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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITIZENS OF THE EBEL'S RESERVE  
FOR A HEALTHY, SAFE AND  
PEACEFUL ENVIRONMENT; and  
PAULA SPINA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
THE NAVY, a military department of the  
United States; and TODD C. MELLON,  
in his official capacity as Acting Assistant  
Secretary of the Navy for Energy,  
Installations & Environment;

Defendants.

NO.

COMPLAINT

**I. NATURE OF ACTION**

1. The Department of the Navy is proposing to significantly increase its military aircraft operations at a Naval Air Station on Whidbey Island that has already grown well beyond all reasonable limits of compatibility with the surrounding area and community.

2. The Department of the Navy prepared a draft and final Environmental Impact Statement to analyze the impacts of its proposed action.

1           3.     On March 12, 2019, then-Assistant Secretary of the Navy for Energy, Installations  
2 and Environment, Phyllis L. Bayer (since resigned and replaced by Acting Assistant Secretary  
3 Todd C. Mellon), issued a Record of Decision that adopts EIS Alternative 2A as the Navy’s course  
4 of action. Among other things, Alternative 2A adds 36 EA-18G “Growler” aircraft at NAS  
5 Whidbey Island; increases low-flying airfield operations at both Ault Field and Outlying Landing  
6 Field Coupeville (“OLF Coupeville”); and shifts a large percentage of the flights from Ault Field  
7 to OLF Coupeville. The net result of these changes is a large increase in the number of extremely  
8 noisy, low-flying Growlers flying over portions of Whidbey Island near OLF Coupeville. The  
9 Navy forecasts that in an average year, these changes will result in approximately 17,600 more  
10 takeoffs and landings and in a “high-tempo year” there will be 20,000 more takeoffs and landings.  
11

12           4.     The Navy based its decision on a deeply flawed EIS that does not comply with the  
13 requirements of the National Environmental Policy Act (“NEPA”). The EIS fails to analyze a  
14 reasonable range of alternatives as required by NEPA. The EIS fails to adequately analyze  
15 alternative sites; the Navy’s purported consideration of off-Whidbey Island alternatives simply  
16 dismisses them from consideration. The actually analyzed action alternatives for Whidbey Island  
17 simply shuffle the number of flights at Ault Field and OLF Coupeville. Those alternatives are so  
18 similar to one another that a real choice among truly different alternatives is missing. The EIS  
19 does not adequately analyze and disclose the environmental impacts and consequences of the  
20 Proposed Action or EIS Alternative 2A. The EIS fails to adequately analyze measures to mitigate  
21 the proposal’s severe impacts on local residents, schools and communities, the nearby National  
22 Historic Reserve, and wildlife including marbled murrelets—a species listed as threatened under  
23 the federal Endangered Species Act and endangered under Washington state law— and southern  
24 resident orcas.  
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1           5.     The Navy's deeply flawed analysis led to it adopting a proposal that subjects local  
2 residents to shocking and offensive levels of additional noise, causes irreparable harm to a  
3 National Historic Reserve, harasses and kills Washington's declining population of marbled  
4 murrelets, and harasses Washington's southern resident orcas.

5  
6           6.     The U.S. Fish and Wildlife Service prepared a Biological Opinion and Incidental  
7 Take Statement regarding the Proposed Action.

8           7.     The U.S. Fish and Wildlife Service's Biological Opinion was based upon stale and  
9 inaccurate data regarding the number of total flights and the number of interfacility flights that  
10 would result from the Proposed Action.

11           8.     The U.S. Fish and Wildlife Service's Incidental Take Statement for marbled  
12 murrelets failed to meet the requirements of the Endangered Species Act, by, among other things,  
13 failing to clearly articulate the amount or extent of the anticipated incidental taking, failing to  
14 specify reasonable and prudent measures necessary or appropriate to minimize the anticipated  
15 take; failing to set forth terms and conditions to enforce any reasonable and prudent measures; and  
16 failing to provide a trigger to reinitiate consultation with the Navy.

17  
18           9.     This action seeks judicial relief with respect to the Navy's EIS and Record of  
19 Decision, ordering the Department of the Navy to comply with the requirements of NEPA. The  
20 decision approving the NAS Whidbey Island Complex Growler Proposal was arbitrary and  
21 capricious, an abuse of discretion, and/or otherwise not in accordance with law.

22  
23           10.    Plaintiffs request that the Court set aside the Record of Decision pursuant to 5  
24 U.S.C. § 706(2)(a) and enjoin its implementation.

25           11.    Plaintiff seeks a declaratory judgment, preliminary and final injunctive relief, an  
26 award of costs and expenses of suit, including attorney and expert witness fees pursuant to the

1 Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief as this Court deems just and  
2 proper.

3 **II. JURISDICTION**

4 12. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises  
5 under the laws of the United States and involves the United States as a defendant.  
6

7 13. Defendants' issuance of the Record of Decision was the final administrative action  
8 of the United States Department of the Navy. Thus, the Court has jurisdiction to review plaintiff's  
9 claims under the Administrative Procedure Act (APA).

10 **III. VENUE**

11 14. Venue is proper in this Court under 28 U.S.C. § 1391. All or a substantial part of  
12 the events or omissions giving rise to the claims herein occurred within this judicial district,  
13 defendants reside in this district, and the public lands and resources and agency records in question  
14 are located in this district.  
15

16 **IV. PARTIES**

17 15. Plaintiff Citizens of the Ebey's Reserve for a Healthy, Safe and Peaceful  
18 Environment ("Citizens of Ebey's Reserve" or "COER") is a non-profit public interest  
19 organization incorporated in 2012 and dedicated to protecting the health and welfare of the  
20 inhabitants of Whidbey Island and surrounding areas, including marine, migratory, and  
21 endangered species and preserving the historic northwest communities being threatened by  
22 military jet training flights. Its registered office is located in Coupeville, Washington. Plaintiff  
23 brings this action on its own behalf and on behalf of its adversely affected members.  
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1           20.       Paula Spina is a resident of and business owner in Central Whidbey whose  
2 residence and businesses are under the OLF flight path. The Navy's violations of law as set forth  
3 in the claims for relief herein threaten Ms. Spina's health and welfare and her use (including  
4 business use) and enjoyment of her property and the surrounding areas, including Ebey's  
5 Landing National Historic Reserve.  
6

7           21.       The Proposed Action will cause invasion of actual concrete interests of the members  
8 of Citizens of Ebey's Reserve. COER's individual members own property, live, study and attend  
9 school, sleep, watch birds, watch whales and other marine mammals, converse, kayak and enjoy  
10 diverse recreational activities on land that is adjacent to and near NAS Whidbey Island, and expect  
11 to continue to do so in the future. The incompatibility of this escalating Navy presence will cause  
12 specific and concrete injuries to COER's organizational interests, as well as its members' auditory  
13 and non-auditory health and their use and enjoyment of their homes, their schools, their work, and  
14 their everyday lives.  
15

16           22.       The Proposed Action involves the expansion of existing Growler operations at the  
17 NAS Whidbey Island complex with, among other things, the addition of 36 Growler aircraft  
18 assigned to the facility, which is four times more Growlers than the Navy proposed in 2005.  
19

20           23.       Under Alternative 2A, total annual airfield operations at NAS Whidbey Island will  
21 increase by approximately 33% over the baseline.

