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CESAJ-RD-NN-P
SAJ-2004-1861
Regional General Permit SAJ-86

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Environmental Assessment and Statement of Finding for Above-Numbered Regional General Permit

1. Applicant: Those wishing to construct works within non-navigable and non-tidal waters, including wetlands, in southeastern Walton County and southwestern Bay County within the following watersheds: 1) The Lake Powell watershed, 2) Various drainage basins of the Choctawhatchee Bay watershed, 3) Various drainage basins of the West Bay watershed, and 4) Two small areas which drain either directly to the Gulf of Mexico, or via the Camp Creek Lake watershed into the Gulf of Mexico. The proposed Regional General Permit (RGP) project area encompasses approximately 48,150 acres, including approximately 39,055 acres owned by The St. Joe Company (Exhibit 1).

2. Location, Existing Site Conditions, Project Description, Changes to Project:

a. Location: The proposed RGP is limited to non-navigable and non-tidal waters, including wetlands, which are located in three large watersheds: The Lake Powell watershed, and various drainage basins of the Choctawhatchee Bay and West Bay watersheds. The RGP area also includes two small areas, which drain either directly to the Gulf of Mexico, or through the Camp Creek Lake watershed into the Gulf of Mexico. The RGP area is located within southeastern Walton County and southwestern Bay County. More specifically, the proposed RGP project area is located south and north of the Intracoastal Waterway (ICW) and north of U.S. Highway 98 (US 98), extending from eastern West Bay west to Choctawhatchee Bay. Ten proposed conservation units and two proposed mitigation banks would be located within the boundaries of the RGP. In Bay County, Township, Range, and Sections are: T2S, R16W, S17-20 & 28-33; T2S, R17W, S13-17 & 19-36; T3S, R15W, S28-33; T3S, R16W, S4-9, 15-18, 20-22, & 25-27; and T3S, R17W, S1-6 &10-13. In Walton County, Township, Range, and Sections are: T2S, R18W, S31; T2S, R19W, S25, 26, 35 & 36; T3S, R18W, S3-6, 8-11, 13-16, 23-26, 35 & 36; and T3S, R19W, S1 & 2.

b. Existing Site Conditions within the Regional General Permit Area:

Most of the approximately 48,150-acre RGP Area is currently undeveloped and in pine silviculture. The RGP area encompasses 18 local drainage sub-basins, both north and south of the ICW. The current land cover is dominated by silviculture. Other land cover types that cover substantial acreages are upland coniferous forest, forested mixed wetlands, and hardwood-conifer mixed. The National Wetlands Inventory

classifies approximately 55% of the land cover as uplands and 45% as wetlands dominated by forested palustrine systems. Based on review of historical aerial photography it appears that the former extent of habitats that supported protected plant and animal species was many times greater than at present. Within the US 98 corridor in the Bay County portion of the project area, there is substantial ongoing, suburban development in the form of residential subdivisions, commercial establishments and local governmental infrastructure, such as recreation areas, offices and utilities. Within the Lake Powell watershed portion of the project area, a large development, now known as Wild Heron, and which includes residential, golf, and commercial components, was authorized by the U.S. Army Corps of Engineers (Corps) in 2001 (Department of the Army permit #199902613(IP-GAH). US 98, which marks most of the southern boundary of the proposed RGP area, is undergoing widening from a two-lane to a four-lane highway in the Walton County section of the RGP. US 98 in the Bay County section of the RGP area was four-laned approximately ten years ago.

c. Project Description: The Jacksonville District proposes to issue a RGP to authorize the discharge of dredged or fill material into non-tidal waters of the United States for the construction of residential, commercial, recreational and institutional projects, including building foundations, building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, and stormwater management facilities.

The RGP would authorize direct impacts to no more than 125 acres of high quality wetlands within the entire RGP area, which would be less than 2% of the existing high quality wetlands in the RGP area. In addition, no more than 20% of low quality wetlands per individual project could be impacted, which would result in an estimated loss of 1,386 acres of the low quality wetlands within the 48,150-acre RGP area. All together a total of approximately 1500 acres of wetlands could be directly impacted, which would represent approximately 5% of the total area of wetlands within the RGP area. All of these proposed direct wetland impacts would be compensated for with compensatory wetland mitigation. The RGP would include two regional mitigation banks, which would total 7,685 acres; and ten conservation units, which would total 13,200 acres. All remaining wetlands not filled on individual project sites would be preserved. Remaining high quality wetlands would be buffered by preserved uplands and low quality wetlands. Overall, the RGP would result in preservation of approximately 70% of the RGP area, with development consolidated in the remaining 30%, thus minimizing and mitigating for secondary impacts associated with projects that would be authorized by the RGP.

The individual project approval process to determine if an individual project conforms to the requirements and criteria of this RGP would begin with a pre-application meeting attended by representatives of the Corps, Florida Department of Environmental Protection (DEP), U.S. Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS), Northwest Florida Water Management District (NWFWMD), and applicant. At these meetings the Corps would solicit comments regarding the project from the DEP, FWS, EPA, NMFS, and NWFWMD in its evaluation as to whether the proposed project conforms to the RGP.

Application to the Corps for individual projects would be made using the form *Joint Application for Works in the Waters of Florida Form #62-312.900*. No regulated work would be allowed to proceed until after written authorization pursuant to this RPG had been issued.

3. Project Purpose:

a. Basic: Construction of residential, commercial, recreational and institutional projects.

b. Overall: Construction of residential, commercial, recreational and institutional projects and their attendant features, including roads, utility lines and stormwater treatment facilities within an area of rapid residential and commercial development, while protecting the aquatic environment on a watershed scale by authorizing a forward-looking, flexible and predictable permitting program, that would minimize unavoidable direct impacts to highest quality aquatic resources, minimize impacts to lower quality aquatic resources, and mitigate for direct, indirect and cumulative impacts within the affected watersheds of an approximately 48,150-acre area in southeastern Walton County and southwestern Bay County.

4. Scope of Analysis:

The scope of analysis for this project was confined to the proposed RGP project area and receiving waters located within the three large watersheds, in which the RGP project area would be located. The project area comprises the permit area for the proposed RGP. Most of the project area is owned by The St. Joe Company (St. Joe), representatives of which have stated to the Corps, that significant development in the form of residential, commercial, recreational and institutional projects is planned. Properties not owned by St. Joe are expected to be developed in the foreseeable future as well.

The project area is currently used primarily for pine silviculture, with areas of ongoing suburban development along the US98 corridor, particularly in the eastern portion of the proposed RGP area. The project area is comprised of a very complex mosaic of uplands and wetlands. Of the approximately 48,150 acres encompassed within the project area, approximately 30,100 acres are wetlands. The location and configuration of wetlands and other waters of the United States, such as streams and jurisdictional ditches, make the area virtually undevelopable without some degree of regulated impact to wetlands and other waters of the United States.

Regulated activities that would be authorized by the proposed RGP would occur throughout the portions of the project area, in which development is allowed under the RGP, and would include the placement of fill in regulated wetlands for the construction of residential, commercial, recreational and institutional projects, possibly including multiple and single unit residential developments, retail stores, light industrial facilities, restaurants, business parks, shopping centers, playgrounds, playing fields, golf courses, stables, nature centers, campgrounds, schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship, roads, bridges, and utility line installation. The construction and operation of these various developments under the proposed RGP, whether located in wetlands, other waters of the United States, unregulated isolated wetlands, or on uplands, would have direct, indirect and cumulative impacts on onsite wetlands and waters; but no direct and only minimal indirect impact on aquatic resources outside the RGP project area, which include wetlands and receiving waterbodies.

No information has been received that demonstrates that the project is in receipt of or expected to receive Federal financial aid.

The extent of cumulative Federal control and responsibility for the project site would include authorities under the National Historic Preservation Act (the project area includes seventeen known historic or cultural resources) and the Endangered Species Act (twenty-four Federal listed species have the potential to occur within the project area).

5. Statutory Authority: Section 404 of the Clean Water Act of 1972 (CWA), as amended (33 U.S.C. 1344).

6. Other Federal, State, and Local Authorizations Obtained or Required and Pending:

a. State water quality certification (WQC): Concurrent with the development and evaluation of the RGP, the DEP developed an Ecosystem Management Agreement

(EMA) with St. Joe, which addresses DEP regulatory approvals for development within the 39,055 acres of land owned by St. Joe within the RGP area. The EMA would set forth the procedures and criteria to be followed by DEP and St. Joe for pre-application meetings, application submittal, review and approval for individual projects within the EMA area. On February 25, 2004, DEP signed a Notice of its intent to enter into a binding EMA under Section 403.0752, Florida Statutes, and Title 62, Florida Administrative Code, to authorize dredging and filling in waters of the State, establishment of two mitigation banks, and construction and maintenance of stormwater facilities, associated with residential, commercial, recreational and institutional projects, including supporting infrastructure. Issuance of the EMA would constitute certification of compliance with state water quality standards pursuant to Section 401 of the CWA, 33 U.S.C. 1341, for properties located within the EMA area. However, at this time several citizen groups have requested an administrative hearing to contest issuance of the EMA. Final action by the state is in abeyance pending the outcome of an administrative hearing. Projects outside the EMA, and projects within the EMA area, which would be reviewed and authorized by the proposed RGP before final issuance of the EMA by the state, would require a separate State Water Quality Certification/Permit from DEP before the Corps could authorize such projects under the RGP.

b. Coastal Zone Management (CZM) consistency/permit: By letter dated November 18, 2003, the Corps provided a consistency determination for the proposed RGP to the Florida State Clearinghouse, DEP (SCH). By letter dated January 15, 2004, the SCH replied that the state had determined that the RGP was consistent with the Florida Coastal Management Program (FCMP), but that all subsequent environmental documents must be reviewed to determine the project's continued consistency with the FCMP. Subsequently, by letter dated February 27, 2004, the SCH stated that the January 15, 2004, was incorrect, and that additional consistency review would not be required. The letter further stated, "The state of Florida has concurred with the adoption of SAJ-86; therefore, additional consistency review will not be required to adopt or use the general permit."

c. Other authorizations: Various authorizations would be required from Bay and Walton Counties for many of the activities that would be authorized under the proposed RGP.

7. General Chronology, Date of Public Notice and Summary of Comments:

a. History, Development and Summary of Overall Project Concept:

The RGP was cooperatively developed by representatives from the Corps, EPA, FWS, NMFS, DEP, NWFWMD, and St. Joe to address the area's existing and anticipated developmental pressures. St. Joe has extensive landholdings in northwest Florida. The change of the company's business plan from paper production and silvicultural management to residential and commercial development raised concerns by many regarding how this development would proceed, regulatory permits obtained, and the ultimate effect of the proposed project on natural resources of the area.

In 2000 the Corps initiated discussions with St. Joe and several Federal and State agencies on a regular, usually quarterly, basis to improve communication and coordination in regard to many pending permit applications resulting from St. Joe's changed business plan and from the overall acceleration of development occurring in the region. Early on it was recognized that reviewing potential impacts on a watershed basis would be preferable to reviewing projects individually.

These discussions involved an interagency team of representatives from the Corps, DEP, USFWS, NMFS, EPA, NWFWMD and St. Joe, and were guided by senior staff team members of the various entities. A technical team (a subset of scientists from the participating entities) met more often than the senior staff group to address specific technical issues associated with the proposed RGP.

The interagency team defined and developed a series of issues for the RGP, including: wetland delineation, wetland functional quality, identification of permitting and mitigation watershed basins and sub-basins, indirect impacts, impact assessment, impact amounts, types of impacts, impact clustering, mitigation, buffers, stormwater treatment, and federally endangered and threatened species.

Overall, the interagency group developed the proposed RGP to best address these issues, to help guide growth within watersheds on a landscape scale, and to protect areas of regional aquatic ecological and cultural significance in the West Bay to east Walton County area. The proposed RGP would provide improved predictability and efficiency of the federal wetland-permitting program in an area of approximately 48,150 acres, of which St. Joe owns approximately 80% with the remaining 20% under numerous other ownerships.

In accordance with the goal of watershed-level planning, ten conservation units were identified within the area of the RGP itself, within which no development would occur, and all lands, uplands and wetlands, would be protected. Two mitigation banks, Devil's Swamp and Breakfast Point, also were identified within which development would not occur, and all lands, uplands and wetlands, would be protected and restored.

The goal of the Devil's Swamp Mitigation Bank mitigation plan is to restore the site to the historical ecosystems of southeastern pine savanna, mixed hardwood-cypress swamps, and upland pines. The goal of the Breakfast Point Mitigation Bank mitigation plan is to restore the site to the historical ecosystems of southeastern pine savanna, mixed hardwood-cypress swamps, and tidal marsh and to buffer approximately 2,500 acres of high quality conservation lands designated as the Breakfast Point Peninsula Conservation Unit in the West Bay Conservation Area that lie directly along the entire water's edge of the Breakfast Point peninsula, and thus protect 11 miles of West Bay shoreline.

The mitigation banks and conservation units would enhance and expand a network of wildlife corridors and significant habitats, which both traverse and are located immediately adjacent to the RGP area, thus linking public resources from Choctawhatchee Bay to West Bay. In addition, conservation units within the RGP area would be located immediately south and west of Bay County's West Bay Area Sector Plan, and would be linked to the sector plan's proposed West Bay Conservation Area. The conservation units and mitigation banks are expected to make important contributions to the local and regional biology and water chemistry through polishing of surface waters and restoration of ecosystem structure and processes that should foster the eventual local recovery of certain listed species, such as the flatwoods salamander and the red-cockaded woodpecker. Compensatory mitigation for wetland impacts authorized under the proposed RGP would be achieved by the restoration and enhancement of wetlands in the mitigation banks, and possibly on a case-by-case basis within the conservation units and within preserved wetlands on individual project sites.

b. Meetings with Federal, State and Local Governmental Officials: During the month of May 2003 representatives of the Corps and DEP met to describe the proposed RGP and EMA to Bay County and Walton County commissioners. Aides for state representative Allen Bense (District 6) and Bev Kilmer (District 7) along with State Senators Charlie Clary (District 4) and Durell Peaden (District 2) were also briefed. Federal legislative aides for Congressman Allen Boyd, Senator Bill Nelson and Senator Bob Graham were briefed during the same time period.

c. Meeting with local citizens groups: On August 15, 2003, representatives of the Corps, DEP and USFWS met with eight representatives of several local citizen groups to present the proposed RGP and EMA. Copies of draft RGP and EMA were provided to the attendees. Various concerns were brought up and discussed.

d. Public Notice Issuance: The Corps issued a public notice for RGP SAJ-86 on August 29, 2003, and sent this notice to all interested parties including appropriate State

and Federal agencies. The public notice was issued with a 30-day comment period. The comment period was extended an additional 30 days for a total comment period of 60 days.

e. Public Meetings: Two public meetings were held that presented the RGP and EMA plans to the public, and at which public comments were received and issues discussed. A joint public meeting sponsored by Corps and the DEP was held on September 24, 2003, starting at 7:00 pm at the Panama City Beach City Commission Meeting Room in City Hall. Approximately 30 people attended. A second public meeting, which was sponsored by the FDEP, was held on January 12, 2004, at 6:00 pm at the Panama City Beach City Commission Meeting Room. A Corps representative attended the meeting to answer questions from the public and receive comments. Approximately 30 people attended.

f. Public Notice comments: The Corps has reviewed all of the comments submitted in response to the circulation of the public notice and the two public meetings. The Corps has summarized the comments received in response to the public notice and the comments voiced at the two public meetings below:

(1) U.S. Environmental Protection Agency (EPA): The EPA was an integral participant in the development and evaluation of the proposed RGP. By letter dated May 4, 2004, the EPA stated:

> This RGP is the culmination of three years of cooperation among state agencies, federal agencies and the regulated public. Considerable time and effort were committed in numerous meetings and field investigations. This work has resulted in consensus among representatives from the private sector, the Florida Department of Environmental Protection, the U. S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the U. S. Environmental Protection Agency (EPA), and the U. S. Army Corps of Engineers that the state and federal wetland alteration application processes could be made more efficient and consistent in specific hydrologic sub-basins in Northwest Florida. It is the opinion of the EPA that this RGP will provide more uniform wetland resource protection than currently exists in other basins in the Southeastern United States, and will take less expenditure of human resource to accomplish that task.
>
> Based on the information provided to date and the specific provisions of this general permit, the EPA is of the opinion that the RGP will result in more consistent protection of wetland resources in these specified sub-basins and will require a lower level of effort to achieve that protection. We appreciate the opportunity of working

with the participants who committed so much time and effort to this activity. We believe this approach will result in more comprehensive protection for public resources than could be anticipated under the normal individual permit process for this area.

(2) U.S. Fish and Wildlife Service (FWS): The FWS was an integral participant in the development and evaluation of the proposed RGP. Issues regarding the FWS's responsibilities under the Fish and Wildlife Coordination Act were addressed during the development of the RGP. On May 24, 2004, the Corps received the final Biological Opinion (BO) dated May 19, 2004, in accordance with Section 7 of the Endangered Species Act of 1973 (ESA) (see paragraph 10e regarding ESA coordination and findings). In a letter dated June 25, 2004, the FWS stated support for the issuance of the RGP.

(3) National Marine Fisheries Service (NMFS): The NMFS was an integral participant in the development and evaluation of the proposed RGP. By letter dated February 9, 2004, the NMFS said that based on the detailed information provided, which identified wetland and wildlife resources, and the many meetings held to discuss and negotiate the terms and conditions of the RGP, NMFS had no objections to permit issuance. NMFS also said that they believe that the RGP approach would result in greater watershed and adjacent estuarine protection than the consideration of numerous individual permits that would be expected for the RGP area. By email dated April 15, 2004, NMFS confirmed that the aforementioned letter constituted concurrence by NMFS that the proposed RGP would not adversely impact Essential Fish Habitat (EFH).

(4) State Historic Preservation Officer (SHPO): The SHPO did not respond to the public notice.

(5) State and local agencies:

(a) Northwest Florida Water Management District (NWFWMD): The NWFWMD participated in the development and evaluation of the proposed RGP. By letter dated September 26, 2004, the NWFWMD offered comments and recommendations, including: that quantification of compensatory mitigation be based on a method that is consistent and appropriately accounts for both direct and secondary impacts; that consideration be given to revising the Breakfast Point mitigation area boundary to encompass bay front and stream front areas at Breakfast Point peninsula; that the proposed 30' buffer around the Bay County portion of Lake Powell be increased at a minimum to the 100' buffer required by Walton County; that a Conservation Unit be

added or extended to encompass some of the direct drainage area and shoreline of Lake Powell; to provide additional avoidance and minimization of wetland impacts and decrease cumulative levels of impact; that means be implemented to ensure that hunting and other activities within conservation units are fully consistent with long-term mitigation; and that the habitat quality of areas currently recognized as high quality wetlands be maintained between the present and a future date when they may be protected by conservation easements or other means. Subsequently, by letter dated January 5, 2004, the NWFWMD stated that staff had been participating in the cooperative effort to develop a watershed-based regulatory framework for wetland and water resource protection in southwestern Bay and southeastern Walton counties, that they are very supportive of the approach taken, and that many of the comments that were previously provided were addressed through final development of the RGP and EMA. The letter further stated that implementation of Environmental Resource Permit (ERP) level standards for stormwater throughout the RGP area, as would be required by the RGP, would help ensure the best possible stormwater treatment and management within the NWFWMD area.

