



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Chair Sawyer and Members of the Historic Resources Committee

**FROM:** Alyson Hunter, Associate Planner

**MEETING DATE:** February 27, 2019

**PERMIT & APPLICATION NO.:** Architectural Permit (AP) Application No. 19-0020

**LOCATION:** 550 Central Avenue, Pacific Grove, CA 93950  
(APN 006-171-098)

**PROJECT DESCRIPTION:** The installation of two (2) clerestory skylights on the south-facing ridge of the existing 1977 library addition. The new total height at these two locations will be approximately 27'4.5".

**APPLICANT:** Daniel Gho, Public Works Director

**ZONING/LAND USE:** Unclassified/Public

**CEQA:** Class 31 Categorical Exemption, Section 15331, *Historical Resources Restoration/Rehabilitation*

**RECOMMENDATION**

Staff recommends that the Historic Resources Committee (HRC) approve the Architectural Permit for the proposed installation of two (2) clerestory skylights on the south-facing ridge of the existing 1977 library addition. The recommendation of approval is subject to findings, conditions, and a Class 31 CEQA exemption.

**PROJECT DESCRIPTION**

The project proposes to install two (2) sets of 4'6" (w) x 3' (h) wood-framed, fixed clerestory skylights on the ridge of the 1970s addition which is currently approximately 24' in height. The skylights will be south-facing to improve interior natural light levels and will result in a total height of approximately 27'4.5" at these two locations (Attachment A). No other exterior alterations are proposed at this time. The library is listed on the City's Historic Resources Inventory (HRI).

## **BACKGROUND**

### **Site Description**

The property is approximately 20,400 sq. ft. in size, is relatively flat and is developed with the City's public library built in 1907 and funded by the Andrew Carnegie Foundation. Over the years, the original building has been significantly altered including by the large addition on the front elevation which was approved by the Planning Commission in 1976 through the issuance of Use Permit 1163-76. A historic assessment (Seavey, January 2019) was prepared for this project and is included here as Attachment B. The City is also undertaking a large interior remodel, but the proposed clerestory windows are the only exterior alterations proposed at this time.

### **Surrounding Land Uses**

The project site is in an area developed with one- and two-story residences on the north and east, Jewell Park to the west and commercial development to the south. The Natural History Museum is located kitty-corner to the library's southwest corner. The library itself covers the majority of the parcel.

## **DISCUSSION**

### **Applicable General Plan Policies**

The Pacific Grove General Plan provides a framework for future growth and development within the City. The Land Use Element includes goals and policies that call for orderly, well-planned, and balanced development, consistent with the historic nature of Pacific Grove, the capacity of the City's infrastructure, and ability to assimilate new growth. This minor alteration to the roof of the 1977 addition to the PG Library is not inconsistent with "Public" designation expressed in 2.14.4 of the General Plan.

### **Applicable Zoning Code Regulations**

General Plan goals and policies are implemented by Title 23 of the Pacific Grove Municipal Code (PGMC).

Chapter 23.44 of the PGMC describes the permitted uses and development standards of the Unclassified (U) zoning district which was adopted through voter initiative in 1986. Per [Section 23.44](#) of the PGMC, the intent of this chapter is to regulate the development of public facilities, signage relating to public facilities and development standards. There are no established development standards in the U zoning district that regulate height, lot coverage, etc., as these standards are to be developed through the Use Permit process for new development. The Planning Commission granted UP 1163-76 for the addition in 1976, but details on a maximum height for the building were not located.

### **Architecture and Historic Resources**

The proposed clerestory skylights will be two (2) sets of wood-framed, fixed windows each set totaling 41.4 sq. ft. of window. The total size of the two new skylights combined will be 82.8 sq. ft.

As mentioned in the attached historic assessment (Seavey, January 2019), which includes a draft Department of Parks and Recreation (DPR) Form 523A prepared in August, 2018, by the City's contracted historic consultant, Page & Turnbull, the building has lost its significance and integrity over the years through additions that were completed outside the guidance of the *Secretary of the Interior's Standards for the Treatment of Historic*

*Properties.* Mr. Seavey's analysis indicates that the proposed alteration will not cause a significant adverse effect on the environment.

No other exterior alterations are proposed at this time. As the project is not residential in nature, the City's Residential Design Guidelines are not applicable.

**Landscaping and Fencing**

No changes to the landscaping or fencing are proposed at this time.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

In reviewing this action, the City has followed guidelines adopted by the State of California as published in California Administrative Code, Title 14, §15000, et seq. The proposed project is found to be exempt under the Class 31, CEQA Guidelines Categorical Exemption, Section 15331, *Historical Resources Restoration/Rehabilitation*.

The Class 31 exemption consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation, or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitation, Restoring, and Reconstructing Historic Buildings (1995).

**FINDINGS**

Staff recommends, should the HRC recommend approval of AP 19-0020 that the permit is subject to the recommended findings (see Attachment C, Draft Permit).

**CONDITIONS**

Staff recommends, should the HRC recommend approval of AP 19-0020 that the permit is subject to the recommended conditions of approval (see Attachment C, Draft Permit).

