NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT

In-Lieu Fee Mitigation Program

Final Instrument

Submitted to:

Regulatory Division
U.S. Army Corps of Engineers, Jacksonville District
701 San Marco Blvd.
Jacksonville, FL 32207-8175

Submitted by:

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Contents

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List of Acronyms

CFR	*Code of Federal Regulations*
USACE	*US Army Corps of Engineers*
CPF	*Compensation Planning Framework*
DE	*District Engineer*
EPA	*US Environmental Protection Agency*
FR	*Final Rule*
FS	*Florida Statutes*
FDEP	*Florida Department of Environmental Protection*
FDOT	*Florida Department of Transportation*
FFS	*Florida Forest Service*
FWC	*Florida Fish and Wildlife Conservation Commission*
ILF	*In-Lieu Fee*
IRT	*Interagency Review Team*
NMFS	*National Marine Fisheries Institute*
NWFWMD	*Northwest Florida Water Management District*
RIBITS	*Regulatory In-lieu fee and Bank Information Tracking System*
SWIM	*Surface Water Improvement and Management*
USFWS	*United States Fish and Wildlife Service*
UWRMP	*Umbrella, Watershed-based Regional Mitigation Plan (aka Umbrella Plan)*

Federal Regulatory Authority

The establishment, use and operation of the Northwest Florida Water Management District In-Lieu Fee Mitigation Program will be carried out in accordance with:

- Federal Clean Water Act (33 USC §1251 *et seq.*)
- Rivers and Harbors Act (33 USC §403)
- Compensatory Mitigation for Losses of Aquatic Resources; Final Rule (2008); Department of the Army, Corps of Engineers (33 CFR Parts 325 and 332) and Environmental Protection Agency (40 CFR Part 230).

1. Introduction

This Instrument, establishing the Northwest Florida Water Management District In-Lieu Fee Mitigation Program (hereinafter referred to as the NWFWMD ILF Program), is made and entered into by the Northwest Florida Water Management District (Sponsor), an entity of the State of Florida, and the U.S. Army Corps of Engineers, Jacksonville District (USACE). This Instrument incorporates all appendices and attachments to the Instrument as a part hereof. Guidelines and responsibilities for the establishment, use, operation, protection, monitoring and maintenance of the NWFWMD ILF Program are set forth in this Instrument.

USACE approval of this Instrument constitutes the regulatory approval required for the Northwest Florida Water Management District In-Lieu Fee Mitigation Program to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Sponsor or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

The main purpose of the NWFWMD ILF Program is to provide compensatory mitigation to offset unavoidable adverse impacts to wetlands, streams and other aquatic resources authorized by Clean Water Act section 404 permits and other Department of the Army (DA) permits. Sponsor is accepting responsibility through the NWFWMD ILF Program for ensuring that the required compensation for authorized impacts is completed and successful. The NWFWMD ILF Program will primarily provide compensatory mitigation options for areas not currently served by mitigation banks, or where appropriate bank credits (as determined by USACE) are not available. The Florida Department of Transportation (FDOT) District-3 will be the primary user of the NWFWMD ILF Program, although non-FDOT customers may be considered. This Instrument meets the in-lieu fee program requirements established in the 2008 Federal Rule on Compensatory Mitigation for Losses of Aquatic Resources (hereinafter Final Rule, noted as FR), while continuing to address watershed needs by preserving, enhancing, and restoring ecological function within target watersheds.

The NWFWMD ILF Program is an outgrowth of the Umbrella, Watershed-based, Regional Mitigation Plan (UWRMP or “Umbrella Plan”), a mitigation program established by signed agreement between the USACE and the Sponsor in July, 2006. Seven mitigation projects established under the Umbrella Plan will initially comprise the NWFWMD ILF Program. These are:

- Dutex Mitigation Area
- Yellow River Ranch Mitigation Area
- Lafayette Creek Mitigation Area
- Tates Hell Mitigation Area (Whiskey George / Sumatra and Pine Log Creek units)
- Shuler Mitigation Area
- Ward Creek West

- Live Oak Peninsula

Although none are currently planned, additional mitigation projects may be developed and brought into the NWFWMD ILF Program in accordance with this Instrument, subject to public noticing, review by an Interagency Review Team (IRT), and USACE approvals.

The USACE acknowledges, for the seven Umbrella Plan projects named above, that the potential credits and unused released credits previously approved by the USACE under the Umbrella Plan will carry over to the NWFWMD ILF Program. All success criteria for the released credits being brought into the NWFWMD ILF Program were met under the terms of the Umbrella Plan. Thus, at the adoption of this Instrument, the NWFWMD ILF Program shall have 195.98 initial credits, as shown in the following table:

Table 1. Initial NWFWMD ILF Program Credits (i.e., Credits released under the Umbrella Plan being brought into the NWFWMD ILF Program)

Initial Northwest Florida Water Management District ILF Program Credits					
Mitigation Project	**Potential Credits Approved by USACE under Umbrella Plan**	**Credits Released by USACE under Umbrella Plan [A]**	**Credits Debited by Permit under Umbrella Plan [B]**	**Initial ILF Program Credits [i.e., A – B]**	**Credit Assessment Method***
Dutex	107.16	63.30	19.77	43.53	UMAM
Yellow River Ranch	50.63	29.29	19.15	10.14	UMAM
Lafayette Creek	50.30	29.47	8.63	20.84	UMAM
Tates Hell	38.52	36.16	0.75	35.41	UMAM
Shuler	33.95	33.95	6.05	27.90	UMAM
Ward Creek West	173.76	102.77	44.68	58.09	WRAP
Live Oak Peninsula	3.98	3.98	3.91	0.07	UMAM
Totals:	458.30	298.92	102.94	195.98	

*UMAM = Uniform Mitigation Assessment Method (Florida Department of Environmental Protection)
WRAP = Wetland Rapid Assessment Procedure (South Florida Water Management District)

The Sponsor has a statutory mandate to protect and manage the water resources of northwest Florida in a sustainable manner for the continued welfare of its residents and natural resources[1]. Inherent in this statutory mandate is the protection, preservation, restoration and enhancement of wetlands within the Sponsor's 16-county area (~11,305 mi^2). Since the establishment of the NWFWMD in the 1970's via the Florida Water Resources Act of 1972, Sponsor staff has successfully implemented numerous wetland and aquatic resource projects. These projects include, since 1997, implementing mitigation at 25 sites to offset approximately 60 FDOT impacts, and the successful development, management and operation of the Sand Hill Lakes Mitigation Bank.

As outlined in Appendix A, the Compensation Planning Framework (CPF) provides for simultaneous planning of future projects and implementation of current wetland mitigation projects within the jurisdictional boundaries of the Sponsor. Watershed resources are identified up-front in a comprehensive manner consistent with other watershed management plans. This facilitates identification of mitigation needs and opportunities efficiently and in a manner that conserves and restores aquatic and wetland resources within the region. Additionally, the dynamic nature of the plan provides for mitigating future impacts in an ecologically coherent manner, and allows for adaptive management while incorporating long-term monitoring and maintenance.

Adoption of the NWFWMD ILF Program Instrument:

- enables the planning of effective and regionally significant mitigation projects from a watershed perspective,
- increases regulatory efficiency and timeliness of implementation of wetlands mitigation,
- supports the federal goal of "no overall net loss" for wetland functions, and
- provides mitigation options in areas not served by private mitigation banks.

2. Qualifications of Program Sponsor

The Sponsor, a governmental entity created by the Florida Water Resources Act of 1972, given taxing authority by a Florida constitutional amendment in 1973, with jurisdictional boundaries covering 16 counties as established in Florida Statutes 373.069, manages over 200,000 acres in the Florida Panhandle for water resources protection and ecosystem integrity. Florida Statutes 373.1391 mandates ecological management of lands owned by the Sponsor while allowing for multiple uses:

> **373.1391 Management of real property.**
> (1)(a) Lands titled to the governing boards of the districts shall be managed and maintained, to the extent practicable, in such a way as to ensure a balance between public access, general public recreational purposes, and restoration and protection of their natural state and condition. Except when prohibited by a covenant or condition described in s. 373.056(2), lands owned, managed, and controlled by the district may be used for

[1] FS 373.1391.

multiple purposes, including, but not limited to, agriculture, silviculture, and water supply, as well as boating and other recreational uses.
(b) Whenever practicable, such lands shall be open to the general public for recreational uses. General public recreational purposes shall include, but not be limited to, fishing, hunting, horseback riding, swimming, camping, hiking, canoeing, boating, diving, birding, sailing, jogging, and other related outdoor activities to the maximum extent possible considering the environmental sensitivity and suitability of those lands.

The Governing Board of the Sponsor prioritizes conservation and protection of water resources and protection and restoration of ecosystems over other uses such as public access. The Sponsor has in place the organization, experience, personnel and statutory obligation to ensure that the projects contained within this NWFWMD ILF Program will be effectively managed for ecological integrity in perpetuity. Sponsor personnel have extensive ecological restoration and land management experience in both wetlands and upland buffers. Since 1997, working in concert with the USACE and other regulatory or commenting entities, the Sponsor has successfully offset approximately 60 FDOT impacts (totaling over 500 acres of wetland impact) via implementation of mitigation at 25 sites.

3. Program Service Area

All five of the State of Florida's water management district boundaries were determined primarily by watersheds and related natural hydrologic and geographic features. The geographic service area for the NWFWMD ILF Program is defined by the jurisdictional boundary of the NWFWMD[2] (i.e., the Sponsor), which covers approximately 11,305 mi^2 and seven major watersheds. The Sponsor approaches wetland mitigation from a regional watershed perspective, using major river basin delineations according to the hydrologic unit classification (HUC) established by the U.S. Geological Survey and described by Seaber et al.[3] Compensatory mitigation for permitted impacts will be located within the same major watershed as the impacts (Figure 1), unless the USACE, in consultation with the IRT, has determined out-of-watershed mitigation is more appropriate or necessary. Each compensatory mitigation project will have a project specific service area approved by the USACE in consultation with the IRT.

[2] 33 C.F.R. § 332.8(c)(2)(i).
[3] Seaber, P.R., F. P Kapinos, and G. L. Knapp, 1987. Hydrologic Unit Maps. U.S. Geological Survey Water-Supply Paper 2294, United States Department of the Interior, Geological Survey, Denver, Colorado.

