



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
44669 STERLING HIGHWAY, SUITE B
SOLDOTNA, AK 99669

May 24, 2022

Regulatory Division
POA-2014-00382

Marcus Hernandez
108 Lincoln Street
Sitka, Alaska 99835

Dear Mr. Hernandez:

Enclosed is the signed Letter of Permission (LOP), file number POA-2014-00382, Jamestown Bay, authorizing the maintenance and expansion of your existing dock. The project site is located within Section 6, T. 56 S., R. 64 E., Copper River Meridian; USGS; Latitude 57.0461° N., Longitude 135.2925° W. Sitka, Alaska. Also enclosed is a Notice of Authorization which should be posted in a prominent location near the authorized work.

If changes to the plans or location of the work are necessary for any reason, plans must be submitted to us immediately. Federal law requires approval of any changes before construction begins.

Nothing in this letter excuses you from compliance with other Federal, State, or local statutes, ordinances, or regulations.

Additionally, we have enclosed a Notification of Administrative Appeals Options and Process and Request for Appeal form regarding this Department of the Army Letter of Permission (see section labeled "Initial Proffered Permit").

Please contact me via email at Andrew.a.gray@usace.army.mil, by mail at the address above, or by phone at (907) 753-2722 if you have questions or to request a hard copy of the LOP and enclosures. For more information about the Regulatory Program, please visit our website at www.poa.usace.army.mil/Missions/Regulatory.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Gray", is positioned above the printed name.

Andrew Gray
Regulatory Specialist

Enclosures



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
44669 STERLING HIGHWAY, SUITE B
SOLDOTNA, AK 99669

May 24, 2022

Regulatory Division
POA-2014-00382

DEPARTMENT OF THE ARMY
LETTER OF PERMISSION

Authorization is hereby granted to Marcus Hernandez, to:

Modify and add on to an existing pile supported dock below the Mean High Water (MHW) of Jamestown Bay (9.2-foot above the 0.0-foot contour). Specifically, the applicant would:

- a) Construct a new 8-foot by 60-foot wooden pier with steel bracing,
- b) Place 2 new 12-inch diameter steel piles,
- c) Cut off and re-use 2 existing 12 inch diameter wooden piles,
- d) Relocate an existing 5-foot wide by 55-foot long aluminum gangway,
- e) Remove a 79-foot by 43-foot "L" shaped wooden float and replace with a 16-foot wide by 60-foot long concrete float, which would be held in place with 3 new 12-inch diameter steel piles. New piles would be installed with a vibratory hammer.
- f) Seven, 12-inch diameter steel piles would be driven in total.

The work will be performed in accordance with the enclosed plans, sheets 1-7, dated October 23, 2021, which are incorporated in and made a part of this Letter of Permission.

This action is based upon the recommendation of the Chief of Engineers and under the provisions of Section 10 of the 1899 Rivers and Harbors Act (30 Stat 1151; 33 U.S.C. 403).

This authorization is subject to the following special conditions and the enclosed general conditions and further information (see enclosure entitled: GENERAL CONDITIONS/INFORMATION).

Special Conditions:

Special Condition 1: The permittee shall comply with the Federal Endangered Species Act, you must implement all of the mitigating measures identified in the enclosed National Marine Fisheries Service (NMFS) letter of concurrence (Number NMFS AKRO-2022-00871, dated May 5, 2022), including those ascribed to the U.S. Army Corps of Engineers (Corps) therein. If you are unable to implement any of these measures, you must immediately notify the Corps, the U.S. Fish and Wildlife Office, and

the NMFS so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.

2. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S.

3. You must install and maintain, at your expense, any safety lights and signals prescribed by the U.S. Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802, (907) 463-2272.

4. Self-Certification: Within 60 days of completion of the work authorized by this permit, the permittee shall complete the attached "Self-Certification Statement of Compliance" form (Attached) and submit it to the Corps of Engineers. In the event that the completed work deviates in any manner from the authorized work, the permittee shall describe the deviations between the work authorized by this permit and the work as constructed on the "Self-Certification Statement of Compliance" form. The description of any deviations on the "Self-Certification Statement of Compliance" form does not constitute approval of any deviations by the Corps.

5. The permittee understands and agrees that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

Nothing in this authorization shall be construed as excusing you from compliance with other Federal, State, or local statutes, ordinances, or regulations which may affect the proposed work.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

May 24, 2022

DATE



FOR: District Engineer
U.S. Army, Corps of Engineers

GENERAL CONDITIONS/INFORMATION

1. The time limit for completing the work authorized ends five years from the date of this authorization. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must contact the Alaska District Corps of Engineers to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Further Information:

1. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.

2. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

3. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

4. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 3 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations, (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

5. Extensions. General Condition #1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.



**This notice of authorization must be
conspicuously displayed at the site of work.**

**United States Army Corps of Engineers
Jamestown Bay**

A permit to: Modify and add on to an existing pile supported dock below the
Mean High Water (MHW) of Jamestown Bay.

at: Section 6, T. 56 S., R. 64 E., Copper River Meridian; USGS;
Latitude 57.0461° N., Longitude 135.2925° W. Sitka, Alaska.

has been issued to: Marcus Hernandez

on: May 24, 2022 **and expires on:** May 24, 2027

Address of Permittee: 108 Lincoln Street, Sitka, AK 99835

Permit Number:

POA-2014-00382

**FOR: District Commander
Andrew Gray
Regulatory Specialist
REGULATORY DIVISION**



VICINITY MAP

APPLICATION BY:
1608 MARCUS HERNANDEZ
SAWMILL CREEK ROAD
SITKA, AK 99835

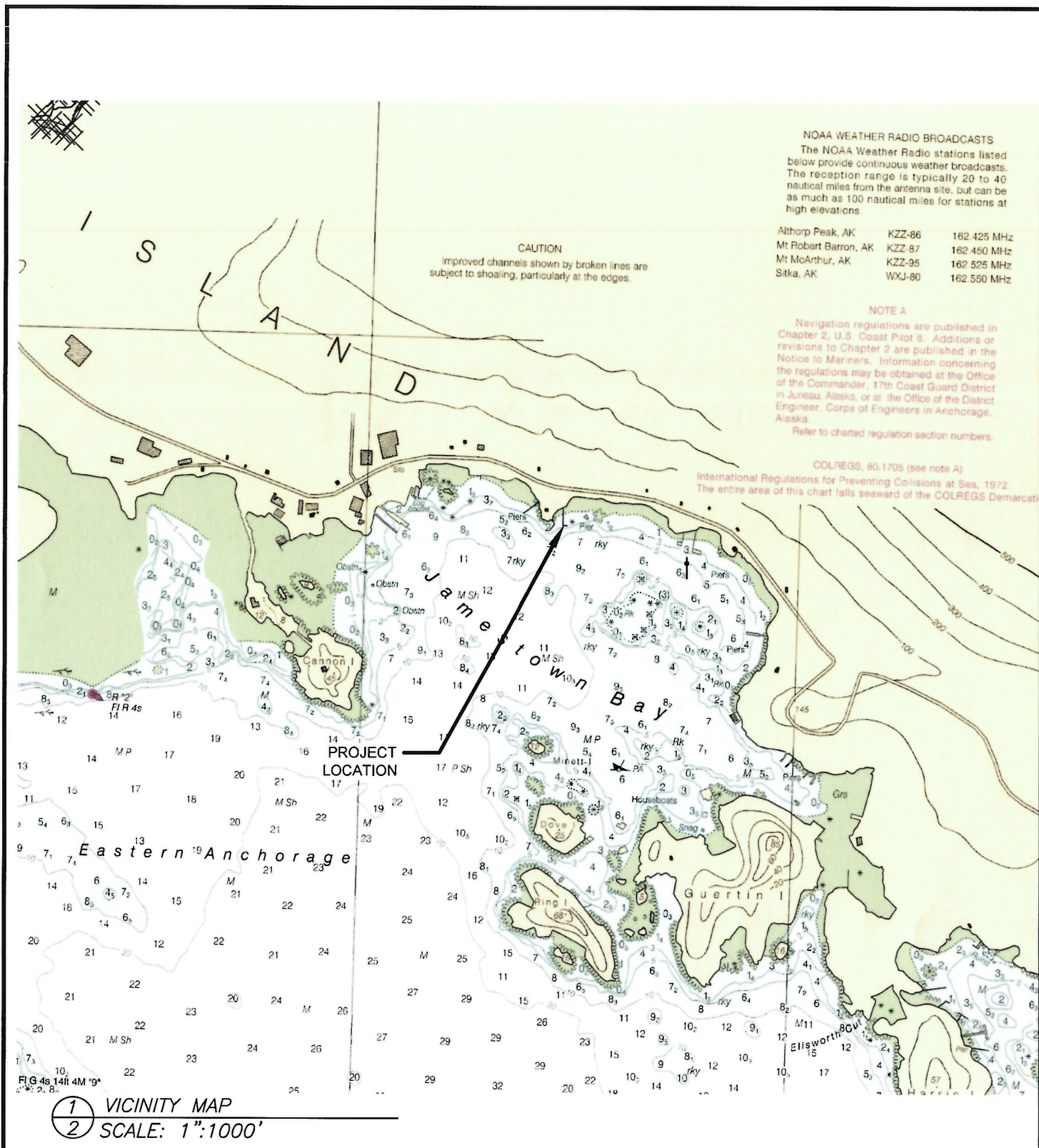
HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21

SHEET 1 OF 6



TIDAL DATA SOURCE: NOAA
 NAUTICAL CHART 17327
 SITKA HARBOR EXTRANCES

LOCATION MAP

APPLICATION BY:
 1608 MARCUS HERNANDEZ
 SAWMILL CREEK ROAD
 SITKA, AK 99835

HERNANDEZ DOCK REPLACEMENT

AT: SITKA
 LOCATED IN: T.56S., R.64E., SECTION 6
 Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21 SHEET **2** OF **6**

SAWMILL CREEK ROAD

1616

1618

HTL

MHW

1703

1614

X 17.20

NEW 8' WIDE STEEL & WOOD PIER

NEW PIER SUPPORT PILE (2) 12" DIA.

