIS assesses the potential environmental impacts from the sponsor’s proposed project, which does not include redevelopment of the existing airport site. This is inadequate, results in an arbitrary and capricious finding that the Existing Site and West Bay site have similar environmental impacts, and fails to meet the FAA’s and the Corps’ obligations under NEPA and the Endangered Species Act. The FAA must evaluate the impacts of redevelopment *before* the FAA makes a final decision as to which alternative is best, not at some time in the future.

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Response Contrary to the Commentor's statement, the indirect impacts of future action on decommissioning and release (consisting primarily of impacts associated with redevelopment of the existing airport site), were included when considering the West Bay Site alternatives. See Tables 3-5 and 3-6 of the FEIS.

Regarding the second sentence in the comment, the FAA did not find that the Existing Site and West Bay site have similar environmental impacts. In fact, the EIS states that "... the environmental impacts of all alternatives considered in detail are substantially similar except with respect to certain resource categories, where impacts show a marked difference when comparing existing site alternatives and West Bay site alternatives." See Section 3.13.3.1. The remainder of this sentence is a legal conclusion to which the FAA believes a response is not necessary. The FAA did evaluate the impacts of redevelopment of the existing site based on the best available information.

Regarding the final sentence in the comment, as clearly explained in the EIS, the three scenarios presented in the RFP represent only three proposals of a potentially limitless number of redevelopment options, any of which might be approved. Even when a final redevelopment option is selected, that decision is outside of the purview and authority of the FAA. Furthermore, there is no legal requirement for the FAA to delay issuing a decision on the proposed relocation of the airport in anticipation of future FAA action that is not ripe for decision at this time (release and decommissioning of the existing airport site). Similarly, there is no legal requirement for the FAA to delay action on the proposed relocation of the airport pending completion of local decisionmaking regarding the ultimate uses of the existing airport site when and if it is redeveloped. Once a final redevelopment plan is developed and approved by local authorities and action by the FAA on release and decommissioning of the existing airport is ripe, additional NEPA evaluation would be required.

Comment 22 The FAA's failure to fully evaluate and integrate the substantial environmental impacts related to redevelopment of the existing site is even more deficient considering the fact that the Airport Sponsor abandoned its airport expansion project in 1998 because the proposed project would result in significant adverse environmental impacts to Goose Bayou. See FEIS Vol. I, 2.2.1, at 2-2. Information disclosed in the FEIS indicates that redevelopment of the existing site would similarly result in significant adverse environmental impacts to Goose Bayou. However, instead of acknowledging the problems with redevelopment of the existing site, the FAA improperly isolates the impacts of redevelopment from its evaluation of the West Bay site alternatives and the Sponsor's proposal.

Response The FAA analyzed the indirect environmental impacts associated with decommissioning and release, including redevelopment of the existing airport site, based on the best information available at the time of publication of the FEIS. This includes impacts to Goose Bayou. Contrary to the Commentor's statement that the FAA has isolated indirect impacts of decommissioning and release (namely redevelopment of the existing airport site) from its evaluation of the West Bay site alternatives, these impacts were included when considering the West Bay Site alternatives. See Tables 3-5 and 3-6 of the FEIS. Impacts to Goose Bayou that may result from future redevelopment of the existing airport site would result from a local decision outside the purview of the FAA. See Appendix D, Volume II of the FEIS for regulatory agency correspondence on previous efforts by the Airport Sponsor to undertake expansion efforts at the existing site that would have impacted Goose Bayou.

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Comment 23 Section 7 of the Endangered Species Act requires all federal agencies to consult with the U.S. Fish and Wildlife Service to ensure that their actions do not jeopardize threatened or endangered species or destroy or adversely modify their habitat. The FAA must consult with the FWS regarding the impacts to threatened and endangered species that would occur as a result of redevelopment of the existing site.

Response See the response to Comment 20 above.

Comment 24 Clearly, the new information provided in the FEIS about redevelopment of the existing airport site reveals the importance of further evaluation of the environmental impacts of redevelopment followed by consideration of the complete environmental impacts of the West Bay site alternatives, including a full analysis of the redevelopment impacts. The FAA must issue a SEIS in order to meet its obligations under NEPA to take a “hard look” at the environmental impacts of the proposal to build a new airport at the West Bay site and consult with the FWS, as required by the ESA, regarding impacts to threatened and endangered species.

Response See the response to Comments 15, 18 and 20 above.

Comment 25 The FEIS concedes that the “relocated airport would serve as a catalyst for the economic development of the West Bay Area. FEIS, Vol. I, 5.5.3, at 5-40. Nonetheless, the FAA fails to evaluate the cumulative impacts of developing 70,000 acres surrounding the West Bay site in the West Bay Sector Plan, the Airport Detailed Specific Area Plan (“DSAP), and the West Bay DSAP. Currently, this land is a remote and undeveloped area dominated by wetlands, which serves and important wildlife habitat for Florida black bears, gopher tortoises, and other imperiled wildlife. The West Bay DSAP, which is adjacent to the Airport DSAP area, outlines future land uses, which are contingent upon building a new airport at the West Bay site. The FAA has failed to evaluate the impact of these connected actions in its analysis of alternatives. The West Bay DSAP outlines which sections of the area would be used for different types of uses, including residential, offices, hotels, marinas, and retail, encompassing a total of 16,556 acres. The FEIS discloses the three different phases of development under the West Bay DSAP, which include specifics related to square footage of warehouse space, industrial parks, office space, retail space, number of hotel rooms, boat slips and residential dwelling units. *See* FEIS, Vol. I, 5.5.3, Table 5-20, at 5-41. With this type of information available, the FAA’s failure to use it to evaluate secondary and cumulative impacts was arbitrary, capricious, and contrary to law. The FAA’s failure to examine the environmental impacts of development surrounding a new airport built at the West Bay site is all the more arbitrary and capricious considering the fact that the FEIS emphasizes the opportunity costs associated with not building a new airport at the West Bay site, including developing the land surrounding the West Bay airport site, and treats the lost opportunity as an impact when considering the adverse impacts of the existing site alternatives. *See, e.g.*, FEIS, Vol. I, 5.5.4, at 5-48.

Response Section 5.26 of the FEIS presents a detailed analysis of secondary and cumulative impacts related to the development of the area surrounding the relocated airport. This analysis was based on the best information available contained in various sources, including but not limited to the West Bay and Airport DSAPs, the West Bay Sector Plan, the *Overview of the West Bay Specific Area Plan*, the *Ecological Assessment, Natural Resource Values and Regional Significance of the West Bay Preservation Area*, and FDEP GIS land cover data. The Commentor’s conclusion about the legal sufficiency of the FEIS is a legal conclusion to which the FAA believes a response is not necessary.

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- Comment 26** Building a new airport at the West Bay site would create demand for developing the land around the new airport, where demand for development otherwise would not exist. Other agencies and proponents of building a new airport at the West Bay site have recognized that the airport and development that it will spur are connected actions. For example, the comments of the Florida Department of Environmental Protection emphasized the connection as a benefit, commenting that “(w)ithout the airport relocation, it is highly unlikely that the Bay County Sector Plan and Detailed Specific Area Plan would be implemented...” FEIS Vol. III, DEP comments on DEIS at 4. The Fish and Wildlife Services even commented that a “complete watershed build-out analysis should be conducted for the West Bay alternatives.” FEIS Vol. III, FWS comments on DEIS at 3.
- Response** The relocation of the airport to the West Bay site is anticipated to influence the type and/or timing of secondary development in the West Bay area. Impacts from such development based on the best information available were addressed in Section 5.26 of the FEIS. See response to Comment 1 above for an explanation of why secondary development in the West Bay area does not meet the definition of a connected action under the CEQ regulations.
- Comment 27** Moreover, the Corps indicated in its response to NRDC’s comments on the DEIS that is the “USACE’s intention to repeat the SAJ-86 process in the Sector Plan area.” FEIS Vol. V, P021, Corps’ Response to NRDC Comments. Other sections of the FEIS attempt to assert that the cumulative impacts that will be spurred by building a new airport at the West Bay site will be reduced by assuming that wetlands destruction would be of the same magnitude as that regulated by the regional general permit SAJ-86 and the ecosystem management agreement between St. Joe and the Florida Department of Environmental Protection. *See, e.g.*, FEIS, Vol. I, 5.26.3.3.1 at 5-212. Here, the FAA has no basis to make such an assumption, and its reliance on the availability of a permit like SAJ-86 to justify its analysis of cumulative impacts is all the more arbitrary and capricious because SAJ-86 has been preliminary enjoined by Judge Timothy Corrigan of the U.S. District Court for the Middle District of Florida. *See Sierra Club v. U.S. Army Corps of Engineers* (November 10, 2005).
- Response** Regardless of the status of permit SAJ-86, the EMA remains valid. The FAA’s reliance on assumptions contained in the EMA is, therefore, also still valid. Nonetheless, the watershed analysis done by the USACE for SAJ-86 is still appropriate for use as an evaluation tool. The FAA made these assumptions even more conservative by applying the allowable wetland impact criteria to all wetlands and not just to low-quality wetlands as the USACE did. See Section 5.26.3.3.1 of the FEIS for discussion of allowable wetland impacts.
- Comment 28** Building a new airport at the West Bay site would result in destroying 7,279 linear feet of streams. In general, the FEIS fails to evaluate how paving over wetlands and burying streams for the airport footprint at the West Bay site would affect hydrology. Instead, the FEIS merely states that drainage patterns in Burnt Mill and Crooked Creek will be maintained, but that drainage patterns in Bear Bay, Kelly Branch and Morrell Branch will be altered. The FEIS acknowledges that some flow going into Kelly Branch will be diverted and that this could have the effect of reducing flow in Kelly Branch and impacting aquatic functions. However, the FEIS fails to examine how aquatic functions could be impacted.

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- Response** The Commentor is incorrect that the FEIS fails to evaluate the hydrological effects and aquatic functions of the West Bay site following implementation of alternatives at that location. Such impacts are considered in Sections 5.8.2 and 5.10.4.3 of the FEIS.
- Comment 29** Even though the impacts from this development and destruction of wetlands are reasonably foreseeable, the FEIS fails to account for the destruction of wetlands beyond the initial 596 acres, which arbitrary, capricious, and contrary to law.
- Response** The FAA evaluated the development proposed in the initial phase because that is within the FAA's planning horizon (2018). The FAA considers development beyond that planning horizon to be speculative and not sufficiently reliable for purposes of analyzing direct impacts. See Section 2.2.2 of the FEIS. Although there is no evidence at this time that future development at the relocated site beyond the initial phase may occur, the FAA undertook a conservative approach in its cumulative impacts analysis and addressed the impacts of ultimate development at the West Bay site envisioned by the Airport Sponsor. See Section 5.26.3.2. Further, any future development beyond the initial phase would require additional evaluation under NEPA and additional USACE Section 404 permitting.
- Comment 30** Moreover, the FEIS fails to evaluate what functions these wetlands serve, which is crucial to an accurate assessment of the ecological harm that will result from destroying the initial 596 acres of wetlands for phase I, 1,936 acres at ultimate build-out and 7,323 acres surrounding the airport site. Instead, the FEIS focuses on how many acres of which types of wetlands would be destroyed during phase I, which gives no indication of whether flood protection, water quality protection, wildlife habitat, groundwater recharge, or other wetlands functions would be lost. The FAA and Corps' failure to evaluate the loss of functions in this context is arbitrary, capricious, and contrary to law. The significant deficiency is also flawed in that it demonstrates that any mitigation that is currently being relied upon cannot possibly be designed to compensate for lost wetlands functions, because the FAA and Corps do not even know what wetlands functions would be lost.
- Response** *The USACE contributed to this response.*
The FEIS provided a detailed evaluation of the wetland functions at the West Bay site and the mitigation parcels using the Wetlands Rapid Assessment Procedures (WRAP). This evaluation includes substantial information beyond a simple accounting of acreages impacted by the project. The FAA supports the USACE determination that the conceptual mitigation strategy for the West Bay Site 8,400 foot alternative would provide sufficient wetland functional lift to offset the proposed wetland functional loss expected from the direct and indirect impacts to wetlands. See Section 5.13.3 in Volume I and Appendix R in Volume II of the FEIS.
- Comment 31** Building the Sponsor's proposed airport at the West Bay site would pave over 207 acres in the 100-year flood plain, and redevelopment of the existing site would result in an additional 139 acres of flood plain impacts. Creating impervious surface in the floodplain will result in loss of flood storage area in the specific areas where the flood plain would be filled to build a new airport. The FEIS indicates that there is not enough information to calculate loss of flood storage volumes, but suggests that because there is no development downstream, this should not be a concern. This is disingenuous considering the fact that the airport will spur development downstream.

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Response The existing site is located immediately adjacent to Goose Bayou; therefore, impacts to the floodplain from redevelopment would have no consequences for other properties because there are no downstream properties. Impacts to the floodplain would have no measurable effect on flood elevations in Goose Bayou. In addition the FAA presented a conservative analysis of potential floodplain impacts at the existing site as a result of redevelopment. The analysis was conservative because it did not include any avoidance and minimization of impacts.

Regarding floodplain impacts at the relocation site, the fact that there is no development downstream is only one factor considered in the FEIS. The other factors relevant to this discussion include matching pre- and post-discharge rates and maintaining existing outfall discharge rates to the extent practicable, the location of the West Bay site low in the watershed (for which FDEP determined floodplain compensation was not required), and the location of the protected mitigation parcels downstream from the site. Therefore, the FAA's conclusions regarding floodplain impacts are reasonably supported by the FEIS. The FDEP's Notice of Intent to Issue the Ecosystem Management Agreement (EMA), dated October 10, 2005, indicates that the state has reviewed potential floodplain impacts and determined that the project meets the state's standards.

Comment 32 The FEIS also states that there would be a "noticeable impact on natural and beneficial floodplain values" without mitigation. FEIS, Vol. I, 5.14.1.7, at 5-156. Yet, the FEIS fails to explain how off site mitigation could possibly compensate for loss of flood storage volume at the West Bay site, and it cannot. The FEIS' failure to evaluate the impacts of loss of flood storage volume is all the more arbitrary and capricious considering that the area's susceptibility to hurricanes and the rising frequency and recent damage cause[d] by hurricanes in the Gulf Coast region.

Response See response to Comment 31 above regarding flood storage volume. The FAA acknowledges that Gulf Coast region is susceptible to hurricanes and severe storms. With regard to potential storm damage from flooding, the West Bay site is preferable to the existing site location. The existing site has been forced to shut down on more than one occasion due to storm surges from hurricanes and other storm events. See Section 2.4.2.5 of the FEIS. By contrast, the West Bay site would be less susceptible to storm surges because it is not located in a storm surge area. In addition, structures would be elevated above base flood levels in accordance with the Bay County Flood Damage Prevention Ordinance. See Section 5.14.2 of the FEIS.

Comment 33 While the FEIS highlights perceived environmental benefits of planned mitigation to compensate for the devastating environmental destruction at the West Bay site, the FEIS only includes excerpts or summaries of the Sponsor's mitigation commitments and does not include a mitigation plan; nor does the FEIS provide any data, analysis, or other information to demonstrate that the mitigation plan has a likelihood of success.

Response The FAA is not required to present a detailed complete and final mitigation plan in its EIS. It is the responsibility of the FAA to present the conceptual mitigation plan and the responsibility of the USACE and the FDEP to finalize the mitigation plan including the success criteria and monitoring program. The mitigation plan for the proposed relocation of the airport has been vetted through all appropriate resource agencies and has been determined to be sufficient by those agencies. Regarding the review and coordination of the mitigation plan, see the April 25, 2005 letter from the USACE; the October 10, 2005 Notice of Intent from the FDEP; the October 3, 2005 Biological Opinion issued by the USFWS in Volume II of the FEIS. In addition, as

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Response indicated in the FEIS, the entire plan completed to date is available at the FDEP
Con't office in Pensacola, Florida. See Section 5.13.3 of the FEIS.