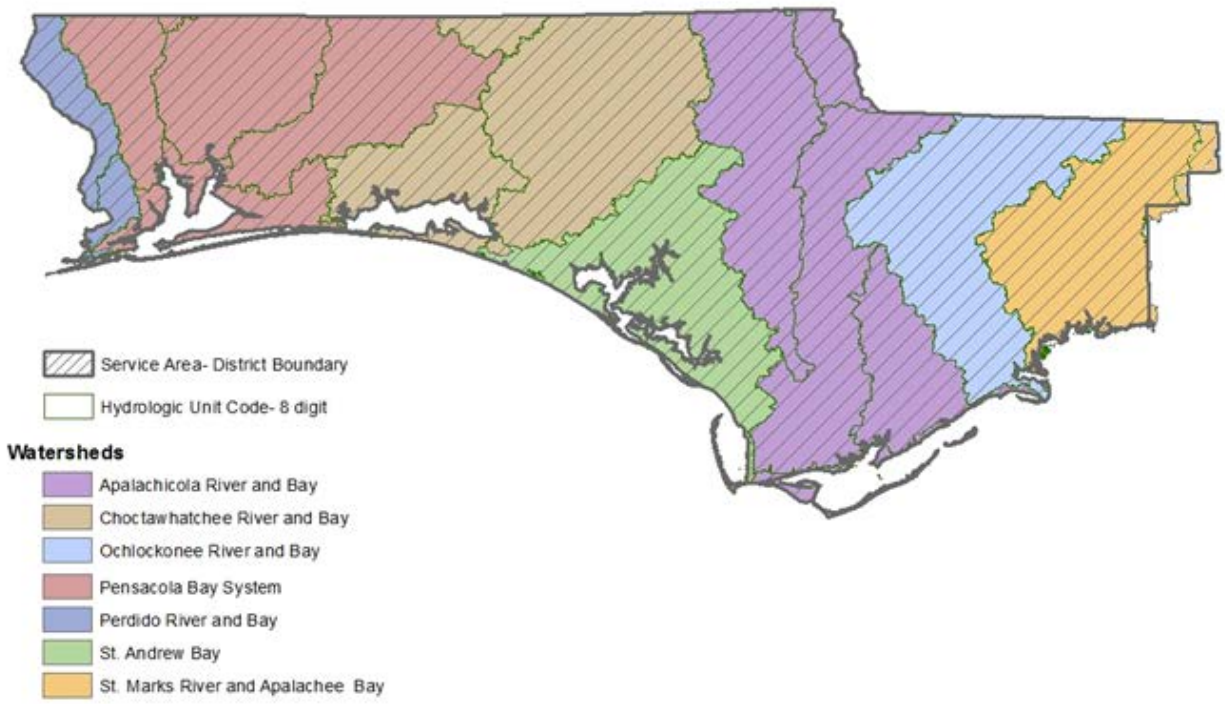

Figure 1. The Northwest Florida Water Management District is the geographic service area of the NWFWMD In-Lieu Fee Program. Each compensatory mitigation project will have a project-specific service area approved by the USACE in consultation with the IRT.

In addition to the seven Umbrella Plan mitigation projects being brought into the NWFWMD ILF Program, future potential mitigation projects may be identified within each watershed through an evaluation of specific wetland and watershed characteristics. The evaluation of future potential mitigation projects may include consideration of:

1. Service area coverage of private mitigation banks,
2. proximity to anticipated wetland impacts,
3. replacement wetland type,
4. potential benefit to the watershed,
5. position in landscape relative to Sponsor and other private, state or federally protected lands,
6. hydrologic connectivity to adjacent or proximate wetland systems,
7. ecological diversity and functioning,
8. restoration potential,
9. natural community type, and
10. potential need and overall water resource value as an identified watershed priority.

4. Interagency Review Team (IRT)

The USACE, in consultation with an Interagency Review Team (IRT), will review mitigation proposals contained within the NWFWMD ILF Program[4]. The IRT is established and chaired by the USACE District Engineer (DE) and may include representatives from the US Environmental Protection Agency (EPA), the US Fish & Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS). Other federal, state, tribal, and local agencies, or non-governmental entities may also be represented on the IRT, as deemed appropriate by the USACE. The primary role of the IRT is to assist the DE in evaluating mitigation plans, reviewing monitoring reports, approving credit releases, recommending remedial measures, and approving Instrument modifications. The IRT works toward consensus to the extent practicable with final decision authority held by the USACE DE.

5. Responsibility of Sponsor to Provide Compensatory Mitigation

The Sponsor assumes all legal responsibility for satisfying the mitigation requirements of the USACE or state permit for which fees have been accepted (i.e., the implementation, performance, and long-term management of the compensatory mitigation project(s) approved under this agreement and subsequent mitigation plans). The transfer of liability is established by:

1) The approval of this in-lieu fee instrument.
2) Receipt by the USACE District Engineer of a credit sale letter and/or certificate that is signed by the Sponsor and the permittee, and is dated.
3) The transfer of fees from the permittee to the Sponsor.

6. Default and Closure Provisions

If the USACE determines that the Sponsor has failed to provide the required compensatory mitigation in a timely manner (e.g., Sponsor fails to meet performance based milestones set forth in a project-specific mitigation plan, submit monitoring reports in a timely manner, establish and maintain an annual ledger report and individual ledgers for each project in accordance with the accounting procedures set forth in this Instrument, submit an annual financial assurances and long-term management funding report, report approved credit transactions, complete land acquisition and initial physical and biological improvements according to agreed-upon schedule, and/or otherwise comply with the terms of this Instrument), the USACE DE will take appropriate action to compel Sponsor compliance with the terms of the Instrument and all approved mitigation plans. Such actions may include suspending credit sales, decreasing available credits, requiring adaptive management measures, terminating the NWFWMD ILF Program, requiring use of the financial assurances or contingency funds to provide alternative compensation,

[4] 33 C.F.R. § 332.8(b).

directing the use of NWFWMD ILF Program account funds to provide alternative mitigation (e.g., securing credits from another third-party mitigation provider), or referring the non-compliance with the terms of the Instrument to the Department of Justice.

If a natural disaster causes deficiencies in a compensatory mitigation project, the USACE District Engineer will evaluate the circumstances and determine whether it would be appropriate and practicable to require measures to address those deficiencies. Additional monitoring may be required to assess how a compensatory mitigation project is responding to a natural disaster. USACE will determine on a case-by case basis whether a natural disaster warrants taking action to repair compensatory mitigation projects. It is appropriate for adaptive management plans to consider potential natural disasters that may occur, to the extent that they can be reasonably foreseen. Financial assurances may be used to provide alternative compensatory mitigation if the compensatory mitigation project fails as a result of a natural disaster. The Sponsor shall give written notice to the USACE District Engineer and IRT if the performance of any NWFWMD ILF Program project is affected by any such event as soon as is reasonably practicable.

Either party to this agreement may terminate the agreement within 60 days of written notification to the other party. In the event that the agreement is terminated, the Sponsor is responsible for fulfilling any remaining project obligations including the successful completion of ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. The Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing requirements have been met and, if applicable, the long-term ownership of all mitigation lands has been transferred to the party responsible for ownership and all long-term management of the project(s).

7. Reporting Protocols

7.1. Monitoring Reports

Monitoring reports are required for all compensatory mitigation projects. These reports will be used to determine if performance standards are being met, and if adaptive management is necessary to ensure that the compensatory mitigation project is accomplishing its objectives.

Monitoring of specific compensatory mitigation projects will be completed annually for a minimum of five years, or as directed by the USACE. Annual monitoring reports will be submitted to the USACE and posted at www.NWFWMDwetlands.com (or any successor website) for review by the IRT and general public. The five year minimum to document mitigation success is required by rule. Interim monitoring (after achieving success and prior to the final credit sale for each project) is required annually to document the site is maintaining mitigation success and long-term monitoring is required annually to document project status.

Monitoring requirements are developed for each individual compensation project and included in project-specific mitigation plans approved by the USACE. Project-specific plans will explicitly state the parameters to be monitored, the length of the monitoring period, the party responsible for conducting the monitoring (i.e., the Sponsor or its designee), the frequency for submitting

monitoring reports to the USACE (annual unless otherwise directed by the USACE), and the party responsible for submitting monitoring reports (i.e., the Sponsor or its designee) to the USACE.
The level of detail required in a monitoring report will be at the discretion of the USACE. Monitoring should be commensurate with the scale and scope of the compensatory mitigation project type and be consistent with USACE Regulatory Guidance Letter 08-03 – *Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Creation, Restoration, and/or Enhancement of Aquatic Resources.*

7.2. Credit Transaction Notification

The legally enforceable transfer of responsibility for implementation of mitigation from the permittee to the Sponsor is established by this NWFWMD In-Lieu Fee Program Instrument and receipt by the USACE of documentation confirming that the Sponsor has accepted responsibility for providing the required compensatory mitigation. Each time the Sponsor accepts fees from a permittee and debits available credits (either released or advance credits) to provide offsetting mitigation required by a USACE permit, the Sponsor will notify the USACE of the credit transaction. Notification will be accomplished via a letter or certificate signed by the Sponsor, and will include:

- USACE permit number.
- USACE permit condition requiring purchase of mitigation credits from NWFWMD ILF Program.
- Number of credits debited from the ILF Program.
- Type of functional credits debited (UMAM or WRAP).
- An ecological classification of the credits debited (e.g., palustrine wetlands).
- The name of the specific ILF Program project from which credits are being debited.
- Date fees were received from the permittee.
- The acreage, functional loss, and ecological classification of the impact (if stated in the USACE permit provided to the Sponsor by permittee).

Each credit transaction notification letter will be archived by the Sponsor and posted online (www.NWFWMDwetlands.com or any successor website). The USACE will ensure that all credit transactions are reflected within the USACE Regulatory In-lieu fee and Bank Information Tracking System (RIBITS—ribits.usace.army.mil).

7.3. Annual Program Report

The Sponsor must submit an annual program report to the USACE, which must be made available to the public upon request. The annual program report must be submitted no later than March 31st of the year following the reporting year, or the following business day if that date falls on a federal/state holiday or weekend. The annual report must include the information outlined below.

Program account (financial) reporting:

- All income received and interest earned.
- A list of all permits for which NWFWMD ILF Program funds were accepted by service area including
  - The USACE permit number (also the state permit number, if applicable).
  - The watershed in which the authorized impacts are located.
  - The watershed in which the mitigation is located.
  - The acreage (if stated in permit) and functional loss (if stated in permit) of the authorized impacts.
  - The number of required compensatory mitigation credits (as stated in USACE and/or state permit).
  - The amount paid to the NWFWMD ILF Program for the purchased mitigation credits.
  - The date the Sponsor received funds from the permittee.
- A description of NWFWMD ILF Program expenditures/disbursements from the mitigation account (e.g., land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, administration) for the program and by service area.

