

# CALIFORNIA COASTAL COMMISSION



# F10c

**5-18-0821 (FOSTER, FOSTER, & WEST COAST TURF)**

**MARCH 8, 2019**

## EXHIBITS

**Exhibit 1 – Vicinity Map**

**Exhibit 2 – Record of Survey**

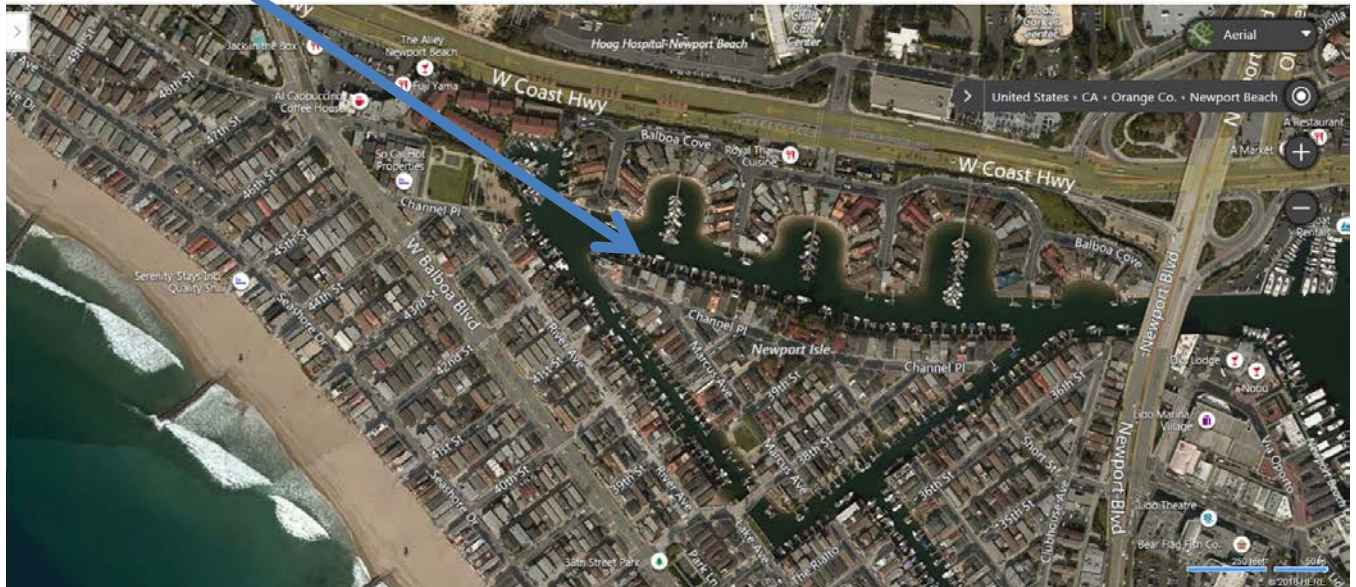
**Exhibit 3 – Project Plans**

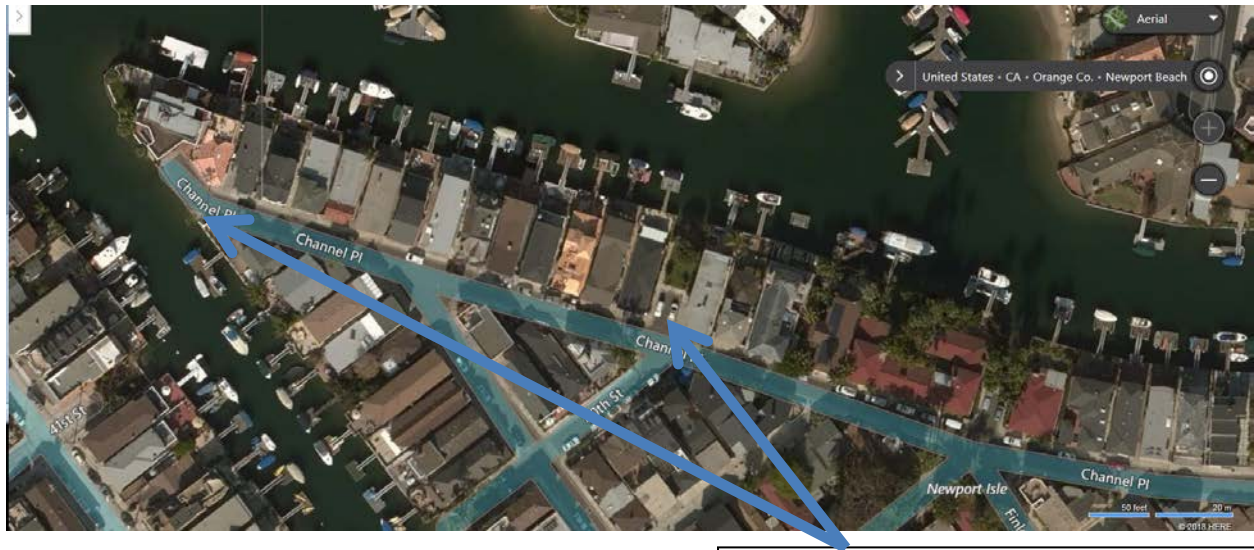
**Exhibit 4 – Site Photographs**

**Exhibit 5 – Correspondence from Sherman Stacey**

## Subject Sites:

**4022, 4020, 4018 Channel Place, Newport Isle, Newport Beach**





**Public access to  
Newport Bay in project  
vicinity**



Exhibit 2  
Page 1 of 3

RECORD OF SURVEY 2017-1080

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE  
STATE OF CALIFORNIA

BEING A SURVEY OF LOTS 10, 11 AND 12, BLOCK 441, MAP OF CANAL  
SECTION, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGE 98 OF  
MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY. TOGETHER WITH  
THE VESTED FEE INTEREST UNDER NEWPORT BAY (LIDO CHANNEL)

DATES OF SURVEY: MARCH & NOVEMBER, 2017

TREVOR D. RICE P.L.S. 8862  
D. WOOLLEY & ASSOCIATES, INC.

NOTE:

SEE SHEET 2 FOR BOUNDARY SURVEY, RECORD  
REFERENCES, BASIS OF BEARINGS, LAND AREA, AND LINE  
DATA.

SEE SHEET 3 FOR TOPOGRAPHIC SURVEY, UNIT CONVERSION,  
AND LEGEND.

MONUMENT DESCRIPTIONS:

- ① FOUND LEAD, TACK AND BRASS TAG, STAMPED "LS 4599", PER RECORD OF  
SURVEY NO. 2013-1154, R.S.B. 268/11, ON PROPERTY LINE PROLONGATION, 1.00'  
OFFSET FROM PROPERTY CORNER, FLUSH IN CONCRETE.
- ② FOUND LEAD, TACK AND BRASS TAG, STAMPED "LS 4599", PER RECORD OF  
SURVEY NO. 2013-1154, R.S.B. 268/11, S17°02'45"W 1.00' FROM RIGHT OF WAY,  
FLUSH IN CONCRETE.
- ③ FOUND LEAD & NAIL, NO TAG, NO REFERENCE, S17°02'45"W 1.00' FROM RIGHT OF  
WAY, FLUSH IN CONCRETE.
- ④ FOUND BRASS TAG SET IN EPOXY, STAMPED "RCE 28328", PER RECORD OF SURVEY  
NO. 2013-1154, R.S.B. 268/11, S17°02'45"W 1.02' FROM RIGHT OF WAY, FLUSH IN  
CONCRETE.
- ⑤ FOUND BRASS TAG SET IN EPOXY, STAMPED "RCE 28328", PER RECORD OF SURVEY  
NO. 2013-1154, R.S.B. 268/11, S17°02'45"W 1.01' FROM RIGHT OF WAY, FLUSH IN  
CONCRETE.
- ⑥ FOUND BRASS TAG SET IN EPOXY, STAMPED "RCE 28328", PER RECORD OF SURVEY  
NO. 2013-1154, R.S.B. 268/11, S17°02'45"W 1.03' FROM RIGHT OF WAY, FLUSH IN  
CONCRETE.
- ⑦ FOUND BRASS TAG SET IN EPOXY, STAMPED "RCE 28328", PER RECORD OF SURVEY  
NO. 2013-1154, R.S.B. 268/11, S17°02'45"W 1.03' FROM RIGHT OF WAY, FLUSH IN  
CONCRETE.
- ⑧ FOUND GEAR SPIKE & WASHER, STAMPED "LS 6902", PER RECORD OF SURVEY  
2013-1154, R.S.B. 268/11, FLUSH IN ASPHALT.
- ⑨ FOUND LEAD, TACK & BRASS TAG, STAMPED "LS 4125", PER RECORD OF SURVEY  
2006-1171, R.S.B 211/29, ON RIGHT OF WAY, FLUSH IN CONCRETE.
- ⑩ FOUND 1" (OUTSIDE DIAMETER) IRON PIPE, WITH NAIL & BRASS TAG, STAMPED "LS  
3064", PER CORNER RECORD 2015-0487, N17°02'45"E 0.06' FROM RIGHT OF WAY,  
FLUSH IN CONCRETE.
- ⑪ FOUND 1" (OUTSIDE DIAMETER) IRON PIPE WITH NAIL & BRASS TAG, STAMPED "L.S.  
2312 J.S.R.", NO REFERENCE, N17°02'45"E 0.30' FROM RIGHT OF WAY, FLUSH IN  
CONCRETE.
- ⑫ SET LEAD, TACK & BRASS TAG, STAMPED "PLS 8862", OFFSET ON LINE AS SHOWN  
FROM LOT CORNER, FLUSH IN TOP OF CONCRETE SEAWALL.
- ⑬ SET LEAD, TACK & BRASS TAG, STAMPED "PLS 8862", AT LOT CORNER, FLUSH IN  
CONCRETE SIDEWALK.
- — INDICATES MONUMENT FOUND AS NOTED.  
○ — INDICATES MONUMENT SET AS NOTED.

