

# STAFF REPORT

**DATE:** June 29, 2016

**RE:** Administrative Hearing, 699 Palm Avenue

On June 2, 2016, I received an e-mail from Anthony Galvan, Charley Toppino & Sons, contractor working on a City project, with an application to remove two sabal palms at Pump Station C. Conversation between the contractors, City personnel and myself indicated that a permit had already been issued for the site to remove one sabal palm. Subsequent discussions and confusion over the location of the permitted sabal palm removal lead to the unpermitted removal of a sabal palm (see attached e-mail chain).

Recommend that a Settlement Agreement be issued with Charley Toppino & Sons (Toppinos) to require the replacement of the removed sabal palm (10 ft tall CT). The palm was in good health and would have been a good candidate for transplanting. The agreement should also require that Toppinos hire an approved person to plant the palm on City property.

It is not recommend that a fine be issued. There was no maliciousness involved in the removal of the palm, in fact, Toppinos did submit an application to remove the palm. Its removal was due to a miscommunication.

## Karen DeMaria

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**From:** Matt Bussard <mattb@toppkw.com>  
**Sent:** Monday, June 06, 2016 4:16 PM  
**To:** Karen DeMaria; Sean.McCoy@CH2M.com; John Paul Castro; Steve Gardner  
**Cc:** anthonyg@toppkw.com; Andrew Toppino  
**Subject:** RE: Pump Station C Tree Permit (DRAFT RESPONSE FOR SEAN MCCOY TO REVIEW BEFORE SUBMISSION)

Karen:

Yes, CT&S does accept some of the responsibility for the tree removed due to misinformation. It was assumed at the time that it was not an approval based upon the previous Tree Permit issued in March. In the past the Tree Commission has made a site visit for these issues prior to a permit being issued so it was incorrectly perceived to be an expedited response on their behalf. It would have been noted if that were the case and that tree were no longer there. We will agree to replace the Sabal Palm with a licensed arborist to transplant at the location of the City's choosing. Myself or someone from Charlie Toppino & Sons will attend the July 12<sup>th</sup> meeting so we can resolve this. Thank you for your consideration of the circumstances involved in the matter. It is my hope that the Tree Commission will take the reality of this situation into account as well.

Regards,

Matt Bussard

**Matt Bussard**  
**Project Superintendent**

**Charley Toppino & Sons, Inc.**  
**Office: (305) 296-5606**  
**Fax: (305) 296-5189**

**Cell: (305) 587-1983**



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## Karen DeMaria

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**From:** Karen DeMaria  
**Sent:** Monday, June 06, 2016 2:34 PM  
**To:** 'Sean.McCoy@CH2M.com'; John Paul Castro; Steve Gardner  
**Cc:** mattb@toppkw.com; anthonyg@toppkw.com  
**Subject:** RE: Pump Station C Tree Permit (DRAFT RESPONSE FOR SEAN MCCOY TO REVIEW BEFORE SUBMISSION)

Matt and Sean:

Thank you for your response. Please answer my questions below.

It is my understanding then that Toppino's is accepting the blame for the removal of 1-palm without a permit and that the removal was based on misinformation? Based on what was submitted below, I can understand the issue. Is Toppino's agreeable to providing the City a replacement sabal palm to be planted and maintained by a contractor of their choosing and for the palm to be planted at a location of the City's choosing?

Is Toppino's agreeing to attending the Tree Commission meeting on July 12 to resolve the issue? Whether a fine is to be imposed is a decision the Tree Commission's make. I will make a recommendation of a tree replacement with no fine but the Commission makes the final decision.

Sincerely,

Karen

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**From:** Sean.McCoy@CH2M.com [mailto:Sean.McCoy@CH2M.com]  
**Sent:** Monday, June 06, 2016 1:39 PM  
**To:** Karen DeMaria <kdemaria@cityofkeywest-fl.gov>; John Paul Castro <jcastro@cityofkeywest-fl.gov>; Steve Gardner <sgardner@cityofkeywest-fl.gov>  
**Cc:** mattb@toppkw.com; anthonyg@toppkw.com  
**Subject:** FW: Pump Station C Tree Permit (DRAFT RESPONSE FOR SEAN MCCOY TO REVIEW BEFORE SUBMISSION)

Karen,

I've spoken with Matt / CT&S, and he has provided the below explanation for what happened, and why this tree was removed without permit. It's clear they made a mistake, they're acknowledging it, and are anxious to comply with whatever ruling the Tree Commission decides upon.