Credit reporting:

- The balance of released credits (and advance credits, if any) at the end of the reporting period for the NWFWMD ILF Program as a whole, and by specific NWFWMD ILF Program project.
- The permitted impacts for each resource type if stated in the USACE permits (e.g., palustrine, palustrine forested, estuarine).
- All additions and subtractions of credits (i.e., credit releases and debits).
- Other changes in credit availability (e.g., suspension of credit sales, development of new credits at existing or new mitigation projects).

7.4. Financial Assurances and Long-term Management Funding Report

The Sponsor must also submit an annual report on financial assurances and long-term management funding to the USACE.

The financial assurances and long-term management funding report must include:

- Beginning and ending balances of the individual project accounts (may be contained within one mitigation fund and individually specified in a spreadsheet) providing funds for financial assurance and long-term management.
- Deposits into and any withdrawals from the individual project accounts providing funds for financial assurance and long-term management (may be contained within one mitigation fund with individual project accounting specified within a spreadsheet).

8. Advance Credits

No advance credits will be associated with the seven existing Umbrella Plan mitigation projects[5], in their current form, being brought into the NWFWMD ILF Program. However, the USACE agrees that 195.98 unused credits, previously released by the USACE under the Umbrella Plan, will be brought into the NWFWMD ILF Program and will be available for immediate use.

Although the Sponsor does not anticipate the use of advance credits as a mitigation option, this Instrument does not, per se, preclude advance credits for new mitigation projects developed in the future, or for substantial expansion of existing mitigation projects. In such cases, the USACE may allow, on a project by project basis, advance credits. If advance credits are allowed by the USACE for new or substantially expanded projects, the initial allocation of advance credits will be specified, a credit release schedule for the fulfillment of advance credits included, and an explanation of the basis for the allocation and fee schedule provided.

9. Method for Determining Project Specific Credits and Fees

9.1. Project Specific Credits

Section 373.414(18), Florida Statutes directed FDEP and water management districts, in cooperation with local governments and the relevant federal agencies, to develop a state-wide method to determine the amount of mitigation required for regulatory permits. The Uniform Mitigation Assessment Method (UMAM) rule (Chapter 62-345, F.A.C.) went into effect on February 2, 2004. UMAM is now the sole means for all state entities (FDEP, Water Management Districts, local governments and other governmental entities) to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to determine mitigation bank credits awarded and debited. Because of this, all project specific credits are determined by UMAM, with the exception of the Ward Creek West Mitigation Area in which credits were previously approved by the USACE using the Wetland Rapid Assessment Procedure (WRAP). At the time credits were assessed and approved for the Ward Creek West site (under the Umbrella Plan) the USACE did not accept UMAM assessments.

Credit release schedules for each existing NWFWMD ILF Program mitigation project are included in individual project plans attached to this Instrument.

If new projects are developed, credit release schedules will be developed in consultation with the USACE and IRT.

9.2. Project Specific Fees

The price charged permittees by the NWFWMD ILF Program for compensatory mitigation credits is determined by the Sponsor. Compensatory mitigation credit fees will be sufficient to

[5] Dutex, Yellow River Ranch, Lafayette Creek, Tates Hell (Pine Log Creek and Whiskey George/Sumatra Units), and Shuler.

cover all costs associated with implementation of compensatory in-lieu fee mitigation projects, including long-term maintenance and monitoring. The cost-per-credit for each in-lieu fee project shall be calculated based on a break-even analysis of the expected costs associated with the restoration, establishment, enhancement, and/or preservation of aquatic resources. These calculations are provided in the NWFWMD In-Lieu Fee Cost Accounting table in Appendix B which will be updated annually and submitted to the Corps. The NWFWMD ILF Program costs included in this analysis are those related to land acquisition, project planning and design, construction, plant materials, labor, legal fees, monitoring, remediation or adaptive management activities, program administration, contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses, the resources necessary for the long-term management and protection of the in-lieu fee project, and financial assurances that are expected to be necessary to ensure successful completion of in-lieu fee projects. The projected ILF credit price for each in-lieu fee project represents the permittees cost to compensate for impacts to waters of the United States as authorized by a Department of the Army permit. The mitigation fee charged to permittees by the Sponsor for credits shall be reviewed by the Sponsor, the USACE, and the IRT on at least an annual basis and adjusted as necessary to address any changes in NWFWMD ILF Program costs as defined above.

The compensatory mitigation credit fees charged by NWFWMD ILF Program for FDOT are governed by Chapter 373.4137, Florida Statutes. If compensatory mitigation is provided to other entities, public or private, as authorized by a Department of the Army permit, the NWFWMD ILF Program shall charge the cost-per-credit for the in-lieu fee project compensating for the authorized impacts as defined above and will be reviewed annually.

10. In-Lieu Fee Program Account

This section outlines the Sponsor's system for tracking credit production, credit transactions, and financial transactions between the Sponsor and permittees[6]. It includes the establishment and operation of the In-lieu fee Program account[7]. Financial and credit ledgers will be posted at www.NWFWMDwetlands.com (or any successor website). The USACE is responsible for maintaining credit ledgers at the Regulatory In lieu fee and Bank Information Tracking System (RIBITS). The Sponsor shall notify USACE of any missing or incorrect credit data in RIBITS.

10.1. Accounting Procedures

The Sponsor shall establish and maintain a system for tracking the production of credits, credit transactions, and financial transactions between the Sponsor and permittees. Credit production, credit transactions, and financial transactions must be tracked on a programmatic basis and separately for each individual project.

[6] 33 C.F.R. § 332.8(d)(6)(ii)(B).
[7] 33 C.F.R. § 332.8(d)(2)(viii)(B).

10.2. Establishment of Program Account

10.2.1. Financial Ledger

The Sponsor shall maintain a ledger and financial management system that tracks all program disbursements/expenditures and the nature of the disbursement, i.e., costs of land acquisition, planning, construction, monitoring, maintenance, contingencies, adaptive management, and administration. The Sponsor also shall track funds obligated or committed, but not yet disbursed. The ledger will be subject to audit by the USACE at their discretion. The Sponsor shall provide the USACE with a summary accounting statement annually, which includes:

- Compensatory mitigation fees collected.
- New or expanded mitigation projects, if any, approved.
- Funds obligated, if any.
- Amount of mitigation funds expended.
- Mitigation fund interest earned.
- Mitigation fund balance.

10.2.2. Mitigation Ledger

The Sponsor shall also maintain a ledger to document mitigation credits and debits. The ledger shall record:

- the DA permit numbers for which the project is being used to offset compensatory mitigation requirements,
- the watershed in which the project is located,
- the aquatic resource type(s) represented in the NWFWMD ILF Program,
- the development status of each mitigation project,
- the amount of compensatory mitigation required or provided for each DA permit,
- the number of credits produced by each mitigation project,
- the number of potential credits approved by the USACE,
- the number of credits released by the USACE,
- the number of advance credits (if any—none are anticipated) approved by the USACE,
- the debit/credit balance for each mitigation project,
- the amount paid to the NWFWMD ILF Program for each of the authorized impacts,
- the date the funds were received from the permittee.

10.3. Operation of Program Account

The Sponsor shall track the fees and all other income received, the source of the income, and any interest earned by the NWFWMD ILF Program Account. The Sponsor will also track funds accepted from permittees separately from those accepted for other regulatory purposes (i.e. fees arising out of an enforcement action, such as supplemental environmental projects)[8]. The account will be held at a financial institution that is a member of the Federal Deposit Insurance

[8] 33 C.F.R. § 323.3(g); 40 C.F.R. § 230.93(g).

Corporation. Any and all interest accruing from the account will be used to provide compensatory mitigation for impacts to aquatic resources[9].

If the USACE determines that the Sponsor is failing to provide compensatory mitigation, the agency may direct the Sponsor to fund alternative compensatory mitigation projects[10]. The USACE may audit the program account records at any time.

Funds paid into the NWFWMD ILF Program Account may only be used for the direct mitigation of aquatic resources. This may include the selection, design, acquisition (i.e. appraisals, surveys, title insurance, etc.), implementation, and management of in-lieu fee compensatory mitigation projects[11]. This may also include fees associated with securing a permit for conducting mitigation activities, activities related to the restoration, enhancement, creation, and/ or preservation of aquatic resources, maintenance and monitoring of mitigation sites, and the purchase of credits from mitigation banks. Administrative costs are anticipated to be generally less than 7%.

11. Long-term Protection and Management

The Sponsor is responsible for ensuring the perpetual management of all mitigation lands that comprise the NWFWMD ILF Program. Mitigation lands owned by the Sponsor are protected in perpetuity via public ownership, conservation easement or other perpetual conservation agreement, and/or agency land management policy.

Mitigation lands owned by the Sponsor will be managed in perpetuity for ecological integrity in accordance with the long term management plan included within the mitigation plan for the property[12]. If mitigation lands are not owned and managed directly by the Sponsor, these areas will be protected through agreements, appropriate real estate instruments (e.g., perpetual conservation easements), or other mechanisms as approved by the USACE. The goal of long term management is to achieve successful mitigation as planned for under the mitigation agreement.

For compensatory mitigation projects on public lands, where integrated natural resources management plans are used to provide long-term protection, and changes in statute, regulation, or agency needs or mission results in an incompatible use on public lands originally set aside for compensatory mitigation, the Sponsor or its successors and assigns is responsible for providing alternative compensatory mitigation that is acceptable to the district engineer for any loss in functions resulting from the incompatible use.

[9] 33 C.F.R. § 332.8(i)(1).
[10] 33 C.F.R. § 332.8(n)(4); 33 C.F.R. § 332.8(i)(2).
[11] 33 C.F.R. § 332.8(i)(1).
[12] 33 C.F.R. § 332.8(d)(2)(v).

11.1. Transfer of Long-Term Management Responsibilities

While the Sponsor typically maintains perpetual management responsibilities on mitigation properties, in rare instances a transfer of responsibilities to a suitable land steward ship entity has been utilized. With approval from the DE, the Sponsor may transfer long-term management responsibilities to a suitable land stewardship entity such as a public agency, non-governmental organization, or private land manager[13]. Once long-term management has been transferred to a land stewardship entity, the receiving party will assume responsibility for meeting any and all long-term management responsibilities outlined in the project-specific mitigation plan. Until such time as long-term management responsibilities are transferred to another party, the Sponsor will be considered responsible for long-term management of the mitigation project.