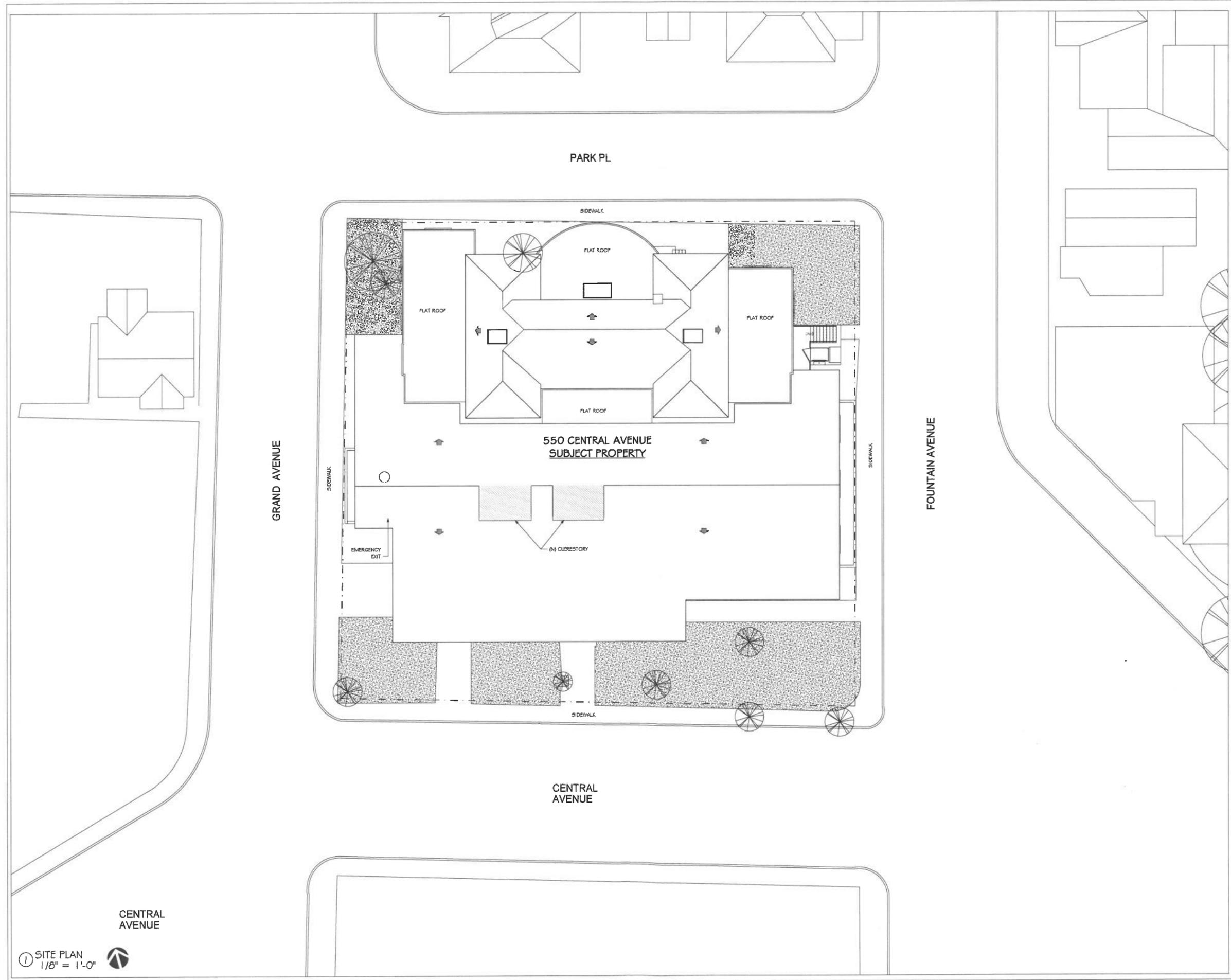
**ATTACHMENTS**

- A. Site Plan, Elevations
- B. Seavey Historic Assessment (January 2019)
- C. Draft Permit
- D. Application

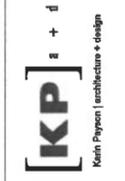
RESPECTFULLY SUBMITTED:

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Alyson Hunter  
Associate Planner



17 Heck, Kinnear Alley  
San Francisco  
CA 94133  
tel: 415.277.9600  
fax: 415.277.9605  
www.kpad.com



550 CENTRAL AVENUE  
**PACIFIC GROVE PUBLIC LIBRARY**  
INTERIOR REMODEL  
PACIFIC GROVE, CA 93950

Drawing Title  
**SITE PLAN**

CONSTRUCTION DOCUMENTS  
50% SET

By KP / JH / JE H

Date 12.17.18

Scale 1/8" = 1'-0"

Drawing No.

**A1.0**

Project No. 1706

① SITE PLAN  
1/8" = 1'-0"

17 Jack Kenousc Alley  
San Francisco  
Tel: 415.277.9500  
Fax: 415.277.9505  
www.kpacd.com



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Drawing Title  
**ROOF PLAN - DEMO**

