CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071



W8e

Filed: February 3, 2014
180th Day: August 2, 2014
Staff: J. Rabin - LB
Staff Report: February 20, 2014
Hearing Date: March 12-14, 2014

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-0799

Applicant: Frank Pritt

Agent: Brion Jeannette Architecture

Attn: Martin Bard

Location: 1114 E. Balboa Blvd., Newport Beach, Orange County

(APN 048-151-50)

Project Description: Modify existing cantilevered deck, including: (1) demolition

of steps from the existing deck to the beach below; (2) replace steps with 202 square feet of new 6-inch-thick cantilevered deck extending 5 feet 6 inches bayward from the landward end of the existing cantilevered deck; (3) install 3 steel beams and 5 new concrete piles landward of the existing bulkhead; and (4) install a steel beam at bayfront end of new cantilevered

deck.

Staff Recommendation: Approve with conditions.

I. MOTION AND RESOLUTION

Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following **Special Conditions:**

1. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (1) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.

(m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

2. Eelgrass Survey(s)

- A. Pre-Construction Eelgrass Survey. A valid pre-construction eelgrass (Zostera marina) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.
- В. **Post-Construction Eelgrass Survey**. If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

3. Pre-construction Caulerpa Taxifolia Survey

A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.

- **B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- **C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
 - (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish and Wildlife (858/467-4218) or Bryant Chesney, National Marine Fisheries Service (562/980-4037), or their successors.
- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-13-0799. Pursuant to Title 14 California Code of Regulations Section 13253(b) (7.5), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-13-0799. Accordingly, any future improvements to the new cantilevered deck authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-13-0799 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1114 E. Balboa Blvd. in the City of Newport Beach, Orange County (**Exhibits 1-2**). An existing cantilevered deck extends toward Newport Bay from the back of the existing residence. The existing cantilevered deck covers 933 square feet of sandy beach. The

applicant is requesting approval to demolish the nine steps that extend from the edge of the cantilevered deck down to the sandy beach below (**Exhibit 3**). In place of seven of the nine steps, the applicant proposes to extend the cantilevered deck 5 feet 6 inches bayward from the point where the existing steps begin their descent to the sand. The project will add 202 square feet of new cantilevered deck. The total square footage of cantilevered deck will increase from 933 square feet to 1,135 square feet. However, the project will actually result in a net reduction in the amount of sandy beach coverage because the nine stairs currently cover more sandy beach than the proposed expansion of the cantilevered deck.

The expansion of the six-inch thick concrete cantilevered deck will be supported by three new steel beams that extend bayward from behind the existing bulkhead. Two of those steel beams will extend 22 feet 6 inches bayward from a point on either side of the residence as shown on the plans (**Exhibit 4**). One of those steel beams will be supported by two new 24-inch diameter circular deadman piles that will be located landward of the bulkhead on the west side of the residence. The other 22 foot 6 inch steel beam will be supported by a new 24-inch diameter circular deadman pile landward of the bulkhead and a new 36-inch by 18-inch rectangular deadman pile on the east side of the residence. A third steel beam will extend bayward 14 feet 6 inches supported by a new 36 inch by 18 inch rectangular deadman pile located just landward of the existing bulkhead. All of the new piles will be concrete.

A fourth steel beam will extend 35 feet 6 inches laterally beneath the bayfront edge of the new cantilevered deck. The existing railing would extend 18 inches bayward to match the new bayfront end of the cantilevered deck. (Please see attached plans for details.) In no case will any sandy beach located outside the area occupied by seven of the nine existing steps be covered by expansion of the cantilevered deck.

As noted on the plans, to protect water quality, construction debris from the deck project is prohibited from entering the water and the sand. During construction, a debris platform will be suspended 18 inches below the existing deck and the expanded deck to protect the beach area. The platform will be covered with filter fabric. The platform is to be monitored and debris is to be cleared regularly. In addition, Best Management Practices shall be followed throughout the construction phase of the project as detailed in **Special Condition 1.**

The City of Newport Beach certified Land Use Plan (LUP) designates the 8,520 square foot lot as Single-Unit Residential and the proposed project adheres to this designation. The project is located within an existing urban residential area on the Newport Bay side of Balboa Peninsula. There is no change to the existing residence, wooden pier platform, gangway, or floating boat dock. The site is a bayfront located between the first public road and the sea. Due to its bayfront location, the project site may be potentially exposed to the hazard of wave run up during a severe storm event.

