



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
COCOA PERMITS OFFICE
400 HIGH POINT DRIVE, SUITE 400
COCOA, FLORIDA, 32926

Regulatory Division
North Permits Branch
Cocoa Permits Section

April 5, 2019

PUBLIC NOTICE

Reauthorization of Permit No. SAJ-2006-05877 (SP-CMM)

TO WHOM IT MAY CONCERN: The Jacksonville District of the U.S. Army Corps of Engineers (Corps) has received an application for a Department of the Army permit pursuant to Section 404 of the Clean Water Act (33 USC 1344) as described below:

APPLICANT: Mr. Eric Fischer
Henry Fischer & Sons, Inc.
PO Box 780068
Sebastian, FL 32978

WATERWAY AND LOCATION: The project would affect waters of the United States associated with the Indian River Lagoon. The project site is located on the west side of US highway 1, north of the southern extent of Indian River Drive, in Section 07, Township 31 South, Range 39 East, Sebastian, Indian River County, Florida.

Directions to the site are as follows: From Jacksonville, Take I-95 South; exist onto CR 512 and head east; turn south onto US Highway 1; the project is located north of Schumann Drive and north of the southern extent of Indian River Drive, on the west side of US Highway 1, in Sebastian, Indian River County, Florida.

APPROXIMATE CENTRAL COORDINATES: Latitude 27.79886°
Longitude -80.46174°

PROJECT PURPOSE:

Basic: Commercial Development.

Overall: To construct a commercial restaurant and nursery development with parking areas and stormwater management system in Indian River County, Florida.

EXISTING CONDITIONS: The 5.85 acre parcel is located between US Highway 1 and the Florida East Coast Railroad, in Sebastian, Florida. Approximately 3.24 acres of wetlands are found on the eastern portion of the parcel. These freshwater wetlands consist of Bay Swamp (*Persea palustris*) with Cabbage Palms (*Sabal Palmetto*), Primrose Willow (*Lugwigia spp.*), sedges, Virginia Chain Fern (*Woodwardia virginicus*), Carolina Willow (*Salix caroliniana*), and Elderberry (*Sambuccus canadensis*) the

uplands comprise 2.61 acres and are located on the western portion of the parcel. The upland areas are primarily herbaceous areas with bracken fern (*Pteridium aquilinum*), Blackberry, Lantana, and Ceaserweed. There is small upland canopy area that is dominated with Live Oak, Cabbage Palm, and Brazilian pepper.

PROPOSED WORK: This project was previously authorized by Department of the Army Permit SAJ-2006-05877, issued March 18, 2010. The permit has since expired as of March 6, 2015. In the original permit the applicant proposed to discharge clean fill material in 2.88 acres of wetlands and excavate 0.36 acres of wetlands for a commercial development.

AVOIDANCE AND MINIMIZATION INFORMATION – The applicant has provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment:

The applicant has stated that due to the size of the parcel and the location of the wetlands on the parcel avoidance and minimization to the onsite wetlands is not economically feasible.

COMPENSATORY MITIGATION – The Corps will make a determination on whether or not the previously initiated compensatory mitigation as detailed in the original permit will be sufficient of off-set the loss of waters of the U.S. for this reauthorization.

CULTURAL RESOURCES: The Corps is not aware of any known historic properties within the permit area. By copy of this public notice, the Corps is providing information for review. Our final determination relative to historic resource impacts is subject to review by and coordination with the State Historic Preservation Officer and those federally recognized tribes with concerns in Florida and the Permit Area.

ESSENTIAL FISH HABITAT (EFH): This notice initiates consultation with the National Marine Fisheries Service on EFH as required by the Magnuson-Stevens Fishery Conservation and Management Act 1996. The proposal would impact approximately 3.24 acres of wetlands that ultimately connect to the Indian River. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or federally managed fisheries in the Indian River. Our final determination relative to the project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

ENDANGERED SPECIES: Wood Stork (*Mycteria americana*) – The Corps completed an evaluation of the project based upon the U.S. Fish and Wildlife Service (FWS) South Florida Ecological Services Field Offices Programmatic Concurrence for use with the Wood Stork (May 2010). Use of the Key for Wood Stork resulted in the following sequential determination: A (Project impacts SFH at a location greater than 0.47 miles from a colony site) > B (Project impact to SFH is less than 0.5 acres) = “May Affect, Not Likely to Adversely Affect”. The Corps has U.S. Fish and Wildlife Service concurrence

for the proposed activities through use of the aforementioned determination key. No further action is required.

Eastern Indigo Snake (*Drymarchon couperi*) – Eastern Indigo Snakes have not been observed on the site and occurrence is considered unlikely. However, they have potential to occur based on the presence of mix of habitats on the site. Using the U.S. Fish and Wildlife Service (FWS) Eastern Indigo Snake Programmatic Effect Determination Key – Revised” (August 2017): A (project not located in salt marsh) > B (Use Standard Protection Measures) > C (There are gopher tortoise burrows, holes, cavities, or other refugia) > D (Project will impact less than 25 acres of Xeric habitat) > E (Permit conditions for removal of snakes if encountered) > “May Affect, Not Likely to Adversely Affect.