RECORD OWNER:

WEST COAST TURF, A CALIFORNIA CORPORATION, PER GRANT DEED RECORDED MARCH  
10, 2017, AS INSTRUMENT NUMBER 2017000099232 OF OFFICIAL RECORDS.

PURPOSE OF SURVEY:

THE PURPOSE OF THIS SURVEY IS TO RE-ESTABLISH AND MONUMENT LOTS 10, 11 AND 12,  
BLOCK 441, MAP OF CANAL SECTION, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGE  
98 OF MISCELLANEOUS MAPS, COUNTY OF ORANGE, CALIFORNIA, AND AS DESCRIBED IN  
GRANT DEEDS, RECORDED OCTOBER 30, 2003, AS INSTRUMENT NO. 2003001338284;  
MARCH 10, 2017, AS INSTRUMENT NO. 2017000099232; AND MARCH 26, 2004 AS  
INSTRUMENT NO. 2004000247977, RESPECTIVELY, ALL OF OFFICIAL RECORDS.

BOUNDARY ESTABLISHMENT NOTES:

- Ⓐ SEARCHED, FOUND NOTHING. ESTABLISHED BY PRORATION.
- Ⓑ HELD BEST FIT LINE BETWEEN MONUMENTS ①, ②, ③, ④, ⑤, ⑥, & ⑦
- Ⓒ HELD BEARING FROM BEST FIT LINE PER NOTE B, FROM FOUND MONUMENT ⑧ FOR  
CENTERLINE OF CHANNEL PLACE.
- Ⓓ THE LINE OF ORDINARY HIGH TIDE OF THE PACIFIC OCEAN PER DECREE RECORDED IN  
BOOK 201, PG 253, OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA, ESTABLISHED  
AT RECORD DISTANCE ALONG PROPERTY LINE PROLONGATION AT LOT LINE 8-9, BLOCK  
441, PER RECORD OF SURVEY NO. 2004-1104, R.S.B. 204/14.
- Ⓔ ESTABLISHED BY INTERSECTION.
- Ⓕ ESTABLISHED AT RECORD ANGLES & DISTANCES PER RECORD OF SURVEY NO.  
2004-1104, R.S.B. 204/14.

SURVEY PROCEDURES AND STATED ACCURACY NOTE:

ALL MONUMENTS SHOWN HEREIN WERE EITHER DOUBLE DETERMINED OR OCCUPIED  
USING CONVENTIONAL EQUIPMENT (TRIMBLE S6 HIGH PRECISION).

CONVENTIONAL SURVEY EQUIPMENT HAS BEEN CALIBRATED AS OF THE FOLLOWING  
DATES:

TRIMBLE S6 HIGH PRECISION TOTAL STATION (SERIAL NO. 92120355):  
MARCH 6, 2017

THE POSITIONS SHOWN ARE THE RESULT OF A LEAST SQUARE ADJUSTMENT  
(STAR\*NET v7.0.0.42) OF CONVENTIONAL FIELD MEASUREMENTS. THE AVERAGE  
STANDARD ERROR BASED ON THE ADJUSTMENT WAS 0.02' NORTHING AND 0.04'  
EASTING, AT ONE SIGMA.

ACCEPTED AND FILED AT THE  
REQUEST OF THE

ORANGE COUNTY SURVEYOR'S OFFICE

DATE \_\_\_\_\_

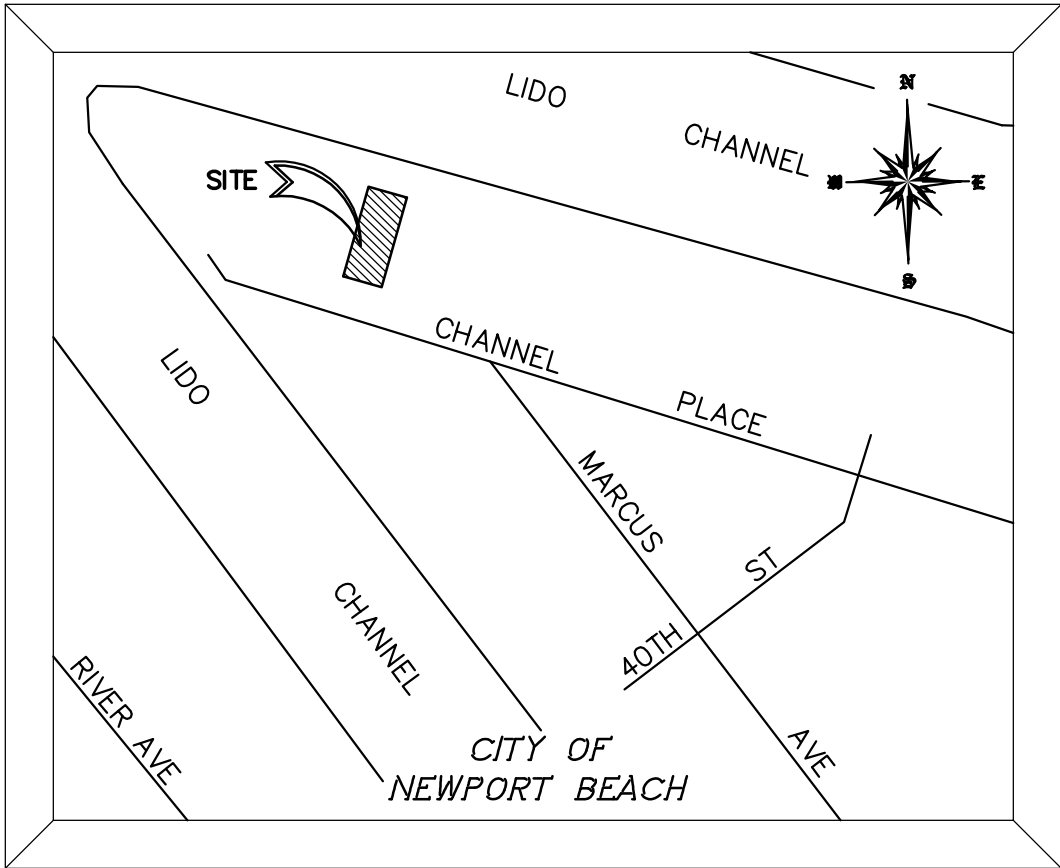
TIME \_\_\_\_\_ FEE \$ \_\_\_\_\_

INSTRUMENT NO. \_\_\_\_\_

BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

HUGH NGUYEN  
COUNTY CLERK-RECORDER

BY \_\_\_\_\_  
DEPUTY



VICINITY MAP  
NO SCALE

COUNTY SURVEYOR'S STATEMENT:

THIS MAP HAS BEEN EXAMINED IN ACCORDANCE WITH SECTION 8766 OF  
THE PROFESSIONAL LAND SURVEYORS' ACT THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2017.

KEVIN R. HILLS, COUNTY SURVEYOR  
L.S. 6617

SURVEYOR'S STATEMENT:

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE  
BY ME OR UNDER MY DIRECTION IN CONFORMANCE  
WITH THE REQUIREMENTS OF THE PROFESSIONAL  
LAND SURVEYORS' ACT AT THE REQUEST OF JOE  
FOSTER IN MARCH AND NOVEMBER, 2017.