Local Government and Other Approvals

On September 24, 2013, the proposed project received a Harbor Permit/Approval-in-Concept No. 110-1114 and Plan Check #1589-2013 from the City of Newport Beach Harbor Resources Division.

The applicant's agent also has applied for approval from the Santa Ana Regional Water Quality Control Board (RWQCB) and the U.S. Army Corps of Engineers. The proposed project has been scaled back since the Approval-in-Concept was issued. The applicant is directed to return to the City of Newport Beach Harbor Resources Division and obtain a new Approval-in-Concept PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT.

As required by the City of Newport Beach Harbor Resources Division, a preliminary eelgrass (*Zostera marina*) survey was conducted on September 17, 2013. Eelgrass was discovered within 30 feet of project area. No live eelgrass was found under the existing steps.

Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in period from August through October. A survey completed in the August-October period shall be valid until the resumption of active growth (i.e. March 1). The subject project is on the agenda for the Coastal Commission's March 2014 meeting, so the eelgrass survey is no longer valid.

Although required by the City of Newport Beach, a preliminary *Caulerpa taxifolia* survey has not been done. The project is on the agenda for the Coastal Commission's March 2014 meeting. A *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes **Special Conditions 2 and 3**, which identify the procedures to be completed prior to beginning any construction. Also, if any *Caulerpa taxifolia* is found on the project site, **Special Condition 3** also identifies the procedures to be completed prior to beginning any construction.

Previous Permit History:

On July 15, 1994, the Commission approved a De Minimis waiver (5-94-124) for installation of a new patio deck, a new 3' by 22' gangway, and rebuilding the floating dock at the same dimensions. According to the plans approved by the City of Newport Beach and signed by a Coastal Program Analyst, the steps to the sand were to extend to a point slightly beyond the end of the railing on the cantilevered deck (**Exhibit 5**). Another plan prepared by Marine Consulting & Design and submitted to the City of Newport Beach shows the bottom steps extending out beyond the railing of the cantilevered deck (**Exhibit 6**). The Marine Consulting & Design plan was not approved by the Commission.

After Commission staff visited the site on January 29, 2014 and met with architects, Brion Jeannette and Martin Bard, it was agreed that the project proposed in Coastal Development Permit application 5-13-0799 should be scaled back. The end of the new cantilevered deck would extend 18 inches beyond the current railing. As noted above, the nine steps would be removed, to be replaced by a 202 square foot expansion of the cantilevered deck. In no case would the new section of cantilevered deck extend beyond the bayward end of the seventh step. The total amount of water coverage allowed by this permit is the existing 933 square foot cantilevered deck plus the 202 square foot expansion of the cantilevered deck. The total cantilevered deck will be 1,135 square feet. Plans for the project submitted with this application clearly define the dimensions of the new cantilevered deck.

B. DEVELOPMENT

The proposed project is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future development **Special Condition 4** be imposed. As conditioned, the development conforms to the Chapter 3 policies of the Coastal Act.

C. PUBLIC ACCESS

The subject site is located on the north side of the Balboa Peninsula in the City of Newport Beach. The nearest public access to Newport Bay is located at the end of C and D Streets. The presence of piers, decks, and bulkheads limit lateral access along the beach. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. The Commission finds that the proposed development conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