CONSTRUCTION DOCUMENTS  
SOW SET

By KP / JH / JE H

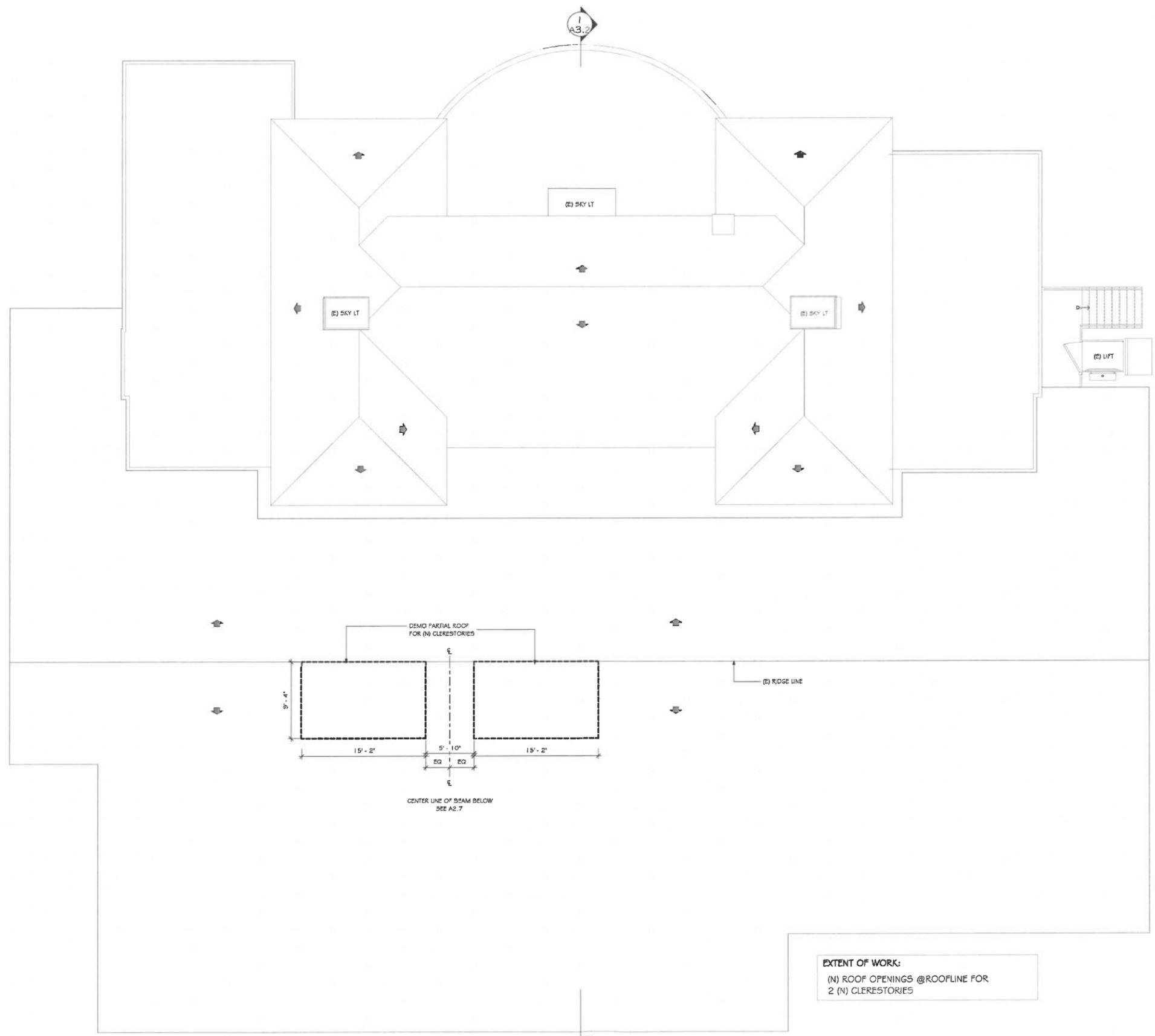
Date 12.17.18

Scale 1/4" = 1'-0"

Drawing No.

**A2.3**

Project No. 1706



**EXTENT OF WORK:**  
(N) ROOF OPENINGS @ ROOFLINE FOR  
2 (N) CLERESTORIES

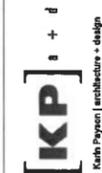
① ROOF PLAN - DEMO  
1/4" = 1'-0"



A3.1

A3.2

17 Jack Kerouac Alley  
San Francisco  
CA 94133  
415.777.8600  
415.277.8605  
www.kpad.com



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Drawing Title  
**ROOF PLAN - PROPOSED**

CONSTRUCTION DOCUMENTS  
50% SET

By KP / JH / JE H

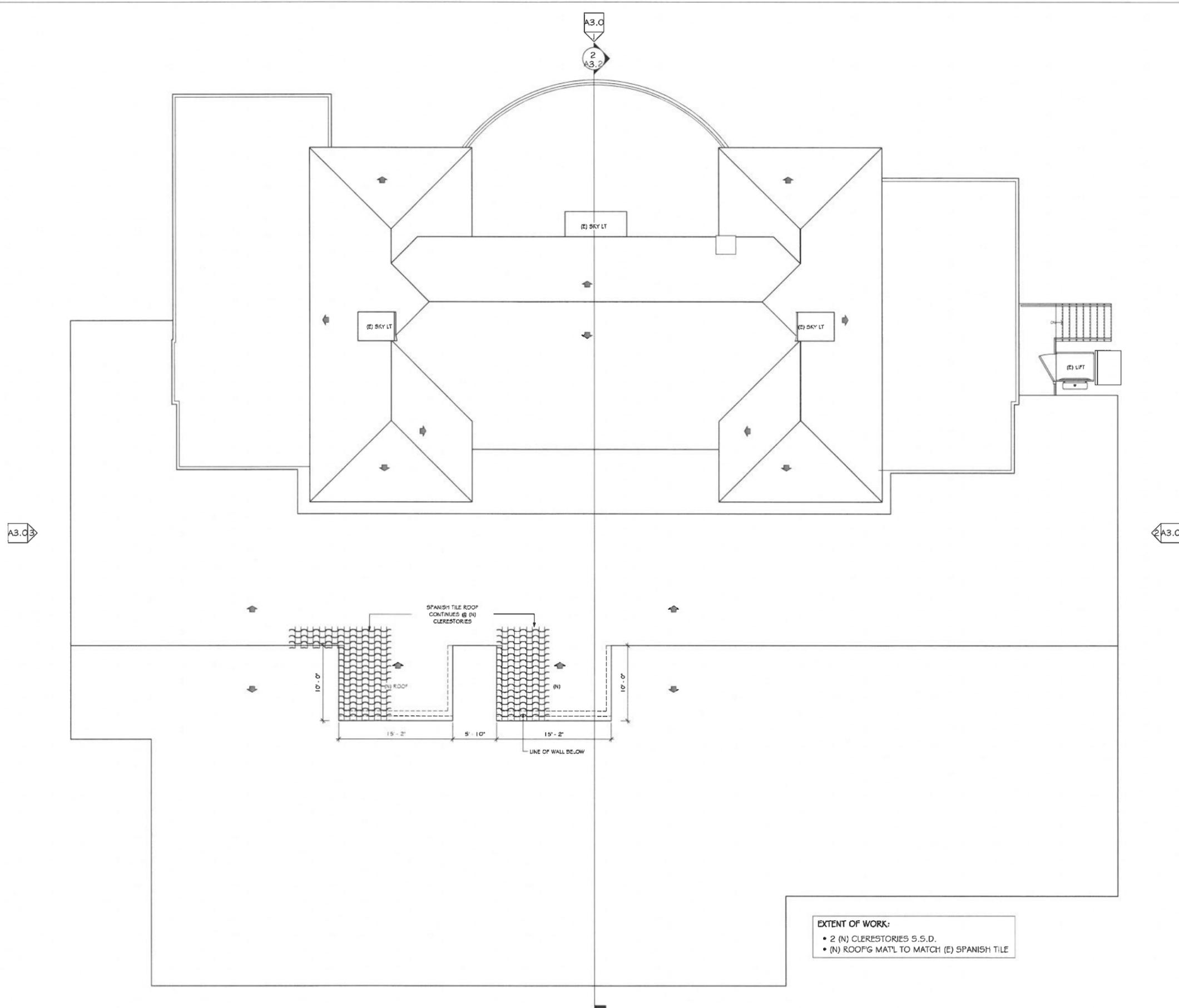
Date 12.17.18

Scale 1/4" = 1'-0"

Drawing No.