TREVOR D. RICE  
P.L.S. NO. 8862

11/20/17





LINE DATA: **Exhibit 2**  
**Page 2 of 3**

- L1 - N72°57'15"W 30.00' (30.00' R1)
- L2 - N17°06'18"E 82.50' (82.50' R1)
- L3 - N75°20'25"W 30.06' (30' R3)
- L4 - N17°07'57"E 83.76'
- L5 - N72°57'15"W 30.00' (30.00' R1)
- L6 - N17°02'45"E 80.00' (80.00' R1) (80' R3)
- L7 - N72°57'15"W 30.00' (30.00' R1)
- L8 - N75°20'25"W 30.07'
- L9 - N75°20'25"W 30.06' (30.06' R1)
- L10 - N17°10'46"E (HELD 86.26' PER R1)
- L11 - N72°57'15"W 30.00' (30.00' R1) (30' R3)
- L12 - N72°57'15"W 30.00' (30' R3)
- L13 - N72°57'15"W 29.98' (30.00' R1) (30' R3)
- L14 - N72°57'15"W 30.00' (29.99' R1) (30' R3)
- L15 - N72°57'15"W 29.99' (30.00' R2) (30' R3)
- L16 - N72°57'15"W 30.02' (30.00' R2) (30' R3)
- L17 - N72°57'15"W 30.01' (30.00' R2) (30' R3)
- L18 - N72°57'15"W 29.98' (30.00' R2) (30' R3)
- L19 - N17°02'45"E 15.00'
- L20 - N17°02'45"E 15.00' (15.00' R2)
- L21 - N72°57'15"W 30.00'
- L22 - N72°57'15"W 54.29'
- L23 - N72°57'15"W 0.78'
- L24 - N17°02'45"E 14.70'
- L25 - N17°02'45"E 14.94'
- L26 - N17°02'45"E 15.00'
- L27 - N17°06'18"E 33.98'
- L28 - N17°07'57"E 33.06'
- L29 - N17°10'46"E (HELD 31.22' PER R1)
- L30 - N75°20'25"W (HELD 150.33' PER R1)
- L31 - N72°57'15"W (HELD 150.00' PER R1)
- L32 - N17°02'45"E 35.83'
- L33 - N17°04'29"E 34.90'
- L34 - N17°04'29"E 81.25'
- L35 - N17°09'16"E 85.01'
- L36 - N17°09'16"E 32.14'

# RECORD OF SURVEY 2017-1080

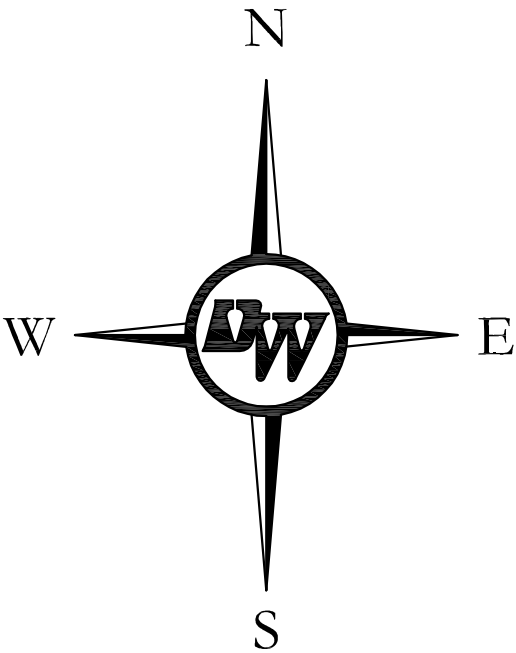
IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE  
STATE OF CALIFORNIA

DATES OF SURVEY: MARCH & NOVEMBER, 2017

TREVOR D. RICE P.L.S. 8862

D. WOOLLEY & ASSOCIATES, INC.

**BOUNDARY SURVEY**



**NOTE:**

SEE SHEET 1 FOR MONUMENT DESCRIPTIONS, RECORD OWNER, PURPOSE OF SURVEY, BOUNDARY ESTABLISHMENT NOTES, SURVEYOR'S STATEMENTS, SURVEY PROCEDURES AND STATED ACCURACY NOTE, AND VICINITY MAP.

SEE SHEET 3 FOR TOPOGRAPHIC SURVEY, UNIT CONVERSION, AND LEGEND.

**LAND AREA:**

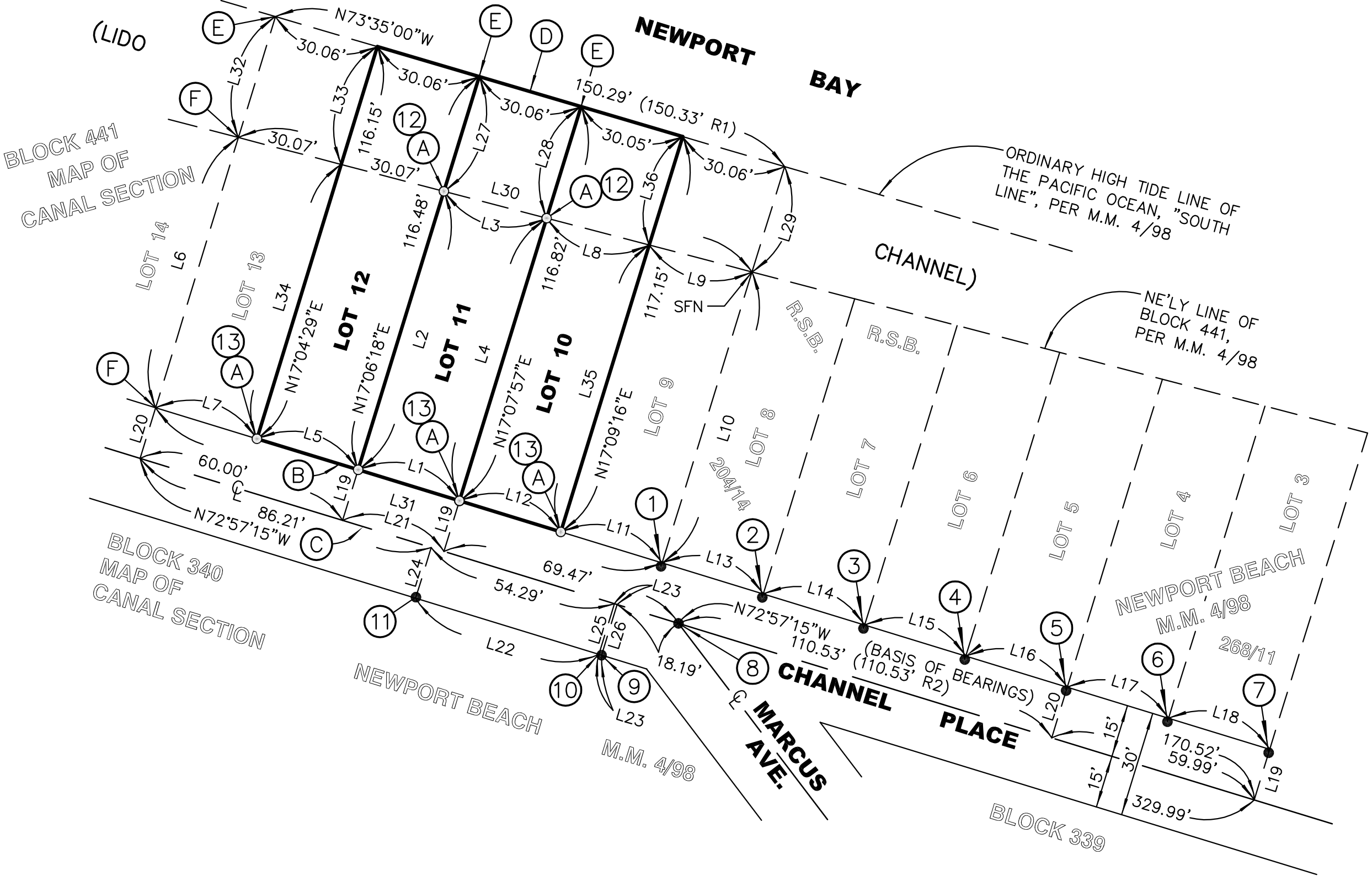
2,496 SQUARE FEET  
0.06 ACRES

**BASIS OF BEARINGS:**

THE BEARING OF N72°57'15"W ALONG THE NORTHERLY RIGHT OF WAY OF CHANNEL PLACE PER RECORD OF SURVEY NO. 2004-1104, BOOK 204, PAGE 14 OF RECORDS OF SURVEY, IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, WAS USED AS THE BASIS OF BEARINGS FOR THIS SURVEY.

