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

CITIZENS OF THE EBEBY’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; and  
UNITED STATES FISH AND  
WILDLIFE SERVICE, an agency of the  
United States,

Defendants.

NO. 2:19-cv-01062-RAJ-JRC

PLAINTIFFS’ FIRST  
AMENDED 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.

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

3           3.       On March 12, 2019, then-Assistant Secretary of the Navy for Energy, Installations  
4 and Environment, Phyllis L. Bayer (since resigned and replaced by Acting Assistant Secretary  
5 Todd C. Mellon), issued a Record of Decision that adopts EIS Alternative 2A as the Navy’s course  
6 of action. Among other things, Alternative 2A adds 36 EA-18G “Growler” aircraft at NAS  
7 Whidbey Island; increases low-flying airfield operations at both Ault Field and Outlying Landing  
8 Field Coupeville (“OLF Coupeville”); and shifts a large percentage of the flights from Ault Field  
9 to OLF Coupeville. The net result of these changes is a large increase in the number of extremely  
10 noisy, low-flying Growlers flying over portions of Whidbey Island near OLF Coupeville. The Navy  
11 forecasts that in an average year, these changes will result in approximately 17,600 more takeoffs  
12 and landings and in a “high-tempo year” there will be 20,000 more takeoffs and landings.  
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15           4.       The Navy based its decision on a deeply flawed EIS that does not comply with the  
16 requirements of the National Environmental Policy Act (“NEPA”). The EIS fails to analyze a  
17 reasonable range of alternatives as required by NEPA. The EIS fails to adequately analyze  
18 alternative sites; the Navy’s purported consideration of off-Whidbey Island alternatives simply  
19 dismisses them from consideration. The actually analyzed action alternatives for Whidbey Island  
20 simply shuffle the number of flights at Ault Field and OLF Coupeville. Those alternatives are so  
21 similar to one another that a real choice among truly different alternatives is missing. The EIS does  
22 not adequately analyze and disclose the environmental impacts and consequences of the Proposed  
23 Action or EIS Alternative 2A. The EIS fails to adequately analyze measures to mitigate the  
24 proposal’s severe impacts on local residents, schools and communities, the nearby National  
25 Historic Reserve, and wildlife including marbled murrelets—a species listed as threatened under  
26

1 the federal Endangered Species Act and endangered under Washington state law—and southern  
2 resident orcas.

3           5.       The Navy’s deeply flawed analysis led to it adopting a proposal that subjects local  
4 residents to shocking and offensive levels of additional noise, causes irreparable harm to a National  
5 Historic Reserve, harasses and kills Washington’s declining population of marbled murrelets, and  
6 harasses Washington’s southern resident orcas.  
7

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

10           7.       The U.S. Fish and Wildlife Service’s Biological Opinion was based upon stale and  
11 inaccurate data regarding the number of total flights and the number of interfacility flights that  
12 would result from the Proposed Action.  
13

14           8.       The U.S. Fish and Wildlife Service’s Incidental Take Statement for marbled  
15 murrelets failed to meet the requirements of the Endangered Species Act, by, among other things,  
16 failing to clearly articulate the amount or extent of the anticipated incidental taking, failing to  
17 specify reasonable and prudent measures necessary or appropriate to minimize the anticipated take;  
18 failing to set forth terms and conditions to enforce any reasonable and prudent measures; and failing  
19 to provide a trigger to reinitiate consultation with the Navy.  
20

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

25           10.       This action further seeks judicial relief with respect to the flawed consultation  
26 conducted between the Navy and the U.S. Fish and Wildlife Service. The Navy should be ordered

1 to cease its illegal take of species listed under the federal Endangered Species Act unless and until  
2 that take is authorized by a lawful Biological Opinion and Incidental Take Statement. The  
3 Biological Opinion and Incidental Take Statement issued by the U.S. Fish and Wildlife Service on  
4 June 14, 2018 were arbitrary and capricious, an abuse of discretion, and/or otherwise not in  
5 accordance with law.  
6

7 11. The Incidental Take Statement issued by the U.S. Fish and Wildlife Service on June  
8 14, 2018 provides no safe harbor to the Navy, which continues to harass and kill marbled murrelets.

9 12. The Navy's reliance on that Incidental Take Statement is arbitrary and capricious,  
10 an abuse of discretion, and/or otherwise not in accordance with law.

11 13. The Navy's taking of federally-listed marbled murrelets in reliance upon an  
12 unlawful Incidental Take Statement violates the Navy's substantive duty under Section 7 of the  
13 Endangered Species Act, 16 U.S.C. § 1536(a)(2), to ensure that its actions are not likely to  
14 jeopardize the continued existence of marbled murrelets.  
15

16 14. Plaintiffs request that the Court set aside the Record of Decision pursuant to 5  
17 U.S.C. § 706(2)(a) and enjoin its implementation.

18 15. Plaintiff seeks a declaratory judgment, preliminary and final injunctive relief, an  
19 award of costs and expenses of suit, including attorney and expert witness fees pursuant to the  
20 Equal Access to Justice Act, 28 U.S.C. § 2412, and such other relief as this Court deems just and  
21 proper.  
22

## 23 II. JURISDICTION

24 16. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises  
25 under the laws of the United States and involves the United States as a defendant.  
26

1 17. Defendants' issuance of the Record of Decision was the final administrative action  
2 of the United States Department of the Navy. Thus, the Court has jurisdiction to review plaintiff's  
3 claims under the Administrative Procedure Act ("APA").

