



United States Department of the Interior



FISH AND WILDLIFE SERVICE
South Florida Ecological Services Office
1339 20th Street
Vero Beach, Florida 32960
June 21, 2013

Alan M. Dodd, Colonel
District Commander
U.S. Army Corps of Engineers
701 San Marco Boulevard, Room 372
Jacksonville, Florida 32207-8175

Service Federal Activity Code: 41420-2006-FA-0417
Service Consultation Code: 41420-2006-F-0872-R002
Corps Application No.: SAJ-2002-01683 (IP-MJD)
Date Received: May 9, 2013
Project: Innovation Hub
Applicant: Innovation Project Group, LLC
County: Lee

Dear Colonel Dodd:

In correspondence dated May 9, 2013, the U.S. Army Corps of Engineers (Corps) requested the U.S. Fish and Wildlife Service's (Service) review of the proposal by Innovation Project Group, LLC, for reauthorization and modification of the site plan authorized by the above listed Department of the Army permit issued on December 17, 2007. This letter is submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (Act) (87 Stat. 884; 16 U.S.C. 1531 *et seq.*).

PROJECT DESCRIPTION

A permit was approved on December 17, 2007, authorizing discharge of fill into 43.10 acres of wetlands and 0.26 acre of waters (ditch) and the excavation of material from 2.44 acres of wetlands to construct an industrial/commercial development. The permittee commenced the site clearing, onsite preserve enhancement, and offsite mitigation required by the original permit. Some of the wetland impacts authorized by the permit commenced, with fill placement to allow for site access to conduct vegetation clearing and mitigation work. The project infrastructure and remaining fill was not completed, and the permit expired.

The applicant seeks authorization to construct a similar project in the same footprint as the previously permitted work. The permittee has requested reauthorization of the previously authorized impact area with a slightly modified site plan to accommodate a minor change in use to a commercial research park for a public/private development in association with Florida Gulf Coast University. There are no changes in wetland impacts or preserve areas. The project is

located in Sections 6 and 7, Township 46 South, Range 26 East, Fort Myers, Lee County, Florida (Figure 1).

Consultation History

In email correspondence dated April 16, 2013, the Corps provided an overview of the original project, an update of the project site construction, and a request by the applicant on how to most expeditiously get a new permit since time-sensitive grant funding for the project had been obtained.

The Corps noted that the project impact footprint is the same (Figure 2), there is no increase in wetland impacts, the lot sizes have increased, and only one internal road is now proposed. Additionally, the original permittee had previously cleared part of the impact areas and had started the onsite mitigation works, (baseline, time zero, annual). The Corps also noted that the offsite panther mitigation parcel had been purchased, and the onsite conservation easements have been recorded. However, the offsite conservation easement has not yet been recorded. The Corps concluded that the site plan changes would result in less traffic from fewer commercial and/or industrial lots than the original site plan.

In email correspondence to the Corps dated April 17, 2013, the Service requested additional information and documentation of compliance with the terms and conditions of the February 9, 2007, Biological Opinion, and the July 23, 2007, amendment. Specific information was requested on the offsite preserve lands conservation easement, the proposed offsite preserve lands management plan, the development of escrow funds for the perpetual management of the offsite preserve lands, and the status of the wetland credits to be purchased from Panther Island Mitigation Bank (PIMB).

In correspondence dated April 23, 2013, the applicant provided a copy of the offsite preserve management plan and confirmation of the purchase of the wetland credits from PIMB. The applicant also proposes to record a conservation easement over the offsite preserve within 90 days of permit issuance and to establish a perpetual management fund or other suitable payment mechanism for the management of the preservation parcel in perpetuity, with the amount and mechanism to be determined through coordinated discussions with the applicant, conservation easement recipient, and the Service at the time the mitigation associated with the offsite preservation parcel is considered "successful" by the Corps and has been released following 5 years of monitoring.