22           24.       The increase in airfield operations at OLF Coupeville under Alternative 2A is even  
23 more striking—an increase of more than 270% over the baseline.

24           25.       The noise from these increased numbers of aircraft is extreme. The noise is so loud  
25 that it interferes with the ability of people to have a conversation outdoors or indoors, to sleep in  
26 their own homes, and of children to learn in their classrooms. The noise will ruin recreational

1 opportunities in and around the National Historic Reserve and will be so intense and frequent that  
2 it will cause adverse health effects on people in the exposed areas including members of Citizens  
3 of Ebey's Reserve.

4           26. Ebey's Landing National Historic Reserve was specifically established to "preserve  
5 and protect a rural community which provides an unbroken historical record from nineteenth  
6 century exploration and settlement in Puget Sound to the present time," 54 U.S.C.A. § 320101.  
7 The primary economic drivers in the rural community in and around Ebey's Landing National  
8 Historic Reserve are tourism and agriculture. Increased Growler operations make agriculture  
9 nearly impossible with the result that several small farms have already ceased farming operations.  
10 Increased Growler operations also threaten tourism.

11           27. Several parks and recreation areas in north and central Whidbey Island will be  
12 directly and adversely affected by aesthetic and noise impacts of the Proposed Action, including  
13 Ebey's Landing National Historic Reserve. Citizens of Ebey's Reserve's members use and enjoy  
14 the unique natural setting in these areas for recreational, scientific, spiritual, educational, aesthetic,  
15 and other purposes. COER's members enjoy hiking, biking, observing wildlife, relaxing,  
16 conversing, and other activities in these areas and will continue to do so in the future. The  
17 annoyance and other impacts of aircraft noise will directly and adversely affect COER's members'  
18 use and enjoyment of these parks and recreation areas.

19           28. Several environmentally sensitive areas that provide important wildlife habitat will  
20 be directly and adversely affected by noise impacts of the Proposed Action. Citizens of Ebey's  
21 Reserve's members enjoy the unique natural setting in these areas for the purpose of observing  
22 the fish and wildlife and will continue to do so in the future. Adverse impacts of aircraft noise on  
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1 birds, fish, marine mammals and other wildlife will directly and adversely affect COER members'  
2 enjoyment of these areas.

3 29. The interests of Citizens of Ebey's Reserve and its members have been and will  
4 continue to be injured and harmed by defendants' failure to comply with NEPA. COER's interests  
5 are protected by NEPA, and defendants' failure to comply with NEPA directly harms those  
6 interests. Unless the relief prayed for herein is granted, Citizens of Ebey's Reserve and its  
7 members will suffer ongoing and irreparable harm and injury to their interests.

9 30. The injuries to Citizens of Ebey's Reserve will be redressed by a favorable decision  
10 of this Court because an order granting the relief requested in this Complaint will ensure that the  
11 Proposed Action will not result in significant new adverse environmental impacts without the due  
12 consideration required by NEPA.

## 14 VI. ADDITIONAL FACTUAL ALLEGATIONS

### 15 A. Naval Air Station Whidbey Island

16 31. Naval Air Station (NAS) Whidbey Island is a naval air station of the United States  
17 Navy located on Whidbey Island in Island County, Washington.

18 32. The NAS Whidbey Island complex includes the main air station (Ault Field), OLF  
19 Coupeville, the Seaplane Base, and Lake Hancock. The main portion of the base, Ault Field, is  
20 in the north central part of Whidbey Island near the City of Oak Harbor. OLF Coupeville is located  
21 in a peaceful setting immediately adjacent to Ebey's Landing National Historic Reserve about 10  
22 miles south of Ault Field and is used primarily for landing practice.

24 33. NAS Whidbey Island began its operations in 1942 and was designated as a Master  
25 Jet Station in 1951, which expanded its mission to include jet aircraft training and operations of  
26

1 carrier-based squadrons. The EA-18G Growler began operations at NAS Whidbey Island for the  
2 first time in 2007.

3 34. EA-18G Growlers conduct field carrier landing practice (FCLP) at OLF Coupeville.  
4 The typical practice pattern involves a takeoff, a quick low-level loop around the area, and then  
5 landing. This loop pattern is repeated again and again with many takeoffs and landings occurring  
6 one after another during the practice session.  
7

8 B. Surrounding Land Uses

9 35. Northern and central Whidbey Island are not suitable locations for military aircraft  
10 operations at the level proposed by the Navy.

11 36. The NAS Whidbey Island complex is surrounded by residences, schools,  
12 businesses, environmentally sensitive areas, at-sea foraging areas for the marbled murrelet (a  
13 federally-protected species), areas frequently used by southern resident orcas, parks and recreation  
14 areas, and a National Historic Reserve.  
15

16 37. The incompatibility of escalating Navy presence in north and central Whidbey  
17 Island has been a subject of much controversy since at least April 29, 1992, when the owners of  
18 forty-six parcels of land surrounding the Naval Air Station Whidbey filed an inverse  
19 condemnation action against the United States, alleging that the Government took their private  
20 property for public use without paying just compensation in violation of the Fifth Amendment.  
21 *See Argent v. United States*, 124 F.3d 1277 (Fed. Cir. 1997) (vacating and remanding Court of  
22 Federal Claims grant of summary judgment against landowners and describing factual setting).  
23

24 38. In 2005, the Navy issued a Finding of No Significant Impact for the addition of EA-  
25 18G “Growler” operational aircraft to the Naval Air Station (“NAS”) Whidbey Island and  
26 determined that “an Environmental Impact Statement (EIS) is not required[.]” Following litigation

1 over that determination (*Citizens of the Ebey's Reserve for a Healthy, Safe and Peaceful*  
2 *Environment v. U.S. Dept. of the Navy, et al.*, Case No. 2:13-cv-01232), the Navy agreed to  
3 prepare an environmental impact statement.

4 C. Proposed Action

5  
6 39. The Navy proposes to continue and expand existing Growler activities at the NAS  
7 Whidbey Island complex, which includes repetitive landing practices by 2–5 Growler aircraft per  
8 45-minute session, at Ault Field and OLF Coupeville.