4 18. Plaintiffs sent a notice of intent to sue pursuant to the Endangered Species Act  
5 ("ESA") to the Secretary of the Department of the Interior, the Acting Secretary of Defense, the  
6 Secretary of the Navy, the Principal Deputy Director of the U.S. Fish and Wildlife Service and  
7 other federal and state officials on July 10, 2019. Thus, plaintiff has complied with the 60-day  
8 notice requirement for claims under the ESA and this Court has jurisdiction to review plaintiff's  
9 ESA claims. A copy of plaintiffs' 60-day notice letter, which included and incorporated by  
10 reference the 60-day notice letter sent by the State of Washington, is attached to this amended  
11 complaint as Attachment A.  
12

### 13 III. VENUE

14 19. Venue is proper in this Court under 28 U.S.C. § 1391. All or a substantial part of  
15 the events or omissions giving rise to the claims herein occurred within this judicial district,  
16 defendants reside in this district, and the public lands and resources and agency records in question  
17 are located in this district.  
18

### 19 IV. PARTIES

20 20. Plaintiff Citizens of the Ebey's Reserve for a Healthy, Safe and Peaceful  
21 Environment ("Citizens of Ebey's Reserve" or "COER") is a non-profit public interest organization  
22 incorporated in 2012 and dedicated to protecting the health and welfare of the inhabitants of  
23 Whidbey Island and surrounding areas, including marine, migratory, and endangered species and  
24 preserving the historic northwest communities being threatened by military jet training flights. Its  
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1 registered office is located in Coupeville, Washington. Plaintiff brings this action on its own behalf  
2 and on behalf of its adversely affected members.

3           21. Plaintiff Paula Spina is a COER director and a resident of, and business owner in,  
4 Central Whidbey whose residence and businesses are under the OLF flight path and who, therefore,  
5 is directly impacted by the Defendants' issuance of the Record of Decision.  
6

7           22. Defendant United States Department of the Navy ("Navy") is a military department  
8 within the United States Department of Defense subject to the authority, direction, and control of  
9 the Secretary of Defense. The Department of the Navy manages the United States Navy, which is  
10 the naval warfare service branch of the United States Armed Forces.

11           23. Former Assistant Secretary of the Navy for Energy, Installations & Environment  
12 Phyllis L. Bayer signed the Record of Decision on March 12, 2019. Phyllis Bayer resigned on  
13 March 30, 2019. Todd C. Mellon is named in his official capacity as Acting Assistant Secretary of  
14 the Navy for Energy, Installations & Environment. In that capacity, he is charged with enhancing  
15 combat capabilities for the warfighter and greater energy security, the acquisition and disposal of  
16 real property, construction and maintenance of installations, protecting the safety and occupational  
17 health of the military and civilian personnel, environmental protection, planning and restoration  
18 ashore and afloat, and conservation of natural and cultural resources. We use the term "Navy" to  
19 refer to the Department of the Navy and the Acting Assistant Secretary of the Navy, collectively.  
20

21           24. Defendant United States Fish and Wildlife Service is an agency within the United  
22 States Department of the Interior charged with the management of fish, wildlife, and natural  
23 habitats.  
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1           29.     Under Alternative 2A, total annual airfield operations at NAS Whidbey Island will  
2 increase by approximately 33% over the baseline.

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

5           31.     The noise from these increased numbers of aircraft is extreme. The noise is so loud  
6 that it interferes with the ability of people to have a conversation outdoors or indoors, to sleep in  
7 their own homes, and of children to learn in their classrooms. The noise will ruin recreational  
8 opportunities in and around the National Historic Reserve and will be so intense and frequent that  
9 it will cause adverse health effects on people in the exposed areas including members of Citizens  
10 of Ebey’s Reserve.  
11

12           32.     Ebey’s Landing National Historic Reserve was specifically established to “preserve  
13 and protect a rural community which provides an unbroken historical record from nineteenth  
14 century exploration and settlement in Puget Sound to the present time,” 54 U.S.C.A. § 320101. The  
15 primary economic drivers in the rural community in and around Ebey’s Landing National Historic  
16 Reserve are tourism and agriculture. Increased Growler operations make agriculture nearly  
17 impossible with the result that several small farms have already ceased farming operations.  
18 Increased Growler operations also threaten tourism.  
19

20           33.     Several parks and recreation areas in north and central Whidbey Island will be  
21 directly and adversely affected by aesthetic and noise impacts of the Proposed Action, including  
22 Ebey’s Landing National Historic Reserve. Citizens of Ebey’s Reserve’s members use and enjoy  
23 the unique natural setting in these areas for recreational, scientific, spiritual, educational, aesthetic,  
24 and other purposes. COER’s members enjoy hiking, biking, observing wildlife, relaxing,  
25 conversing, and other activities in these areas and will continue to do so in the future. The  
26



1           38.     The NAS Whidbey Island complex includes the main air station (Ault Field), OLF  
2 Coupeville, the Seaplane Base, and Lake Hancock. The main portion of the base, Ault Field, is in  
3 the north central part of Whidbey Island near the City of Oak Harbor. OLF Coupeville is located  
4 in a peaceful setting immediately adjacent to Ebey’s Landing National Historic Reserve about 10  
5 miles south of Ault Field and is used primarily for landing practice.  
6

7           39.     NAS Whidbey Island began its operations in 1942 and was designated as a Master  
8 Jet Station in 1951, which expanded its mission to include jet aircraft training and operations of  
9 carrier-based squadrons. The EA-18G Growler began operations at NAS Whidbey Island for the  
10 first time in 2007.

