

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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W8g

Filed:	2/12/2014
180th Day:	8/11/2014
Staff:	MStone-LB
Staff Report:	2/20/2014
Hearing Date:	3/12/2014

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-1341

Applicant: 5001 Partners, LP

Agent: C.J. Light Associates (Scott Schaffer)

Location: 5001 Seashore Drive, Newport Beach, Orange County
(APN 424-451-06)

Project Description: Demolition of an existing single-family, beachfront home with attached two-car garage. Construct a 29-foot high, two-story, single-family residence with a roof deck; 2,043 square feet of living space; and attached 383 square foot, two-car garage. Grading consists of 20 cubic yards of cut and 20 cubic yards of fill.

Staff Recommendation: Approval 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. 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 of 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. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
2. **No Future Shoreline Protective Device**
 - a) By acceptance of this permit, the applicant and landowner agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-13-1341 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant and landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
 - b) By acceptance of this permit, the applicant and landowner further agree, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-13-1341. Pursuant to Title 14 California Code of Regulations

Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-13-1341. Accordingly, any future improvements to the single-family house 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. 5-13-1341 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. **Recommendations of the Geotechnical Report.** All final design and construction plans shall be consistent with all recommendations contained in the Geotechnical Engineering Investigation of Proposed New Residence at 5001 Seashore Drive, Newport Beach, California dated August 30, 2013, prepared by Coast Geotechnical, Inc. of Fullerton, California for Mr. Mike Arakelian of 5001 Partners, LP. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
5. **Conformance with the submitted drainage and run-off control plan.** The applicant shall conform to the Drainage Plan showing runoff from all impervious areas directed toward the bottomless trench drains at the front of the house (Seashore Drive side). Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
6. **Drought Tolerant Landscaping, Non Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall primarily be low or very low water plants as identified by California Department of Water Resources for South Coastal Region 3. (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
7. **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.
- l) 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.

8. **Deviation from Approved Encroachments.** The retained 30” high wall and at-grade patio is the only development allowed by this Coastal Development Permit 5-13-1341 in the City of Newport Beach Oceanfront Encroachment Area that extends 10 feet seaward from the beachfront property line at 5001 Seashore Drive. Any development in the Oceanfront public right-of-way, including additional improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines through written confirmation that no amendment or new permit is legally required.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence, for the review and approval of the Executive Director that the applicant has made the initial payment to the City’s public access impact mitigation program (i.e. annual payment to City for encroachment.) The applicant and all other successors and assigns must remain enrolled in the City's public access impact mitigation program (i.e.

annual payment to City for encroachment) and make the recurring annual payment so long as the encroachment remains in place.

9. **City's Right to Revoke Encroachment Permit.** Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

10. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION & DESCRIPTION

The subject site is a residential lot located at 5001 Seashore Drive (APN: 424-451-06) in the City of Newport Beach, Orange County. The lot size is approximately 1,827 square feet. The city's certified Land Use Plan (LUP) designates the lot as Single-Unit Residential and the proposed single-family residence adheres to this designation. The project is located in an existing urban residential area in West Newport up coast from the Newport Pier, and is between the first public road and the sea. There is a sandy beach, approximately 250 feet wide, between the subject property and the Pacific Ocean.

The applicants are proposing to demolish an existing two-story, single-family home on the site with an attached two-car garage and construct a new two-story, 29-foot high, single-family residence with 2,043 square feet of living space; attached 383 square foot, two-car garage; and a rooftop deck that is partially covered. Grading consists of 20 cubic yards of cut and 20 cubic yards of fill. The City of Newport Beach issued an Approval-in-Concept (No. 2013062) for the proposed project on December 12, 2013. The proposed project is consistent with the City's required 5-foot setback for primary structures from the seaward property line. The proposed project is also consistent with the character of the surrounding development, which primarily consists of two and three-story homes.