**RECORD REFERENCES:**

- (R1) - INDICATES RECORD OR CALCULATED DATA PER RECORD OF SURVEY NO. 2004-1104, R.S.B. 204/14.
- (R2) - INDICATES RECORD OR CALCULATED DATA PER RECORD OF SURVEY NO. 2013-1154, R.S.B. 268/11.
- (R3) - INDICATES RECORD OR CALCULATED DATA PER MAP OF CANAL SECTION NEWPORT BEACH, M.M. 4/98.



**Exhibit 2**  
**Page 3 of 3**

# RECORD OF SURVEY 2017-1080

IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE  
STATE OF CALIFORNIA

DATES OF SURVEY: MARCH & NOVEMBER, 2017  
TREVOR D. RICE P.L.S. 8862  
D. WOOLLEY & ASSOCIATES, INC.

**TOPOGRAPHIC SURVEY**

**NOTE:**

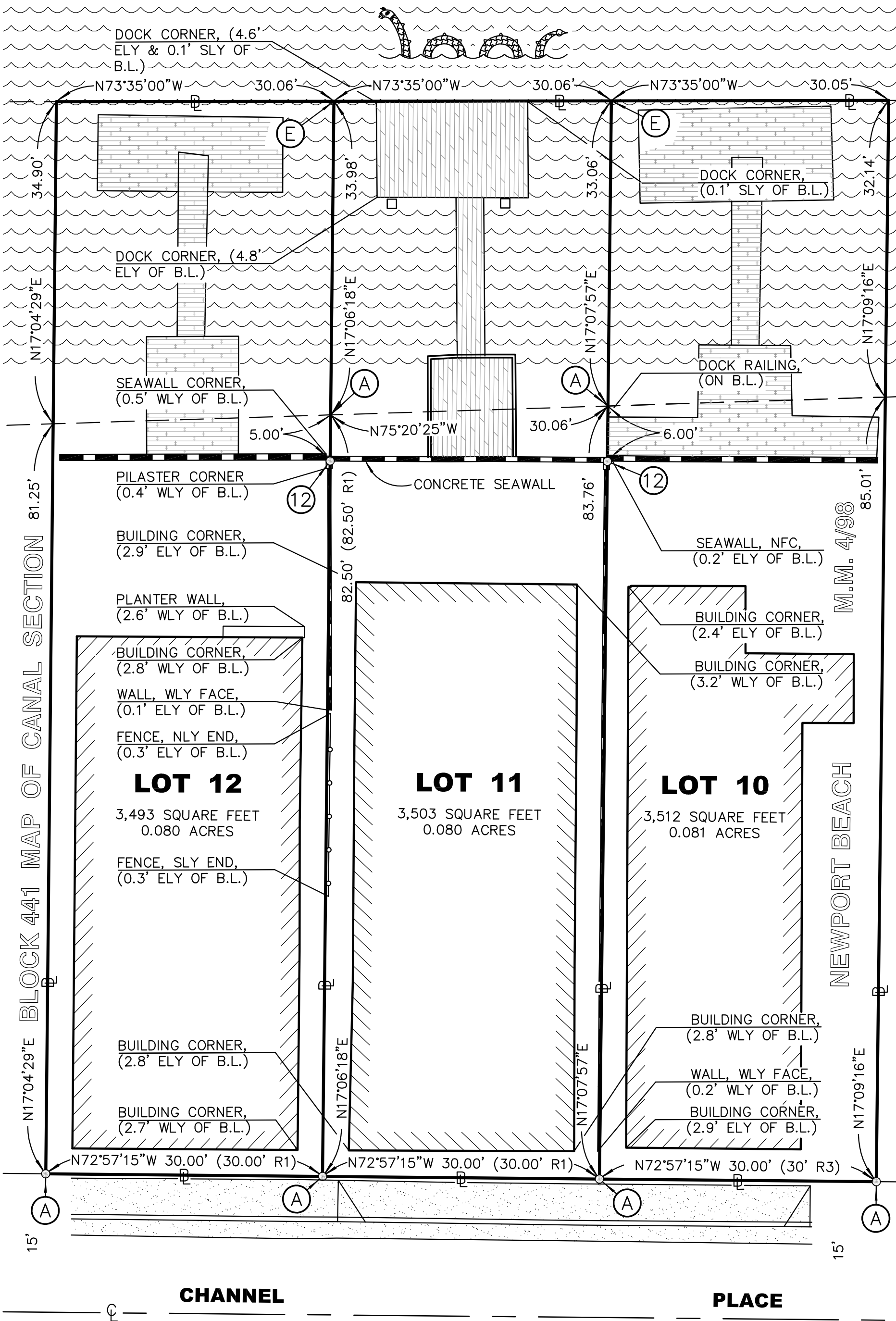
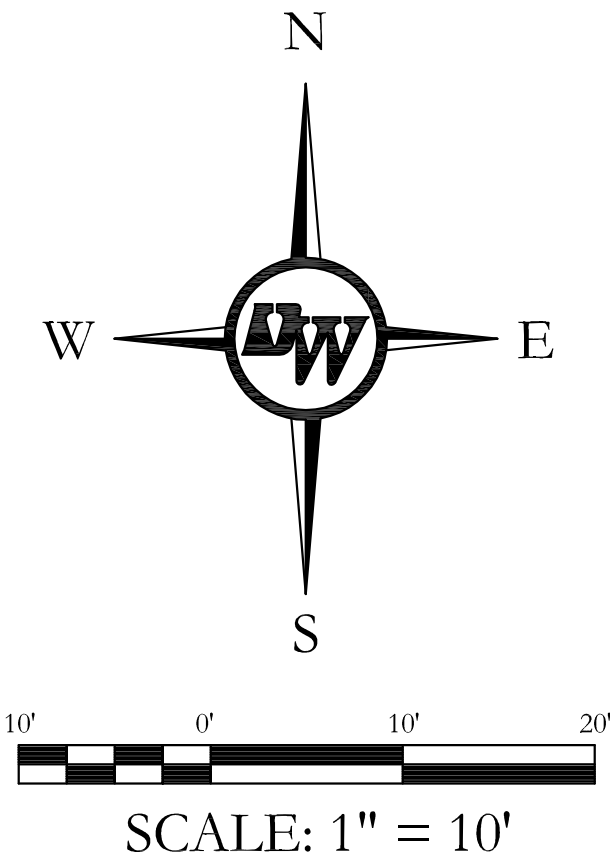
SEE SHEET 1 FOR MONUMENT DESCRIPTIONS, RECORD OWNER, PURPOSE OF SURVEY, BOUNDARY ESTABLISHMENT NOTES, SURVEYOR'S STATEMENTS, SURVEY PROCEDURES AND STATED ACCURACY NOTE, AND VICINITY MAP.

SEE SHEET 2 FOR BOUNDARY SURVEY, RECORD REFERENCES, BASIS OF BEARINGS, LAND AREA, AND LINE DATA.

**LEGEND:**

- B.L. - BOUNDARY LINE
- E - EAST
- ELY - EASTERLY
- M.M. - MISCELLANEOUS MAPS
- N - NORTH
- NFC - NORTHERLY FACE
- NLY - NORTHERLY
- NO. - NUMBER
- R.S.B. - RECORD OF SURVEY BOOK
- S - SOUTH
- SFN - SEARCHED, FOUND NOTHING
- SLY - SOUTHERLY
- W - WEST
- WLY - WESTERLY
- B - BOUNDARY LINE
- C - CENTERLINE

UNIT CONVERSION	
0.01'	1/8"
0.25'	3"
0.50'	6"
0.75'	9"
1.00'	12"





# CHANNEL PLACE

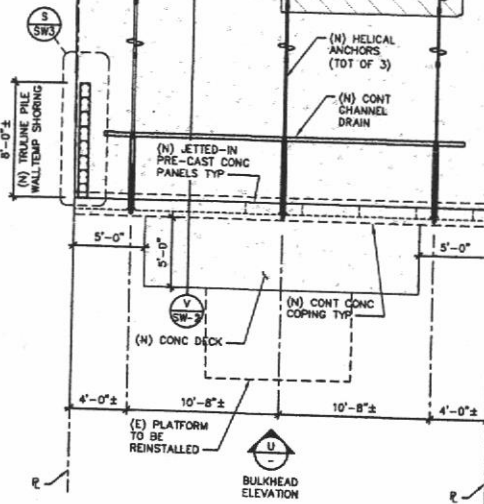
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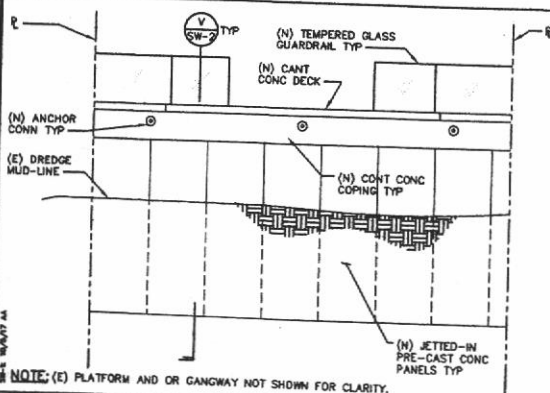
4018  
CHANNEL  
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(E) BLDG