9 40. The Proposed Action includes adding 35 to 36 EA-18G Growler aircraft to NAS  
10 Whidbey Island and shifting a large percentage of the landing practices from Ault Field to OLF  
11 Coupeville.

12 D. Purpose and Need, Alternatives Beyond Whidbey, and Cost

13  
14 41. The Navy prepared an EIS to assess environmental issues related to its proposed  
15 action. In the EIS, the described purpose of the Proposed Action is “to augment the Navy’s existing  
16 Electronic Attack community at NAS Whidbey Island by operating additional Growler aircraft  
17 that have been appropriated by Congress.” EIS at 1-5. The EIS states that the need for the  
18 Proposed Action is “to maintain and expand Growler operational readiness to support national  
19 defense requirements under” federal law. *Id.*

20  
21 42. By limiting the purpose to increasing Growler operations on Whidbey and nowhere  
22 else, the EIS precludes consideration of other, potentially preferable, off-Whidbey sites for the  
23 Growlers.

24 43. The Navy’s consideration of alternatives was artificially constrained by this narrow  
25 purpose and need statement and precluded consideration of feasible, environmentally preferable  
26 alternatives.

1           44. The EIS stated that moving Growler squadrons to another location would involve  
2 excessive cost and major new construction without providing any supporting analysis for that  
3 conclusion.

4           45. Because cost was stated to be relevant to the choice of alternatives that were  
5 considered, the EIS should have incorporated or appended a cost-benefit analysis to support,  
6 justify, and explain the reasons for not providing a detailed analysis of any off-Whidbey sites.  
7

8           46. The current and proposed expanded use of NAS Whidbey Island involves excessive  
9 costs, both economic and socioeconomic to Island County, the residents of Whidbey Island, and  
10 others. These costs were not adequately analyzed and disclosed in the EIS.

11           E. Alternatives at Whidbey

12           47. The EIS evaluated a no-action alternative and three action alternatives for increasing  
13 Growlers at Whidbey.  
14

15           48. The three action alternatives that were evaluated in the EIS are so similar as to  
16 provide almost no meaningful distinction between them regarding the number of Growlers to be  
17 brought to Whidbey. Alternative 1 proposes adding 35 new Growlers, Alternative 2 proposes  
18 adding 36 new Growlers, and Alternative 3 proposes adding 36 new Growlers.

19           49. The EIS devoted a considerable portion of its analysis to presenting a redundant  
20 analysis of these three practically identical alternatives. The result was, not surprisingly, a  
21 conclusion that all three alternatives in many respects would have nearly identical environmental  
22 impacts.  
23

24           50. The EIS should have, but did not, rigorously explore and objectively evaluate all  
25 reasonable alternatives that were eliminated from detailed study. The EIS did not inform decision-  
26

1 makers and the public of reasonable alternatives to the proposal that would avoid or minimize the  
2 adverse significant impacts of the proposal.

3 51. For example, the EIS should have considered a markedly smaller number of aircraft  
4 than what was being proposed, and alternative off-Whidbey basing or practice venues, so that the  
5 decision makers and the public could see and compare those impacts with the impacts of adding  
6 35 or 36 aircraft at NAS Whidbey Island.  
7

8 F. Noise Impacts

9 52. The EIS does not adequately analyze and disclose the environmental impacts and  
10 consequences of the Proposed Action with respect to noise associated with aircraft operations at  
11 NAS Whidbey Island.

12 53. The aircraft noise at NAS Whidbey Island from the Proposed Action will cause  
13 significant annoyance, speech interference, sleep interference, classroom/learning interference,  
14 effects on recreation, and health effects—including permanent hearing loss—on residents and  
15 visitors in the exposed communities.  
16

17 54. Noise from Growlers is not just like ‘being near an airport;’ the Growler engines are  
18 far louder than commercial aircraft. The planes are flown in repetitious patterns at extremely low  
19 elevation (sometimes 200–500 feet above the ground and lower during takeoff and landing) across  
20 neighborhoods and natural and historic areas. The noise is enhanced by significant turbulence and  
21 low frequency vibrations.  
22

23 55. Aircraft noise levels are represented in the EIS by various noise metrics that are  
24 generated by a computer model and not based upon actual, on-site measurements at Ault Field or  
25 OLF Coupeville. The model provided estimates of noise levels from current operations and future  
26

1 alternatives. The model is not reliable. The model results for current operations do not match  
2 measurements of current operations.

3 56. Citizens of the Ebey's Reserve retained JGL Acoustics of Issaquah, WA, to conduct  
4 actual noise recordings of Growlers when using OLF Coupeville for repetitive landing practice in  
5 May 2013, February 2016, and June 2019.  
6

7 57. The National Park Service conducted on-site noise recordings of repetitive landing  
8 practices at OLF Coupeville in the summer of 2015 and reported its findings and conclusions in  
9 an Acoustical Monitoring Report dated November, 2016. The National Park Service findings  
10 were consistent with the JGL Acoustics findings.

11 58. Navy's modeled noise reported in the EIS grossly underestimate noise compared  
12 with the actual noise levels recorded by JGL Acoustics and the National Park Service. The EIS  
13 fails to provide adequate justification for using noise data generated by a computer model and not  
14 based upon actual, on-site measurements at Ault Field or OLF Coupeville.  
15

16 59. The existing environment noise and the noise impacts of the Proposed Action were  
17 modeled using FA-18E/F "Super Hornet" data in the computer model. The Super Hornet is a  
18 different aircraft from the Growler.

19 60. The EIS fails to provide adequate justification for using noise data for the Super  
20 Hornet instead of data for the actual aircraft that will be causing the noise impacts.  
21

22 61. The EIS provides misleading information by emphasizing metrics based on  
23 averaging sound levels over long periods of time. The averages water down the description of the  
24 true noise impacts. People and animals do not hear noise as an average of noisy events and  
25 intervening quieter periods. The noisy events are the pertinent data and predictions, yet those  
26 receive little attention in the EIS.

1           62. The EIS’s misleading focus on average noise levels is compounded by the EIS’s use  
2 of an outdated and misleading benchmark for assessing whether the average noise levels are  
3 significant. The average noise level forecasts are expressed in the “day-night” noise level (DNL).

4           63. According to the EIS, 87% of the population is not highly annoyed by outdoor sound  
5 levels below 65 dB DNL. Based on this and other information in the EIS, the 65 dB DNL is set  
6 in the EIS as the threshold for significant noise impacts.