Since publication of the FEIS, the Airport Sponsor provided FAA with the performance standards and an Adaptive Management Plan to address contingencies in the mitigation. This information is included in Appendix K of this ROD along with revised hydrologic restoration graphics for the mitigation area.

Comment 34 Basically, the FEIS takes a hands-off approach to reviewing the adequacy of mitigation in favor of trusting the sponsor and deferring to the Corps and state agencies, which does not meet the FAA's obligations under NEPA. The FAA has a responsibility as the lead agency to fully evaluate the environmental impacts of the Sponsor's proposal to build a new airport at the West Bay site and to compare the impacts to those of reasonable and feasible alternatives. The FAA cannot rely on mitigation to justify a proposal with egregious environmental impacts relative to available alternatives, particularly in this case, where the FAA is relying on a mitigation plan that is not even finished.

Response The USACE is a cooperating agency for this EIS and the FAA has worked with the USACE as well as other resource agencies with expertise in regard to mitigation. The FAA does not agree that this is a hands-off approach. As evidenced throughout the FEIS, the FAA has complied with NEPA by fully evaluating the environmental impacts of the Airport Sponsor's proposal to relocate the airport and comparing those impacts with those of the other reasonable and feasible alternatives. The FAA has not relied upon the mitigation plan to justify the proposal. The mitigation plan is designed to appropriately mitigate the impacts of the project. The mitigation plan is not required to be in final form in the FEIS. The FAA believes the mitigation plan is sufficiently developed for purposes of satisfying the FAA's NEPA obligations. The FAA has explained the aeronautical purpose and need for the proposal in Sections 2.5.1 and 2.5.2 of the FEIS.

Comment 35 The FEIS indicates that the wetlands rapid assessment procedure ("WRAP") was used to evaluate the quality of the wetlands that will be impacted and those that will be restored or enhanced as part of a future mitigation plan. However, this process does not provide an evaluation of what actual functions are being served and would be lost by wetlands that would be destroyed by building a new airport. WRAP was also used to score the functional quality of the wetlands that would be restored as mitigation for lost wetlands. WRAP was designed to evaluate the wetland mitigation sites that have been created, enhanced, preserved, or restored. As such, WRAP analysis should be conducted on an already created, enhanced, preserved, or restored site. WRAP was not designed to be a predictive tool. However, the FEIS uses it as a predictive tool by including WRAP scores and functional lift amounts for wetlands that have not even been restored.

Response *The USACE provided this response.*
The Commentor is correct that the WRAP was originally designed to evaluate wetland mitigation sites that have been created, enhanced, preserved, or restored. The USACE Jacksonville District adopted the WRAP beginning in the late 1990's as a tool to evaluate and quantify predicted changes in wetland functions and values between existing conditions and predicted conditions on both impact sites and mitigation sites. Thus, it was appropriate to use the WRAP as a tool to evaluate the wetland impacts and mitigation for this EIS.

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Comment 36 Building a new airport at the West Bay site would also bury 7,279 linear feet of streams for the first phase alone and nearly 22,000 linear feet of streams at full build out. Mitigation will not compensate for the destruction of these streams. Streams are complex ecosystems, depending on a variety of factors to function properly. Groundwater and surface flows, sediment routing, soil characteristics, vegetation, and its position on the landscape are all factors leading to a living, self-sustaining stream system. The FEIS fails to include any information to justify whether and how the functions of these streams, when lost, can be compensated for through mitigation.

Response See the response to Comment 29 above regarding the planning horizon and the initial phase of development. The FAA recognizes that there will be impacts to streams, however, the mitigation plan addresses these impacts through restoration and enhancement of streams on the mitigation parcels. See Appendix K, Conceptual Mitigation Plan Synopsis, Hydrologic Restoration section of this ROD. The mitigation parcels comprise approximately 9,609 acres which will be preserved in perpetuity and the majority of this acreage will also be restored and enhanced. On a functional basis, the mitigation has been designed for the Airport Sponsor's envisioned full buildout scenario. Therefore, the FAA believes that the mitigation proposed more than adequately addresses impacts for development that is likely to occur based on the FAA's planning horizon and best available information from the Airport Sponsor.

Comment 37 The wetlands and streams that would be restored as mitigation for wetlands and streams that will have already been lost may not function properly for decades, and may never function properly if restoration fails. It is a crucial flaw that the incomplete description of mitigation requirements in the FEIS allows natural wetland function to be lost long before mitigation wetland functions have been restored or even exist. Furthermore, the FEIS does not discuss what the performance standards will be, if any. Performance standards should provide measurable criteria to determine if the project has accomplished its goals and objectives. Ecological performance standards should serve as "measurable benchmarks" to determine the degree to which ecological characteristics associated with specific wetland functions are achieved.

Response *The USACE has contributed to this response.*
Federal regulations and policies do not require implementation of fully functional wetland mitigation prior to project approval and construction. The FAA, the USACE, and the FDEP all recognized and have accounted for the temporal lag and risk factors in determining the functional lift described in the WRAP analysis. Performance standards are included in the Mitigation Plan Synopsis, Appendix K of this ROD. This is a unique opportunity to provide mitigation on a landscape scale with important benefits on the receiving water body, West Bay.

The FEIS is not flawed because the complete mitigation plan is not fully reproduced and finalized in the FEIS. See the response to Comment 33 above regarding the legal requirement for description of mitigation in an EIS.

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Comment 38 The FEIS does not adequately explain what the mitigation monitoring requirements are. The sponsor must be required to submit timely, accurate, and complete monitoring reports to ensure compliance with mitigation requirements and adequate replacement of wetland acreage and function. They also must be held accountable for failure to do so through specific monitoring and reporting requirements as enforceable permit conditions.

Response *The USACE has contributed to this response.*
The FEIS contains a synopsis of the mitigation monitoring plan that will be in place following implementation of mitigation measures required as part of the project. Not only is the mitigation monitoring plan described in the FEIS (See the Mitigation Plan Synopsis, Appendix K of this ROD) there are at least three legally enforceable mechanisms that will ensure compliance with the monitoring program. These mechanisms would be the FDEP's EMA, the USACE Section 404 permit, and the USFWS Biological Opinion Terms and Conditions. In addition, wetland mitigation has been made a condition of the FAA approval of this ROD, and the Airport Sponsor's compliance with the mitigation plan will be required as part of any grant approval the FAA may issue to assist with project funding.

Comment 39 Perhaps the most disturbing aspect of the mitigation plan is that it covers a fifty year period and purports to compensate for the impacts of full build out, while the FEIS otherwise limits the scope of analysis of environmental harm caused by building a new airport at the West Bay site to the first phase through 2018, or ten years. By purporting to consider the environmental benefits of a larger mitigation plan, which extends forty years past the time considered for evaluating detriments to the environment, the FEIS skews the benefits. The FEIS must consider the full environmental harms, not just the full environmental benefits, and thus must consider the impacts of burying 21,957 feet of streams, destroying all 1,936 acres of wetlands in the airport footprint, and destroying over 9,000 acres in the area surrounding the airport for future development consistent with local zoning plans.

Response The Commentor is correct that the mitigation plan's implementation period is 50 years while the FEIS addresses environmental impacts for the FAA 10-year planning horizon. See the response to Comment 29 above regarding the planning horizon and the development approved in this ROD. As previously acknowledged, the mitigation has been designed for the Airport Sponsor's envisioned full buildout scenario despite the fact that the FAA has no evidence at this time to support a conclusion that further airport development will be needed in the future at the West Bay site. The Commentor expresses dissatisfaction with the different lengths of time for which the mitigation implementation is considered as compared to the environmental impacts of the relocated airport. However, this difference is explained in large part by the reality of federal government control over implementation of the mitigation plan where such control is lacking with respect to future development beyond the 10-year planning horizon. This is not a question of skewing the benefits in the FEIS. It merely acknowledges the speculative nature of future development both at the airport and in the surrounding environs whereas implementation of the mitigation shall be required if a Section 404 permit is issued.

Comment 40 The FEIS also fails to include the proposed easement and to explain which entity will be responsible for managing the land and performing the restoration and enhancement activities. We understand that St. Joe will continue to hold title to the land, but the state will own the conservation easement, and as a result the state may be responsible for managing the land.

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Response There is no requirement under NEPA that the proposed easement be included in the FEIS. Based on on-going coordination with the FDEP regarding the status of the conservation easement, the FAA is satisfied that the conservation easement will be executed and will provide long-term protection of the mitigation parcels. The EIS discloses that the Airport Sponsor, not the state, would be responsible for managing the mitigation parcels and has provided financial assurance to the FDEP. See the Airport Sponsor's Mitigation Commitments in Appendix H of this ROD.

Comment 41 The FEIS acknowledges that building a new airport at the West Bay site may result in water quality impacts from stormwater runoff, particularly increases in sedimentation and turbidity, as well as stream erosion, changes in salinity, eutrophication, and associated algal blooms and species composition. Building a new airport at the West Bay site would mean going from 0% impervious surface to about 75% impervious surface, resulting in substantial water quality degradation from stormwater runoff. The FEIS indicates that the stormwater management system has been designed to accommodate extra volume, but does not give any indication of how that would impact water quality. Indeed, the EPA's comments on the DEIS emphasize:

“the cited stormwater benefits (Section 5.8.3.3.) that could be achieved from decommissioning the existing airport and building the new relocated airport seem somewhat generous in the overall stormwater accounting between the two sites... While updated technology would have its benefits, it should not be overlooked that these benefits do not eliminate the pollutant load from the airport activities, merely displace them from the old airport with more efficient ones at the new airport. Moreover, the relocated airport would have greater impervious surfaces from the old site... and the old site would continue to have latent pollutant runoff from the affected on site soils...” FEIS, Vol. III, F003.

Response The Commentor is incorrect that “the stormwater management system has been designed to accommodate extra volume, but does not give any indication of how that would impact water quality”. As indicated in Section 5.8.4 of the FEIS, the Airport Sponsor has committed to meeting the state's criteria for stormwater discharge to an OFW on a voluntary basis. These criteria require an additional 50 percent water quality treatment and do not address water quantity. Water quantity is addressed in the stormwater management plan.

The FEIS discloses the impacts to water quality at the West Bay site in Section 5.8.2. Despite the Commentor's characterization of the FEIS' analysis of water quality impacts, the FAA took a hard look at such impacts as disclosed in the FEIS.

The EPA has provided further comment on this issue based on the additional information provided in the FEIS. The EPA states in its comments, dated June 29, 2006, on the FEIS that “[w]e appreciate that additional description of the impacts of redeveloping the EAS were included in Chapter 5 and Appendix V. It is clear, however, that whatever stormwater impacts that are attendant to the reuse of the EAS would be additional to those new stormwater impacts associated with the proposed relocation, its potential future expansion, and its induced development. Therefore, stormwater management at both sites should be maximized with updated technology to minimize point source and non-point source impacts.” The airport relocation is going to use updated technology and it is reasonable to assume that any approved redevelopment at the existing airport site would also use updated technology.

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Comment 42 The FEIS ignores the significant changes in land use that increase impervious cover, which lead to flooding, erosion, habitat degradation, and water quality impairment. One study estimated that because of the increase in impervious cover in a watershed a flood event that should be expected once in 100 years could occur once every 5 years when the impervious cover reaches 25 percent, and could become an annual event when impervious cover reaches 65 percent.

Response The Commentor is incorrect that the FEIS ignores changes in land use and resulting environmental impacts. Water quality impacts are disclosed in Sections 5.8 and 5.26 of the FEIS as well as best management practices and mitigation strategies to minimize water quality impacts. The Commentor references conclusions contained in “Urbanization and Stream Quality Impairment” and “The Effect of Urbanization on Floods of Different Recurrence Interval”. Any individual study is dependent upon the context in which it is conducted and there is no way for the FAA to determine the applicability of this study to this EIS.

Comment 43 NRDC released a report called *Stormwater Strategies* (1999), which discussed common impacts of stormwater runoff. Some of the problems from stormwater runoff that we discussed in *Stormwater Strategies* follow below. Stormwater runoff can harm aquatic life in many ways due to changes in water chemistry and habitat loss. The metals and organics that stormwater carries are toxic to fish and other forms of aquatic life. Sediment in stormwater has a number of harmful effects on aquatic life. Sediment still suspended in water increases infection and disease among fish by irritating their gills. The increase in surface runoff associated with land development also dramatically increases runoff of the nutrients phosphorous and nitrogen, causing waters to suffer. Many nutrients, which cling to soil particles in natural settings, are dislodged by development and other activities making them free to run off with stormwater. The enrichment of waters with nutrients is termed eutrophication and is a concern for several reasons. Excess phosphorous causes elevated growth of algae and aquatic vegetation in lakes and streams. Excess nitrogen can have a similar effect in marine waters. The excessive plant growth interferes with the use of waterbodies for recreation, fisheries, industry, agriculture, and drinking water supply. It can also lead to foul odors, noxious gas, and poor aesthetic quality of the receiving water. In marine systems, nutrient enrichment can lead to red and brown tides that are a threat to marine organisms and human health. Perhaps most dramatically, eutrophication can cause fish kills. When the vegetation dies and decomposes, it consumes oxygen dissolved in the water. Fish and other aquatic organisms cannot tolerate dissolved oxygen concentration below certain thresholds. As a result, eutrophic waters are typically devoid of most life.

Response While the nature of impacts disclosed in this comment may apply to varying degrees to the project at issue here, the specific nature and intensity of impacts vary on a case by case basis. The factual circumstances of any individual project and watershed will be different. The comment contains generalizations while the specific impacts applicable to this project are disclosed in Sections 5.8 and 5.26 of the FEIS.

Comment 44 The FEIS includes very little discussion of the impacts to species on federal and state threatened and endangered lists. There is almost no information included about the impacts to state listed species. The FAA has an obligation to consider any impacts to both federal and state listed species in its evaluation of the environmental impacts of the Sponsor’s proposed project. The analysis of impacts at the West Bay site alternative and the connected redevelopment of the existing airport must consider any and all impacts to federal and state threatened and endangered species. As we discussed in the section on impacts of redevelopment, the FAA has failed to fully.

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Comment 44 evaluate the impacts that redeveloping the existing airport site would have on both
Con't federal and state threatened and endangered species, as required by section 7 of the
ESA. FAA has an obligation to consult with the Fish and Wildlife Service about
these impacts and to include FWS' evaluation in its alternatives analysis because
redevelopment of the existing site is a connected action to building a new airport at
the West Bay site.

Response The FEIS appropriately considers impacts to state- and federally-listed species.
Impacts to federally-listed species related to relocation are in Section 5.12.1.3 and
redevelopment of the existing site are in Section 5.12.1.4 of the FEIS. Impacts to
state-listed species related to relocation are in Section 5.12.2.3 and redevelopment of
the existing site are in Section 5.12.2.4 of the FEIS. See Appendix T, Volume II of
the FEIS for the Biological Assessment and Appendix F in this ROD for the
Biological Opinion for the proposal to relocate the airport.

Assuming the FAA's future decommissioning and release of the existing site is a
connected action, the FEIS has considered the indirect impacts of those future
decisions based on the best currently available information. Disclosure of such
indirect impacts consists primarily of redevelopment impacts.. See Chapter 5 of the
FEIS.

See the response to Comment 20 above regarding the FAA's coordination with
USFWS on redevelopment of the existing site and impacts to listed species.

Comment 45 Furthermore, the FEIS quickly dismisses the impacts of destroying habitat or forage
areas of some species. For example, the FEIS indicates that the American alligator
would simply relocate. Similarly, the FEIS surmises that the Florida black bear
would also relocate and that little blue herons, snowy egrets, great blue herons, tri-
colored herons, and white ibis would simply find someplace else to forage. However,
these assumptions are not supported by any studies or analysis and are arbitrary,
capricious, and contrary to law.