The subject site has existing development that currently encroaches into the approximately 10 foot unimproved public right of way at the rear (beach front) of the property. The approximately 8 foot encroachment contains a concrete patio and 30" wall. The beach immediately adjacent to the property is owned by the City of Newport Beach. Encroachment consisting of landscaping or development is not permitted on the sandy beach beyond the unimproved public right of way. As stated above, the City has approved the plans in concept, which include the encroachments. The encroachments are under the building permit, which will be reviewed by the City's Public Works Department and are subject to review and approval by that department. No changes or new construction to the concrete patio encroachment area are proposed.

The project includes a drainage system to manage runoff, including gutters and downspouts which are directly tied to onsite bottomless trench drains. All surface water runoff is directed away from the ocean and to the City of Newport Beach perforated bottomless trench drains located off-site at the front (Seashore Drive side) of the property. On site percolation of run-off will be increased from existing conditions with the removal of existing impermeable surfaces and the addition of planters. All surface water in the encroachment area is directed to onsite drainage, which flows away from the ocean and toward the front (Seashore Drive side) of the property.

A Coastal Hazard and Wave Runup study wave was conducted for this property by Global Geo-Engineering, Inc. on January 24, 2014. The study concludes that "*no protection devices are recommended*" for the proposed development. In reaching this conclusion, the study found, inter alia, that the beach is likely to remain stable throughout the lifetime of the proposed development, due to the groin fields placed by the Army Corps of Engineers and periodic sand replenishment by the *Orange County Erosion Control Project*. The study also found that waves will tend to break further off shore, because the off-shore sea bottom is relatively shallow. According to the study, given the depth and slope of the beach, run up from waves may reach the top of the beach, but will ultimately dissipate. And, if overtopping should occur, the study found that any wave action will encounter the wall enclosing the beach facing yard before reaching the structure, therefore, the structure will not be severely impacted.

Due to its oceanfront location and the width of the beach, however, the project site may be exposed to coastal hazards including sea-level rise and wave run-up during severe storms. **Special Condition 1** requires that the by accepting this permit, the applicant, landowner and future landowners acknowledge and assume the risks associated with this development.

Vertical public access to the beach is available via 50th Street, which is adjacent to the property. The sidewalk and parking spots on 50th Street and the bike path on Seashore Drive will not be affected by the proposed demolition or construction of this project. Therefore, the proposed project will not adversely impact public access.

The glass screens in the guard rails on the second floor and rooftop decks will be made of Ornilux Bird Protective Glass, which will help reduce the potential for bird strikes.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have

upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located in 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 3** be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

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 with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following: the appropriate management of equipment and construction materials, construction-phase erosion control measures, reduction in runoff through the use of trench drains, percolation pits, and permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, 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.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 10** requiring that the property owner record a deed restriction against the property, referencing all of the above Special

Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. 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 on 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.

H. 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 Certified Land Use Plan; City of Newport Beach Approval-in-Concept No. 2013062, dated December 12, 2013; Coastal Development Permit Application File No. 5-13-1341; Geotechnical Engineering Investigation of Proposed New Residence at 5001 Seashore Drive, Newport Beach, California dated August 30, 2013 prepared by Coast Geotechnical, Inc. of Fullerton, California; Coastal Hazard and Wave Runup Study, 5001 Seashore Drive, Newport Beach, January 24, 2014 by Global Geo-Engineering, Inc. of Irvine, California.