**A2.4**

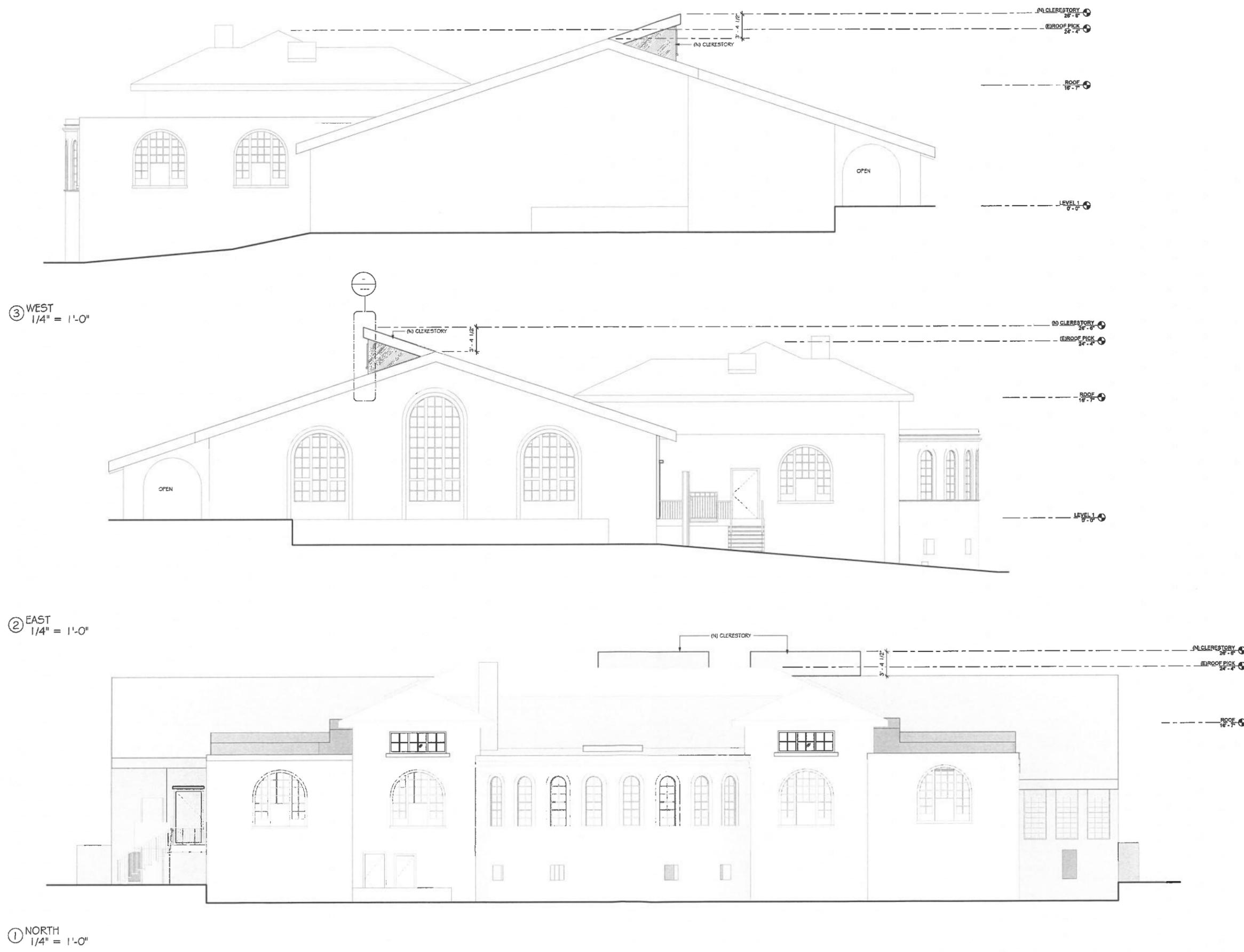
Project No. 1706



**EXTENT OF WORK:**

- 2 (N) CLERESTORIES S.S.D.
- (N) ROOFG MAT'L TO MATCH (E) SPANISH TILE

① ROOF PLAN - PROPOSED  
1/4" = 1'-0"



③ WEST  
1/4" = 1'-0"

② EAST  
1/4" = 1'-0"

① NORTH  
1/4" = 1'-0"

EXTENT OF WORK AT EXTERIOR:  
(2) (N) CLERESTORY

17 Jack Karcuse Alley  
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CA 94115 977 9500  
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PACIFIC GROVE, CA 93950

Drawing Title  
EXTERIOR  
ELEVATIONS -  
PROPOSED  
SHOWING (N)  
CLERESTORY IN  
CONTEXT

CONSTRUCTION  
DOCUMENTS  
50% SET

By KP / JH / JE H

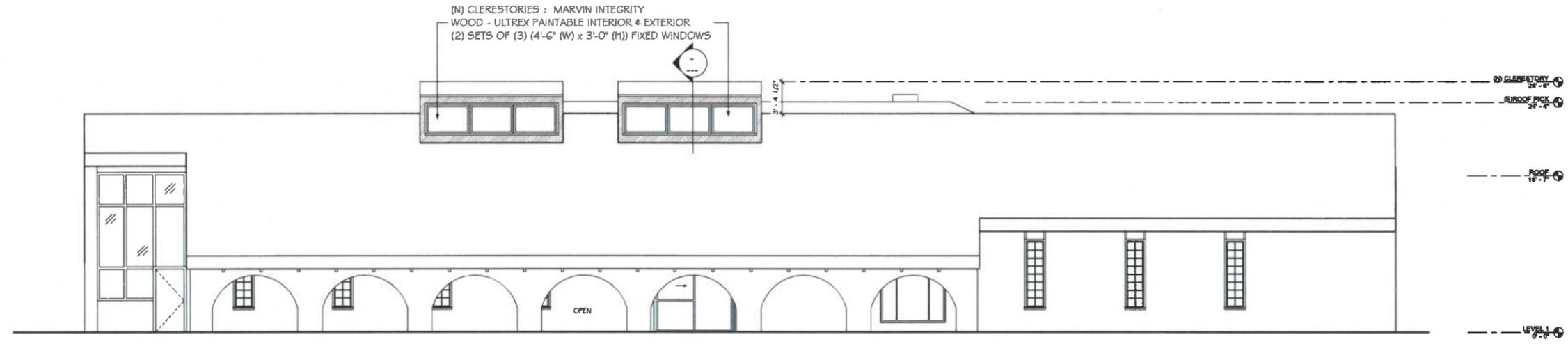
Date 12.17.18

Scale 1/4" = 1'-0"