Please read through the narrative, and review the attached photographs.

As PS C currently stands, the remaining palm will remain in place with no need to relocate. Following your review of the information, please let me know when CT&S can resume work on the PS C VFD building electrical and concrete work?

Regards,  
Sean

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**From:** Matt Bussard [mailto:mattb@toppkw.com]

**Sent:** Monday, June 06, 2016 1:24 PM

**To:** Mc Coy, Sean/KWF <Sean.McCoy@CH2M.com>

**Cc:** Andrew Toppino <ajtoppino@gmail.com>; Anthony Galvan <anthonyg@toppkw.com>

**Subject:** RE: Pump Station C Tree Permit (DRAFT RESPONSE FOR SEAN MCCOY TO REVIEW BEFORE SUBMISSION)

Karen,

Thank you for your timely response in addressing this matter last week. Attached are pictures you sent Friday along with the notations I've made. At this time we are taking corrective measures to ensure no further miscommunication regarding Tree Permit issues arise in the future. I can assure you that the removal of the Sabal Palm was not an intentional disregard of the local ordinances that protect our trees and preserve the green space in Key West. Just the opposite is reflected in the circumstances surrounding the removal of that Sabal Palm. Ideally, that should speak volumes to anyone that may have initially thought otherwise.

RFI No. 017 was submitted to CH2M on 6/2/17 after I had met with Sean McCoy for a site visit at Pump Station C the previous day. The premise for the site visit was a minor dimension conflict and, more importantly, a significant drainage issue that would affect the overall health and sustainability of the trees adjacent to the new structure we are building. I felt it was important to bring this to their attention immediately before we poured the concrete walls. It was my recommendation that a small retaining wall be constructed and the egress of the ground level be removed from the scope entirely. My objective in that was to prevent the erosion of the soil surrounding the roots of those adjacent trees and the environmental impact of the new building be minimized. After reviewing my recommendations, the engineers at CH2M agreed and we are currently designing and pricing the changes needed to facilitate those areas of concern.

On Thursday afternoon it was verbally communicated to me that the tree closest to the new building had received permit approval for removal and that the other tree was to remain, pending a transplant location designation. At that time I was unaware that the permit approval mentioned was for the permit received in early March. That tree had been removed for the last few months. When I was notified of the approval for the tree to be removed on Thursday afternoon I assumed that we'd received an expedited approval and chose to remove it. Having met Bill Collins a few

days earlier to resolve a tree conflict at PS-B, I received this as an indication that the City was making adjustments to avoid impacting the construction schedules of ongoing projects.

I agree with your recommendation for us to replace the Sabal Palm at the location of the Tree Commission's choosing. We would be happy to facilitate that. My only concern is the possibility of a fine being issued for this as well. There was no intention of removing a tree without a permit. The other tree would not have been left in its same location to be transplanted later otherwise. In addition to this, I would not have submitted RFI No. 017 to CH2M if the sustainability of the trees adjacent to the new building were not a primary concern. If I had neglected to address it, the soil surrounding the roots of those trees would have eroded and jeopardized the health of those trees. In spite of any miscommunication in the matter, can we expect the Tree Commission to assess a fine even with the proactive measures we've taken for the preservation of them? Please advise.

Regards,

Matt Bussard

**Matt Bussard**  
**Project Superintendent**

Charley Toppino & Sons, Inc.

Office: (305) 296-5606

Fax: (305) 296-5189

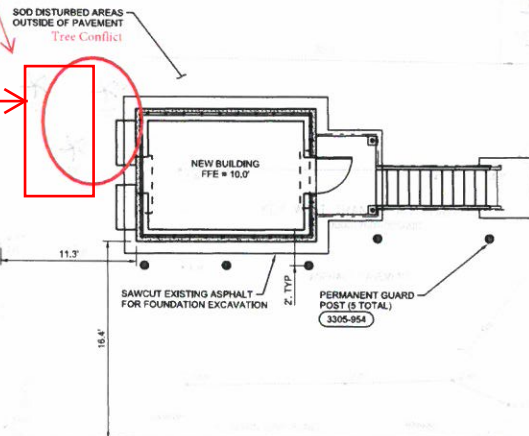
Cell: (305) 587-1983

# GENERAL SHEET NOTES

1. THE SUBJECT PROPERTY LIES WITHIN FLOOD ZONE AE (ELEVATION 7).

NOTE: EXISTING SABAL PALMETTO TREES WILL CONFLICT WITH GROUNDING SYSTEM INSTALLATION. TREE COMMISSION WILL NEED TO APPROVE REMOVAL OR RELOCATION.