7           64. The EIS threshold of 65 dB DNL for high noise annoyance has been scientifically  
8 discredited as an inappropriate and flawed method for evaluating the noise impacts. The EIS,  
9 however, uses that 65 dB DNL metric, which understates impacts of the Proposed Action. Current  
10 studies and analysis reflect that a reasonable high annoyance threshold level is no more than 55  
11 dB DNL.  
12

13           65. Thus, the heart of the EIS noise analysis suffers twin defects. It relies on computer  
14 modeled long-term averages instead of actual short-term or instantaneous impacts and it then  
15 compares the misleading averages to an unduly high threshold for determining significant impacts.  
16 Because the EIS analysis of noise impacts is erroneously based on the 65 dB DNL noise contour,  
17 the EIS underestimates the size of the residential population and the size of areas (including, but  
18 not limited to, the areas within Ebey’s Landing National Historic Reserve) that will be  
19 significantly impacted by the Proposed Action.  
20

21           66. The EIS failed to analyze that the Growler’s standard F414-400 engine can be  
22 retrofitted and enhanced to produce significantly more thrust and, hence, more noise. Neither the  
23 likelihood of such enhancements nor the consequences of additional noise from retrofitted engines  
24 were analyzed.  
25  
26

1           67. The EIS contains limited information about instantaneous noise impacts (referenced  
2 as “ $L_{\max}$ ” in the EIS). The EIS includes predictions of the number of times  $L_{\max}$  exceeds 50  
3 decibels at various locations. Noise impacts will be much more severe when  $L_{\max}$  is 60 or 70 or  
4 higher. The EIS fails to include adequate information about the number of events when  $L_{\max}$  will  
5 be at any level other than 50 decibels. To the extent information is provided, it is based on modeled  
6 sound impacts, not actual measurements. This missing information is important to allow the Navy  
7 and the public to assess the consequences of the proposal and its alternatives and to assess the  
8 need for mitigation. At various points of interest (POIs) the EIS provided modeled estimates of  
9 the number of times in a year when Growler noise would exceed  $L_{\max}$  values of 80, 90, and 100  
10 dB. The JGL Acoustics and National Park Service’s on-site Growler noise data were collected at  
11 four sites very close to four POIs (Table 4.2-4). The modeled noise-event incidences at those four  
12 POIs was grossly underestimated, based on the on-site recordings data at each of those comparable  
13 sites revealing a much higher incident rate. This exposes shortcomings in the POI modeled data,  
14 not only in Table 4.2-4 of the EIS, but in all the POI-related tables, all of which are based on the  
15 same erroneous modeling.

18           68. The Navy’s failure to fully analyze and disclose noise impacts is contrary to NEPA’s  
19 underlying purpose and requirement of disclosure of environmental impacts.

21           G.           Historic District Impacts

22           69. Implementation of the Proposed Action will result in significant adverse impacts to  
23 Ebey’s Landing National Historic Reserve, our Nation’s first National Historic Reserve.

24           70. Congress created Ebey’s Landing National Historic Reserve in 1978 to preserve and  
25 protect a rural community which provides an unbroken historical record from nineteenth century  
26 exploration and settlement in Puget Sound to the present time. The approximately 17,000 acre

1 reserve preserves the natural setting and cultural history of the Ebey's Landing National Historic  
2 Reserve area on Whidbey Island south of Penn Cove and southwest of the Town of Coupeville.

3 71. OLF Coupeville is located partially within and partially abutting Ebey's Landing  
4 National Historic Reserve.

5 72. The acoustic environment of Ebey's Landing National Historic Reserve is an  
6 especially valuable resource and degradation of that environment by excessive noise is particularly  
7 significant and harmful in this unique area.

8 73. People visit Ebey's Landing National Historic Reserve to see, hear, and experience  
9 a unique natural and historic cultural environment; to savor the quiet; or to hear the wind and  
10 waves, bird vocalizations, or a coyote's wail, against the backdrop of history. The significant noise  
11 impacts that will result from this project will impede and undermine the use of the area for resource  
12 protection, public use and enjoyment, agriculture, and tourism.

13 74. The EIS does not adequately analyze and disclose the environmental impacts and  
14 consequences of the Proposed Action with respect to impacts to Ebey's Landing National Historic  
15 Reserve.

16 75. The assumptions and conclusions about noise impacts to Ebey's Landing National  
17 Historic Reserve are misleading, incorrect, and understated because they are based on misleading,  
18 incorrect and understated assessments of the noise generated by the Growlers. See above ¶¶ 52–  
19 68.

20 76. Low frequency rumbles of Growlers carry further than other noise and traverse the  
21 full extent of Ebey's Landing National Historic Reserve, shaking windows and rattling walls,  
22 throughout the entire time that Growlers practice at OLF Coupeville. The EIS failed to adequately  
23 assess the impacts of this low frequency noise on the Reserve and, as a result, provides misleading  
24  
25  
26

1 and incorrect conclusions that understate the actual noise impacts to the Ebey's Landing National  
2 Historic Reserve users' experience.

3 77. The National Historic Preservation Act (NHPA) requires the Navy to "make a  
4 reasonable and good faith effort to identify historic properties; determine whether identified  
5 properties are eligible for listing on the National Register ...; [and] assess the effects of the  
6 undertaking on any eligible historic properties found." *Te-Moak Tribe of W. Shoshone of Nevada*  
7 *v. U.S. Dep't of Interior*, 608 F.3d 592, 607 (9th Cir. 2010). The Navy must also engage in  
8 consultation with the State Historic Preservation Officer (SHPO) to "[d]etermine and document  
9 the area of potential effects," "[g]ather information," and "develop and evaluate alternatives or  
10 modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic  
11 properties." 36 C.F.R. §§ 800.4(a), 800.6(a).

12  
13  
14 78. The required consultation process is set out in Section 106 of the National Historic  
15 Preservation Act, which requires federal agencies to consider the effects of federal undertakings  
16 on any district, site, building, structure, or object that is included in or eligible for inclusion in the  
17 National Register prior to approving the undertaking. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. "An  
18 adverse effect is found when an undertaking may alter, directly or indirectly, any of the  
19 characteristics of a historic property that qualify the property for inclusion in the National Register  
20 in a manner that would diminish the integrity of the property's location, design, setting, materials,  
21 workmanship, feeling, or association." 36 C.F.R. § 800.5(a)(1). If an agency finds that an adverse  
22 effect will occur, then the agency shall engage in further consultation to resolve adverse effects to  
23 historic properties through avoidance, minimization, or mitigation. *Id.* §§ 800.5(2), 800.6(b);  
24 800.8(c)(v).

1 79. During the Section 106 consultation process, the Washington State Historic  
2 Preservation Officer (SHPO) repeatedly stated that the Navy's proposed mitigation measures were  
3 inadequate to address the adverse effects on the impacted historic resources.