EXHIBIT# 1

Vicinity Map

Application Number:
5-13-1341



California Coastal
Commission

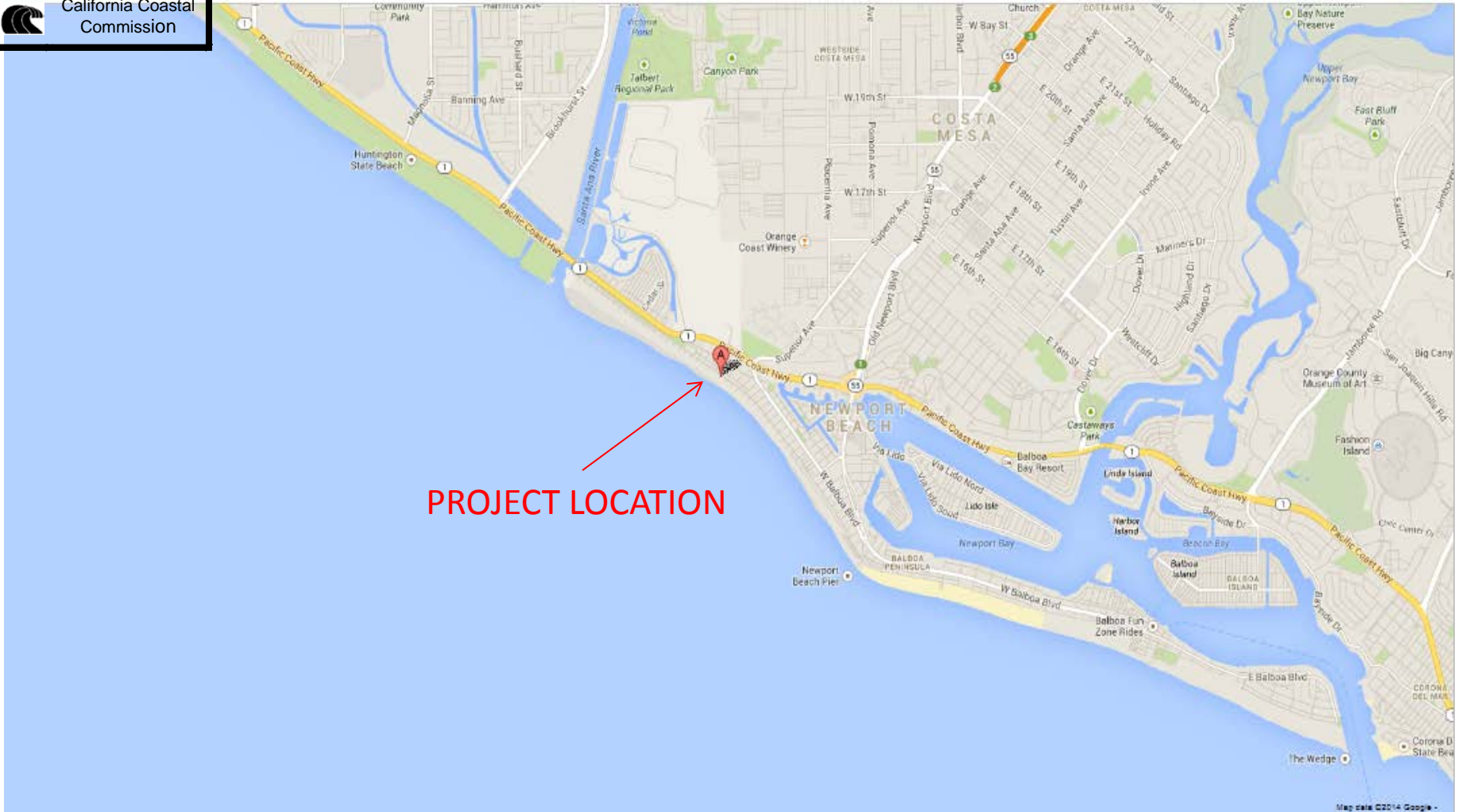
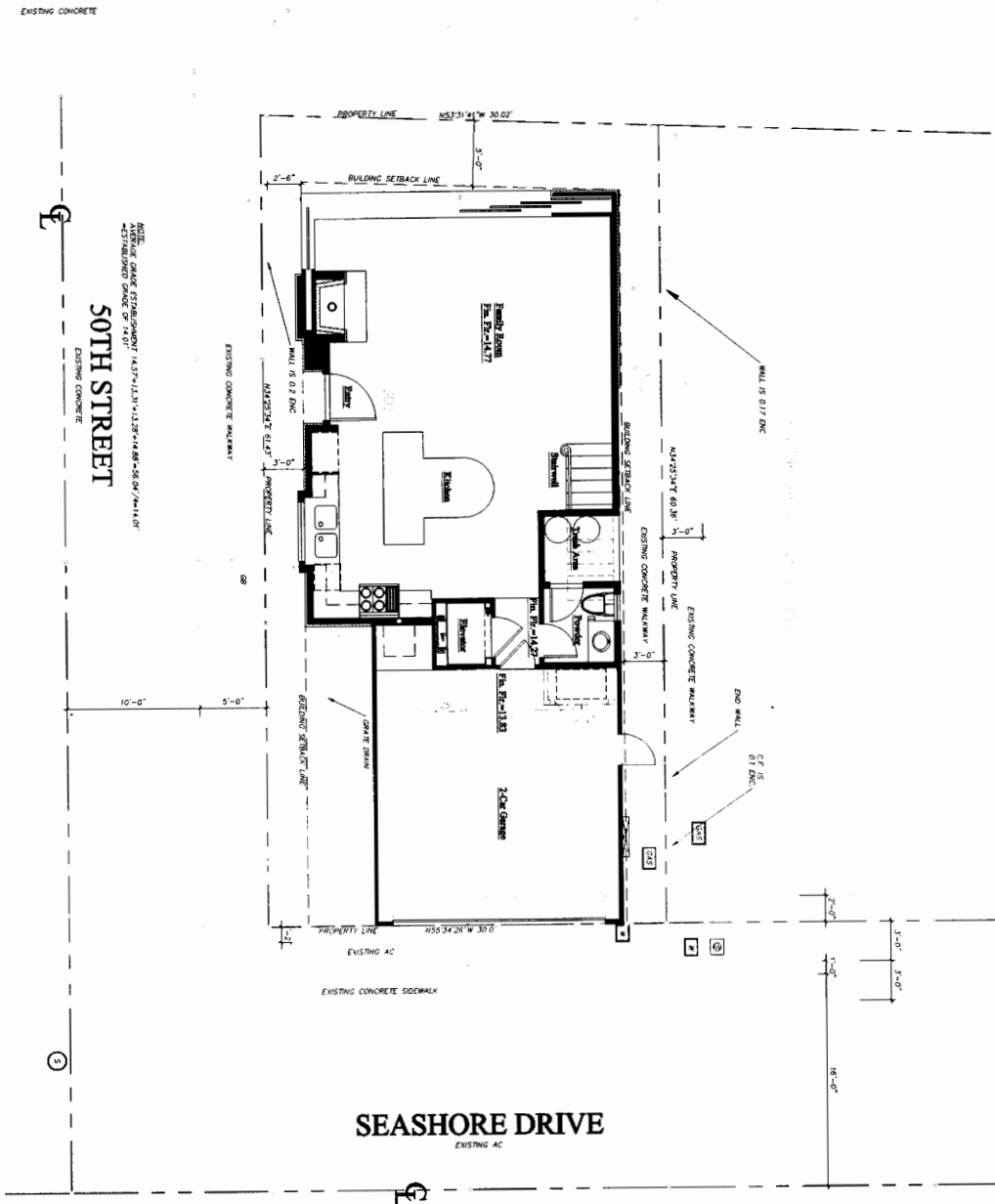