Response: Tree that was issued permit & removed in March was inadvertently included in the RFI. Trees within the rectangle were the intended trees. That is the reason the tree in the upper left quadrant was not removed pending an area designated for relocation. -MATT BUSSARD, CT&S



PROPERTY LINE, TYP

PALM AVENUE

P.O.B.



## NOTES:

1. REPAIR ASPHALT PAVEMENT DAMAGED DURING CONSTRUCTION. SEE ELECTRICAL DRAWINGS FOR CONDUIT ROUTES. REPAIR LIMITS MAY VARY. REPAIR PERIOD 2123-115.
2. SEE ELECTRICAL DRAWINGS FOR DEMOLITION PLAN AND ELECTRICAL IMPROVEMENTS.
3. SEE STRUCTURAL DRAWINGS FOR LANDING AND FOUNDATION ELEVATIONS.



NO.	DATE	BY	CHK	APPD
0001	08/01/2015	R. MORRISON	R. MORRISON	A. MALONE

NO.	DATE	BY	CHK	APPD
0001	08/01/2015	R. MORRISON	R. MORRISON	A. MALONE

NO.	DATE	BY	CHK	APPD
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NO.	DATE	BY	CHK	APPD
0001	08/01/2015	R. MORRISON	R. MORRISON	A. MALONE

CH2MHILL

CIVIL  
PUMP STATION C  
SITE PLAN

DATE	AUGUST 2015
PROJ	476744
DWG	030-C-201
SHEET	22 of 53

CONFORMED DOCUMENTS

pw:/project/hse.ch2m.com:CH2MHILL\_WBG/Drawings/476744&space=4&space=2-13&space=SWR&space=VFD&space=1/PGRADES/DRAWINGS/CI/Dr/030-C-201\_476744.dgn

FILENAME: 030-C-201\_476744.dgn

PLOT DATE: 9/2/2015

PLOT TIME: 5:49:21 AM

received 6-2-16



5-3-16



RESPONSE: Area in black is where the Sabal was removed. Other tree remained pending advisement from Tree Commision. -MATT BUSSARD, CT&S.



6.13.16







6-3-16

remains

removed with permit

removed - no permit

removed -  
no permit  
issued

K. Jafari



12" max permit water - removed

removed no permit

RESPONSE:  
Tress removed  
after permit was  
issued in March. -  
Matt Bussard,  
CT&S



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**From:** Karen DeMaria [<mailto:kdemaria@cityofkeywest-fl.gov>]  
**Sent:** Friday, June 03, 2016 4:58 PM  
**To:** Anthony Galvan  
**Cc:** Andrew Toppino; [mattb@toppkw.com](mailto:mattb@toppkw.com); [Sean.McCoy@CH2M.com](mailto:Sean.McCoy@CH2M.com); John Paul Castro; Steve Gardner  
**Subject:** RE: Pump Station C Tree Permit

All:

Today I requested the contractor stop work at the Palm Avenue Pump Station (C). This morning it was determined that a Sabal palm was removed without benefit of a permit.

On June 2, 2016 I received an e-mail regarding two palms that needed to be removed from the area. The plans identifying the trees were not clear. I responded back to the e-mail stating that a permit had already been issued to

remove one palm in that area and attached to that email was a copy of the permit and the application showing location and photos of the palm. I suggested that the other palms were candidates for transplantation. The palm could have been transplanted anywhere on the City property that surrounds this Pump Station. In fact, the tree crew is stationed immediately behind this facility.

To resolve this issue I need, in writing, a statement why this happened. I will then place this issue on the July 12 Tree Commission agenda for an Administrative Hearing with a recommendation that the contractor (Toppino's) be required to purchase a 10 ft tall clear trunk Sabal palm and to hire someone to plant that palm at a location specified by the City. The Tree Commission may also decide to issue a fine.

Also, I need to know what the plan is for the one remaining sabal palm. The preference is that it remains.

I will check my e-mail during the weekend. No work is to start on Monday until I have received the information I requested above. Once I am comfortable as to why this happened and an agreement as to an appearance at the Tree Commission meeting, I will release the work site.