4 80. Before making its determination under Section 106, the Navy terminated  
5 consultation with the SHPO, the Ebey's Landing Historic Reserve Trust Board, and other  
6 consulting parties because the Navy disagreed with the SHPO on the type and amount of  
7 mitigation appropriate to resolve adverse effects to Ebey's Landing National Historical Reserve.

8 81. The Navy selected the alternative deemed to have the most severe adverse impact  
9 on historic and cultural resources within Ebey's Landing National Historical Reserve.

10 82. After terminating consultation with the SHPO, the Navy requested that the Advisory  
11 Council on Historic Preservation participate and provide comments, as required by 36 C.F.R.  
12 § 800.7(c).  
13

14 83. The Advisory Council on Historic Preservation recommended that the Navy  
15 mitigate adverse effects by working with stakeholders to monitor actual noise impacts associated  
16 with expanded Growler operations, work with stakeholders to develop mitigation measures based  
17 on the results of the monitoring of actual noise levels, and work with stakeholders to identify ways  
18 to reduce noise.  
19

20 84. The Navy declined to adopt the Advisory Council on Historic Preservation's  
21 recommendations and failed to provide an adequate rationale for rejecting the Council's  
22 recommendations.  
23

24 85. The Navy's actions were arbitrary and capricious when it refused to adopt the  
25 recommendations from the Advisory Council on Historic Preservation. The Navy's reliance on  
26 its own mitigation measures is arbitrary and capricious because they do not meaningfully address

1 the adverse impacts of the Navy's expanded EA-18 Growler operations on Ebey's Landing  
2 Historic Reserve and do not truly or adequately mitigate or resolve adverse impacts to the area.

3 H. Wildlife Impacts

4 86. Implementation of the Proposed Action will result in significant adverse impacts to  
5 wildlife listed under the Endangered Species Act as a result of increased noise exposure.  
6

7 87. The EIS does not adequately analyze and disclose the environmental impacts and  
8 consequences of the Proposed Action with respect to wildlife impacts caused by noisy Growler  
9 operations at NAS Whidbey Island.

10 88. Noise created by humans may disrupt ecosystem processes by interfering with  
11 predator-prey relationships and the ability of wildlife to communicate, establish territory,  
12 reproduce, and support and protect offspring.  
13

14 89. The marbled murrelet is a small seabird that inhabits nearshore marine environment  
15 in western North America. The species was listed as threatened under the U.S. Endangered  
16 Species Act in 1992 in Washington, Oregon and California and was subsequently listed by the  
17 Washington Fish and Wildlife Commission as threatened in 1993.

18 90. In 2017, the marbled murrelet was reclassified by the Washington Fish and Wildlife  
19 Commission as endangered.  
20

21 91. The marbled murrelet has the unusual behavior among seabirds of flying  
22 considerable distances inland during the breeding season to establish nest locations. From April  
23 to mid-September, breeding murrelets make daily flights from marine foraging areas to tend inland  
24 nest sites. These flights are often quite long—one radio-tagged murrelet nesting in the Hoh River  
25 drainage of the Olympic Mountains regularly foraged in the San Juan Islands, making daily flights  
26

1 of about 70 miles from its nest. Another murrelet nesting in the Cascade Range foraged in the  
2 San Juan Islands more than 75 miles from its nest.

3 92. The distribution of murrelets in Washington includes the southern Salish Sea and  
4 the outer coast.

5 93. In Washington, murrelets receive extra protection during their nesting and rearing  
6 season. Murrelet egg laying and incubation occurs from April to early August and chick rearing  
7 occurs between late May and September. State regulations provide an extra level of protection  
8 from April 1 to September 23.

9 94. The marbled murrelet has a naturally low reproductive rate; when in breeding  
10 condition, females produce a relatively large single egg (nearly 25% of body mass) and one brood  
11 per season. Given the high energy cost of breeding, females are not likely to be in breeding  
12 condition every year and may nest in alternate years.

13 95. The 2015 marbled murrelet population estimate for all of Washington was about  
14 7,500 birds.

15 96. In Marbled Murrelet Conservation Zone 1, which encompasses all of the Salish Sea  
16 and the Action Area for the Navy's Proposed Action, there are approximately 4,614 murrelets.

17 97. Despite the protection intended to be provided by the federal and state listings, the  
18 population of marbled murrelets in Conservation Zone 1 continues to decline. The population is  
19 dwindling at a rate of approximately 4.9% per year. The population has dropped 44% reduction  
20 since 2001.

21 98. In Washington, murrelets and their chicks are literally starving to death. Eighty per  
22 cent of murrelet eggs do not result in fledglings because the chicks starve or because lack of food  
23 for the adults makes them abandon their eggs before completing incubation.

1           99. An adult marbled murrelet feeding a nestling will hold a single prey item (*e.g.*, sand  
2 lance, herring or anchovy) in its beak while sitting on the water before flying inland to deliver the  
3 prey.

4           100. Fish-holding marbled murrelets tend to swallow the prey when they are disturbed—  
5 for instance, by an overflight of an extremely loud plane—instead of bringing the prey to the nest  
6 for the nestling. If the adult marbled murrelet is successful in catching a new prey item for the  
7 nestling, the nestling will experience a delayed feeding. If the adult marbled murrelet is  
8 unsuccessful replacing the lost prey, the nestling will miss its feeding.

9           101. Marbled murrelets feed their nestlings one to eight times per day. Assuming an  
10 average of four times per day, a single missed feeding would constitute a loss of 25% of that day's  
11 food and water intake for the nestling.

12           102. Food limitation often results in poor growth, delayed fledging, increased mortality  
13 of murrelet chicks, and nest abandonment by adults.

14           103. Growlers will be operating at power settings and altitudes that will expose sub-adult  
15 and adult marbled murrelets to extremely high noise levels and vibration sound waves.

16           104. In addition to swallowing prey items, murrelets will often either dive, or fly and  
17 leave the foraging area, in response to the noise from Growler overflights. Both diving and flying  
18 force the birds to consume energy that they need for other survival purposes.

19           105. By diving or flying in response to aircraft overflights sub-adult and adult marbled  
20 murrelets will expend energy that they can only replace by capturing additional prey. Given the  
21 number of overflights proposed, and the long duration of the activity (thirty years), some sub-adult  
22 and adult marbled murrelets will not be able to replace energy spent responding to disturbances.  
23  
24  
25  
26

1 Ultimately, the inability of sub-adult and adult marbled murrelets to replace energy lost responding  
2 to overflights creates a likelihood of injury or death from starvation.

3 106. The EIS failed to adequately consider, analyze and disclose the impacts of the  
4 proposal on marbled murrelets.