In email correspondence dated June 4, 2013, the Service requested clarification of the applicant's proposal for the management fund as the language in the letter could be interpreted to imply that the fund will be developed following release by the Corps of the applicant's commitments for mitigation success at the offsite preserve parcel. The Service requested and the applicant has agreed (email dated June 4, 2013) to the inclusion of the following as a condition in the Corps' permit, if issued: "The establishment of the escrow fund for perpetual management, or other suitable payment mechanism, shall be a success criterion for release; release cannot be sought/obtained until the funding mechanism is in place."

THREATENED AND ENDANGERED SPECIES

In correspondence dated May 9, 2013, the Corps requested consultation with the Service for adverse effects to listed species from the proposed project reauthorization and site plan modification. The Corps also completed an evaluation of the impacts the work may have on the endangered Florida panther (*Puma concolor coryi*), endangered wood stork (*Mycteria americana*), and endangered red-cockaded woodpecker (RCW; *Picoides borealis*), and requested re-initiation of formal consultation pursuant to Section 7 of the Act to determine if the revised project's impacts are consistent with the impacts considered in the Service's 2007 Biological Opinion. The Corps has also determined that, if the permittee utilizes the 2004 Standard Standard Protection Measures for the threatened eastern indigo snake (*Drymarchon corais couperi*) (Service 2004), the revised project may affect but is not likely to adversely affect this species.

Florida panther

The project, as originally permitted by the Corps, would have resulted in the loss of 165.5 acres of habitat suitable for use by the Florida panther, located in the Primary Zone of the Panther Focus Area (Kautz et al. 2006). The habitat loss equated to approximately 1,111.24 panther habitat units (PHU), with a recommended compensation need of 2,778.09 PHUs. The Service issued a Biological Opinion on February 9, 2007, and an amendment on July 23, 2007. The amendment addressed an alternative panther impact compensation plan in the form of the restoration and preservation of 297 acres of lands south of I-75 and west of SR-29 (SR-29 Parcel) (Figure 3), and the purchase of wetland credits from PIMB (Figure 4). The purchase of wetland credits from PIMB yield 153.6 PHUs and represent 17.6 acres of Primary Zone habitat. The restoration and preservation of the 297 acres in the SR-29 Parcel will yield 2,636.1 PHUs. Total compensation is 2,789.1 PHUs, which correlates to 314.6 acres of Primary Zone lands.

In correspondence referenced above, the Service provided an assessment of the current status of the preservation lands and onsite project land impacts. Deficiencies were noted in land management commitments by the applicant for the offsite preserve lands and the applicant's compliance with the terms and conditions of the Biological Opinion. Additional information provided by the Corps and applicant, as referenced above, corrected these deficiencies.

The revised site plan will not result in impacts to panther habitat above and beyond those impacts analyzed in 2007, nor will the revisions result in additional traffic or fragmentation not originally considered. In addition, the Corps has agreed to include the following as a permit condition: "The establishment of the escrow fund for perpetual management, or other suitable payment mechanism, shall be a success criterion for release; release cannot be sought/obtained until the funding mechanism is in place." This provides assurance for establishment of the escrow fund, or other suitable payment mechanism, for perpetual management of the offsite preserve lands.

The Corps has also determined that any permit issued by the Corps will contain permit conditions that require the permittee to request a modification of the permit in order to seek release from monitoring of the offsite panther parcel. If donation of the offsite parcel is

contemplated, the permittee and grantee must seek modification of the DA permit in order to ensure the parcel will be maintained in perpetuity as a mitigation and endangered species conservation area, and clearly define on-going responsibility for perpetual maintenance of the site. Otherwise the permittee remains responsible for the maintenance of the site in perpetuity regardless of the funding mechanism agreement.

Based on the information provided by the Corps and applicant's commitments, the Service believes the conclusions provided in the February 9, 2007, Biological Opinion and the July 23, 2007, amendment are applicable to the project as modified and concludes the revised project will have no additional adverse impacts to the Florida panther greater than those previously addressed by the Service.