Sincerely,

Karen

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**From:** Anthony Galvan [<mailto:anthonyg@toppkw.com>]  
**Sent:** Thursday, June 02, 2016 10:56 AM  
**To:** Karen DeMaria <[kdemaria@cityofkeywest-fl.gov](mailto:kdemaria@cityofkeywest-fl.gov)>  
**Cc:** Andrew Toppino <[ajtoppino@gmail.com](mailto:ajtoppino@gmail.com)>; [mattb@toppkw.com](mailto:mattb@toppkw.com); [Sean.McCoy@CH2M.com](mailto:Sean.McCoy@CH2M.com); John Paul Castro <[jcastro@cityofkeywest-fl.gov](mailto:jcastro@cityofkeywest-fl.gov)>; Steve Gardner <[sgardner@cityofkeywest-fl.gov](mailto:sgardner@cityofkeywest-fl.gov)>  
**Subject:** Pump Station C Tree Permit

Good morning Karen,  
Please see the attached tree permit application for the trees at Pump Station C.

Thank you for your time,

Anthony N. Galvan  
Project Administrator

Charley Toppino & Sons  
Office: (305)-296-5606  
Fax: (305)-296-5189



## Tree Permit Application

Date: 6/2/16

**Please Clearly Print** All Information unless indicated otherwise.

**Tree Address** 699 Palm Avenue  
**Cross/Corner Street** Atlantic & Steven  
**List Tree Name(s) and Quantity** (2) Sabal Palmetto  
**Species Type(s) check all that apply** (X) Palm ( ) Flowering ( ) Fruit ( ) Shade ( ) Unsure  
**Reason(s) for Application:**

(X) **REMOVE** ( ) Tree Health ( ) Safety (X) Other/Explain below  
( ) **TRANSPLANT** ( ) New Location ( ) Same Property ( ) Other/Explain below  
( ) **HEAVY MAINTENANCE** ( ) Branch Removal ( ) Crown Cleaning/Thinning ( ) Crown Reduction

**Other/Explain** Layout Conflict

**Reason for Request** Root ball of both trees will be in conflict with the installation of the grounding system for Pump Station C for the VFD Upgrades Project.

**Property Owner Name** John Paul Castro / City of Key West  
**Property Owner eMail Address** jcastro@cityofkeywest-fl.gov  
**Property Owner Mailing Address** \_\_\_\_\_  
**Property Owner Mailing City** \_\_\_\_\_ **State** \_\_\_\_\_ **Zip** \_\_\_\_\_  
**Property Owner Phone Number** ( 305 ) 809 - 3902  
**Property Owner Signature** \_\_\_\_\_

**Representative Name** Sean McCoy  
**Representative eMail Address** sean.mccoy@ch2m.com  
**Representative Mailing Address** 6410 5th St. Suite 2-A  
**Representative Mailing City** Key West **State** FL **Zip** 33040  
**Representative Phone Number** ( 305 ) 432 - 9124

NOTE: A Tree Representation Authorization form must accompany this application if someone other than the owner will be representing the owner at a Tree Commission meeting or picking up an issued Tree Permit.

Tree Representation Authorization form attached ( )

**<<<< Sketch location of tree in this area including cross/corner Street >>>>**

**Please identify tree(s) with colored tape**

See attachment for location

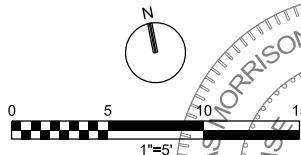
**If this process requires blocking of a City right-of-way, a separate ROW Permit is required. Please contact 305-809-3740.**