11.2. Financial Arrangements for Transfer of Long-Term Management

If the Sponsor chooses to transfer the responsibilities for long-term management to a long-term steward, the Sponsor must seek USACE approval. In some instances, a financial endowment from the Sponsor to the long-term steward may be required[14]. The USACE must be given the option of being a signatory to any contract or other arrangement assigning the rights and delegating the long-term management responsibilities to the steward.

[13] 33 C.F.R. § 332.8(u)(2); 33 C.F.R. § 332.7(d)(1).
[14] 33 C.F.R. § 332.8(u)(3).

12. Signature Page

US Army Corps of Engineers

3/18/15
Date

Chief, Regulatory Division, Jacksonville District

Northwest Florida Water Management District (Sponsor)

1/29/15
Date

Brett J. Cyphers
Executive Director

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Appendix A. Compensation Planning Framework

The compensation planning framework[15] is a detailed process used to select, secure, and implement aquatic resource restoration, establishment, enhancement, and/or preservation activities, and will improve Sponsor accountability and performance of compensatory mitigation projects. All specific NWFWMD ILF Program projects selected by the Sponsor and approved by the USACE will be supported by and consistent with the approved framework. Modifications to the framework will be approved by the USACE, after consultation with the IRT[16].

A.1. Service Area

All five of the State of Florida's water management district boundaries were determined primarily by watersheds and related natural, hydrologic and geographic features. The geographic service area for the NWFWMD ILF Program is defined by the boundary of the NWFWMD[17] (i.e., Sponsor), which covers 11,305 square miles and seven watershed areas. The Sponsor approaches wetland mitigation from a regional watershed perspective, using major river basins delineations according to the hydrologic unit classification established by the U.S. Geological Survey and described by Seaber et al.[18] Compensatory mitigation for permitted impacts will be located within the same riverine watershed, with preference for the proximal eight digit HUC basin, in which the impacts occurs (Figure 1) unless the USACE, in consultation with the IRT, has determined out-of-watershed mitigation is more appropriate or necessary.

Potential mitigation projects are identified within each watershed through an evaluation of specific wetland and watershed characteristics. The evaluation of mitigation projects includes consideration of 1) proximity to proposed wetland impacts, 2) replacement of wetland type, 3) potential benefit to the watershed, 4) position in landscape relative to Sponsor and other private, state or federally protected lands, 5) hydrologic connectivity, 6) ecological diversity and functioning, 7) restoration potential, 8) natural community type, 9) potential for wetland creation, and 10) potential need as an identified watershed priority.

A.2. Aquatic Resource Goals and Objectives

The goal of the NWFWMD ILF Program Instrument is to accurately outline Sponsor planning and decision methodology in a transparent fashion[19]. This includes:

- Reduce cumulative wetland losses within identified watersheds as well as throughout the region.

[15] 33 C.F.R. § 332.8(d)(2)(viii)(A).
[16] 33 C.F.R. § 332.8(c)(1).
[17] FS 373.069.
[18] Seaber, P.R., F. P Kapinos, and G. L. Knapp, 1987. Hydrologic Unit Maps. U.S. Geological Survey Water-Supply Paper 2294, United States Department of the Interior, Geological Survey, Denver, Colorado.
[19] 33 C.F.R. § 332.8(c)(2)(v).

- Provide regionally significant compensatory mitigation that will ensure no net loss of wetland functions in advance of impacts.
- Satisfy the compensatory wetland mitigation requirements for authorized development impacts on a watershed basis.
- Provide effective protection of aquatic resources by the preservation, enhancement, and restoration of wetland and watershed functions on a regional and watershed scale with a focus on regional and watershed-based priorities.
- Be consistent and coordinated with state and local wetland mitigation programs to the extent practical.
- Enhance ecological health and productivity, encompassing fish and wildlife habitat, primary productivity, and support for freshwater, estuarine, and marine fish; migratory birds; and other wildlife.
- Support regional plant and animal biodiversity.
- Protect and improve water quality and quantity, including soil stability, runoff filtration, nutrient cycling, pollutant uptake and transformation, groundwater recharge, and floodwater storage.
- Promote aesthetic resources and indirect quality of life benefits.

A.3. Status of Aquatic Resources—Basin Summaries [20]

A.3.1. St. Marks River and Apalachee Bay

The St. Marks River watershed extends from the red hills of southern Georgia to the Gulf of Mexico, covering approximately 1,170 square miles. Approximately 91 percent of the watershed lies within Florida, with the remainder in Georgia. Surface water features include the St. Marks River, its major tributary the Wakulla River, and the headwaters of the Wakulla River, Wakulla Springs. Other major surface water features within the watershed are lakes Miccosukee, Lafayette, and Munson, and the coastal receiving waters of Apalachee Bay.

The watershed encompasses two main physiographic regions: the Tallahassee Hills subdivision of the Northern Highlands in the north and the coastal lowlands in the southern portion of the watershed. These regions are physically divided by an escarpment designated as the Cody Scarp. North of the scarp, water generally drains to closed basin lakes. These lakes are karst features with connections to underlying aquifers where the confining layer has been breached or is more permeable. South of the scarp, the coastal plain is characterized by numerous karst features, including major Floridan Aquifer springs and numerous sinkholes and sinking streams, where surface and ground waters readily interact. In this region in particular, activities on the land surface very quickly affect ground and surface water quality. These conditions present distinct management challenges that must be considered in land use planning, resource regulation, and the treatment and management of both stormwater and wastewater.

[20] 33 C.F.R. § 332.8(c)(ii) – (iv).

The city of Tallahassee and its associated urban area is the primary center of population and development within the watershed (Figure 2). Much of the city drains southwest to Lake Munson and east to Lake Lafayette. Lake Munson is a cypress-lined impoundment of Munson Slough that drains to Ames Sink. Ground water tracing has confirmed a hydrologic connection between Ames Sink and Wakulla Springs. Lake Lafayette is a highly altered closed basin with ground water drainage within the St. Marks River watershed.

Apalachee Bay supports one of the most extensive continuous seagrass systems in the United States. Much of this system is encompassed within the Big Bend Seagrasses Aquatic Preserve. Nearshore waters are also substantially protected by the St. Marks National Wildlife Refuge. These estuarine habitats support wintering migratory waterfowl and many marine organisms, including federally endangered Kemp's Ridley sea turtles and commercially and recreationally important fish and shellfish.

Water resources within the St. Marks River and Apalachee Bay watershed have proven vulnerable to water quality degradation from both point and nonpoint source (NPS) pollution. Given the karst geology in the southern portion of the watershed, along with high runoff coefficients in its northern extent, conventional wastewater and stormwater treatment measures can be inadequate for protecting water resources. Thus, enhanced treatment systems, and protection of functional wetlands and floodplains and protective buffers along riparian areas, karst features, and wetlands are of high importance to the long-term sustainability of watershed resources.

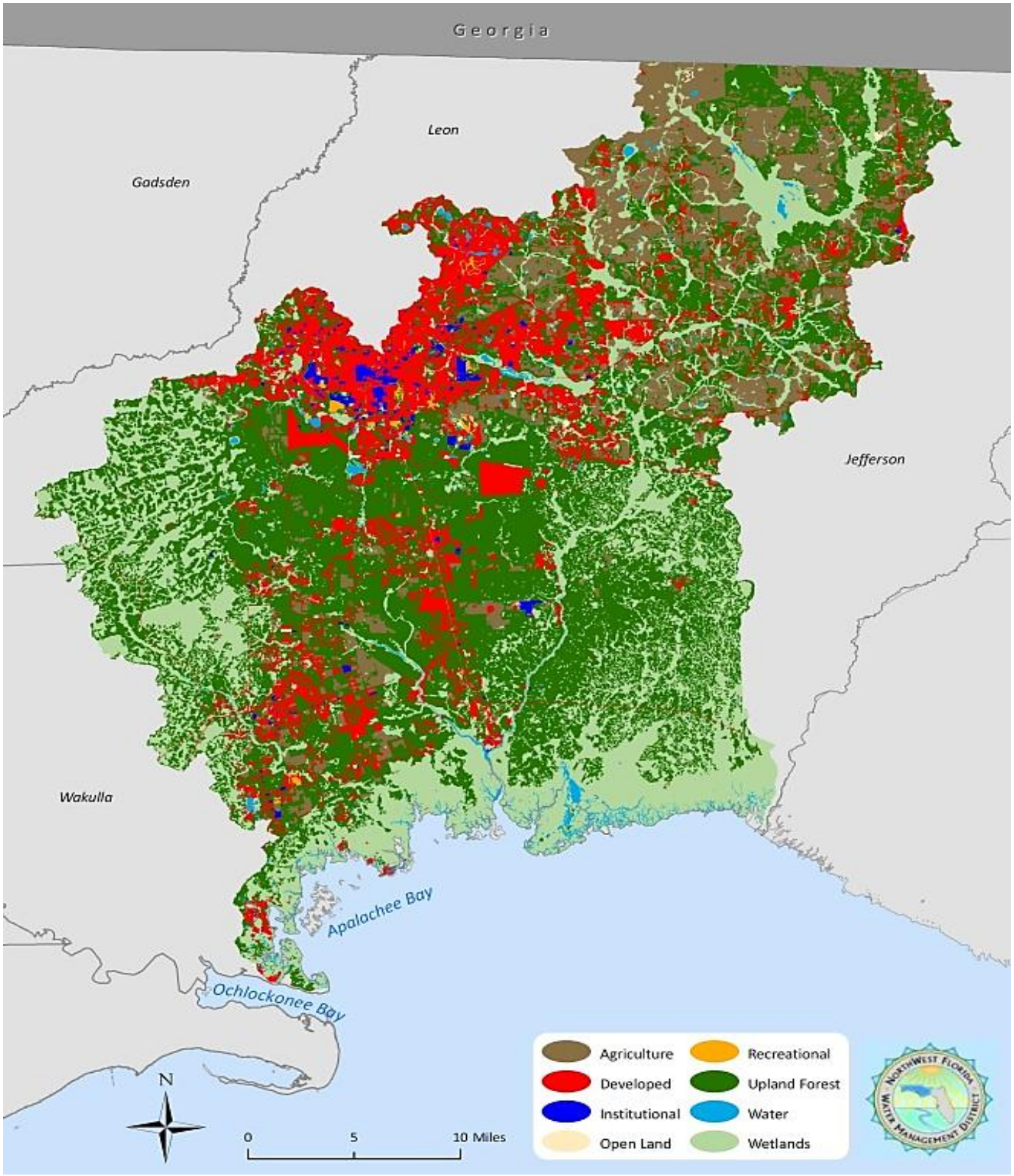

Figure 2. St. Marks River Watershed Land Use.