(b) By letter dated October 27, 2003, the Bay County Public Works Department, Engineering Division, stated that in general the proposed RGP is a positive step towards improvement of the permit review process and protection of the environment, water bodies and wetlands. The letter said that the county does have three concerns: 1) ensuring that mitigation for wetland impacts include restoration of lost flood retention volumes from incremental filling of wetlands, 2) continued access by governing agencies responsible for maintenance of drainage ways to all drainage facilities and easements, especially within the mitigation and conservation areas, and 3) that standard wetland delineation methodology be used for delineating wetlands.

(6) Organizations:

(a) The St. Andrew Bay Resource Management Association commented in a letter dated September 23, 2003, that they want fewer allowable impacts and more mitigation. Specifically, allowance for 20% impact to "low quality" wetlands designated as such due to silvicultural activity, is too high. They want better buffering in addition to direct impact mitigation already identified, specifically 100' buffers of natural vegetation around all wetlands, and water bodies, especially Lake Powell, an Outstanding Florida Water (OFW). They want assurances that public review is allowed for RGP renewal every five years and review of environmental impacts at that time. Finally, as new rules go into effect after permit implemented, they should apply to new projects using the permit.

(b) The Clean Water Network (CWN) in a letter dated September 24, 2003, requested that a public hearing regarding the RGP be held, and that the public notice comment period be extended at least 30 days after all state and federal agencies have submitted their comments. CWN commented that a general permit should not be developed for the primary purpose of creating an administratively convenient way to process Section 404 applications, and that the proposed RGP would not comport with CWA requirements regarding issuance of general permits, such as activities authorized by the RGP must be similar in nature, allow only minimal effects from authorized individual projects, and allow only minimal cumulative effects on the environment. The CWN also commented that an Environmental Impact Statement (EIS) should be required, that the RGP's effect on endangered and threatened species must be addressed, that the proposed RGP is inconsistent with EPA's position regarding the regulation of wetlands in the Florida panhandle, that maps provided to show various aspects of the RGP are inaccurate as to sizes of buffers and mitigation areas, and a complaint that CWN staff had been informed that drafts of the RGP were secret and not available through the Freedom of Information Act (FOIA).

(c) The Sierra Club, Northwest Florida Group (SC), commented in a letter dated September 24, 2003, that the proposed RGP would offer many advantages to the applicant, and permit processing burden relief to agencies, but question whether the RGP would result in distinct and significant environmental protection above normal, individual permitting of projects. The SC said that the overall concept has possibilities to work well, but substantially more from the applicant is needed, such as more minimization of wetland impacts and increased mitigation. The SC requested that the RGP not be issued as currently proposed. Specific concerns of the SC included that the RGP, as proposed, provides less protection for wetlands than the individual permit process; that there will be a perceived right by others to have a RGP fashioned for them by the Corps; that the individual project approval process under the RGP should be open to public review and input; that the DEP should not be given authority to administer the RGP for the Corps due to fear of political manipulation at the state level; that minimization of wetland impacts is not a form of mitigation; that the value assessment of "low quality" wetlands should be increased, especially since the activities that degraded these former high quality wetlands were done by the major applicant for this RGP; that mitigation should be required for impacts to isolated wetlands, especially since the DEP and Corps may gain jurisdiction over isolated wetlands in the near future; that there are no incentives for applicants to impact less than 20% of low quality wetlands, rather the incentive is to impact the maximum amount of wetlands, especially in light of allowance of impact transfers within basins; that the allowance for impacts to 20% of low quality wetlands is too high; that bridges through high quality wetlands should be required, except if an applicant can clearly demonstrate that bridging is not

practicable; that allowing 125 acres of high quality wetland impact is too much; and that the applicant should identify all essential road crossings up front and work toward no high quality wetland impacts. The SC also said that 100' buffers should be required for all of Lake Powell; that the coastal portion of Breakfast Point should be included in the ROMA; that since the public notice did not include what mitigation ratios would be, the RGP should not be issued until after the public is given an opportunity to review and comment on the mitigation plan and ratios; that deed restrictions are inadequate to protect CU's, rather conservation easements granted to the state should be utilized; that the RGP should not preclude the application of any new regulations enacted by either DEP or the Corps; that the RGP should have language that any new regulations would be applied immediately; that the five year interval for period review of the proposed RGP is too long, rather review should be every other year with public input; concerned that there would be a loss of the public's right to challenge future projects under the RGP; concerned with the open renewal language in the RGP; and objection that St. Joe can defer to use of the individual permit application process, but rather that St. Joe should be required to use RGP only and transfer this requirement to new owners of land in RGP area.

(d) The Wildlife Advocacy Project (WAP) submitted comments by letter dated September 24, 2003. An essentially duplicate letter dated October 28, 2003, was received from the law firm of Meyer and Glitzenstein. Both letters requested that the comment period be extended 30 days after state and federal agencies have submitted comments. Both letters commented that an EIS is required, since they believe the project will significantly impact the area; that the public notice did not provide sufficient information for the public to assist interested parties in their review of the proposed RGP; concern that the individual project approval process under the RGP process is secretive, unaccountable, and does not allow public review or comment; and that the proposed RGP does not meet various federal regulatory requirements for the protection of wetlands and aquatic resources in light of the water dependency test, alternatives, and the public interest. Also, the letters stated that the Corps had violated the Federal Advisory Committee Act (FACA).

(e) The Bay County Audubon Society said in a letter dated October 9, 2003, that they are supportive of the concept of the RGP, since it is better to protect large tracts of habitat to sustain complex ecosystems, and that high quality wetlands would not be filled, except for necessary, minimized road crossings. The BCAS recommended that the requirement for minimization of road crossings should be made stronger to require bridging, unless demonstrated that bridging is unworkable or highly impractical. They also recommended that the coastal portion of Breakfast Point should be included in the Breakfast Point mitigation project. Their primary concern is with the

implementation and enforcement of the RGP plan, and questioned whether St. Joe and other applicants would be required to set up a trust fund or other tool to manage areas placed under conservation easements, whether BCAS be placed on a list to receive copies of annual monitoring reports, and if BCAS has the right to intervene if they believe provisions of RGP are not being met. The BCAS stated that the RGP should be modified to meet these concerns.

(f) The Bay County Citizens Coalition (BCCC) commented in a letter dated October 10, 2003, that Northwest Florida is considered a national hotspot for biodiversity but faces rapid development into undeveloped areas, which threatens water quality and wildlife habitat; that there are few advantages to the RGP plan because 20% of wetlands in the RGP area would to be filled, filled wetlands will not be replaced, no wetland creation is required, and that improvements to wetland functioning would not replace filled wetlands, and the plants and wildlife that inhabited them. The BCCC further commented that the Corps responded to a similar situation in Southwest Florida by using the EIS process, which should also be done here; and that the RGP does not adequately address large-scale impacts and instead speeds up permitting for large projects with little research and understanding of long-term cumulative impacts, as well as disallows public intervention/oversight. The BCCC requested that the Corps stop work on the proposed RGP, and instead perform a full EIS on the middle Florida panhandle region, that would include: a full study of all the public interest factors, secondary and cumulative environmental impacts, economic impacts caused by continued wetland losses, correlation between shrinking wetland acreage and declining water quality, diminishing flood storage capacity, declining animal populations, and economic and governmental costs implications.

(7) Individuals:

(a) Dr. Bryan Bruns commented in emails dated September 19 and 29, 2003, that the proposed RGP and EMA are innovative initiatives, which offer the potential to protect and enhance the natural environment on a basin and sub-basin scale, as well as promoting efficient and effective regulation of development in wetlands. Dr. Bruns expressed several concerns, including in reference to the proposed conservation easements, that there needs to be allowance for public review of key elements, establishment of a core set of standards/principles required of whomever eventually owns areas under conservation easements, and that public recreational access should be allowed in conservation areas. Additional concerns included that affected nearby landowners of individual projects evaluated under the RGP should be notified of such projects, need to ensure that there will be public notice and opportunities for comment, need for more public meetings and allowance for additional public comments timed after

a full draft of the EMA is available and for those aspects of the RGP still under development, such as mitigation ratios and conservation easement language; and that the Corps should provide a web-link for the Corps proposed RGP to the relevant DEP notice for the EMA.

(b) Ms. Lisa G. Jelks in a letter dated October 14, 2003, asked whether there is a mechanism for developers to request a variance from this general permit, and if so, whether the public can comment on those decisions; and if any other landowners besides St. Joe were involved in the discussions that led to development of the proposed RGP. Ms. Jelks commented that the RGP would protect more wetlands than current laws would allow, but would like the public to remain informed as the process unfolds.

(c) Dr. Edwin J. Keppner commented in a letter dated October 16, 2003, that the proposed RGP would provide ecosystem management at a level not experienced before in the local area, that it would provide mitigation that is planned rather than a patchwork effort, and it would provide a means to address cumulative impacts in the RGP area. Dr. Keppner provided several comments as recommendations to strengthen the proposed RGP; including that the Corps should not delegate any federal authority to DEP in its responsibilities under this RGP; that the Breakfast Point ROMA should include the coastal rim at Breakfast Point; and concerns regarding Lake Powell, which is an OFW, that the RPG would allow fill in wetlands, which drain into Lake Powell, and that a 100' upland buffer is preferable to a 30' buffer for Lake Powell. Overall concern is potential degradation of wetlands that would impact ambient water quality of Lake Powell.

(d) Summary of comments received at the September 24, 2003, public meeting: Comments received dealt with both the RGP and EMA, since the public meeting dealt with both the proposed RGP and EMA. Comments included: have similar RGPs been issued in Florida; long-term management of conservation areas should be assured; what is the jurisdictional status of isolated wetlands and how are they covered by the RGP and EMA; concerns regarding Lake Powell and how to insure against degradation of ambient conditions; how will historical sites be investigated and protected; that an EIS should be required for the RGP, that the federal process should be in compliance with the Federal Advisory Committee Act, that the Corps should have included environmental groups in development of the RGP, how will the public access the various appendices and exhibits to the RGP and EMA, how was the determination of high and low quality wetlands made and was that determination subject to peer review, concern that prior notice to adjacent property and home owners regarding individual projects will not be given, what will happen if St. Joe doesn't follow the

guidelines, public should have access to preserved lands used for mitigation including the conservation units, what will be the funding source for management of conservation lands, conservation easements should allow new owners to appropriately manage conservation lands, feral pigs need to be controlled within conservation areas, concerned that it appears that proposed conservation units overlap state lands, concerns regarding potential sale of the perimeter of Breakfast Point peninsula, concerns regarding development within the conservation units, how will it be possible for conservation units to be burned if St. Joe developments are built adjacent to conservation units, concerns regarding the continuation of logging of timber and normal silvicultural practices within conservation units, concerns regarding delineation of wetlands for individual projects, wetlands should have upland buffers, concerns as whether the proposed mitigation actually offset indirect and secondary effects resulting from projects authorized under the RGP and EMA, mitigation and preservation should be assured in perpetuity, stormwater standards should be at state Environmental Resource Permitting (ERP) and Outstanding Florida Waters (OFW) standards for the Lake Powell basin and ERP for rest of RGP area, concern that OFW standards are not all that good, need for input from Florida Department of Transportation and local Metropolitan Planning Organizations for future road expansion in the area (transportation corridors), concerns regarding downstream flooding of neighboring properties from wetland fills, how will drainage ditches be maintained, what will happen if rules and regulation change while the RGP and EMA are in use.

(e) Summary of comments from the January 12, 2004, public meeting: The only comments that were substantially different from those received at the September 24, 2003, public meeting, were concerns by property owners within the RGP area, that they had not been formally advised of the development of the RGP and EMA; and that they will be held to the same permitting standards to which St. Joe has voluntarily agreed.

(8) Others including Internal Coordination: No internal coordination was necessary.

8. Alternatives:

a. Proposed Project Context: Various alternatives were reviewed in regard to the use of a regional general permit. These included the no action alternative, review of individual projects with the establishment of mitigation banks, and enacting the RGP In the review of these alternatives, certain facts were ascertained. As the largest landowner in the area, the St. Joe Company and its future business plans were a predominant factor. The company has publicly proclaimed that it was changing its

business from primarily a silviculture/pulp mill operation to a commercial/residential development company. It was an established fact that the company was going to continue proposing various types of commercial and residential developments. Northwest Florida is environmentally pristine with little development when compared to other parts of the State. With the increasing development pressure, it is expected that without some proactive environmental approach, the landscape would be fragmented, and densely developed, mirroring many areas found in South Florida. Areas important to protected species, such as the Flatwoods salamander and Bald eagle, would benefit from the preservation of large, unfragmented areas.

b. Avoidance (No action, uplands, and availability of other sites):

(1) No Action Alternative: Adoption of this alternative would mean that each permit application received within the proposed RGP area would be evaluated on an individual basis as a Nationwide Permit, a Letter of Permission, or an Individual Permit. Regulatory evaluations and decisions would be made independently on each permit application, as they are submitted to the Corps over time. St. Joe, as the major landowner in the proposed RGP area, would likely sell numerous parcels to buyers with widely varying needs. Environmental consequences of the succession of projects that would be permitted and built, including potential secondary and cumulative impacts to the surrounding ecosystem, would be difficult to ascertain. No conservation units or mitigation banks would be established. Endangered species reviews and cultural resource surveys would be done on a case-by-case, project-by-project basis only. Compensatory mitigation projects would likely be piecemealed, small-scaled, scattered and disjointed in the landscape. Piecemealed mitigation projects would be managed by a host of different entities, and coordination of management efforts of preserved lands would likely not occur. The landscape would likely become a patchwork of projects of varying sizes, in which considerably more uplands would be developed, and an extensive network of interconnected wetlands and uplands would not be preserved.

c. Minimization: Establishment of mitigation banks to compensate for wetland impacts from individual projects in the area would help to focus mitigation into larger, higher quality and geographically desirable areas. However, the primary landowner, St. Joe, was not interested in establishing mitigation banks for use by other landowners without a regional general permit. St. Joe believed that it could carve out areas of its holdings, sufficient for its own mitigation needs. Potential environmental consequences would very likely include scattered preservation areas in the landscape, and a reduction in areas that would be guaranteed preservation through conservation easements. In addition, mitigation banks are required to have conservation and restoration plans in place prior to their establishment. Due to the complex mosaic of wetlands and uplands

dispersed throughout the landscape within the RGP area, some wetland impact is unavoidable and is warranted to achieve a more compact development pattern to enable avoidance of more valued wetlands, and in some cases ecologically valuable uplands as well. If future development in the RGP area conforms to the RGP's terms and conditions, no more than approximately 5% of the wetlands in the RGP area would be developed. Approximately 70% of the RGP area would be preserved and development would be consolidated within the remaining 30% of the landscape (see Tables "Effects in the RGP Project Area" and "Wetland Impacts Within the RGP Area" in paragraph 10a(4)(c))

d. Project As Proposed: This would result in the establishment of a regional general permit for three large watersheds and two small areas that drain to the Gulf Of Mexico, as described in paragraph 7a above. Environmental consequences include establishment of geographically contiguous conservation units and mitigation banks located in the most environmentally sensitive areas in the watersheds. Environmental predictability in terms of secondary and cumulative impacts can be ascertained. No more than approximately 5% of the overall wetlands in the area would be developed. In addition, buffers would be established around high quality wetlands, and uplands would also be preserved when they would enhance nearby wetlands. Development would be confined primarily to the low quality wetland areas, which have been impacted by previous silviculture operations. Impacts to the high quality wetlands are limited and would consist of necessary road crossings. The RGP would allow the permitting process to be more efficient, and allow Corps regulatory personnel to spend additional time dealing with other environmentally sensitive areas of the region. Endangered species consultation and review of the cultural resources in the area would be done on a regional basis, thus allowing for more comprehensive reviews and saving resources of other Federal agencies.

e. Conclusion of the Alternatives Analysis: Given the environmental benefits of the proposed regional permit and the concomitant regulatory streamlining, the proposed regional general permit is considered the least damaging practicable alternative.

9. Evaluation of the 404(b)(1) Guidelines:

a. Factual determinations:

(1) Physical substrate: Only clean fill and rock material (e.g., soil, rock, sand, marl, clay, stone, and/or concrete rubble) would be used for wetland fills. However, the proposed placement of these fill materials within wetlands would alter the physical nature of the existing soils through the introduction of these non-hydric soils and

materials, and the placement of impervious surfaces over most areas of fill for the construction of various components normally found in suburban developments, such as roads, parking lots, and buildings. The placement of fill and the excavation of wetlands would directly and permanently impact the substrate within the footprint of individual projects authorized by the RGP. Under the proposed RGP approximately 1500 of the approximately 30,000 acres of wetlands (approximately 5%) in the RGP area would be directly impacted. Fill material would be placed in such a manner as to minimize the potential for impact outside of the footprint of individually authorized projects. The special conditions of any State water quality certification for individual projects authorized under this RGP would be incorporated as a special condition of the RGP. Therefore, permittees would be required prior to and during construction, to implement and maintain erosion and sediment control best management practices needed to retain sediment on-site and to prevent violations of state water quality standards.

(2) Water circulation, fluctuation, and salinity: It is not expected that the placement of fill or excavation of wetlands for projects that would be authorized under this RGP would, either individually or cumulatively, directly effect the circulation, fluctuation and salinity of the various receiving waterbodies (West Bay, Choctawhatchee River and Bay, Lake Powell, Camp Creek Lake and Gulf of Mexico) of the watersheds in which the RGP area is located. Indirect effects on these receiving waterbodies by RGP authorized activities are expected to be of a scale that will not measurably alter their ecological balance due to the size of the receiving waters and to the water quality protection measures required by the RGP and concurrent requirements of State permit/water quality certifications for individual projects. In addition, the RGP does not authorize any activities in any navigable, and thus tidal, water of the United States (i.e. waters subject to Section 10, Rivers and Harbors Act of 1899). The RGP area is located within the Gulf Coastal Lowlands physiographic division characterized by very flat topography on a series of coast-parallel plains or terraces. The area is within the last two terraces with elevations between sea level and approximately 40 feet. Such flat topography with sandy soils results in poorly defined stream systems and a landscape composed of a complex mosaic of intermixed uplands and wetlands. Authorized projects may impact interior open waters, such as streams and ponds, within the RGP area itself. All road or bridge crossings in wetlands shall be designed so that the hydrologic conveyance is not reduced or impaired and no wetland fill shall sever a jurisdictional connection or isolate a jurisdictional area. It is anticipated that most direct wetland impacts will occur along the perimeters of large wetlands in low quality wetlands, since such wetlands in the RGP area consist of high quality wetland cores with perimeter low quality wetlands that have been impacted by past silvicultural activities. Overall, the potential alteration of flow patterns over the landscape of the RGP area and its constituent, individual sub-basins would be minimal.