E. LOCAL COASTAL PROGRAM

Coastal Act Section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

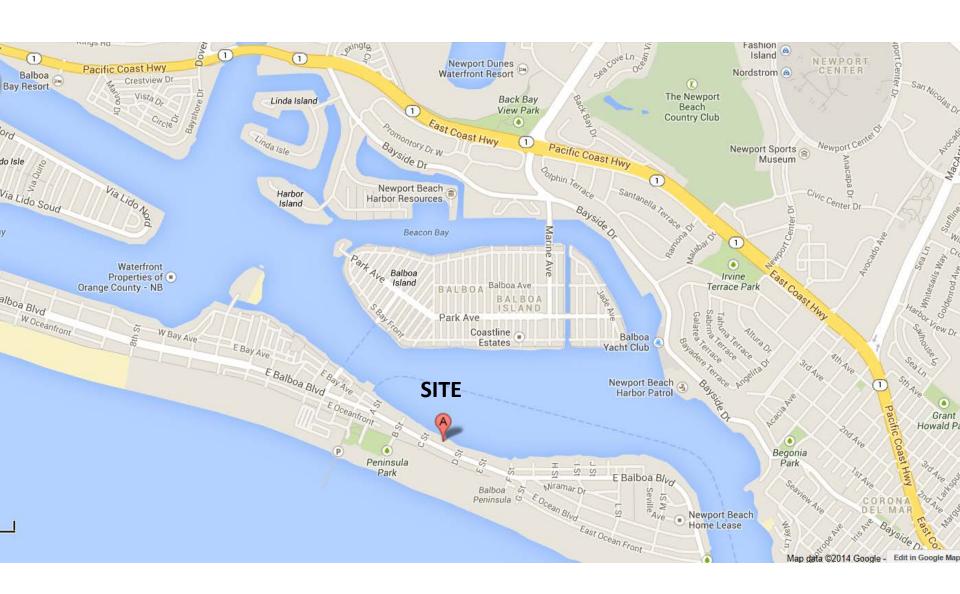
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

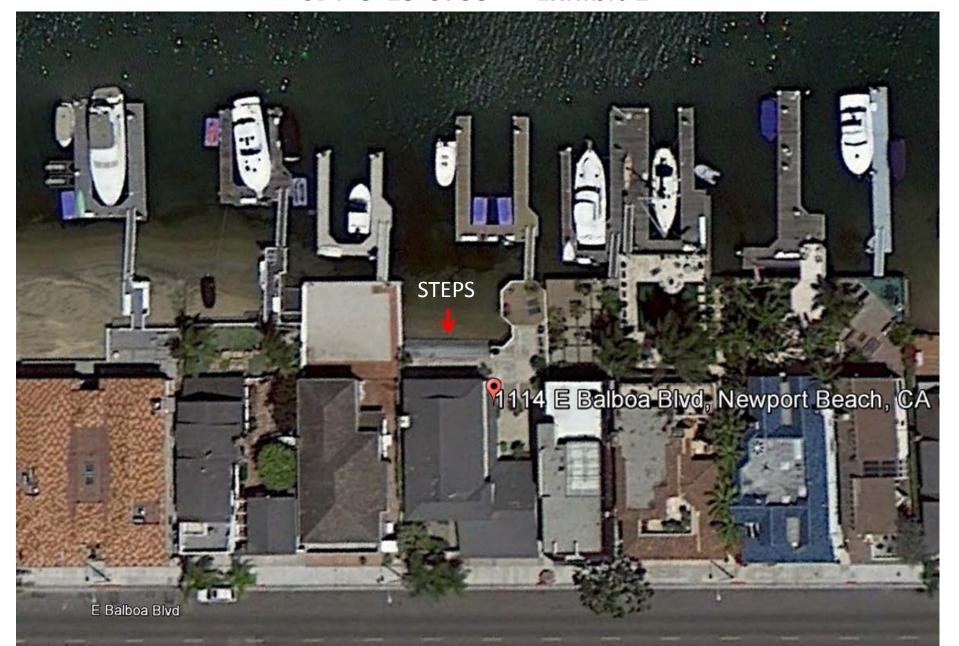
APPENDIX A

Substantive File Documents: City of Newport Beach Harbor Permit/Approval in Concept No. 110-1114 and Plan Check No. 1589-2013 dated September 24, 2013; Coastal Development Permit Application File No. 5-13-0799; Eelgrass Survey conducted September 17, 2013 by Debbie Karimoto; Revised Deck Plan, Section & Information, submitted February 3, 2014.