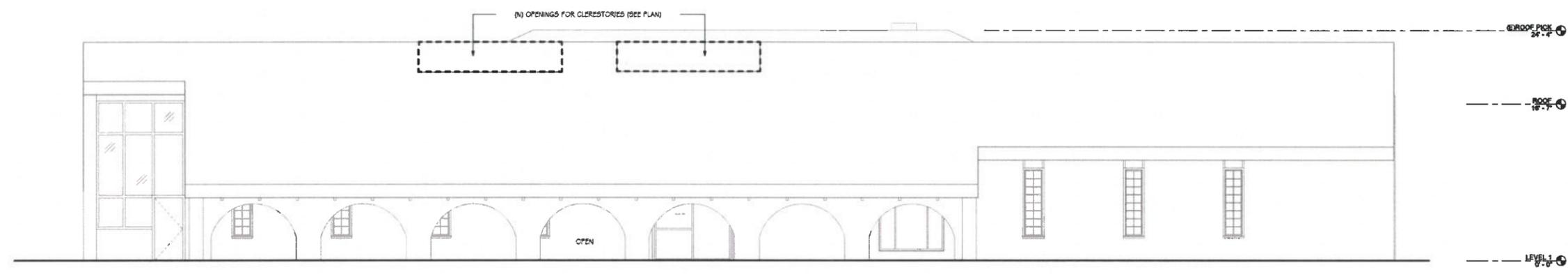
Drawing No.

**A3.0**

Project No. 1706



② SOUTH ELEVATION - PROPOSED  
1/4" = 1'-0"



① SOUTH ELEVATION - DEMOLITION  
1/4" = 1'-0"

EXTENT OF WORK AT EXTERIOR:  
(2) (N) CLERESTORY

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PACIFIC GROVE, CA 93950

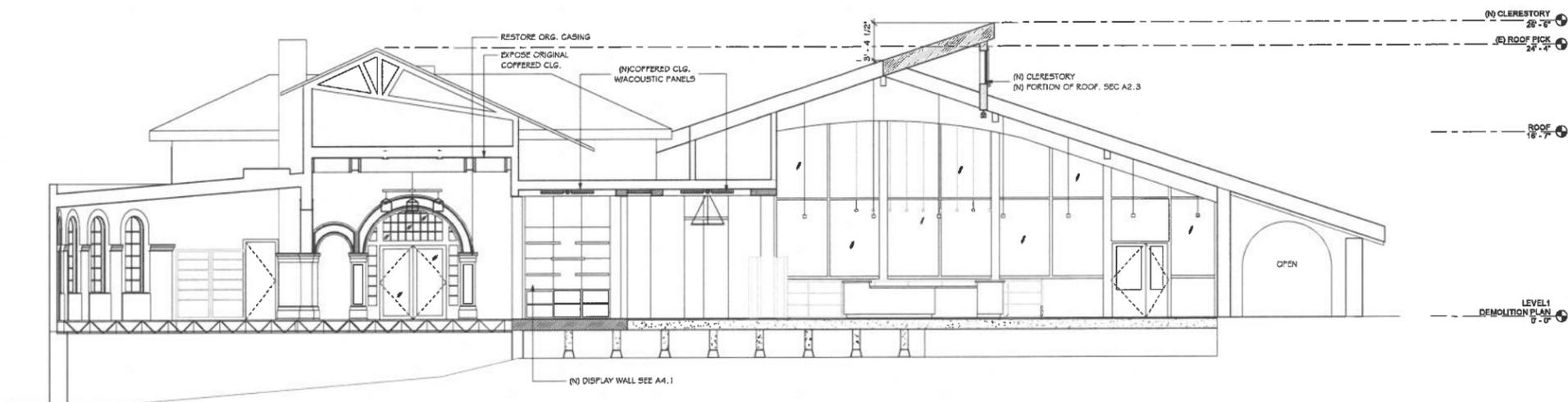
Drawing Title  
EXTERIOR ELEVATIONS - DEMO AND PROPOSED

CONSTRUCTION DOCUMENTS  
50% SET

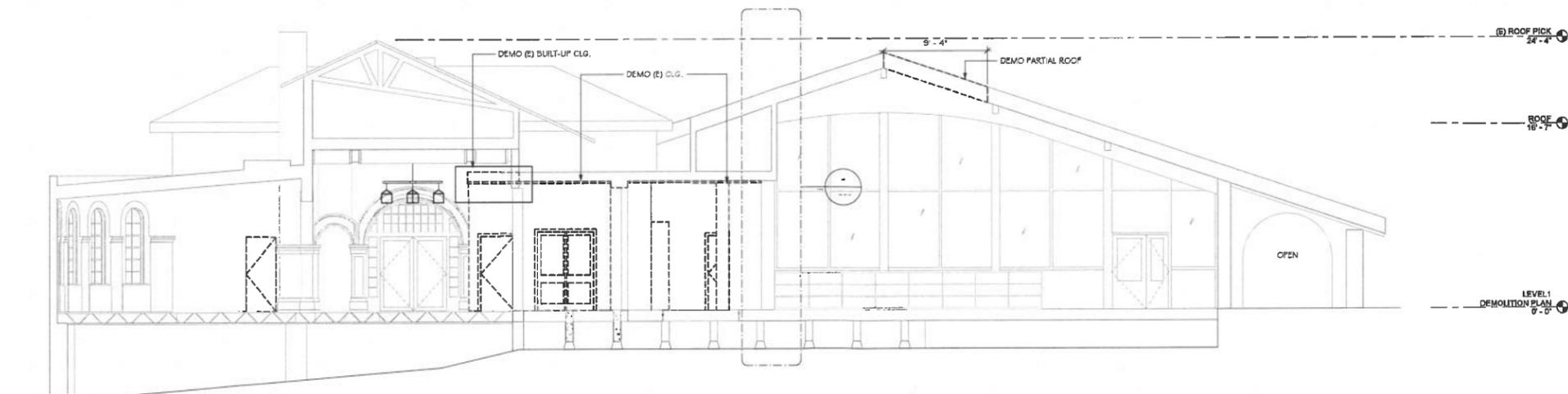
By KP / JH / JE H  
Date 12.17.18  
Scale 1/4" = 1'-0"  
Drawing No.