A.3.2. Ochlockonee River and Bay

The Ochlockonee River and Bay watershed extends from southern Georgia, southward through Florida's Big Bend, to the Gulf of Mexico. The watershed covers approximately 2,476 square

miles. Approximately 53 percent of the watershed is in Florida, with the remainder in Georgia. Major surface water features in Florida include the main stem of the Ochlockonee River and its impounded reach at Lake Talquin and major tributaries Little River, Telogia Creek, Sopchoppy River, and Crooked River. Other major surface water features within the watershed are lakes Jackson, Iamonia, and the coastal receiving waters of Ochlockonee Bay. Among many other listed species, there are several federally endangered mussel species endemic to this system.

The Ochlockonee River and most of its tributaries are alluvial. The river's length is approximately 216 miles. Among the river's major tributaries, Telogia Creek in particular has been highly altered through construction of numerous impoundments and water withdrawals for agricultural irrigation. The Sopchoppy River drains about 102 square miles of flat, sandy terrain within the Apalachicola National Forest prior to discharging into Ochlockonee Bay.

Ochlockonee Bay covers approximately nine square miles bordering southern Wakulla and Franklin counties. The bay's two primary tributaries are the Ochlockonee River and the Sopchoppy River. Prominent habitats in and associated with the bay include extensive tidal marshes, tidal creeks, and tidal flats. Bottom sediments are predominantly mud, although there are sand and shell bottoms in places.

The nature of the landscape is primarily agricultural land use in the northern clay hills, with distinct, relatively small urban centers and a portion of the larger city of Tallahassee (Figure 3). The coastal plain in the south is used for silviculture but remains largely as forested conservation land. Urban, industrial, and agricultural uses have caused water pollution concerns and ecological disturbance in the watershed's streams and lakes, and there are historic water quality issues upstream in Georgia. Clay mining in particular continues to adversely affect water quality and the physical condition of streams and wetlands within the watershed. Additionally surface runoff and NPS pollution from urban and developing areas and agricultural land uses present water quality challenges throughout much of the watershed. Because of these threats to wetlands and wetland function- protection, enhancement and restoration of functional wetlands, floodplains, and protective buffers along riparian areas and wetlands are of high importance to the long-term sustainability of watershed resources.

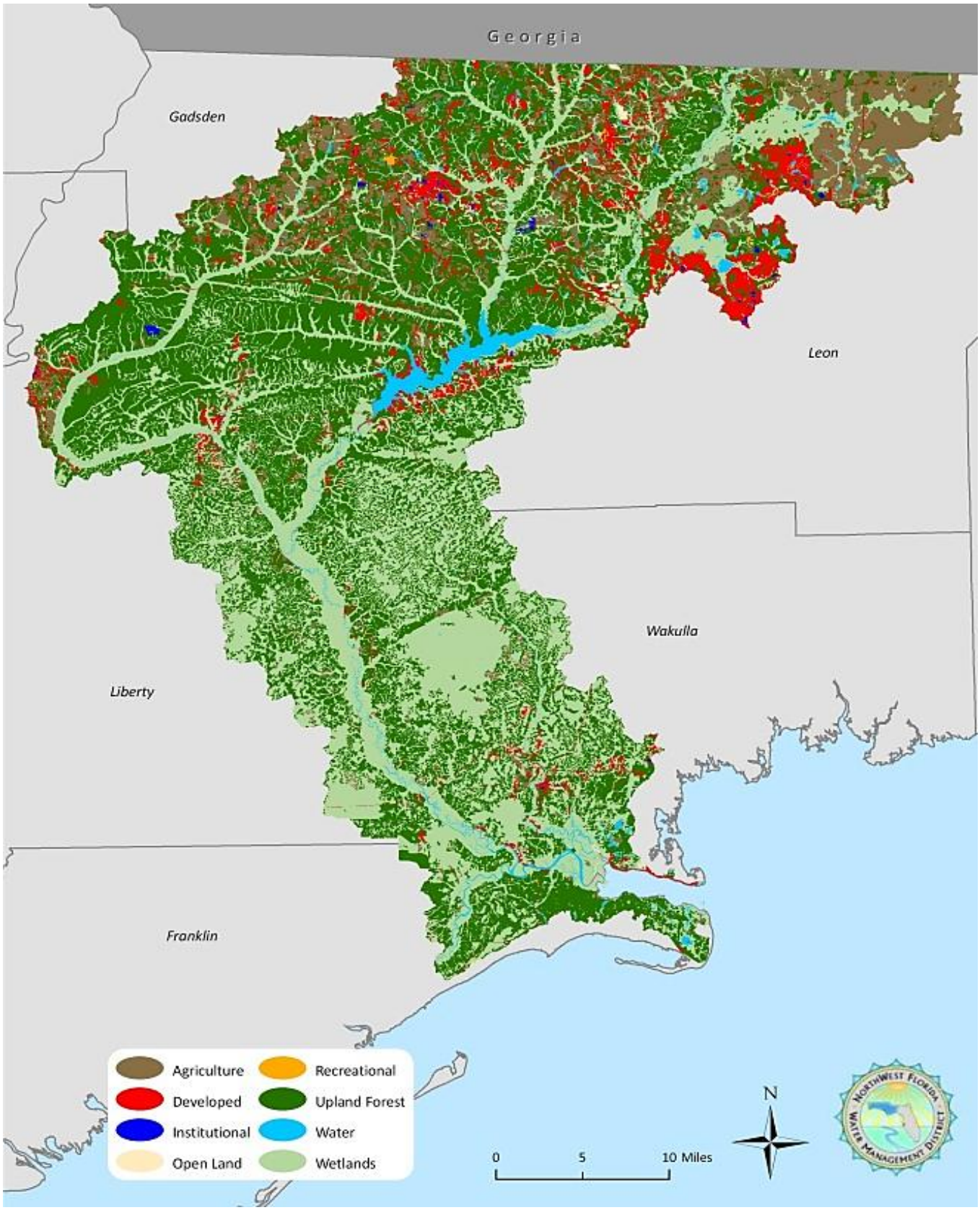

Figure 3. Ochlockonee River and Bay Watershed Land Use.

A.3.3. Apalachicola River and Bay

The Apalachicola River and Bay watershed is the southern extent of the Apalachicola, Chattahoochee, and Flint (ACF) rivers basin. The basin drains 21,794 square miles within Alabama, Georgia, and Florida, with approximately 15% in Florida. The Apalachicola Bay estuary covers an area of about 212 square miles and is bounded by four barrier islands: St. Vincent Island, St. George Island, Cape St. George Island, and Dog Island.

The Apalachicola River is the largest river by flow volume in Florida. It is also the fifth largest river entering the Gulf of Mexico, and the 21st largest in the nation. The Apalachicola River and Bay system is recognized as being among the country's most diverse, productive, and economically important natural systems. The national significance of this ecosystem for biodiversity, including of amphibians, reptiles, mammals, fish, and plants, has been well documented. One notable biological feature of this watershed is the occurrence of the federally endangered Reticulated Flatwoods Salamander, which is found only in the western panhandle of Florida and extreme southwest Georgia, and relies on quickly disappearing ephemeral ponds for breeding habitat. The river also includes some of the most extensive undeveloped and intact bottomland hardwood river floodplains in the nation. The Chipola River basin, with a number of Floridan Aquifer springs and a karst recharge area in its northern extent, is the major tributary of the Apalachicola River within Florida.

Apalachicola Bay supports major tidal marshes, seagrasses, and some of the largest oyster beds in the state. In addition to the Apalachicola River, other bay tributaries include the New and Carrabelle rivers. The bay has been recognized as an exceptionally important nursery area for the Gulf of Mexico. It is commonly accepted that it provides approximately 90% of Florida's oyster harvest and 10% of the nation's oyster harvest, while also maintaining the state's third largest shrimp harvest.

While the Apalachicola River and Bay watershed continues to support outstanding resources, it also continues to face a number of significant threats. Upstream, out of state water withdrawals and flow manipulation is significant and has adversely impacted riverine and estuarine habitats and resources. Additionally, historic channel conversion and maintenance by the USACE has physically disrupted riverine and floodplain functions, water quality, and wetland floodplain species. Other water resource issues include urban stormwater runoff and other nonpoint sources of pollution, sedimentation, invasive exotic species, domestic and industrial discharges, and habitat loss and degradation.