(3) Suspended particulate/turbidity: It is not expected that projects authorized by the RPG would significantly release suspended particulate matter into or affect turbidity of receiving waters or wetlands, streams or other waters adjacent to permitted impact areas. As a special condition of this RPG, which would incorporate the special conditions of state water quality certification for individual projects authorized under this RGP, permittees would be required prior to and during construction, to implement and maintain erosion and sediment control best management practices needed to retain sediment on-site and to prevent violations of state water quality standards, including turbidity standards.

(4) Contaminant availability: The source of fill material that would be used for individual projects is unknown, but the RGP would require the use of clean fill material. Surface water management systems for all projects authorized by this RGP would be required to be designed, constructed, operated, and maintained in compliance with the *Stormwater System Design and Review Criteria Manual (February 2004)*. The manual incorporates water quantity and quality components, which exceed the state's rule criteria in Rule 62-25, Florida Administrative Code, as now required in northwest Florida. By using the manual the RPG would require that stormwater treatment meet State Environmental Resource Permitting (ERP) standards, which would be a higher level of treatment than that now required in northwest Florida. In the Lake Powell basin all projects would be required to treat stormwater at the ERP Outstanding Florida Waters (OFW) standards, though under normal ERP rules, only discharges directly into Lake Powell itself, would normally be required to be treated at this higher level.

(5) Aquatic ecosystem effects: Under the proposed RGP, a maximum of 125 acres of high quality wetlands and no more than approximately 1,400 acres of low quality wetlands for a total of approximately 1500 acres of wetlands, would be directly impacted. Within the footprint of the area of wetlands that would be directly impacted, wetland plants and organisms, and the habitats, which support them, would be eliminated. Secondary impacts on remaining wetlands adjacent to areas impacted by projects authorized by the RGP would include decreased wildlife usage and changes in hydrology due to the damming effect of fills. However, the proposed RGP would minimize such impacts over what could be expected to occur under normal permitting procedures. If future development in the RGP area conforms to the RGP's terms and conditions, no more than approximately 5% of the wetlands in the RGP area would be developed. Approximately 70% of the RGP area would be preserved and development would be consolidated within the remaining 30% of the landscape. In addition to minimization of wetland impacts, the proposed RGP would include establishment of upland and/or low quality wetland buffers adjacent to high quality wetlands, upfront

preservation of ten conservation units totaling over 13,200 acres, and compensatory mitigation through wetland enhancements and restoration within two mitigation banks (approximately 7,700 acres). Additional opportunities for compensatory mitigation projects exist within the conservation units and within preserved wetlands on individual project sites. The mitigation banks, conservation units, and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant wetland and upland habitats, which both traverse and are located immediately adjacent to the RGP area, thus linking ecological resources from Choctawhatchee Bay to West Bay.

(6) Proposed disposal site: The fill material would be contained at the site of placement. Therefore, an analysis of mixing zones is not applicable.

(7) Cumulative effects: The RGP would provide a plan for development on a landscape scale that is ecologically driven and focused. Unlike normal permitting procedures, in which a series of projects are permitted over time within a particular area, and it is extremely difficult to ascertain secondary and cumulative impacts of the succession of these projects over time on adjacent ecosystems, the proposed RGP would afford the opportunity to address and determine these impacts upfront on a landscape scale. As stated in paragraph 9a(5) above, if future development in the 48,150 acre RGP area conforms to the RGP's terms and conditions, no more than approximately 5% of the wetlands in the RGP area would be developed, and approximately 70% of the area would be preserved and development would be consolidated. These preserved lands would comprise an enhanced network of wildlife corridors and significant wetland and upland habitats, which would preserve the linkage of ecological resources from Choctawhatchee Bay to West Bay. The RGP would require more stringent stormwater standards than normally required in northwest Florida, thus minimizing cumulative impacts of stormwater runoff to receiving waters.

(8) Secondary effects: Components of the aquatic environment, that could be subjected to the secondary effects of the RGP would include wetlands and other waters that would remain intact within the RGP area, as projects are authorized and built; as well as wetlands and other waters adjacent and downstream of the RGP area. Secondary effects generally associated with fill activities in wetlands include changes in water circulation and flow patterns (see paragraph 9a(2) above), changes in stormwater runoff volumes and quality, release of leachate from septic tanks, and reduction in habitat size and/or connectivity for species that are dependent on or use the aquatic environment. Under the proposed RGP secondary effects would be reduced from those that could be expected to occur under normal permitting procedures, and such secondary effects that would occur would be minimal. Under the RGP stormwater

would be treated to a higher standard that is normally required in the Florida panhandle, and the placement of fill for, and thus the installation of septic tanks and drainfields in wetlands would be prohibited. The ten conservation units constitute approximately 27% of the RGP area. Land management within the conservation units would change from intensive silvicultural production to selective timbering and land management to enhance conservation and habitat restoration. The Cypress and Wet Pine Flats Conservation Unit (approximately 2,910 acres in size) would also be used as a discharge area for tertiary treated effluent from the Panama City Beach wastewater treatment facility. Currently the effluent is discharged directly into West Bay. At build-out under the RGP, approximately 70% of the RGP area would be placed under conservation easements and would comprise an enhanced network of wildlife corridors and significant wetland and upland habitats, which would preserve the linkage of ecological resources from Choctawhatchee Bay to West Bay. Compensatory mitigation projects within portions of these preserved areas would enhance the network of wildlife corridors and greenways.

b. Restrictions on Discharges:

(1) Alternatives (see section 8 above):

(a) The activity is located in a special aquatic site.

yes_x_ no

(b) The activity needs to be located in a special aquatic site to fulfill its basic purpose.

yes__ no x

(c) It has been demonstrated in section 8 above that there are no practicable nor less damaging alternatives which would satisfy the project's basic purpose.

yes_x_ no

(2) Other program requirements:

(a) The proposed activity violates applicable State water quality standards or Section 307 prohibitions or effluent standards.

yes__ no x

(b) The proposed activity jeopardizes the continued existence of federally listed threatened or endangered species or affects their critical habitat.

yes__ no_x

(c) The proposed activity violates the requirements of a federally designated marine sanctuary.

yes__ no_x

(3) The activity will cause or contribute to significant degradation of waters of the United States, including adverse affects on human health; life stages of aquatic organisms; ecosystem diversity; productivity and stability; and recreational, aesthetic, and economic values.

yes__ no_x

(4) Minimization of adverse impacts:

(a) Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

yes_x_ no

(b) Compensatory Mitigation (Wetland enhancement, creation, etc.):

(1) Description of impacts: The RGP, as proposed, would at a maximum result in the direct impact of approximately 1400 acres of low quality wetlands and 125 acres of high quality wetlands within the approximately 48,150-acre RGP area (see paragraph 10a(4) below). Indirect impacts would occur in portions of remaining wetlands that are adjacent to the directly affected wetlands and uplands. Impacts to high quality wetlands would be confined to necessary road crossings and bridges to allow access to developable upland areas. All low quality wetlands would consist of wetland areas under active silvicultural production of pine trees, as well as jurisdictional ditches. All other wetland areas are defined as high quality for purposes of this RGP. All jurisdictional wetlands that could be impacted by this project are contiguous to other waters that eventually drain to Choctawhatchee Bay, West Bay, Lake Powell, Camp Creek Lake or the Gulf of Mexico.

(2) Compensation:

(a) Overall mitigation for regulated work authorized under the proposed RGP would include upfront minimization of wetland impacts, establishment of upland and/or low quality wetland buffers adjacent to high quality wetlands, upfront preservation of ten conservation units totaling over 13,200 acres, and compensatory mitigation through wetland enhancements and restoration within two mitigation banks, the conservation units, or within preserved wetlands on individual project sites. The mitigation banks total over 7,600 acres. The mitigation banks, conservation units and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant habitats, which both traverse and are located immediately adjacent to the RGP area, thus linking public resources from Choctawhatchee Bay to West Bay. In addition, the RGP area is located immediately south and west of Bay County's *West Bay Area Sector Plan*, and would be linked to the sector plan's proposed conservation areas.

(b) Compensatory mitigation for individual project wetland impacts, authorized under the proposed RGP, would be satisfied within: 1) two specified mitigation banks, 2) conservation units, or 3) the individual project site. Compensatory mitigation at a mitigation bank would not be an option for a project within the Lake Powell basin (see Exhibit 1). Mitigation for projects within the Lake Powell basin would only be located within the Lake Powell basin (i.e. within the project site, or within a conservation unit in the Lake Powell basin). The first priority for compensatory mitigation of permitted wetland impacts in the RGP area, except for impacts within the Lake Powell basin, would be restoration/enhancement-based activities at one of the two mitigation banks. The Corps on a case-by-case basis would review plans for individual compensatory mitigation projects located within the conservation units or on individual project sites. Such projects would require Corps approval. Compensatory mitigation credits and debits would be defined in terms of functional units (FU), as determined using the WRAP. Each acre of impact to low quality wetlands would be valued at 0.65 FU, and each acre of impact to high quality wetlands would be valued at 0.92 FU. Compensatory mitigation would be required to occur prior to or be implemented concurrent with authorized impacts under the RGP. Compensatory mitigation projects would be maintained in perpetuity in the enhanced/restored ecological condition.

(c) Mitigation Banks:

As part of the development of the proposed RGP and EMA, St. Joe elected to establish two mitigation banks to serve two of the three major mitigation basins within the RGP area (see Exhibit 1). The banks would be used for compensatory mitigation

for loss of wetland functions from impacts to waters of the United States, including wetlands, which would result from activities authorized under the proposed RGP. Federal and State agencies participated in the review of the mitigation banks as a Mitigation Bank Review Team (MBRT). The Devil's Swamp Mitigation Bank (SAJ-2004-1864) would serve the Devil's Swamp Basin and the Breakfast Point Mitigation Bank (SAJ-2004-1865) would serve the Breakfast Point Basin within the RGP area. The Federal Mitigation Banking Instruments for both mitigation banks, which govern the establishment, use, operation, and maintenance of the banks, were entered into by and among St. Joe, the Corps, EPA, and FWS.

The Devil's Swamp Mitigation Bank (DSMB) is a 3,049-acre area located between the ICW to the south and west, silvicultural lands to the south and east and the NWFWMD's Devil's Swamp mitigation property to the north and west. The bulk of the site is south of Steele Field and Bunker Roads. The mitigation bank is located in Section 31, Township 01 South, Range 18 West, and Sections 6 and 7, Township 02 South, Range 18 West in Bay County, Florida; and in Sections 34-36, Township 02 South, Range18 West, and Sections 1, 2, 11, and 12, Township 03 South, Range 18 West in Walton County, Florida.

Historically, the DSMB site was a mosaic of hydric and mesic pine flatwoods with broad areas of mixed forested wetlands and cypress swamps, savannahs, and xeric pine communities. During the 1960s and 1970s, much of the proposed mitigation bank was planted in slash or sand pine plantation for silviculture. Approximately 54.4% (slash pine) and 4.5% of the site (sand pine) is currently planted in pines of various ages (approximately 5 years to 25 years). Some of the older plantings have recently been thinned every third row. Most of the site was furrowed during planting, and furrow depths are typically 6 to 8 inches deep. The understory/ground cover varies from open herbaceous to very dense thickets of hydric shrubs, primarily titi (*Cliftonia monophylla*). Due to fire suppression, shrub percent cover is much higher than would naturally occur in the historical natural communities. There has been no infrastructure constructed on the site other than logging roads and ditches to support silviculture. In addition to the planted pine, other communities include titi swamp, shrub swamp, and cypress swamp. The planted pines occur primarily in historical hydric and mesic pine flatwoods, xeric sandhills, and savannah. Habitats on the property vary in quality from excellent to poor depending on the effects of management for pine silviculture. The degree of infestation by exotic or nuisance plant species is negligible. In general, the current and historical communities at the bank site are typical of those in the RGP area.

The DSMB MBI requires St. Joe, as the mitigation bank sponsor, to preserve, enhance and maintain the bank site by the removal of inappropriate vegetation and

discontinuation of timber operations, the improvement of hydrology through low-water crossing and culvert installation, and by the implementation of an interim and long-term restoration management plan including prescribed burns. The sponsor would conduct these compensatory mitigation activities in accordance with the provisions of the MBI. The entire bank may be implemented in three discrete phases. The compensatory mitigation plan is expected to result in the restoration or enhancement of a mosaic of hydric pine flatwoods, savannah, mixed forested wetland, cypress swamp and upland pines. In accordance with the provisions of the MBI and upon satisfaction of the success criteria contained therein, a total of 526.8 freshwater credits would be available to be used as compensatory mitigation for projects within the Devil's Swamp Basin portion of the RGP area, as shown on Exhibit 1. Mitigation bank credits are in the form of FUs pursuant to the WRAP, as applied during the assessment of the wetlands within both the bank and RGP area.

The Breakfast Point Mitigation Bank (BPMB) is a 4,647-acre portion of the 7,100-acre Breakfast Point peninsula extending into the south side of West Bay. Pine silvicultural lands form the southern boundary of the mitigation bank. The mitigation bank is located in Township 03 South, Range 16 West, Sections 1, 11-15, and 23-26; and Township 03 South, Range 15 West, Sections 6-9,16-21and 28 in Bay County, Florida.

Historically, the BPMB site was a mosaic of predominately hydric pine and cypress flatwoods and prairie-marsh associations with a central, deep drainage area of predominantly mixed hardwood wetlands. During the 1960s and 1970s, much of the proposed mitigation bank was planted in slash pine for silviculture. Approximately 87% of the site is currently planted in pine of various ages (approximately 3 - 25 years). Most of the site was bedded during planting, and bed and furrow depths are typically 3 to 8 inches deep. In wetter areas, such as in cypress flats/swamps and palustrine marshes, many of the slash pines have died. Some of the older plantings have recently been thinned every third row. Some of the types of communities found on the site vary based on slight differences in topography. Where wetlands have been furrowed, distinctly different plant communities usually exist on the tops of the beds vs. in the furrows. The understory/ground cover varies from open herbaceous to very dense thickets of mesic or hydric shrubs. Due to fire suppression, shrub percent cover is much higher than would naturally occur in the historical natural communities. There has been no infrastructure constructed on the site other than logging roads and ditches to support silviculture. In addition to the planted pine, other communities include hydric and mesic pine flatwoods, cypress flats, mixed forested wetland, wet prairie, and freshwater marsh. The planted pines occur primarily in historical hydric and mesic pine flatwoods, cypress flats, wet prairie, and freshwater marsh. Habitats on the property

vary in quality from excellent to poor depending on the effects of management for pine silviculture. The degree of infestation by exotic and nuisance plant species is minimal. Chinese tallow (*Sapium sebiferum*) and cattail (*Typha latifolia*) were observed in several on-site wetlands and in roadside drainage ditches. In general, the current and historical communities at the bank site are typical of those in the RGP area.

The BPMB MBI requires St. Joe, as the bank sponsor, to preserve, enhance and maintain the bank site by the removal of inappropriate vegetation and discontinuation of timber operations, the improvement of hydrology through ditch blocks and low-water crossing and culvert installation, and by the implementation of an interim and long-term restoration management plan including prescribed burns. The sponsor would conduct these mitigation activities in accordance with the provisions of the MBI. The entire BPMB may be implemented in four discrete phases. The compensatory mitigation plan is expected to result in the restoration or enhancement of a mosaic of hydric and mesic pine flatwoods, cypress flats, mixed forested wetlands, and palustrine marsh. In accordance with the provisions of the MBI and upon satisfaction of the success criteria contained therein, a total of 1,051.7 freshwater credits would be available to be used as compensatory mitigation for projects within the Breakfast Point Basin portion of the RGP area, as shown on Exhibit 1. Credits are in the form of FUs pursuant to the WRAP, as applied during the assessment of the wetlands within both the bank and RGP area.

The two mitigation banks together upon complete satisfaction of all success criteria would have a total of 1,578.5 freshwater FU credits. Under the RGP, the maximum number of FU credits required to offset authorized impacts would be approximately 1025 (125 acres of high quality wetlands X 0.92 FU + 1400 acres of low quality wetlands X 0.65 FU = 1025 FUs). Therefore, approximately 500 FU credits could be available above that needed to offset direct wetland impacts allowed under the RGP. Potentially some of these excess credits could be used to provide compensatory mitigation for projects, that would not qualify for the RGP, but in consideration of the goals of the RGP, would otherwise be permittable as Individual Permits, Letters of Permission, or Nationwide Permits.

c. Findings: The project complies with the Guidelines with incorporation of the following conditions, which comprise the special conditions of the proposed RGP:

1. Water quality certification for a portion of the Regional General Permit (RGP) area may be granted by the Ecosystem Management Agreement (EMA), if it is executed between the Florida Department of Environmental Protection (DEP) and The St. Joe Company (Appendix E). If executed, the EMA would constitute water quality certification for those projects located within the EMA portion of the RGP

area. All of the conditions specified in the EMA would constitute special conditions to this RGP. All projects outside the EMA area and all projects authorized by this RGP within the EMA area before issuance of the EMA will require separate water quality certifications from DEP. The conditions specified in such certifications constitute special conditions of this RGP.

2. Surface Water Management Systems for all projects authorized by this RGP shall be designed, constructed, operated, and maintained in compliance with the *Stormwater System Design and Review Criteria Manual, February 2004* (Appendix F).

3. This permit applies to discharges of dredged or fill material into non-tidal waters of the United States for the construction of residential, commercial, recreational and institutional projects, including building foundations, building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, and stormwater management facilities. Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, light industrial facilities, restaurants, business parks, and shopping centers. Examples of recreational facilities include playgrounds, playing fields, golf courses, hiking trails, bike paths, horse paths, stables, nature centers, and campgrounds. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. This permit applies only to the portions of Bay and Walton Counties, Florida, as depicted on Exhibit 1.

4. This RGP authorizes impacts to wetlands that are defined as low and high quality. Low quality wetlands are wetlands that are planted in pine trees. Low quality wetlands include ditches. High quality wetlands are all other jurisdictional wetlands. Low quality wetlands are typically hydric pine plantations. High quality wetlands are typically cypress domes/strands, bay/gallberry swamps, harvested cypress swamp areas, titi monocultures, and *Hypericum* bogs.