NOTE: This public notice is being issued based on information furnished by the applicant. This information has not been verified or evaluated to ensure compliance with laws and regulation governing the regulatory program. The jurisdictional line has been verified by Corps personnel.

AUTHORIZATION FROM OTHER AGENCIES: Water Quality Certification may be required from the Florida Department of Environmental Protection and/or one of the state Water Management Districts.

COMMENTS regarding the potential authorization of the work proposed should be submitted in writing to the attention of the District Engineer through the Cocoa Permits Section, 400 High Point Dr., Cocoa, Florida, 32926 within 15 days from the date of this notice.

The decision whether to issue or deny this permit application will be based on the information received from this public notice and the evaluation of the probable impact to the associated wetlands. This is based on an analysis of the applicant's avoidance and minimization efforts for the project, as well as the compensatory mitigation proposed.

QUESTIONS concerning this application should be directed to Corey Maier, in writing at the Cocoa Permits Section, 400 High Point Drive, Cocoa, Florida, 32926; by electronic mail at corey.m.maier@usace.army.mil; by facsimile transmission at (321) 504-3803; or, by telephone at (321) 504-3771 ext. 15.

IMPACT ON NATURAL RESOURCES: Coordination with U.S. Fish and Wildlife Service, Environmental Protection Agency (EPA), the National Marine Fisheries Services, and other Federal, State, and local agencies, environmental groups, and concerned citizens generally yields pertinent environmental information that is instrumental in determining the impact the proposed action will have on the natural resources of the area.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public

interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including cumulative impacts thereof; among these are conservation, economics, esthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food, and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people. Evaluation of the impact of the activity on the public interest will also include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act or the criteria established under authority of Section 102(a) of the Marine Protection Research and Sanctuaries Act of 1972. A permit will be granted unless its issuance is found to be contrary to the public interest.

The US Army Corps of Engineers (Corps) is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other Interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this determination, comments are used to assess impacts to endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

COASTAL ZONE MANAGEMENT CONSISTENCY: In Florida, the State approval constitutes compliance with the approved Coastal Zone Management Plan. In Puerto Rico, a Coastal Zone Management Consistency Concurrence is required from the Puerto Rico Planning Board. In the Virgin Islands, the Department of Planning and Natural Resources permit constitutes compliance with the Coastal Zone Management Plan.

REQUEST FOR PUBLIC HEARING: Any person may request a public hearing. The request must be submitted in writing to the District Engineer within the designated comment period of the notice and must state the specific reasons for requesting the public hearing.



BKI, Inc.

Consulting Ecologists
325 Fifth Avenue, Suite 204
Indianapolis, Florida 32903

Title: Location Map

Project: Fischer Lots 1 and 5

Project No.: 05086

Scale: Not to Scale

Notes: Boundaries depicted are approximate

Figure
No.

U.S. Army Corps of Engineers
Permit # SAJ-2006-05877 (SP-TSD)

Date: 02/05/2010





Drawing 1 of 5

Attachment 1



[illegible]

ZONING: CG
LAND USE: C/

-  = METAL LIGHT POLE
-  = WOODEN LIGHT POLE
-  = WOODEN POWER POLE
-  = TELEPHONE RISER BOX
-  = CONCRETE POWER POLE

PHASE 1 - RETENTION POND AND NURSERY
PHASE 2 - REHABILITATION

ZONING: IL
LAND USE: C/I

FILE 9. JEWEL SEPARATION REQUIREMENT

[illegible]

AT THE UTILITY CROSSINGS DESCRIBED ABOVE, ONE FULL LENGTH OF FULL LENGTH OF WATER MAIN PIPE SHALL BE CENTERED ABOVE OR BELOW THE OTHER PIPELINE SO THE WATER MAIN JOINTS WILL BE AS FAR AS POSSIBLE FROM THE OTHER PIPELINE. ALTERNATIVELY, AT SUCH CROSSINGS, THE PIPES SHALL BE ARRANGED SO THAT ALL WATER MAIN JOINTS ARE AT LEAST THREE FEET FROM ALL JOINTS IN VACUUM-TYPE SANITARY SEWERAGE OR PIPES. JOINTS RECLAIMED WATER REGULATOR UNDER PART II OF CHAPTER 62-810, F.A.C. AND AT LEAST SIX FEET FROM ALL JOINTS IN STREET- OR PRESSURE-TYPE SANITARY SEWERS, WIDESPREAD FORCE MAINS, OR PIPELINES CONVEYING RECLAIMED WATER NOT REGULATED UNDER PART II OF CHAPTER 62-810, F.A.C.

(IN FEET)
1 INCH = 40 FT.