Wood stork

The project, as originally proposed and permitted, would have resulted in the loss 45.8 acres of disturbed wetlands onsite that provide foraging value to wood storks. The applicant originally proposed compensation by the enhancement and preservation of about 297 acres of wetlands and uplands offsite, and the enhancement and preservation of 75.46 acres onsite, resulting in a net increase in foraging value to the wood stork. The revised project proposes no change in wetland preserve/development impacts and the offsite parcel. The Service has reviewed the data provided and concludes the revised project does not propose adverse effects to the wood stork in a manner or extent not previously considered in the Service's February 9, 2007, Biological Opinion and the July 23, 2007, amendment.

Red-cockaded woodpecker

The project, as originally proposed and permitted, would have resulted in the loss of 10 acres of habitat suitable for foraging by RCWs. In the Service's original analysis of project related impacts to the RCW, the Service noted that the nearest active RCW colony was about 13 miles west, in Lee County, and the surrounding habitats appear largely unmanaged and fragmented by development and sand mining activities. The Service concluded the proposed project was not likely to adversely affect the RCW and recommended the Corps change their determination to "may affect, not likely to adversely affect" the RCW. The Service provided concurrence with the revised determination from the Corps.

The revised project proposes no change in preserve/development impacts and the offsite parcel. The Service has reviewed the data provided, as well as recent RCW data in our GIS database, and concludes the revised project does not propose adverse effects to the RCW in a manner or extent not previously considered in the Service's February 9, 2007, Biological Opinion and the July 23, 2007, amendment.

Eastern indigo snake

In correspondence dated May 9, 2013, the Corps determined that, if the permittee utilizes the 2004 Standard Protection Measures for the eastern indigo snake, the revised project may affect but is not likely to adversely affect this species. The Corps has agreed to include the protection measures as a special condition of the permit. Based on the above, the Service concurs with the Corps determination.

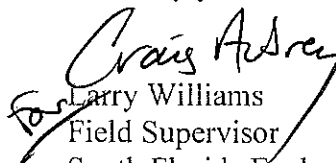
In conclusion, the Service has reviewed the information and determinations in the February 9, 2007, Biological Opinion and the July 23, 2007, amendment, and concludes that the effects to the Florida panther, wood stork, RCW, and eastern indigo snake resulting from the proposed project modifications do not exceed those effects originally evaluated in a manner or extent not previously considered. All reasonable and prudent measures and terms and conditions referenced in the February 9, 2007, Biological Opinion and the July 23, 2007, amendment, are also applicable to this consultation. This concludes consultation for the Florida panther, wood stork, RCW, and eastern indigo snake.

REINITIATION NOTICE

As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; (3) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease, pending reinitiation.

Thank you for your cooperation in the effort to protect fish and wildlife resources. If you have any questions regarding this project, please contact Allen Webb at 772-469-4246.

Sincerely yours,


Larry Williams
Field Supervisor

South Florida Ecological Services Office

cc:

Corps, Fort Myers, Florida (Monika Dey)
EPA, West Palm Beach, Florida (Ron Meidema)
FWC, Naples, Florida (Darrell Land)
FWC, Tallahassee, Florida (FWC-CPS, Kipp Frohlich)
Service, Atlanta, Georgia (Ken Graham)
Service, Florida Panther NWR, Naples, Florida (Kevin Godsea)

Literature Cited

- U.S. Fish and Wildlife Service. 2004. Standard protection measures for the eastern indigo snake. Fish and Wildlife Service, South Florida Ecological Services Office; Vero Beach, Florida.
- Kautz, R., R. Kawula, T. Hootor, J. Comiskey, D. Jansen, D. Jennings, J. Kasbohm, F. Mazzotti, R. McBride, L. Richardson, and K. Root. 2006. How much is enough? Landscape-scale conservation for the Florida panther. *Biological Conservation*.