**A3.1**

Project No. 1706



② SECTION 1 - PROPOSED (SEE A4.0 FOR ADDITIONAL DETAILS)  
1/4" = 1'-0"



① SECTION 1 - DEMO (SEE A4.0 FOR ADDITIONAL DETAILS)  
1/4" = 1'-0"

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fax: 415.277.8605  
www.kpad.com



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Drawing Title  
**BUILDING SECTIONS - DEMO AND PROPOSED**

CONSTRUCTION DOCUMENTS  
50% SET

By KP / JH / JE H

Date 12.17.18

Scale 1/4" = 1'-0"

Drawing No.

**A3.2**

Project No. 1706

**KENT L. SEAVEY**  
**310 LIGHTHOUSE AVENUE**  
**PACIFIC GROVE, CALIFORNIA 93950**  
**(831) 375-8739**

January 14, 2019

Mr. Daniel Gho-Public Works Director  
City of Pacific Grove  
2100 Sunset Dr.  
Pacific Grove, CA 93950

Dear Mr. Gho:

Thank you for the opportunity to comment on the historic significance of the Pacific Grove Public Library, related to the proposed remodeling project for the 1907 Andrew Carnegie Foundation funded building. As noted in the 2011 Pacific Grove Historic Context Statement, the original Mission Revival Style building was designed by the McDougal Brothers, and constructed by local contractor Henry Chivers.

The Historic Context Statement goes on to state that several additions and alterations to the original building envelope took place over time, with the intent to preserve the overall Spanish-influenced architecture of the original design. Unfortunately, those efforts were less than successful, particularly with the employment of some conjectural features that the *Secretary of the Interior's Standards for the Treatment of Historic Properties* does not recommend for work on historic buildings.

Other problems were called out in a 2018 historic assessment of the library by the architectural firm of Page & Turnbull, who found the building to have no physical integrity, confirming an earlier local government review citing the size and extent of the additions to the structure had compromised its historic value.

According to CEQA, eligibility for historic listing of buildings, structures, objects, sites and districts, rests on the twin factors of historic significance, and integrity. Loss of integrity, if sufficiently great, will overwhelm the historic significance a resource may possess and render it ineligible for historic listing. Likewise, a resource can have complete integrity, but if it lacks significance, it must also be considered ineligible. I am in concurrence with these findings and do not think the proposed work will cause a significant adverse effect on the environment.

Respectfully Submitted,



State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
**PRIMARY RECORD**

Primary # \_\_\_\_\_  
HRI # \_\_\_\_\_  
Trinomial \_\_\_\_\_  
NRHP Status Code 6L \_\_\_\_\_

Other Listings \_\_\_\_\_  
Review Code \_\_\_\_\_ Reviewer \_\_\_\_\_ Date \_\_\_\_\_

Page 1 of 2 \*Resource Name or #: 550 Central Ave (APN 006171098000)

P1. Other Identifier: Central Ave

\*P2. Location:  Not for Publication  Unrestricted \*a. County: Monterey

\*b. USGS Quad(s): Monterey, California (1997)

c. Address: 550 Central Ave, Pacific Grove, CA 93950 (APN 006171098000)

d. UTM:

e. Other Locational Data: Latitude, Longitude (Decimal Degrees) 36.622247646481, -121.916280149858

\*P3a. Description:

- Architectural Style(s): Mission Revival
- Construction Type: Wood Frame
- Number of Stories: 1
- Basement: Not Visible
- Garage: None
- Roof Type(s): Gable
- Roof Material(s): Clay Tile
- Wall Material(s): Stucco
- Window Type(s): Fixed, Awning
- Window Material(s): Wood
- Architectural Features: Recessed Entrance
- Decorative Details: Exposed Rafter Tails, Arched Window(s)
- Alterations: Several large additions; Altered Pattern of Windows and Doors
- Additional Remarks: Original building is I-plan with semi-circular bay. Flanking flat roof volumes are additions. South volume with arcade along Central is an addition.

\*P3b. Resource Attributes: HP15 (Educational building)

\*P4. Resources Present:  Building  Structure  Object  Site  District  Element of District  Other (isolates, etc.)



\*P5b. Description of Photo:  
Primary façade, 8/2/2018.

\*P6. Date Constructed/Age & Sources:  
 Prehistoric  Protohistoric  
 Historic  Unknown

1907. Sources: PG HRI Database (6/19/18).

\*P7. Owner and Address:  
City Of Pacific Grove  
  
Pacific Grove, CA 93950

\*P8. Recorded by:  
Hannah Simonson, Page & Turnbull  
417 Montgomery Street, 8th Floor  
San Francisco, CA 94104

\*P9. Date Recorded: 8/2/2018

\*P10. Survey Type: Reconnaissance

\*P11. Citation: Page & Turnbull. Pacific Grove Historic Resource Inventory (HRI) Survey Report. Prepared for the City of Pacific Grove, December 10, 2018 [ADMIN DRAFT].