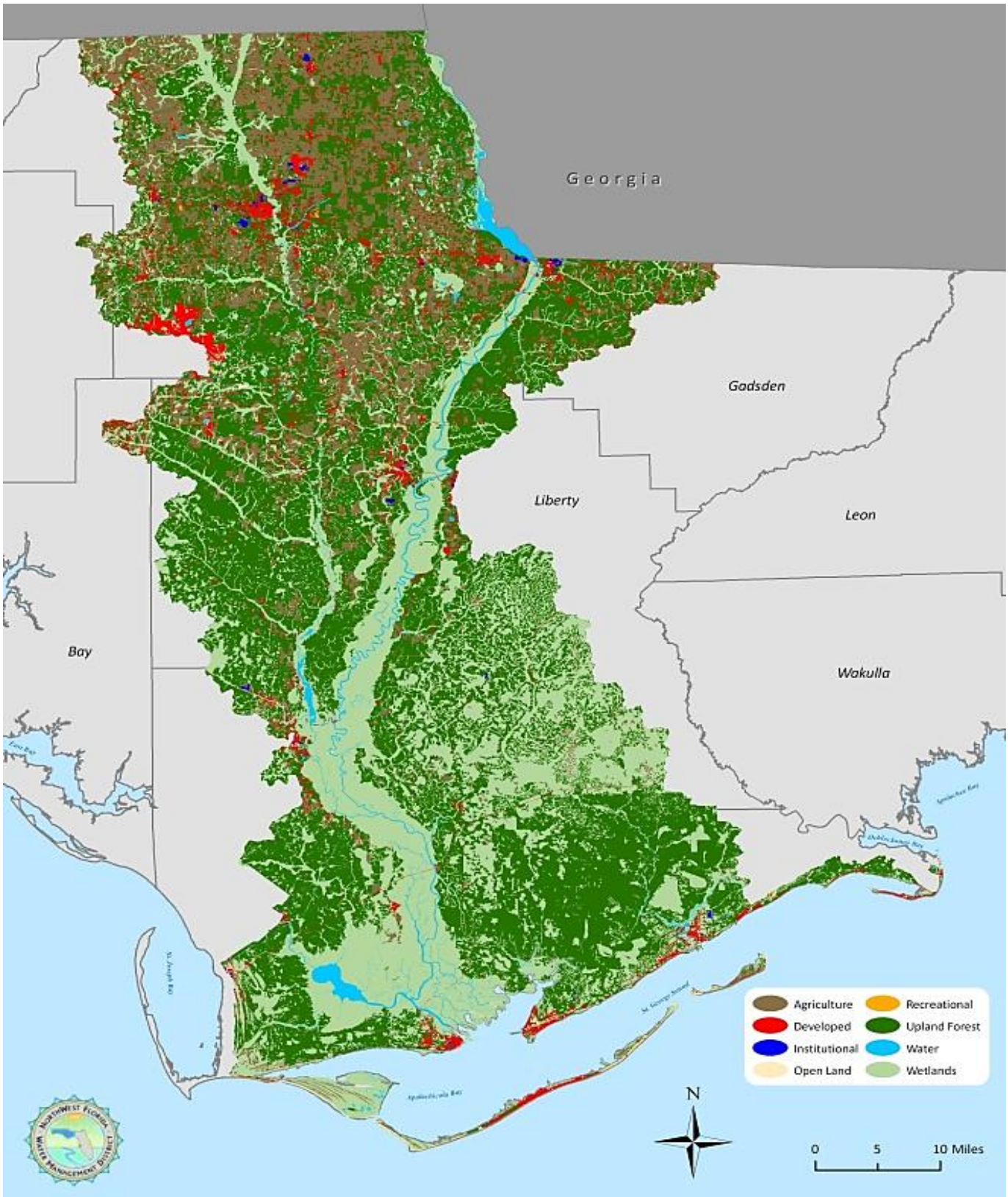

Figure 4. Apalachicola River and Bay Watershed Land Use.

A.3.4. St. Andrew Bay

The St. Andrew Bay watershed is the only major estuarine drainage basin entirely within the Florida Panhandle. This watershed is defined as incorporating the interconnected St. Andrew, West, East, and North bays; St. Joseph Bay; and Deer Point Lake Reservoir, as well as the respective surface water basins of each of these waterbodies. The overall watershed covers approximately 1,171 square miles in six counties. The major tributary streams within the watershed include Econfina, Burnt Mill, Crooked, Sandy, Bear, and Wetappo creeks. Additionally, the north-central portion of the watershed encompasses the Sand Hill Lakes, a regionally unique region of karst lakes, noteworthy for their rare plant community associations, public use importance, and critical ground water recharge functions.

Econfina Creek and Deer Point Lake Reservoir are Class I waters. The reservoir serves as the primary public water supply for Bay County. St. Andrew Bay and adjacent waters, as well as St. Joseph Bay, include some of the largest seagrass beds in northwest Florida. Seagrass communities are important to regional biodiversity but have proven vulnerable to water quality degradation in other areas. The estuary also includes some major tidal marshes, particularly fringing and at stream discharges into numerous bayous and within the Breakfast Point peninsula.

Significant alterations and impacts have been incurred from urban development and sprawl within and adjacent to the Panama City metropolitan area (Figure 6). The impacts have included water quality degradation from runoff and NPS pollution, point source pollution, and substantial wetland losses and fragmentation. Additionally, West Bay has suffered seagrass losses and other impacts from aquaculture operations (discontinued) and wastewater discharges. Notable biological features of this system include the federally endangered St. Andrews beach mouse and the federally endangered Choctawhatchee beach mouse, which have both been negatively affected by coastal urban development and sprawl.

Substantial land use changes are planned or ongoing for the watershed. A major new airport has been constructed north of West Bay and between Burnt Mill and Crooked creeks. Adjacent commercial and industrial areas and residential communities are planned to the west and south of West Bay. Additionally, large developments have been proposed within and adjacent to Panama City, Lynn Haven, and Callaway. Further direct and secondary development impacts can be anticipated from roadway widenings and major new transportation facilities planned between the airport vicinity and Walton County (West Bay Parkway), as well as between Callaway/Panama City and southern Gulf County (Gulf Coast Parkway).

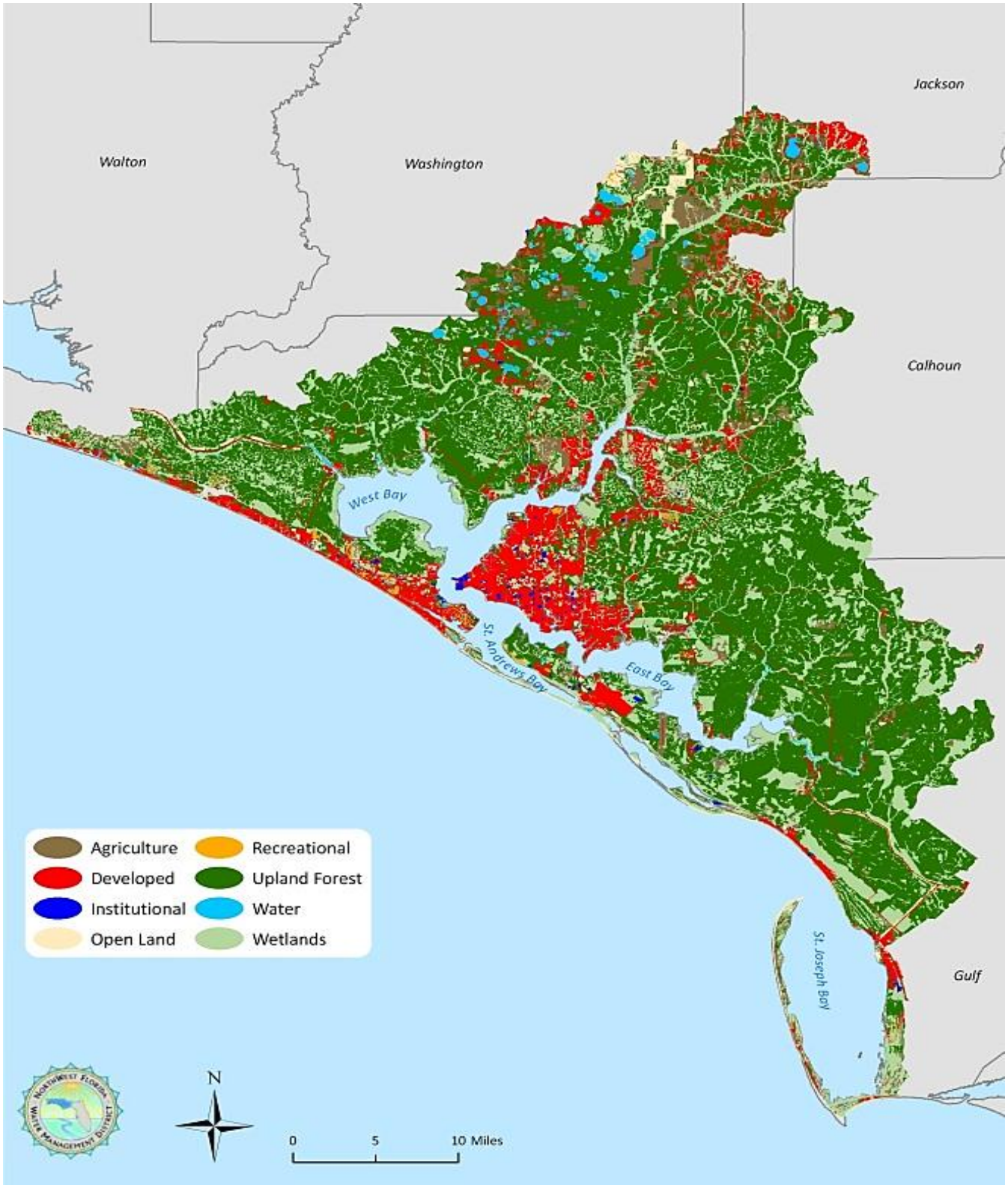

Figure 5. St. Andrew Bay Watershed Land Use.

A.3.5. Choctawhatchee River and Bay

The Choctawhatchee River and Bay watershed covers approximately 5,347 square miles. About 42 percent of this is within Florida, and the remainder is in Alabama. Major tributaries of the river include the Pea and Little Choctawhatchee rivers in Alabama, as well as Holmes, Wrights, Bruce, and Pine Log creeks in Florida. Direct tributaries of Choctawhatchee Bay include Alaqua, Rocky, Black, and Turkey creeks. The watershed also includes a portion of the Sand Hill Lakes in Washington County, including a recharge area for Floridan Aquifer springs discharging into Holmes Creek. The bay has one direct opening to the Gulf of Mexico at East Pass, adjacent to the city of Destin, and joins with Santa Rosa Sound to the west and the Intracoastal Waterway to the east.

The Choctawhatchee River is generally alluvial in nature. Its watershed also includes major Floridan Aquifer springs, substantially spring-fed tributaries, and major floodplain forests. The river includes designated critical habitat for the federally threatened Gulf sturgeon and for freshwater mussels, and Holmes Creek has been recognized for its diversity of fish and freshwater mollusks. Choctawhatchee Bay supports seagrass beds, especially in its western extent, oysters, and tidal marshes, as well as important habitat for the sturgeon and other fish and shellfish species. The largest estuarine marshes are at the Live Oak Point peninsula and at the mouth of the river. The river and bay watershed also includes numerous steephead streams, which have been recognized as being unique to northwest Florida and for their rich faunal and plant diversity.

Substantial portions of the river floodplain in particular are protected through District ownership, and a large part of the watershed consists of military lands – some of which are managed for resource protection purposes. Other important conservation lands include The Nature Conservancy's Choctawhatchee Delta Preserve, the Point Washington State Forest, several state parks, and the Nokuse Plantation. Improved stormwater and wastewater treatment have also helped to protect and improve surface water quality.