ADJACENT PROPERTIES  
UNDER SEPARATE PERMITS



## BALBOA COVES



ADJACENT PROPERTIES  
UNDER SEPARATE PERMITS

ELEVATION





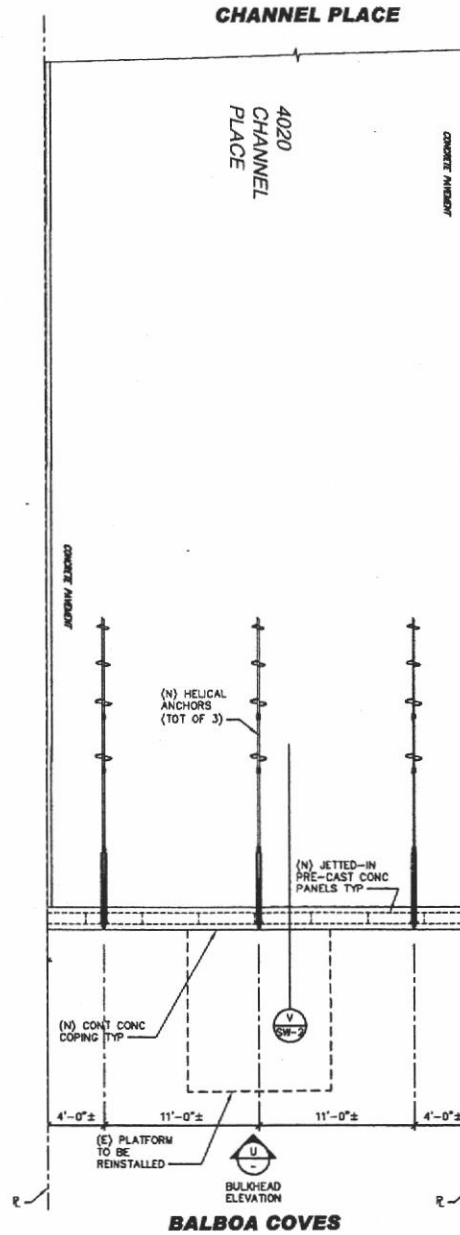


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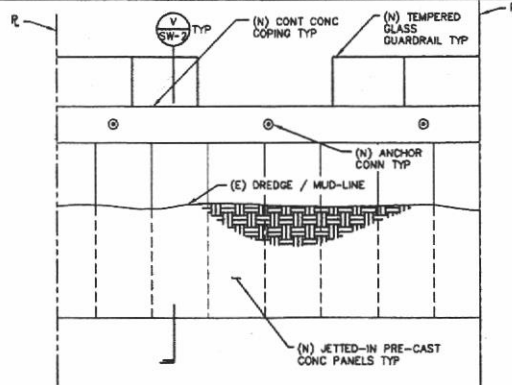
ADJACENT PROPERTY  
UNDER A SEPARATE PERMIT

ADJACENT PROPERTY  
UNDER A SEPARATE PERMIT



ADJACENT PROPERTY  
UNDER A SEPARATE PERMIT

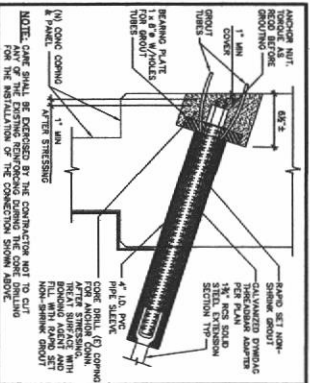
ADJACENT PROPERTY  
UNDER A SEPARATE PERMIT



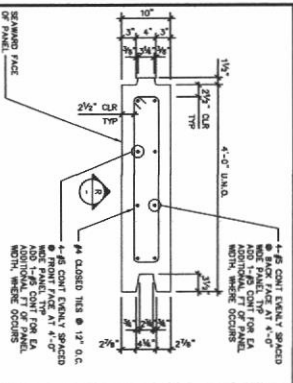
NOTE: (E) PLATFORM AND OR GANGWAY NOT SHOWN FOR CLARITY.