60'

REUSE EXIST. (2) 12" PILE DIA.

2

RELOCATE AND REUSE EXIST. RAMP

10

(3) NEW 12" STEEL PILE

16' WIDE x 60' LONG
CONCRETE FLOAT

15

EXISTING WOOD FLOAT
TO BE REMOVED

20

NEIGHBORING FLOAT

QUANTITIES

PIER - 8'x40', RAMP 6'x50'
RELOCATE (2) 12" STEEL PILE
NEW (3) 12" STEEL PILE
NEW 16'x60' CONCRETE FLOAT
REMOVE 825 S.F. WOOD FLOAT

SITE PLAN

APPLICATION BY:
MARCUS HERNANDEZ
1618 SAWMILL CREEK ROAD
SITKA, AK 99835

HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
Lat 57°02.78'N, Long. 135°17.55'W

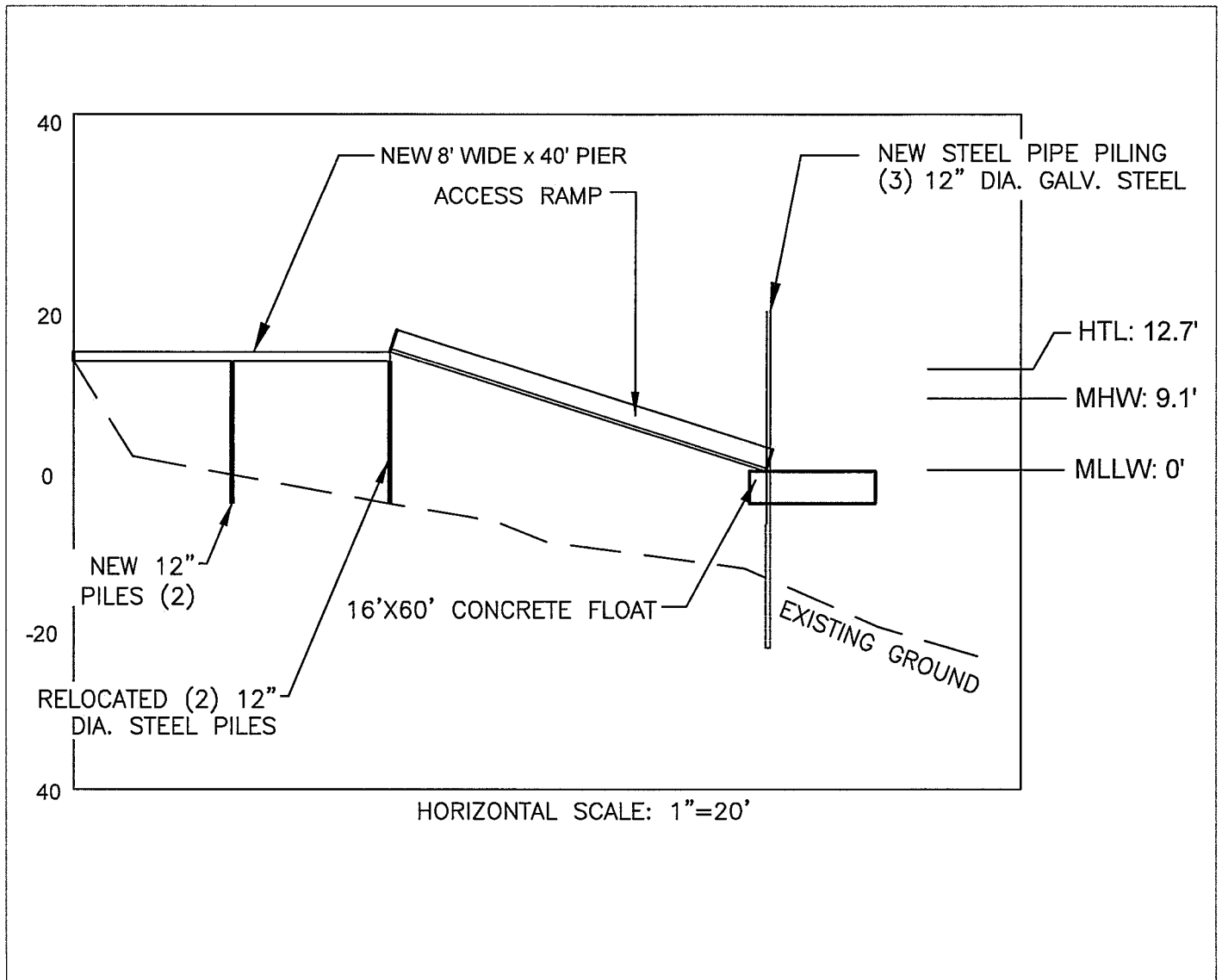
DATE: 10-28-21

SHEET **3** OF **6**

POA-2014-00382

October 23, 2021

Sheet 3 of 7



RAMP AND FLOAT ELEVATION VIEW
1"=20'

PROFILE VIEW

APPLICATION BY:
MARCUS HERNANDEZ
1618 SAWMILL CREEK ROAD
SITKA, AK 99835

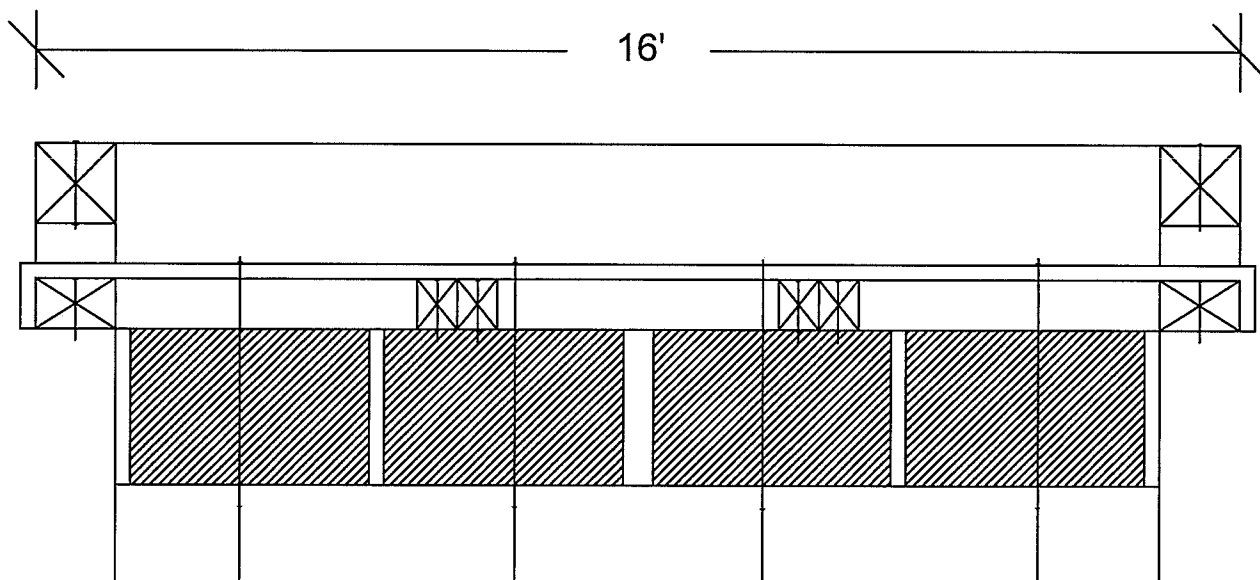
HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
Lat 57°02.78'N, Long. 135°17.55'W