5 107. The EIS failed to adequately disclose or analyze that marbled murrelet nestlings,  
6 sub-adults, and adults will die from starvation due to the noise from Growler overflights year-  
7 round, during both the day and the night, over the thirty year term of the proposed action.

8 108. The EIS failed to adequately disclose or analyze that marbled murrelet nestlings,  
9 sub-adults, and adults will be annoyed it to such an extent as to significantly disrupt normal  
10 behavioral because of the noise from Growler overflights year-round, during both the day and the  
11 night, over the thirty year term of the proposed action.

12 109. The EIS fails to disclose, consider or analyze the cumulative impacts of the  
13 Proposed Action with other Navy Actions adversely affecting marbled murrelets in the area near  
14 NAS Whidbey.

15 110. For example, the EIS fails to disclose, consider or analyze the cumulative impacts  
16 of the noise impacts from the Proposed Action with the noise impacts from the over-water  
17 activities discussed in the Northwest Training and Testing Final EIS/OEIS, which involves areas  
18 in close proximity to and overlapping with FCLP activities at OLF Coupeville.

19 111. Each roundtrip interfacility flight between Ault Field and OLF Coupeville will  
20 subject at-sea marbled murrelets in an area of 75.5 square miles, on average, to extremely high  
21 sound levels. Under Alternative 2A, in an average year, there will be approximately 1,483  
22 roundtrip interfacility flights between Ault Field and OLF Coupeville. In estimating the size of  
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24  
25  
26

1 areas that will be subjected to various noise levels from Growler operations, the EIS omitted all  
2 over-water marbled murrelet habitat.

3 112. The U.S. Fish and Wildlife Service's June 14, 2018 Biological Opinion was based  
4 upon data provided by the Navy estimating that under Alternative 2A, in an average year, there  
5 will be approximately 2,899,530 total airfield operations at NAS Whidbey Island over thirty years.  
6

7 113. The Fish and Wildlife Service set 2,899,530 flights over thirty years as the  
8 maximum number allowed without triggering a need for additional consultation.

9 114. Under Alternative 2A (adopted by the Navy in the Record of Decision), the Navy  
10 estimates that there will be approximately 3,363,000 total airfield operations at NAS Whidbey  
11 Island over thirty years.

12 115. The Navy's adoption of an alternative in excess of the number of flights authorized  
13 by the Incidental Take Statement triggers the requirements in the ESA and the Incidental Take  
14 Statement to re-initiate consultation.  
15

16 116. The Navy defendants did not reinitiate consultation with U.S. Fish and Wildlife  
17 Services as required by 50 C.F.R. § 402.16 and the Incidental Take Statement, even though new  
18 information revealed effects of the action that will affect marbled murrelets to a greater extent  
19 than previously considered.  
20

21 117. The U.S. Fish and Wildlife Service's Incidental Take Statement (ITS), which  
22 authorizes the Navy to proceed with its proposal, fails to meet the requirements of the Endangered  
23 Species Act in at least the following ways:

- 24 a. The ITS fails to clearly articulate the amount or extent of the anticipated incidental  
25 taking or the impact of this level of take on marbled murrelets at the local level and  
26

1 where it does articulate the amount or extent of the anticipated incidental take, it is  
2 misstated and based upon stale and inaccurate data.

3 b. The ITS fails to specify reasonable and prudent measures necessary or appropriate  
4 to minimize the anticipated take of marbled murrelets.

5 c. The ITS fails to set forth terms and conditions to enforce any reasonable and  
6 prudent measures.

7 d. The ITS fails to provide a trigger to reinitiate consultation with the Navy regarding  
8 impacts to marbled murrelets.

9  
10 118. The EIS does not adequately analyze and disclose the environmental impacts and  
11 consequences of the Proposed Action with respect to impacts on southern resident orcas (also  
12 called southern resident killer whales). The EIS asserts that impacts to southern resident orcas are  
13 insignificant, without providing a rationale grounded in high quality scientific information and  
14 without insuring the professional integrity, including scientific integrity, of the discussions and  
15 analyses regarding southern resident orcas. 40 C.F.R. §§ 1500.1; 1502.24. For example, the Navy  
16 asserts that the impacts on southern resident orcas “would be spread out over the course of a year,”  
17 and references the number of days of FCLP flights in 2015. The Navy fails to analyze the impacts  
18 of more than 100,000 flights over the course of a year under Alternative 2A and improperly  
19 minimizes the impacts of those flights by only discussing days of flight operations, rather than  
20 number of flights.  
21

22  
23 119. The Navy failed to consider cumulative noise impacts on threatened and  
24 endangered species, and other wildlife, from the Proposed Action in combination with the noise  
25 impacts discussed in the 2015 Northwest Training and Testing EIS. The noise impacts from the  
26 proposed actions at NAS Whidbey Island and the 2015 Northwest Training and Testing will

1 overlap and concurrently affect marine areas used by marbled murrelets and southern resident  
2 orcas. By ignoring the cumulative effects of the two proposed actions, the Navy unlawfully  
3 segmented its review and analysis, resulting in inadequate analyses and disclosure of the  
4 environmental impacts of the NAS Whidbey Island Proposed Action.

5  
6 I. Toxic Chemical Impacts

7 120. The EIS does not adequately analyze and disclose the environmental impacts and  
8 consequences of the Proposed Action with respect to per- and polyfluoroalkyl substances  
9 (“PFAS”) associated with operations at NAS Whidbey Island.

10 121. PFAS in the form of aqueous film-forming foam (“AFFF”) used for firefighting and  
11 fire suppression training are being discharged by NAS Whidbey Island into surface waters on and  
12 near the base.

13 122. The Proposed Action will increase stormwater flow, which, upon information and  
14 belief, will increase the Navy’s discharges of PFAS into surface waters on and near the base.  
15 Defendants did not adequately consider or analyze the environmental impacts of increased PFAS  
16 discharges flowing from the Proposed Action.

17 123. PFAS are persistent in the environment; bio-accumulative; highly mobile in water;  
18 and are toxic in very small concentrations.

19 124. While the Navy failed to consider or analyze the impacts of PFAS on wildlife, the  
20 Navy knows that PFAS are toxic to humans in very small concentrations—in the parts per trillion.  
21 PFAS are suspected carcinogens and have been linked to growth, learning and behavioral  
22 problems in infants and children; fertility and pregnancy problems, including pre-eclampsia;  
23 interference with natural human hormones; increased cholesterol; immune system problems; and  
24 interference with liver, thyroid, and pancreatic function. PFAS have been linked to increases in  
25  
26

1 testicular and kidney cancer in human adults. The developing fetus and newborn babies are  
2 particularly sensitive to PFAS.