Response The Commentor is incorrect in its characterization of the information presented in
the FEIS. The FEIS discloses impacts to biotic communities including foraging
habitat for the species identified in the comment. See Section 5.12.3 and Appendix
R, Volume II of the FEIS. These species are highly mobile species and could be
expected to make use of foraging habitat in adjacent areas including the mitigation
parcels. See Section 5.12.2.3 of the FEIS. The FEIS also discloses the ability of the
mitigation parcels to provide enhanced and restored habitat for these species. See
the Mitigation Plan Synopsis Wildlife Management section, Appendix K of this
ROD. In addition, the FAA coordinated closely with state and federal resource
agencies with expertise throughout the process. With respect to the American
alligator, the USFWS concurred with the FAA's finding of no effect. See the
Biological Assessment in Appendix T, Volume II of the FEIS and the Biological
Opinion in Appendix F of this ROD. With respect to the state-listed species
identified in the comment, the FWC provided comments on the DEIS that stated that
there was insufficient information regarding the mitigation plan to assess the impacts
to habitats for a variety of species. See Letter S002, Volume III of the FEIS.
Subsequent to these comments, the FAA provided additional detail regarding the
mitigation plan in the FEIS. Having reviewed the FEIS, the FWC provided no
further comments. See Letter S004 in Appendix B of this ROD.

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Comment 46 The FEIS fails to discuss how fisheries and other living marine resources would be impacted by building a new airport at the West Bay site, as required by law. Although proper NEPA analysis requires an examination of the baseline conditions of an area that could be affected by a proposed project, the FEIS does not give any indication of what the species composition is in Crooked Creek, Burnt Mills Creek, and their tributaries. Indeed, there is no indication of that any agency sampled the area or reviewed existing literature to evaluate what aquatic species are found in those waters. Instead, the National Marine Fisheries Services merely listed species that occur in the West Bay estuarine area. There is no attempt to evaluate how any of these species or other species that are found in Crooked Creek and Burnt Mill Creek would be affected by increased sedimentation, eutrophication, or other pollutants degrading water quality.

Response See response to Comment 21 above regarding coordination with the NMFS on EFH. Detailed surveys were conducted in the tributaries that would likely be affected by the project. The FAA conducted a review of existing literature to identify listed species found throughout Bay County including Crooked Creek and Burnt Mill Creek. See Section 4.12.2.2., Volume I of the FEIS. The Commentor is correct that extensive sampling in areas outside the study area, including Burnt Mill Creek and Crooked Creek, was not conducted as it was beyond the scope of this EIS. The methodologies and scope of the sampling processes were discussed with the USFWS and FWC prior to conducting the surveys. See Appendix D, Volume II of the FEIS. Neither agency expressed concern that the scope of sampling or methodology was insufficient.

In response to comments on the DEIS, the FAA conducted an Essential Fish Habitat assessment including Crooked Creek and Burnt Mill Creek and concluded that there would be no more than minimal adverse impacts. This was coordinated with NMFS and NMFS responded that they had no EFH conservation recommendations to offer. See Appendix S, Volume II of the FEIS. Therefore, the FAA has adequately addressed EFH issues in Burnt Mill Creek and determined that further sampling was not required. The issues of increase sedimentation, eutrophication, or other pollutants degrading water quality were considered in the FEIS. See Section 5.8 and 5.26, Volume I of the FEIS.

Comment 47 The two alternatives identified for extending the existing runway to 6,800 feet met the FAA's safety and design criteria, would provide for aviation demand within the defined market area, and would be compatible with the current airspace configuration and utilization. FEIS, Vol. 1, 3.6.1 at 3-31. The FEIS indicated that its own Terminal Area Forecasts ("TAF") were used to assess the environmental impacts of the proposed project and alternatives. However, at the same time, the FEIS repeatedly mentions that a 6,800 foot runway would not be sufficient to accommodate charter activity that the Airport Sponsor has predicted a future demand for in its forecasts, despite the FAA's acknowledgement that the sponsor's forecasts diverge significantly from the FAA's forecasts. See FEIS, Vol. 1, 3.3.1.1b, at 3-15. The FAA's forecasts, which found that 6,800 foot runway is sufficient, must control the analysis, not the Sponsor's desire to have an 8,400 foot runway to support international charter flights, which is not supported by the FAA's forecasts.

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Response

The basic conclusion of the foregoing comment is that the Commentor believes that the Airport Sponsor's forecast and proposal "control[led] the analysis" of the FEIS. This is not the case. As stated in Section 2.5.1 of the FEIS "the FAA may consider the Airport Sponsor's preferences in evaluating alternatives that would meet the needs for the National Airspace System and the FAA's environmental responsibilities". Thus, consideration of the Airport Sponsor's proposal is both expected and appropriate. Indeed, the FAA did not limit its consideration of alternatives to those that would satisfy the Airport Sponsor's forecasts. As such, Section 2.5.2 indicates that both the 6,800 foot and 8,400 foot alternatives would be analyzed in the FEIS.

In addition, the FAA wishes to correct the context in which the Commentor presents certain statements from the FEIS. The Comment states that the FAA has acknowledged that the "sponsor's forecasts diverge significantly from the FAA's forecasts." However, the Commentor fails to also acknowledge that as a general matter the FAA views the TAF as a conservative predictive tool. See Section 1.7.2 of the FEIS. The FAA recognizes and expects that there are acceptable variations from the TAF. FAA policy allows for up to 15 percent variation in forecasts in the 10 year period. (See FAA Advisory Circular 150/5070-6B, Airport Master Plans.) The FAA's EIS also indicates that both the TAF and the Airport Sponsor's forecasts were used to represent the full range of environmental impacts that might be expected to occur. This situation also occurred with the recent EIS at Boston Logan airport. When there is difference between forecasts, the FAA has previously considered the use of a range of forecasts in the interest of disclosing impacts under different scenarios. Therefore, the Commentor's conclusion that it was the Airport Sponsor's forecast that controlled the EIS's analysis is incorrect. Use of both forecasts represented the full range of environmental considerations. See Section 1.7.2 of the FEIS.

NEPA requires that an EIS disclose potential impacts of a proposed action and its alternatives. The FEIS shows that the FAA has considered a full range of alternatives that responded to both the Airport Sponsor's forecast and the TAF. See Chapter 3 of the FEIS. When the Commentor states that the Airport Sponsor's desires have controlled the analysis, it appears that the Commentor's dispute is with FAA's substantive judgment about which alternative should be preferred, not with the range of alternatives considered in the FEIS.

Comment 48

The criteria used by the FAA to evaluate natural environmental impacts in its level II screening process are too narrow and demonstrate bias. The FAA should have used a broader set of factors to evaluate environmental impacts objectively. Instead, the FAA chose to ignore environmental impacts that are substantial at the West Bay site, including impacts to streams, wetlands, and wildlife, while focusing on impacts to Class II waters, seagrass habitat, and state sovereign submerged lands. The FAA's failure to explain why it selectively chose these criteria in its screening process and valued them above other environmental impacts is arbitrary, capricious, and contrary to law. More importantly, the FAA's biased screening process resulted in retaining the West Bay site alternatives for further analysis, when these alternatives could not have "passed" the level II screening process had the FAA used an objective set of environmental criteria in its level II screening. The FAA should have evaluated the alternatives based on impacts to water quality, aquatic resources, and wildlife habitat, which would encompass impacts to streams, Class II waters, wetlands, seagrasses, state sovereign submerged lands, and wildlife habitat.

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Response As previously explained by FAA, the Level 2 screening criteria are not intended for detailed environmental analysis but to provide a basis to determine which alternatives to the proposed project will be carried forward for detailed analysis. Extensive coordination was conducted with environmental permitting and resources agencies (USFWS, EPA, FDEP, USACE and NMFS) regarding the use of environmental screening criteria and their appropriateness. The FAA made the decision to use impacts to seagrass habitat and Class II waters in Goose Bayou as screening criteria based on correspondence from FDEP (2/19/04) stating that it would be “highly unlikely a request for a fill permit would meet regulatory requirements,” and based on the comments received during agency scoping for the FEIS, which included copies of or references to comments made during the Airport Sponsor’s previous Environmental Assessment for extension of Runway 14-32 into Goose Bayou. In addition to concerns regarding agency comments on impacts to seagrasses and Class II Waters in Goose Bayou, the existing environments at the West Bay Site and existing airport site are substantially different. This makes it difficult to identify universally applicable screening criteria for environmental matters that will not have the affect of eliminating one of the sites from consideration. Although the comment suggests that more appropriate screening criteria might have been streams, wetlands and wildlife, such impacts would by default eliminate a great many sites except the existing site. This would not satisfy the Purpose and Need identified in the FEIS and would not allow a meaningful range of alternatives to be considered in the FEIS.

Comment 49 Despite the FAA’s acknowledgement that there are “marked differences” between the impact at the Existing Site and West Bay Site alternatives on biotic communities, threatened and endangered species, wetlands, water quality, and floodplains, the FAA comes to the remarkable and unsubstantiated conclusion that the impacts of all alternatives are substantially similar and neither site is environmentally preferable. In this case, it is abundantly clear that the existing site alternatives will result in far fewer impacts to wetlands, streams, floodplains, water quality, and threatened and endangered species. In this respect the comparisons of alternatives fail to meet NEPA’s requirements. *See* 40 C.F.R. § 1502.14.

Response This comment consists of the Commentor’s opinion and characterization of which site is environmentally preferred. The FAA cannot provide a meaningful response to a statement of opinion. The FAA did conclude that neither site could be found environmentally preferable due to the differences in the variety and magnitude of associated impacts. However, the FAA did not find that the Existing Site and West Bay site have similar environmental impacts. In fact, the EIS states that “... the environmental impacts of all alternatives considered in detail are substantially similar except with respect to certain resource categories, where impacts show a marked difference when comparing existing site alternatives and West Bay site alternatives.” See Section 3.13.3.1. The impacts are dissimilar because each site is in a vastly different setting, with the existing site being located within a highly urbanized environment and the West Bay site being located in a rural environment impacted by silviculture. The FAA was unable to assign comparative values to these impacts or to determine that one type of impact is more important than another. (Social impacts and/or impacts to communities vs. impacts to natural resources). The last sentence of the comment represents a legal conclusion to which no response is required.

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Comment 50 The table below shows the discrepancy in these impacts and demonstrates that the FAA's explanation for this conclusion is plainly unsupported by the facts, and as a result is arbitrary, capricious, and contrary to law. This table focuses on the impacts of the alternatives, so the table omits categories that would not cause any impacts. It also omits categories where the impacts are similar. The table does not include the Existing Site 8400 foot alternative because the FAA found that 6800 foot runway was adequate to meet the federal purpose and need. Even though the FAA found a 6,800 foot runway to meet the federal purpose and need, the table includes the West Bay 8,400 foot alternative because it is the sponsor's proposal. ES = Existing Site; WB = West Bay Site.

Response The first sentence of the comment represents a legal conclusion to which no response is required. The table that is produced in the comment letter is a selective presentation of only a subset of environmental impacts and ignores impacts of a social or community nature. The table also modifies the analysis that was included in the FEIS and does not allow for fair comparison amongst alternatives. For this reason, FAA is unable to provide a meaningful response. See Table 3-5 in Section 3, Volume I of the FEIS.

Comment 51 The FAA's Environmental Consequences Summary Matrix indicates that all of the alternatives except for the no action alternative would have impacts to water quality, but the impact to water quality from increased stormwater runoff at the West Bay site differ greatly because of the massive increase in impervious surface. Yet, the FEIS fails to take this into account and instead treats the impacts to water quality at the two sites as similar based on the assumption that pollution from stormwater would be reduced because a new airport at the West Bay site would incorporate better stormwater management.

Response The Commentor is correct that the FEIS indicates that all alternatives except the no action alternative would have impacts to water quality. The Commentor is also correct that a new airport at the West Bay Site would be required to meet the State's stormwater management criteria. But the Commentor is incorrect with respect to a number of other statements in the comment. First, FAA has not indicated that the impacts to water quality at the two sites are similar. Nor has FAA indicated that the stormwater impacts at the West Bay Site would be reduced as compared to the existing site because the West Bay Site would incorporate better stormwater management. The FEIS compares the impacts of each alternative to the No Action alternative. See Section 5.8, Volume I of the FEIS. The FEIS also does discuss considerations pertinent to assessing impacts for each alternative, but these are not meant to provide comparisons regarding severity of impacts between alternatives. For example, the FEIS indicates that all portions of a relocated airport would incorporate measures to satisfy the State's stormwater management criteria. See Section 5.8.4.3. Contrary to the Commentor's statement otherwise, the FEIS acknowledges that retrofitting would occur at the existing airport site. However, as compared to the West Bay Site alternatives, such retrofitting to meet State stormwater management criteria at the Existing Airport site would only occur where new impervious area is proposed. See Section 5.8.4.1.

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Comment 52 The FAA's summary matrix of environmental consequences only considers the direct impacts of the first phase of building a new airport at the West Bay site, compared to three alternatives at the existing site and the no action alternative. Because of the significant secondary, indirect, and cumulative impacts associated with any of the West Bay site alternatives, it was arbitrary, capricious, and contrary to law for the FAA to restrict its alternatives analysis to direct impacts. *See* 40 C.F.R §§ 1502.14, 1502.16, 1508.7, 1508.8.

Response The Chapter 3 summary matrix does not purport to be a comparison of all direct, indirect and cumulative impacts. See Section 3.13.1, Volume 1 of the FEIS. Neither NEPA nor the CEQ regulations contain a requirement that an alternatives comparison summary matrix do so. Chapter 5 contains full disclosure of all relative direct, indirect and cumulative impact based on best available information.

Comment 53 Instead of recognizing that the existing site will result in less environmentally damage and therefore is environmentally preferable, the FAA argues that the West Bay site will bring benefits through planned mitigation, which the existing site does not have to offer. *See* FEIS, Vol. 1, 3.13.2, at 3-82 to 3-83.

Response The Commentor is correct that the FEIS identifies planned mitigation at the West Bay Site including mitigation not available at the Existing Airport Site. The remainder of this comment is statement of opinion, to which the FAA cannot provide a meaningful response. The FAA has identified the environmentally preferable alternative in this ROD.

Comment 54 Of course, the FEIS does not realize the impacts or benefits of mitigation at any of the existing site alternatives because none of the agencies or the Sponsor gave any consideration to mitigation that would be required with any of these alternatives, which further demonstrates that the FAA and Corps have predetermined that the Sponsor's proposal will be selected in advance.

Response The mitigation plan associated with the proposed action is more developed for the Airport Sponsor's proposal because the Sponsor is applying for environmental approvals and permits. However, FAA has considered potential mitigation opportunities for the Existing Site alternatives, where applicable. A few examples follow. The FEIS discusses that relocation assistance programs would address residential and business displacements as well as noise impacts. See Section 5.4.5, Volume I of the FEIS. With respect to wetlands, the FEIS provides potential on-site mitigation options that could be considered. See Section 5.13.3, Volume I of the FEIS. Water quality mitigation is discussed in Section 5.8.4 of the FEIS which includes retrofitting the stormwater management system to meet current state stormwater management criteria. The Airport Sponsor's proposal includes the relocation of the airport and thus they would not have prepared a mitigation plan for Existing Site Alternatives.

Comment 55 Moreover, mitigation that would be required by any of the existing site alternatives would not be anything close to the scale of mitigation required to compensate for destruction of streams and wetlands at the West Bay Site, where substantial destruction of wetlands and streams would occur.

Response It is correct that substantial mitigation for wetlands and streams would be required for the West Bay Site alternatives, and the Airport Sponsor has committed to provide this mitigation as discussed in the FEIS.