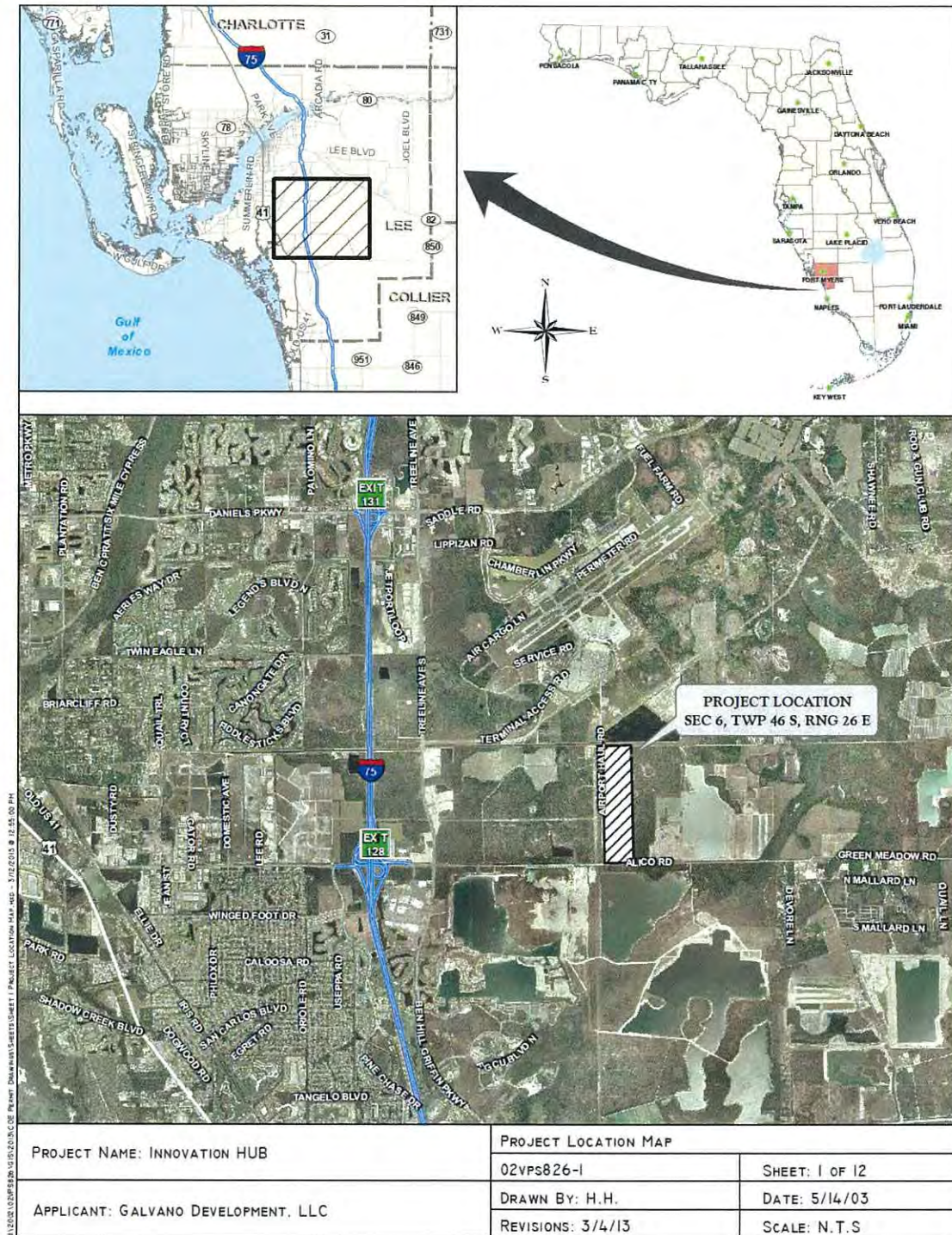


Figure 1. Project Location.