Exhibit 3
5-13-1341
Site Plan
1 of 6

BEACH



SCALE: 1/4"=1'-0"

Site Plan

NOTE:
 1. ALL DIMENSIONS ARE ESTIMATED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 3. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 4. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.

50TH STREET

5001 Custom Residence
 5001 Seashore Drive
 Newport Beach • California • 92663



1401 Quail Street, Suite 100
 Newport Beach, CA 92660
 (949) 851-1234
 (949) 851-1110

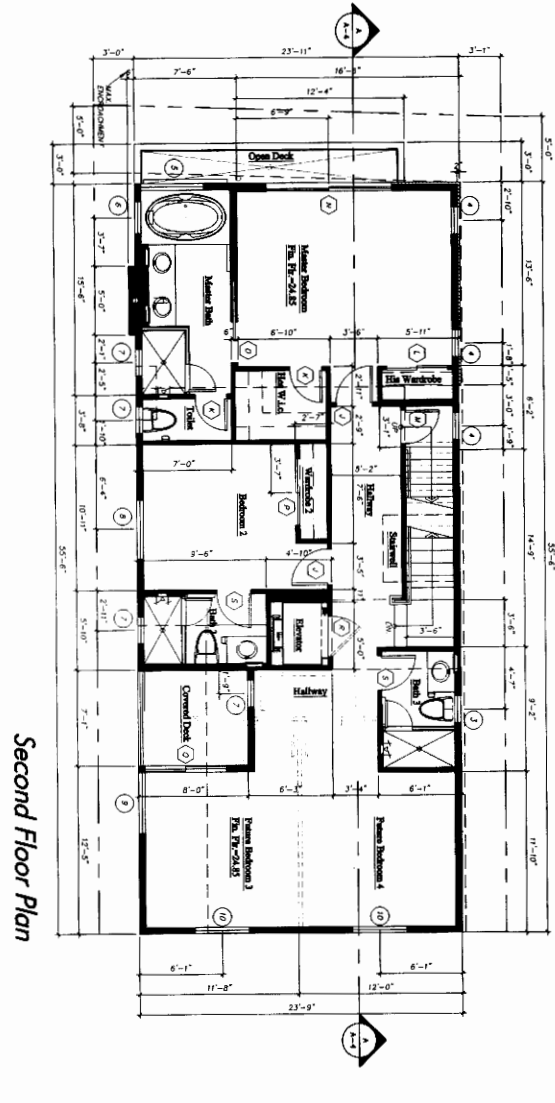
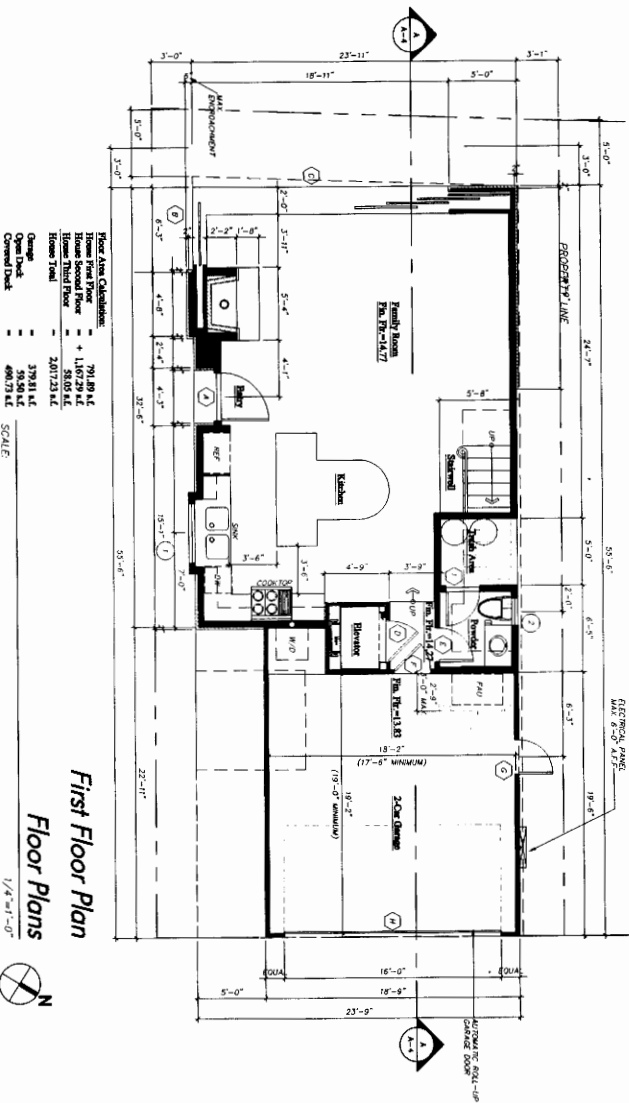
Site Plan