DATE: 11-28-21

SHEET **4** OF **6**



TYPICAL CONCRETE FLOAT

EARTHWORK VOLUMES
 AREA OF FILL 24,400 S.F.
 TOTAL EXCAVATION 2,700 CY
 ROCK FILL 4,066 CY
 D-1 SURFACING 450 CY

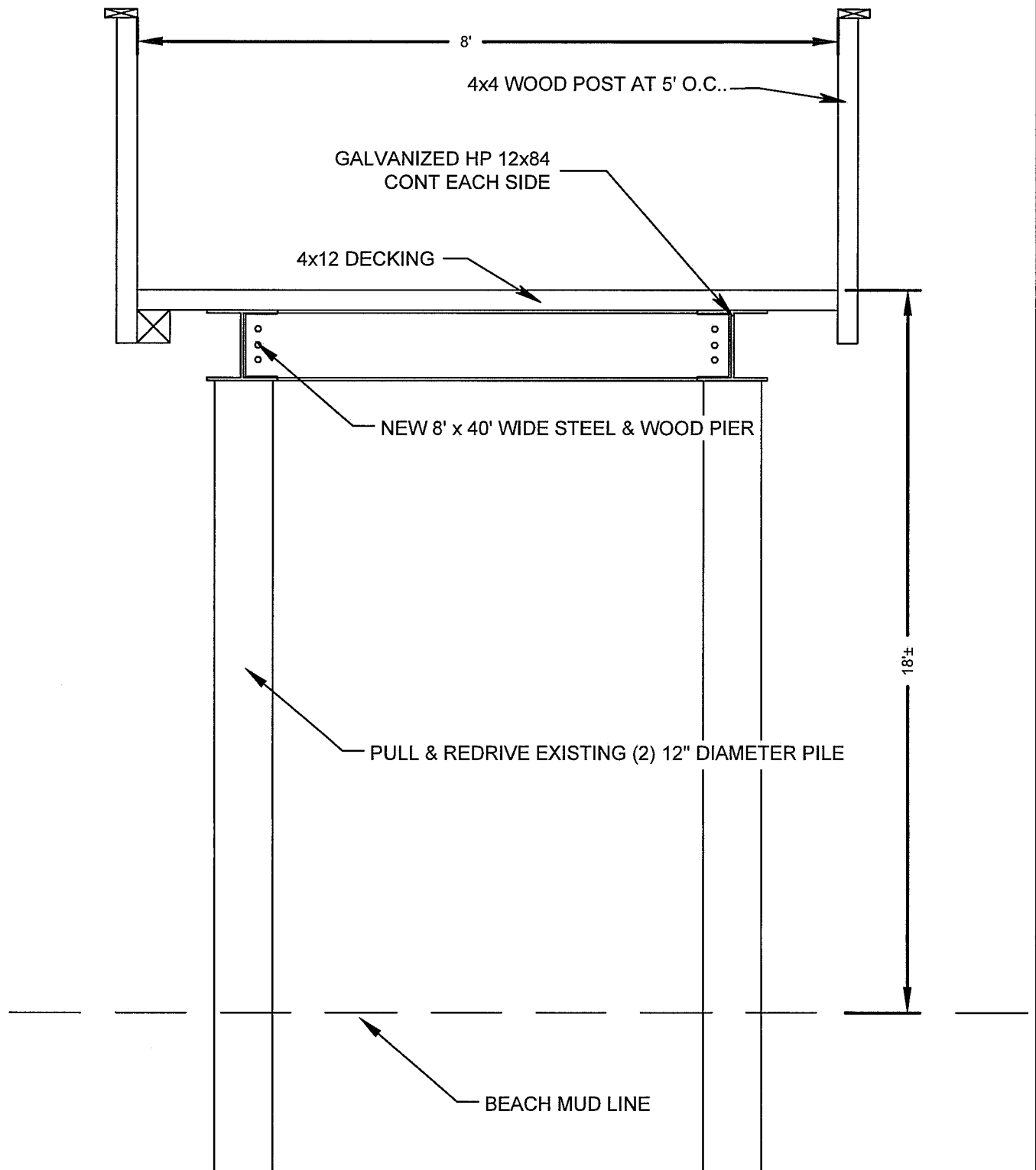
**FLOAT & PIER
 SECTION**

APPLICATION BY:
 1608 MARCUS HERNANDEZ
 SAWMILL CREEK ROAD
 SITKA, AK 99835

*HERNANDEZ DOCK
 REPLACEMENT*

AT: SITKA
 LOCATED IN: T.56S., R.64E., SECTION 6
 Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21 SHEET **5** OF **6**



FLOAT & PIER SECTION

APPLICATION BY:
1608 MARCUS HERNANDEZ
SAWMILL CREEK ROAD
SITKA, AK 99835

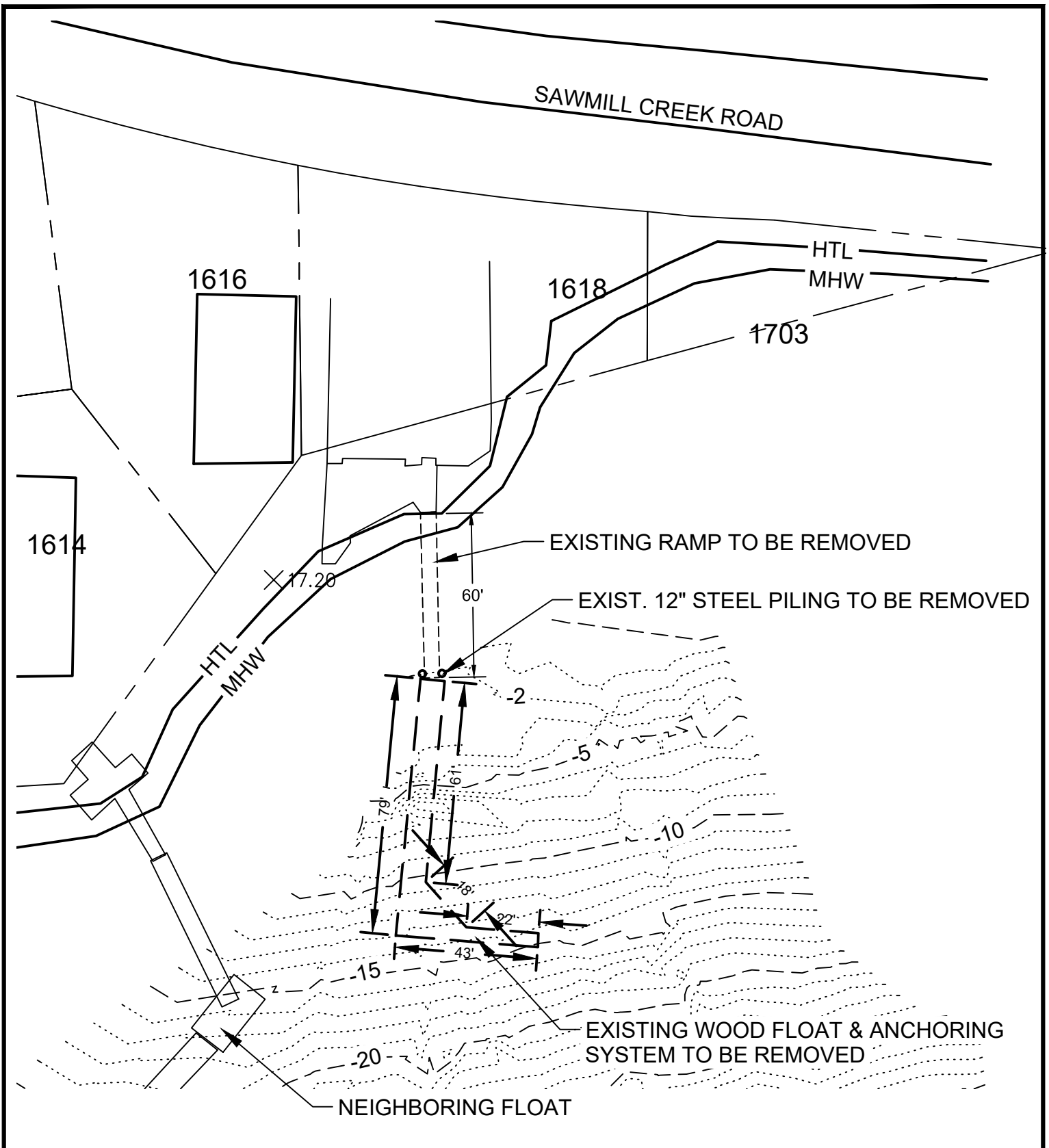
HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21

SHEET **6** OF **6**



QUANTITIES

PIER - 8'x40', RAMP 6'x50'
 RELOCATE (2) 12" STEEL PILE
 NEW (3) 12" STEEL PILE
 NEW 16'x60' CONCRETE FLOAT
 REMOVE 825 S.F. WOOD FLOAT

SITE PLAN

APPLICATION BY:
 MARCUS HERNANDEZ
 1618 SAWMILL CREEK ROAD
 SITKA, AK 99835

HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
 Lat 57°02.78'N, Long. 135°17.55'W

DATE: 2-15-22

SHEET **3A** OF **6**
 POA-2014-00382

October 23, 2021
 Sheet 7 of 7

POA-2014-00382

Marcus Hernandez

FARMS DIRECT

Virgil's Appliance Repair

Mt. Verstovia Trailhead

Sawmill Creek Rd

Sitka Dock Location

Jamestown Bay B&B

Sawmill Creek Rd

Worldclass Sport

Jamestown Bay

150 meter
shutdown zone

Cannon Island

Minett Islet

Google Earth

Image © 2021 Maxar Technologies

1000 ft

N



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

May 5, 2022

Col. Damon Delarosa
U.S. Army Corps of Engineers, Alaska District
Regulatory Division
P.O. Box 6898
JBER, Alaska 99506-0898

Re: Jamestown Dock xLOC POA-2014-00382 AKRO-2022-00871

Dear Colonel Delarosa:

This letter responds to your request for concurrence from the National Marine Fisheries Service (NMFS) pursuant to Section 7 of the Endangered Species Act (ESA) for the proposal to permit the construction of a new dock in Jamestown Bay near Sitka, Alaska (POA-2014-00382). NMFS received an initial request for an expedited informal consultation on April 13, 2022. After several communications regarding details of the proposed action including mitigation measures, and effects analysis, the U.S. Army Corps of Engineers submitted a revised request for expedited informal consultation on April 26, 2022. Your request qualified for our expedited review and concurrence because it met our screening criteria and contained all required information on your proposed action, mitigation measures, and its potential effects to listed species and designated critical habitat. Expedited consultation for this proposed action commenced on April 26, 2022.

We reviewed your consultation request document and related materials. Our analysis of this project's effects on listed species and critical habitats relied upon the project description you provided, including all of the proposed mitigation measures. Through the consultation process mitigation measures were updated and agreed upon with the U.S. Army Corps of Engineers (see attachment). Failure to implement any of these mitigation measures may require reinitiation of consultation as per reinitiation trigger number 3, below (50 CFR 402.16(a)(3)).

Based on our knowledge, expertise, and the materials you provided, we concur with your conclusions that the proposed action is not likely to adversely affect Mexico Distinct Population Segment (DPS) humpback whales (*Megaptera novaeangliae*) or Western DPS Steller sea lions (*Eumetopias jubatus*). A complete administrative record of this consultation is on file at the Anchorage NMFS office.

Reinitiation of consultation is required where discretionary federal involvement or control over the action has been retained or is authorized by law and if (1) take of listed species occurs, (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered, (3) the action is subsequently modified in a



manner that causes an effect to the listed species or critical habitat that was not considered in this concurrence letter, or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16).

Please direct any questions regarding this letter to Ellen Wilt, at ellen.wilt@noaa.gov or (907) 351-8352.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory R. Balogh".