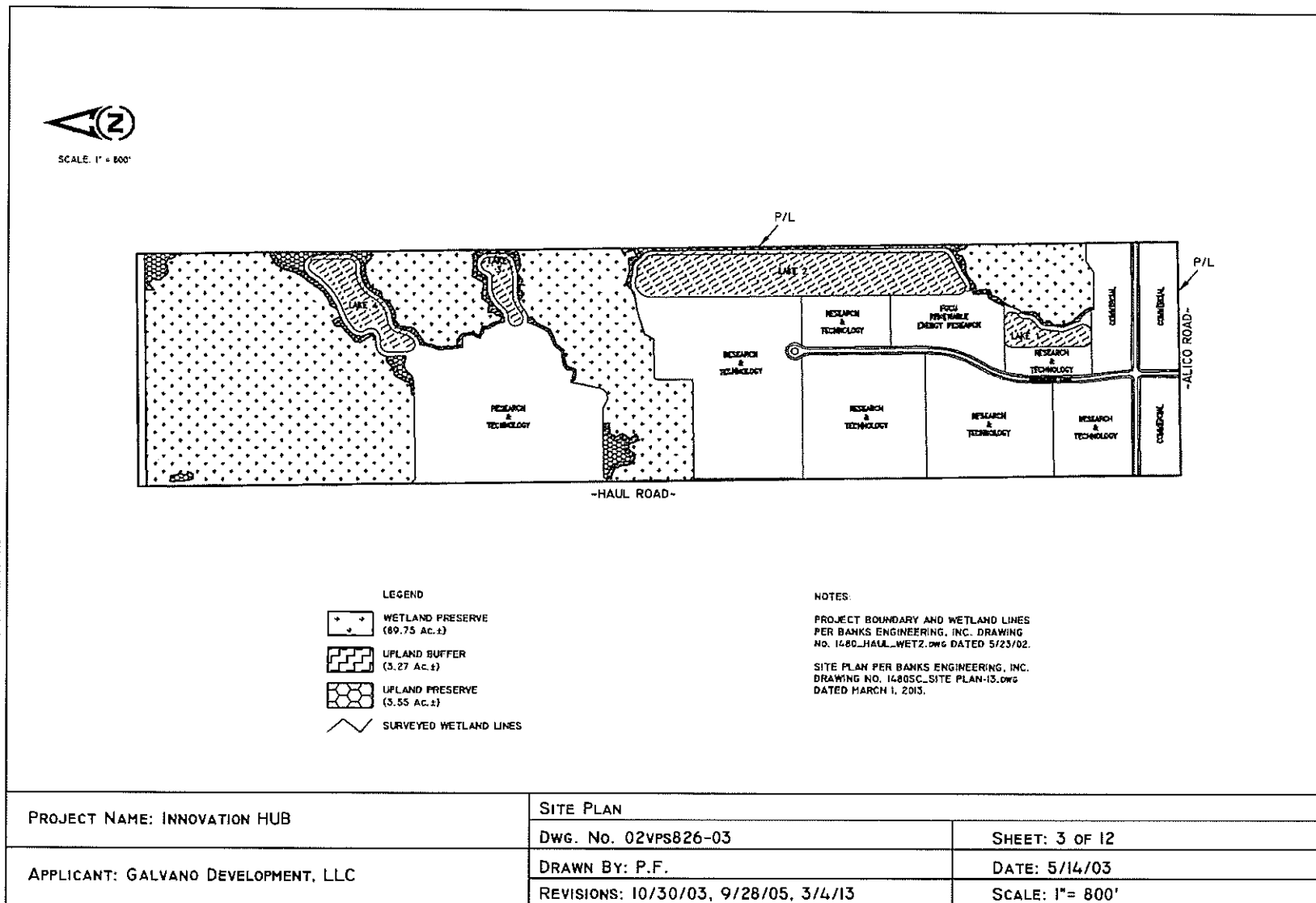


Figure 2. Site Plan

