

**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**

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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.

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.

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.

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.

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.").

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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)

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

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

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.

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.

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.

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.

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

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.

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.

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.

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.

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:

“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

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.

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.

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.

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.

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.

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.

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.

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.

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
Endangere d 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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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.

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.

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.

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.

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

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.

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.

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).

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.

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

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.

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.