



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207-8915

July 8, 2019

Regulatory Division
West Permits Branch
Fort Myers Permits Section

PUBLIC NOTICE

Permit Application No. SAJ-2019-00654 (SP-KRD)

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 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403) as described below:

APPLICANT:
Mr. Peter Clark
SHM Cape Harbour Marina, LLC
5828 Cape Harbour Drive
Cape Coral, Florida 33914

WATERWAY AND LOCATION: The project would affect waters of the United States associated with the man-made Cape Harbour area off the Caloosahatchee River. The project site is located at 5702 Cape Harbour Drive, Section 21, Township 45 South, Range 23 East, Cape Coral, Lee County, Florida.

Directions to the site are as follows: From the west end of Cape Coral Bridge, go west on Cape Coral Parkway approximately 5 miles to Chiquita Boulevard South to El Dorado Parkway West. Take the first left onto Cape Harbour Drive and follow to existing marginal dock behind the Marina View at Cape Harbour Condominium/Apartment Complex at 5702 Cape Harbour Drive.

APPROXIMATE CENTRAL COORDINATES: Latitude 26.546257
Longitude -82.008111

PROJECT PURPOSE:

Basic: To create a multi-slip docking facility.

Overall: To create a multi-slip docking facility.

EXISTING CONDITIONS: The wetland system consists of Cape Harbour Marina which is a man-made marina area mapped on the National Wetlands Inventory (NWI) as E1UBL ((E) Estuarine, (1) Tidal, (UB) Unconsolidated Bottom, (L) Subtidal). The

existing area surrounding the project area consists of an existing marina complex and does not support mangroves, submerged aquatic vegetation (SAV), or marsh vegetation.

PROPOSED WORK: The applicant seeks authorization to add an additional twelve (12) 4-foot-wide by 23-foot-long (92 SF) finger piers and 21 mooring piles to create 22 wet boat slips along the existing 7-foot-wide by 416-foot-long marginal dock at 5702 Cape Harbour Drive, Cape Coral 33914 (Parcel ID #21-45-23-C2-004R5.0000) in a man-made waterbody. The project will involve the installation of approximately 117, 12-inch diameter wood pilings (96 piles for the finger piers and 21 mooring piles for the boat slips) via impact hammer method.

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 proposed finger piers and mooring piles will be installed in an existing man-made marina area which does not support mangroves, SAV, or marsh vegetation. The proposed finger piers/mooring piles will encroach 50-feet from the existing seawall/mean high water (MHW) line which is 88-feet from adjacent mooring pilings.

COMPENSATORY MITIGATION: Compensatory mitigation will not be required since the proposed structures will not result in the permanent loss of waters of the U.S. and will not impact any special aquatic sites.

CULTURAL RESOURCES: The Corps has determined the permit area has been extensively modified by previous work and there is little likelihood a historic property may be affected 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". 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.

ENDANGERED SPECIES:

Name of species potentially present that are managed by the U.S. Fish and Wildlife Service (USFWS):

- Florida Bonneted Bat (*Eumops floridanus*)
- Florida Scrub Jay (*Aphelocoma coerulescens*)
- Piping Plover (*Charadrius melodus*)
- West Indian Manatee (*Trichechus manatus*)
- Wood Stork (*Mycteria americana*)

Name of species potentially present that are managed by the National Marine Fisheries Service (NMFS):

- Smalltooth sawfish (*Pristis pectinata*)
- Swimming Sea Turtles: Green sea turtle (*Chelonia mydas*), Hawksbill sea turtle (*Eremochelys imbricate*), Kemp's Ridley sea turtle (*Lepidochelys kempi*), Leatherback sea turtle (*Dermochelys coriacea*), and/or Loggerhead sea turtle (*Caretta caretta*).

Designated Critical Habitat (DCH): There project is located within DCH of the West Indian manatee and the Smalltooth sawfish.

The following summarizes the Corps effect determinations for the listed species noted above:

Florida Bonneted Bat (FBB) - The project is located within the designated FBB consultation area. However, the Corps has determined that the project will have no effect on this species due to the project's location on a highly developed marina with seawalls and lack of suitable habitat. No further consultation will be required with USFWS for this species.

Florida Scrub Jay - The project is located within the designated Florida Scrub Jay consultation area. However, the Corps has determined that the project will have no effect on this species due to the project's location on a highly developed marina with seawalls and lack of suitable nesting habitat. No further consultation will be required with USFWS for this species.