\* Attachments:  None  Location Map  Sketch Map  Continuation Sheet  Building, Structure, and Object Record  
 Archaeological Record  District Record  Linear Feature Record  Milling Station Record  Rock Art Record  
 Artifact Record  Photograph Record  Other:

State of California - The Resources Agency  
DEPARTMENT OF PARKS AND RECREATION  
**CONTINUATION SHEET**

Primary # \_\_\_\_\_  
HRI # \_\_\_\_\_  
Trinomial \_\_\_\_\_

Page 2 of 2 \*Resource Name or #: 550 Central Ave (APN 006171098000)

\*Recorded By: Hannah Simonson

\*Date: 8/2/2018

**Historic Name:** Pacific Grove Public Library

**Original Use:** Institutional

**Present Use:** Institutional

**Original Owner:**

**Architect/Builder:** McDougall Brothers (architects); Henry Chivers (builders)

**Significance**

**Pacific Grove Historic Context Statement Theme:** Social, Religious, or Cultural Institutions, Movements & Trends; Civic Growth

**Period of Development:**

**Integrity:** No Integrity

**Period of Significance:**

**Eligible for Pacific Grove HRI:** No

**Appears Individually Eligible for National Register/California Register:** No

**Level of Significance:**

**California Historic Resource Status Codes:** 6L

**Evaluation Notes:** Central, north volume of the library is original, but the building has been expanded several times. Due to the size and extent of the additions, the building has been previously determined ineligible for the Pacific Grove HRI through a local government review process. Page & Turnbull concurs with these findings. A status of "6L" has been previously given to the building to indicate that, despite lacking integrity, it may warrant special consideration in local planning.

National/ California Register	PG Municipal Code §23.76	Significance	Discussion
A/1	A, B	Events, Patterns & Trends	Not found to have sufficient integrity to be eligible under these criteria during the course of this survey.
B/2	C	Persons	Not found to be eligible under these criteria during the course of this survey.
C/3	D, E, F, G, H, I	Architecture & Design	Not found to have sufficient integrity to be eligible under these criteria during the course of this survey.
D/4		Information Potential	Properties were not evaluated for significance under these criteria as part of this survey.

**References:** Page & Turnbull. *City of Pacific Grove Historic Context Statement*. Prepared for City of Pacific Grove, CA. Approved by City Council October 19, 2011.



## CITY OF PACIFIC GROVE

Community Economic Development Department – Planning Division

300 Forest Avenue, Pacific Grove, CA 93950

T : 831.648.3183 • F : 831.648.3184 • [www.cityofpacificgrove.org](http://www.cityofpacificgrove.org)

### ARCHITECTURAL PERMIT (AP) 19-0020

## FOR THE ADDITION OF TWO (2) CLERESTORY SKYLIGHTS ON THE EXISTING SOUTH-FACING ROOF RIDGE OF THE CITY LIBRARY.

### FACTS

1. The subject site is located at 550 Central Ave., Pacific Grove, 93950 (APN 006-171-098)
2. The subject site has a designation “Public” on the adopted Pacific Grove General Plan Land Use Map.
3. The project site is located in the Unclassified (U) zoning district. This is a voter-initiative zoning district.
4. The subject site is approximately 20,400 square feet in size.
5. The subject site is currently developed with the 1907 Carnegie Library and subsequent large additions, including the portion of the library built in the late 1970s which is proposed to be modified by this project.
6. The subject site is located in the Area of Special Biological Significance, the Coastal zone, and is listed on the City’s Historic Resources Inventory (HRI). This area is also known to be archaeologically sensitive.
7. The proposed alteration qualifies for a Class 31, Section 15331, CEQA exemption for *Historical Resources Restoration/Rehabilitation*.
8. A brief assessment of the proposed project’s potential impacts to the historic resource was prepared by a qualified historian and resulted in a finding of no impact.

### FINDINGS

#### For the Architectural Permit: PGMC Section 23.70.060(f):

1. The architecture and general appearance of the completed project are compatible with the neighborhood;
2. The completed project will neither be detrimental to the orderly and harmonious development of the city nor impair the desirability of investment or occupation in the neighborhood; and
3. The commission has been guided by and has made reference to applicable provisions of the architectural review guidelines in making its determinations on the structure.

### PERMIT

Architectural Permit (AP) 19-0020 for the installation of two (2) clerestory skylights on the south-facing ridge of the ± 24’ tall existing 1977 library addition. The new total height at these two locations will be approximately 27’4.5”.

### CONDITIONS OF APPROVAL

1. **Permit Expiration.** This permit shall expire and be null and void if a building permit has not been applied for within one (1) year from and after the date of approval. Application for extension of this approval must be made prior to the expiration date.
2. **Construction Compliance.** All construction must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions of approval herein. Any deviation from approvals must be reviewed and approved by staff, and may require Architectural Review Board approval.
3. **Terms and Conditions.** These terms and conditions shall run with the land, and it is the intention of the Community and Economic Development Director and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions, unless amended. Amendments to this permit may be achieved only if an application is made and approved, pursuant to the Zoning Code.

4. **Public Works, Fire and Building.** Review and approval by the Public Works, Fire and Building Departments are required prior to issuance of a building permit. Any work within the public right-of-way shall require an encroachment permit prior to issuance of the building permit.
5. **Building Plans.** All conditions of approval for the Planning permit(s) shall be printed on a full size sheet and included with the construction plan set submitted to the Building Department.

**NOW, THEREFORE, BE IT RESOLVED BY THE HISTORIC RESOURCES COMMITTEE OF THE CITY OF PACIFIC GROVE:**

1. The Committee determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Permit.
2. The Committee hereby approves File No. AP 19-0020 as conditioned and pursuant to CEQA categorical exemption 15331, *Historical Resources Restoration/Rehabilitation*.
3. This permit shall become effective upon the expiration of the Committee's 10-day appeal period.
4. This permit shall not take effect until the owner acknowledges and agrees to all terms and conditions and agrees to conform to and comply with those terms and conditions.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE HISTORIC RESOURCES COMMITTEE OF THE CITY OF PACIFIC GROVE ON THE 27<sup>th</sup> DAY OF FEBRUARY, 2019, BY THE FOLLOWING VOTE:

AYES: XXX

NOES: XXX

ABSENT: XXX

ABSTENTIONS: XXX

APPROVED:

\_\_\_\_\_  
Claudia Sawyer, Chair

The undersigned hereby acknowledge and agree to the approved terms and conditions, and agree to fully conform to, and comply with, said terms and conditions.