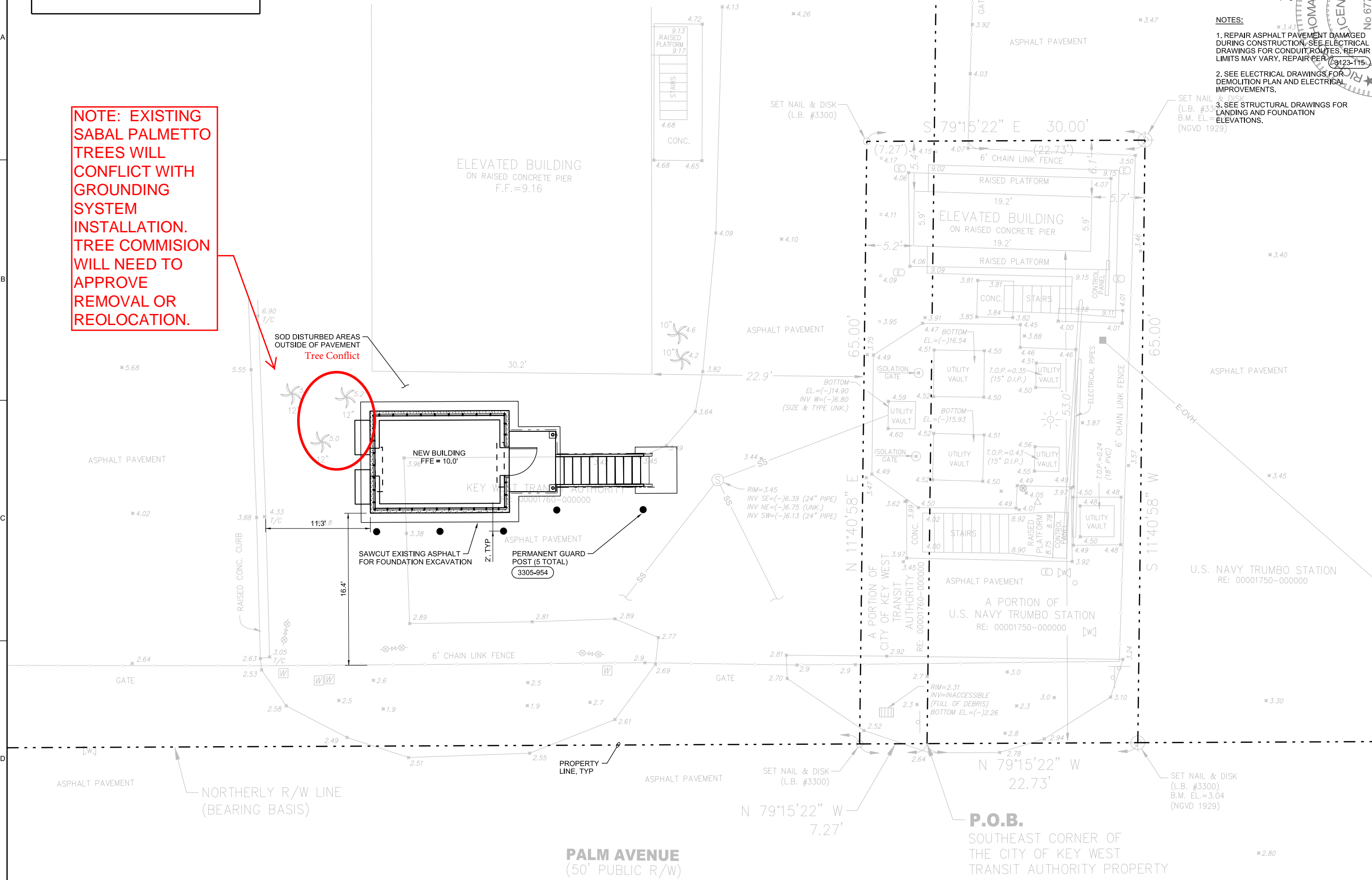
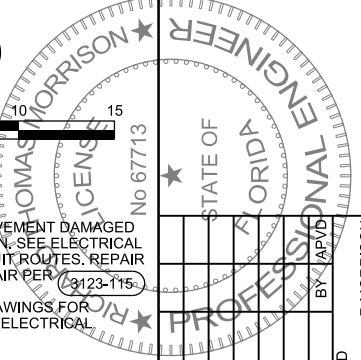
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CIVIL

PUMP STATION C  
SITE PLAN

3011 S.W. WILLISTON ROAD  
GAINESVILLE, FLORIDA 32608  
EB0000072 AAC001982  
Richard Thomas Morrison PE 67713

KEY WEST VFD UPGRADE  
KEY WEST, FLORIDA  
CITY OF KEY WEST  
KEY WEST, FLORIDA

NO.	DATE	DR	REVISION	CHK	APVD

R MORRISON

VERIFY SCALE

BAR IS ONE INCH ON ORIGINAL DRAWING.

DATE AUGUST 2015

PROJ 476744

DWG 030-C-201

SHEET 22 of 53

CONFORMED DOCUMENTS