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- Comment 56** In the end, the FAA defers to the judgment of the Corps on the sufficiency of mitigation to offset environmental impacts caused by destruction of wetlands and burying streams. This is inappropriate, particularly considering the fact that the Corps did not even analyze the environmental impacts of any alternatives other than the no action alternative, which itself is arbitrary, capricious, and contrary to law.
- Response** The FAA did rely on the expertise of the USACE and other resource agencies on the adequacy of the mitigation regarding impacts to resources not within the FAA's area of expertise. The FAA did, however, independently evaluate the adequacy of the mitigation plan. The FAA acknowledges that the USACE's alternatives analysis process differs under the CWA from the FAA's alternatives analysis process under NEPA. This may be due in part to the difference in the agencies' missions, statutes, regulations and policies. The remainder of this comment consists of statements of opinion and conclusions of law which do not require a FAA response.
- Comment 57** Moreover, the FAA cannot rely on mitigation to justify a proposal with egregious environmental impacts relative to available alternatives, where the FAA is relying the mitigation plan is not even finished. The FAA's reliance on the Corps judgment under such circumstances is all the more arbitrary and capricious.
- Response** The FAA has not relied upon the mitigation plan to justify the proposal. The mitigation plan is designed to appropriately mitigate the impacts of the project. The mitigation plan is not required to be in final form in the FEIS. The FAA believes the mitigation plan is sufficiently developed for purposes of satisfying the FAA's NEPA obligations. The FAA has explained the aeronautical purpose and need for the proposal in Sections 2.5.1 and 2.5.2 of the FEIS. With regard to the last sentence, see response to Comment 56 above.
- Comment 58** The FAA's analysis of environmental impacts is incomplete and improperly weighs socioeconomic factors against substantial harm to wetlands, stream, and threatened and endangered species. The FAA fails to justify why the relocation of some single family homes, and businesses, which would be required by both the 6,800 foot alternatives analyzed at the existing site, is equivalent to the permanent and irretrievable destruction of aquatic resources and wildlife habitat. Here, the FAA's conclusion that relocation of families is equivalent to the permanent destruction of aquatic resources and wildlife habitat that cannot be replaced is unfounded.
- Response** To the contrary of the Commentor's statement that FAA concluded that the relocation of families is equivalent to the loss of aquatic resources and wildlife habitat, the FAA explicitly explained that such value comparisons could not be made. See Section 3.13.3.1. Volume 1 of the FEIS. Rather, the FAA identified the impacts associated with the various alternatives and indicated the differences in the nature of the impacts depending on the location of the alternative. Ultimately, in reaching a decision in this ROD, the FAA has taken into account a variety of different considerations, including but not limited to environmental factors, purpose and need for the project, FAA's statutory mission, and operational characteristics of the alternatives. This is in keeping with applicable CEQ regulations. See 40 C.F.R. § 1505.2.
- Comment 59** At the same time, the FEIS fails to consider the impact that decommissioning the existing airport would have on businesses that rely on the existing airport for their customer base.

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Response The FAA did not address in the FEIS the potential impacts from decommissioning to businesses that rely on the existing airport because the final redevelopment plans for the existing airport site have not been determined or approved. Therefore, such assessments would be premature at this time.

Comment 60 The FAA states that consideration of the Airport Sponsor's preference in evaluating alternatives is appropriate where there is no clearly superior alternative from an environmental standpoint that meets the stated purpose and need. The FAA also inappropriately uses added socioeconomic development and local mixed use development planning that revolves around building a new airport as additional environmental benefits of the West Bay site. The FAA does this is an attempt to balance the environmental harms and benefits of the existing site compared to the West Bay site, even though these purported benefits at the West Bay site are not environmental. Put simply, the FAA is bending over backwards to justify its selection of the airport sponsor's proposal as its preferred alternative based on criteria that should not be a focus or justification of its decision in an Environmental Impact Statement.

Response The Commentor is correct that the EIS states "where all alternatives meet the needs of the national airspace system and there is no clearly superior alternative from an environmental standpoint that meets the stated purpose and need" FAA may consider the Airport Sponsor's preference in evaluating alternatives. Contrary to statements in this comment, the FAA has not relied upon socioeconomic development made possible by the West Bay Site alternatives as an environmental consideration when rendering a decision on the preferred and selected alternative. Socioeconomic impacts are, however, relevant to the comparison of impacts in an EIS. See FAA Order 5050.4A, Paragraph 85.d. Furthermore, in reaching a decision in the ROD to approve the Airport Sponsor's proposed project, the FAA evaluated environmental considerations for the alternatives, and induced socioeconomic impacts is not evaluated under that part of the decision. See Section 9.0 of the ROD for the FAA's summary of environmental issues considered in rendering a decision on the project. The remainder of this comment is opinion of the Commentor and does not require a response.

Comment 61 The FAA attempts to further distinguish the benefits of the West Bay site alternatives by explaining that the West Bay site alternatives will avoid the noise effects associated with the Existing Site alternatives. This is not a proper comparison because only the 8,400 foot runway alternative at the existing site will result in noise impacts. *Compare* FEIS Vol. 1, Table 3-5, at 3-72 to 3.13.3.2, at 3-84. As we explained in our comments on the DEIS and reiterate in these comments, because the FAA found that a 6,800 foot runway is sufficient, it is unnecessary to review an 8400 foot alternative at the existing site.

Response It is correct that only the Existing Site 8,400 foot Alternative will result in exceedances of the noise compatibility threshold for residences. It is also correct that FAA identified that the West Bay Site would avoid noise impacts. However, the FAA also discloses the opportunity to develop an airport that is compatible with existing land use and provides the residential exclusion zone at the West Bay Site. Failure to consider the 8,400 foot alternative at either site would have improperly restricted the range of alternatives that must be considered under NEPA, as alternatives with a primary runway length of 8,400 feet are the only alternatives that fully respond to the Airport Sponsor's established purpose and need.

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Comment 62 The 404(b)(1) guidelines, which establish criteria that the Corps must follow to evaluate proposals to discharge dredged or fill material into waters of the United States, clearly mandate avoidance of impacts to wetlands and other aquatic sites, and where avoidance is not required minimization of impacts to these waters.

Response *The USACE provided this response.*
Avoidance and minimization of impacts under the Clean Water Act will be addressed in the statement of findings and record of decision to be prepared by the USACE.

Comment 63 The mandate to avoid impacts is so strong, that it defines practicable alternatives to include locating a project in an area not currently owned by the applicant if that area “could be reasonably obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity.” 40 C.F.R. § 230.10(a)(2). Here, the Sponsor does not even own the land at the proposed West Bay site (the St. Joe Company owns the land), so there is even less reason to prefer the West Bay site.

Response *The USACE provided this response.*
Avoidance of impacts under the Clean Water Act will be addressed in the statement of findings and record of decision to be prepared by the USACE.

Comment 64 The mandate to avoid impacts is even stronger when an activity does not require access or proximity to a special aquatic site to fulfill the activity’s basic purpose (i.e., when the activity is non-water dependent).” 40 C.F.R. § 230.10 (a)(3). Here, there is no question that building an airport is a non-water dependent activity, the 404(b)(1) guidelines create a legal presumption that practicable alternatives to the proposed activity are available that do not involve a special aquatic site. Special aquatic sites include wetlands, mud flats, and rifle and pool complexes that are deemed to be so ecologically valuable that their degradation or destruction may represent an irreversible loss of valuable aquatic resources. 40 C.F.R. § 230.1(d). The wetlands and streams at the West Bay site qualify as special aquatic sites. The Corps must deny a permit for a non-water dependent activity that impacts a special aquatic site unless the applicant clearly demonstrates that a practicable alternative does not exist. This places an extremely high burden on the Sponsor to show that there are not practicable alternatives to the proposal to build a new airport at the West Bay site.

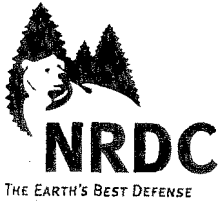
Response *The USACE provided this response.*
Avoidance of impacts under the Clean Water Act will be addressed in the statement of findings and record of decision to be prepared by the USACE.

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Comment 65 Here, the Corps alternatives analysis fails to fulfill the Corps' obligations under NEPA and the CWA and is otherwise arbitrary, capricious and contrary to law. The Corps' alternatives analysis is plagued by an improperly narrow definition of purpose and need, which resulted in rejecting reasonable and feasible existing site alternatives. The Corps rejected all other alternatives outright without doing any actual evaluation of the environmental impacts of the alternatives. This is particularly troubling considering the fact that the Corps' chief responsibility in this process is to evaluate the impacts of the proposed project and alternatives on waters of the United States, including wetlands and streams.

Clearly, building a new airport with a 8,400 foot runway at the West Bay site would have significant and irreversible impacts on wetlands and streams, and inextricably connected action of redevelopment of the existing airport could have additional devastating impacts on seagrasses, oyster beds, and other aquatic resources. The Corps failed to carry out its obligations under NEPA and the CWA to evaluate alternatives that would avoid and minimize these impacts to the aquatic environment. Improperly narrowing the purpose and need to specifically require an 8,400 foot runway with a 500 foot primary crosswind does not absolve the Corps of its legal obligations.

Response *The USACE provided this response.*
See response to comment 9 regarding the Corps determination of project purpose and need. See FEIS Vol. I, 3.12.8 regarding the USACE's evaluation of alternatives, in which the USACE found that the West Bay site and No-Action alternatives would be carried forward for detailed analyses. These two alternatives are included in the detailed environmental analyses conducted by the FAA in the FEIS Vol. I, Chapters 4 and 5 for all of the alternatives, which passed the FAA's Level 2 screening. The USACE, as a cooperating agency for this FEIS, contributed to and concurs with the environmental analyses in this FEIS.



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NATURAL RESOURCES DEFENSE COUNCIL

**Comments of the Natural Resources Defense Council on the Final
Environmental Impact Statement for the Proposed Relocation of the Panama
City-Bay County International Airport**

Submitted by Melanie Shepherdson
Staff Attorney, Water and Oceans Program
July 3, 2006

These comments on the Final Environmental Impact Statement (“FEIS”) for the Proposed Relocation of the Panama City-Bay County International Airport are submitted on behalf of the Natural Resources Defense Council, Inc. (“NRDC”), a national environmental organization with more than 650,000 members nationwide, including more than 26,000 members residing in Florida. NRDC is dedicated to the preservation, protection, and defense of the environment and natural resources, and we actively support effective implementation and enforcement of the National Environmental Policy Act, Clean Water Act, and the Endangered Species Act on behalf of our members.

NRDC is very concerned by the tremendous environmental destruction that would result from building a new airport, as proposed by the Panama City-Bay County Airport and Industrial District (“Airport Sponsor” or “Sponsor”), at the West Bay site, as well as the substantial adverse environmental impacts that would incur from the connected actions of redeveloping the existing airport site and the development of the 70,000 acres surrounding the West Bay site, which would be spurred by building the proposed airport. Building a new airport would ultimately destroy over 9,000 acres of wetlands, bury close to 22,000 linear feet of streams, and destroy valuable habitat for threatened, endangered, and species of concern such as the American alligator, eastern indigo snake, gopher tortoise, Florida black bear, flatwoods salamander, and wading birds. Redevelopment of the existing airport, as contemplated, could destroy seagrass beds that serve as important habitat for threatened and endangered seaturtles, and harm other species. Indeed, the impacts of redevelopment of the existing airport could be quite severe to the natural environment, but because the Federal Aviation Administration (“FAA”) has not met its legal obligations to analyze these impacts and consult with the U.S. Fish and Wildlife Service (“FWS”), we do not have a solid sense of what the full impacts could be.

NRDC provides these comments to highlight the deficiencies in the FAA and U.S. Army Corps of Engineers’ (“Corps”) NEPA analysis in the FEIS in addition to the concerns that we raised in our comments on the draft EIS. Our main concerns are: 1) the FAA adopted the Sponsor’s purpose and need; 2) the Corps deferred to the Sponsor’s purpose and need, rejecting the public’s need; 3) the FEIS fails to consider the proper scope of environmental impacts, including the impacts of redeveloping the existing airport site and developing the land around the proposed airport; 4) the alternatives analysis does not recognize that the existing site is environmentally preferable; 5) a vague plan for ultimate build out after 50 years is used to justify impacts from a limited first phase; and 6) the Corps’ alternatives analysis fails to follow the Clean Water Act’s 404(b)(1) guidelines.

NRDC incorporates, by reference, the comments that we made on the DEIS and the U.S. Army Corps of Engineers’ (“Corps”) draft section 404 Clean Water Act permit.¹ The detailed comments provided below address new information and analyses provided in the FEIS.

¹ We have enclosed a copy of our comments on the draft 404 permit.

1. **Purpose and Need**

a. **There is No Demonstrated Need for a New Airport.**

At the outset, we emphasize that the existing Panama City-Bay County Airport is adequate to serve the region for the foreseeable future and thus there simply is no demonstrated need to expand the existing airport, much less approve building a new airport with an 8,400 foot runway at the West Bay site. 4

A new airport simply is not needed to obtain more air service. The "Feasibility Study" completed in 2000 forecasted 217,000 passengers enplaned in 2005 (up from 168,000 in 1999), with further growth to 323,000 enplanements by 2020. However, the actual enplanements for 2005 was only 190,000, and future growth is problematic because both airlines serving the existing airport are in bankruptcy. Building a bigger runway will not bring more airline traffic (and larger airplanes) because economics drive these decisions for the airline industry. With many flights only partially filled currently, sending a larger sized aircraft will not increase passenger traffic. In fact, since 9/11, flights from the existing airport to four major cities have been dropped altogether and the twenty-five daily flights have fallen to approximately twelve flights a day. 5

Furthermore, the existing 6,300 foot runway is safe and adequate for foreseeable future traffic over the 20-year future planning period utilized by the FAA in making future airport construction decisions. It would be a mistake to plan outside of the FAA's planning period because FAA has limited resources that are applied to its highest priorities and future technology may not even require long runways. 6

While we fundamentally disagree with the FAA and Corps' premise that the existing airport is not adequate to meet air travel needs, we provide our comments below on the Final Environmental Impact Statement for the proposed relocation of the Panama City-Bay County International Airport. 7

b. **FAA's Purpose and Need**

The FAA defined its purpose and need to: 1) ensure that the airport meets FAA design standards and is operated in a safe and efficient manner; 2) address aviation demand for the Panama City-Bay County air service area; 3) address the effects of PFN airport expansion related to noise and land use compatibility; and 4) address the need identified by the FAA for adequate runway length to accommodate existing and projected aviation demand. FEIS, Vol. I, 2.5.2, at 2-23. The FAA states in the FEIS that according to its "independent review of runway length requirements, an initial runway length of 6,800 feet would accommodate the regional jet and narrow-body jet aircraft operating in those markets that would be expected to receive non-stop service from Panama City during the FEIS planning period through 2018." FEIS, Vol. 1, 2.5.2. at 2-23.

Despite the FAA's clear statement that it independently evaluated the purpose and need for the airport distinct from the Sponsor's proffered purpose and need, the fact that the FAA evaluated alternatives based on their ability to expand and provide flexibility demonstrates that the FAA has adopted the Sponsor's stated purpose and need in lieu of the FAA's purpose and need. The FAA cannot fulfill its NEPA obligations by simply looking to what is preferred by the Sponsor. *See Van Abbema v. Fornell*, 807 F.2d 633 (7th Cir. 1986) ("the evaluation of 'alternatives' mandated by NEPA is to be an evaluation of alternative means to accomplish the general goal of an action; it is not an evaluation of the alternative means by which a particular applicant can reach his goals.").

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c. Corps' Purpose and Need

NEPA requires the Corps to evaluate alternatives that are reasonable and feasible to accomplish the underlying purpose and need of not only the applicant, but also the public. *See* 33 C.F.R. Part 325, Part B. While the Corps indicated that it will "exercise independent judgment in defining the purpose and need both from the applicant's and the public's perspective," FEIS, Vol. 1, 3.11.1, at 3-61, the Corps impermissibly ignored the purpose and need of the public in favor of the obviously narrow and biased purpose and need put forward by the project sponsor to help ensure that the Corps and the FAA would approve the Sponsor's proposed project. Indeed, the Corps' stated that it "accepts that the purpose and need to accomplish the goals of the Airport Sponsor's Proposed Project include the initial development of an 8,400-foot primary runway with a 5,000-foot crosswind runway." FEIS Vol. 1, 3.12.7, at 3-68.

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However, the non-binding referendum held in Bay County in 2004 demonstrates that the public rejected the need for a new airport at the West Bay site. The nonbinding referendum posed the following question: "Do you approve of a new airport at West Bay, *at no cost to the taxpayers?*" (emphasis added). The "No's" prevailed by 54%-46% despite this wording, which intended to skew the referendum vote in support of a new airport. The FEIS fails to even mention the nonbinding referendum.