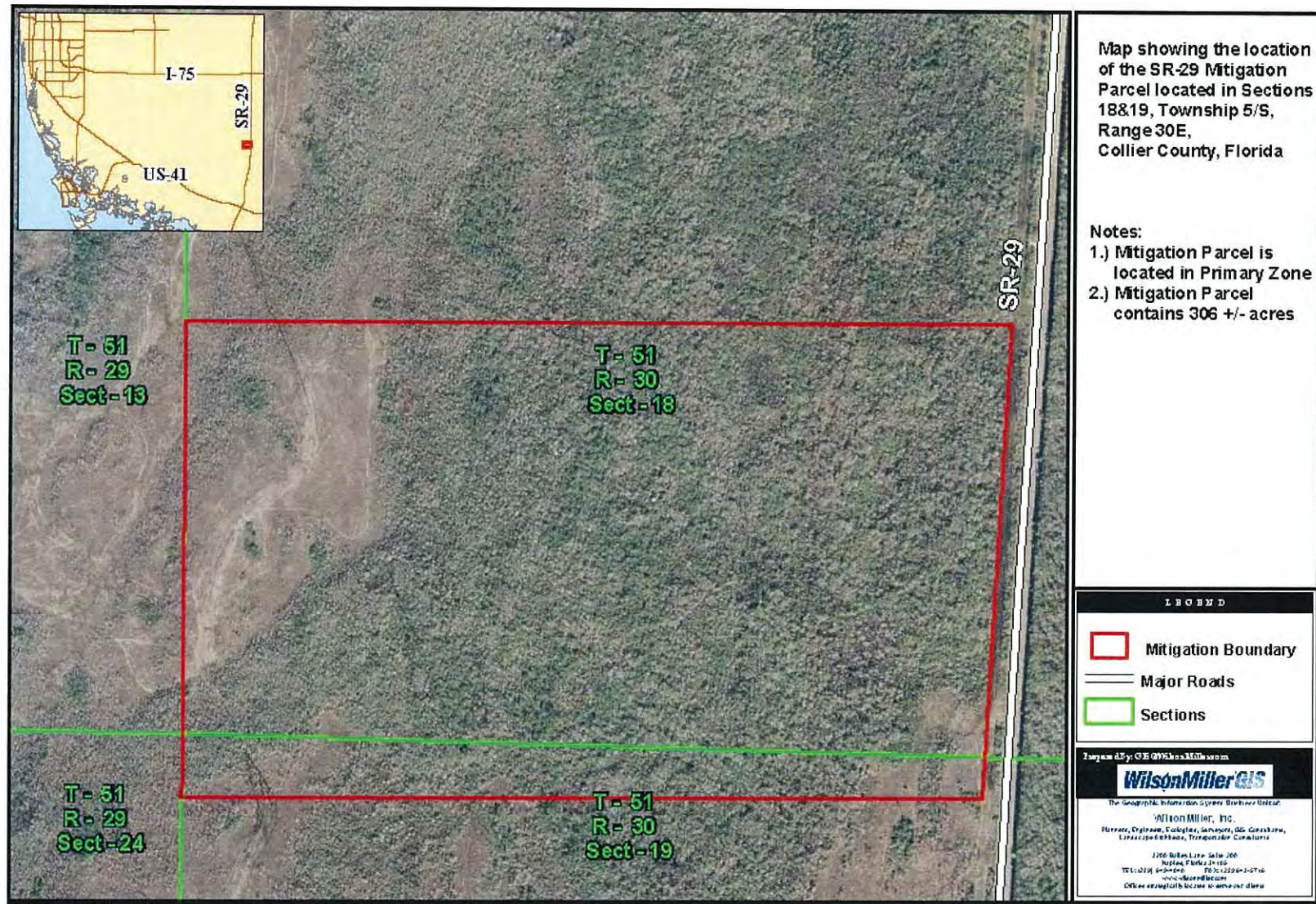


Figure 3. SR 29 Parcel.