11           40.     EA-18G Growlers conduct field carrier landing practice (FCLP) at OLF Coupeville.  
12 The typical practice pattern involves a takeoff, a quick low-level loop around the area, and then a  
13 “touch-and-go” partial landing. This loop pattern is repeated again and again by multiple jets with  
14 many takeoffs and landings occurring one after another during the practice session.  
15

16           B.     Surrounding Land Uses

17           41.     Northern and central Whidbey Island are not suitable locations for military aircraft  
18 operations at the level proposed by the Navy.

19           42.     The NAS Whidbey Island complex is surrounded by residences, schools,  
20 businesses, environmentally sensitive areas, at-sea foraging areas for the marbled murrelet (a  
21 federally-protected species), areas frequently used by southern resident orcas, parks and recreation  
22 areas, and a National Historic Reserve.  
23

24           43.     The incompatibility of escalating Navy presence in north and central Whidbey  
25 Island has been a subject of much controversy since at least April 29, 1992, when the owners of  
26 forty-six parcels of land surrounding the Naval Air Station Whidbey filed an inverse condemnation

1 action against the United States, alleging that the Government took their private property for public  
2 use without paying just compensation in violation of the Fifth Amendment. *See Argent v. United*  
3 *States*, 124 F.3d 1277 (Fed. Cir. 1997) (vacating and remanding Court of Federal Claims grant of  
4 summary judgment against landowners and describing factual setting).

5  
6 44. In 2005, the Navy issued a Finding of No Significant Impact for the addition of EA-  
7 18G “Growler” operational aircraft to the Naval Air Station (“NAS”) Whidbey Island and  
8 determined that “an Environmental Impact Statement (EIS) is not required[.]” Following litigation  
9 over that determination (*Citizens of the Ebey’s Reserve for a Healthy, Safe and Peaceful*  
10 *Environment v. U.S. Dept. of the Navy, et al.*, Case No. 2:13-cv-01232), the Navy agreed to prepare  
11 an environmental impact statement.

12  
13 C. Proposed Action

14 45. The Navy proposes to continue and expand existing Growler activities at the NAS  
15 Whidbey Island complex, which includes repetitive landing practices by 2–5 Growler aircraft per  
16 45-minute session, at Ault Field and OLF Coupeville.

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

20  
21 D. Purpose and Need, Alternatives Beyond Whidbey, and Cost

22 47. The Navy prepared an EIS to assess environmental issues related to its proposed  
23 action. In the EIS, the described purpose of the Proposed Action is “to augment the Navy’s existing  
24 Electronic Attack community at NAS Whidbey Island by operating additional Growler aircraft that  
25 have been appropriated by Congress.” EIS at 1-5. The EIS states that the need for the Proposed  
26

1 Action is “to maintain and expand Growler operational readiness to support national defense  
2 requirements under” federal law. *Id.*

3 48. By limiting the purpose to increasing Growler operations on Whidbey and nowhere  
4 else, the EIS precludes consideration of other, potentially preferable, off-Whidbey sites for the  
5 Growlers.  
6

7 49. The Navy’s consideration of alternatives was artificially constrained by this narrow  
8 purpose and need statement and precluded consideration of feasible, environmentally preferable  
9 alternatives.

10 50. The EIS stated that moving Growler squadrons to another location would involve  
11 excessive cost and major new construction without providing any supporting analysis for that  
12 conclusion.  
13

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

17 52. The current and proposed expanded use of NAS Whidbey Island involves excessive  
18 costs, both economic and socioeconomic to Island County, the residents of Whidbey Island, and  
19 others. These costs were not adequately analyzed and disclosed in the EIS.  
20

21 E. Alternatives at Whidbey

22 53. The EIS evaluated a no-action alternative and three action alternatives for increasing  
23 Growlers at Whidbey.

24 54. The three action alternatives that were evaluated in the EIS are so similar as to  
25 provide almost no meaningful distinction between them regarding the number of Growlers to be  
26

1 brought to Whidbey. Alternative 1 proposes adding 35 new Growlers, Alternative 2 proposes  
2 adding 36 new Growlers, and Alternative 3 proposes adding 36 new Growlers.

3 55. The EIS devoted a considerable portion of its analysis to presenting a redundant  
4 analysis of these three practically identical alternatives. The result was, not surprisingly, a  
5 conclusion that all three alternatives in many respects would have nearly identical environmental  
6 impacts.  
7

8 56. The EIS should have, but did not, rigorously explore and objectively evaluate all  
9 reasonable alternatives that were eliminated from detailed study. The EIS did not inform decision-  
10 makers and the public of reasonable alternatives to the proposal that would avoid or minimize the  
11 adverse significant impacts of the proposal.