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The 8,400 foot alternative at the existing site would have greater impacts than the 6,800 foot alternatives at the existing site with respect to residential relocations and noise. Yet, despite these distinct differences, the Corps grouped all of the existing site alternatives into a single existing site alternative for purposes of its evaluation. In the process, the Corps failed to give adequate consideration to reasonable and feasible alternatives at the existing site. Furthermore, the Corps plainly stated that the only reason why it even considered the no action alternative was because NEPA and the CEQ regulations require its consideration. *See* FEIS, Vol. 1, 3.12, at 3-62, 3-69. Clearly, the Corps' statement of purpose and need and its application in the Corps' analysis of alternatives is so narrow as to rule out *any* alternatives to the sponsor's proposed project. As a result, the Corps evaluation of alternatives fails to meet the requirements of NEPA, the Clean Water Act, and is otherwise arbitrary and capricious.

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2. **Environmental Impacts**

As we emphasized in our separate coalition letter to Virginia Lane and Gordon Hambrick, dated June 26, 2006, the FEIS does not cover the appropriate scope of environmental impacts that will result from the proposal to relocate the Panama City Airport to the West Bay site. The proposal to build a new airport at the West Bay site involves both redeveloping the existing airport site and spurring further development surrounding the new airport. However, the effects of these actions have not been analyzed and taken into consideration in the alternatives analysis as required by NEPA. 13

a. **Scope of Review**

The Council on Environmental Quality's ("CEQ") regulations implementing NEPA require an agency to consider "connected actions" and "cumulative actions" within a single EA or EIS. 40 C.F.R. § 1508.25. The development around the West Bay site and the redevelopment of the existing airport site are geographically related and connected to the proposal to build a new airport at the West Bay site.

According to CEQ's NEPA regulations, a Supplemental Environmental Impact Statement ("SEIS") must be prepared when "(i) [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(1).

Neither redeveloping the existing airport, nor developing the land around a new airport at the West Bay site has independent utility. Rather, both redevelopment of the existing airport and development of the 70,000 acres surrounding the proposed West Bay airport site are connected to building a new airport at the West Bay site. To meet the agencies' obligations under the National Environmental Policy Act ("NEPA") to take a "hard look" and fully evaluate the environmental effects of building a new airport at a greenfield site in West Bay, the FAA and Corps must fully evaluate the cumulative environmental impacts of building a new airport in a greenfield and redeveloping the existing airport site. See 40 C.F.R. § 1508.8. The circumstances here further demonstrate that the FAA must prepare a SEIS to fully evaluate the environmental impacts of redevelopment of the existing airport site. 14 15

In the event that the FAA decides to forego additional analysis of the impacts of redevelopment of the existing airport site and development of the 70,000 acres surrounding the proposed West Bay airport site and issues a ROD that finds that neither site is environmentally superior, its ROD will be arbitrary and capricious and otherwise contrary to law. Below, we explain why the FAA and Corps must take further action before issuing their Record of Decision to meet their legal obligations under NEPA. We urge the FAA and the Corps to take further action to comply with their obligations under NEPA before issuing their Record of Decision. 16 17

b. Failure to Assess Impacts of Redeveloping the Existing Airport Site.

There are significant new circumstances and information regarding the environmental impacts associated with redeveloping the existing Panama City-Bay County Airport site, which are crucial to providing a complete and objective analysis of environmental impacts of the West Bay site alternatives. In October, 2005, while the FEIS was being prepared, the Airport Sponsor released a *Redevelopment Report*, which includes three comprehensive redevelopment scenarios. At the same time, the Airport Sponsor formally solicited requests for proposals to purchase the existing airport site on terms that allow the Sponsor to use the proceeds of the sale as collateral for debt to finance construction of a new airport at the West Bay site with a 8,400 foot runway. This information was neither disclosed, nor analyzed in the draft EIS.

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Redevelopment of the existing airport is not severable from the construction of a new airport at the West Bay site because the Airport Authority is relying, in part, on the sale of the existing airport site in order to finance the construction of a new airport. In addition, the FAA plainly states that if any of the West Bay site alternatives are selected, the existing airport site would be redeveloped. Thus, redevelopment is not speculative. Furthermore, the FEIS emphasizes the opportunity costs associated with not building a new airport at the West Bay site, including the lost opportunity to redevelop the existing airport, even treating this as an adverse impact when considering the adverse impacts of the existing site alternatives. *See, e.g.*, FEIS, Vol. I, 5.5.4 at 5-48. EPA's comments on the draft EIS explicitly recognize that "[t]he fate of the existing site is a *connected action* that is important to the overall project." FEIS Vol. III, EPA comments on DEIS at 4 (emphasis added). Nevertheless, the FAA has failed to fully assess the impacts of redeveloping the existing airport, which is a connected action to the West Bay site proposal.

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While the FAA concedes in the FEIS that the sale and redevelopment of the existing airport site is relevant to its environmental analysis, the FAA improperly ignores the substantial environmental impacts from redevelopment of the existing site, even though such redevelopment would obviously occur within the 2008-2018 time frame of its analysis. The FEIS merely "discloses" a number of the substantial environmental impacts to aquatic resources and wildlife that would result from plans to redevelop the existing airport site in the FEIS, but the FAA has not fully evaluated the impacts to aquatic resources, has not consulted with the U.S. Fish and Wildlife Service about impacts to threatened and endangered species, and the FEIS fails to include these impacts as impacts that would result from any of the West Bay site alternatives in its comparison of alternatives.

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The FAA makes it clear that the FEIS assesses the potential environmental impacts from the sponsor's proposed project, which does not include redevelopment of the existing airport site. This is inadequate, results in an arbitrary and capricious finding that the Existing Site and West Bay site have similar environmental impacts, and fails to meet the FAA's and the Corps' obligations under NEPA and the Endangered Species Act. The FAA must evaluate the impacts of redevelopment *before* the FAA makes a final decision as to which alternative is the best, not at some time in the future.

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The FAA's failure to fully evaluate and integrate the substantial environmental impacts related to redevelopment of the existing site is even more deficient considering the fact that the Airport Sponsor abandoned its airport expansion project in 1998 because the proposed project would have resulted in significant adverse environmental impacts to Goose Bayou. *See* FEIS Vol. 1, 2.2.1, at 2-2. Information disclosed in the FEIS indicates that redevelopment of the existing site would similarly result in significant adverse environmental impacts to Goose Bayou. However, instead of acknowledging the problems with redevelopment of the existing site, the FAA improperly isolates the impacts of redevelopment from its evaluation of the West Bay site alternatives and the Sponsor's proposal.

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The composite redevelopment scenario includes a 250-slip marina, hotel, golf course, condominiums, and retail space. The cursory information disclosed by the FAA indicates that stormwater runoff would result in both short and long-term water quality degradation, impact Goose and Robinson Bayous, and affect the composition of species in the estuary. Dredging for a marina would destroy seagrass beds that provide important habitat for threatened and endangered sea turtles, as well as harm manatees, gulf sturgeon, and oyster beds. Gopher tortoise habitat would also be lost to redevelopment.

Section 7 of the Endangered Species Act requires all federal agencies to consult with the U.S. Fish and Wildlife Service to ensure that their actions do not jeopardize threatened or endangered species or destroy or adversely modify their habitat. The FAA must consult with the FWS regarding impacts to threatened and endangered species that would occur as a result of redevelopment of the existing airport site.

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Clearly, the new information provided in the FEIS about redevelopment of the existing airport site reveals the importance of further evaluation of the environmental impacts of redevelopment followed by consideration of the complete environmental impacts of the West Bay site alternatives, including a full analysis of the redevelopment impacts. The FAA must issue a SEIS in order to meet its obligations under NEPA to take a "hard look" at the environmental impacts of the proposal to build a new airport at the West Bay site and consult with the FWS, as required by the ESA, regarding impacts to threatened and endangered species.

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c. Failure to Consider Cumulative Impacts of Development of 70,000 Acres Surrounding the Proposed Airport.

The FEIS concedes that the "relocated airport would serve as a catalyst for the economic development of the West Bay Area. FEIS, Vol. I, 5.5.3, at 5-40. Nonetheless, the FAA fails to evaluate the cumulative impacts of developing the 70,000 acres surrounding the West Bay site in the West Bay Sector Plan, the Airport Detailed Specific Area Plan ("DSAP), and the West Bay DSAP. Currently, this land is a remote and undeveloped area dominated by wetlands, which serves as important wildlife habitat for Florida black bears, gopher tortoises, and other imperiled wildlife. The West Bay DSAP, which is adjacent to the Airport DSAP area, outlines future land uses, which are contingent upon building a new airport at the West Bay site. The FAA has failed to evaluate the impact of these connected actions in its analysis of alternatives. The West Bay DSAP outlines which sections of the area would be used for different types of uses, including

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residential, offices, hotels, marinas, and retail, encompassing a total of 16,556 acres. The FEIS discloses the three different phases of development under the West Bay DSAP, which include specifics related to square footage of warehouse space, industrial parks, office space, retail space, number of hotel rooms, boat slips and residential dwelling units. *See* FEIS, Vol. I, 5.5.3, Table 5-20, at 5-41. With this type of information available, the FAA's failure to use it to evaluate secondary and cumulative impacts was arbitrary, capricious, and contrary to law. The FAA's failure to examine the environmental impacts of development surrounding a new airport built at the West Bay site is all the more arbitrary and capricious considering the fact that the FEIS emphasizes the opportunity costs associated with not building a new airport at the West Bay site, including developing the land surrounding the West Bay airport site, and treats the lost opportunity as an impact when considering the adverse impacts of the existing site alternatives. *See, e.g.*, FEIS, Vol. I, 5.5.4, at 5-48.

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Building a new airport at the West Bay site would create demand for developing the land around the new airport, where demand for development otherwise would not exist. Other agencies and proponents of building a new airport at the West Bay site have recognized that the airport and development that it will spur are connected actions. For example, the comments of the Florida Department of Environmental Protection emphasized the connection as a benefit, commenting that "[w]ithout the airport relocation, it is highly unlikely that the Bay County Sector Plan and Detailed Specific Area Plan would be implemented..." FEIS Vol. III, DEP comments on DEIS at 4. The Fish and Wildlife Service even commented that a "complete watershed build-out analysis should be conducted for the West Bay alternatives." FEIS Vol. III, FWS comments on DEIS at 3.

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Moreover, the Corps indicated in its response to NRDC's comments on the DEIS that it is the "USACE's intention to repeat the SAJ-86 process in the Sector Plan area." FEIS Vol. V., PO21, Corps' Response to NRDC Comments. Other sections of the FEIS attempt to assert that the cumulative impacts that will be spurred by building a new airport at the West Bay site will be reduced by assuming that wetlands destruction would be of the same magnitude as that regulated by the regional general permit SAJ-86 and the ecosystem management agreement between St. Joe and the Florida Department of Environmental Protection. *See, e.g.*, FEIS, Vol. I, 5.26.3.3.1 at 5-212. Here, the FAA has no basis to make such an assumption, and its reliance on the availability of a permit like SAJ-86 to justify its analysis of cumulative impacts is all the more arbitrary and capricious because SAJ-86 has been preliminarily enjoined by Judge Timothy Corrigan of the U.S. District Court for the Middle District of Florida. *See Sierra Club v. U.S. Army Corps of Engineers* (November 10, 2005)

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d. Streams and Hydrology

Building a new airport at the West Bay site would result in destroying 7,279 linear feet of streams. In general, the FEIS fails to evaluate how paving over wetlands and burying streams for the airport footprint at the West Bay site would affect hydrology. Instead, the FEIS merely states that drainage patterns in Burnt Mill and Crooked Creek will be maintained, but that drainage patterns in Bear Bay, Kelly Branch and Morrell Branch will be altered. The FEIS acknowledges that some flow going into Kelly Branch will be diverted and that this could have the effect of

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reducing flow in Kelly Branch and impacting aquatic functions. However, the FEIS fails to examine how aquatic functions could be impacted.

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e. Wetlands

596 acres of wetlands would be destroyed during the first phase alone of the proposal to build a new airport at the West Bay site. All of the 1,936 acres of wetlands could be destroyed based on the ultimate build-out scenario, which is not considered in the analysis of environmental impacts or evaluation of alternatives. At least an additional 7,323 acres of wetlands could be destroyed to develop the land surround the airport, as follows. The FEIS mentions that 1,480 acres of wetlands could be destroyed by development in the West Bay DSAP, 5,118 acres of wetlands could be destroyed in the West Bay Sector Plan area, and 725 acres of wetlands could be destroyed outside the sector planning boundaries. Together, the full impact of building a new airport would be at least 9,259 acres according to these conservative estimates. Even though the impacts from this development and destruction of wetlands are reasonably foreseeable, the FEIS fails to account for the destruction of wetlands beyond the initial 596 acres, which is arbitrary, capricious, and contrary to law. Moreover, the FEIS fails to evaluate what functions these wetlands serve, which is crucial to an accurate assessment of the ecological harm that will result from destroying the initial 596 acres of wetlands for phase I, 1,936 acres at ultimate build out, and 7,323 acres surrounding the airport site. Instead, the FEIS focuses on how many acres of which types of wetlands would be destroyed during phase I, which gives no indication of whether flood protection, water quality protection, wildlife habitat, groundwater recharge, or other wetlands functions would be lost. The FAA and Corps' failure to evaluate the loss of functions in this context is arbitrary, capricious, and contrary to law. This significant deficiency is also flawed in that it demonstrates that any mitigation that is currently being relied upon cannot possibly be designed to compensate for lost wetlands functions, because the FAA and Corps do not even know what wetlands functions would be lost.

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f. Floodplains

Building the Sponsor's proposed airport at the West Bay site would pave over 207 acres in the 100-year flood plain, and redevelopment of the existing site would result in an additional 139 acres of flood plain impacts. Creating impervious surface in the floodplain will result in loss of flood storage area in the specific areas where the flood plain would be filled to build a new airport. The FEIS indicates that there is not enough information to calculate loss of flood storage volumes, but suggests that because there is no development downstream, this should not be a concern. This is disingenuous considering the fact that the airport will spur development downstream. The FEIS also states that there would be a "noticeable impact on natural and beneficial floodplain values" without mitigation. FEIS, Vol. I, 5.14.1.7, at 5-156. Yet, the FEIS fails to explain how off site mitigation could possibly compensate for loss of flood storage volume at the West Bay site, and it cannot. The FEIS' failure to evaluate the impacts of loss of flood storage volume is all the more arbitrary and capricious considering that the area's susceptibility to hurricanes and the rising frequency and recent damage cause by hurricanes in the Gulf Coast region.

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g. Mitigation

While the FEIS highlights perceived environmental benefits of planned mitigation to compensate for the devastating environmental destruction at the West Bay site, the FEIS only includes excerpts or summaries of the Sponsor's mitigation commitments and does not include a mitigation plan because the Sponsor is still working on the mitigation plan; nor does the FEIS provide any data, analysis, or other information to demonstrate that the mitigation plan has a likelihood of success. Basically, the FEIS takes a hands-off approach to reviewing the adequacy of mitigation in favor of trusting the sponsor and deferring to the Corps and state agencies, which does not meet the FAA's obligations under NEPA. The FAA has a responsibility as the lead agency to fully evaluate the environmental impacts of the Sponsor's proposal to build a new airport at the West Bay site and to compare the impacts to those of reasonable and feasible alternatives. The FAA cannot rely on mitigation to justify a proposal with egregious environmental impacts relative to available alternatives, particularly in this case, where the FAA is relying on a mitigation plan that is not even finished.