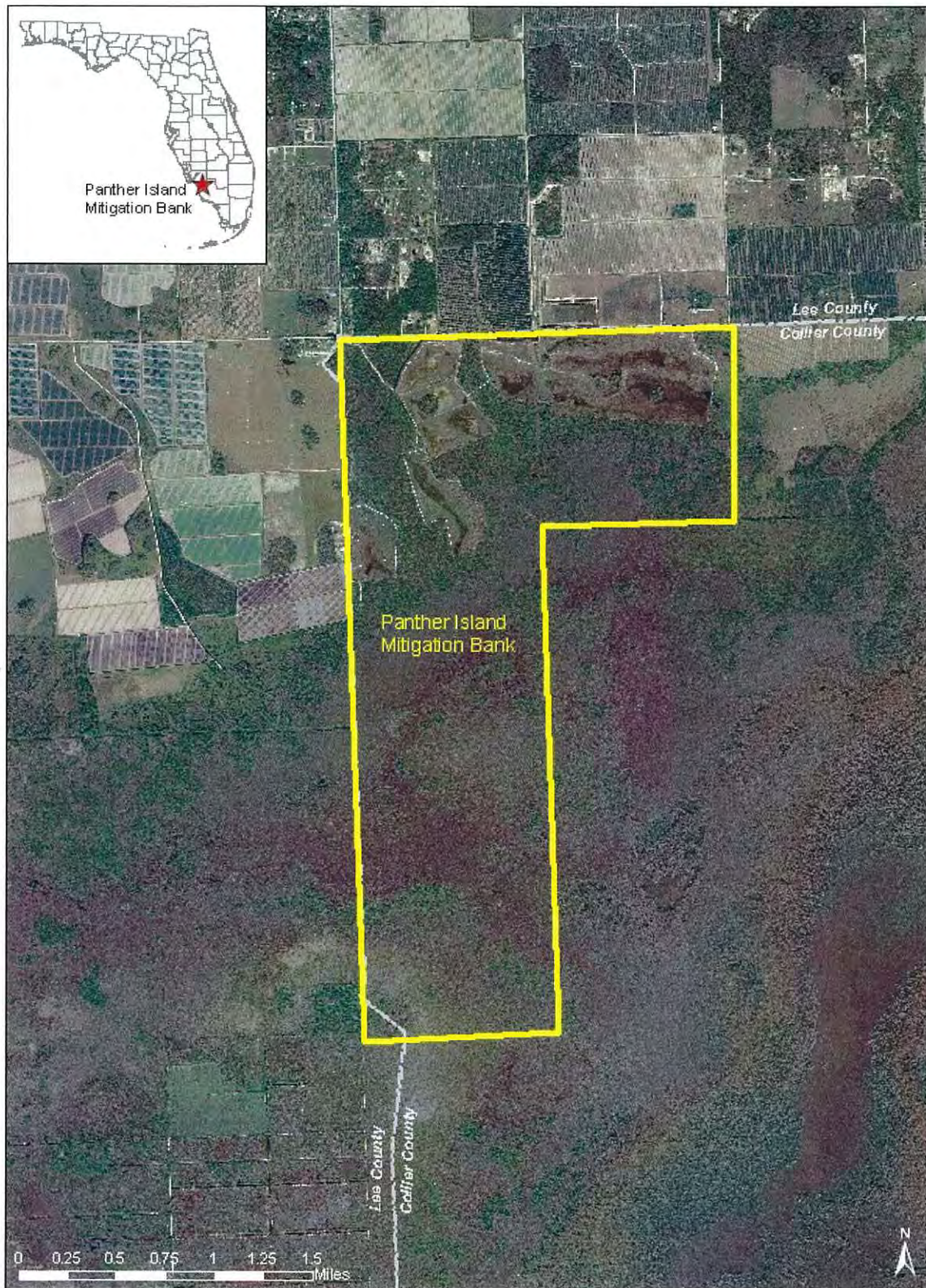


Figure 4. Panther Island Mitigation Bank.