ELEVATION

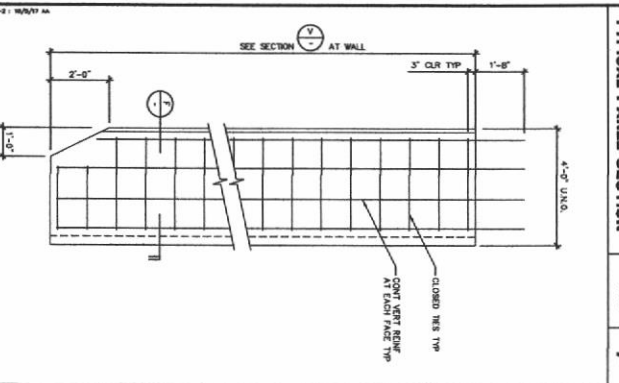




**CORE DRILL DETAIL**



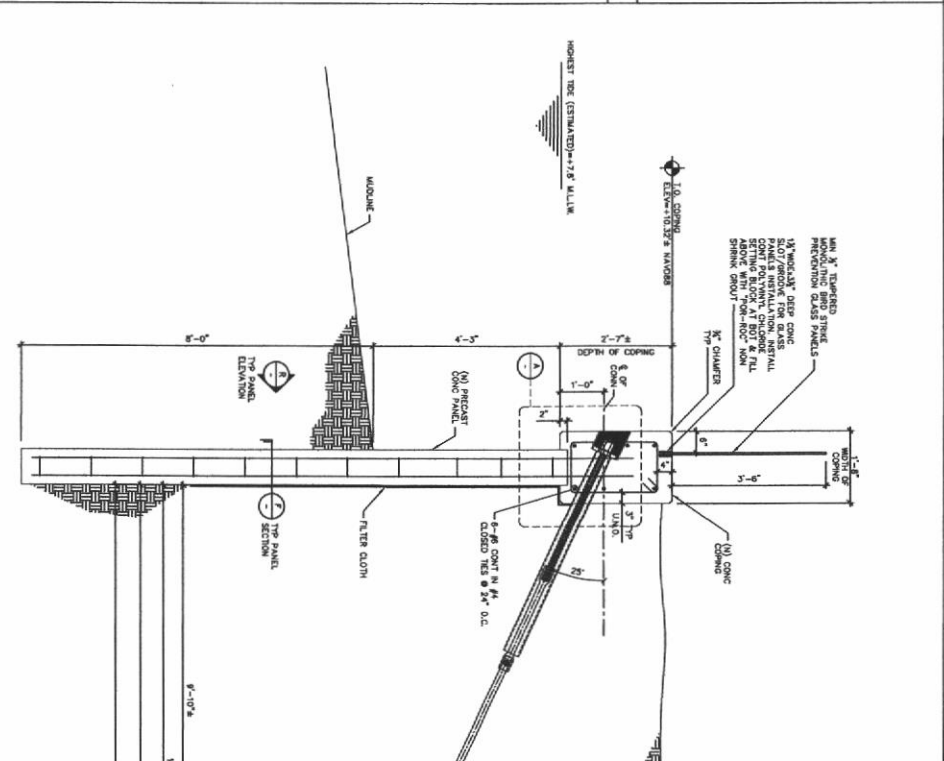
**TYPICAL PANEL SECTION**



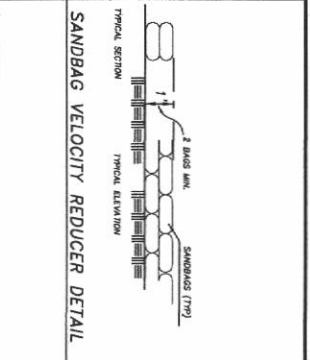
**TYPICAL BULKHEAD PANEL**



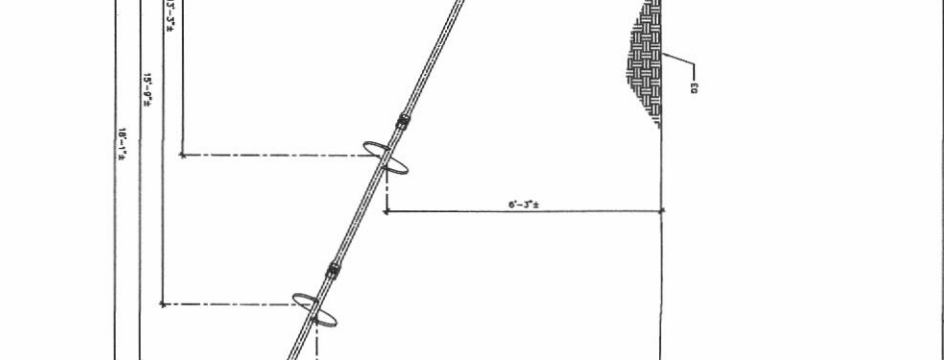
**SECTION AT SEAWALL TYP**



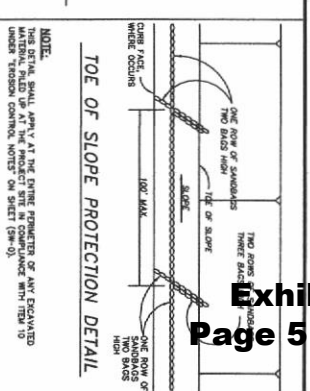
**TYPICAL BULKHEAD PANEL**



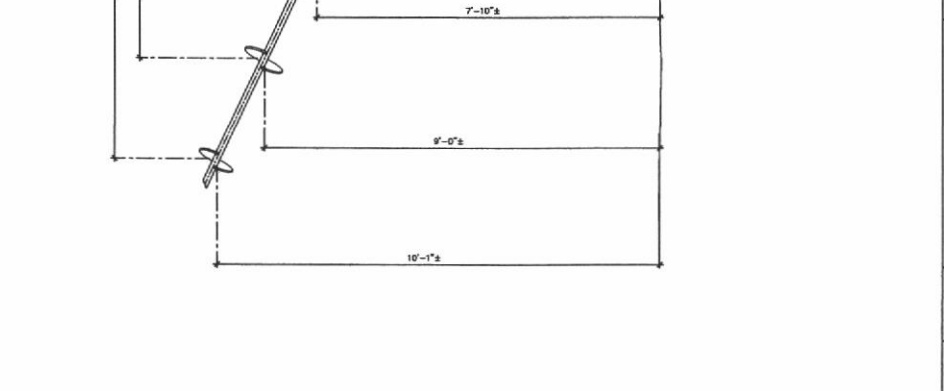
**SANDBAG VELOCITY REDUCER DETAIL**



**TYPICAL BULKHEAD PANEL**



**TOE OF SLOPE PROTECTION DETAIL**

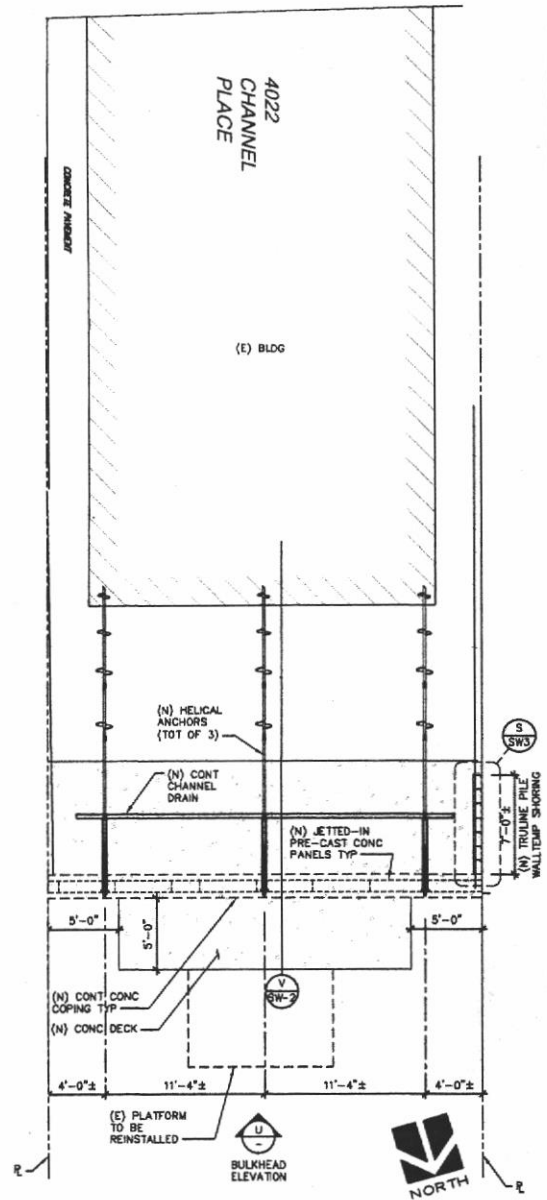


**TYPICAL BULKHEAD PANEL**

**Exhibit 3**  
**Page 5 of 8**

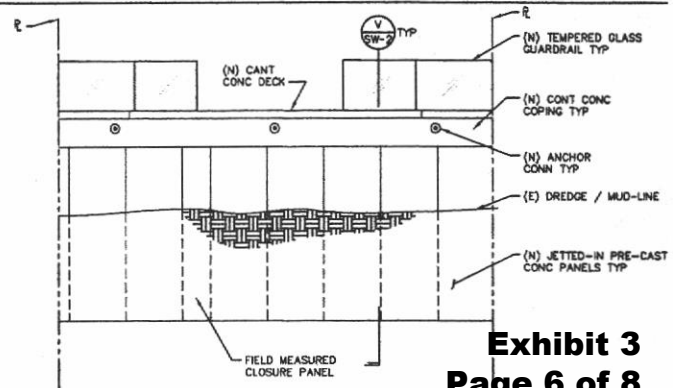
# CHANNEL PLACE

ADJACENT PROPERTIES  
UNDER SEPARATE PERMITS



BALBOA COVES

ADJACENT PROPERTIES  
UNDER SEPARATE PERMITS



NOTE: (E) PLATFORM AND OR GANGWAY NOT SHOWN FOR CLARITY.

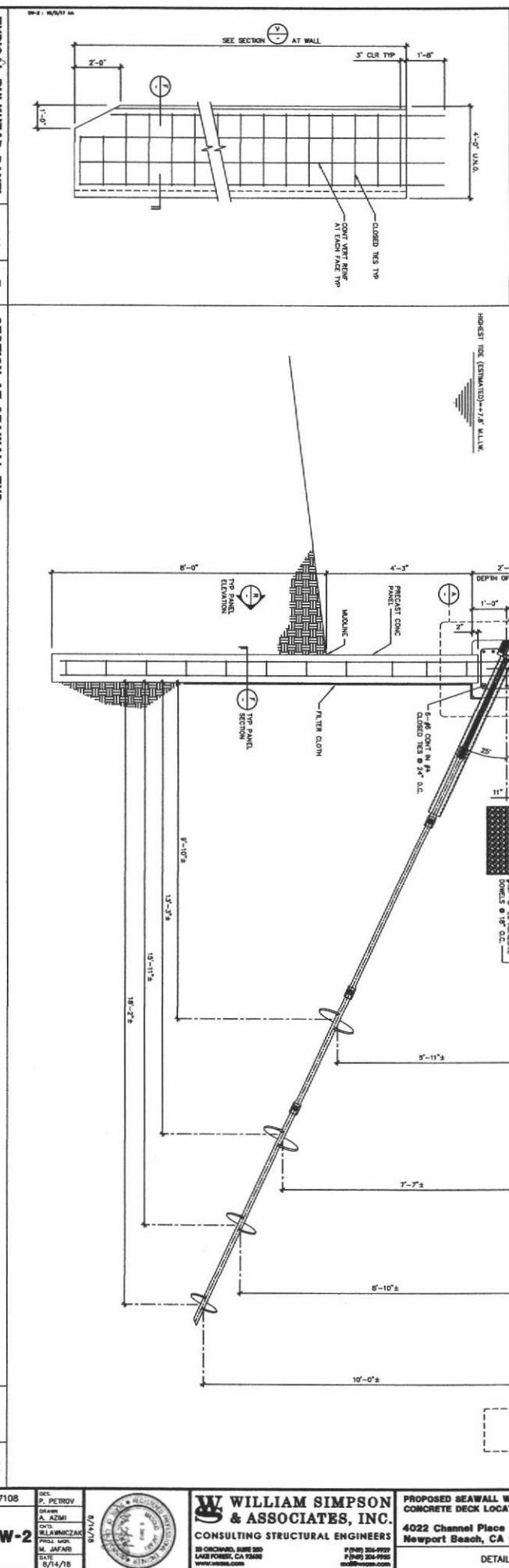
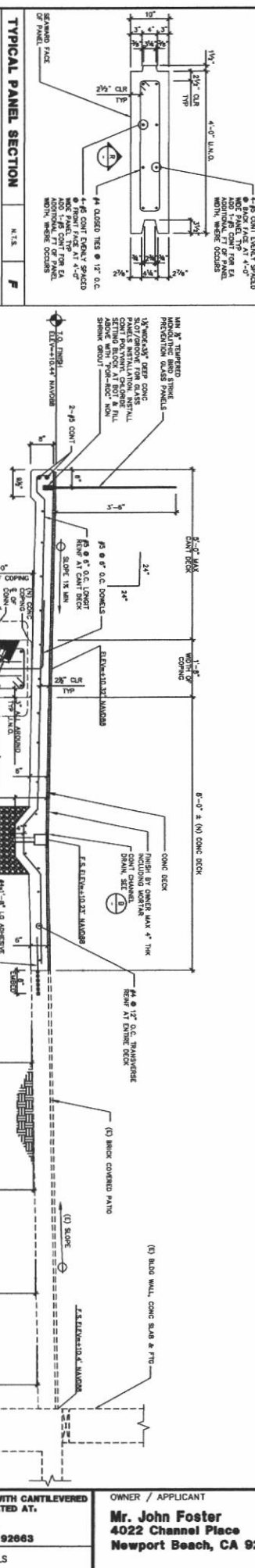
ELEVATION