Ongoing challenges include urban stormwater runoff and other nonpoint sources of pollution, widespread sedimentation in rural areas, domestic and industrial wastewater discharges, and habitat loss and degradation. Coastal development in southern Walton County and other coastal areas has significantly impacted wetland and coastal upland habitats. The practice of steering mitigation toward inexpensive inland areas has tended to diminish mitigation effectiveness; in areas such as these the ability to tailor in-lieu fee mitigation projects can be very beneficial for aquatic resources. In other areas, fragmentation from roadway development and lack of prescribed fire are of concern regarding aquatic resource values. Cumulatively, these threaten the quality of the river and bay system and diminish watershed benefits.

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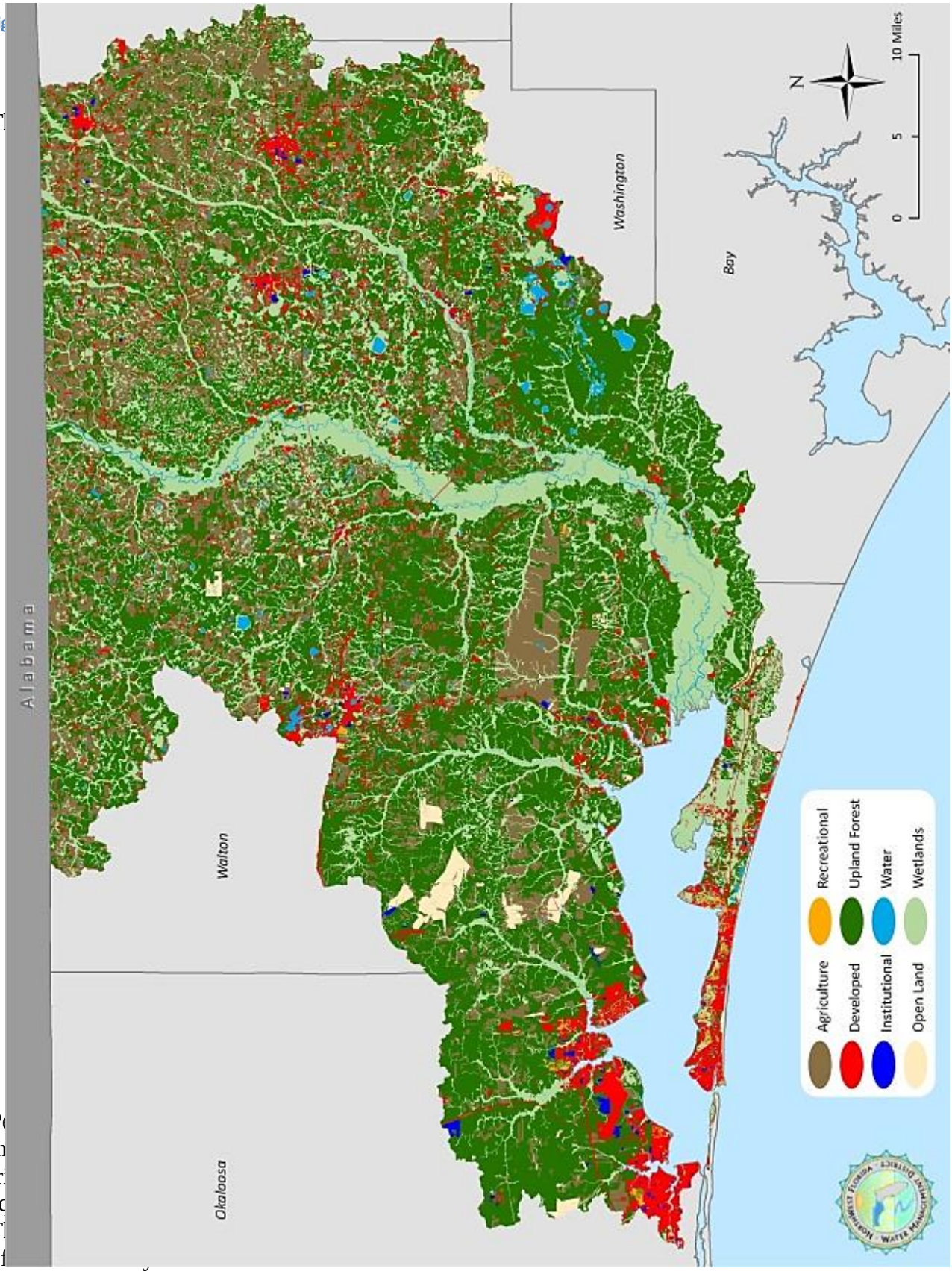

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Critical habitat for the federally threatened Gulf sturgeon has been designated in the Escambia, Blackwater, and Yellow rivers. Significant seagrass beds are within Santa Rosa Sound and Big Lagoon. Major portions of the Escambia River floodplain, have been protected through District ownership, as have lands on the Garcon Point Peninsula and along the Yellow and Blackwater rivers. Other significant conservation lands in the watershed include Escambia County's Jones Swamp Preserve, the Conecuh National Forest (Alabama), the Blackwater River State Forest, and several state parks. Significant restoration and water quality improvement efforts have improved habitat quality and conditions in several areas, including Bayou Chico and estuarine waters off of Pensacola.

Current challenges include urban stormwater runoff and other nonpoint sources of pollution, widespread sedimentation across the watershed, domestic and industrial wastewater discharges, and habitat loss and degradation. Examples include widespread recent development and urban sprawl, with associated NPS pollution and habitat loss and fragmentation, as well as the potential for contaminants on scattered military lands. This watershed also has the greatest concentration of proposed and active roadway development projects, as well as current and historic industrial discharges that have left residual pollutants in the sediment. Recently, Pensacola Bay has been impacted by oil from the Deepwater Horizon oil spill.

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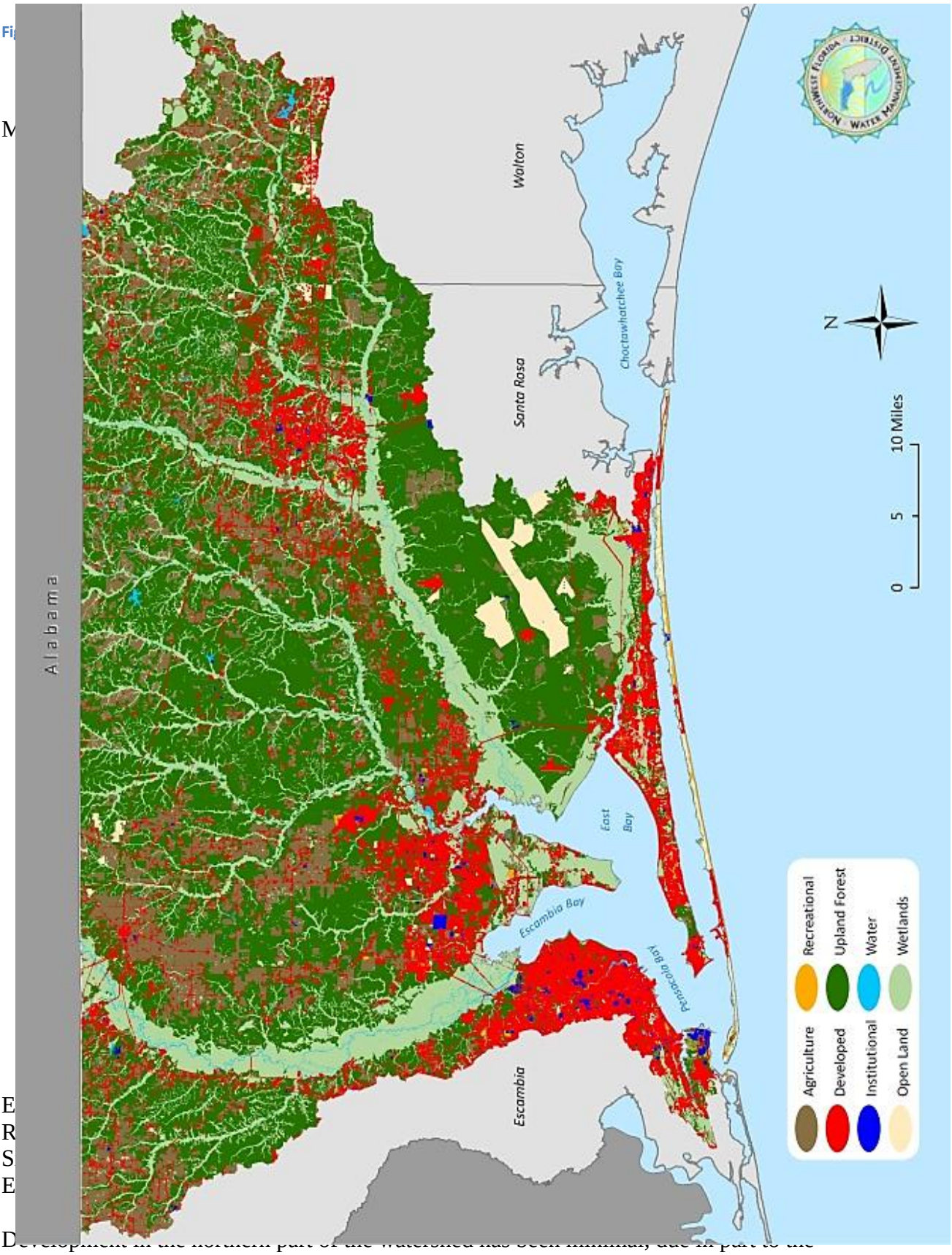

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predominance of forested and emergent wetlands and the presence of conservation lands along

the Perdido River. In contrast, a much higher density development is within the Pensacola urban area, with substantial shoreline development found along lower Perdido Bay – particularly south of the U.S. Highway 98 bridge. It is apparent, however, that the watershed receives considerable NPS pollution from agricultural and urban areas within Alabama, as well as urban development in and around Pensacola and on Perdido Key. Perdido Bay and Elevenmile Creek have experienced long-term water quality impairment from paper mill discharge. Other ongoing water quality issues relate to erosion and deposition of sediment from unpaved roads. Additionally, Perdido Bay and nearby waters have recently been impacted by oil from the Deepwater Horizon oil spill, the long-term effects of which have yet to be fully understood.

District lands along the Perdido River and Perdido Bay help protect water quality, floodplains, and public uses. Other significant conservation lands in the watershed include the Perdido Pitcher Plant Prairie Preserve and state parks on Tarkiln Bayou, Big Lagoon, and Perdido Key. Tenmile Creek and Elevenmile Creek are both undergoing restoration projects, and additional water quality improvements have been achieved through stormwater retrofit efforts. Notable biological features in this watershed include critical habitat designations for both the federally endangered Perdido Key beach mouse and the federally endangered Piping Plover.