1114 E. Balboa Blvd., Newport Beach CDP 5-13-0799 Exhibit 1

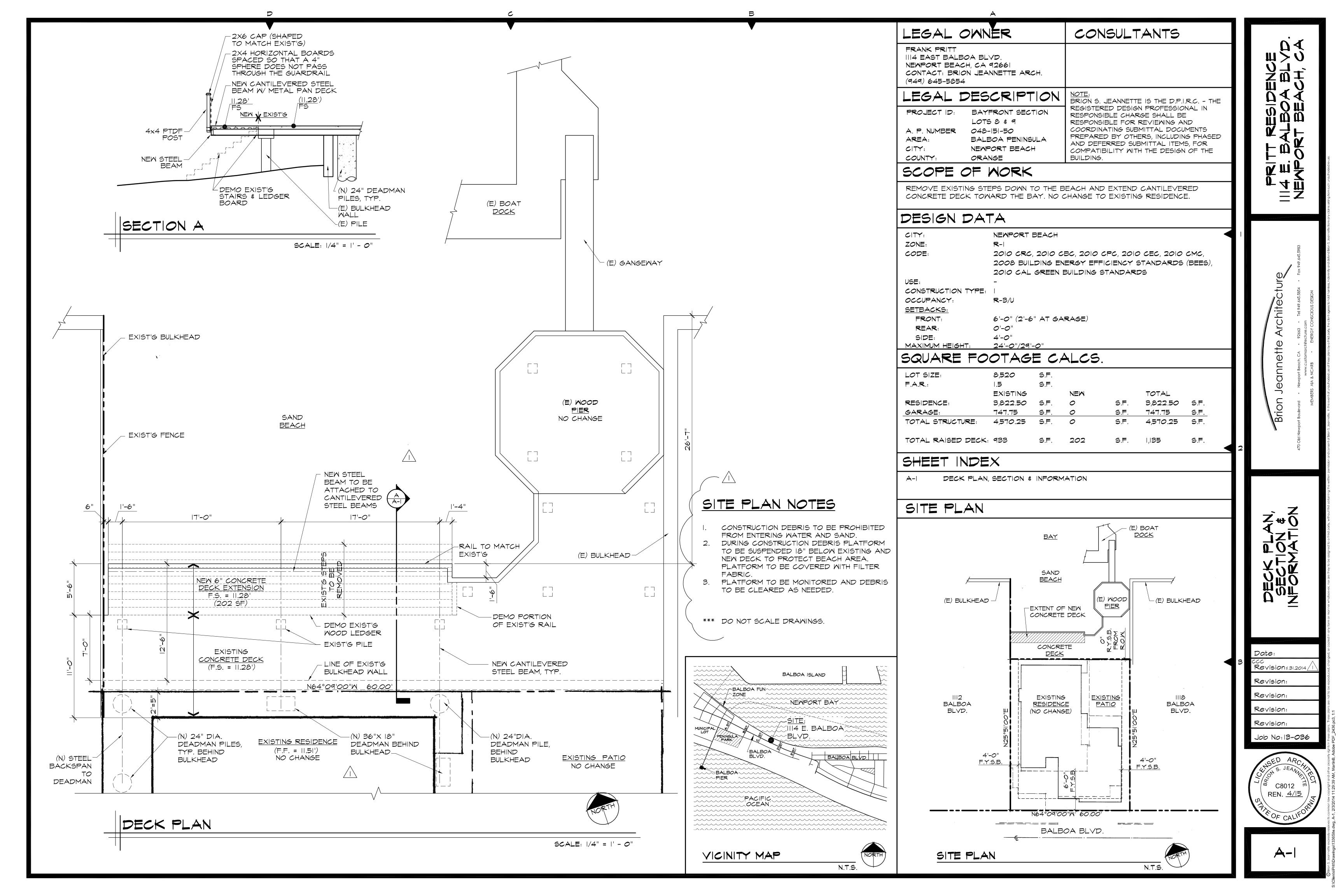


Existing Deck, Steps, and Dock 1114 E. Balboa Blvd., Newport Beach CDP 5-13-0799 Exhibit 2



Existing Deck/Steps at 1114 E. Balboa Blvd. Newport Beach CDP 5-13-0799 Exhibit 3





CDP 5-13-0799 Exhibit 5