5. Impacts to wetlands must meet all of the following criteria:

a. Impacts to low quality wetlands shall not exceed 20% of the total low quality wetlands in any one sub-basin. The area within a particular sub-basin to be used to make the 20% calculation does not include areas within either mitigation banks

or Conservation Units located within the sub-basin. Sub-basins are depicted in Exhibit 2.

b. Projects may impact more than 20% of the low quality wetlands within an individual project site, if cumulative low quality wetland impacts for all approved projects within the sub-basin do not exceed 20% at any time. Examples of how this may occur include:

(1) An individual project impacts only 15% of the low quality wetlands in the project site and the remaining on-site wetlands are preserved through a conservation easement to the DEP. A subsequent project owned by the same applicant within that sub-basin may impact more than 20% of the low quality wetlands in the project site, as long as the total impact to low quality wetlands for all approved projects for the same landowner within the sub-basin does not exceed 20%.

(2) An individual project impacts 30% of the low quality wetlands on the project site. As a part of the project, a sufficient amount of low quality wetlands are preserved through a conservation easement to DEP elsewhere within the same sub-basin so as not to exceed the maximum 20% impact to low quality wetlands for all approved projects within the sub-basin.

c. Impacts to high quality wetlands shall be limited to road and bridge crossings necessary to support the associated development, and shall not exceed a width of 100 feet of combined filling or clearing at each crossing. The aggregate total filling or clearing of high quality wetlands for road crossings within the RGP area shall not exceed 125 acres. The first preference for new high quality wetland road crossings will be at existing silviculture road crossings. Road crossings at locations other than existing silviculture crossings are allowed if the crossing is designed and constructed to minimize wetland impacts. In addition, for each crossing proposed at a point where no previous crossing existed, an existing silviculture road crossing within the sub-basin must be removed and the wetland connection restored. All road or bridge crossings in wetlands shall be designed so that the hydrologic conveyance is not reduced or impaired. Bridging is encouraged wherever practicable. The following factors shall be considered when determining if bridging of the wetlands is practicable: 1) the degree of water flow within the wetland, 2) the length of the wetland crossing, 3) the topography of the wetland and associated upland, and 4) the degree to which a roadway would adversely affect the movement of wildlife expected to use the wetland.

d. All wetlands not authorized for impact on each project site shall be preserved. Conservation easements shall be placed over such wetlands (see Special Condition 15.b.). Individual project sites, including offsite preservation areas to meet the requirement in Special Condition 5.b.(2) above, shall have reasonable boundaries that include intermixed and adjacent low and high quality wetlands.

6. No fill material may be placed in wetlands for septic tanks or drainfields.

7. Buffers are required around Lake Powell. A 100-foot buffer between the lake from the ordinary high water line (OHWL) and development is required in Walton County. A 30-foot buffer between the lake from the OHWL and development is required in Bay County. All buffers, whether upland or wetland, will be preserved and maintained in a natural condition, except boardwalks for dock access and on-grade trails. Buffers may be enhanced or restored to a more natural condition. Application of fertilizers, herbicides, or pesticides is prohibited in all buffers.

8. In general, low quality wetlands shall buffer high quality wetlands throughout the RGP area. Except at road crossings on a per project basis, upland and/or low quality wetland buffers adjacent to high quality wetlands shall be an average of 50 feet wide, with a minimum 30-foot width for each individual project. All buffers, whether upland or wetland, will be preserved and maintained in a natural condition, except for the construction of boardwalks for dock access and on-grade trails. Buffers may be enhanced or restored to a more natural condition. Application of fertilizers, herbicides, or pesticides is prohibited in all buffers.

9. Only clean fill and rock material compatible with existing soils (e.g., soil, rock, sand, marl, clay, stone, and/or concrete rubble) shall be used for wetland fills.

10. No wetland fill shall sever a jurisdictional connection or isolate a jurisdictional area.

11. Compensatory Mitigation:

a. Compensatory mitigation for individual project wetland impacts may be satisfied within: 1) two specified regional offsite mitigation banks, 2) designated Conservation Units, or 3) within the project area. However, mitigation at a mitigation bank shall not be an available option for a project within the Lake Powell basin. Mitigation for projects within the Lake Powell basin can only be

located within the Lake Powell basin. Mitigation for impacts within the Lake Powell basin can be within the project site, or within a designated Conservation Unit in the Lake Powell basin.

b. The first priority for mitigation of permitted wetland impacts in the RGP area, except for impacts within the Lake Powell basin as described above, is restoration/ enhancement-based activities at one of the two following designated mitigation banks. The Breakfast Point Mitigation Bank (BPMB), which is 4,636 acres in size, is only available for projects within the Breakfast Point Basin. The Devils Swamp Mitigation Bank (DSMB), which is 3,049 acres in size, is only available for projects within the Devils Swamp Basin. The two mitigation banks and their respective basins, as well as the Lake Powell basin, are depicted in Exhibits 1, 3 and 4.

c. The Corps on a case-by-case basis may approve compensatory mitigation projects located within the conservation units or on individual project sites.

d. Compensatory mitigation credits and debits are defined in terms of functional units (FU), as determined using the *Wetland Rapid Assessment Procedure (WRAP), Technical Publication REG-001, September 1997*. Each acre of impact to low quality wetlands shall be valued at 0.65 FU, and each acre of impact to high quality wetlands shall be valued at 0.92 FU.

e. Compensatory mitigation will occur prior to or be implemented concurrent with permitted impacts.

12. Compensatory mitigation projects required for projects authorized by this RGP must be maintained in perpetuity in the enhanced/restored ecological condition, as described in the individual compensatory mitigation project's plan.

13. Mitigation Banks:

a. The two mitigation banks shall be constructed, managed and monitored according to the mitigation bank instruments, included as Appendices A (BPMB) and B (DSMB).

b. The number of wetland mitigation credits and the release schedule for credits in each mitigation bank are provided in the mitigation bank plans referenced above. For individual projects, which utilize a mitigation bank, the

sum of impact FUs shall be debited from the appropriate mitigation bank within 30 days of individual project approval under this RGP.

c. Ownership or interest in a mitigation bank, other than sale of mitigation credits to a third party, may only be transferred to a governmental agency for conservation purposes, or to a 501c(3) conservation organization. If a mitigation bank, or any part thereof or any interest therein, is conveyed to a subsequent conservation owner, St. Joe will ensure that the new owner be bound by the conditions and requirements of the mitigation bank plan, as required by this RGP. Prior to the conveyance, the Corps must approve the instrument(s) that ensure compliance with the RGP and mitigation bank plan, and may require execution of a subsequent agreement with the conservation owner to provide for continued compliance with the approved mitigation plan. The Corps' approval of the assurance instruments shall be contingent on the conservation owner providing reasonable assurance that such owner has the technical and financial resources to comply with the approved mitigation bank plan.

14. Conservation Units:

a. Ten Conservation Units (Exhibits 5 through 15) will be excluded from development and preserved under the conditions listed below by the St. Joe Company, commencing with the first authorization issued under this RGP for any project of the St. Joe Company or any of its constituent companies.

b. Conservation Units may only be used for conservation purposes, wetland or habitat mitigation, and limited passive recreational purposes. The uses and activities authorized in the Conservation Units are limited to the following:

(1) Wetland and upland habitat enhancement and restoration.

(2) Forest management shall be conducted so as to enhance conservation and habitat restoration, using Best Management Practice's and uneven age management regimes in accordance with the *Principles for Forest and Wildlife Management of Conservation Units within the Regional General Permit Area and Ecosystem Agreement Area"* (Appendix C). Timber management for the sole purpose of timber production is prohibited. No timbering of cypress or wetland hardwoods will occur in Conservation Units. Clear cutting is prohibited except as allowed in the referenced management plan.

(3) Hunting pursuant to properly issued hunting permits, fishing, and birding.

(4) Prior approval from the Corps is required for construction of nature trails, boardwalks, gathering shelters, restroom facilities and other similar passive recreational activities in the Conservation Units. These activities shall result in no more than minimal impacts to the Conservation Units. Additional activities may be approved after review by the Corps, and only if the Corps determines the proposed activity to be consistent with the purpose of this RGP.

(5) Wetland mitigation.

(6) Effluent disposal, including necessary transmission lines, distribution facilities, and attendant structures, in the Cypress and Wet Pine Flats Conservation Unit, if authorized by separate DEP and Corps permits. Treatment facilities shall not be allowed in the Conservation Unit.

(7) Reinstitution of fire regime, including necessary firebreaks, which mimics natural conditions.

(8) Incorporation into adjacent developments as open space and limited to the uses outlined above.

(9) Maintenance of roads and ditches where needed to implement activities listed above.

(10) Construction of five new or improved road crossings, as shown on Exhibit 16. Crossing Number 4, through the Wildlife Corridor Conservation Unit, shall be bridged. These road crossings shall be subject to the road crossing criteria and wetland impact limitations as required in special condition number 4 above.

(11) Activities needed to maintain, in current condition, existing access within and through the Conservation Units. With the exception of the crossings identified in special condition number 13b(10) above, these do not include activities to improve, enlarge or relocate such access.

c. By February 15th of each year, The St. Joe Company shall have placed perpetual conservation easements with the DEP as the grantee (or ensure that conservation easements are placed on sold or transferred parcels) on portions of

Conservation Units equal to the percentage of the total acreage of approved projects in each sub-basin. To determine the acreage of the Conservation Units that must be placed under an easement:

(1) Using the EMA area only, divide the total acreage within an approved project boundary in a sub-basin (including impact and preserved area) by the total acreage of land within the sub-basin minus the area of any conservation units with the same sub-basin.

(2) This percentage of the Conservation Units in each sub-basin shall be placed under a conservation easement by the end of each annual reporting period.

(3) The cumulative acreage of Conservation Units conveyed to governmental entities or 501c (3) conservation organization buyers shall count toward the acreage placed under a conservation easement.

d. Sale or transfer of a Conservation Unit is limited to a governmental entity or 501c (3) private conservation owner, and only when the requirements in special condition numbers 13a & 13b are met. If Conservation Units, or any portion thereof or interest therein, are conveyed to subsequent owners, if not already subject to a conservation easement pursuant to special condition number 13c above, The St. Joe Company shall place conservation easements on such property to assure the perpetual conservation use of the Conservation Units as described in special condition 13b above. The perpetual conservation easement shall be in the form of Exhibit 17. Within seven days of conveyance of any portion or interest of a Conservation Unit, The St. Joe Company shall provide to the new owner a complete copy of the RGP, including the Biological Opinion (Appendix D). Written assurance that a complete copy of the RGP has been given and received shall be provided to the Corps by The St. Joe Company within fourteen days of any such conveyance. The written assurance shall consist of a letter to the Corps stating that the exchange has taken place and shall be signed by the appropriate representatives of The St. Joe Company and the new owner.

15. Conservation Easements. This section addresses the placement of conservation easements, as required by this RGP, under four different scenarios:

a. Perpetual conservation easements placed on Conservation Units as described in special condition 14c above. The easement shall be in the form of Exhibit 17.

b. Perpetual conservation easements with the DEP as the grantee will be placed on wetlands not authorized for impact on each project site following individual project approval, but prior to commencing any activities authorized by this RGP or according to the timeframe specified in the approval. The easement shall be in the form of Exhibit 18.

c. Perpetual conservation easements with the DEP as the grantee will be placed on each mitigation bank, or each approved phase of a mitigation bank, prior to commencing any activities authorized by this RGP on an individual project that will use the mitigation bank or a phase of the mitigation bank for mitigation. The easement shall be in the form of Exhibit 18.

d. For compensatory mitigation conducted outside of a mitigation bank, a perpetual conservation easement with the DEP as the grantee, will be placed on the mitigation area prior to commencing any activities authorized by this RGP on the individual project for which the mitigation is approved. The easement shall be in the form of Exhibit 18.

e. In addition to the above, the following shall apply for all conservation easements and deed restrictions:

(1) The permittee shall have the conservation easement, including a legal description, survey, and scaled drawings, of the areas in question, prepared and sent to the Regulatory Division, Enforcement Branch, Post Office Box 4970, Jacksonville, Florida 32232-0019, for legal review and approval.

(2) Within 30 days of U.S. Army Corps of Engineers' approval of the proposed easement, the permittee shall record the easement or deed restriction in the public records of Bay or Walton County, Florida. A certified copy of the recorded document, plat, and verification of acceptance from the grantee will be forwarded to the Jacksonville District Office.

(3) The Permittee must show that it has clear title to the real property and can legally place it under a conservation easement. Along with the submittal of the draft conservation easement, the Permittee shall submit a title insurance commitment, in favor of the grantee, for the property that is being offered for preservation. Any existing liens or encumbrances on the property must be subordinated to the conservation easement. At the time of recordation of the conservation easement, a copy of a title insurance policy written in favor of the

DEP must be provided to the Corps in an amount equal to the current market value of the property.

(4) In the event the permit is transferred, proof of delivery of a copy of the recorded conservation easement to the subsequent permittee or permittees must be submitted to the Corps together with the notification of permit transfer.

(5) Grantee shall not assign its rights or obligations under a conservation easement except to another organization qualified to hold such interests under the applicable state and federal laws, including §704.06 Florida Statutes, and committed to holding this conservation easement exclusively for conservation purposes. The Corps shall be notified in writing of any intention to reassign the conservation easement to a new grantee and must approve selection of the grantee. The new grantee must accept the assignment in writing and deliver a copy of this acceptance to the Corps. The conservation easement must then be re-recorded and indexed in the same manner as any other instrument affecting title to real property, and a certified copy of the recorded conservation easement shall be furnished to the Corps.

16. Monitoring and reporting requirements specific to The St. Joe Company:

a. Use of this RGP for any project by The St. Joe Company makes the company responsible for b. and c. below.

b. The St. Joe Company shall submit monitoring reports related to the mitigation banks, as specified in Appendices A and B.

c. The St. Joe Company shall establish and maintain a GIS-based ledger and map depicting the amount, type and percentage of wetland impact and mitigation implemented in the EMA area. An updated ledger balance sheet demonstrating compliance with this RGP shall be submitted with each individual request for project approval. The ledger shall include the following by sub-basin:

(1) Total high quality and low quality wetlands in the EMA area.

(2) Total project size – uplands and wetlands.

(3) Project impacts – high quality and low quality amount and percent of total.

(4) Mitigation required and location.

(5) Cumulative project impacts (acreage total and percentage).

(6) Total wetlands by quality remaining in the EMA area.

(7) The St. Joe Company shall submit an annual report by February 15 of each year for the proceeding calendar year identifying:

(a) The location and acreage of any mitigation activity undertaken;

(b) Deed Restrictions and Conservation Easements recorded;

(c) Conservation Units or Mitigation Banks conveyed to other owners;

(d) Activities undertaken within Conservation Units; and

(e) Other activities that may impact this RGP.

17. For the purposes of Section 404 of the Clean Water Act under this RGP, the identification and delineation of wetlands must be in accordance with the *Corps of Engineers Wetlands Delineation Manual* (1987). Wetlands may be delineated using aerial photo-interpretation (API) and ground-truthing, and, if necessary, mapped using the Global Positioning System (GPS) and other Geographical Information System (GIS) mapping techniques. In much of the project area, historical aerial photography will be used to obtain pre-pine plantation wetland community signatures. If a construction line falls within 250 feet of a wetland boundary, estimated using the method described in this paragraph, then a formal field wetland jurisdictional determination will be required for that segment of the proposed project.

18. Endangered and Threatened Species: This RGP does not authorize the take of an endangered species, with the exception of the flatwoods salamander, *Ambystoma cingulatum*. In order to legally take a listed species, separate authorization under the Endangered Species Act (ESA) is required (e.g., an ESA section 10 permit, or a biological opinion (BO) under ESA section 7, with "incidental take" provisions with which permittees under this RGP must comply). The enclosed U.S. Fish and Wildlife Service (FWS) BO (Appendix D) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with the "incidental take" that is specified in the

BO. Authorization under this RGP is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated herein by reference. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, will constitute an unauthorized take, and will also constitute non-compliance with this RGP. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

19. No work is authorized under this RGP on properties listed or eligible for listing in the *National Register of Historic Places* (see special condition 19a(7) below).

20. Individual Project Approval:

a. The evaluation process to determine if an individual project conforms to the requirements and criteria of this RGP shall begin with a pre-application meeting to which the appropriate representatives from the Corps, DEP, USFWS, NMFS, EPA and NWFWMD are invited. The primary purpose of the pre-application process is to identify and produce preliminary data necessary for evaluation during the application phase and to conduct an informal analysis of the project and evaluate how it complies with the RGP criteria. The pre-application meeting shall also provide an opportunity to discuss the proposed project design and the opportunity for habitat corridors between on-site wetlands, the Conservation Units, and other wetlands in the RGP area. At the pre-application meeting, the following information will be provided:

(1) Scope of the Project – Type of project and how it comports with activities authorized by the RGP.

(2) Location / Project Boundaries – Exhibits showing general project location within the Project Area boundaries and specific location (1"=200' or other appropriate scale).

(3) The identification and delineation of wetlands must be in accordance with the *Corps of Engineers Wetlands Delineation Manual* (1987). Wetlands may be delineated using API and ground-truthing, and if necessary, mapped using GPS and other GIS mapping techniques. In much of the project area, historical aerial photography will be used to obtain pre-pine plantation wetland community signatures. If the construction line falls within 250 feet of a wetland boundary

estimated using the method described in this paragraph, then a formal field wetland jurisdictional determination will be required for that segment of the proposed project.

(4) Maps of high quality and low quality wetlands onsite. For sites within the EMA area, the existing high quality/low quality wetland map shall be used as a starting point for delineation of onsite wetlands (Exhibit 19). During or after wetland boundaries have been established using the method described in 19a(3) above, the resulting wetland areas will be classified and mapped by quality, as defined in special condition number 3 above. The procedure will use a combination of GPS technology, visual inspection of photography, and ground-truthing. Additional data that may be used including overlays involving timber stand data.

(5) Proposed Wetland Impacts. The number, type, location, and acreage of all wetland impacts, as well as drawings and other exhibits that sufficiently depict that the proposed project fully complies with this RGP.

(6) Stormwater management systems for projects authorized under this RGP area will be in accordance with the *Stormwater System Design and Review Criteria Manual, February 2004* (Appendix F). A signed statement by a Florida licensed engineer that verifies that the project conforms to the aforementioned manual and a set of sealed stormwater management system plans will be submitted.

(7) Documentation of coordination with the State Historic Preservation Officer (SHPO). When required by the SHPO, the applicant shall conduct a Phase I archeological and historical survey on each individual project site. This information shall be provided to the SHPO and the Corps, so that measures can be identified to avoid, minimize or mitigate adverse impacts to historic properties listed, or eligible for listing in the *National Register of Historic Places*, or otherwise of archeological or historical value.

(8) Flatwoods salamander (*Ambystoma cingulatum*): Site evaluation for the flatwoods salamander by completion of the *SAJ-86 Flatwoods Salamander Pre-application Evaluation* (Exhibit 20).