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The FEIS indicates that the wetlands rapid assessment procedure ("WRAP") was used to evaluate the quality of the wetlands that will be impacted and those that will be restored or enhanced as part of a future mitigation plan. However, this process does not provide an evaluation of what actual functions are being served and would be lost by wetlands that would be destroyed by building a new airport. WRAP was also used to score the functional quality of the wetlands that would be restored as mitigation for lost wetlands. WRAP was designed to evaluate wetland mitigation sites that *have been* created, enhanced, preserved, or restored. As such, WRAP analysis should be conducted on an already created, enhanced, preserved, or restored site. WRAP was not designed to be a predictive tool. However, the FEIS uses it as a predictive tool by including WRAP scores and functional lift amounts for wetlands that have not even been restored.

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Building a new airport at the West Bay site would also bury 7,279 linear feet of streams for the first phase alone and nearly 22,000 linear feet of streams at full build out. Mitigation will not compensate for the destruction of these streams. Streams are complex ecosystems, depending on a variety of factors to function properly. Groundwater and surface flows, sediment routing, soil characteristics, vegetation, and its position on the landscape are all factors leading to a living, self-sustaining stream system. The FEIS fails to include any information to justify whether and how the functions of these streams, when lost, can be compensated for through mitigation

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The wetlands and streams that would be restored as mitigation for wetlands and streams that will have already been lost may not function properly for decades, and may never function properly if restoration fails. It is a critical flaw that the incomplete description of mitigation requirements in the FEIS allows natural wetland functions to be lost long before mitigation wetland functions have been restored or even exist. Furthermore, the FEIS does not discuss what the performance standards will be, if any. Performance standards should provide measurable criteria to determine if the project has accomplished its goals and objectives. Ecological performance standards should serve as "measurable benchmarks" to determine the degree to which ecological characteristics associated with specific wetland functions are achieved.

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The FEIS does not adequately explain what the mitigation monitoring requirements are. The sponsor must be required to submit timely, accurate, and complete monitoring reports to ensure compliance with mitigation requirements and adequate replacement of wetland acreage and function. They also must be held accountable for failure to do so through specific monitoring and reporting requirements as enforceable permit conditions.

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Perhaps the most disturbing aspect of the mitigation plan is that it covers a fifty year period and purports to compensate for the impacts of full build out, while the FEIS otherwise limits the scope of analysis of environmental harm caused by building a new airport at the West Bay site to the first phase through 2018, or ten years. By purporting to consider the environmental benefits of a larger mitigation plan, which extends forty years past the time considered for evaluating detriments to the environment, the FEIS skews the benefits. The FEIS must consider the full environmental harms, not just the full environmental benefits, and thus must consider the impacts of burying 21,957 linear feet of streams, destroying all 1,936 acres of wetlands in the airport footprint, and destroying over 9,000 acres of wetlands in the area surrounding the airport for future development consistent with local zoning plans.

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The FEIS also fails to include the proposed easement and to explain which entity will be responsible for managing the land and performing the restoration and enhancement activities. We understand that St. Joe will continue to hold title to the land, but the state will own the conservation easement, and as a result the state may be responsible for managing the land.

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h. Water Quality

The FEIS acknowledges that building a new airport at the West Bay site may result in water quality impacts from stormwater runoff, particularly increases in sedimentation and turbidity, as well as stream erosion, changes in salinity, eutrophication and associated algal blooms and species composition. Building a new airport at the West Bay site would mean going from 0% impervious surface to about 75% impervious surface, resulting in substantial water quality degradation from stormwater runoff. The FEIS indicates that the stormwater management system has been designed to accommodate extra volume, but does not give any indication of how that would impact water quality. Indeed, the EPA's comments on the DEIS emphasize:

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“the cited stormwater benefits (Section 5.8.3.3.) that could be achieved from decommissioning the existing airport and building the new relocated airport seem somewhat generous in the overall stormwater accounting between the two sites... While updated technology would have its benefits, it should not be overlooked that these benefits do not eliminate the pollutant load from airport activities, merely displace them from the old airport with more efficient ones at the new airport. Moreover, the relocated airport would have greater impervious surfaces than the old site... and the old site would continue to have latent pollutant runoff from affected onsite soils...” FEIS, Vol. III., F003.

The FEIS ignores the significant changes in land use that increase impervious cover, which lead to flooding, erosion, habitat degradation, and water quality impairment. One study estimated

that because of the increase in impervious cover in a watershed a flood event that should be expected once in 100 years could occur once every 5 years when the impervious cover reaches 25 percent, and could become an annual event when impervious cover reaches 65 percent.²

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NRDC released a report called *Stormwater Strategies* (1999), which discussed common impacts of stormwater runoff. Some of the problems from stormwater runoff that we discussed in *Stormwater Strategies* follow below. Stormwater runoff can harm aquatic life in many ways due to changes in water chemistry and habitat loss. The metals and organics that stormwater carries are toxic to fish and other forms of aquatic life. Sediment in stormwater has a number of harmful effects on aquatic life. Sediment still suspended in water increases infection and disease among fish by irritating their gills. The increase in surface runoff associated with land development also dramatically increases runoff of the nutrients phosphorus and nitrogen, causing receiving waters to suffer. Many nutrients, which cling to soil particles in natural settings, are dislodged by development and other activities making them free to run off with stormwater. The enrichment of waters with nutrients is termed eutrophication and is a concern for several reasons. Excess phosphorus causes elevated growth of algae and aquatic vegetation in lakes and streams. Excess nitrogen can have a similar effect in marine waters. The excessive plant growth interferes with the use of waterbodies for recreation, fisheries, industry, agriculture, and drinking water supply. It can also lead to foul odors, noxious gas, and poor aesthetic quality of the receiving water. In marine systems, nutrient enrichment can lead to red and brown tides that are a threat to marine organisms and human health. Perhaps most dramatically, eutrophication can cause fish kills. When the vegetation dies and decomposes, it consumes oxygen dissolved in the water. Fish and other aquatic organisms cannot tolerate dissolved oxygen concentration below certain thresholds. As a result, eutrophic waters are typically devoid of most life.

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i. Threatened and Endangered Species

The FEIS includes very little discussion of the impacts to species on federal and state threatened and endangered lists. There is almost no information included about the impacts to state listed species. The FAA has an obligation to consider any impacts to both federal and state listed species in its evaluation of the environmental impacts of the Sponsor's proposed project. The analysis of impacts at the West Bay site alternative and the connected redevelopment of the existing airport must consider any and all impacts to federal and state threatened and endangered species. As we discussed in the section on impacts of redevelopment, the FAA has failed to fully evaluate the impacts that redeveloping the existing airport site would have on both federal and state threatened and endangered species, as required by section 7 of the ESA. FAA has an obligation to consult with the Fish and Wildlife Service about these impacts and to include FWS' evaluation in its alternatives analysis because redevelopment of the existing site is a connected action to building a new airport at the West Bay site.

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² Klein, R. D., "Urbanization and Stream Quality Impairment." *Water Resources Bulletin*, vol. 15, no. 4, August 1979, p.953; Hollis, G. E., "The Effect of Urbanization on Floods of Different Recurrence Interval," *Water Resources Research*, vol. 11, no. 3, June 1975, p. 434. This study indicates that covering 30 percent of a watershed with impervious surface can double the size of the 100-year flood event and can enlarge more frequent flood events to an even greater extent.

Furthermore, the FEIS quickly dismisses the impacts of destroying habitat or forage areas of some species. For example, the FEIS indicates that the American alligator would simply relocate. Similarly, the FEIS surmises that the Florida black bear would also relocate and that little blue herons, snowy egrets, great blue herons, tri-colored herons, and white ibis would simply find someplace else to forage. However, these assumptions are not supported by any studies or analysis and are arbitrary, capricious, and contrary to law. 45

j. Failure to examine impacts to fisheries and other living marine resources

The FEIS fails to discuss how fisheries and other living marine resources would be impacted by building a new airport at the West Bay site, as required by law. Although proper NEPA analysis requires an examination of the baseline conditions of an area that could be affected by a proposed project, the FEIS does not give any indication of what the species composition is in Crooked Creek, Burnt Mill Creek, and their tributaries. Indeed, there is no indication that any agency sampled the area or reviewed existing literature to evaluate what aquatic species are found in those waters. Instead, the National Marine Fisheries Service merely listed species that occur in the West Bay estuarine area. There is no attempt to evaluate how any of these species or other species that are found in Crooked Creek and Burnt Mill Creek would be affected by increased sedimentation, eutrophication, or other pollutants degrading water quality. 46

3. Alternatives Analysis

a. FAA's Alternatives Analysis

i. The Sponsor's Forecasts Are Not an Appropriate Starting Point for Evaluating Any Environmental Impacts

The two alternatives identified for extending the existing runway to 6,800 feet met the FAA's safety and design criteria, would provide for aviation demand within the defined market area, and would be compatible with the current airspace configuration and utilization. FEIS, Vol. 1, 3.6.1 at 3-31. The FEIS indicates that its own Terminal Area Forecasts ("TAF") were used to assess the environmental impacts of the proposed project and alternatives. However, at the same time, the FEIS repeatedly mentions that a 6,800 foot runway would not be sufficient to accommodate charter activity that the Airport Sponsor has predicted a future demand for in its forecasts, despite the FAA's acknowledgement that the sponsor's forecasts diverge significantly from the FAA's forecasts. See FEIS, Vol. 1, 3.3.1.1b, at 3-15. The FAA's forecasts, which found that a 6,800 foot runway is sufficient, must control the analysis, not the Sponsor's desire to have an 8,400 foot runway to support international charter flights, which is not supported by the FAA's forecasts. 47

ii. Level II Criteria Are Too Narrow

The criteria used by the FAA to evaluate natural environmental impacts in its level II screening process are too narrow and demonstrate bias. The FAA should have used a broader set of factors to evaluate environmental impacts objectively. Instead, the FAA choose to ignore environmental

impacts that are substantial at the West Bay site, including impacts to streams, wetlands, and wildlife, while focusing on impacts to Class II waters, seagrass habitat, and state sovereign submerged lands. The FAA's failure to explain why it selectively chose these criteria in its screening process and valued them above other environmental impacts is arbitrary, capricious, and contrary to law. More importantly, the FAA's biased screening process resulted in retaining the West Bay site alternatives for further analysis, when these alternatives could not have "passed" the level II screening process had the FAA used an objective set of environmental criteria in its level II screening. The FAA should have evaluated the alternatives based on impacts to water quality, aquatic resources, and wildlife habitat, which would encompass impacts to streams, Class II waters, wetlands, seagrasses, state sovereign submerged lands, and wildlife habitat.

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iii. Existing Site Is Environmentally Preferable

Despite the FAA's acknowledgement that there are "marked differences" between the impacts at the Existing Site and West Bay Site alternatives on biotic communities, threatened and endangered species, wetlands, water quality, and floodplains, the FAA comes to the remarkable and unsubstantiated conclusion that the impacts of all alternatives are substantially similar and neither site is environmentally preferable. In this case, it is abundantly clear that the existing site alternatives will result in far fewer impacts to wetlands, streams, floodplains, water quality, and threatened and endangered species. In this respect, the comparisons of alternatives fail to meet NEPA's requirements. *See* 40 C.F.R. § 1502.14.

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The table below shows the discrepancy in these impacts and demonstrates that the FAA's explanation for this conclusion is plainly unsupported by the facts, and as a result is arbitrary, capricious, and contrary to law.

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Impacts to the Natural Environment³

Criterion	Measure of Impact	No Action	ES: 6800'	ES: 6800' EMAS scenario 2	WB: 6800 1 + ES redeveloped	WB: 6800' 2 + ES redeveloped	West Bay 8,400'
Streams	Linear feet phase I	0	0	0	7,279 Loss of portions of Kelly Branch, Morrell Branch, and tributaries of Burnt Mill Creek	7,279 Loss of portions of Kelly Branch, Morrell Branch, and tributaries of Burnt Mill Creek	7,279 Loss of portions of Kelly Branch, Morrell Branch, and tributaries of Burnt Mill Creek
	Linear feet full build out	0	0	0	21,957 All streams would be impacted	21,957 All streams would be impacted	21,957 All streams would be impacted
Wetlands	Acres direct impact phase I	0	12.2	13.1	630.5	509.6	630.5
	Total direct impact	0	12.2	13.1	1,936.4	1,936.4	1,936.4
	Cumulative impact	0	12.2	13.1	9,259	9,259	9,259
Water quality	Storm water	0	Increased stormwater runoff from 45 additional acres impervious surface	Increased stormwater runoff from 45 additional acres impervious surface	Long term impacts: increase in sedimentation, turbidity, volume stormwater runoff, stream erosion, salinity, eutrophication	Long term impacts: increase in sedimentation, turbidity, volume stormwater runoff, stream erosion, salinity, eutrophication	Long term impacts: increase in sedimentation, turbidity, volume stormwater runoff, stream erosion, salinity, eutrophication
Endangered and Threatened	Impacts to federal listed	None	None	none	Loss of flatwoods salamander	Loss of flatwoods salamander	Loss of flatwoods salamander

³ This table focuses on the impacts of the alternatives, so the table omits categories that would not cause any impacts. It also omits categories where the impacts are similar. The table does not include the Existing Site 8400 foot alternative because the FAA found that 6800 foot runway was adequate to meet the federal purpose and need. Even though the FAA found a 6,800 foot runway to meet the federal purpose and need, the table includes the West Bay 8,400 foot alternative because it is the sponsor's proposal. ES = Existing Site; WB = West Bay Site

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NRDC Comments on FEIS for Proposed Relocation of Panama City-Bay County Airport

Species	species				breeding habitat; American Alligator, Eastern Indigo Snake, Woodstork, redevelopment: sea turtles, gulf sturgeon, manatee	breeding habitat; American Alligator, Eastern Indigo Snake, Woodstork redevelopment: sea turtles, gulf sturgeon, manatee	breeding habitat; American Alligator, Eastern Indigo Snake, Woodstork redevelopment: sea turtles, gulf sturgeon, manatee
	Impacts to state listed species	None	Wading birds	Wading birds	Florida black bear, gopher tortoise, Florida pine snake, wading birds, bluenose shiner	Florida black bear, gopher tortoise, Florida pine snake, wading birds, bluenose shiner	Florida black bear, gopher tortoise, Florida pine snake, wading birds, bluenose shiner
Floodplains	Acres of direct impact	0	33.4	44.2	347.1	323.4	347.1
Biotic communities	Acres of Impact to terrestrial and aquatic habitats	0	30.7	28.4	1,466.9	1,327.4	1,466.9

The FAA's Environmental Consequences Summary Matrix indicates that all of the alternatives except for the no action alternative would have impacts to water quality, but the impacts to water quality from increased stormwater runoff at the West Bay site differ greatly because of the massive increase in impervious surface. Yet, the FEIS fails to take this into account and instead treats the impacts to water quality at the two sites as similar based on the assumption that pollution from stormwater would be reduced because a new airport at the West Bay site would incorporate better stormwater management than the existing airport. These assumptions are not supported. Moreover, the FEIS fails to consider retrofitting the alternatives at the existing site to provide for better stormwater management.

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The FAA's summary matrix of environmental consequences only considers the direct impacts of the first phase of building a new airport at the West Bay site, compared to three alternatives at the existing site and the no action alternative. Because of the significant secondary, indirect, and cumulative impacts associated with any of the West Bay site alternatives, it was arbitrary, capricious, and contrary to law for the FAA to restrict its alternatives analysis to direct impacts. See 40 C.F.R. §§ 1502.14, 1502.16, 1508.7, 1508.8.

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iv. Mitigation Does Not Make Up For Environmental Harm at West Bay Site

Instead of recognizing that the existing site will result in less environmental damage and therefore is environmentally preferable, the FAA argues that the West Bay site will bring benefits through planned mitigation, which the existing site does not have to offer. See FEIS, Vol. 1, 3.13.2, at 3-82 to 3-83. Of course, the FEIS does not analyze the impacts or benefits of mitigation at any of the existing site alternatives because none of the agencies or the Sponsor gave any consideration to mitigation that would be required with any of these alternatives, which further demonstrates that the FAA and Corps have predetermined that the Sponsor's proposal will be selected in advance. Moreover, mitigation that would be required by any of the existing site alternatives would not be anything close to the scale of mitigation required to compensate for destruction of streams and wetlands at the West Bay site, where substantial destruction of wetlands and streams would occur. In the end, the FAA defers to the judgment of the Corps on the sufficiency of mitigation to offset environmental impacts caused by destruction of wetlands and burying streams. This is inappropriate, particularly considering the fact that the Corps did not even analyze the environmental impacts of any alternatives other than the no action alternative, which itself is arbitrary, capricious, and contrary to law. Moreover, the FAA cannot rely on mitigation to justify a proposal with egregious environmental impacts relative to available alternatives, where the FAA is relying the mitigation plan is not even finished. The FAA's reliance on the Corps judgment under such circumstances is all the more arbitrary and capricious.