12 57. For example, the EIS should have considered a markedly smaller number of aircraft  
13 than what was being proposed, and alternative off-Whidbey basing or practice venues, so that the  
14 decision makers and the public could see and compare those impacts with the impacts of adding 35  
15 or 36 aircraft at NAS Whidbey Island.  
16

17 F. Noise Impacts

18 58. The EIS does not adequately analyze and disclose the environmental impacts and  
19 consequences of the Proposed Action with respect to noise associated with aircraft operations at  
20 NAS Whidbey Island.  
21

22 59. The aircraft noise at NAS Whidbey Island from the Proposed Action will cause  
23 significant annoyance, speech interference, sleep interference, classroom/learning interference,  
24 effects on recreation, and health effects—including permanent hearing loss—on residents and  
25 visitors in the exposed communities.  
26

1           60.     Noise from Growlers is not just like ‘being near an airport;’ the Growler engines are  
2 far louder than commercial aircraft. The planes are flown in repetitious patterns at extremely low  
3 elevation (sometimes 200–500 feet above the ground and lower during takeoff and landing) across  
4 neighborhoods and natural and historic areas. The noise is enhanced by significant turbulence and  
5 low frequency vibrations.  
6

7           61.     Aircraft noise levels are represented in the EIS by various noise metrics that are  
8 generated by a computer model and not based upon actual, on-site measurements at Ault Field or  
9 OLF Coupeville. The model provided estimates of noise levels from current operations and future  
10 alternatives. The model is not reliable. The model results for current operations do not match  
11 measurements of current operations.  
12

13           62.     Citizens of the Ebey’s Reserve retained JGL Acoustics of Issaquah, WA, to conduct  
14 actual noise recordings of Growlers when using OLF Coupeville for repetitive landing practice in  
15 May 2013, February 2016, and June 2019.

16           63.     The National Park Service conducted on-site noise recordings of repetitive landing  
17 practices at OLF Coupeville in the summer of 2015 and reported its findings and conclusions in an  
18 Acoustical Monitoring Report dated November, 2016. The National Park Service findings were  
19 consistent with the JGL Acoustics findings.  
20

21           64.     Navy’s modeled noise reported in the EIS grossly underestimate noise compared  
22 with the actual noise levels recorded by JGL Acoustics and the National Park Service. The EIS  
23 fails to provide adequate justification for using noise data generated by a computer model and not  
24 based upon actual, on-site measurements at Ault Field or OLF Coupeville.  
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1           65.     The existing environment noise and the noise impacts of the Proposed Action were  
2 modeled using FA-18E/F “Super Hornet” data in the computer model. The Super Hornet is a  
3 different aircraft from the Growler.

4           66.     The EIS fails to provide adequate justification for using noise data for the Super  
5 Hornet instead of data for the actual aircraft that will be causing the noise impacts.

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

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

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

17           70.     The EIS threshold of 65 dB DNL for high noise annoyance has been scientifically  
18 discredited as an inappropriate and flawed method for evaluating the noise impacts. The EIS,  
19 however, uses that 65 dB DNL metric, which understates impacts of the Proposed Action. Current  
20 studies and analysis reflect that a reasonable high annoyance threshold level is no more than 55 dB  
21 DNL.

22           71.     Thus, the heart of the EIS noise analysis suffers twin defects. It relies on computer  
23 modeled long-term averages instead of actual short-term or instantaneous impacts and it then  
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1 compares the misleading averages to an unduly high threshold for determining significant impacts.  
2 Because the EIS analysis of noise impacts is erroneously based on the 65 dB DNL noise contour,  
3 the EIS underestimates the size of the residential population and the size of areas (including, but  
4 not limited to, the areas within Ebey's Landing National Historic Reserve) that will be significantly  
5 impacted by the Proposed Action.  
6

7 72. The EIS failed to analyze that the Growler's standard F414-400 engine can be  
8 retrofitted and enhanced to produce significantly more thrust and, hence, more noise. Neither the  
9 likelihood of such enhancements nor the consequences of additional noise from retrofitted engines  
10 were analyzed.

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

3 74. The Navy's failure to fully analyze and disclose noise impacts is contrary to NEPA's  
4 underlying purpose and requirement of disclosure of environmental impacts.

5 G. Historic District Impacts

6 75. Implementation of the Proposed Action will result in significant adverse impacts to  
7 Ebey's Landing National Historic Reserve, our Nation's first National Historic Reserve.

8 76. Congress created Ebey's Landing National Historic Reserve in 1978 to preserve and  
9 protect a rural community which provides an unbroken historical record from nineteenth century  
10 exploration and settlement in Puget Sound to the present time. The approximately 17,000 acre  
11 reserve preserves the natural setting and cultural history of the Ebey's Landing National Historic  
12 Reserve area on Whidbey Island south of Penn Cove and southwest of the Town of Coupeville.

13 77. OLF Coupeville is located partially within and partially abutting Ebey's Landing  
14 National Historic Reserve.