(9) Bald Eagle (*Haliaeetus leucocephalus*): Documentation shall be provided that states whether an eagle nest is located on or in the vicinity of the project site. If eagle nests are found on or in the vicinity of the project site, the

Habitat Management Guidelines for Bald Eagle in the Southeast Region (1987) shall be incorporated in the project, and documentation shall be submitted, which describes how the guidelines will be implemented.

(10) Telephus Spurge (Euphorbia telephioides): Documentation as to whether Telephus spurge is found on the site (See FWS Biological Opinion, Appendix D).

b. Application to the Corps for individual projects under this RGP will be made using the form *Joint Application for Works in the Waters of Florida Form #62-312.900*. The exhibits and information referenced in special condition number 19a above shall be included in their final form with the application. No regulated work may proceed until after written authorization under this RPG has been issued.

21. On a case-by-case basis, the Corps may impose special conditions that are deemed necessary to minimize adverse environmental impacts.

22. Failure to comply with all conditions of the Federal authorizations under this Permit will constitute a violation of the Federal authorization.

23. Self-Certification: Within 60 days of completion of the work authorized and mitigation (if applicable), the attached "Self-Certification Statement of Compliance" must be completed and submitted to the U.S. Army Corps of Engineers. Mail the completed form to the Regulatory Division, Enforcement Branch, Post Office Box 4970, Jacksonville, Florida 32232-0019. A copy of the "Self-Certification Statement of Compliance" must also be provided to the DEP at Florida Department of Environmental Protection, SLERP, 160 Governmental Center, Suite 202, Pensacola, Florida 32501.

24. This Permit will be valid for 5 years from the date of issuance unless suspended or revoked by issuance of a public notice by the District Engineer. The Corps, in conjunction with the Federal resource agencies will conduct periodic reviews, which will include compliance reviews, to determine if continuation of the permit is not contrary to the public interest. The permit can be reissued for 5-year periods indefinitely, if it is found not to be contrary to the public interest.

10. Public interest review:

a. Public interest factors: The Corps reviewed all of the public interest factors. The Corps considers the public interest factors identified below as relevant to this proposal. The Corps considered both cumulative and secondary impacts on these public interest factors.

(1) Conservation: Under the proposed RGP, almost 70% of the approximately 48, 150 acres within the RGP area, would not be developed for commercial, residential, institutional, and intensive recreational (such as golf courses and ball fields) purposes. Approximately 28,600 acres of wetlands and 5,200 acres of uplands would be conserved. The land would be used for conservation purposes, including preservation of uplands and wetlands, and restoration and enhancement of uplands and wetlands. Approximately 13,200 acres of wetlands and uplands would be placed within ten conservation units, that would only be used for conservation purposes, wetland or habitat mitigation, limited passive recreational purposes, and in the case of one conservation unit, the Cypress and Wet Pine Flats Conservation Unit, used as a alternative area for disposal of effluent, which is currently discharged directly into West Bay. Other lands that would be conserved would comprise two mitigation banks totaling 7,685 acres, as well as all wetlands on individual project sites, which are not directly impacted. The proposed RGP would minimize direct impacts to wetlands, by confining over 90% of potential wetland impacts to those wetland systems that have already been highly impacted by previous and ongoing silvicultural activities. The less than 10% of wetland impacts that would occur in high quality wetlands would be confined to necessary road crossings and bridges to gain access to developable uplands. Most of the road crossing would take advantage of upgrading existing silvicultural road crossings. Overall, no more than approximately 5% of wetlands in the RGP area would be directly impacted.

(2) Economics: The proposed RGP area is located within a coastal region, which is undergoing rapid tourist-oriented development and primary home/second home/retiree residential development, which in turn is promoting growth in businesses to serve tourists and residents. The local real estate markets in Walton and Bay Counties have demonstrated, through both high sales volumes and increasing prices for real estate products, that there is a strong desire by the real estate buying public for the types of commercial and residential development that would likely occur in the RGP area. Individual projects authorized by the proposed RGP would likely provide considerable permanent and temporary employment. The *ad valorem* property tax base for Bay and Walton Counties would likely greatly increase, as well as sales tax collections, thereby providing additional revenues for county services and schools. However, increased infrastructure needs and governmental services to new residents would require additional expenditures of local and state revenues over what is currently needed.

(3) Aesthetics: Projects authorized by the proposed RGP would have impacts on the aesthetic environment. A mostly undeveloped landscape of relatively undisturbed cypress domes and mixed forest/shrub swamps, intermixed among extensive areas of silvicultured wet and dry pine flatwoods, would be replaced by a mosaic of mixed use developments intermixed in a landscape of preserved uplands and wetlands, significant portions of which, would undergo ecological restoration and enhancement. St. Joe, which is the owner of almost 75% of the RGP area, is recognized for its high quality landscaping and integration of projects into the natural landscape.

(4) Wetlands:

(a) Wetland Functional Quality: The technical team, under the direction of the interagency team, developed definitions of and determined functional scores for low and high quality wetlands. The team determined that all wetlands that were not planted in pine, excluding roadside ditches, would be classified as high quality wetlands. High quality wetlands are typically cypress domes or strands, bay/gallberry swamps, harvested cypress swamps, titi monocultures, and *Hypericum* bogs. Low quality wetlands were determined to be those wetlands that are planted in pine (i.e. pine plantations) or are roadside ditches. WRAP was used to score the functional quality of wetlands. WRAP scores the functional value of wetlands on a scale of 0 to 1.0 functional units (FUs). Pine plantations in wetlands (hydric pine plantations) are highly disturbed ecosystems in which bedding disrupts micro and macro surface hydrology, wildlife and vegetative species diversity is greatly reduced, and there is cyclic gross disturbance by timbering and planting operations. All of these activities are exempted from the Corps permitting requirements. Hydric pine plantations posed certain issues when using WRAP, since there is variation in the functional quality of hydric pine plantations based on the age of the stand due to changes in ground cover, shrub density, and leaf litter on the ground during the cycle of silvicultural management. Because of this range in variation it was decided to score hydric pine plantations as if they were at a mid-point in their stand rotation, which was set at about 15 years. The technical team reviewed and inspected many high and low quality wetland sites in the proposed RGP area. A series of wetlands were chosen as being representative of these two wetland types. For comparison the team reviewed WRAP scores that had been done for two other projects in areas near and adjacent to the RPG area: the proposed relocation site and mitigation sites for the proposed relocation of the Panama City – Bay County International Airport and St. Joe's Beckrich Office Park project. Overall, the scores for low quality (i.e. hydric pine plantations) are very close on average among the different data sets referenced above, particularly in consideration of the variability that could be expected using an assessment method such as WRAP.

The team decided to include jurisdictional ditches in the low quality wetland category for the sake of simplicity. The WRAP score that the team determined to use for high quality wetlands in the RGP area was higher than scores for similar wetlands on the comparison sites. The team chose one score for all high quality wetlands to make the RGP easier to use. Also, use of the higher score would provide a safe margin of error to assure that more than enough compensatory mitigation would be required for direct impacts to high quality wetlands.

Based on the WRAP scoring referenced above, the team determined that each acre of impact to low quality wetlands would be valued at 0.65 FU, and each acre of impact to high quality wetlands would be valued at 0.92 FU.

(b) Watershed Basins and Sub-basins: In order to protect watersheds and receiving waterbodies within the proposed RGP geographic area, basins and sub-basins were delineated to establish the upper limits for wetland impacts. They were also used to define where compensatory mitigation for wetland impacts would be assigned.

(1) Permitting Basins. The RGP incorporates all or part of nineteen sub-basins (Exhibit 2), which were identified and delineated by the technical team using United States Geological Survey (USGS) drainage basin information and maps. These sub-basins were grouped into three larger basins: Breakfast Point, Devils Swamp and Lake Powell Basins. These are part of two major watersheds: St. Andrews Bay and Choctawhatchee River and Bay. The sub-basins were created and reviewed for their appropriateness in regard to the amount of impact that may occur within specific drainages and watersheds. Of particular concern was distribution of impacts in the "Direct-Runoff-to-Bay" basin that flows directly into West Bay from the west. Several named and unnamed streams and overland flow systems collectively form this basin. In order to better protect the quality and quantity of waters flowing into the bay, this drainage basin was divided into three sub-basins. Finally, because of the various existing public drainage and mosquito control ditching projects immediately south of and on Breakfast Point Peninsula caused the creation of several artificial basin boundaries, the several basins south of the peninsula along US Highway 98 were consolidated into a single "Highway 98" sub-basin.

The entire RGP team determined that no more than 20% of the low quality wetlands in any sub-basin may be impacted (see paragraph 10a(4)(c), "Wetland Impacts," below). A ledger of wetland impacts by sub-basin would be required to ensure that this threshold is not exceeded. The allowable impacts to high quality wetlands would not be apportioned among permitting basins, since such impacts are limited to necessary road

crossings, and would be evaluated by the Corps during the individual project review process, as required by the proposed RGP.

(2) Mitigation Basins. In order to ensure that mitigation for impacts occurs in the appropriate drainage basins and watersheds, mitigation basins were identified (Exhibit 1). Any impacts that occur in the Lake Powell basin must be mitigated within that basin. Impacts that occur in the Devils Swamp or Breakfast Point basins must be mitigated within them.

(c) Wetland Impacts. For the purpose of developing the RGP, FWS Wetland Inventory Maps and Natural Resources Conservation Service soil survey maps and information along with current and historical aerial photographs of the RGP area, were used on a landscape scale to approximately delineate wetlands and to determine wetland and upland acreages. Location and delineation of hydric pine plantations were determined using pine plantation data from St. Joe. The proposed RGP would authorize impacts to wetlands that are defined as low and high quality. The RGP would allow a maximum impact of 20% of the low quality wetlands in individual sub-basins, excluding areas within conservation units and the two mitigation banks within any particular sub-basin. The RGP would offer incentives to consolidate that acreage in fewer areas by allowing more than 20% fill on individual sites, so long as the individual sub-basin has no more than 20% of its low quality wetlands filled (excluding conservation units and mitigation banks). Based on the data developed and reviewed by the interagency team and the technical sub-team, the direct effects of the individual RGP authorized projects would be a maximum loss of approximately 1386 acres of low quality wetlands and 125 acres of high quality wetlands throughout the approximately 48,150-acre RGP area. The indirect effects of the RGP would be to those wetlands that are adjacent to the directly affected wetlands and uplands; however these would be greatly limited under the RGP as compared to typical permitted projects. The 125 acres of high quality wetlands in the Lake Powell, West Bay and Devils Swamp permitting basins that could be filled under the RGP would represent about 1.7% of the high quality wetlands in the RGP area. The total wetland loss that could occur under the RGP would be approximately 5.0% of the total area of wetlands in the RGP area. The following tables show approximate, allowable wetland impacts in acreage and percentage terms.

Drainage Basins excluding CUs, BPMB & DSMB					
Sub-Basin	Low Quality Wetlands	High Quality Wetlands	Estimated Wetlands	Estimated Uplands	Total

Camp Creek	314.64	283.93	598.58	239.52	838.10
Direct Runoff to Bay	1,084.36	921.15	2,005.52	2,182.86	4,188.38
Direct Runoff to Gulf	2.22	6.49	8.72	409.63	418.35
Highway 98 Sub Basin	1,044.74	946.05	1,990.79	1,033.17	3,023.96
ICW Sub Basin	1,311.30	807.84	2,119.13	1,137.14	3,256.27
Intracoastal Waterway	74.37	376.12	450.49	914.87	1,365.36
Peach Creek	0.00	181.93	181.93	335.93	517.86
Phillips Inlet (Lake Powell)	746.84	1,052.78	1,799.62	3,798.14	5,597.76
Southwest West Bay Sub Basin	1,094.67	1,411.93	2,506.60	1,933.96	4,440.57
Ward Creek Sub Basin	1,156.82	633.01	1,789.82	593.35	2,383.18
West Laird Drain	102.53	41.95	144.48	169.91	314.40
Waterbodies	0.50	588.29	588.79	0.00	588.79
(blank)*	0.00	1.68	1.68	15.07	16.75
Total	6,933.00	7,253.15	14,186.15	12,763.57	26,949.72

* "Blanks" are slivers along edges of polygons. Their overall acreage is insignificant in comparison to the size of the EMA or RGP areas

Sub-Basin	Low Quality Wetlands	20% Potentially Fillable
Camp Creek	314.64	62.93
Direct Runoff to Bay	1,084.36	216.87
Direct Runoff to Gulf	2.22	0.44
Highway 98 Sub Basin	1,044.74	208.95
ICW Sub Basin	1,311.30	262.26
Intracoastal Waterway	74.37	14.87
Peach Creek	0.00	0.00
Phillips Inlet (Lake Powell)	746.84	149.37
Roaring Creek	0.00	0.00
Southwest West Bay Sub Basin	1,094.67	218.93
Ten Mile Branch	0.00	0.00
Ward Creek Sub Basin	1,156.82	231.36
West Bay Creek	0.00	0.00
West Laird Drain	102.53	20.51
Waterbodies	0.50	0.10
(blank)*	0.00	0.00
Total	6,933.00	1,386.60

There is a small corner of the SW West Bay sub-basin that overlaps with the Breakfast Point CU and bank, those lands were not considered in this calculation.

Effects in the RGP Project Area.

RGP Area	Acres Wetlands[1]	Acres Uplands	Wetlands + Uplands	Direct Effects: Wetlands Loss	Non-Developable Wetlands	Non-Developable Uplands	Potentially Developable Lands
Land in Permitting Sub-Basins	14,186	12,764	26,950	1,511	12,675	0	14,275
Conservation Units	10,084	3,116	13,201	0	10,084	3,116	0
Devils Swamp MB	1,835	1,214	3,049	0	1,835	1,214	0
Breakfast Point MB + Mitigation Outparcel	3,994	909	4,903	0	3,994	909	0
Totals	30,099	18,003	48,150	1,511	28,588	5,239	14,275

[1] Estimated wetland acreages, includes water

Wetland Impacts Within the RGP Area:

Percent of wetlands potentially fillable in RGP area:	5.0%
Percent of wetlands not fillable in RGP area:	95.0%
Percent of wetlands potentially fillable (high quality):	1.7%
Percent of wetlands potentially fillable, permitting basins:	10.7%
Percent of wetlands to not be filled, permitting basins:	89.3%
Percent of land area potentially developable in RGP area:	29.6%

Permitting basins = basin area excluding conservation units and mitigation banks

(d) Wetland mitigation: Overall mitigation for wetland impacts authorized under the proposed RGP would include upfront minimization of wetland impacts, upfront preservation of ten conservation units totaling over 13,200 acres, buffers around high quality wetlands, and compensatory mitigation through wetland enhancements and restoration within two mitigation banks, the conservation units, or within preserved wetlands on individual project sites.

The conservation units would form an almost continuous connection from east to west across the RGP area from West Bay to Point Washington State Forest and north to NWFWMD lands connecting to Choctawhatchee River and Bay. The conservation units also connect the West Bay and Devil's Swamp basins with lands in the Lake

Powell watershed. The conservation units encompass many significant environmental features, such as important wildlife habitat, natural communities, high quality wetlands, and surface flow connections with Lake Powell and West Bay. The conservation units are typical of the region; they are largely in fire-suppressed pine plantation with interspersed shrub and cypress swamps. The historical communities that they encompassed would have been north Florida flatwoods with major components of southeastern pine savanna, and mixed hardwood and cypress swamps. There are also some areas in the north-central and northwestern conservation units that historically would have been xeric pinelands with depressional wetland inclusions.

The mitigation banks total over 7,600 acres and would provide compensatory mitigation for direct wetland impacts. Additional compensatory mitigation may be authorized by the RGP within the conservation units and in preserved wetlands within individual project sites. See paragraph 9b(4)(b) for additional information regarding compensatory mitigation. Compensatory mitigation would be required to occur prior to or be implemented concurrent with authorized impacts under the RGP. Compensatory mitigation projects would be maintained in perpetuity in the enhanced/restored ecological condition.

Overall, the mitigation banks, conservation units and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant habitats, and especially a mosaic of interconnecting wetlands, which both traverse and are located immediately adjacent to the RGP area, thus linking public resources from Choctawhatchee Bay to West Bay.

(e) Wetland Delineation for Individual Projects under the Proposed RGP: In order to accurately determine wetland locations and boundaries on individual project sites for calculation and identification of proposed wetland impacts, the RGP would require that identification and delineation of wetlands must be in accordance with the *Corps of Engineers Wetlands Delineation Manual* (1987). Under the RGP wetlands may be delineated using aerial photo-interpretation and ground-truthing, and, as necessary, mapped using the Global Positioning System and other Geographical Information System mapping techniques. In much of the project area, historical aerial photography would be used to obtain pre-pine plantation wetland community signatures. If a proposed project construction line falls within 250 feet of a wetland boundary estimated using the above method, then a formal field wetland jurisdictional determination would be required for that segment of the proposed project.

(5) Historic and cultural resources: The proposed work should not impact any known historical or archeological sites. The individual project review process under the

proposed RGP would require documentation of coordination of the applicant with the State Historic Preservation Officer (SHPO). When required by the SHPO, the applicant would be required to conduct a Phase I archeological and historical survey on the individual project. Results of any required survey would be provided to the SHPO and the Corps, so that measures can be identified to avoid, minimize or mitigate adverse impacts to historic properties listed, or eligible for listing in the *National Register of Historic Places*, or otherwise of archeological or historical value.

(6) Fish and wildlife values: Potential impacts to fishery resources would be limited to impacts on water quality by loss of the filtering capacity of impacted, interior wetlands. Wildlife would be affected by the loss of uplands and wetlands that under the RGP would be converted from undeveloped land and land currently used for intensive silviculture into various residential, commercial, institutional, and recreational purposes. However, water quality and quantity impacts would be minimized, since projects that would be authorized under the proposed RGP, would be required to meet more stringent criteria for required stormwater management systems, than normally required under state law in northwest Florida. These more stringent stormwater criteria are included in the proposed EMA, and would be referenced in and required by the RGP. In addition, impacts to wetlands would be mitigated under the proposed RGP through upfront minimization of wetland impacts, upfront preservation of ten conservation units, and compensatory mitigation through wetland enhancements and restoration within two mitigation banks, the conservation units, or within preserved wetlands on individual project sites. The mitigation banks, conservation units and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant habitats within and adjacent to the RGP area. See section 11 below for EFH considerations and paragraph 10(e) for ESA considerations.