Gregory R. Balogh
Acting Assistant Regional Administrator
for Protected Resources

Attachments:

Project Mitigation Measures
U.S. Army Corps of Engineer's Consultation Request Letter

cc: Andrew Gray, Andrew.A.Gray@usace.army.mil

Mitigation Measures for U.S. Army Corps of Engineers Coastal Permit Action POA-2014-00382/AKRO-2022-00871 Jamestown Bay

For all reporting that results from implementation of these mitigation measures, NMFS will be contacted using the contact information specified in Table 1. In all cases, notification will reference the NMFS consultation tracking number (e.g., AKRO-2022-00871)

General Mitigation Measures

1. The USACO/applicant will inform NMFS of impending in-water activities a minimum of one week prior to the onset of those activities (email information to akr.section7@noaa.gov).
2. If construction activities will occur outside of the time window specified in this letter, the applicant will notify NMFS of the situation at least 60 days prior to the end of the specified time window to allow for reinitiation of consultation.
3. In-water work will be conducted at the lowest points of the tidal cycle feasible.
4. Consistent with AS 46.06.080, trash will be disposed of in accordance with state law. In addition, the project proponent will ensure that all closed loops (e.g., packing straps, rings, bands) will be cut prior to disposal. In addition, the project proponent will secure all ropes, nets, and other marine mammal entanglement hazards so they cannot enter public waterways.

Protected Species Observer (PSO)-related measures

5. One or more PSOs will perform PSO duties onsite throughout impact pile driving activities.
6. For each in-water activity, PSOs will monitor all marine waters within the 150 meter shutdown zone radius for that activity.
7. PSOs will be positioned such that they will collectively be able to monitor the entirety of each activity's shutdown zone. The proponent will coordinate with NMFS on the placement of PSOs prior to commencing in-water work.
8. Prior to commencing impact pile driving, PSOs will scan waters within the 150 meter shutdown zone and confirm no listed species are within the shutdown zone for at least 30 minutes immediately prior to initiation of the in-water activity. If one or more listed species are observed within the shutdown zone, the in-water activity will not begin until the listed species exit the shutdown zone of their own accord, or the shutdown zone has remained clear of listed species for 30 minutes immediately prior to impact pile driving.
9. The on-duty PSOs will continuously monitor the shutdown zone and adjacent waters during impact pile driving operations for the presence of listed species.
10. In-water activities will take place only:
 - a. between sunrise and sunset.
 - b. when the entire shutdown zone and adjacent waters are visible (e.g., monitoring effectiveness is not reduced due to rain, fog, snow, haze or other

environmental/atmospheric conditions).

11. If visibility degrades such that a PSO can no longer ensure that the shutdown zone remains devoid of listed species during impact pile driving, the crew will cease in-water work until the entire shutdown zone is visible and the PSO has indicated that the zone has remained devoid of listed species for 30 minutes.
12. The PSO will order the impact pile driving activities to immediately cease if one or more listed species has entered, or appears likely to enter, the associated shutdown zone.
13. If impact pile driving activities are shut down for less than 30 minutes due to the presence of listed-species in the shutdown zone, impact pile driving may commence when the PSO provides assurance that listed species were observed exiting the shutdown zone. Otherwise, the activities may only commence after the PSO provides assurance that listed species have not been seen in the shutdown zone for 30 minutes (for cetaceans) or 15 minutes (for pinnipeds).
14. If a listed species is observed within a shutdown zone or is otherwise harassed, harmed, injured, or disturbed, PSOs will immediately report that occurrence to NMFS using the contact information specified in Table 1.

Protected Species Observer Requirements

15. PSOs will be someone other than the applicant and must have no other assigned tasks during monitoring periods.
16. The action agency or its designated non-federal representative will provide resumes or qualifications of PSO candidates to the NMFS consultation biologist or section 7 coordinator for approval at least one week prior to in-water work. NMFS will provide a brief explanation of lack of approval in instances where an individual is not approved.
17. PSOs will:
 - a. have the ability to effectively communicate orally, by radio and in person, with project personnel;
 - b. be able to collect field observations and record field data accurately and in accordance with project protocols and provide an understandable summary of those observations;
 - c. be able to identify protected species that occur in the action area at a distance equal to the outer edge of the shutdown zone;
18. PSOs will work in shifts lasting no longer than 4 hours with at least a 1-hour break from monitoring duties between shifts. PSOs will not perform PSO duties for more than 12 hours in a 24-hour period.
19. PSOs will have the ability to effectively communicate orally, by radio and in person, with project personnel to provide real-time information on listed species.
20. PSOs will have the ability and authority to order appropriate mitigation response, including shutdowns, to avoid takes of all listed species.
21. The PSOs will have the following equipment to address their duties:

- a. communicate in real time with the construction crew
 - b. effectively observe the entirety of the shutdown zone
 - c. identify marine mammals
 - d. record the date, time, species, and coordinates of all observed marine mammals.
 - e. instruments that allow observer to estimate geographic coordinates of observed marine mammals
 - f. a legible copy of this LOC and all appendices
 - g. legible and fillable observation record form allowing for required PSO data entry.
22. Prior to commencing in-water work or at changes in watch, PSOs will establish a point of contact with the construction crew. The PSO will brief the point of contact as to the shutdown procedures if listed species are observed likely to enter or within the shutdown zone, and will request that the point of contact instruct the crew to notify the PSO when a marine mammal is observed. If the point of contact goes "off shift" and delegates his duties, the PSO must be informed and brief the new point of contact.

Impact Pile driving

23. If no listed species are observed within the impact pile driving shutdown zone for 30 minutes immediately prior to pile driving, soft-start procedures will be implemented immediately prior to activities. Soft start requires contractors to provide an initial set of strikes at no more than half the operational power, followed by a 30 second waiting period, then two subsequent reduced power strike sets. A soft start must be implemented at the start of each day's impact pile driving, any time pile driving has been shutdown or delayed due the presence of a listed species, and following cessation of pile driving for a period of 30 minutes or longer.
24. Following this soft-start procedure, operational impact pile driving may commence and continue provided listed species remain absent from the shutdown zone.
25. Following a lapse of impact pile driving activities of more than 30 minutes, the PSO will authorize resumption of impact pile driving only after the PSO provides assurance that listed species have not been present in the shutdown zone for at least 30 minutes immediately prior to resumption of operations.

Project-Dedicated Vessels

26. Vessel operators will:
- a. maintain a watch for marine mammals at all times while underway;
 - b. stay at least 91 m (100 yds) away from listed marine mammals, except they will remain at least 460 m (500 yards) from endangered North Pacific right whales;
 - c. travel at less than 5 knots (9 km/hour) when within 274 m (300 yards) of a whale;
 - d. avoid changes in direction and speed when within 274 m (300 yds) of a whale, unless doing so is necessary for maritime safety;

- e. not position vessel(s) in the path of a whale, and will not cut in front of a whale in a way or at a distance that causes the whale to change direction of travel or behavior (including breathing/surfacing pattern);
 - f. check the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged;
 - g. reduce vessel speed to 10 knots or less when weather conditions reduce visibility to 1.6 km (1 mi) or less;
27. Adhere to the Alaska Humpback Whale Approach Regulations when vessels are transiting to and from the project site: (see 50 CFR §§ 216.18, 223.214, and 224.103(b)) (note: these regulations apply to all humpback whales). Specifically, pilot and crew will not:
- a. approach, by any means, including by interception (i.e., placing a vessel in the path of an oncoming humpback whale), within 100 yards of any humpback whale;
 - b. cause a vessel or other object to approach within 100 yards of a humpback whale;
 - c. disrupt the normal behavior or prior activity of a whale by any other act or omission.
28. If a whale's course and speed are such that it will likely cross in front of a vessel that is underway, or approach within 91 m (100 yds) of the vessel, and if maritime conditions safely allow, the engine will be put in neutral and the whale will be allowed to pass beyond the vessel, except that vessels will remain 460 m (500 yds) from North Pacific right whales.
29. Vessels will take reasonable steps to alert other vessels in the vicinity of whale(s).
30. Vessels will not allow lines to remain in the water unless both ends are under tension and affixed to vessels or gear. No materials capable of becoming entangled around marine mammals will be discarded into marine waters.

Vessel Transit, Western DPS Steller Sea Lions, and their Critical Habitat.

31. Vessels will not approach within 5.5 km (3 nm) of rookery sites listed in (50 CFR § 224.103(d)).
32. Vessels will not approach within 914 m (3,000 ft) of any Steller sea lion haulout or rookery.

General Data Collection and Reporting

Data Collection

33. PSOs will record observations on data forms or into electronic data sheets.
34. The project proponent will ensure that PSO data will be submitted electronically in a format that can be queried such as a spreadsheet or database (i.e. digital images of data sheets are not sufficient).
35. PSOs will record the following:

- a. the date, shift start time, shift stop time, and PSO identifier;
- b. date and time of each reportable event (e.g., a marine mammal observation, operation shutdown, reason for operation shutdown, change in weather);
- c. weather parameters (e.g., percent cloud cover, percent glare, visibility) and sea state where the Beaufort Wind Force Scale will be used to determine sea-state (<https://www.weather.gov/mfl/beaufort>);
- d. species, numbers, and, if possible, sex and age class of observed marine mammals, and observation date, time, and location;
- e. the predominant anthropogenic sound-producing activities occurring during each marine mammal observation;
- f. bearing and direction of travel of observed marine mammal(s);
- g. observations of marine mammal behaviors and reactions to anthropogenic sounds and presence;
- h. initial, closest, and last location of marine mammals, including distance from observer to the marine mammal, and minimum distance from the predominant sound-producing activity or activities to marine mammals;
- i. whether the presence of marine mammals necessitated the implementation of mitigation measures to avoid acoustic impact, and the duration of time that normal operations were affected by the presence of marine mammals;
- j. geographic coordinates for the observed animals, with the position recorded by using the most precise coordinates practicable (coordinates will be recorded in decimal degrees, or similar standard and defined coordinate system).

