



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
COCOA PERMITS SECTION
400 HIGH POINT DRIVE, SUITE 600
COCOA, FLORIDA 32926

CESAJ-RD

August 19, 2019

PUBLIC NOTICE

Permit Application No. SAJ-2019-00637 (SP-BJC)

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 U.S.C. §1344) as described below:

APPLICANT: Mr. Robert Milliken
1200 S. Courtenay Parkway
Merritt Island, Florida 32952

WATERWAY AND LOCATION: The approximately 1.6 acre North Courtenay Business Complex project would affect waters of the United States associated with the Banana River Hydrologic Unit (Hydrologic Unit Code 0308020202). The project site is located on the east side of Courtenay Parkway, in Section 35, Township 23 South and Range 36 East; Merritt Island, Brevard County, Florida (Approximate central coordinates: Latitude 28.443822 Longitude -80.708144).

Directions to the site are as follows: From I-95, proceed east on FL-528 approximately 6.9 miles to exit 49 for FL-3 N. Turn left onto FL-3 N and travel approximately 2.7 miles and project site will be on the right.

APPROXIMATE CENTRAL COORDINATES: Latitude: 28.443822°
Longitude: -80.708144°

PROJECT PURPOSE:

Basic: Commercial

Overall: Construction of a commercial retail business complex and associated parking and stormwater infrastructure.

EXISTING CONDITIONS: The proposed site is an approximately 1.6 acre undeveloped lot that now supports two land use type/vegetative communities, as classified by the Florida Land Use, Cover and Forms Classification System, Level III (FLUCFCS, FDOT, January 1999). Onsite aquatic resources are adjacent to tidal waters and did not qualify for a general permit.

PROPOSED WORK: The applicant seeks authorization to fill 0.24 acres of waters of the United States for the North Courtenay Business Complex project.

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:

“Since the wetlands span the property in a thin strip from lot line to lot line, impacts to them are unavoidable while allowing for reasonable usage and development of the property.”

COMPENSATORY MITIGATION: To offset impacts to wetlands, mitigation credits will be purchased from a federally approved mitigation bank.

CULTURAL RESOURCES:

The Corps reviewed the project consistent with REGULATORY DIVISION STANDARD OPERATING PROCEDURES FOR SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE FOR THE STATE OF FLORIDA (21 NOV 2016). The Corps evaluated cultural resources in the original permit application based on results from the Resources At Risk report, which includes Florida Master Site File data. This report indicated there were no known cultural resource sites located within the permit area and the activity is of such limited scope there is little likelihood of impact upon a historic property; therefore, the proposed project would have “No Potential to Cause Effect”.

ENDANGERED SPECIES:

Wood Stork: Wood Stork: The Corps completed an evaluation of the project based upon the U.S. Fish and Wildlife Service (FWS) North Florida Ecological Services Field Offices Programmatic Concurrence for use with the Wood Stork (September 2008). Use of the Key for Wood Stork resulted in the following sequential determination: A (The project is more than 2,500 feet from a colony site.) > B (Project does not affect suitable foraging habitat) = no effect. The Corps has FWS concurrence for the proposed activities through the use of the aforementioned determination key. No mitigation is required.

Eastern Indigo Snake: Eastern Indigo Snake: The Corps has determined the proposed project may affect, but is not likely to adversely affect the Eastern Indigo Snake and its designated critical habitat. Based upon review of the Corps and Service’s *Eastern Indigo Snake Programmatic Effect Determination Key* (dated August 13, 2013), the proposed project resulted in the following sequential determination: A (The project is not located in open water or salt marsh.) >B (The permit will be conditioned for use of the Service’s *Standard Protection Measures for the Eastern Indigo Snake* during site preparation and protection construction.) >C (The project has known gopher tortoise burrows, holes, cavities, active or inactive gopher tortoise burrows, or other underground refugia where a snake could be buried, trapped and/or injured) >D (The project will impact less than 25 acres of xeric habitat supporting less than 25 active and inactive gopher tortoise burrows) >E (Permit will be conditioned such that all gopher

tortoise burrows, active or inactive, will be evacuated prior to site manipulation in the vicinity of the burrow. If an indigo snake is encountered, the snake must be allowed to vacate the area prior to additional site manipulation in the vicinity. Any permit will be conditioned such that holes, cavities, and snake refugia other than gopher tortoise burrows will be inspected each morning before planned site manipulation of a particular area, and, if occupied by an indigo snake, no work will commence until the snake has vacated the vicinity of proposed work) = "not likely to adversely affect" for the Eastern indigo snake. The permit will be conditioned with the Standard Construction Guidelines for the Eastern Indigo Snake. No further consultation was required.

Based on existing habitat types, the Corps preliminarily determined the project will have no effect on Florida scrub jay (*Aphelocoma coerulescens*), and Piping Plover (*Charadrius melodus*).