Job Number

Scale

Date

A-1



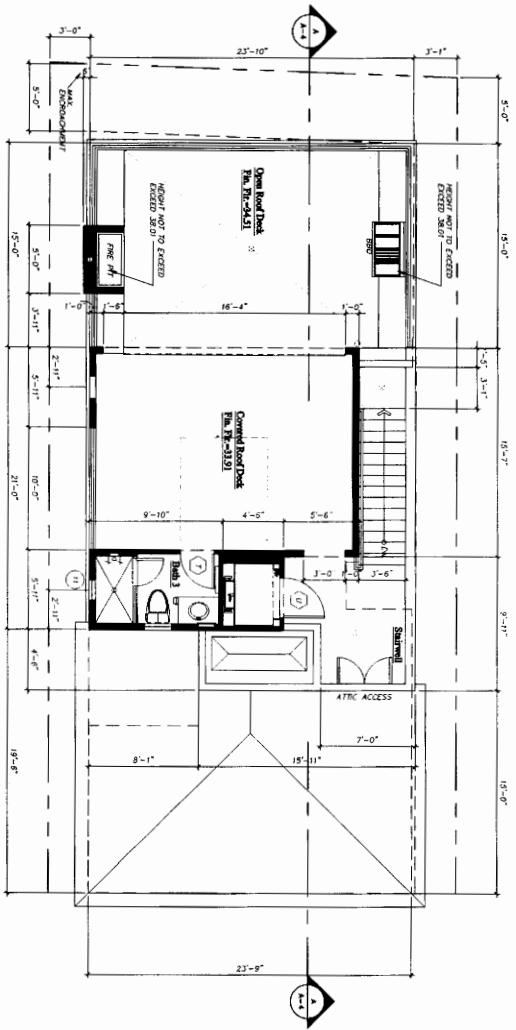
Job Number
 Scale
 Date

First and Second
 Floor Plans

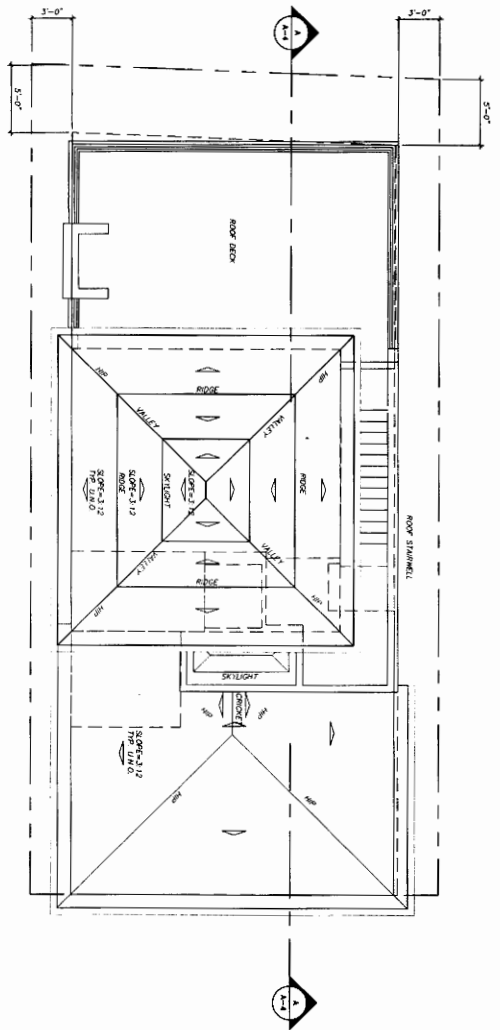
5001 Custom Residence
 5001 Seashore Drive
 Newport Beach • California • 92663

C. LIGHT ASSOCIATES
 CHARLES E. LIGHT - ARCHITECT
 1401 Grand Street, Suite 100
 Newport Beach, CA 92660
 (949) 833-8242
 Fax: (949) 833-1110

A-2



Third Floor Plan
 SCALE: 1/4"=1'-0"