Data Reporting

36. All observations of North Pacific right whales will be reported to NMFS within 24 hours. These observation reports will include the following information:
 - a. date, time, and geographic coordinates of the observation(s);
 - b. number of North Pacific right whales observed, including number of adults/juveniles/calves observed, if determinable;
 - c. Environmental conditions as they existed during each observation event, including sea conditions, weather conditions, visibility, lighting conditions, and percent ice cover.
37. Observations of humpback whales will be transmitted to AKR.section7@noaa.gov by the end of the calendar year, including:
 - d. photographs (especially flukes) and video obtained.
 - e. geographic coordinates for the observed animals, with the position recorded by using the most precise coordinates practicable (coordinates will be recorded in decimal degrees, or similar standard (and defined) coordinate system).
 - f. Number of humpback whales observed, including number of

adults/juveniles/calves observed (if determinable).

- g. Environmental conditions as they existed during each observation event, including sea conditions, weather conditions, visibility, lighting conditions, and percent ice cover.

Unauthorized Take

38. If a listed marine mammal is determined by the PSO to have been disturbed, harassed, harmed, injured, or killed (e.g., a listed marine mammal(s) is observed entering a shutdown zone before operations can be shut down, or is injured or killed as a direct or indirect result of this action), the PSO will report the incident to NMFS within one business day, with information submitted to akr.section7@noaa.gov. These PSO records will include:

- a. all information to be provided in the final report (see Mitigation Measures under the *Final Report* heading below);
- b. number of animals of each threatened and endangered species affected;
- c. the date, time, and location of each event (provide geographic coordinates);
- d. description of the event;
- e. the time the animal(s) was first observed or entered the shutdown zone, and, if known, the time the animal was last seen or exited the zone, and the fate of the animal;
- f. mitigation measures implemented prior to and after the animal was taken; and
- g. if a vessel struck a marine mammal, the contact information for the PSO on duty, or the contact information for the individual piloting the vessel if there was no PSO on duty;
- h. Photographs or video footage of the animal(s) (if available).

Stranded, Injured, Sick or Dead Marine Mammal (not associated with the project)

39. If PSOs observe an injured, sick, or dead marine mammal (i.e., stranded marine mammal), they will notify the Alaska Marine Mammal Stranding Hotline at 877-925-7773. The PSOs will submit photos and available data to aid NMFS in determining how to respond to the stranded animal. If possible, data submitted to NMFS in response to stranded marine mammals will include date/time, location of stranded marine mammal, species and number of stranded marine mammals, description of the stranded marine mammal's condition, event type (e.g., entanglement, dead, floating), and behavior of live-stranded marine mammals.

Illegal Activities

40. If PSOs observe marine mammals being disturbed, harassed, harmed, injured, or killed (e.g., feeding or unauthorized harassment), these activities will be reported to NMFS Alaska Region Office of Law Enforcement at (Table 2; 1-800-853-1964).

41. Data submitted to NMFS will include date/time, location, description of the event, and any photos or videos taken.

Final Report

42. A final report will be submitted to NMFS within 90 calendar days of the completion of the project summarizing the data recorded and submitted to AKR.section7@noaa.gov. The report will summarize all in-water activities associated with the proposed action, and results of PSO monitoring conducted during the in-water project activities.

The final report will include:

- a. summaries of monitoring efforts, including dates and times of construction, dates and times of monitoring, dates and times and duration of shutdowns due to marine mammal presence;
- b. date and time of marine mammal observations, geographic coordinates of marine mammals at their closest approach to the project site, including date, water depth, marine mammal species, numbers, age/size/gender categories (if determinable), and group sizes.

Summary of Agency Contact Information

Table 1. Summary of agency contact information.

Reason for Contact	Contact Information
Request S7 Consultation	AKR.PRD.Section7@noaa.gov
Consultation Questions & Unauthorized Take	Bonnie Easley-Appleyard (bonnie.easley-appleyard@noaa) & Ellen Wilt (ellen.wilt@noaa.gov)
Reports & Data Submittal	AKR.section7@noaa.gov (please include NMFS AKRO tracking number in subject line)
Stranded, Injured, or Dead Marine Mammal (<i>not related to project activities</i>)	Stranding Hotline (24/7 coverage) 877-925-7773
Oil Spill & Hazardous Materials Response	U.S. Coast Guard National Response Center: 1-800-424-8802 & AKRNMFSspillResponse@noaa.gov
Illegal Activities (<i>not related to project activities; e.g., feeding, unauthorized harassment, or disturbance to marine mammals</i>)	NMFS Office of Law Enforcement (AK Hotline): 1-800-853-1964

Reason for Contact	Contact Information
In the event that this contact information becomes obsolete	NMFS Anchorage Main Office: 907-271-5006 Or NMFS Juneau Main Office: 907-586-7236



DEPARTMENT OF THE ARMY
ALASKA DISTRICT, U.S. ARMY CORPS OF ENGINEERS
REGULATORY DIVISION
44669 STERLING HIGHWAY, SUITE B
SOLDOTNA, AK 99669

March 25, 2021

Regulatory Division
POA-2014-00382

Mr. Jon Kurland
Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service, Alaska Region
Post Office Box 21668
Juneau, Alaska 99802

Dear Mr. Kurland:

In accordance with Section 7(a)2 of the Endangered Species Act of 1973, as amended (ESA), the U.S. Army Corps of Engineers, Alaska District, Regulatory Division (Corps), requests initiation of informal consultation regarding a Department of the Army (DA) permit application submitted by Trevor Sande with R & M Engineering, on behalf of Marcus Hernandez, file number POA-2014-00382 Jamestown Bay, which should be referred to in all correspondence with us. In accordance with guidance provided in the Endangered Species Consultation Handbook, the Corps requests that you initiate consultation upon receipt of this request or provide a response within 30 days of receipt of this request stating what information is necessary to meet the requirements of 50 CFR §402.14(c). Upon your initiation of informal consultation, please provide this office with an expected completion date so that we may inform the applicant of the associated timeframes. The following information is provided in accordance with 50 CFR §402.14(c). The applicant proposes to modify and add on to an existing pile supported dock below the Mean High Water (MHW) of Jamestown Bay (9.2-foot above the 0.0-foot contour). Specifically, the applicant would:

- a. Construct a new 8-foot by 60-foot wooden pier with steel bracing.
- b. Place two new 12-inch diameter steel piles to support pier.
- c. Cut off and re-use two existing 12-inch diameter wooden piles.
- d. Relocate an existing 5-foot wide by 55-foot long aluminum gangway.
- e. Remove a 79-foot by 43-foot "L" shaped wooden float and replace with a 16-foot wide by 60-foot concrete float, which would be held in place with 3 new 12 inch diameter steel piles.
- f. Seven 12 inch diameter steel piles would be driven in total via impact hammer.

All work would be performed in accordance with the enclosed plan (sheets 1-7), dated October 23, 2021. The project site is located within Section 6, T. 56 S., R. 64 E., Copper River Meridian; Latitude 57.0463° N., Longitude -135.2925° W.; Sitka Parcel ID #3-0765-000; in Sitka, Alaska

The action area is defined in the ESA regulations (50 CFR 402.02) as the area within which all consequences of the action will occur. The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur.

For this project, the action area includes the ensonified area within which project-related noise levels are greater than or equal to 160 dBrms re1μPa or approaching ambient noise levels (i.e., the point where no measurable effect from the project would occur). According to National Oceanic and Atmospheric Administration (NOAA) Fisheries' "Technical Guidance for Assessing the Effects of Anthropogenic Noise on Marine Mammal Hearing" (July 2016), the Level B threshold for behavioral disturbance for discontinuous noise is 160 dBrms.

The Corps has determined that the action area extends out from the proposed project's sound source to approximately 136 meters. The action area is based upon observed sound levels reported in "Technical Guidance for the Assessment of Hydroacoustic Effects of Pile Driving on Fish" (2020; Caltrans, pdf page 171). This document summarized the observed sound levels for the installation by impact hammer of a 12-inch steel pipe pile in San Francisco Bay near El Cerrito, California. In this study, sound was measured at 177 dBrms at 10 meters from the sound source. Using this data in the Practical Spreading Model results in a shutdown zone of 136 meters. The Corps is recommending a conservative shutdown zone of 150 meters, which is depicted on aerial photography, attached.

Within the action area, the Mexico Distinct Population Segment (DPS) of humpback whales (*Megaptera novaeangliae*) occurs and given the timeframe of when pile driving would occur, it would be expected that humpback whales would be in the area. Steller Sea Lions Western Distinct Population Segment (WDPS) (*Eumetopias jubatus*) also occur within the action area, and it is expected that they may be present at the time pile driving would take place.

Acoustic disturbance from pile driving is the main consequence which would be expected to occur because of the proposed project. Loud underwater noise can impact listed species by resulting in mortality (either directly from the noise, or indirectly from a reaction to the noise), injury, and disturbance ranging from severe (e.g., abandonment of vital habitat) or mild (e.g., startle response). Though the proposed pile driving would introduce loud discontinuous sounds into the water, the applicant has agreed to the enclosed list of minimization measures which would ensure no individuals of the listed species are exposed to noise levels above 160 dB.

We believe that with the incorporation of the proposed measures, the action may affect, but is not likely to adversely affect the Mexico DPS humpback whale, and the WDPS Steller Sea Lion. We request your concurrence with our determination.

Please contact me via email at andrew.a.gray@usace.army.mil, by mail at the address above, or by phone at (907) 753-2722, if you have questions. For additional information about our Regulatory Program, visit <http://www.poa.usace.army.mil/Missions/Regulatory>.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Gray", with a stylized flourish at the end.

Andrew Gray
Regulatory Specialist

Enclosures

1. One or more Protected Species Observers (PSOs) will be performing PSO duties onsite throughout pile installation activities. PSOs will be positioned such that they will collectively be able to monitor the entirety of the shutdown zone, along with adjacent waters.
2. For each in-water activity, PSOs will monitor all marine waters within the indicated shutdown zone radius for that activity (Table 1).