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 0.24 acres of freshwater wetlands and surface waters which ultimately discharge to Banana River. Our initial determination is that the proposed action would not have a substantial adverse impact on downstream EFH or federally managed fisheries. Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service (NMFS).

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 Drive, Suite 600, Cocoa, Florida 32926, within **21** 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 the project manager, Brandon J. Conroy, in writing at the Cocoa Permits Section, 400 High Point Drive, Suite 600, Cocoa, Florida 32926; by electronic mail at brandon.j.conroy@usace.army.mil; by facsimile transmission at (321) 504-3803; or, by telephone at (321) 504-3771 x11.

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.

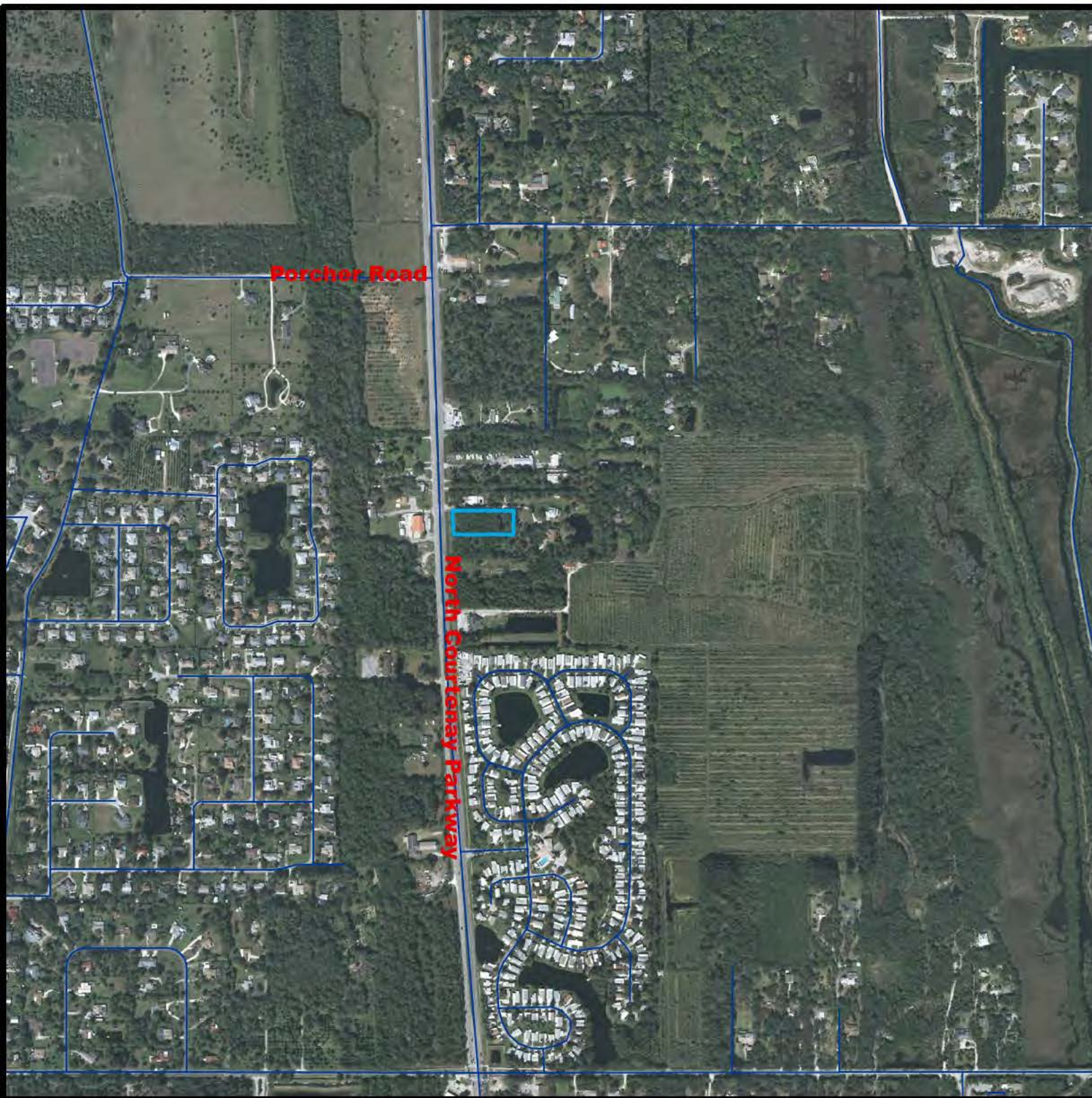
EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, 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 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.

Figure 1: Regional Location Map



Legend

 Property

Prepared by Toland Environmental Consulting
Using 2015 Aerial Photographs



0 600 1,200 2,400 Feet

Figure 1: Site Plan