(7) Flood hazards: The proposed RGP area is located in a coastal landscape between the Gulf of Mexico to the south with Choctawhatchee Bay and River, West Bay and the ICW to the north. The eastern and western ends of the RGP area extend onto two peninsulas between the Gulf and bays, which for local, regional and state planning purposes, make much of the RGP area the equivalent of a barrier island. The RGP area is susceptible to tropical cyclone induced storm surges on both the gulf and bay sides, as well as susceptible to wind damage. In 1995 the area was evacuated during the approach of Hurricane Opal. The state is addressing the problem of hurricane evacuation by the ongoing four-laning of US98 and SR 79. There are plans to four-lane US331 to Interstate 10. SR 79 and US331 comprise the two northbound evacuation routes out of the RGP area, once an emergency is declared. The major flood hazard for the individual projects that would be authorized under the proposed RGP would likely be flooding in areas near the bays and Gulf, Lake Powell, and the various onsite streams and wetlands, which drain

to these waterbodies, as well as from onsite backup of stormwater runoff during tropical storm events. Stormwater during such events may not be able to flow off individual project sites due to the backup of rainwater within the surrounding wetlands and low uplands connecting the sites to the aforementioned waterbodies, particularly, if there is a storm surge. However, it is unlikely that project impacts would significantly alter final flood elevation of such an events. Removal of vegetation and hardening of surfaces on uplands and wetlands filled for this project, however, may reduce the onsite dampening effect that vegetation and natural ground can have on stormwater flow and onsite absorption of stormwater. However, in order to minimize negative impacts from projects that would be authorized under the proposed RGP, such projects would be required to meet more stringent criteria for required stormwater management systems, than normally required under state law in northwest Florida (see paragraph 10a(12) below for specifics). These more stringent stormwater criteria would be required by the RGP (see RGP special condition 2 in paragraph 9c above). Concerns were raised about the potential for flooding of residential and commercial areas south of the BPMB, which could result from the manipulation of drainages to restore historical hydrological conditions within the bank. The hydrological alterations proposed for BPMB were designed to not negatively affect offsite drainage patterns.

(8) Floodplain values: The proposed RGP area is comprised of lands bordering the eastern end of Choctawhatchee Bay, the ICWW, Lake Powell, and West Bay, within a landscape composed of a complex mosaic of uplands and wetlands, which drain to these waterbodies via various streams and drainages. Over one-third of the RGP area is within the 100-year floodplains of these waterbodies, streams, drainages and wetlands. Because of the extremely scattered distribution of the designated 100-year floodplains and their associated waterbodies and wetlands, some degree of impact to floodplains is unavoidable if private use and development of privately owned lands is to proceed. Placement of fill material in wetlands on individual projects that would be authorized under the RGP, would reduce the water holding capacity and dampening effect on the release of water to receiving waters, which wetlands provide. However, these negative impacts to the water holding capacity of 100-year floodplains from projects that would be authorized under the proposed RGP would be minimized by such projects being required to meet more stringent criteria for required stormwater management systems, than is normally required in northwest Florida (see paragraph 10a(12) below for specifics). These more stringent stormwater criteria would be required by the RGP (see RGP special condition 2 in paragraph 9b above). Mitigation for wetland impacts authorized under the proposed RGP would also minimize and mitigate for impacts to floodplains. These mitigative actions would include upfront minimization of wetland impacts, upfront preservation of ten conservation units (totaling over 13,200 acres), and compensatory mitigation through wetland enhancements and restoration within two

mitigation banks (totaling approximately 7,600 acres), the conservation units, or within preserved wetlands on individual project sites. The mitigation banks, conservation units and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant habitats, including floodplains, which both traverse and are located immediately adjacent to the RGP area.

(9) Land use: The proposed RPG overlaps three local governmental jurisdictions: Walton County, Bay County and the City of Panama City Beach. All three have comprehensive plans to guide and plan development. Current land use designations within Bay and Walton Counties allow for 2 units per acre on land designated as Conservation within the suburban service area. This land use designation covers approximately 10,400 acres of the RGP area. The Agriculture/Timber (AGT) designation allows for 1 unit per 10-20 acres within Bay County and 1 unit per 40 acres within Walton County and covers approximately 23,000 acres of the RGP area. Panama City Beach land use designations for the approximately 3,700 acres within the RGP area have unit densities, which range from 2:1 to 45:1 for residential and supporting retail/commercial/industrial uses. Under the RGP, the ten conservation units and two mitigation banks would preempt 21,153 acres from development, which currently designate land uses that allow for varying densities, such as 1:20 in the AGT designation, 2:1 in the CSV designation and 8:1 in the R1A designation.

Although the RGP authorizes activities in areas that may not currently have those specific land use designations on the Panama City Beach, Bay County or Walton County Future Land Use Maps (FLUM), the RGP would provide an environmental framework within which development could take place, regardless of when or where it may occur. The Florida Department of Community Affairs (DCA), which reviews and approves local comprehensive plans, requires policies that protect wetlands and regionally significant resources as part of any comprehensive plan. These policies could potentially be satisfied within the RGP area, since approximately 21,000 acres are protected within the conservation units and mitigation banks, 95% of the wetlands in the RGP area would be preserved, significant upland acreages would be included within the conservation units and mitigation banks, projects would be required to meet ERP stormwater standards, a high level of connectivity of natural areas would be preserved, and high quality wetlands would be buffered.

Any individual project that could be authorized by the RGP would require approval from local governments to meet their land use requirements and limitations. Authorization of an individual project under the RGP does not obviate the need for permittees to obtain other Federal, State or local authorizations required by law, nor grant any property rights or exclusive privileges.

In recent years in both Walton and Bay counties, requests have been made and approved for comprehensive plan amendments for large developments on land adjacent to or within the RGP area that changed designated land use from agriculture/silviculture to community/mixed use development. If a landowner seeks to change a land use designation for their property, and thus make an amendment to the FLUM, the process would generally proceed as follows: There are two public hearings required to adopt a plan amendment. Many local governments also hold workshops prior to proposing a plan amendment. The Transmittal Hearing, which is a public hearing, takes place first. At the Transmittal Hearing the local government may decide to transmit a proposed plan amendment to the DCA for review. DCA has 60 days to review it, consider comments from regional and state agencies, and issue an Objections, Recommendations and Comments Report (ORC) to the local government for further consideration in adopting the proposed land use amendment. The local government then has 60 days to consider the ORC and adopt the amendment. The second hearing is the Adoption Hearing. If the amendment is adopted at this public hearing, it is sent to DCA again for a 45-day review to determine if it is in compliance with State statutes. If DCA determines the plan amendment to be in compliance, it will notify the local government, which then publishes a Notice of DCA's Intent to find the amendment in compliance in the local newspaper. Any affected persons may challenge the determination within 21 days of the date of publication.

(10) Recreation: Much of the approximately three-quarters of the proposed RGP area, which is owned by St. Joe, is in pine silvicultural production. St. Joe also currently leases much of these lands to private hunt clubs. The proposed RGP area borders various waterbodies, which are used for public recreation, including Choctawhatchee Bay and River, West Bay, Lake Powell and the Gulf of Mexico; and state lands open to public use and recreation, including Point Washington State Forest, Deer Lake State Park, Choctawhatchee Water Management Area , and Camp Helen State Park. Many areas subject to the proposed RGP can be expected to change in use from silvicultural production and hunting to areas of mixed residential, commercial, recreational and institutional uses and their attendant features, including roads, utility lines and stormwater treatment facilities. Facilities for future private and public recreational activities that could be authorized by the RGP would include golf courses, ball fields, biking trails, hiking trails, and horse trails. Hunting by private leaseholders would be allowed within the BPMB, DSMB and conservation units. Residential and commercial facilities authorized under the RGP would likely increase the number of people residing and vacationing in the RGP area, thus potentially increasing the number of people utilizing adjacent open waters and state lands for recreational purposes.

(11) Water supply: It can be expected that development subject to the proposed RGP would result in additional need for potable water supplies to meet the increased demand from expansion of residential, commercial, institutional and recreational projects within the RGP area. Potable water supplies are a concern in the southern Walton County portion of the RGP area. The NWFWMD has designated the coastal area from Santa Rosa County through Walton County as a Water Resource Caution Area. Within the last two years a large pipeline was constructed to import water to southern Walton County from well fields north of Choctawhatchee Bay. All potable water drawn from wells, located on both sides of Choctawhatchee Bay, withdraw water from the Floridan aquifer. Wells within southern Walton are suffering from saltwater intrusion, and water utilities are working with the NWFWMD to find alternative supplies for non-potable water uses. The aforementioned pipeline from northern Walton County would provide potable water. A major source of non-potable water in southern Walton County, particularly for irrigation, is reclaimed water from the Point Washington Waste Water Treatment Plant, and localized use of the sand and gravel aquifer. Water supplies within the Bay County portion of the RGP area are in the process of being switched from wells located within the Panama City Beach area to a county wide system that uses the surface waters of Deer Point Lake as the source for potable water. The wells within Panama City Beach draw from the Floridan aquifer and face similar saltwater intrusion problems as those in southern Walton County. The NWFWMD projects that regional water use in the Walton County area (includes Walton, Okaloosa and Santa Rosa Counties) will increase approximately 67 percent, and regional water use in the Bay County area will increase approximately 43 percent from 2000 to 2025. Existing water resources should be sufficient to meet these increased demands with the assumption that Bay County will have a county-wide system using Deer Point Lake, and that southern Walton will continue to use the pipeline to northern Walton County for potable water.

(12) Water quality: All projects would require water quality certification from the DEP before authorization would be issued under the proposed RGP. Surface water management systems for all projects authorized by this RGP would be required to be designed, constructed, operated, and maintained in compliance with the *Stormwater System Design and Review Criteria Manual (February 2004)*. The manual incorporates water quantity and quality components, which exceed the state's rule criteria in Rule 62-25, Florida Administrative Code, as now required in northwest Florida. By using the manual the RPG would require that stormwater treatment meet ERP standards, which would be a higher level of treatment than that now required in northwest Florida. In the Lake Powell basin all projects would be required to treat stormwater at the ERP OFW standards, though under normal ERP rules, only discharges directly into Lake Powell itself would normally be required to be treated at this higher level. In addition, the RGP

would require that ERP stormwater retention standards be followed, that are designed to prevent off-site flooding, and which are also not normally required in northwest Florida.

(13) Considerations of property ownership: The RGP would allow the private use of privately owned land for individual property owners and for the creation of profits for corporations or other private entities involved in the production of new residential and commercial developments. At the same time the proposed RGP would protect and enhance the public's interests in the protection of the environmental attributes of the RGP area.

b. Describe the relative extent of the public and private need for the proposed RGP: Public needs and benefits include proactive growth management on a multi-watershed scale in southwestern Bay County and southeastern Walton County, that would protect areas of ecological and cultural significance by minimizing impacts to the aquatic environment, and would provide ecological restoration and preservation on a large landscape scale. Concurrently, the proposed RGP would allow additional public benefits, such as development activities that would provide employment opportunities, which would result in a significant increase in the local tax base, and which would provide opportunities for people to live and recreate in a high quality natural and man-made environment. Private needs and benefits would include allowance for private desirable land use, economic return on property, and a predictable, streamlined permitting process.

c. Describe the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed work where there are unresolved conflicts as to resource use: There are no unresolved conflicts regarding resource use among the federal and state agencies that participated in the development of the proposed RGP, or from other agencies that did not participate, but which responded to the public notice. See section 13 below for the Corps' analysis and positions regarding comments and concerns, which were received from various groups and individuals. See section 8 above regarding the analysis of alternatives for the proposed RGP.

d. Describe the extent and permanence of the beneficial and/or detrimental effects, which the proposed work is likely to have on the public, and private uses to which the area is suited: Detrimental impacts associated with the loss of upland and wetland values, such as habitat and green space, would be permanent in the construction areas of the various individual projects that would be authorized under the proposed RGP. The beneficial effects under the proposed RGP would include upfront minimization of wetland impacts, upfront preservation of ten conservation units, and compensatory

mitigation through wetland enhancements and restoration within two mitigation banks, the conservation units, or within preserved wetlands on individual project sites. The mitigation banks, conservation units and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant habitats, which both traverse and are located immediately adjacent to the RGP area, thus linking public resources from Choctawhatchee Bay to West Bay. Overall, an existing landscape of extensive areas of silvicultural pine plantations in significantly altered uplands and wetlands, intermixed with areas of relatively undisturbed cypress domes and mixed forest/shrub swamps, would be replaced by a mosaic of mixed use developments, located on lands that had been subjected to the aforementioned silvicultural operations, intermixed in a landscape of preserved uplands and wetlands. Significant portions of these preserved lands would undergo ecological restoration and enhancement. All preserved uplands and wetlands would be preserved and maintained in perpetuity.

e. Threatened or endangered species: Protection of threatened and endangered species was one of the primary concerns addressed by the interagency team in the development of the proposed RGP. It was recognized that management for protected species on a landscape scale would benefit efforts to aid the recovery of such species. Concern for protected species figured in the design of the location and configuration of the conservation units and mitigation banks, and in the management plans that would govern them.

On October 30, 2003, a draft Biological Assessment (BA) was provided by the consultants for St. Joe to the Corps and FWS for review and comments. Subsequent to review and comment by the interagency team, including the Corps and FWS, the consultants provided a final BA to the Corps and FWS on December 22, 2003. By letter dated December 23, 2003, the Corps stated to the FWS that the Corps concurred with the findings of the BA, and that the proposed action (i.e., the proposed RGP) may affect, but is not likely to adversely affect four faunal species and two plant species: Bald eagle (*Haliaeetus leucocephalus*), Gulf sturgeon (*Acipenser oxyrinchus desotoi*), Red-cockaded woodpecker (*Picoides borealis*), West Indian manatee (*Trichechus manatus latirostris*), Telephus spurge (*Euphorbia telephioides*), and Godfrey's butterwort (*Pinguicula ionantha*). The Corps also stated that the proposed action "may affect, likely to adversely affect" the Flatwoods salamander (*Ambystoma cingulatum*), and that the proposed action would have "no effect" on other listed species. In addition, the Corps requested the initiation of formal consultation concerning the impacts of the project on the listed species named above. The Corps requested that the FWS prepare a Biological Opinion (BO) concerning potential effects of the RGP on the above federally listed species, and enclosed a copy of the BA to aid in the FWS's preparation of a BO. The BA was subsequently supplemented with the Corps concurrence on January 28, 2004, to add additional information regarding the

flatwood salamander, on February 5, 2004, to add a "flatwood salamander checklist" for RGP individual project review procedures, and on May 6, 2004, to add additional information and a RGP individual project review procedure for the Telephus spurge.

On May 24, 2004, the Corps received the final BO, dated May 19, 2004, from the FWS. The BO stated that the FWS concurred with the BA's determination of "likely to adversely affect" for the Flatwoods salamander, but determined that the RGP would not jeopardize the continued existence of the species. The FWS identified Terms and Conditions to minimize the potential incidental take of the Flatwoods salamander. The FWS also concurred with the determination of "not likely to adversely affect" for several other species, as stated in the BA. The FWS stated that concurrence is based upon implementation of the avoidance and minimization measures identified in the BA and its supplements. The FWS included these avoidance and minimization measures in the Conservation Measures section of the BO. The Corps concurs with the findings of the BO.

The proposed RGP will not jeopardize the continued existence or critical habitat of any threatened or endangered species with the inclusion of a special condition, which makes the authorization under the Corps permit conditional upon the applicant's compliance with the BO's mandatory terms and conditions, which would implement the reasonable and prudent measures, that are associated with the "incidental take" for *A. cingulatum* (see special condition number 17 in paragraph 9c above). In addition, the conservation measures in the BO are captured in various special conditions of the RGP, such as the RGP's restrictions on impacts to low and high quality wetlands, and required preservation and management of the mitigation banks and conservation units. Specific to individual protected species, special conditions 20a(8), 20a(9) and 20a(10) (see paragraph 9c above) require that RGP applicants provide evaluations and documentation regarding the Flatwoods salamander, Bald eagle and Telephus spurge at both the required pre-application meeting, and subsequently, as part of the RGP individual project permit application.

f. Corps' wetland policy: The proposed wetland alterations that would be authorized under the proposed RGP are necessary to realize the overall project purpose, which is the construction of residential, commercial, recreational and institutional projects and their attendant features within an area of rapid residential and commercial development, while protecting the aquatic environment on a watershed scale by authorizing a forward-looking, flexible and predictable permitting program, that would minimize unavoidable direct impacts to highest quality aquatic resources, minimize impacts to lower quality aquatic resources, and mitigate for direct, indirect and cumulative impacts within the affected watersheds of an approximately 48,150-acre area in southeastern Walton County and southwestern Bay County. The proposed RGP would require

compensatory mitigation for individual projects in the form of wetland restoration and enhancements within a landscape of uplands and wetlands that is heavily impacted by ongoing silvicultural operations. The proposed work should result in minimal adverse environmental impacts. The benefits of the project would outweigh the detrimental impacts. Therefore, the project is in accordance with the Corps' wetland policy. See section 9 above for application of the 404(b)(1) guidelines to the proposed RGP, as required by the Corps' wetland policy.

g. Cumulative and secondary Impacts: The proposed RGP would provide an upfront plan for development on a landscape scale that is ecologically driven and focused, and would allow more long-term predictability in the amount of wetlands that would be impacted than is afforded by normal permitting practices. If future development in the study area conforms to the RGP's terms and conditions, no more than approximately 5% of the wetlands in the RGP area would be developed. Approximately 70% of the area would be preserved and development would be consolidated. Similar areas in southwest Florida can be used to determine potential impacts without the proactive actions taken via the regional general permit. Recently the Corps conducted an EIS in southwest Florida. Comparable in the percentage of wetlands to the RGP area (62% in the RGP area and 52% in the EIS area), approximately 72.3% of the uplands are developed, 8.1% of the wetlands have been developed, and only 19.7% of the area is preserved in the southwest Florida EIS study area. Other more stringent guidelines under the proposed RGP include more stringent stormwater standards that would enhance water quality in the nearby open water areas minimizing secondary impacts of runoff. Preservation of some upland areas along with buffers around existing wetlands also contributes to minimization of secondary impacts. Given the above, cumulative and secondary impacts from the proposed RGP would be minimal.

h. Overall, it has been shown in paragraphs10a through 10g above, in the Corps review of and response to comments in section 12 below, and with the inclusion of the special conditions listed in paragraph 9c above, that the proposed RGP would have minimal adverse impact on the public interest, including relevant public interest factors, cumulative and secondary impacts, and Federally threatened or endangered species.

11. Essential Fish Habitat (EFH): The public notice, which was issued on August 29, 2003, for this RGP, requested initiation of EFH consultation, as required by the Magnuson-Stevens Fishery Conservation and Management Act, and stated that the Corps' initial determination was that the proposed action would not have a substantial adverse impact on EFH or Federally managed fisheries in the Gulf of Mexico. By letter dated February 9, 2004, the NMFS stated they had no objections to permit issuance.

By email dated April 15, 2004, NMFS confirmed that the aforementioned letter constituted concurrence by NMFS that the proposed RGP would not adversely impact EFH.