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v. FAA Improperly Weighs Socioeconomic Factors Against Substantial Harm to the Natural Environment.

The FAA's analysis of environmental impacts is incomplete and improperly weighs socioeconomic factors against substantial harm to wetlands, stream, and threatened and endangered species. The FAA fails to justify why the relocation of some single family homes, and businesses, which would be required by both the 6,800 foot alternatives analyzed at the existing site, is equivalent to the permanent and irretrievable destruction of wetlands, streams, floodplains, and wildlife habitat. Here, the FAA's conclusion that relocation of families is equivalent to the permanent destruction of aquatic resources and wildlife habitat that cannot be replaced is unfounded. At the same time, the FEIS fails to consider the impact that decommissioning the existing airport would have on businesses that rely on the existing airport for their customer base.

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The FAA states that consideration of the Airport Sponsor's preference in evaluating alternatives is appropriate where there is no clearly superior alternative from an environmental standpoint that meets the stated purpose and need. The FAA also inappropriately uses added socioeconomic development and local mixed use development planning that revolves around building a new airport as additional environmental benefits of the West Bay site. The FAA does this in an attempt to balance the environmental harms and benefits of the existing site compared to the West Bay site, even though these purported benefits at the West Bay site are not environmental. Put simply, the FAA is bending over backwards to justify its selection of the

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airport sponsor's proposal as its preferred alternative based on criteria that should not be a focus or justification of its decision in an Environmental Impact Statement.

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vi. Noise Impacts Do Not Differ Between the Existing Site and West Bay Site

The FAA attempts to further distinguish the benefits of the West Bay site alternatives by explaining that the West Bay site alternatives will avoid the noise effects associated with the Existing Site alternatives. This is not a proper comparison because only the 8,400 foot runway alternative at the existing site will result in noise impacts. Compare FEIS Vol. 1, Table 3-5, at 3-72 to 3.13.3.2, at 3-84. As we explained in our comments on the DEIS and reiterate in these comments, because the FAA found that a 6,800 foot runway is sufficient, it is unnecessary to review an 8400 foot alternative at the existing site.

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b. **The Corps' Alternatives Analysis**

The 404(b)(1) guidelines, which establish criteria that the Corps must follow to evaluate proposals to discharge dredged or fill material into waters of the United States, clearly mandate avoidance of impacts to wetlands and other aquatic sites, and where avoidance is not required minimization of impacts to these waters. Indeed, the 404(b)(1) guidelines are based on "the precept that dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystems of concern." 40 C.F.R. § 230.1(c).

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To implement the requirements of 40 C.F.R. § 230.1(c) to avoid unacceptable adverse impacts, the guidelines require the Corps to deny a permit under a number of circumstances, including in situations where there is a practicable alternative that will cause less harm. A § 404 permit must be denied "if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem." 40 C.F.R. § 230.10(a). "An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes." 40 C.F.R. § 230.10(a)(2). The mandate to avoid impacts is so strong, that it defines practicable alternatives to include locating a project in an area not currently owned by the applicant if that area "could be reasonably obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity." 40 C.F.R. § 230.10(a)(2). Here, the Sponsor does not even own the land at the proposed West Bay site (the St. Joe Company owns the land), so there is even less reason to prefer the West Bay site.

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The mandate to avoid impacts is even stronger when an activity does not require access or proximity to a special aquatic site to fulfill the activity's basic purpose (i.e., when the activity is non-water dependent)." 40 C.F.R. § 230.10(a)(3). Here, there is no question that building an airport is a non-water dependent activity. When a permit is requested for a non-water dependent activity, the 404(b)(1) guidelines create a legal presumption that practicable alternatives to the proposed activity are available that do not involve a special aquatic site. Special aquatic sites include wetlands, mud flats, and riffle and pool complexes that are deemed to be so ecologically

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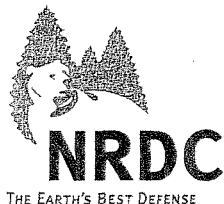
valuable that their degradation or destruction may represent an irreversible loss of valuable aquatic resources. 40 C.F.R. § 230.1(d). The wetlands and streams at the West Bay site qualify as special aquatic sites. The Corps must deny a permit for a non-water dependent activity that impacts a special aquatic site unless the applicant clearly demonstrates that a practicable alternative does not exist. This places an extremely high burden on the Sponsor to show that there are no practicable alternatives to the proposal to build a new airport at the West Bay site.

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The Corps' Standard Operating Procedures state that "[d]efining the project purpose is critical to the evaluation of any project. . . ." *Army Corps of Engineers Standard Operating Procedures for the Regulatory Program 6* (1999). Both the basic and overall project purposes must be determined. The basic purpose provides the foundation for the water-dependency determination, while the overall purpose "is used for evaluating practicable alternatives under the Section 404(b)(1) Guidelines." *Id.* The determination of project purpose is critical: an applicant who is allowed to narrowly define the purpose will have a much easier time convincing the Corps that no "practicable" alternatives exist.

Here, the Corps' alternatives analysis fails to fulfill the Corps' obligations under NEPA and the CWA and is otherwise arbitrary, capricious, and contrary to law. The Corps' alternatives analysis is plagued by an improperly narrow definition of purpose and need, which resulted in rejecting reasonable and feasible existing site alternatives. The Corps rejected all other alternatives outright without doing any actual evaluation of the environmental impacts of the alternatives. This is particularly troubling considering the fact that the Corps' chief responsibility in this process is to evaluate the impacts of the proposed project and alternatives on waters of the United States, including wetlands and streams. Clearly, building a new airport with a 8,400 foot runway at the West Bay site would have significant and irreversible impacts on wetlands and streams, and the inextricably connected action of redevelopment of the existing airport could have additional devastating impacts on seagrasses, oyster beds, and other aquatic resources. The Corps failed to carry out its obligations under NEPA and the CWA to evaluate alternatives that would avoid and minimize these impacts to the aquatic environment. Improperly narrowing the purpose and need to specifically require an 8,400 foot runway with a 500 foot primary crosswind does not absolve the Corps of its legal obligations.

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NATURAL RESOURCES DEFENSE COUNCIL

June 2, 2005

Mr. Gordon Hambrick
U.S. Army Corps of Engineers
Jacksonville District Corps of Engineers
Panama City Regulatory Office
1002 West 23rd Street, Suite 350
Panama City, FL 32405-3648

**Re: Permit Application No. SAJ-2001-5264 (IP-GAH)
Bay County Airport**

Dear Mr. Hambrick,

These comments on the Clean Water Act permit application for the Bay County Airport are submitted on behalf of the Natural Resources Defense Council, Inc. ("NRDC"), a national environmental organization with more than 600,000 members nationwide, include over 26,000 members residing in Florida. NRDC is dedicated to the preservation, protection, and defense of the environment and natural resources, and we actively support effective implementation and enforcement of the Clean Water Act on behalf of our members.

The proposed permit would authorize the destruction of more than 1,500 acres of wetlands and other waters in a biologically rich and unspoiled region of Florida. The proposed site includes high quality titi swamp, titi-bay-pine swamp, and ecologically important cypress swamp and hydric pine flatwoods. The tremendous biodiversity of the area is evident by resident animals and plants on both state and federal threatened and endangered species lists, such as alligator, Gulf sturgeon, gopher tortoise, Florida black bear, flatwoods salamander, Florida pine snake, eastern indigo snake, little blue heron, snowy egret, and great blue heron. Allowing the contemplated destruction of wetlands and filling of streams and other waters will have a substantial and irreversible adverse impact on the ecosystems, habitat, and wildlife in West Bay and other waters in the St. Andrew's Bay watershed.

We previously submitted detailed comments to the Federal Aviation Administration ("FAA") on the draft environmental impact statement ("DEIS"). Today we reiterate many of the concerns we expressed in our DEIS comments, which we incorporate by

reference.¹ As discussed in more detail below, the Corps should deny the permit to dredge and fill waters at the proposed airport relocation site because the project would have irreversible adverse impacts on the environment and wildlife that are impermissible under federal law. As a result, a decision by the Corps to grant the permit would be arbitrary, capricious, and otherwise not in accordance with law.

Public Notice

The public notice of this permit application is seriously deficient and fails to meet the minimum requirements of the Clean Water Act (“CWA”). It fails to even describe, no less analyze, any practicable alternatives to the proposed project. The notice also fails to provide adequate descriptions of the wetlands and other waters that will be destroyed and the adverse environmental impacts to water quality, wildlife, and other resources that will result from the proposed dredging and filling of wetlands and streams. Furthermore, the fact that the FAA has not completed the Final Environmental Impact Statement (“FEIS”) for the proposed project demonstrates that it is premature to propose issuance of the CWA permit and that the public should be afforded an opportunity to provide fully informed comments after the FEIS is issued. Notwithstanding these concerns, it is evident from the information available that the proposed permit is unlawful and should be denied by the Corps.

Alternatives

The proposed airport relocation violates CWA § 404(b)(1) and its implementing regulations. Under 40 C.F.R. § 230.10(a), the Corps shall not permit filling wetlands “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” Despite the fact that the Corps fails to even mention alternative sites in the draft permit, as we emphasized in NRDC’s comments on the DEIS for this project, a practicable alternative to relocating the airport does exist – improving existing facilities at the Panama City-Bay County International Airport. While improving the existing facilities might impact the aquatic ecosystem, the impact would be magnitudes less than the 1,500 acres of wetlands that will be destroyed if this permit is granted. As such, the Corps must deny the permit application pursuant to 40 C.F.R. § 230.10(a).

The Corps’ regulations create a strong presumption against approving the filling of wetlands, particularly in cases where the proposed filling is for an activity that is not “water dependent.” An airport, its attendant runways, service roads, parking lots, and service industries do not require siting within or proximate to a “special aquatic site,” such as the wetlands here. This proposed activity, therefore, is not “water dependent” under the Corps’ regulations. 40 C.F.R. § 230.10(a)(3). When a proposed activity is not “water dependent,” and will impact a “special aquatic site,” such as wetlands and streams, the Corps is to presume that practicable alternatives to the proposed activity exist, unless clearly demonstrated otherwise. *Id.* Here, the Corps has failed to analyze *any* alternatives to the proposed airport relocation site. By no means has the Corps met its burden under the CWA of demonstrating that all alternatives to relocating the airport

¹ A copy of NRDC’s comments on the DEIS are attached as exhibit A.

are impracticable, and as a result a decision to grant the permit would be arbitrary, capricious, and contrary to law. Thus, the Corps should deny the permit application.

Minimize Adverse Effects

Pursuant to the § 404(b)(1) guidelines, “no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.” 40 C.F.R. § 230.10(d). Here, the proposed permit would destroy a minimum of 1,513 acres of jurisdictional wetlands, but all 1,936 acres of wetlands could be destroyed because the permit grants the sponsor unfettered discretion to eliminate any remaining wetlands under the guise of a “Wildlife Management Plan.” Indeed, excerpts from the proposed wildlife management program provide that “[a]ll of the wetland habitat within the development footprint will be permitted for impacts.” The Wildlife Management Plan pays lip service to retaining wetland areas without direct impacts or delaying the proposed impacts to some future time, but the sponsor has no incentive to minimize and avoid destruction of wetlands. Instead, the permit authorizes the destruction of *all* wetlands and the Corps has failed to take appropriate and practicable steps to minimize loss of wetlands and impacts of the discharge of fill on the aquatic ecosystem.

In lieu of avoiding and minimizing impacts to wetlands through choosing an appropriate site as required by law, the proposed permit seeks to mitigate impacts through an off-site mitigation area. The selected mitigation area is composed of different ecosystems that cannot be expected to provide equivalent functions and values as the wetlands and waters that will be destroyed in the event that the permit is granted. Indeed, the notice indicates that the mitigation area includes approximately 40 “dump sites” containing discarded items such as refrigerators, automobile scraps, and construction debris and thus the mitigation area is nowhere near the high quality or functional value of the wetlands and waters that would be irreversibly destroyed at the proposed airport relocation site. Studies of wetland mitigation projects have indicated that it is difficult to restore wetlands. To make matters worse, the National Resource Council found that attempts to create or restore forested wetlands, such as those that would be destroyed here, are more difficult than other types of wetlands, noting that structural characteristics of the forest are “quite different” from natural wetlands. See *Compensating for Wetland Losses Under the Clean Water Act*, Chapter 2, p. 23.²

As a result, a decision to grant the permit as proposed would be arbitrary, capricious and otherwise contrary to law.

Water Quality

Before issuing a § 404 permit, the Corps must receive state certification under § 401 of the CWA that the permit will not cause a violation of state water quality standards. 33 U.S.C. § 1341(a); 33 C.F.R. § 325.2(b)(ii). Florida has not provided a section 401 water quality certification for this project and the public notice for the proposed project fails to otherwise analyze or take into account protection of existing water quality and reducing pollutant loads to impaired waters as required by law.

² Exhibit B.

The Corps must deny this permit because the approval will cause or contribute to violations of Florida water quality standards. *See* 40 C.F.R. § 230.10(b)(1). The proposed relocation site is located in and over the headwaters and main runs of two creeks that feed into West Bay – Burnt Mill and Crooked Creeks. Draft Environmental Impact Statement at 4.8.3, p. 4-26. Not only are there regular exceedances of dissolved oxygen and fecal coliform bacteria standards in the two creeks, but West Bay and St. Andrews Bay will soon be listed as impaired waters under CWA § 303(d) for elevated levels of fecal coliform bacteria and chlorophyll. *Id.* at 4.8.3, p.4-36 and 4-37; 2004 Florida DEP Proposed 303(d) list.³ If the airport is relocated, the consequent increase of stormwater runoff and reduction in the amount of pollutants removed by the wetlands into Burnt Mill Creek, Crooked Creek, and West Bay will exacerbate the impaired condition of these waters and lead to continuing exceedances of Florida Water Quality standards. Because the activities contemplated in the permit will cause or contribute to violations of Florida water quality standards, the Corps should deny the § 404 permit application.

Furthermore, where a § 404 permit application seeks approval to fill wetlands in such a way that it will cause “significant degradation of the waters of the United States,” the Corps should deny the application. 40 C.F.R. § 230.10(c). We have precisely that situation here. The Corps’ regulations outline certain factors that are to be considered in determining whether there will be a “significant degradation.” Included in these factors are significant adverse effects “on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetland to assimilate nutrients, purify water, or reduce wave energy.” 40 C.F.R. § 230.10(c)(3). If this permit is not denied, more than 1,500 acres of wetlands will be completely lost and unable to assimilate nutrients, purify water, or provide habitat for fish and wildlife. Furthermore, the permit application entirely fails to consider the impacts of increased impervious surfaces and resulting stormwater runoff on water quality and the permit certainly fails to include any measures to mitigate degradation of water quality caused by stormwater runoff and associated loading of nutrients, PAHs, and toxic and nontoxic algal blooms.