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				<p><b>Exhibit 3</b> <b>Page 7 of 8</b></p>
<p><b>CORE DRILL DETAIL</b></p> <p>N.T.S.</p>	<p><b>BOTTOMLESS TRENCH DRAIN</b></p> <p>N.T.S.</p>	<p><b>VELOCITY REDUCER DETAIL</b></p> <p>N.T.S.</p>	<p><b>TOE OF SLOPE PROTECTION</b></p> <p>N.T.S.</p>	<p><b>TOE OF SLOPE PROTECTION DETAIL</b></p> <p>N.T.S.</p>



TYPICAL BULKHEAD PANEL	SECTION AT SEAWALL TYP			
N.T.S.	R			V

SW-2

8/14/16

**WILLIAM SIMPSON & ASSOCIATES, INC.**  
CONSULTING STRUCTURAL ENGINEERS

25 ORCHARD, SUITE 200  
LAKE FOREST, CA 92650

P (949) 354-9777  
F (949) 354-9955  
www.williamsimpson.com

PROPOSED SEAWALL WITH CANTILEVERED CONCRETE DECK LOCATED AT:

4022 Channel Place  
Newport Beach, CA 92663

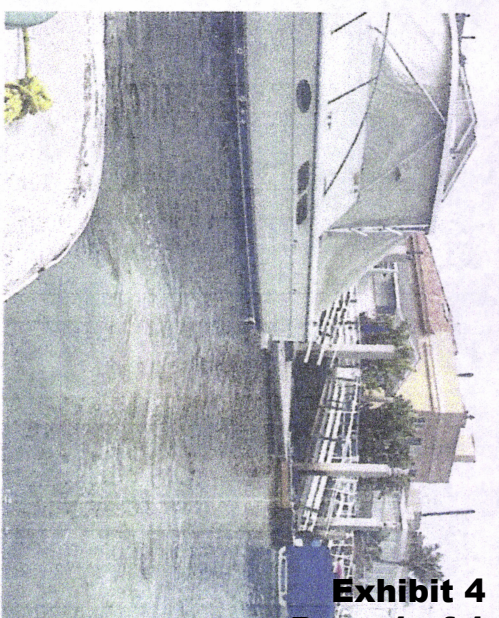
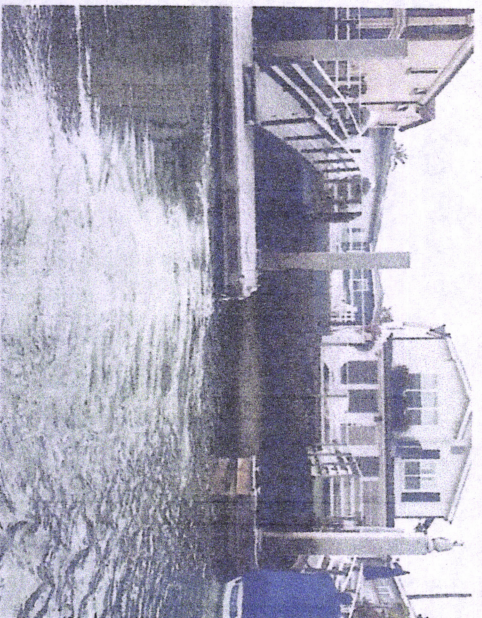
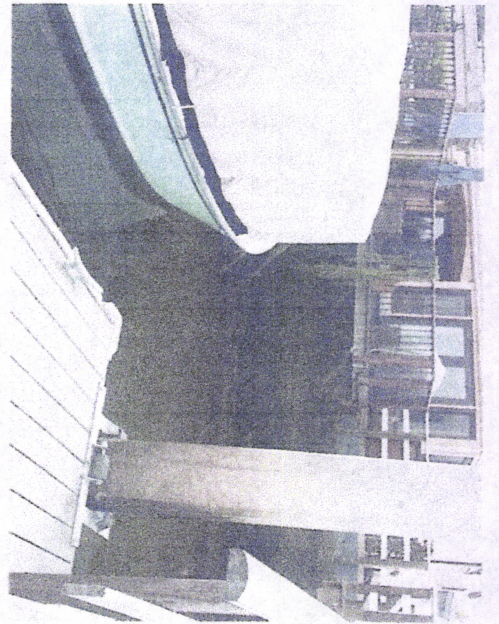
DETAILS

OWNER / APPLICANT

**Mr. John Foster**  
4022 Channel Place  
Newport Beach, CA 92663









FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG  
REBECCA A. THOMPSON  
NANCI S. STACEY  
KIMBERLY RIBLE  
ALICIA B. BARTLEY

LAW OFFICES OF  
**GAINES & STACEY LLP**  
1111 BAYSIDE DRIVE, SUITE 280  
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE  
(949)640-8999  
FAX  
(949)640-8330  
sstacey@gaineslaw.com

January 8, 2018

Liliana Roman  
Coastal Permit Analyst  
California Coastal Commission  
200 Oceangate, #1000  
Long Beach, CA 90802

Re: CDP Application No. 5-18-0821 (Foster)

Dear Liliana:

I have been engaged by the Applicants for CDP No. 5-18-0821 for the purpose of establishing that the tidelands trust (also commonly called the public trust interest) does not apply to the waters that adjoin the bulkhead on the Applicants' property. My engagement is principally directed to responding to your November 5, 2018 email to Lisa Miller in which you stated:

"Thank you for the survey, I'll use it as an exhibit in the staff report. However, in this case, the location of the seaward property line is irrelevant, all bay waters are considered public waters, regardless of ownership and are subject to the Public Trust per the State of California constitution. Private docks are allowed in public waters because it is a recreational use appropriate for water covered lands subject to the Public Trust. However, something like a cantilevered deck is not an allowable use because it is considered a prolongation of private property and not appropriate for water covered lands subject to the Public Trust. Uses that do not protect or promote Public Trust values, are not water dependent or oriented and exclude rather than facilitate public access and use are not consistent with the trust under which the lands are held. So, Mr. Petrov is correct in that there is no actual "Coastal Commission rule prohibiting cantilevered deck construction if it doesn't encroach beyond Property Line," it's a question of the use being an allowable use in an area subject to the Public Trust.



The example I gave of Linda Isle, differs in that the surrounding waters of that island remain in private ownership as the water area was excavated from dry land, thus, cantilevered decks and docks in those waters are constructed over non-public waters, therefore not subject to the public trust. I don't believe this is the case for Newport Island as the waters surrounding it are simply classified as waterways."

I have reviewed the history of title to the Applicants' property and researched the applicable statutes which govern the application of the public trust doctrine. The reason that this is a critical issue is that the Newport Beach LCP allows for the cantilever of decks for a maximum of five feet beyond a bulkhead provided that the decks are not over property subject to the tidelands trust. This provision is found in the certified Implementation Plan for the Newport Beach Local Coastal Program. The provision is Newport Beach Municipal Code § 21.30C.050(9)(5).

5. Patio Decks. Patios are not permitted to extend over the waters of Newport Harbor unless the waters are adjacent to the upland property and outside the areas described in the tidelands trust, and provided the patio complies with the following conditions: [emphasis added]

- a. The maximum projection of patio decks encroachments beyond the bulkhead line shall be limited to five feet.
- b. The minimum setbacks from the prolongations of the side property lines shall be five feet.
- c. No float shall be permitted within one foot of the decks.
- d. No permanent structure shall be permitted on the projecting portion of the patios except:
  - i. Planters and benches not over sixteen (16) inches in height;
  - ii. Railings not over forty-two (42) inches in height with approximately ninety-five (95) percent open area.
- e. A harbor and building permit has been obtained.