12. Public Hearing Evaluation: A request for a public hearing was received on September 24, 2003, from Ms. Linda L. Young of the Clean Water Network. A joint public meeting sponsored by the Corps and the Florida Department of Environmental Protection was held on September 24, 2003, at the Panama City Beach City Hall. Approximately 30 people attended, including Ms. Young. A second public meeting, which was sponsored by the FDEP, was held on January 12, 2004, at the Panama City Beach City Commission Meeting Room. A Corps representative attended the meeting to answer questions from the public and receive comments. Approximately 30 people attended. In addition, the public notice comment period was extended from 30 days to a total of 60 days. There is sufficient information available to evaluate the proposed project; therefore, the request for a public hearing is denied.

13. Corps analysis of comments and responses: All comments received in response to the public notice and received at the public meetings have been considered in the public interest review. In response to requests that the public notice period be extended, the Corps extended the comment period an additional 30 days. Comments that expressed opposition, concerns, or recommendations to the RGP or its components have been summarized into various groupings below. Each grouping includes the Corps response.

a. The proposed RGP is not in conformity with CWA requirements for issuance of general permits, such as allowable activities must be similar in nature, will cause only minimal adverse environmental impacts when performed separately, and will have only minimal cumulative adverse effects on the environment.

Corps response: Pursuant to 33 CFR Part 323.2(h), a general permit is an authorization that is issued on a nationwide or regional basis for a category or categories of activities when those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, state, or local agency, provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. The proposed RGP is in compliance with all of these requirements. The various categories of work that would be authorized are similar in nature, since these activities essentially involve the placement of fill material into two pre-identified and evaluated classes of wetlands for the construction of various components that typically comprise suburban development. The list of activities allowed under the proposed RGP is almost

an exact copy of the activities authorized by Nationwide Permit 39 (NWP39). The RGP builds on NWP39 through the development of a focused, regionally specific plan to protect the aquatic environment on a watershed scale by authorizing a forward-looking, flexible and predictable permitting program, that would decrease duplication of effort with the DEP's permit program, that would minimize unavoidable direct impacts to highest quality aquatic resources, minimize impacts to lower quality aquatic resources, and which would mitigate for direct, indirect and cumulative impacts within the affected watersheds of an approximately 48,000-acre area in southeastern Walton County and southwestern Bay County. See section 8 above regarding avoidance and minimization of impacts on the aquatic environment, including wetlands; and paragraph 10g above regarding cumulative and secondary impacts.

b. An EIS should be prepared for the RGP. The EIS should include a full study of all the public interest factors, secondary and cumulative environmental impacts, economic impacts caused by continued wetland losses, correlation between shrinking wetland acreage and declining water quality, diminishing flood storage capacity, declining animal populations, and economic and governmental costs implications.

Corps response: An EIS is prepared when it has been determined that there will be a significant impact to the human environment. The extensive amount of up front mitigation established, increased stormwater standards and the establishment of buffers have reduced the impacts below the EIS threshold of significance.

c. Have similar RGPs been issued in Florida?

Corps response: No other RGPs of this scope and scale have been developed by the Corps, Jacksonville District for use in Florida. However, the Corps uses NWP39 (see paragraph 13a above) in Florida, components of which were incorporated into the proposed RGP.

d. The public notice did not provide sufficient information for the public to review and comment on the proposed RGP. The public should be given additional opportunity to review the RGP's proposed mitigation plans, proposed mitigation ratios, etc.; after receipt of comments from federal and state agencies, and after the proposed RGP and its components have been fully developed. The individual project review process under the RGP should be open to public review and comment. The process as proposed is secretive and unaccountable. Landowners of properties near individual projects evaluated under the RGP should be notified of such projects. Assurances that public review is allowed for RGP renewal every five years, including public review of environmental impacts that have been authorized under the RGP. The five-year interval

is too long, and should be every other year with public review and comment. How will the public be able to access the RGP and its exhibits and appendices? Can interested groups and individuals be placed on a list to receive copies of annual monitoring reports? Will the public lose the right to challenge future projects under the RGP? Can groups and individuals intervene if they believe that the provisions of the RGP are not being followed?

Corps response: 33 CFR Part 320.1(a)(4) & (5) states that "The Corps is neither a proponent nor opponent of any permit proposal. However, the Corps believes that applicants are due a timely decision. Reducing unnecessary paperwork and delays is a continuing Corps goal. The Corps believes that state and federal regulatory programs should complement rather than duplicate one another. The Corps uses general permits, joint processing procedures, interagency review, coordination, and authority transfers (where authorized by law) to reduce duplication."

Issuance of the RGP would implement a focused, regionally specific plan to protect the aquatic environment on a watershed scale by authorizing a forward-looking, flexible and predictable permitting program, that would decrease duplication of effort with the DEP's permit program, that would minimize unavoidable direct impacts to highest quality aquatic resources, minimize impacts to lower quality aquatic resources, and which would mitigate for direct, indirect and cumulative impacts within the affected watersheds in southeastern Walton County and southwestern Bay County. It is the Corps position that the RGP would result in overall minimal, adverse impacts on the environment, while meeting the congressionally mandated goal to streamline federal regulatory processes.

On August 29, 2003, the Corps issued a public notice regarding the development of the RGP plan. The public notice included a draft of the proposed RGP. The public notice provided information regarding the scope, underlying principles, and components of the proposed RGP. In addition, two public meetings were held regarding the RGP and EMA. The meetings were noticed in local newspapers. The purpose of the public notice and the public meetings was to present the proposed RGP to the public, allow the public to review the proposed RGP, and to receive comments from the public. The Corps believes that this process allowed sufficient upfront review and input by the public regarding the proposed RGP and the plan it would implement.

It is the Corps position that additional, public review of and comment on individual projects, that would be authorized under the RGP, is unnecessary, since the criteria found in the RGP, with which individual proposed projects must comply, were reviewed and commented on by the public. However, the Corps would seek public review and

comment on the RGP every five years when the RGP comes up for renewal. This would allow the public to review and comment on how the RGP is working, and what improvements or other modifications, if any, are needed, as well as whether the RGP should be reissued. The Corps believes that the five-year validation timeframe for renewal of the RGP is appropriate in light of the usual multi-year timeframe required for the construction of large projects, and to allow sufficient time to ascertain how well the RGP is working. The Corps, Federal resource agencies and DEP have committed to conduct periodic reviews, which would include compliance reviews, to determine if implementation of the RGP is meeting expectations.

The Corps intends to maintain a web site for public access to the RGP, its various appendices and exhibits, annual reports, monitoring reports, and individual project approvals.

e. Will the proposed RGP provide distinct and significant environmental advantages, particularly over individual permit review?

Corps response: It is the Corps position that the RGP would provide additional environmental protection over normal permitting. The following are several examples. Under the RPG the amount of land preserved and enhanced by conservation units, mitigation banks, on individual project sites, would be greater than would have been expected by normal project-by-project permitting. The RPG would require that stormwater treatment meet ERP standards, which would be a higher level of treatment than that now required in northwest Florida. In the Lake Powell basin all projects would be required to treat stormwater at the ERP OFW standards, though under normal ERP rules, only discharges directly into Lake Powell itself, would normally be required to be treated at this higher level. The RGP would require that ERP stormwater retention standards be followed, that are designed to prevent off-site flooding, and which are not normally required in the Florida panhandle.

f. The proposed RGP does not meet requirements for protection of aquatic resources, including wetlands, pursuant to the water dependency test, alternatives, and the public interest review. There should be a clear and significant public interest in creating the RGP.

Corps response: The Corps evaluation of the proposed RGP found that while the RGP would authorize activities that are not water dependent, the RGP complies with the 404(b)(1) guidelines (see section 9 above), that the RGP is the least damaging practicable alternative (see section 8 above), and that the RGP would not be contrary to the public interest (see section 10 above). The standard that must be met under the

public interest review is that permitted activities are not contrary to the public interest (see paragraph 14d below). However, in the case of the proposed RGP, the Corps is convinced that the RGP would exceed this standard, since the RGP would provide, for example, considerable more land preservation than could be expected through normal permitting procedures; a higher level of stormwater treatment and retention, than is normally required in northwest Florida; and a more predictable and efficient permit program for the regulated public.

g. RGP allowance for impacts to 20% of low-quality wetlands (low quality because of silvicultural impacts) and 125 acres of high quality wetlands is too high. Minimization is not a form of mitigation. Additional wetland impact minimization should be required. There is no incentive to impact less than 20% of low quality wetlands. Under the RGP filled wetlands would not be replaced and no wetland creation is required. Improvements to wetland functioning would not replace filled wetlands, and the plants and wildlife, which inhabit them. Concern regarding transfer of the 20% allowable impact to low quality wetlands within sub-basins.

Corps response: Under the Corps regulations, mitigation in its broadest sense includes minimization, but has become in common use to mean compensatory mitigation. The RGP would allow a maximum impact of 20% of the low quality wetlands in individual sub-basins, excluding areas within conservation units and the two mitigation banks within any particular sub-basin. The RGP would offer incentives to consolidate that acreage in fewer areas by allowing more than 20% fill on individual sites, so long as the individual sub-basin has no more than 20% of its low quality wetlands filled (excluding conservation units and mitigation banks). The direct effects of the individual RGP authorized projects would be a maximum loss of approximately 1386 acres of low quality wetlands and 125 acres of high quality wetlands throughout the approximately 48,000-acre RGP area. Wetland functions and values are not solely a function of the raw number of wetland acres, but are extremely dependent on the relative quality of the wetland in terms of its ecological functions. Low quality wetlands under the RGP have been identified as jurisdictional ditches, which are generally of very low wetland function and quality; and hydric pine plantations, which are legally, though adversely altered wetlands. The RGP would mitigate the loss of these low quality wetlands by the enhancement and restoration of other damaged wetlands to a higher level of function and value in locations better suited toward optimal wetland function, thus replacing the lost value and function in the wetlands permitted to be filled under the RGP. In addition, the mitigation banks, conservation units and wetlands preserved on individual project sites would comprise and enhance a network of wildlife corridors and significant habitats, and especially a mosaic of interconnecting wetlands, which both

traverse and are located immediately adjacent to the RGP area, thus linking public resources from Choctawhatchee Bay to West Bay.

h. How was the determination of low and high quality wetlands made, and was the determination subject to peer review?

Corps response: A team of representatives from the Corps, DEP, FWS, EPA, NMFS, NWFWMD, and St. Joe developed the proposed RGP and EMA. A senior staff team directed a smaller technical team to research, conduct field studies and report back to the full team. This technical team, consisting of field biologists and scientists from the Corps, DEP, USFWS, NMFS, EPA, and St. Joe and its consultant team, conducted the evaluation of wetlands functions and values within the RGP area. Though the scale of the proposed RGP is larger than most projects reviewed by the above participating agencies, the technical evaluations performed by the above professionals are no different in substance from evaluations ordinarily performed by these governmental agencies under their regulatory and advisory statutory authorities. Outside peer review is not required, nor necessary for this project. The technical team developed definitions of and functional scores for low and high quality wetlands. WRAP was used to score the functional quality of wetlands. The WRAP scoring of sites in the RGP area, was compared with scoring that had already been performed for various other projects in the general area of the RGP, including the proposed relocation site and proposed mitigation sites for the Panama City – Bay County International Airport.

i. Standard wetland delineation methodology should be used to delineate wetlands for individual projects.

Corps response: Special condition 17 of the proposed RGP requires that the identification and delineation of wetlands must be in accordance with the *Corps of Engineers Wetlands Delineation Manual* (1987). Use of this manual by the Corps is mandatory. Under the proposed RGP wetlands may be delineated using aerial photo-interpretation (API) and ground-truthing, and, if necessary, mapped using the Global Positioning System (GPS) and other Geographical Information System (GIS) mapping techniques. If a construction line falls within 250 feet of a wetland boundary estimated using the aforementioned method, then a formal field wetland jurisdictional determination would be required for that segment of the proposed project.

j. Bridges should be required for road crossings through high quality wetlands, unless bridging is impractical, and all such crossings through high quality wetlands should be identified upfront.

Corps response: Subsequent to the receipt of comments regarding strengthening the requirements for the use of bridging for road crossings through high quality wetlands, the section of the proposed RGP dealing with this issue was modified and strengthened. Originally, the requirements were that all road or bridge crossings in wetlands should be designed so that the hydrologic conveyance is not reduced or impaired, and that bridging is encouraged wherever practicable. The following test for the determination of practicability has been added to the RGP: The following factors shall be considered when determining if bridging of the wetlands is practical: 1) the degree of water flow within the wetland, 2) the length of the wetland crossing, 3) the topography of the wetland and associated upland, and 4) the degree to which a roadway would adversely affect the movement of wildlife expected to use the wetland. As for the identification of all crossings through high quality wetlands prior to issuance of the RGP, the Corps believes that such a requirement is not practicable, and would undermine the flexibility of the RGP. The RGP has been developed and evaluated upfront to minimize impacts to the aquatic environment on a landscape scale, including impacts to high quality wetlands.

k. If evaluation of individual permits within the RGP is allowed, individual permits could be issued that would allow wetland impacts beyond those allowed under the RGP. St. Joe and other applicants within the RGP area should be required to use RGP. If applicants are allowed to submit individual permit applications, will public review and comment be allowed for such projects?

Corps response: Except under certain, specific conditions, the Corps cannot refuse to review any proffered individual permit application. Issuance of a general permit is not one of the disqualifiers for acceptance of an individual permit application by the Corps. Any application for a project, for which an individual Department of the Army (DA) permit would be required, would be advertised by normal public notice procedures to solicit public review and comment. It is the Corps position that the RGP would set the framework for evaluation of all proposed projects requiring authorization from the Corps within the RGP area.

l. Additional compensatory mitigation should be required, particularly for low quality wetlands that were damaged by St. Joe's silvicultural activities. Will proposed mitigation actually offset indirect and secondary impacts on wetlands from project authorized under the RGP?

Corps response: 33 CFR Part 323.4 describes various activities that are not regulated by the Corps, and thus do not require permits from the Corps. Among these activities are normal silvicultural activities, including plowing, cultivating, minor drainage,

and harvesting of forest products. Also, included is the construction of forestry roads, when constructed using best management practices. Other existing impacts to waters of the United States, including wetlands, that were performed prior to the implementation of the relevant portions of the Corps regulatory program, are grand-fathered and do not require permits now. It is the Corps understanding that in the RGP area, timbering activities began with a general cutover before the 1920's. Then in the 1950's St. Joe began logging when the company acquired the land. Subsequently, St. Joe implemented more modern silvicultural techniques, including the row planting and bedding of pines in the 1960's. The Corps believes that these various silvicultural activities that impacted wetlands within the RGP area are either grandfathered or exempted from the requirement for DA permits. The Corps has no legal basis to require any landowner to mitigate for activities that were not or are not regulated, and for which DA permits are not required.

m. Wetland mitigation and preservation should be assured in perpetuity.

Corps response: The RGP would require that perpetual conservation easements be placed over all wetlands that are required to be preserved under the proposed RGP, and all uplands within the conservation units, and mitigation banks. The mitigation banks would require perpetual maintenance of the enhanced or restored states of onsite wetlands and uplands, as required by the individual mitigation bank plan. Any other sites within the RGP area, where wetlands and uplands are enhanced or restored for mitigation, would also be required to be maintained in that enhanced or restored state in perpetuity, and be placed under perpetual conservation easements.

n. Mitigation should be required for impacts to isolated wetlands, especially since the Corps may soon regain jurisdiction over isolated wetlands.

Corps response: Subsequent to the United States Supreme Court decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 121 S. Ct. 675 (2001), the Corps no longer has regulatory jurisdiction over certain isolated wetlands. Since, these specific, isolated wetlands are no longer jurisdictional, and thus not subject to the Corps regulatory program, the Corps, and thus the proposed RGP, would not regulate direct impacts nor require mitigation for direct impacts to these isolated wetlands. If in the future, the Corps were to regain jurisdiction over these particular isolated wetlands, they would automatically be under the regulatory authority of the Corps and subject to the proposed RGP in the same fashion as are all other currently jurisdictional wetlands within the RGP area.

o. Ensure that mitigation for wetland impacts include restoration of lost flood retention volumes from incremental filling of wetlands and concerns regarding potential for flooding of adjacent properties to project sites where wetlands are filled under the RGP.

Corps response: The RGP would require that ERP stormwater retention standards be followed, that are designed to prevent off-site flooding, and which are not normally required in northwest Florida. In addition, it can be expected as intensive silvicultural operations are phased out in the RGP area, especially in wetlands, that managed restoration and natural re-vegetation will replace almost 70% of a landscape that has been highly disrupted with the cyclic bedding, row planting and timbering of pines over the past 60 years. In can be expected that as the landscape transitions from one highly impacted by silvicultural operations to one of stable natural vegetative communities, that stormwater retention capacity would increase.

p. Stormwater standards should be at the ERP level for the entire RGP area and at the OFW and ERP levels for the Lake Powell basin. Concern that the OFW stormwater standards are not that good.

Corps response: Projects authorized under the RGP would be required to provide stormwater treatment at the ERP level within the entire RGP area, and at the ERP OFW level within the Lake Powell basin (see paragraph 10a(12)). It is the Corps position that the requirement under the RGP to use the higher ERP standard is a substantial increase in the level of stormwater treatment, than would result under normal permitting in the RGP area.

q. The coastal rim of Breakfast Point should be included within the Breakfast Point mitigation area.

Corps response: Since the receipt of the comments regarding the need for protection of the perimeter of Breakfast Point, the perimeter has been designated as an additional conservation unit, and would, therefore, be protected as preserved land under the proposed RGP. It is the Corps understanding that St. Joe plans to sell what is now called the Breakfast Point Peninsula Conservation Unit to an appropriate governmental or private conservation entity, for conservation purposes, as would be required by the RGP.

r. Impact of activities authorized by the RGP on endangered and threatened species should be addressed.

Corps response: The Corps entered into formal consultation under Section 7 of the ESA with the FWS to address endangered and threatened species (see paragraph 10e above).

s. Additional buffering, including 100-foot buffers of natural vegetation around all waterbodies and wetlands, especially around Lake Powell. Wetlands should have upland buffers.

Corps response: Sufficient buffering of important wetlands and waterbodies on a landscape scale would be achieved by the RGP. Under the proposed RGP a combination of low quality wetlands and uplands would buffer high quality wetlands throughout the RGP area. Except at road crossings and on a per project basis, upland and/or low quality wetland buffers adjacent to high quality wetlands would be an average of 50 feet wide, with a minimum 30-foot width for each individual project. All buffers, whether upland or wetland, will be preserved and maintained in a natural condition, except for the construction of boardwalks for dock access and on-grade trails. Buffers may be enhanced or restored to a more natural condition under the RGP. Application of fertilizers, herbicides, or pesticides would be prohibited in all buffers.

t. How will the RGP assure investigation and protection of historical sites?