15 78. The acoustic environment of Ebey's Landing National Historic Reserve is an  
16 especially valuable resource and degradation of that environment by excessive noise is particularly  
17 significant and harmful in this unique area.

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

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1           80.     The EIS does not adequately analyze and disclose the environmental impacts and  
2 consequences of the Proposed Action with respect to impacts to Ebey’s Landing National Historic  
3 Reserve.

4           81.     The assumptions and conclusions about noise impacts to Ebey’s Landing National  
5 Historic Reserve are misleading, incorrect, and understated because they are based on misleading,  
6 incorrect and understated assessments of the noise generated by the Growlers. See above ¶¶ 58–  
7 74.

8           82.     Low frequency rumbles of Growlers carry further than other noise and traverse the  
9 full extent of Ebey’s Landing National Historic Reserve, shaking windows and rattling walls,  
10 throughout the entire time that Growlers practice at OLF Coupeville. The EIS failed to adequately  
11 assess the impacts of this low frequency noise on the Reserve and, as a result, provides misleading  
12 and incorrect conclusions that understate the actual noise impacts to the Ebey’s Landing National  
13 Historic Reserve users’ experience.

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

1           84.     The required consultation process is set out in Section 106 of the National Historic  
2 Preservation Act, which requires federal agencies to consider the effects of federal undertakings on  
3 any district, site, building, structure, or object that is included in or eligible for inclusion in the  
4 National Register prior to approving the undertaking. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. “An  
5 adverse effect is found when an undertaking may alter, directly or indirectly, any of the  
6 characteristics of a historic property that qualify the property for inclusion in the National Register  
7 in a manner that would diminish the integrity of the property’s location, design, setting, materials,  
8 workmanship, feeling, or association.” 36 C.F.R. § 800.5(a)(1). If an agency finds that an adverse  
9 effect will occur, then the agency shall engage in further consultation to resolve adverse effects to  
10 historic properties through avoidance, minimization, or mitigation. *Id.* §§ 800.5(2), 800.6(b);  
11 800.8(c)(v).  
12

13  
14           85.     During the Section 106 consultation process, the Washington State Historic  
15 Preservation Officer (SHPO) repeatedly stated that the Navy’s proposed mitigation measures were  
16 inadequate to address the adverse effects on the impacted historic resources.

17           86.     Before making its determination under Section 106, the Navy terminated  
18 consultation with the SHPO, the Ebey’s Landing Historic Reserve Trust Board, and other  
19 consulting parties because the Navy disagreed with the SHPO on the type and amount of mitigation  
20 appropriate to resolve adverse effects to Ebey’s Landing National Historical Reserve.  
21

22           87.     The Navy selected the alternative deemed to have the most severe adverse impact  
23 on historic and cultural resources within Ebey’s Landing National Historical Reserve.

24           88.     After terminating consultation with the SHPO, the Navy requested that the Advisory  
25 Council on Historic Preservation participate and provide comments, as required by 36 C.F.R.  
26 § 800.7(c).

1           89.     The Advisory Council on Historic Preservation recommended that the Navy  
2 mitigate adverse effects by working with stakeholders to monitor actual noise impacts associated  
3 with expanded Growler operations, work with stakeholders to develop mitigation measures based  
4 on the results of the monitoring of actual noise levels, and work with stakeholders to identify ways  
5 to reduce noise.  
6

7           90.     The Navy declined to adopt the Advisory Council on Historic Preservation's  
8 recommendations and failed to provide an adequate rationale for rejecting the Council's  
9 recommendations.

10          91.     The Navy's actions were arbitrary and capricious when it refused to adopt the  
11 recommendations from the Advisory Council on Historic Preservation. The Navy's reliance on its  
12 own mitigation measures is arbitrary and capricious because they do not meaningfully address the  
13 adverse impacts of the Navy's expanded EA-18 Growler operations on Ebey's Landing Historic  
14 Reserve and do not truly or adequately mitigate or resolve adverse impacts to the area.  
15

16           H.     Wildlife Impacts

17          92.     Implementation of the Proposed Action will result in significant adverse impacts to  
18 wildlife listed under the Endangered Species Act as a result of increased noise exposure.

19          93.     The EIS does not adequately analyze and disclose the environmental impacts and  
20 consequences of the Proposed Action with respect to wildlife impacts caused by noisy Growler  
21 operations at NAS Whidbey Island.  
22

23          94.     Noise created by humans may disrupt ecosystem processes by interfering with  
24 predator-prey relationships and the ability of wildlife to communicate, establish territory,  
25 reproduce, and support and protect offspring.  
26

1           95.     The marbled murrelet is a small seabird that inhabits nearshore marine environment  
2 in western North America. The species was listed as threatened under the federal Endangered  
3 Species Act in 1992 in Washington, Oregon and California and was subsequently listed by the  
4 Washington Fish and Wildlife Commission as threatened in 1993.

5           96.     In 2017, the marbled murrelet was reclassified by the Washington Fish and Wildlife  
6 Commission as endangered.