NPDES Permits

The availability of NPDES permits for the proposed airport should also be taken into consideration. Stormwater runoff from the proposed new airport will flow through Burnt Mill Creek and Crooked Creek first into West Bay, and then into St. Andrews Bay. Both West Bay and St. Andrews Bay will soon be listed as impaired waters under § 303(d) of the CWA. The CWA prohibits issuance of NPDES permits to new sources of pollutants that will discharge into a water body that is on a § 303(d) list where that discharge will contribute to an identified impairment, unless and until “[t]here are sufficient remaining pollutant load allocations to allow for the discharge” to guarantee attainment of water quality standards. 40 C.F.R. § 122.4(i)(1). The DEIS for the proposed relocation of the airport states that no TMDL has been developed for West Bay or St. Andrews Bay. As such, no NPDES permits should be available for stormwater discharges from the

³ http://www.dep.state.fl.us/water/tmdl/docs/verified/group3/revised/choctawdraftverified_9_24_04.pdf

proposed new airport. This is problematic because stormwater runoff will carry with it pollutants that will contribute to the impairment of West Bay and St. Andrews Bay. Nor should NPDES permits be available for discharge from wastewater treatment plants in the area since the discharge from a wastewater treatment plant would increase the amount of fecal coliform bacteria added to West Bay and St. Andrews Bay. The inability to obtain a permit for a wastewater treatment plant or stormwater runoff should preclude the Corps from granting a permit for the proposed airport relocation.

Factual Determinations

The Corps' regulations require assessment of a number of factors prior to approval of any permit that allows for filling of wetlands. The impact of fill of wetlands and streams as proposed on the substrate at the disposal site, water circulation, turbidity, contaminants, aquatic ecosystems and organisms, cumulative effects on the aquatic ecosystem, and secondary effects on the aquatic ecosystem further demonstrate that the permit should be denied as articulated below.

230.11(a): *Physical substrate* – The proposed filling of over 1,500 acres of wetlands will have a substantial adverse effect on the substrate at the proposed disposal site. The substrate will be compacted, resulting in destruction of the wetlands' ecological values for filtration, biomass accumulation, carbon storage, wildlife habitat, and flood control. These effects will be substantial because the proposed fill is the most environmentally damaging option for increasing air traffic capabilities and it is permanent.

230.11(b): *Water circulation, fluctuation, and salinity* – As the potentially impacted wetlands stand today, they are filled by rainfall and groundwater discharge and ultimately flow into West Bay and St. Andrews Bay. Filling the wetlands and covering the fill with impervious surfaces such as roads, runways, and buildings will substantially alter the hydrological cycle in the area. Not only will this affect the quantity of water flowing into West and St. Andrews Bays, but it will also greatly affect the quality of that water.

230.11(c): *Suspended particulate/turbidity* – The amount of fill material necessary to complete this proposed project creates the possibility for a significant release of suspended particulates and increase in turbidity. Furthermore, by destroying the 1,500 acres of wetlands, this proposed project would decrease the particulate filtering capabilities of the West Bay and St. Andrews Bay watershed.

230.11(d): *Contaminant* – Though it is unclear whether the fill material will itself introduce contaminants into the affected area, it is abundantly clear that the construction of an airport would greatly increase contaminant loading to the surrounding areas. Contaminants from construction itself, as well as those introduced afterwards from roadways, runways, fertilizers, and all other sources of pollution incidental to an airport, would greatly increase if this application is not denied.

230.11(e): *Aquatic ecosystem and organism* – The wetlands that could potentially be impacted here are vitally important for filtering contaminants out of the watershed, accumulating biomass, storing carbon, cycling nutrients, and providing habitat for a

diverse spectrum of plants and animals. The wetlands also serve a fundamental role at the base of the food chain. Litter from the forested wetlands that might be impacted here decomposes to create the detritus that is the food for zooplankton. Zooplankton is eaten by larger organisms that are, in turn, eaten by even larger organisms. Thus, the loss of these forested wetlands will ultimately lead to a decrease in food for the largest predators, including humans.

230.11(f): *Proposed disposal site* – The proposed disposal site here is a vast swath of diverse wetland ecosystems. The DEIS for this project notes that proposed disposal site consists of hundreds of acres each of titi swamp and titi-bay-pine swamp. There are also ecologically important stretches of cypress swamp and hydric pine flatwoods. These areas are too important for the public and the broader environment to be destroyed.

230.11(g): *Cumulative effects* – Failure to deny this application would open the floodgates to permit applications for further development in surrounding wetlands. The 1,500 acres of wetlands that would be destroyed in order to relocate the airport would be just the beginning. All of the development surrounding the airport, from hotels and restaurants to car rental agencies, would follow, with developers seeking permission from the Corps to fill in the surrounding wetlands. It is not unreasonable to anticipate permit applications to fill thousands more acres of wetlands that would then be covered with impervious surfaces, increasing pollutant loading to the local watershed and decreasing the ability of the ecosystem to function properly. Destruction of 1,500 acres of wetlands on its own is too much. Setting a precedent that would allow further destruction of this ecologically important area in Florida is unconscionable.

230.11(h): *Secondary effects* – In addition to the anticipated increase in permit applications to fill surrounding wetlands, there are numerous foreseeable secondary effects of this proposal on the environment. For instance, destroying these wetlands will result in permanent loss of habitat used by animals for hunting, breeding, and migrating. The proposed new airport would also bring with it runoff containing fertilizers, pesticides, and other chemical contaminants produced by air and automobile traffic. Additionally, replacement of sponge-like wetlands with impervious layers of asphalt, concrete, and other materials will greatly increase the flow of surface waters through the Burnt Mill and Crooked Creeks into West Bay and St. Andrews Bay.

In short, the restrictions on allowable discharges described in 40 C.F.R. § 230.10 require the Corps to deny this permit at the outset because of its monumental potential impacts on important ecological systems and the existence of a reasonable alternative to the proposal. Even when all of the factual determinations required under 40 C.F.R. § 230.11 are analyzed, it is clear that primary, secondary, and cumulative impacts of the proposal are so environmentally destructive that the permit must be denied.

Public Interest Review

Before deciding to issue a permit, the Corps must evaluate, *inter alia*, “the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” 33 C.F.R. § 320.4(a)(1). This evaluation “requires a careful

weighing of all those factors which become relevant in each particular case” and is commonly referred to as a “public interest” analysis. *Id.* “All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.” A permit may not be issued where it would be contrary to the public interest. *See id.*

Here, the proposed permit is contrary to the public interest and should be denied by the Corps. Overall, relocation of the airport does not serve the needs and welfare of the majority of residents in the area. The proposed relocation is simply not convenient for the largest segment of current airport users, residents of Panama City. Indeed, a majority of voters in Panama City and Bay County voted by referendum in March 2004 to reject relocation of the airport. Moreover, the current airport meets user needs and thus relocation of the existing airport is unwarranted. Additional factors demonstrate that the proposed project is not in the public interest, as articulated below.

Conservation – Destruction of over 1,500 acres of high quality wetlands in order to build a new airport where the existing airport could simply be expanded cuts against any concern for conservation. As it did in the denial of the permit for the Freedom Commerce Center, the Corps should ignore any proposed mitigation plans until it has determined that the proposed action is the least environmentally damaging alternative. Here it is the most environmentally damaging alternative, and so the public’s interest in conservation cannot be served by approving this application.

Allowing for the relocation of the airport also contradicts Bay County’s “Wide Open Spaces Strategy.”⁴ The strategy was adopted by the County to fight urban sprawl. Failure to deny this permit would encourage urban sprawl by enabling development of land that is currently considered part of Bay County’s rural service area.

Economics – Existing businesses catering to the current Panama City-Bay County International Airport will suffer a significant decline in business if this project is allowed to go forward.

Aesthetics – Destruction of this currently undeveloped area to construct an airport and all incidental facilities would greatly diminish the aesthetics of the locale. The diverse population of plants and animals found in the wetlands would be replaced by an unsightly expanse of flat land covered by concrete and asphalt. Furthermore, the noise and light pollution created by the airport also destroys the aesthetics of the wetlands.

Wetlands – As noted above, 1,500 acres of lost wetlands means a significant decline in habitat for numerous species, as well as minimization of the watershed’s ability to filter

⁴ Included in attached Exhibit A, NRDC’s comments on the DEIS, see Exhibit V.

pollutants, provide flood protection, sequester carbon, and form the base of the food chain.

Flood Control – Executive Order 11988 instructs all federal agencies “to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains.” Much of the 1,500 acres of wetlands that could be filled here is within the 100 year floodplain. By denying this permit application, the Corps can preserve the natural and beneficial values provided by those wetlands.

Water Quality – Failure to deny this permit would decrease water quality in the Burnt Mill Creek, Crooked Creek, West Bay, and St. Andrews Bay in two respects. First, the lost filtration capabilities resulting from wetlands destruction would mean increased pollution from any existing sources. Second, the stormwater runoff from the airport and all related facilities would increase pollutant loading to waters.

Air Quality – The loss of wetlands would decrease air quality as fewer plants will be available to remove carbon dioxide from the air. Operation of equipment used to fill the wetlands would also increase emissions of air pollutants. Lastly, all of the airplanes, cars, trucks, buses, and other airport-related equipment will increase air pollution.

Threatened and Endangered Species

Under Section 7 of the Endangered Species Act (“ESA”), all federal agencies must consult with FWS or NMFS to ensure that no action authorized by that agency will jeopardize the continued existence of a listed species or destroy or adversely modify a listed species’ habitat. The first step in the consultation process is an informal consultation (governed by section 7(c)), during which time the action agency requests from the wildlife agency a biological assessment that states whether listed species may be present in the affected area. If so, the agencies will begin the formal consultation process (governed by section 7(b)). During the formal consultation process, the wildlife services will determine whether the proposed action will jeopardize the continued existence of any listed species or destroy/adversely modify its habitat. The conclusion is presented in a Biological Opinion. Should there be a potential for jeopardy, the wildlife service will provide Reasonable and Prudent Alternatives to the proposed project.

The proposed airport relocation will have a significant impact on threatened and endangered species that has not been carefully considered by the Corps, FWS, and NMFS and requires denial of the § 404 permit application. Federally listed threatened and endangered species inhabit the area, including the American alligator, Gulf sturgeon, gopher tortoise, flatwoods salamander, Florida pine snake, eastern indigo snake, little blue heron, snowy egret, and great blue heron. Allowing the contemplated destruction of wetlands and filling of streams and other waters will have a substantial and irreversible adverse impact on these species and their habitat both in the project area and surrounding areas. To make matters worse, the conceptual permit includes a proposed wildlife management plan, which allows the sponsor to unilaterally decide that birds and wildlife, including threatened and endangered species, are causing “hazards,” justifying further

destruction of additional wetlands and resulting loss of habitat. Indeed, the wildlife management plan unlawfully authorizes further elimination of birds and other wildlife, or in other words, takings of endangered species in violation of the Endangered Species Act.

Furthermore, pollution resulting from the airport relocation will adversely affect the critical habitat for the Gulf sturgeon. Under 40 C.F.R. § 320.10(b)(3), the Corps must deny a permit application if the proposed activity is likely to destroy or adversely modify critical habitat for endangered species. The 1,500 acres of wetlands that would have to be filled in order to relocate the airport are all part of the watershed that drains into the nearshore waters of the Gulf of Mexico designated as critical habitat for the Gulf sturgeon. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Gulf Sturgeon, 68 Fed. Reg. 13370, 13396 (March 19, 2003). The proposed airport relocation would have an adverse impact on Essential Fish Habitat (“EFH”). The Corps’ public notice of the permit application states that an initial determination has been made “that the proposed action would have a minor adverse impact on the EFH.” During the formal consultation with the National Marine Fisheries Service pursuant to the Magnuson-Stevens Act the agencies should consider the degradation of EFH due to increased impervious surface and resulting stormwater pollution.

Reasoning for Recent Permit Denials Applies Here

In recent months the Corps has denied several § 404 permit applications on grounds that should dictate denial of this permit application. The other permit applications were for the Freedom Commerce Center,⁵ the Valparaiso Realty shopping center,⁶ the Lake Worth residential community,⁷ and the Van Horn single-family residence.⁸

In each case, the Corps denied the permit application in order to protect environmentally sensitive areas and avoid setting a precedent that would encourage further destruction of high quality wetlands. In each case, the potentially impacted wetlands were qualitatively similar to those at issue in this permit application. But in each case, the total potentially impacted wetland acreage was far less than that which would be impacted if this permit is not denied. In order to maintain consistency in its decisions on § 404 permit applications that impact high quality wetlands, the Corps should deny this application.

For a full understanding of the precedent set by the Corps’ recent denials of the other permit applications, a quick comparison of the potentially impacted environment is instructive.

⁵ Permit application number SAJ-2000-4335-BAL; Memorandum of Record denying application dated May 12, 2005. Exhibit C.

⁶ Permit application number SAJ-1999-4364-IP-TLZ; Memorandum of Record denying application dated May 5, 2005. Exhibit D.

⁷ Permit application number SAJ-2003-11115 (IP-TKW); Memorandum of Record denying application dated May 18, 2005. Exhibit E.

⁸ Permit application number SJ-2003-7096 (IP-AWP); Memorandum of Record denying application dated May 5, 2005. Exhibit F.

Consider first the types of wetlands that would have been affected. The Freedom Commerce Center ("FCC") would have destroyed 167 acres of mature hardwood forest, 156 acres of which is high quality mixed hardwood wetlands consisting of cypress, swamp bay, red maple, laurel oak, cinnamon fern, Virginia chain fern, and numerous other plant species. Fill for the Valparaiso Realty shopping center would have destroyed 5.52 acres of high quality wetlands dominated by tulip poplar, sweet bay, red bay, sourwood, gum tree, cinnamon fern, royal fern, poison ivy, and lizards tail. In order to build the residential community, the City of Lake Worth proposed filling 5.9 acres of tidal lands containing pandlegrass, Johnsons' seagrass, and Cuban shoal grass. Mr. Van Horn wanted to fill just 0.2 acres of high quality cabbage palm wetlands to build a house pad. Much like these proposed projects, the proposed filling of wetlands to relocate the Panama City-Bay County International Airport would destroy high quality wetlands inhabited by black titi, red titi, sweetbay, slash pine, red bay, cypress, Virginia chain fern, and various other plant species. The most significant difference between the wetlands that would be destroyed by this project and those that would have been destroyed by the others is that none of the others were even remotely of the same scale. The largest proposal – the FCC – would have impacted about one-tenth the acreage of wetlands in this case.

Another important point of comparison is the impact of the proposed projects on headwaters of local creeks and rivers. The proposed site for the FCC would have impacted the headwaters of the Pottsburg and Julington Creeks, which feed into the St. Johns River, an American Heritage River. The Corps noted that its decision to deny the FCC permit was significantly influenced by the "overriding negative effect on this river." Failure to deny the permit application for the proposed airport relocation will have a similar negative effect. Filling the 1,500 acres of wetlands will destroy the primary sources of water for the Burnt Mill and Crooked Creeks, both of which supply significant flows of fresh water into West Bay. Allowing the destruction of these headwaters will have a substantial adverse impact on the aquatic ecosystems of the two creeks and the West Bay.

The Jacksonville District denied the FCC permit application in part because of its impact on an EFH. The Corps should similarly deny this application.

The proposal outlined in the permit application for the airport relocation project stands out from the other permit applications in two significant ways. First and foremost, the impacted wetlands are of substantially greater extent here. Secondly, this is the only project where the critical habitat for a federally protected species will be impacted.

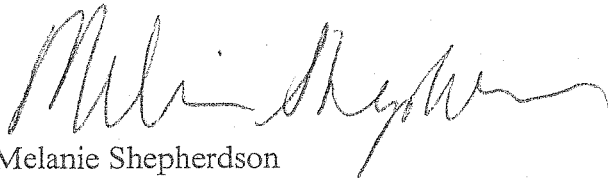
In light of all these considerations, NRDC urges the Corps to follow its recent decisions to protect high quality wetlands from unnecessary development. It is clear from those permit denials that the Corps intended to set a strong precedent that would discourage developers from attempting to destroy these valuable natural resources.

Conclusion

The proposed permit does not meet the requirements of the Clean Water Act and Endangered Species Act and as a result the Corps should deny the permit application.

Thank you for considering our views. Please keep us informed of additional public notices and opportunities to supplement these comments as more information about the proposal becomes available.

Sincerely,

A handwritten signature in black ink, appearing to read "Melanie Shepherdson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Melanie Shepherdson
Staff Attorney
Water and Coastal Program

Matthew Shudtz
Law Clerk