Piping Plover - The project is located within the designated Piping Plover consultation area. However, the Corps has determined that the project will have no effect on this species due to the project's location on a highly developed marina with seawalls and lack of suitable nesting habitat. No further consultation will be required with USFWS for this species.

West Indian Manatee – The project is located within Manatee critical habitat, and consultation area. Use of the 2013 Manatee Key resulted in a determination that the proposed project “May affect” the endangered West Indian manatee (A>B>C>G>H>I>J>K>May Affect). Per Key stipulation, consultation with USFWS is required. The Permittee will have to adhere to the “Standard Manatee Conditions for In-Water Work, July 2011”. However, after further review of the proposed project, the Corps has determined the proposal may affect, but is not likely to adversely affect (MANLAA) the West Indian manatee due to the lack of foraging habitat (i.e. seagrass) in the project area. The Corps will request initiation of informal consultation with the USFWS pursuant to Section 7 of the Endangered Species Act by separate letter.

Wood Stork – The project is located within the wood stork colonies buffer areas or core foraging area, but the site does not support suitable foraging habitat (SFH). In accordance with the Corps and USFWS SFESO South Florida Programmatic Concurrence Wood Stork Key (May 18, 2010), the project keyed out A>No effect (Project does not affect SFH). The Corps has determined that the project will have no effect on the wood stork and no further consultation with USFWS will be required.

Smalltooth sawfish and Swimming Sea Turtles - The Corps evaluated the proposed work utilizing NMFS's Jacksonville District's Programmatic Biological Opinion (JAXBO) dated 20 November 2017. The JAXBO analyzes the effects from 10 categories of minor in-water activities occurring in Florida and the U.S. Caribbean on sea turtles (loggerhead, leatherback, Kemp's ridley, hawksbill, and green); smalltooth sawfish; Nassau grouper; scalloped hammerhead shark, Johnson's seagrass; sturgeon (Gulf, shortnose, and Atlantic); corals (elkhorn, staghorn, boulder star, mountainous star, lobed star, rough cactus, and pillar); whales (North Atlantic right whale, sei, blue, fin, and sperm); and designated critical habitat for Johnson's seagrass; smalltooth sawfish; sturgeon (Gulf and Atlantic); sea turtles (green, hawksbill, leatherback, loggerhead); North Atlantic right whale; and elkhorn and staghorn corals in accordance with Section 7 of the Endangered Species Act. Based on past permitting practices of the Corps and review of consultations with similar in-water construction activities, Project Design Criteria (PDCs) were identified in the JAXBO that typically have been applied to permitted in-water construction activities. These PDCs ensure effects of in-water construction activities are minimal in nature and do not result in adverse effects to listed species or to essential features of designated CH. For this verification, the Corps conducted a project specific review to ensure that all of the PDCs were met. In accordance with the project-specific review process established in the JAXBO, a PDC checklist, certification that the activity meets the applicable PDCs, and supporting documentation for the proposed activity were emailed to nmfs.ser.statewideprogrammatic@noaa.gov and jaxbo@usace.army.mil on 5 JULY 2019. Therefore, the Jacksonville District satisfied the project-specific review requirements stipulated in the JAXBO and satisfied its obligation under the ESA for the above-listed species and critical habitats within the NMFS purview.

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 1108 SF of non-vegetated aquatic habitat potentially utilized by various life stages of EFH species. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or Federally managed fisheries in the Cape Harbour Marina area. 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.

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 and is assumed at the mean high water (MHW) located along the existing seawall. The project is located within the man-made Cape Harbour Marina which is mapped on the National Wetlands Inventory (NWI) as E1UBL ((E) Estuarine, (1) Tidal, (UB) Unconsolidated Bottom, (L) Subtidal). This waterway is directly connected to the Caloosahatchee River and Gulf of Mexico. Since this waterway is subject to the ebb and flow of the tide, no official JD is required as it is a navigable waterway, jurisdictional under Section 10 of the Rivers and Harbors Act and considered to be a Section 404 of the Clean Water Act traditional navigable water.

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 Fort Myers Permits Section, 1520 Royal Palm Square Blvd, Fort Myers, FL 33919 or preferably by email to Katy.R.Damico@usace.army.mil 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, Katy Damico, in writing by U.S. Mail at the Fort Myers Permits Section, 1520 Royal Palm Square Blvd, Fort Myers, Florida 33919; by electronic mail at Katy.R.Damico@usace.army.mil; or, by telephone at (813) 769-7076.