7           97.     The marbled murrelet has the unusual behavior among seabirds of flying  
8 considerable distances inland during the breeding season to establish nest locations. From April to  
9 mid-September, breeding murrelets make daily flights from marine foraging areas to tend inland  
10 nest sites. These flights are often quite long—one radio-tagged murrelet nesting in the Hoh River  
11 drainage of the Olympic Mountains regularly foraged in the San Juan Islands, making daily flights  
12 of about 70 miles from its nest. Another murrelet nesting in the Cascade Range foraged in the San  
13 Juan Islands more than 75 miles from its nest.

14           98.     The distribution of murrelets in Washington includes the southern Salish Sea and  
15 the outer coast. Murrelet nesting in the islands of the Salish Sea and related questions of potential  
16 Navy disturbance and possible extirpation are unresolved in the USFWS biological opinion.

17           99.     In Washington, murrelets receive extra protection during their nesting and rearing  
18 season. Murrelet egg laying and incubation occurs from April to early August and chick rearing  
19 occurs between late May and September. State regulations provide an extra level of protection from  
20 April 1 to September 23.

21           100.    The marbled murrelet has a naturally low reproductive rate; when in breeding  
22 condition, females produce a relatively large single egg (nearly 25% of body mass) and one brood  
23

1 per season. Given the high energy cost of breeding, females are not likely to be in breeding  
2 condition every year and may nest in alternate years.

3 101. The 2015 marbled murrelet population estimate for all of Washington was about  
4 7,500 birds.

5 102. In Marbled Murrelet Conservation Zone 1, which encompasses all of the Salish Sea  
6 and the Action Area for the Navy's Proposed Action, there are approximately 4,614 murrelets.  
7

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

12 104. In Washington, murrelets and their chicks are literally starving to death. Eighty per  
13 cent of murrelet eggs do not result in fledglings because the chicks starve or because lack of food  
14 for the adults makes them abandon their eggs before completing incubation.  
15

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

19 106. Fish-holding marbled murrelets tend to swallow the prey when they are disturbed—  
20 for instance, by an overflight of an extremely loud plane—instead of bringing the prey to the nest  
21 for the nestling. If the adult marbled murrelet is successful in catching a new prey item for the  
22 nestling, the nestling will experience a delayed feeding. If the adult marbled murrelet is  
23 unsuccessful replacing the lost prey, the nestling will miss its feeding.  
24  
25  
26

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

4           108. Food limitation often results in poor growth, delayed fledging, increased mortality  
5 of murrelet chicks, and nest abandonment by adults.

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

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

11           111. By diving or flying in response to aircraft overflights sub-adult and adult marbled  
12 murrelets will expend energy that they can only replace by capturing additional prey. Given the  
13 number of overflights proposed, and the long duration of the activity (thirty years), some sub-adult  
14 and adult marbled murrelets will not be able to replace energy spent responding to disturbances.  
15 Ultimately, the inability of sub-adult and adult marbled murrelets to replace energy lost responding  
16 to overflights decreases reproductive success and increases the likelihood of death from starvation.

17           112. The EIS failed to adequately consider, analyze and disclose the impacts of the  
18 proposal on marbled murrelets.

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

22           114. The EIS failed to adequately disclose or analyze that marbled murrelet nestlings,  
23 sub-adults, and adults will be annoyed it to such an extent as to significantly disrupt normal  
24  
25  
26

1 behavior because of the noise from Growler year-round overflights, during both the day and the  
2 night, over the thirty year term of the proposed action.

3 115. The EIS fails to disclose, consider or analyze the cumulative impacts of the  
4 Proposed Action with other Navy Actions adversely affecting marbled murrelets in the area near  
5 NAS Whidbey.  
6

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

11 117. Each roundtrip interfacility flight between Ault Field and OLF Coupeville will  
12 subject at-sea marbled murrelets in an area of 75.5 square miles, on average, to extremely high  
13 sound levels. Under Alternative 2A, in an average year, there will be approximately 1,483 roundtrip  
14 interfacility flights between Ault Field and OLF Coupeville. In estimating the size of areas that will  
15 be subjected to various noise levels from Growler operations, the EIS omitted all over-water  
16 marbled murrelet habitat.  
17

18 118. The U.S. Fish and Wildlife Service's June 14, 2018 Biological Opinion was based  
19 upon data provided by the Navy estimating that under Alternative 2A there will be approximately  
20 2,899,530 total airfield operations at NAS Whidbey Island over thirty years.  
21

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

24 120. Under Alternative 2A (adopted by the Navy in the Record of Decision), the Navy  
25 now estimates that there will be approximately 3,363,000 total airfield operations at NAS Whidbey  
26 Island over thirty years.

1            121.    The Navy’s adoption of an alternative in excess of the number of flights authorized  
2 by the Incidental Take Statement triggers the requirements in the ESA and the Incidental Take  
3 Statement to re-initiate consultation.

4            122.    The Navy defendants did not reinitiate consultation with U.S. Fish and Wildlife  
5 Services as required by 50 C.F.R. § 402.16 and the Incidental Take Statement until after the filing  
6 of Plaintiffs’ original complaint, even though new information revealed effects of the action that  
7 will affect marbled murrelets to a greater extent than previously considered. Despite re-initiating  
8 consultation, the Navy continues its activities which harass, harm and kill endangered murrelets.