Table 1. Shutdown Zones for Each Activity.

Activity	Zone Radius (m)
Pile Installation (Impact hammer)	150

3. Prior to commencing pile installation, PSOs will scan waters within the depicted shutdown zone (attached) and confirm no listed species are within the shutdown zone for at least 30 minutes immediately prior to initiation of pile installation. If one or more listed species are observed within the shutdown zone, pile installation will not begin until the listed species exit the shutdown zone of their own accord, or the shutdown zone has remained clear of listed species for 30 minutes immediately prior to pile installation.
4. The on-duty PSOs will continuously monitor the shutdown zone and adjacent waters during pile installation operations for the presence of listed species.
5. In-water activities will take place only:
 - a. between civil dawn and civil dusk when PSOs can effectively monitor for the presence of listed species;
 - b. during conditions with a Beaufort Sea State of 4 or less;
 - c. when the entire shutdown zone and adjacent waters are visible (e.g., monitoring effectiveness is not reduced due to rain, fog, snow, volcanic ash).
6. If visibility degrades to where the PSO(s) cannot ensure that the shutdown zone remains devoid of listed species during pile installation, the crew will cease pile installation until the entire shutdown zone is visible and the PSO(s) has indicated that the zone has remained devoid of listed species for 30 minutes.
7. The PSO(s) will order the pile installation to immediately cease if one or more listed species has entered, or appears likely to enter, the shutdown zone.
8. If pile installation activities are shut down for less than 30 minutes due to the presence of listed species in the shutdown zone, pile installation may commence when the PSO(s) provides assurance that listed species were observed exiting the shutdown zone. Otherwise, pile installation may only commence after the PSO(s) provides assurance that listed species have not been seen in the shutdown zone for 30 minutes.

9. Following a lapse of pile installation of more than 30 minutes, the PSO(s) will authorize resumption of activities only after the PSO(s) provides assurance that listed species have not been present in the shutdown zone for at least 30 minutes immediately prior to resumption of operations.
10. If a listed species is observed within a shutdown zone or is otherwise harassed, harmed, injured, or disturbed, PSO(s) will immediately report that occurrence to National Marine Fisheries Service (NMFS) using the contact information specified in Table 2.

Table 2. NMFS Contact Information

Reason for Contact	Contact Information
Consultation Questions & Unauthorized Take	Greg Balogh: greg.balogh@noaa.gov & Consultation Biologist, TBD, TBD
Reports & Data Submittal	AKR: section7@noaa.gov (please include NMFS AKRO tracking number in subject line)
In the event that this contact information becomes obsolete, for NMFS Anchorage Main Office: 907-271-5006 or NMFS Juneau Main Office: 907-586-7286	

11. PSO(s) will work in shifts lasting no longer than four (4) hours with at least a one (1) hour break from monitoring duties between shifts. PSO(s) will not perform PSO duties for more than 12 hours in a 24-hour period.
12. PSO(s) will have the ability and authority to order appropriate mitigation response, including shutdowns, to avoid takes of all listed species.
13. The PSO(s) will have the following equipment to address their duties:
 - a. tools which enable them to accurately determine the position of a listed species in relationship to the shutdown zone;
 - b. two-way radio communication, or equivalent, with onsite project manager;
 - c. tide tables for the project area;
 - d. watch or chronometer;
 - e. binoculars (7x30 or higher magnification) with built-in rangefinder or reticle (rangefinder may be provided separately);
 - f. global positioning system;
 - g. a legible copy of this letter of concurrence (LOC) and all appendices; and
 - h. legible and fillable observation record form allowing for required PSO data entry
14. PSO(s) will have no other primary duties beyond watching for, acting on, and reporting events related to listed species.

15. Prior to commencing in-water work or at changes in watch, PSO(s) will establish a point of contact with the construction crew. The PSO(s) will brief the point of contact as to the shutdown procedures if listed species are observed likely to enter or within the shutdown zone and will request that the point of contact instruct the crew to notify the PSO(s) when a listed species is observed. If the point of contact goes "off shift" and delegates his duties, the PSO(s) must be informed and brief the new point of contact.
16. If no listed species are observed within the impact pile driving shutdown zone for 30 minutes immediately prior to pile driving, impact pile driving may commence. This pre-pile driving observation period will take place at the start of each day's impact pile driving, each time pile driving has been shut down or delayed due the presence of a listed species and following cessation of pile driving for a period of 30 minutes or longer.
17. If a listed marine mammal is determined by the PSO(s) to have been disturbed, harassed, harmed, injured, or killed (e.g., a listed species is injured or killed or is observed entering a shutdown zone before operations can be shut down), it will be reported to NMFS within one business day to akr.section7@noaa.gov. These PSO records will include:
 - a. information to be provided in the final report (see below);
 - b. number and species of listed animals affected;
 - c. the date, time, and location of each event (provide geographic coordinates);
 - d. description of the event;
 - e. the time the animal(s) was first observed or entered the shutdown zone, and if known, the time the animal was last seen or exited the zone, and the fate of the animal;
 - f. mitigation measures implemented prior to and after the animal was taken;
 - g. if a vessel struck a marine mammal, the contact information for the PSO(s) on duty, and/or the contact information for the individual piloting vessel if there was no PSO on duty; and
 - h. photographs or video footage of the animal(s) (if available).
18. A final report will be submitted to NMFS within 90 calendar days of the completion of the project summarizing the data recorded and submitted to akr.section7@noaa.gov. The report will summarize all pile installation activities associated with the proposed action, and results of PSO monitoring conducted during the pile installation activities. The final report will include:
 - a. Summary of monitoring efforts including dates, total hours, and sea state and other factors that affect visibility and detectability of listed species;
 - b. Listed species occurrence (list number of individuals) and distance from project activities at time of observation.



VICINITY MAP

APPLICATION BY:
1608 MARCUS HERNANDEZ
SAWMILL CREEK ROAD
SITKA, AK 99835

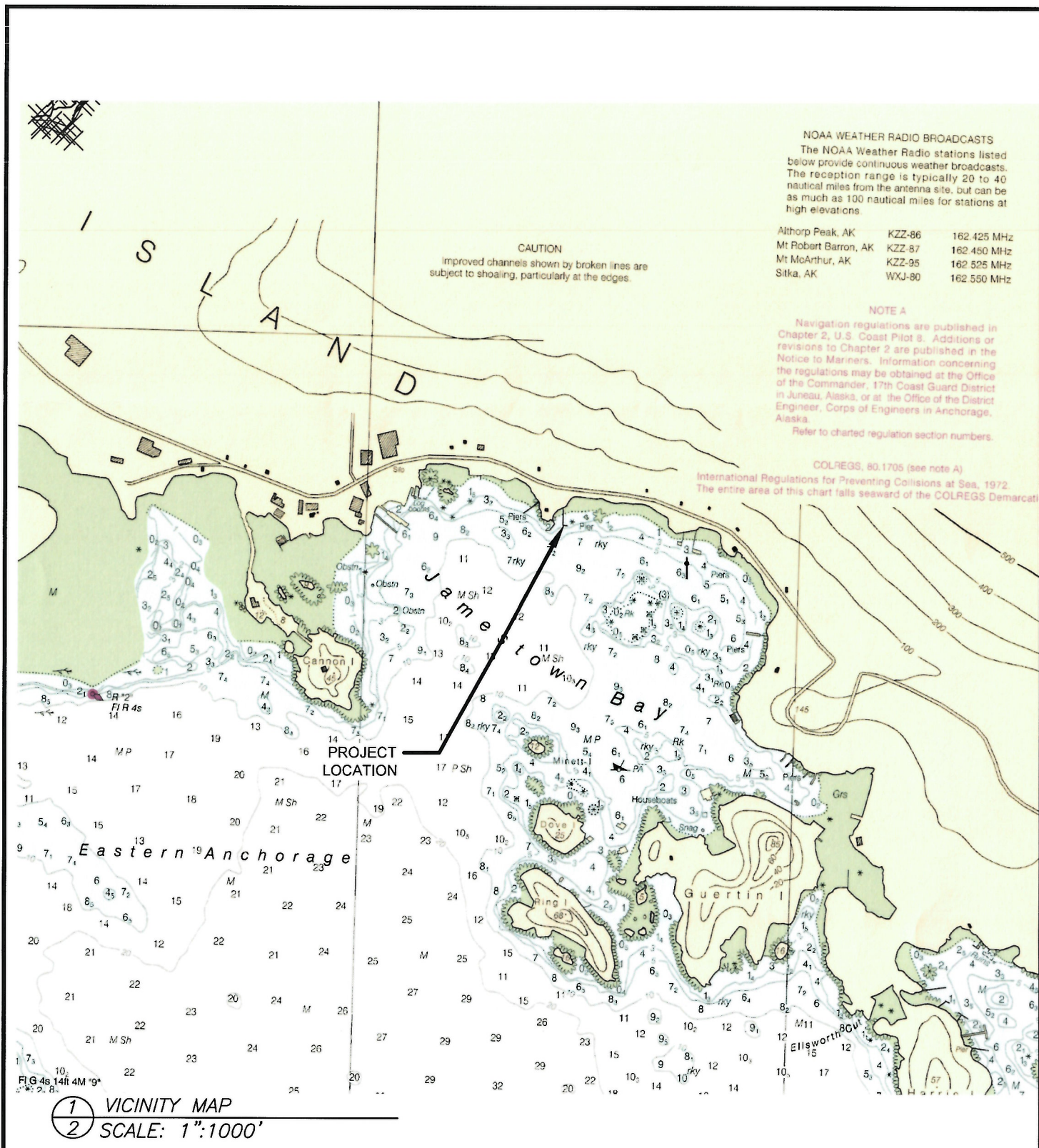
HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.55S., R.63E., SECTION 36
Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21

SHEET **1** OF **6**



TIDAL DATA SOURCE: NOAA
 NAUTICAL CHART 17327
 SITKA HARBOR EXTRANCES

LOCATION MAP

APPLICATION BY:
 1608 MARCUS HERNANDEZ
 SAWMILL CREEK ROAD
 SITKA, AK 99835

HERNANDEZ DOCK REPLACEMENT

AT: SITKA
 LOCATED IN: T.56S., R.64E., SECTION 6
 Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21 SHEET **2** OF **6**

SAWMILL CREEK ROAD

1616

1618

HTL

MHW

1703

1614

X 17.20

NEW 8' WIDE STEEL & WOOD PIER

NEW PIER SUPPORT PILE (2) 12" DIA.