3 125. Because PFAS accumulate in animals in the food chain, top-level predators  
4 concentrate PFAS in their blood and muscle tissues, causing harmful effects including  
5 reproductive harm.  
6

7 126. The EIS fails to discuss, address or analyze the effects of PFAS on wildlife,  
8 including on trophic level predators like marbled murrelets and southern resident orcas, other  
9 marine mammals, and other wildlife in the aquatic food chain.

10 J. Climate Change and Air Quality Impacts

11 127. The EIS fails to adequately disclose, consider or analyze the impacts of the  
12 Proposed Action on the State of Washington's efforts to meet its greenhouse gas emission  
13 reduction targets.  
14

15 128. The Navy erred in calculating the baseline fuel use and resulting greenhouse gas  
16 emissions for the baseline No Action Alternative.

17 129. The Navy's error in calculations for the baseline fuel use and resulting greenhouse  
18 gas emissions for the baseline No Action Alternative is carried over into the projected  
19 greenhouse gas emissions under Alternative 2A.  
20

21 130. The final EIS states at Vol. 2, Appendix B, at page B-7 that the baseline average  
22 annual fuel use is 9,443,989.06 gallons of jet fuel.

23 131. In the Navy's fiscal year 2016, all EA18G Growlers for NAS Whidbey Island  
24 were actually issued 20,253,643 gallons of jet fuel, more than twice the baseline average annual  
25 fuel use calculated at Vol. 2, Appendix B, at page B-7.  
26

1 132. Rather than basing its calculations on actual fuel use by EA-18G Growlers, the  
2 Navy based its calculations on assumptions regarding fuel use and resulting emissions,  
3 assumptions which were in error and grossly misrepresent the emissions under both the baseline  
4 and Alternative 2A.

5 133. Because the assumed emission factors chosen by the Navy in preparing the EIS  
6 were too low, both the increase compared to baseline and the absolute amount of gallons of jet  
7 fuel (and thus CO<sub>2</sub> emissions) are underestimated under Alternative 2A.

8 134. The table titled “Alternative 2A Average Year EA-18G (Growler) Air Emissions,  
9 NAS Whidbey Island Complex” at Vol. 2, Appendix B, at page B-22, erroneously states that  
10 total fuel use under Alternative 2A in an average year will be 13,331,805 gallons of jet fuel, and  
11 the resulting total CO<sub>2</sub> emissions will be 139,065.1 tons per year.  
12

13 135. If the Navy had calibrated its assumptions regarding fuel use and resulting  
14 emissions to actual fuel use, the average year total fuel use under Alternative 2A should have  
15 been 28,591,553 gallons of jet fuel and the resulting total CO<sub>2</sub> emissions should have been  
16 298,240 tons per year, each more than twice what the Navy assumed.  
17

18 136. The Navy’s miscalculations regarding greenhouse gas emissions in Vol. 2,  
19 Appendix B is carried over to the final EIS at Vol. 1, Table 4.16-2.  
20

21 K. Electromagnetic Radiation Impacts

22 137. The Navy failed to adequately analyze or disclose the environmental impacts of  
23 fixed and mobile sources of electromagnetic radiation from the Proposed Action.

24 L. Consequences of Mishap

25 138. The EIS fails to properly delineate accident potential zone risks to Coupeville  
26 schools and a large daycare facility by using a singular uniform takeoff pattern for civilian and

1 commercial aviation that does not conform to the multiple takeoff and landing patterns (tracks)  
2 used by the Navy when conducting Growler field carrier landing practice at OLF Coupeville.

3 M. Inadequate Mitigation

4 139. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
5 that is specified and actually capable of being carried out, as required by NEPA.

6 140. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
7 of noise impacts, and failed to identify and assess a monitoring program to assess the actual, as  
8 opposed to computer modeled, direct, indirect, and cumulative noise impacts of the Proposed  
9 Action.

10 141. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
11 for noise impacts, including low frequency noise impacts, at Ebey's Landing National Historic  
12 Reserve.

13 142. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
14 for impacts to marbled murrelets, and failed and failed to identify and assess a marbled murrelet  
15 monitoring program.

16 143. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
17 for greenhouse gas and criteria pollutant emissions.

18 **VII. CLAIMS FOR RELIEF**

19 **FIRST CLAIM FOR RELIEF**  
20 **VIOLATION OF NEPA**

21 **Failure to Adequately Disclose and Analyze Environmental Impacts**

22 144. Plaintiffs restate and incorporate by reference all preceding paragraphs.

23 145. NEPA is a procedural statute that requires federal agencies to take a hard look at the  
24 environmental consequences of the proposed action using high quality scientific information and  
25  
26

1 insuring the professional integrity, including scientific integrity, of the discussions and analyses.  
2 An agency complies with NEPA's hard look requirement if the procedure followed by the agency  
3 resulted in a reasoned analysis of the evidence before it. NEPA mandates that the disclosure of  
4 high quality information detailing the environmental impacts of the Proposed Action be made  
5 available to public officials and citizens before actions are taken. 40 C.F.R. § 1500.1(b).  
6

7 146. Agencies must ensure scientific accuracy and disclose all methodology used to  
8 evaluate environmental impact statements. 40 C.F.R. § 1502.24. If information is incomplete or  
9 lacking, agencies are required to disclose this limitation. 40 C.F.R. § 1502.22.

10 147. When faced with incomplete or unavailable information, defendants ignored,  
11 denied, or glossed over their lack of information, contrary to the requirements of 40 C.F.R.  
12 § 1502.22. Instead, defendants papered-over their incomplete or unavailable information with  
13 erroneous computer modeling and outdated, invalidated and misleading noise modeling.  
14 Defendants also denied or conveniently overlooked the most current scientific findings of the  
15 world's health experts on the detrimental impacts of noise on auditory and non-auditory health,  
16 fetal health, and childhood learning.  
17

18 148. The EIS fails to adequately disclose and analyze the environmental impacts of the  
19 Proposed Action as required by NEPA. 40 C.F.R. § 1500.1(b).  
20

21 149. The EIS fails to disclose and analyze the direct, indirect, and cumulative noise  
22 impacts of the proposal.

23 150. The EIS fails to disclose and analyze the direct, indirect, and cumulative impacts of  
24 the Proposed Action on historic and cultural resources.

25 151. The EIS fails to disclose and analyze the direct, indirect, and cumulative wildlife  
26 impacts of the proposal.

1 152. The EIS fails to disclose and analyze the direct, indirect, and cumulative toxic  
2 chemical impacts of the proposal.

3 153. The EIS fails to disclose and analyze the direct, indirect, and cumulative climate  
4 change and air quality impacts of the proposal.

5 154. The EIS fails to disclose and analyze the direct, indirect, and cumulative  
6 electromagnetic radiation impacts of the proposal.