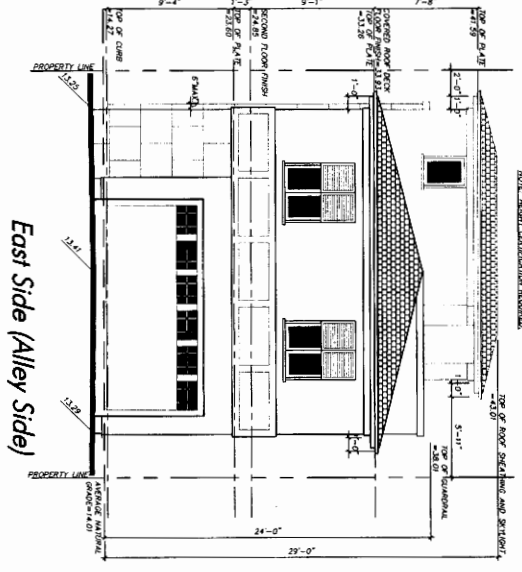


Roof Plan
 SCALE: 1/4"=1'-0"

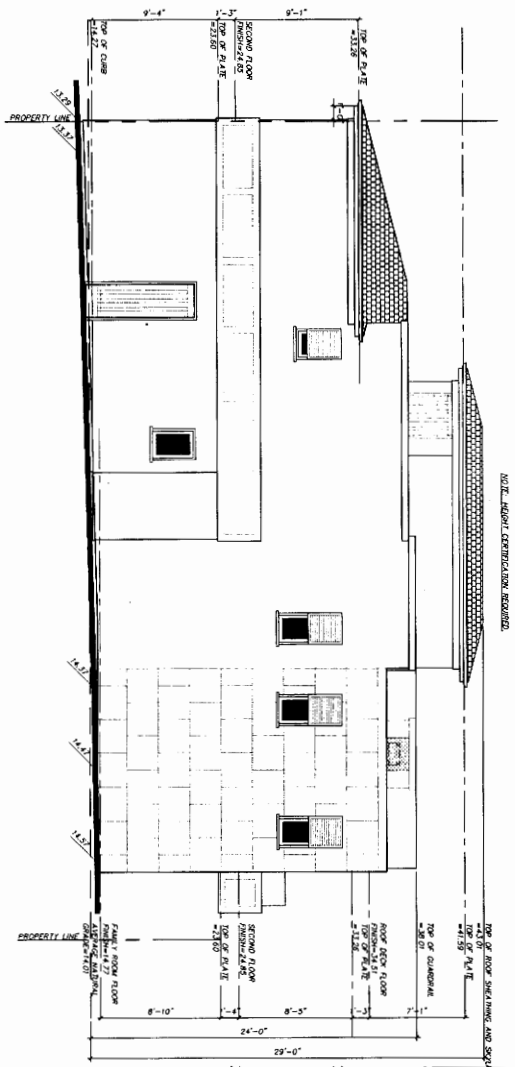
C.LIGHT ASSOCIATES
 CONSULTING ENGINEERS - ARCHITECTS
 1401 South Coast, Suite 120
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 (949) 861-8000
 Fax: (949) 861-1116

5001 Custom Residence
 5001 Seashore Drive
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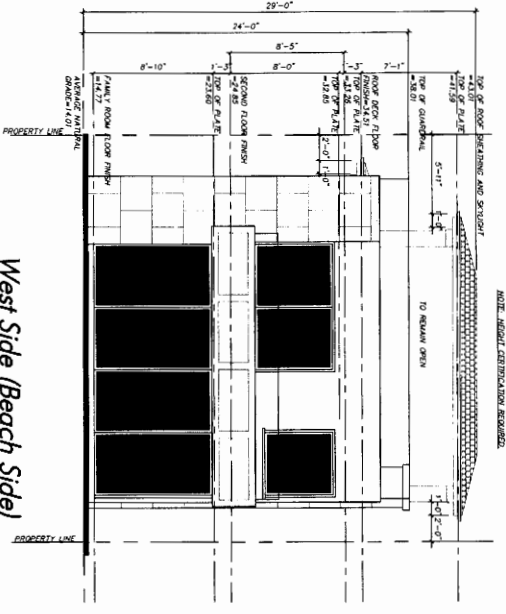
Third Floor and Roof Plans
 Job Number:
 Scale:
 Date:
 A-2.1