\_\_\_\_\_  
Daniel Gho, Public Works Director

\_\_\_\_\_  
Date



**CITY OF PACIFIC GROVE**

Community Development Department – Planning Division

300 Forest Avenue, Pacific Grove, CA 93950

Tel: 831.648.3190 • Fax: 831.648.3184 • www.cityofpacificgrove.org/cedd

**Permit Application**

*HRC*

Application # AP 19-0020  
Date: 1/09/19  
Total Fees: n/a

**APPLICANT/OWNER:**

Project Address: 550 Central Avenue APN: 006171098000

Project Description: Installation of Two Clerestories on the exterior Roof of the Pacific Grove library.

Will the project create, add, or replace impervious surface?  Yes  No

Will the project impact any tree(s) on site?  Yes  No

<u>Applicant</u>	<u>Owner</u>
Name: <u>City of Pacific Grove</u>	Name: _____
Phone: <u>831-648-5722</u>	Phone: <u>Same as Applicant</u>
Email: <u>dgho@cityofpacificgrove.org</u>	Email: <u>107 addition built 1979</u>
Mailing Address: <u>300 forest Ave</u>	Mailing Address: _____

**PLANNING STAFF USE ONLY:**

**Permit Request:**

<input type="checkbox"/> CRD: Counter Determination	<input type="checkbox"/> SP: Sign Permit	<input type="checkbox"/> IHS: Initial Historic Screening	<input type="checkbox"/> VAR: Variance
<input checked="" type="checkbox"/> AP: Architectural Permit	<input type="checkbox"/> UP: Use Permit	<input type="checkbox"/> HPP: Historic Preservation	<input type="checkbox"/> MMP: Mitigation Monitoring
<input type="checkbox"/> AAP: Administrative AP	<input type="checkbox"/> AUP: Administrative UP	<input type="checkbox"/> A: Appeal	<input type="checkbox"/> Stormwater Permit
<input type="checkbox"/> ADC: Arch Design Change	<input type="checkbox"/> ADU: Acc. Dwelling Unit	<input type="checkbox"/> TPD: Tree Permit W/ Dev't	<input type="checkbox"/> Other: _____
<input type="checkbox"/> ASP: Admin Sign Permit	<input type="checkbox"/> LLA: Lot Line Adjustment	<input type="checkbox"/> EIR: Environmental Impact	<input type="checkbox"/> Other: _____

**CEQA Determination:**  Exempt  
 Initial Study & Mitigated Negative Declaration  
 Environmental Impact Report

**Review Authority:**  Staff  HRC  
 ZA  PC  
 SPRC  CC  
 ARB  \_\_\_\_\_

**Active Permits:**  Active Planning Permit  
 Active Building Permit  
 Active Code Violation  
 Permit #: \_\_\_\_\_

**Overlay Zones:**  Butterfly Zone  
 Coastal Zone  
 Area of Special Biological Significance (ASBS)  
 Environmentally Sensitive Habitat Area (ESHA)

**Property Information**

Lot: \_\_\_\_\_ Block: \_\_\_\_\_ Tract: \_\_\_\_\_  
 ZC: \_\_\_\_\_ GP: \_\_\_\_\_ Lot Size: \_\_\_\_\_

Historic Resources Inventory  Archaeologically Sensitive Area

**Staff Use Only:**

Received by: AH  
 Assigned to: AH

**RECEIVED**  
 JAN 09 2019  
 CITY OF PACIFIC GROVE  
 COMMUNITY DEV DEPT

Application # \_\_\_\_\_

**INDEMNIFICATION CONDITION**

In consideration for City review and approval of application in this matter, the Owner/Applicant shall indemnify, defend, protect and hold harmless the City, its elected and appointed officials, officers, agents, and employees (collectively "Indemnitees"), using counsel approved in writing by the City, from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements which may accrue against Indemnitees by reason of the City's processing, approval or denial of the request and application in this matter. Indemnification shall include, but shall not be limited to any action, or proceeding brought to attack, set aside, void, annul, limit, or inhibit the approval of the application referenced above, and shall expressly include causes of action under the California Environmental Quality Act (CEQA), or the National Environmental Policy Act (NEPA).

The obligation to indemnify shall include, but not be limited to, all costs relating to preparing administrative records, investigations, responses to discovery, retention of experts, and other costs, including attorney's fees or obligations related to this matter, including actions brought by the Owner/Applicant and also extend to any expense incurred in establishing the City's right to indemnification. City expenses shall be paid by Owner/Applicant upon City request notwithstanding final disposition of the matter has not yet occurred. If the City is later determined to not be entitled to indemnification, the City shall repay amounts so advanced.

This indemnification condition is the Owner/Applicant's inducement to the City to process and approve the application, which approval would otherwise be withheld by City due to its concern for liability or expense that may result from performance of the City's duties. Should any dispute arise regarding interpretation of this condition, the prevailing party shall recover all reasonable costs incurred, including court costs, attorney fees and related expenses. Recovery of expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

This indemnification condition shall not require the Owner/Applicant to indemnify the City or other Indemnities: (a) to the extent that an obligation is actually paid by an insurer pursuant to an insurance policy; (b) in connection with any remuneration paid to the City, if it shall be finally adjudged that such remuneration was in violation of law; or (c) on account of the City's misconduct if such misconduct shall be finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful.

Any permit or other approval given by the City to the Owner/Applicant Guarantor shall be valid only so long as this indemnification condition is given full force and effect. If this indemnification condition is revoked, the permit or other approval of the City shall then become null and void.

Owner/Applicant represents it (and any subsidiary) is (a) duly formed and organized, (b) validly existing and in good standing under state law, and (c) has all necessary power to execute and deliver this document and perform its obligations. Owner/Applicant also represents it is authorized to enter into this agreement by all requisite partnership, corporate or other action, and its terms are a valid and legally binding obligation. Neither execution nor delivery of this document nor performance of its obligations will violate any law or provision of any agreement, articles of incorporation, by-laws or other organizational or governing documents relating to Owner/Applicant, nor conflict with any court order relating to Owner/Applicant.

**Applicant Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Owner Signature (Required):** *Daniel Shaw*  
*Public Works Director*

**Date:** *1-9-19*