I recognize that construction in or over the water within the Commission's permanent jurisdiction is governed by Chapter 3 policies. However, the certified LCP is used as guidance to the application of those policies. As you have noted, in other areas of Newport Harbor where the tidelands trust does not apply, the Commission has found that cantilever decks five feet or less are consistent with Chapter 3 policies. I conclude that if the tidelands trust does not apply to the property over which the two cantilever decks at 4018 and 4022 Channel Place are proposed, that such proposed decks should be approved.

1. Origin of the Applicants' Title to the Property

The land and water area which is owned by the Applicants was derived from Swamp and Overflowed Land Patent S&O 3089 ("S&O 3089") which was issued to James McFadden in 1892. A copy of S&O 3089 is attached as Exhibit A. Upon admission as a State in the United States, California became the sovereign holder of swamp and overflowed lands under the Arkansas Swamp Act of 1850 (43 U.S.C. § 981, et seq.; Stats 1850, Ch. 84). California subsequently created a statutory scheme by which a person could seek to acquire the swamp and overflowed lands by applying to the State and paying the State for the land.

In 1891, James McFadden made application to the State to acquire approximately 420 acres within the Newport Bay area. The State caused the lands to be surveyed by James Finley. McFadden's application was approved and on May 16, 1892, the State issued a Patent (a form of title transfer) to McFadden for 420.85 acres. I have attached as Exhibit B a map of the Finley Survey where the total patent area is shown in yellow. In the vicinity of the Applicants' property, the boundary of the patent was the south bank of the Santa Ana River which, at the time, flowed into Newport Bay.

By 1907, a large portion of S&O 3089 had been conveyed to Orange County Improvement Association ("OCIA"). OCIA was the original owner and subdivider of Newport Island. A subdivision map was recorded on March 20, 1907. At that time, the Santa Ana River was in its natural banks. The north boundary of Newport Island was subject to erosion and accretion both from natural riparian and tidal causes. (A copy of the subdivision map is attached as Exhibit C.) The Applicants' property is Lots 10, 11 and 12, Block 441, Canal Section.

Between 1919 and 1921, the City and County had constructed the Bitter Point Dam to restrict the flow of the Santa Ana River into Newport Harbor and divert the ocean outlet for the river to the City boundary to the northwest where it remains today. After construction of the Bitter Point Dam, the bank of the Santa Ana River suffered no further riparian activity. The sole action of the water was tidal, allowing the ordinary high water mark (mean high tide line) to be established. (See Civil Code § 830.)

2. Tidelands Were Granted to the City to Administer

The City is the grantee of its tidelands originally under an act passed in 1919 by the State Legislature commonly referred to as the Beacon Bay Bill. (Chapter 494, Statutes of 1919.) You have raised the question whether any tidelands trust right exists in the area north of the bulkhead on the Applicants' property. The City has communicated that it has no such tidelands trust interest. (Chris Miller's email, October 19, 2018, Exhibit D).

The terms "public trust lands" and "tidelands trust" refer to the same concept. Tidelands are encumbered by a Public Trust for commerce, navigation and fisheries. (See, *Marks v. Whitney* (1971) 6 Cal.3d 251; *People v. California Fish Co.* (1913) 166 Cal. 576.) Tidelands is the area covered and uncovered by the daily flux and reflux of the tides. (*City of Oakland v.*

*Oakland Water Front Co.* (1897) 118 Cal.160, 182.) Submerged lands are also included in the tidelands trust. (*San Pedro, L.A. & S.L.R.R. v. Hamilton* (1911) 161 Cal. 610, 614.)

3. The City Resolved Tideland Boundaries by Court Judgment

In the late 1920's, the City resolved the boundaries to many areas which may be affected by tides. The boundary resolution is found in numerous Superior Court Judgments. Superior Court Case No. 23686 established the tidal boundary for the north side of Newport Island which includes the Applicants' property. The Judgment in Case No. 23686 (the "Judgment") was entered on August 22, 1928 and recorded at Book 201, Page 253, Official Records, Orange County. The Judgment provides that OCIA held its title without any adverse tidelands trust interest. Although hard to read, I have attached a copy of the Judgment as recorded as Exhibit E.

Paragraph IA on Page 2 of the Judgment affirms the title of OCIA to the property between the northerly line of the parcels in Block 441 (among others) and the SOUTH LINE of the Santa Ana River. The area between the northern boundary shown on the subdivision map and the SOUTH LINE is described as a parcel 2 on each of the three deeds by which the Applicants have taken title to the property. (Deeds attached as Exhibits F, G, H.) This is a distance of approximately 30 feet. This area is shown in detail on Record of Survey 2017-1080 (not yet recorded). (Record of Survey attached as Exhibit I.) Sheet 3 of said Record of Survey shows the location of the bulkhead, the original 1907 Subdivision Map boundary, and the boundary established by the Judgment.

Paragraph II on page 18 of the Judgment states "It is hereby ordered, adjudged and decreed that the plaintiff [City of Newport Beach] has no right, title, interest or estate in or to any of the lands in Paragraph I described except such rights acquired by the City of Newport Beach



by virtue of an agreement recorded August 9<sup>th</sup>, 1927 in Book 70 page 306 and a deed recorded November 15, 1927 in Book 96, page 228 of Official Records of said Orange County." The language "has no right, title, interest or estate" excludes any Public Trust interest in the area adjudged to be private property in paragraph IA.

The two "exception" documents do not affect this result. The Agreement at Book 70 Page 306 (copy attached as Exhibit J) relates to an agreement among the private property owners to establish and maintain certain channels to access the rest of Newport Harbor. The Agreement was recorded before the Judgment. At the time OCIA claimed a far larger portion of the property north of the 1907 Tract Map boundary. The survey drawing attached to the Agreement at Book 70, Page 431, shows Block 441 and the Applicants' Lots 10, 11 and 12. The prolongation of the property lines shown Page 431 identify a claim by OCIA to far more property than the approximately 30 feet adjudicated in the Judgment.

The Deed at Book 96, Page 228 (copy attached as Exhibit K) relates to a grant of an easement to the City of Newport Beach to extend a street from 46th Street to 54th Street and then to the State Highway at 54th Street. This Deed did not affect the Applicants' property.

The boundary of the Applicants' Property is also shown on the records of the Orange County Assessor. Assessor's Map Book 423, Page 05 is attached as Exhibit M. The solid line shows the north boundary of the Applicant's Property by reference to the Judgment which is at Book 201, Page 253 of the Orange County Recorder Official Records. The Applicants' Property are shown as APN 423-05-004, 423-05-005, and 423-05-006.

4. The Proposed Cantilever Deck Does Not Overhang Tideland Trust Property

It is not the case that all bay waters are subject to the Public Trust doctrine. The area north of the bulkhead on the Applicants' property was dredged to allow the mooring of boats. Public Resources Code § 7552.5 provides that when swamp and overflowed land has been granted by the State and the land is subsequently dredged so that water flows over them, that the "common law public trust for commerce, navigation and fisheries" is not created. Although § 7552.5 provides that dredging may give rise to a "navigational easement in favor of the public", no such easement exists in the private waterway that extends approximately 30 feet north of the bulkhead. The Applicants and the City agree that there is no public trust interest 30 feet north of the original 1907 Tract boundary. The area is a private waterway. (Public Resources Code § 7552.5 was not adopted until 1982. Section 7552.5 cannot create a navigational easement over lands dredged in the 1930's. However, it is immaterial as a navigational easement is not a public trust interest or tidelands trust.)

Finally, I would note that the Coastal Commission approved an identical cantilever deck in CDP 5-83-527A for the property at 4012 Channel Place (Lot 7), three doors east of the Applicants' property. A copy of the plan approved for the Lot 7 signed as approved by D. H. Pickens is attached as Exhibit L.

The facts support the finding that a deck which cantilevers 5 feet beyond the bulkhead on Lots 10 and 12 would be "outside the areas described in the tidelands trust". The facts support the finding that the property up to the "SOUTH LINE" established in the Judgment are a private waterway. The proposed decks are consistent with the Newport Beach LCP, and are consistent

with the Chapter 3 policies of the Coastal Act as evidenced by approvals of such decks on other private waterways. (e.g. Linda Isle).

I am available at any time to discuss this matter with you. If you forward this to State Lands Commission for review, please advise me of the person assigned to review so I can communicate directly.

Very truly yours,

*Sherman L. Stacey*

SHERMAN L. STACEY

SLS:ck  
Enclosures

cc: John Foster  
Joe Foster  
Lisa Miller