SCALE: (1" = 40')

ZONING: CH
LAND USE: C/A

MAY 08 2008
707199-1
Palm Bay SC

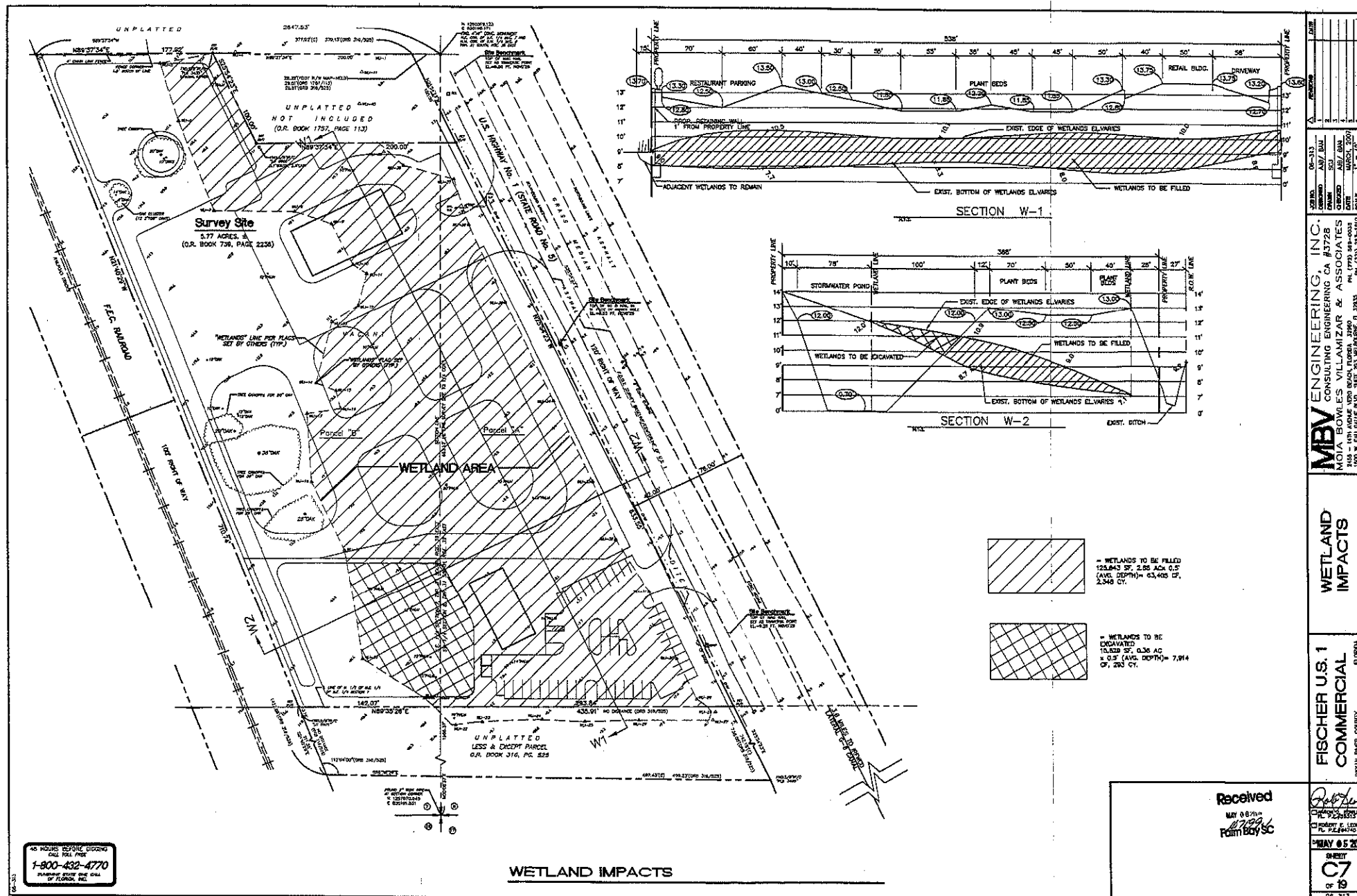
DATE	10/07/07
APPROVED FOR REG. UNIT MGR.	
APPROVED FOR TUGS	11/19/07
APPROVED REGS TO SAE TRKS	2/1/07
1	
4	
5	
6	

MBV ENGINEERING, INC.
CONSULTING ENGINEERING CA #3728
MOIRA BOWLES VILLAMIZAR & ASSOCIATES
P.O. BOX 989-0038
PR. (321) 333-1181
PR. (321) 333-1181
1415 N. 10TH AVENUE YORBA LINDA, CALIF. 92686
1600 N. YAU CALLE MDC. SUITE 203 MIAMI, FL 33136

SITE AND UTILITIES PLAN

**FISCHER U.S. 1
COMMERCIAL**

CARROLL J. POWELL
 FL. PZ#3313
 ROBERT E. LEON
 FL. PZ#6474
 MAY 05 20
 SHEET
 C3
 OF 19
 08-313



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WETLAND IMPACTS

**FISCHER U.S. 1
COMMERCIAL**

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Received
MAY 08 2014
107199
Falm Bay St

Robert L. ...
☐ ...
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 MAY 05 2007
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