7 155. The EIS fails to disclose and analyze the direct, indirect, and cumulative impacts  
8 of aircraft mishaps under the proposal.

9 156. The EIS fails to disclose and analyze the direct, indirect, and cumulative impacts of  
10 mitigation measures that may be utilized under the Proposed Action.

11 157. The EIS also fails to take the necessary hard look at all of these impacts as required  
12 by NEPA.

13 158. Defendants' actions are arbitrary, capricious, not in accordance with law, and taken  
14 without observance of procedures required by law, within the meaning of the APA, 5 U.S.C. § 706.

15  
16  
17 **SECOND CLAIM FOR RELIEF**  
18 **VIOLATION OF NEPA**  
19 **Failure to Analyze an Adequate Range of Alternatives**

20 159. Plaintiffs restate and incorporate by reference all preceding paragraphs.

21 160. In preparing an EIS, NEPA requires the agency to “study, develop, and describe  
22 appropriate alternatives to recommend courses of action in any proposal which involves  
23 unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 102(2)(E).

24 161. The EIS must rigorously explore and objectively evaluate all reasonable alternatives  
25 and should present the environmental impacts of the proposal and the alternatives in comparative  
26 form, thus sharply defining the issues and providing a clear basis for choice among options by the

1 decision-maker and the public. This consideration must include reasonable alternatives not within  
2 the jurisdiction of the lead agency. This analysis also must include appropriate mitigation  
3 measures not already included in the proposed action or alternatives. 40 C.F.R. §1502.14. The  
4 range of alternatives considered in the EIS flows from the agency’s statement of purpose and need.  
5 If the purpose and need are defined too narrowly, the agency’s consideration of alternatives is  
6 artificially constrained, defeating NEPA’s fundamental aim to identify workable alternatives in  
7 time to avoid environmental harm. In preparing an EIS, the agency must “briefly specify the  
8 underlying purpose and need to which the agency is responding in proposing the alternatives  
9 including the proposed action.” 40 C.F.R. § 1502.13.

11 162. This EIS defines the purpose and need of the Proposed Action as “to augment the  
12 Navy’s existing Electronic Attack community at NAS Whidbey Island by operating additional  
13 Growler aircraft that have been appropriated by Congress.”

15 163. The purpose and need statement effectively excluded consideration of off-Whidbey  
16 locations for operating additional Growler aircraft.

17 164. Off-Whidbey locations are reasonable alternatives to locating the Growlers at  
18 Whidbey.

19 165. The Navy violated NEPA by defining the purpose and need narrowly to exclude  
20 reasonable off-Whidbey alternatives.

22 166. Defendants also did not meaningfully consider the alternative of adding fewer than  
23 35 Growler aircraft at Whidbey.

24 167. Defendants fail to adequately explain why reasonable alternatives were either not  
25 considered or removed from consideration within the EIS.

26

1 168. Defendants' actions violate NEPA and its implementing regulations. *See* 40 C.F.R.  
2 § 1502.13; 1502.14.

3 169. Defendants' actions as described above are arbitrary, capricious, not in accordance  
4 with law, and without observance of procedures required by law, within the meaning of the APA,  
5 5 U.S.C. § 706.  
6

7 **THIRD CLAIM FOR RELIEF**  
8 **VIOLATION OF NEPA**  
9 **Failure to adequately analyze mitigation measures**

10 170. Plaintiffs restate and incorporate by reference all preceding paragraphs.

11 171. In preparing an EIS, NEPA requires the agency to fully analyze the environmental  
12 impacts of each identified alternative, including "appropriate mitigation measures." 40 C.F.R.  
13 § 1502.14(f).

14 172. NEPA requires the agency to fully discuss the environmental consequences of the  
15 alternatives identified, including a discussion of the "means to mitigate adverse environmental  
16 impacts." 40 C.F.R. § 1502.16(h).

17 173. The EIS fails to provide an adequate discussion of appropriate mitigation measures  
18 for noise impacts within the Proposed Action area.

19 174. The EIS fails to provide an adequate discussion of appropriate mitigation measures  
20 for historic resources within the Proposed Action area.

21 175. The EIS fails to provide an adequate discussion of appropriate mitigation measures  
22 for wildlife impacts within the Proposed Action area.

23 176. The EIS fails to provide an adequate discussion of appropriate mitigation measures  
24 for toxic chemical impacts within the Proposed Action area.  
25  
26

1 177. The EIS fails to provide an adequate discussion of appropriate mitigation measures  
2 for climate change and air quality impacts within the Proposed Action area.

3 178. Defendants' actions as described above are arbitrary, capricious, not in accordance  
4 with law, and without observance of procedures required by law, within the meaning of the APA,  
5 5 U.S.C. § 706.  
6

7 **FOURTH CLAIM FOR RELIEF**  
8 **VIOLATION OF THE**  
9 **NATIONAL HISTORIC PRESERVATION ACT**

10 179. Plaintiffs restate and incorporate by reference all preceding paragraphs.

11 180. The Navy's decision under Section 106 of the National Historic Preservation Act  
12 violated the NHPA because the Navy failed to avoid or mitigate adverse effects on Ebey's Landing  
13 National Historic Reserve and refused to adopt the recommendations from the Advisory Council  
14 on Historic Preservation without providing an adequate rationale.

15 181. The Navy's actions as described above are arbitrary, capricious, not in accordance  
16 with law, and without observance of procedures required by law, within the meaning of the APA,  
17 5 U.S.C. § 706.  
18

19 **VIII. PRAYER FOR RELIEF**

20 Plaintiffs respectfully request that the Court grant the following relief:  
21

22 A. Order, declare, and adjudge that the defendants have violated the National  
23 Environmental Policy Act, and the National Historic Preservation Act and their implementing  
24 regulations as set forth above;

25 B. Issue a preliminary and final order enjoining the defendants from implementing the  
26 Proposed Action;

1 C. Order the defendants to prepare a supplemental draft EIS and supplemental final  
2 EIS that corrects the deficiencies identified by the Court;

3 D. Order the defendants to withdraw the Record of Decision approving the Proposed  
4 Action;

5 E. Award the plaintiffs their costs, litigation expenses, expert witness fees, and  
6 reasonable attorneys' fees associated with this litigation pursuant to the Equal Access to Justice  
7 Act and all other applicable authorities; and

8 F. Grant plaintiffs any such further relief as may be just, proper, and equitable.

9 Dated this 9<sup>th</sup> day of July, 2019.

10  
11 Respectfully submitted by counsel for Plaintiffs  
12 Citizens of the Ebey's Reserve for a Healthy, Safe and  
13 Peaceful Environment and Paula Spina,

14 BRICKLIN & NEWMAN, LLP

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