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.

Initial _____ Date _____

US Army Corps of Engineers
Fort Myers Permits Section
Received by CESAJ-RD-WF/KRD
Date Received: May 22, 2019

NO.	DESCRIPTION	BY	DATE
1	Dock Addition	MD	5/4/19
2			
3			
4			
5			



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* **ALL MEASUREMENTS ARE APPROXIMATE**
* ALL STRINGERS & SUB STRINGERS ARE ROUGH CUT 3 X 8 .60 CCA
* ALL HEADERS ARE BOLTED W/3/4" SS Fasteners (All Thread)
* **Decking Direction May Differ From Plan**

PROJECT DESCRIPTION
Safe Harbour
5702 Cape Harbour
Cape Coral, FL 33914

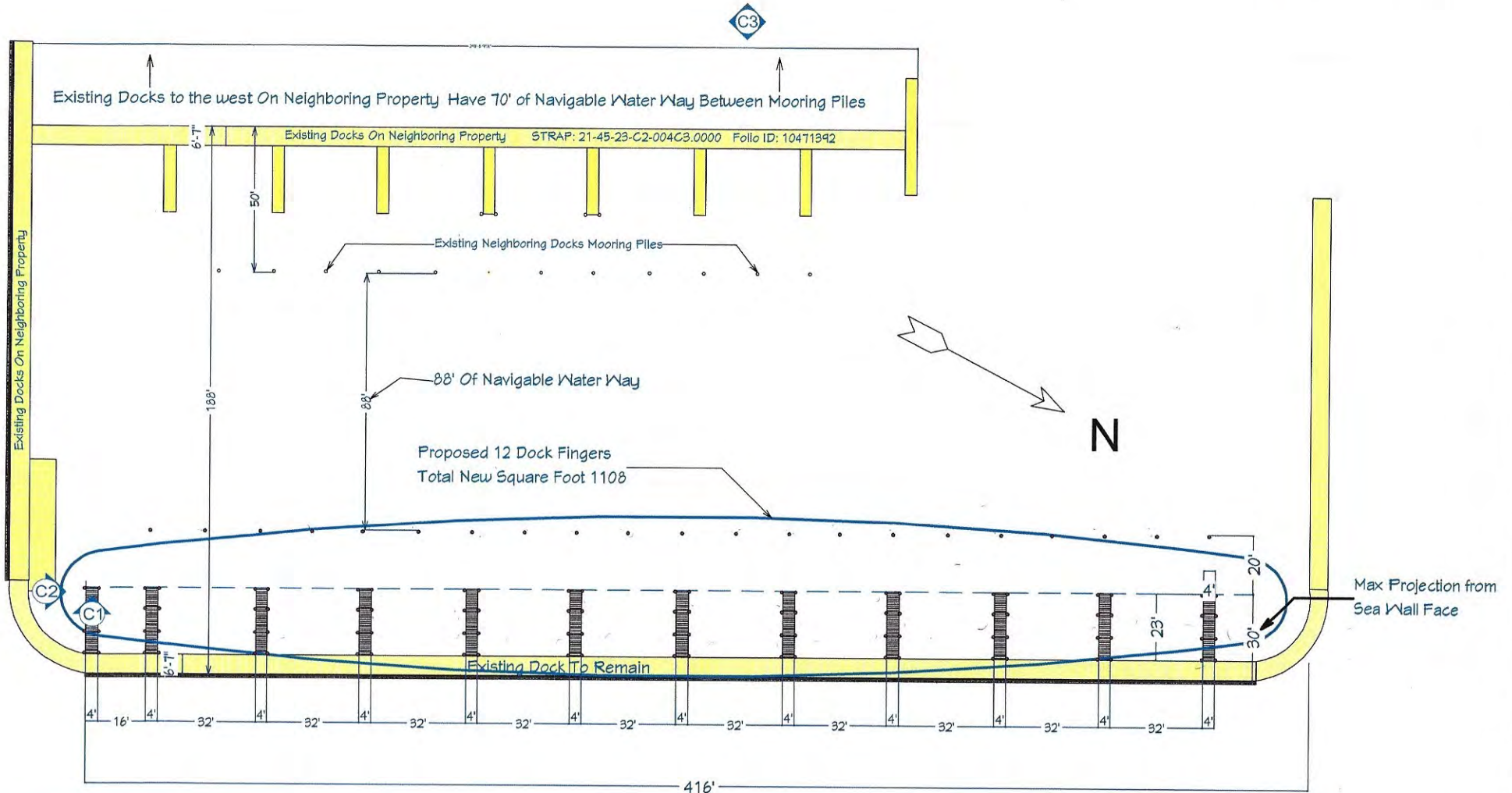
SCALE:
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SCALE:
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Initial _____ Date _____