9            123.    The U.S. Fish and Wildlife Service’s Incidental Take Statement (ITS), which  
10 authorizes the Navy to proceed with its proposal, fails to meet the requirements of the Endangered  
11 Species Act in at least the following ways:  
12

13            a.        The ITS fails to clearly articulate the amount or extent of the anticipated  
14 incidental taking or the impact of this level of take on marbled murrelets at the local level and  
15 where it does articulate the amount or extent of the anticipated incidental take, it is misstated and  
16 based upon stale and inaccurate data.  
17

18            b.        The ITS fails to specify reasonable and prudent measures necessary or  
19 appropriate to minimize the anticipated take of marbled murrelets.  
20

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

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

25            124.    The U.S. Fish and Wildlife Service’s Incidental Take Statement is unlawful and,  
26 therefore, does not provide a safe harbor for the Navy’s ongoing taking of marbled murrelets.

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

13  
14           126. The Navy failed to consider cumulative noise impacts on threatened and endangered  
15 species, and other wildlife, from the Proposed Action in combination with the noise impacts  
16 discussed in the 2015 Northwest Training and Testing EIS. The noise impacts from the proposed  
17 actions at NAS Whidbey Island and the 2015 Northwest Training and Testing will overlap and  
18 concurrently affect marine areas used by marbled murrelets and southern resident orcas. By  
19 ignoring the cumulative effects of the two proposed actions, the Navy unlawfully segmented its  
20 review and analysis, resulting in inadequate analyses and disclosure of the environmental impacts  
21 of the NAS Whidbey Island Proposed Action.  
22

23           I.       Toxic Chemical Impacts

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

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

4 129. The Proposed Action will increase stormwater flow, which, upon information and  
5 belief, will increase the Navy’s discharges of PFAS into surface waters on and near the base.  
6 Defendants did not adequately consider or analyze the environmental impacts of increased PFAS  
7 discharges flowing from the Proposed Action.  
8

9 130. PFAS are persistent in the environment; bio-accumulative; highly mobile in water;  
10 and are toxic in very small concentrations.

11 131. While the Navy failed to consider or analyze the impacts of PFAS on wildlife, the  
12 Navy knows that PFAS are toxic to humans in very small concentrations—in the parts per trillion.  
13 PFAS are suspected carcinogens and have been linked to growth, learning and behavioral problems  
14 in infants and children; fertility and pregnancy problems, including pre-eclampsia; interference  
15 with natural human hormones; increased cholesterol; immune system problems; and interference  
16 with liver, thyroid, and pancreatic function. PFAS have been linked to increases in testicular and  
17 kidney cancer in human adults. The developing fetus and newborn babies are particularly sensitive  
18 to PFAS.  
19

20 132. Because PFAS accumulate in animals in the food chain, top-level predators  
21 concentrate PFAS in their blood and muscle tissues, causing harmful effects including reproductive  
22 harm.  
23

24 133. The EIS fails to discuss, address or analyze the effects of PFAS on wildlife,  
25 including higher trophic level predators—like marbled murrelets and southern resident orcas, and  
26 other marine mammals—and other wildlife below them in the aquatic food chain.

1 J. Climate Change and Air Quality Impacts

2 134. The EIS fails to adequately disclose, consider or analyze the impacts of the Proposed  
3 Action on the State of Washington's efforts to meet its greenhouse gas emission reduction targets.

4 135. The Navy erred in calculating the baseline fuel use and resulting greenhouse gas  
5 emissions for the baseline No Action Alternative.

6 136. The Navy's error in calculations for the baseline fuel use and resulting greenhouse  
7 gas emissions for the baseline No Action Alternative is carried over into the projected greenhouse  
8 gas emissions under Alternative 2A.

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

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

14 139. Rather than basing its calculations on actual fuel use by EA-18G Growlers, the Navy  
15 based its calculations on assumptions regarding fuel use and resulting emissions, assumptions  
16 which were in error and grossly misrepresent the emissions under both the baseline and Alternative  
17 2A.

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

21 141. The table titled "Alternative 2A Average Year EA-18G (Growler) Air Emissions,  
22 NAS Whidbey Island Complex" at Vol. 2, Appendix B, at page B-22, erroneously states that total  
23  
24  
25  
26

1 fuel use under Alternative 2A in an average year will be 13,331,805 gallons of jet fuel, and the  
2 resulting total CO<sub>2</sub> emissions will be 139,065.1 tons per year.

3 142. If the Navy had calibrated its assumptions regarding fuel use and resulting emissions  
4 to actual fuel use, the average year total fuel use under Alternative 2A should have been 28,591,553  
5 gallons of jet fuel and the resulting total CO<sub>2</sub> emissions should have been 298,240 tons per year,  
6 each more than twice what the Navy assumed.  
7

8 143. The Navy's miscalculations regarding greenhouse gas emissions in Vol. 2,  
9 Appendix B is carried over to the final EIS at Vol. 1, Table 4.16-2.