Corps response: The RGP would require investigation and protection of historical and cultural resources (see paragraph 10a(5) above).

u. How will continued access by governing agencies responsible for maintenance of drainage ways, be allowed to all drainage facilities and easements, especially within the mitigation and conservation areas?

Corps response: The Corps has been in contact with the landowner, the St. Joe Company and they gave the following response: "Access by governing agencies to drainage facilities and easements will continue in the same fashion as granted now. Many of these areas are gated and locked currently and access is coordinated with the Unit Forester in the area. The government authorities, in some instances, have keys to the locks or otherwise gain access off public roads. We have attempted to identify known drainage easements and structures in our GIS database to preserve them in the future. The hydrologic modeling for the mitigation banks incorporated known drainage easements and facilities as well as ditches, which must be maintained to prevent offsite flooding. Finally, known easements and facilities will also be identified as detailed restoration and habitat management plans are developed for CUs."

v. Deed restrictions are inadequate to protect the conservation units. Proposed conservation units overlap state lands. How can conservation units be fire managed if developments are built adjacent to conservation units? Concerns regarding continuation of normal silvicultural operations and potential of development within the conservation units. How will long-term management of conservation units be assured?

Corps response: The proposed RGP will use conservation easements granted to the DEP for preservation of the conservation units. The proposed conservation units do not overlap state owned lands, except for some areas of submerged and tidal sovereign state lands included within the boundaries of three of the conservation units. Though problematic, it is the intent of the Corps that mitigation projects that require ongoing fire management will continue to do so in the future. Fire management within preserved lands is not only environmentally desirable, but also important to keep fire fuel loads low to prevent uncontrollable wild fires from starting and spreading into developed areas.

w. Conservation easements granted to the state should be utilized. Will permittees under the RGP be required to set up trust funds or other tools to manage areas placed under conservation easements? Conservation easements should have a core set of governing principles/standards applicable to whomever owns the lands subject to conservation easements. Feral pigs need to be controlled within conservation areas. Concerns regarding sales of conservation areas, particularly the Breakfast Point area.

Corps response: Conservation easements granted to the DEP would be utilized under the RGP. Sale of conservation units and mitigation banks is confined to governmental entities or qualifying conservation entities that would use the land for conservation purposes. Guarantees of proper management would be required. The conservation easements that would be used are typical of those already required by the Corps and DEP for the preservation of wetlands and uplands and include governing principles and standards, as to the activities that may occur within areas under such conservation easements. Feral pigs are a recognized problem on conservation lands. While there is no requirement to actively manage pig populations under the RGP, hunting is allowed, and thus some culling of the feral pig population would occur.

x. Public should have recreational access to the conservation units, mitigation banks and other preserved lands.

Corps response: The Corps acknowledges that public access to preserved, natural lands for recreational purposes is normally considered to be in the public interest. However, in terms of achieving environmental benefits for and preservation of

such things as wildlife habitat, biological diversity, and water quality, privately owned preserved lands achieve the same goals. As a private company, St. Joe will ascertain the degree of public access to its privately owned lands it deems appropriate. However, it is the Corps understanding that St. Joe intends to sell considerable portions of these preserved lands to both governmental and private conservation entities. These entities normally would allow differing degrees of public access, depending on the specific conservation goals for particular properties.

y. New rules, which may come into effect after the RGP is implemented, should apply to new projects using the RGP.

Corps response: The RGP would be valid for 5 years from the date of issuance unless suspended or revoked by issuance of a public notice by the District Engineer. The permit can be reissued for 5-year periods indefinitely, if it is found not to be contrary to the public interest. This review would be conducted pursuant to any new or modified regulations in force at the time of the review.

z. Input from FDOT and local Metropolitan Planning Organizations (MPOs) for future road expansions in the RGP area should be sought.

Corps response: Direct input from the FDOT and MPOs was not sought. The proposed RGP would allow for future road construction as part of the overall mix of developments associated with typical suburban development.

aa. Concerns from property owners within the RGP area, that they were not formally notified of the development of the RGP, and that they will be held to the same permitting standards to which St. Joe has voluntarily agreed.

Corps response: The Corps believes that sufficient notice was given regarding the RGP proposal (see paragraph 13d above). Development of the RGP has afforded an opportunity to plan for direct, secondary and cumulative impacts on both the general environment and especially on the aquatic environment on a regional and watershed scale. This has allowed an upfront, reasonable apportionment to all landowners of future potential, but minimized impacts to wetlands in the RGP area, so that landowners can reasonably develop their properties. St. Joe has voluntarily shouldered a significant portion of the burden of minimization of direct impacts and minimization of secondary and cumulative impacts for the entire RGP area by agreeing to set aside over 13,000 acres of land in conservation units and approximately 7,600 acres of land in two mitigation banks. Of the approximately 48,000 acres within the RGP area, almost

10,000 acres are not owned by St. Joe. The RGP would allow other landowners to benefit from St. Joe's efforts.

bb. DEP should not be given authority to administer the RGP for the Corps.

Corps response: In order to serve the regulated public more efficiently, the DEP would issue one letter that would include the Corps authorization for projects that the Corps has determined to meet the special conditions of the proposed RGP. The Corps would actively review individual projects and inform the DEP whether a particular project can be authorized under the RGP.

cc. There may be a perceived right by others to have a RGP fashioned for them by the Corps.

Corps response: The development of the proposed RGP was initiated by the Corps to deal with an escalating pace of development in an area of significant ecological resources, particularly several watersheds and their component stream and wetland systems, and their receiving waterbodies, such as West Bay, Choctawhatchee Bay, several coastal dune lakes, and the Gulf of Mexico. The Corps wants to provide a predictable and efficient regulatory permitting program that protects the aquatic environment. The Corps may apply the concept of the RGP to other areas within Florida, where it would facilitate and enhance both protection of the aquatic environment and regulatory efficiency.

dd. The Corps violated the FACA in its development of the RGP.

Corps response: The Corps did not violate the FACA. The Corps and other Federal and State agencies often meet to discuss individual permit applications. As part of the normal permit evaluation process, issues concerning a proposed project are discussed with and without the permit applicant being present and taking part in the discussions. In this case, the Corps initially held meetings with the Federal commenting agencies to discuss the various issues starting to surface on projects submitted by St. Joe. Due to the rising concern among the Corps and other agencies regarding potential secondary and cumulative impacts that would arise from these proposed projects, the various agencies, including the Corps, eventually decided to periodically meet as a group with St. Joe to proactively ascertain what projects would be submitted in the near future. Existing regulations and guidance were used by the participating agencies to evaluate the proposed RGP, as they would be used to evaluate individual projects. The agencies were active participants throughout all phases of this process. The meetings were held in the office, field, or via teleconference, as needed, to discuss the issues.

Such pre-project meetings are authorized by Corps permitting regulations. These meetings resulted in the proposed RGP, which would be a holistic approach to the review of the numerous projects proposed for the area. The interagency team continues to meet regularly and would provide ongoing guidance and monitoring of the RGP plan.

ee. Maps showing the RGP area are inaccurate, especially in reference to the size of buffers and mitigation areas.

Corps response: This comment was specifically directed at the proposed RGP's Exhibit 1 (same as Exhibit 1 of this environmental assessment/statement of findings). Objections were raised as to depiction of the size of the buffers and preservation areas within the West Bay Area Sector Plan (WBAS) in the exhibit. The purpose for including the WBSP area was to show how the plan that the proposed RGP implements with its component mitigation banks and conservation units, would fit in with other proposed planning projects in the region, and existing state and NWFWMD conservation lands. Though the WBSP has been adopted by Bay County, the actual boundaries of the various preservation areas and buffers have not been set. Only conceptual representations of the proposed buffers and preservation areas in the WBSP are available at this time. Exhibit 1, as well as other RGP exhibits showing the size and location of the RGP area itself, and its components, such as the conservation units and mitigation banks, are as accurate as possible at the level of scale of such exhibits.

ff. The RGP would be inconsistent with EPA policy regarding the regulation of wetlands in the Florida panhandle.

Corps response: The RGP is the culmination of three years of cooperation among State and Federal agencies. Considerable time and effort were committed in numerous meetings and field investigations, which resulted in consensus among representatives from the various state and federal agencies that participated, including the EPA.

gg. Complaint that CWN staff had been informed that drafts of the RGP were secret and not available through the FOIA.

Corps response: On several occasions Ms. Linda Young of the Clean Water Network requested copies of drafts of the RGP. Ms. Young was informed that such documents were working drafts and are considered to be pre-decisional and not releasable under FOIA. However, at a meeting on August 15, 2003, with various members of local citizen interest groups, a draft of the RGP, which was used for the public notice that was published two weeks later, was provided to Ms. Young and the

other meeting attendees. On March 4, 2004, a FOIA request was received form Ms. Melanie Shepherdson of the Natural Resources Defense Council (NRDC). The Corps sent copies of RGP related file documents to the NRDC on April 2, 2004. The Corps in the process of assembling RGP related e-mail to send to the NRDC at this time.

hh. The proposed RGP should be withdrawn from consideration.

Corps response: The Corps strongly believes that the proposed RGP would provide a focused, regionally specific plan to protect the aquatic environment on a watershed scale by authorizing a forward-looking, flexible and predictable permitting program, that would decrease duplication of effort with the DEP's dredge and fill permit program, that would minimize unavoidable direct impacts to highest quality aquatic resources, minimize impacts to lower quality aquatic resources, and which would mitigate for direct, indirect and cumulative impacts within the watersheds subject to the proposed RGP in an approximately 48,000 acre area in Walton and Bay counties. This environmental assessment/statement of findings supports the position that the RGP should be issued.

14. Determinations:

a. Finding of No Significant Impact (FONSI): Having reviewed the information provided by the applicant and all interested parties and an assessment of the environmental impacts, I find that this permit action would not have a significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement would not be required.

b. Compliance with 404(b)(1) Guidelines: Having completed the evaluation in paragraph 9 above, I have determined that the proposed discharge complies with the 404(b)(1) guidelines.

c. Section 176(c) of the Clean Air Act General Conformity Rule Review: The proposed permit action has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this permit would not exceed *de minimis* levels of direct or indirect emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps' continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required for this permit action.

d. Public Interest Determination: I find that issuance of a Department of the Army permit is not contrary to the public interest.

PREPARED BY:

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REVIEWED BY:

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Enforcement Branch

APPROVED BY:

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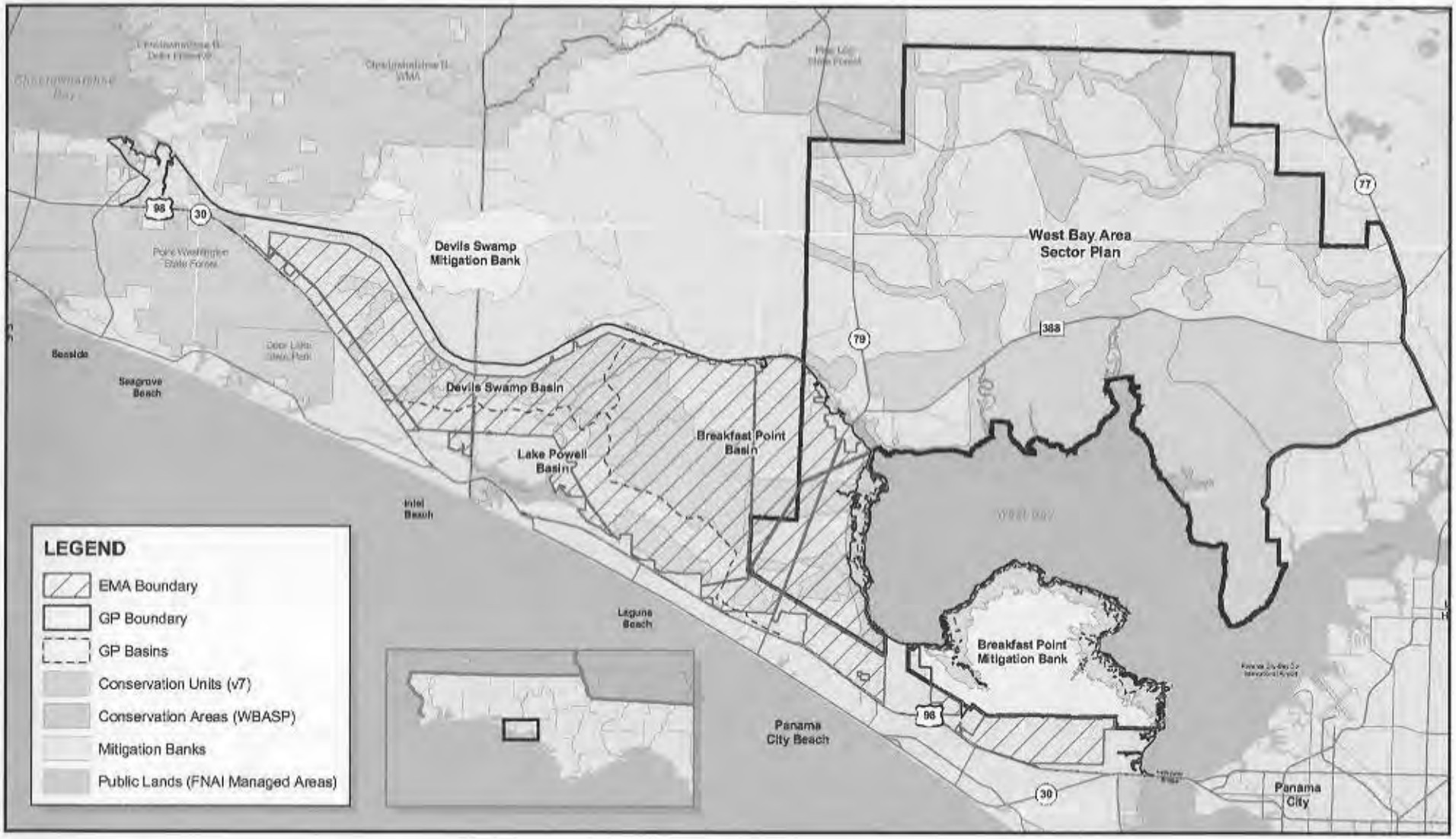

EXHIBIT 61

MITIGATION STRATEGY

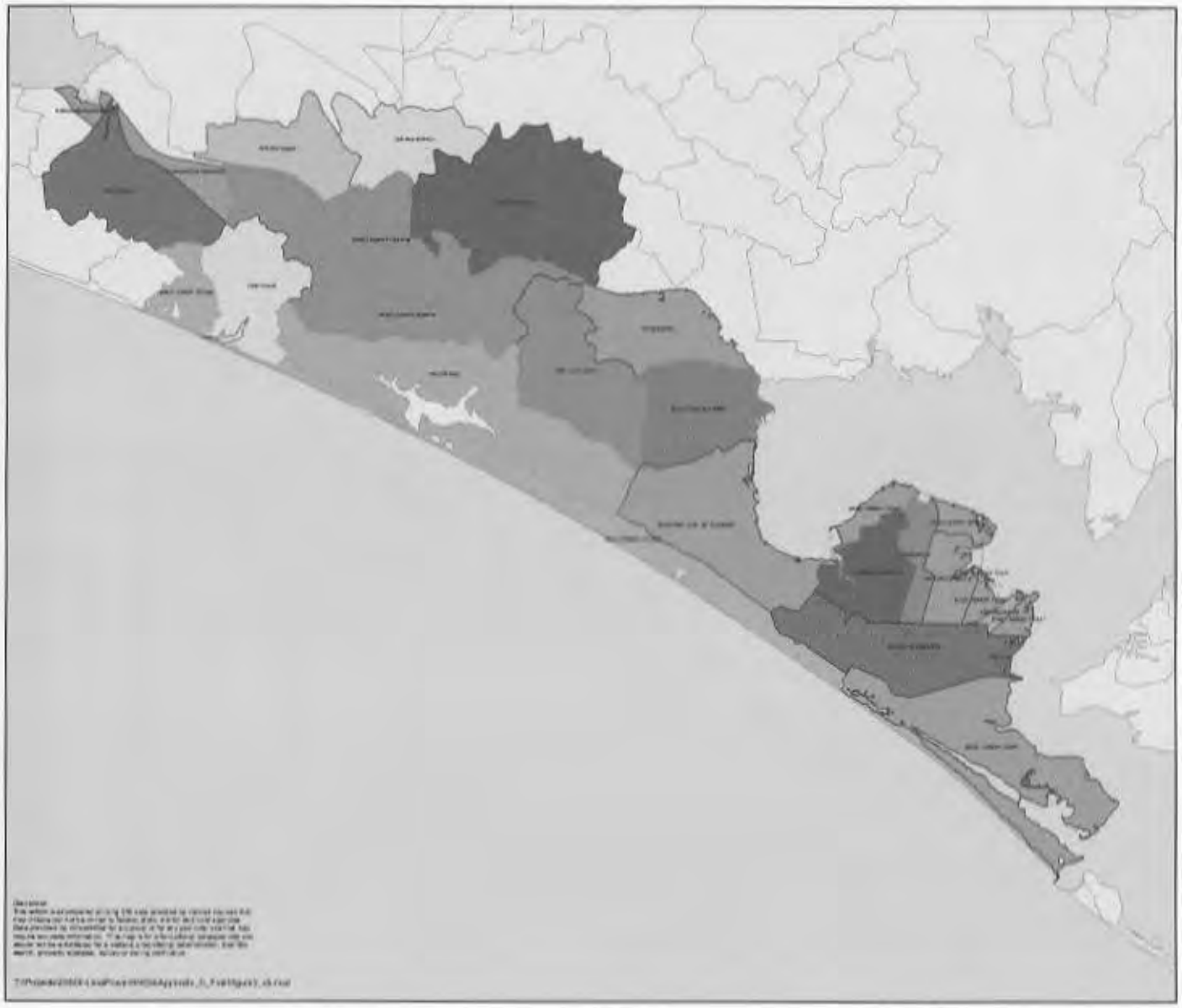

Exhibit 2

Sub-Basin Map

Legend

MAJOR ROADS

BASINS

- BASIN BAYOU
- BOTHERATION BAYOU
- CAMP CREEK
- DIRECT RUNOFF TO BAY
- DIRECT RUNOFF TO BAY-S
- DIRECT RUNOFF TO GULF
- HARRISON BAYOU
- HIGHWAY 98 SUB-BASIN
- ICW SUB-BASIN
- INTRACOASTAL WATERWAY
- PEACH CREEK
- PHILLIPS INLET
- ROARING CREEK
- SOUTHWEST WEST BAY SUB-BASIN
- TEN MILE BRANCH
- UNNAMED BAYOU
- WARD CREEK SUB-BASIN
- WEST LAIRD DRAIN
- WESTBAY CREEK

N

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