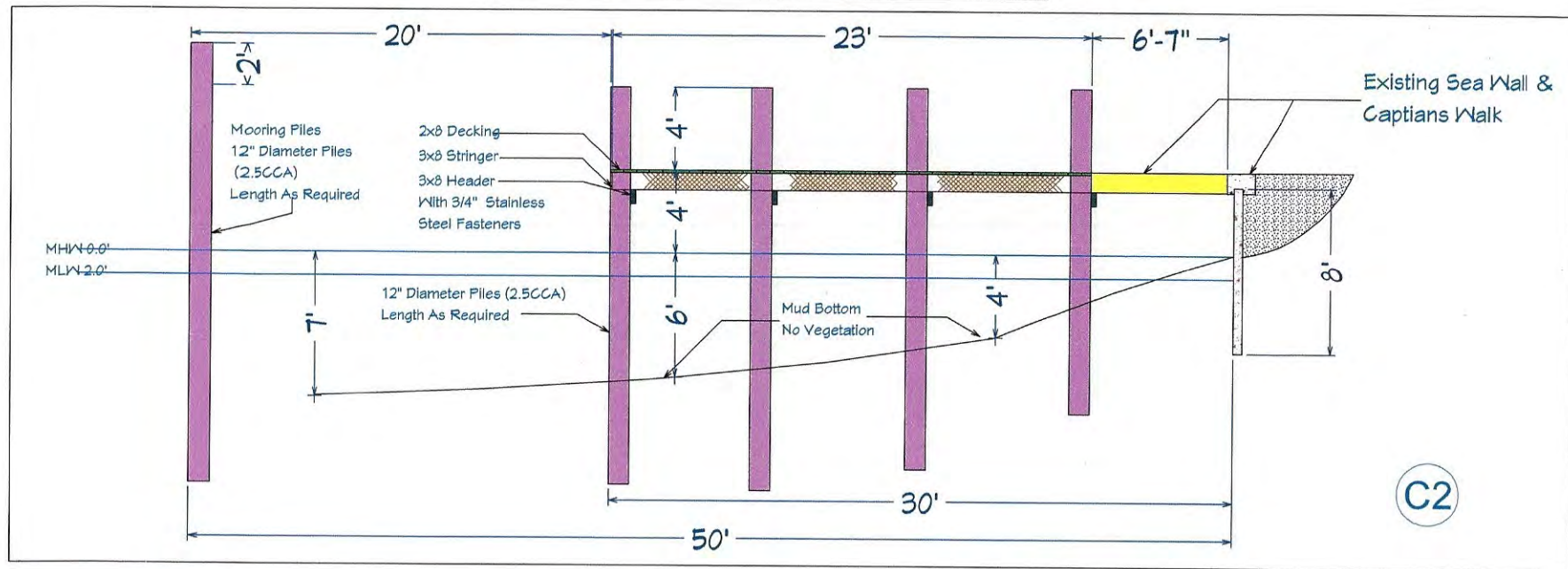
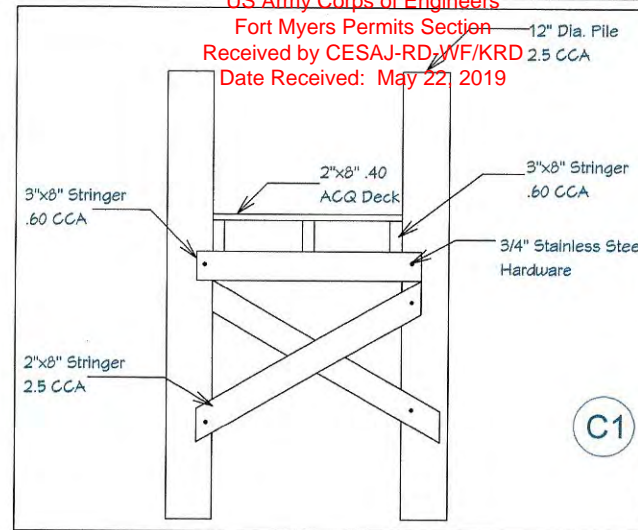
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