10 K. Electromagnetic Radiation Impacts

11 144. The Navy failed to adequately analyze or disclose the environmental impacts of  
12 fixed and mobile sources of electromagnetic radiation from the Proposed Action on humans and  
13 wildlife, including the listed marbled murrelet.  
14

15 L. Consequences of Mishap

16 145. The EIS fails to properly delineate accident potential zone risks to Coupeville  
17 schools and a large daycare facility by using a singular uniform takeoff pattern for civilian and  
18 commercial aviation that does not conform to the multiple takeoff and landing patterns (tracks)  
19 used by the Navy when conducting Growler field carrier landing practice at OLF Coupeville.  
20

21 M. Inadequate Mitigation

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

24 147. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
25 of noise impacts, and failed to identify and assess a monitoring program to assess the actual, as  
26

1 opposed to computer-modeled, direct, indirect, and cumulative noise impacts of the Proposed  
2 Action.

3 148. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
4 for noise impacts, including low frequency noise impacts, at Ebey's Landing National Historic  
5 Reserve.  
6

7 149. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
8 for impacts to marbled murrelets and failed to identify and assess a marbled murrelet monitoring  
9 program.

10 150. The EIS and Record of Decision fail to sufficiently identify and assess mitigation  
11 for greenhouse gas and criteria pollutant emissions.  
12

## 13 **VII. CLAIMS FOR RELIEF**

### 14 **FIRST CLAIM FOR RELIEF** 15 **VIOLATION OF NEPA**

#### 16 **Failure to Adequately Disclose and Analyze Environmental Impacts**

17 151. Plaintiffs restate and incorporate by reference all preceding paragraphs.

18 152. NEPA is a procedural statute that requires federal agencies to take a hard look at the  
19 environmental consequences of the proposed action using high quality scientific information and  
20 insuring the professional integrity, including scientific integrity, of the discussions and analyses.  
21 An agency complies with NEPA's hard look requirement if the procedure followed by the agency  
22 resulted in a reasoned analysis of the evidence before it. NEPA mandates that the disclosure of  
23 high-quality information detailing the environmental impacts of the Proposed Action be made  
24 available to public officials and citizens before actions are taken. 40 C.F.R. § 1500.1(b).  
25  
26

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

4           154. When faced with incomplete or unavailable information, defendants ignored,  
5 denied, or glossed over their lack of information, contrary to the requirements of 40 C.F.R.  
6 § 1502.22. Instead, defendants papered-over their incomplete or unavailable information with  
7 erroneous computer modeling and outdated, invalidated and misleading noise modeling.  
8 Defendants also denied or conveniently overlooked the most current scientific findings of the  
9 world's health experts on the detrimental impacts of noise on auditory and non-auditory health,  
10 fetal health, and childhood learning.

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

13           156. The EIS fails to disclose and analyze the direct, indirect, and cumulative noise  
14 impacts of the proposal.

15           157. The EIS fails to disclose and analyze the direct, indirect, and cumulative impacts of  
16 the Proposed Action on historic and cultural resources.

17           158. The EIS fails to disclose and analyze the direct, indirect, and cumulative wildlife  
18 impacts of the proposal.

19           159. The EIS fails to disclose and analyze the direct, indirect, and cumulative toxic  
20 chemical impacts of the proposal.

21           160. The EIS fails to disclose and analyze the direct, indirect, and cumulative climate  
22 change and air quality impacts of the proposal.

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1 purpose and need are defined too narrowly, the agency’s consideration of alternatives is artificially  
2 constrained, defeating NEPA’s fundamental aim to identify workable alternatives in time to avoid  
3 environmental harm. In preparing an EIS, the agency must “briefly specify the underlying purpose  
4 and need to which the agency is responding in proposing the alternatives including the proposed  
5 action.” 40 C.F.R. § 1502.13.  
6

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

10 170. The purpose and need statement effectively excluded consideration of off-Whidbey  
11 locations for operating additional Growler aircraft.

12 171. Off-Whidbey locations are reasonable alternatives to locating the Growlers at  
13 Whidbey.  
14

15 172. The Navy violated NEPA by defining the purpose and need narrowly to exclude  
16 reasonable off-Whidbey alternatives.

17 173. Defendants also did not meaningfully consider the alternative of adding fewer than  
18 35 Growler aircraft at Whidbey.

19 174. Defendants failed to adequately explain why reasonable alternatives were either not  
20 considered or removed from consideration within the EIS.  
21

22 175. Defendants’ actions violate NEPA and its implementing regulations. *See* 40 C.F.R.  
23 § 1502.13; 1502.14.

24 176. Defendants’ actions as described above are arbitrary, capricious, not in accordance  
25 with law, and without observance of procedures required by law, within the meaning of the APA,  
26 5 U.S.C. § 706.

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

177. Plaintiffs restate and incorporate by reference all preceding paragraphs.

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

179. NEPA requires the agency to fully discuss the environmental consequences of the alternatives identified, including a discussion of the “means to mitigate adverse environmental impacts.” 40 C.F.R. § 1502.16(h).

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

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

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

183. The EIS fails to provide an adequate discussion of appropriate mitigation measures for toxic chemical impacts within the Proposed Action area.

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

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





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G. Award the plaintiffs their costs, litigation expenses, expert witness fees, and reasonable attorneys' fees associated with this litigation pursuant to the Equal Access to Justice Act, the citizen suit provision of the Endangered Species Act, and all other applicable authorities; and

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

Dated this 11<sup>th</sup> day of October, 2019.

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

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