While this is a relatively small basin and development threats from military expansion and coastal development are still a challenge, and effective watershed management and planning can help to preserve and restore the natural resources and human benefits provided by the Perdido Bay System and limit the need for more expensive and difficult solutions in the future.

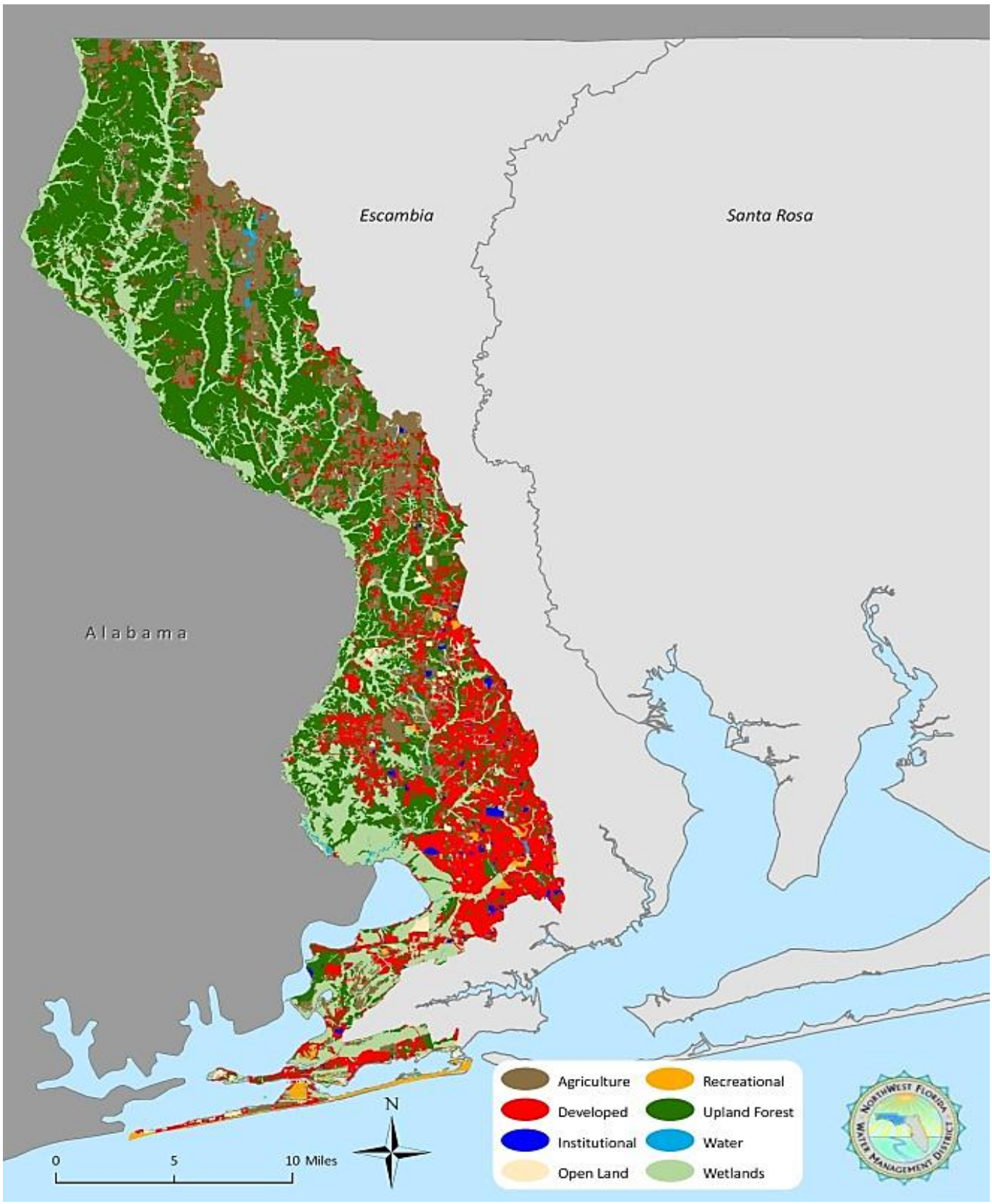

Figure 8. Perdido River and Bay Watershed Land Use.

A.4. Prioritization Strategy

Mitigation projects will be evaluated for their potential to provide appropriate compensatory mitigation for impacts to aquatic resources in accordance with the Sponsor's (NWFWMD) strategic planning process and SWIM (Surface Water Improvement and Management) plans based on sound science and adaptive management principles. The Sponsor will use targeting tools available to identify and prioritize key properties based on ecological and functional values to increase the likelihood of success of mitigation projects. These spatial layering tools (e.g., GIS) will first help evaluate key restoration and/or preservation parameters. For example, ecological and functional parameters for successful restoration include an assessment of soils, evaluation of slope, determination of sub-watershed size and shape, current and adjacent land use, existing and potential hydrology, historical alterations of the property, landscape proximity to other preserved or restored lands, and evaluation of the potential to improve habitat for threatened and endangered species[21]. For land preservation, key parameters include, but are not limited to, surrounding landscape composition, state and federal designation of important lands for preservation, a highly impacted and/or threatened landscape type, lands important for threatened, endangered, rare, and other priority aquatic species, lands important for water quality or quantity threats, and both willing landowners and landholders.

Criteria for site selection include:

A. Regional conservation: Projects will be evaluated based on their potential to support regional conservation initiatives and their compatibility with the surrounding landscape. Projects should be located where they address limiting factors in watersheds, complement adjacent land uses, meet regional conservation priorities, increase habitat diversity, and support state wildlife action plans.
B. Multiple objectives: Projects will be evaluated based on their potential to address multiple functions. Higher preference will be given to properties that provide multiple services such as water quality improvement or flood attenuation and increase the diversity of native plant communities, fish and wildlife habitat, support for rare species, or recreation or education values.
C. Address water quality issues: Projects should focus on the most degraded areas or most severe water quality issues important for maintaining or improving ecosystem functions.
D. Reduce fragmentation: Projects will be evaluated based on their potential to establish corridors and enhance the function of existing natural areas.
E. Increase resource function: Projects will be evaluated for their ability to result in successful and sustainable net gain of aquatic resource area and/or function.
F. Project costs: Projects with high aquatic resource functional gain per dollar will be given preference.

[21] 33 C.F.R. § 332.3(a)(1).

A.5. Justification of Preservation as a Mitigation Option

The Final Rule states that preservation may be used as mitigation provided that the following five criteria are met[22]:

1) The resources to be preserved provide important physical, chemical, or biological functions for the watershed;
2) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the DE must use appropriate quantitative assessment tools, where available;
3) Preservation is determined by the DE to be appropriate and practicable;
4) The resources are under threat of destruction or adverse modifications; and
5) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g. easement, title transfer to state resource agency or land trust)

Given the historic aquatic resource loss and the current aquatic resource threats and conditions, preservation is a necessary mitigation option. Both the prioritization strategy and the credit determination process implemented by the Sponsor, USACE and IRT take into account each of the above conditions and will assure that if preservation is used as a mitigation option all five criteria will be met[23].

A.6. Stakeholder Involvement

As the NWFWMD ILF Program sponsor, the NWFWMD will optimize mitigation efforts under the NWFWMD ILF Program by working closely with interested agencies, local governments, community partners or organizations, and private landowners to identify wetland mitigation opportunities and develop mitigation plans and methods for inclusion in the NWFWMD ILF Program following IRT project review and USACE approvals[24]. Methods for assessing aquatic resource functions pre- and post-project implementation will be coordinated with the IRT and involved agencies.

A.7. Long-term Protection and Management

The Sponsor is responsible for ensuring the perpetual management of mitigation lands. Sponsor mitigation lands are protected in perpetuity via public ownership, conservation easement or other perpetual conservation agreement, and/or agency land management policy.

Mitigation lands owned by the Sponsor will be managed in perpetuity for ecological integrity in accordance with the long term management plan included within the mitigation plan for the

[22] 33 C.F.R. § 332.3(h).
[23] 33 C.F.R. § 230.98(c)(2)(vii).
[24] 33 C.F.R. § 332.8(c)(2)(viii).

property[25]. If mitigation lands are not owned and managed directly by the Sponsor, these areas will be protected through agreements and appropriate real estate instruments (e.g. perpetual conservation easements or deed restrictions). The goal of long term management is to achieve successful mitigation as planned for under the mitigation agreement.

A.7.1. Transfer of Long-Term Management Responsibilities

While the Sponsor typically maintains long-term management responsibilities on mitigation properties, in rare instances, a transfer of responsibilities to a suitable land stewardship entity has been utilized. After securing approval from the DE, the Sponsor may transfer long-term management responsibilities to a suitable land stewardship entity such as a public agency, non-governmental organization, or private land manager. The transfer of long term stewardship responsibilities shall not occur until after performance standards have been achieved. Once long term management has been transferred to a land stewardship entity, said party will have responsibility for meeting any and all long-term management responsibilities outlined in the project-specific mitigation plan. Until such time as long-term management responsibilities are transferred to another party, the Sponsor will be considered responsible for long-term management of the mitigation project.

A.7.2. Financial Arrangements for Long-Term Management

If the Sponsor chooses to transfer the responsibilities for long-term management to a long-term steward, the Sponsor must seek USACE approval. In some instances, a financial endowment from the Sponsor to the long-term steward may be required. The USACE must be given the option of being a signatory to any contract or other arrangement assigning the rights and delegating the long-term management responsibilities to the steward.

A.8. Evaluation

As stated in the introduction, the watershed-based concept is a proactive process. Mitigation needs and opportunities are identified up-front and in a comprehensive manner consistent with other related watershed management plans. The Sponsor intends to evaluate the NWFWMD ILF Program as part of periodic reviews of its aquatic resource management responsibilities, strategic planning, and reporting requirements outlined above. As part of this overall evaluation, the Sponsor will examine its efforts in achieving the previously identified goals and objectives of the NWFWMD ILF Program. Working in conjunction with internal programs and external partners, as new data is collected and distributed, mitigation needs and opportunities will be reassessed and adapted. As land uses, development and water quality trends, or other ecological functions change, the goals, objectives, and individual project mitigation plans will be updated in consultation with the IRT[26].

[25] 22 C.F.R. § 332.8(d)(2)(v).
[26] 33 C.F.R. § 332.2.

Appendix B. NWFWMD ILF Cost Accounting Spreadsheet

Project Plan Attachments