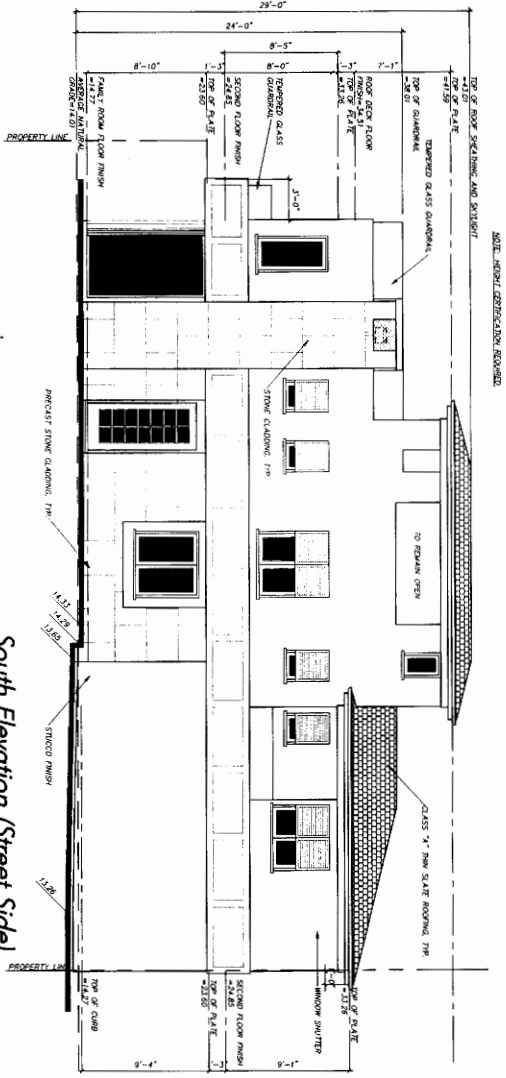
East Side (Alley Side)



North Elevation (Neighbor Side)



West Side (Beach Side)



South Elevation (Street Side)

Exterior Elevations

SCALE

1/4"=1'-0"

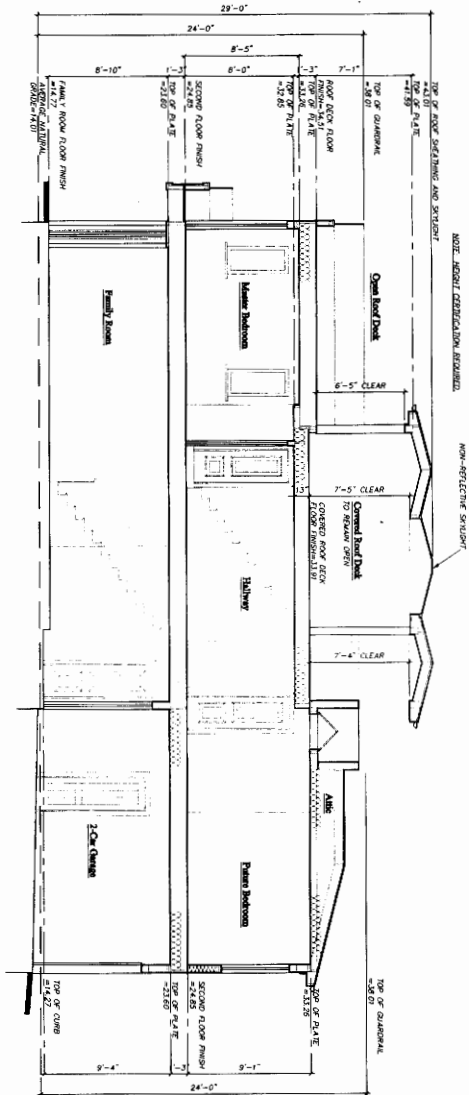
A-3

Job Number:
Scale:
Date:

Exterior Elevations

5001 Custom Residence
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CALLIGHT ASSOCIATES
CHRISTINE E. LIGHT - ARCHITECT
1401 East Lincoln Ave. #100
Newport Beach, CA 92660
Phone 949-444-8888
Fax 949-444-1114



Section "A"
Building Sections
SCALE: 1/4" = 1'-0"

5001 Custom Residence

5001 Seashore Drive
Newport Beach • California • 92663



Building Sections
Job Number
Scale
Date
A-4