60'

REUSE EXIST. (2) 12" PILE DIA.

2

RELOCATE AND REUSE EXIST. RAMP

10

(3) NEW 12" STEEL PILE

16' WIDE x 60' LONG
CONCRETE FLOAT

15

EXISTING WOOD FLOAT
TO BE REMOVED

20

NEIGHBORING FLOAT

QUANTITIES

PIER - 8'x40', RAMP 6'x50'
RELOCATE (2) 12" STEEL PILE
NEW (3) 12" STEEL PILE
NEW 16'x60' CONCRETE FLOAT
REMOVE 825 S.F. WOOD FLOAT

SITE PLAN

APPLICATION BY:
MARCUS HERNANDEZ
1618 SAWMILL CREEK ROAD
SITKA, AK 99835

HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
Lat 57°02.78'N, Long. 135°17.55'W

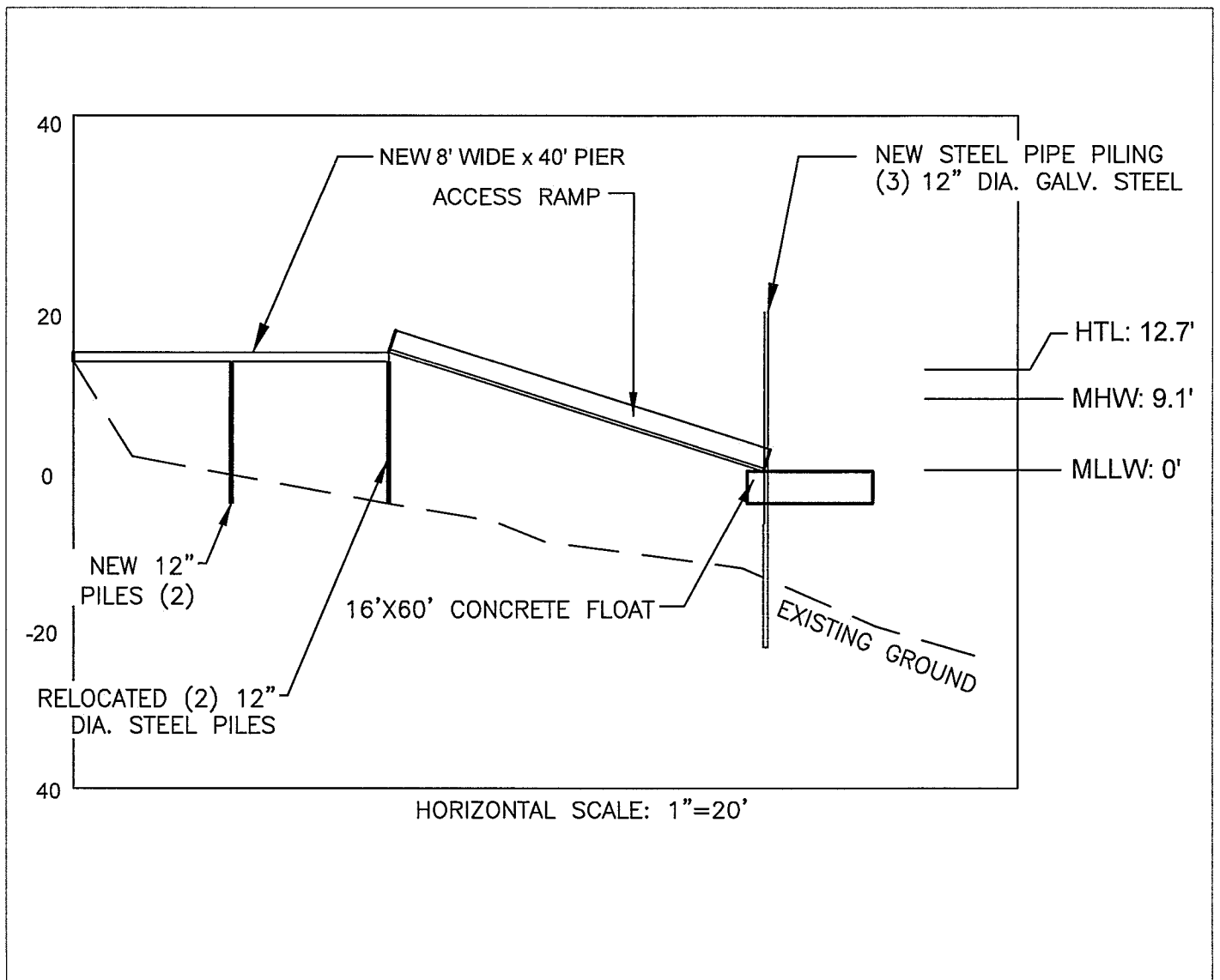
DATE: 10-28-21

SHEET **3** OF **6**

POA-2014-00382

October 23, 2021

Sheet 3 of 7



RAMP AND FLOAT ELEVATION VIEW
1"=20'

PROFILE VIEW

APPLICATION BY:
MARCUS HERNANDEZ
1618 SAWMILL CREEK ROAD
SITKA, AK 99835

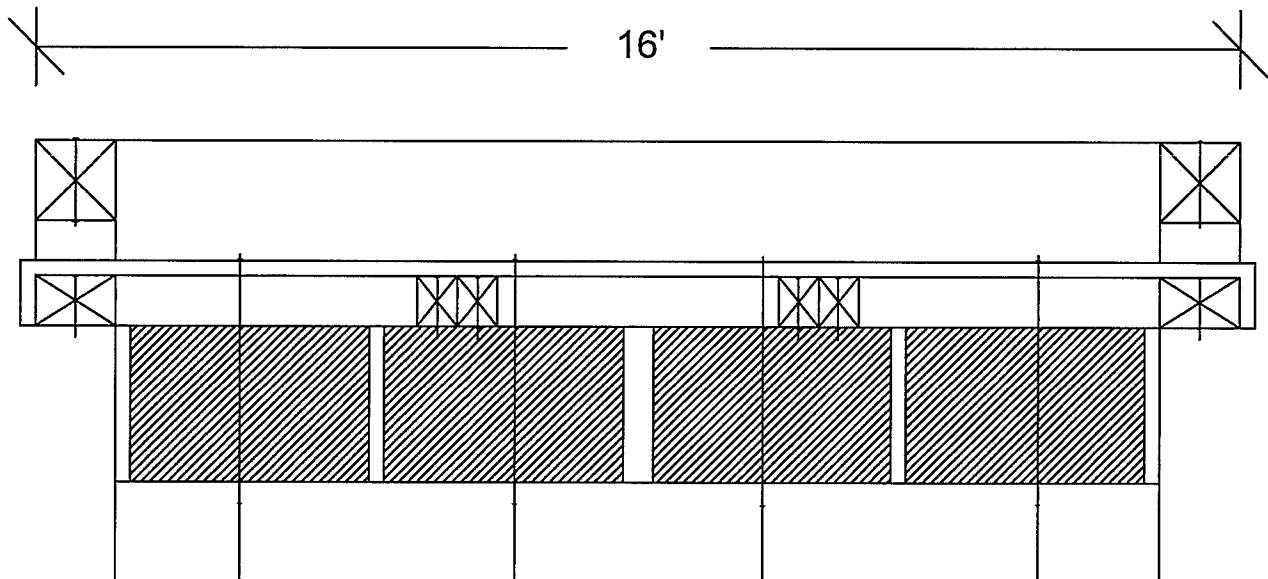
**HERNANDEZ DOCK
REPLACEMENT**

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
Lat 57°02.78'N, Long. 135°17.55'W

DATE: 11-28-21

SHEET **4** OF **6**



TYPICAL CONCRETE FLOAT

EARTHWORK VOLUMES
 AREA OF FILL 24,400 S.F.
 TOTAL EXCAVATION 2,700 CY
 ROCK FILL 4,066 CY
 D-1 SURFACING 450 CY

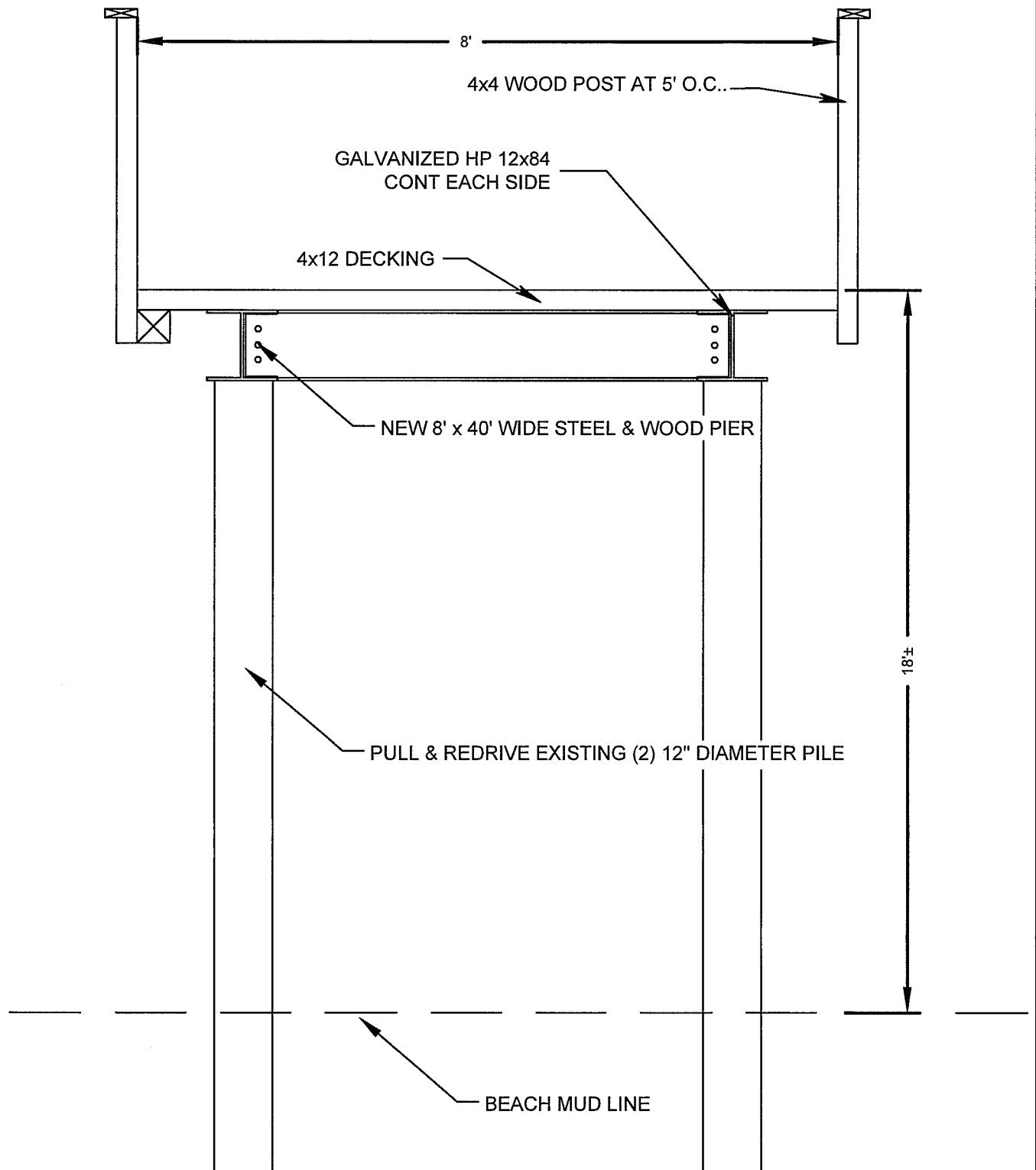
**FLOAT & PIER
 SECTION**

APPLICATION BY:
 1608 MARCUS HERNANDEZ
 SAWMILL CREEK ROAD
 SITKA, AK 99835

*HERNANDEZ DOCK
 REPLACEMENT*

AT: SITKA
 LOCATED IN: T.56S., R.64E., SECTION 6
 Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21 SHEET **5** OF **6**



FLOAT & PIER SECTION

APPLICATION BY:
1608 MARCUS HERNANDEZ
SAWMILL CREEK ROAD
SITKA, AK 99835

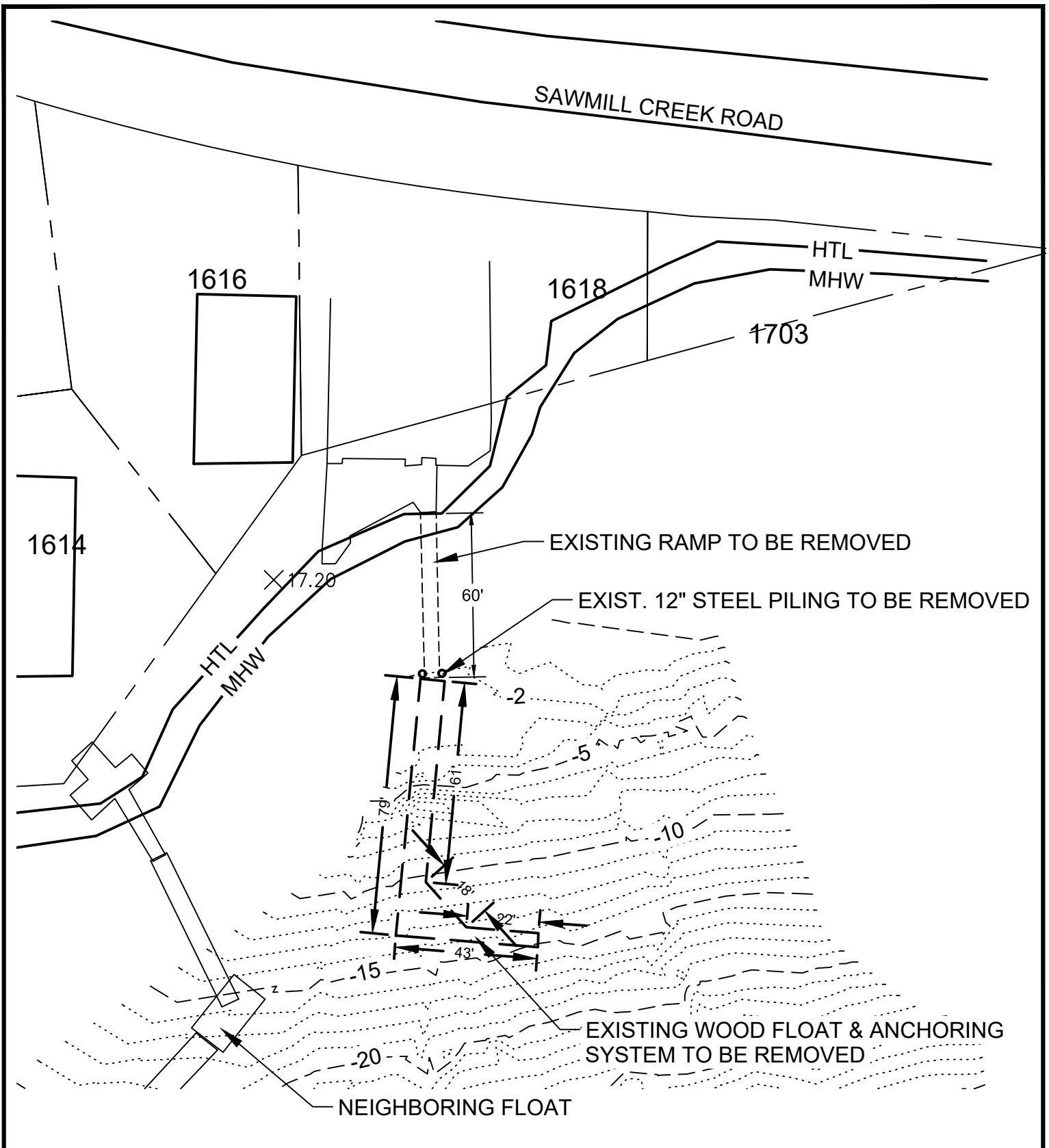
HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
Lat 57°02.78'N, Long. 135°17.55'W

DATE: 10-23-21

SHEET **6** OF **6**



QUANTITIES

PIER - 8'x40', RAMP 6'x50'
 RELOCATE (2) 12" STEEL PILE
 NEW (3) 12" STEEL PILE
 NEW 16'x60' CONCRETE FLOAT
 REMOVE 825 S.F. WOOD FLOAT

SITE PLAN

APPLICATION BY:
 MARCUS HERNANDEZ
 1618 SAWMILL CREEK ROAD
 SITKA, AK 99835

HERNANDEZ DOCK REPLACEMENT

AT: SITKA

LOCATED IN: T.56S., R.64E., SECTION 6
 Lat 57°02.78'N, Long. 135°17.55'W

DATE: 2-15-22

SHEET **3A** OF **6**
 POA-2014-00382

October 23, 2021
 Sheet 7 of 7

POA-2014-00382

Marcus Hernandez

FARMS DIRECT

Virgil's Appliance Repair

Mt. Verstovia Trailhead

Sawmill Creek Rd

Sitka Dock Location

Jamestown Bay B&B

Sawmill Creek Rd

Worldclass Sport

Jamestown Bay

150 meter
shutdown zone

Cannon Island

Minett Islet

Google Earth

Image © 2021 Maxar Technologies

1000 ft

N

SELF-CERTIFICATION STATEMENT OF COMPLIANCE

Permit Number: POA-2014-00382

Permittee's Name & Address (please print or type): _____

Telephone Number: _____

Location of the Work: _____

Date Work Started: _____ Date Work Completed: _____

PROPERTY IS INACCESSIBLE WITHOUT PRIOR NOTIFICATION: YES _____ NO _____
TO SCHEDULE AN INSPECTION PLEASE CONTACT _____
AT _____

Description of the Work (e.g. bank stabilization, residential or commercial filling, docks, dredging, etc.): _____

Acreage or Square Feet of Impacts to Waters of the United States: _____

Describe Mitigation completed (if applicable): _____

Describe any Deviations from Permit (attach drawing(s) depicting the deviations):

I certify that all work and mitigation (if applicable) was done in accordance with the limitations and conditions as described in the permit. Any deviations as described above are depicted on the attached drawing(s).

Signature of Permittee

Full Name of Permittee (printed or typed)

Date

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Marcus Hernandez		File Number: POA-2014-00382	Date: 5/24/2022
Attached is:			See Section below
X	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at

http://www.usace.army.mil/CECW/Pages/reg_materials.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Andrew Gray, RS
Alaska District Corps of Engineers
Kenai Regulatory Field Office (CEPOA-RD-SE)
44669 Sterling Highway, Suite B
Soldotna, Alaska 99669-7915
(907) 753-2722

If you only have questions regarding the appeal process you may also contact:

Ms. Kate Bliss
Regulatory Program Manager
U.S. Army Corps of Engineers, Pacific Ocean Division
CEPOD-PDC, Bldg 525
Fort Shafter, HI 96858-5440
(808) 835-4626
kate.m.bliss@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number: