

**CALIFORNIA COASTAL COMMISSION**

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

**RECORD PACKET COPY****Th 4e**

Filed: April 20, 2004  
49th Day: June 8, 2004  
180th Day: October 17, 2004  
Staff: ALB-LB *ALB*  
Staff Report: June 24, 2004  
Hearing Date: July 14-16, 2004  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-04-148**APPLICANT:** Mitch Kahn**AGENTS:** James Glover and Brad Smith**PROJECT LOCATION:** 4018 Calle Ariana, San Clemente, County of Orange

**PROJECT DESCRIPTION:** Demolition of an existing single-family residence and construction of a new two-level 5,636 square foot single-family residence supported by a caisson and grade beam foundation system with 997 square foot three-car garage area (two-car garage and one-car garage) and 900 cubic yards of grading (all cut) on a coastal blufftop lot.

**LOCAL APPROVALS RECEIVED:** San Clemente Planning Division Approval-in-Concept dated April 14, 2004.

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**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing to demolish and replace a single-family home on a blufftop lot located within the private gated community of Cypress Shores in San Clemente. The primary issue addressed in the staff report is assurance that the proposed development is appropriately set back from the bluff edge to be consistent with the geologic hazard and visual resource policies of the Coastal Act.

Staff recommends the Commission **APPROVE** the proposed project subject to five (5) special conditions. Special Condition 1 requires conformance with geotechnical recommendations. Special Condition 2 requires that the applicant assume the risks of development. Special Condition 3 prohibits the construction of any future protective devices to protect the development approved by this permit. Special Condition 4 requires that proposals for future improvements be submitted to the Commission for a new permit or permit amendment. Special Condition 5 requires recordation of a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

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**SUBSTANTIVE FILE DOCUMENTS:** City of San Clemente Certified Land Use Plan; *Preliminary Geotechnical Investigation for Foundation Design* prepared by Geofirm dated February 18, 2004.

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**LIST OF EXHIBITS:**

1. Location Map
  2. Assessor's Parcel Map
  3. Project Plans
  4. Letter from Applicant Regarding Bluff Face Stairway
- 

**STAFF RECOMMENDATION:**

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

**STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:**

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

**RESOLUTION:**

**I.     APPROVAL WITH CONDITIONS**

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**

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 this permit is reported to the Commission. 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:**

1. **Conformance of Design and Construction Plans to Geotechnical Report Geologic Hazard**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the Preliminary Geotechnical Investigation for Foundation Design prepared by Geofirm dated February 18, 2004. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from geologic instability; (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.

3. **No Future Protective Device**

- A. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no protective device(s) shall ever be constructed to protect the development approved pursuant to 5-04-148 including, but not limited to, the residence, foundation, concrete patio and planters, and any other future improvements in the event that the development is threatened with damage or destruction from bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves 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 applicants further agree, on behalf of themselves and all successors and assigns, that the permittee and/or landowner shall remove the development authorized by this permit, including the residence, foundation, concrete patio and planters, if any government agency has ordered that the areas are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the bluff and/or beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the bluff and/or beach and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

**4. Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-04-148. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6) and/or 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) and (b) shall not apply to the development governed by Coastal Development Permit No. 5-04-148. Accordingly, any future improvements to the structure 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. 5-02-379 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government

**5. Deed Restriction**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants 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 all 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:

The Commission hereby finds and declares:

##### A. PROJECT LOCATION AND DESCRIPTION

###### 1. Project Location

The proposed development is located at 4018 Calle Ariana in the private gated community of Cypress Shores in the City of San Clemente, Orange County (Exhibits 1 & 2). The subject site is designated RL (Residential Low Density) in the San Clemente certified Land Use Plan (LUP).

The 8,715 square foot site is currently developed with a two-level single-family residence with rear yard (ocean-facing) hardscape improvements, landscaping and a bluff face stairway. The existing residence was constructed prior to the effective date of Proposition 20, the precursor to the Coastal Act. According to the applicant, the bluff face stairway was also constructed at that time.<sup>1</sup> The seawardmost portion of the residence is sited 25' from the bluff edge. Hardscaping currently extends to the bluff edge. The site is surrounded to the north by a single-family residence, to the south by a single-family residence, to the east by the frontage street (Calle Ariana) and to the west by an approximately 30 foot high coastal bluff. The bluff slope descends to the Orange County Transportation Authority (OCTA) railroad and sandy beach below.

The coastal bluffs in San Clemente are not subject to direct wave attack because they are separated from the beach by the railroad tracks and right-of-way. The railroad tracks have a rip-rap revetment which protects the tracks from erosion and wave overtopping. Though not subject to direct wave attack, the bluffs are subject to weathering caused by natural factors such as wind and rain, poorly structured bedding, soils conducive to erosion and rodent burrowing. Bluffs may also be subject to erosion from human activities, such as irrigation, improper site drainage and grading.

The nearest public vertical access is located to the southeast of the subject lot, beyond the adjacent military housing development at the Trestles accessway through an easement granted by the Federal government until the year 2021. Lateral public access is located seaward of the railroad right-of-way at the beach below the subject site.

###### 2. Project Description

The applicant proposes to demolish an existing single-family residence and construct a new two-level 5,636 square foot single-family residence supported by a caisson and grade beam foundation system with a 997 square foot three-car garage area (two-car garage and one-car garage), as shown in Exhibit 3. All new structural development (including the foundation system) will be sited 25' from the bluff edge, consistent with the pattern of development and past Commission actions in the subject area. The existing hardscape development, which extends to the bluff edge, is also consistent with the pattern of development within the subject area. The geotechnical report

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<sup>1</sup> City of San Clemente Building Department records confirm that construction of the residence was initiated in mid-1972. However, no record of the stairway is available. The applicant has submitted a letter to verify that the stairway was constructed at the same time as the residence (Exhibit 4). No authorization for modification/construction of the stairway is requested or granted as part of the subject application.

concludes that the proposed project is feasible and safe from a geotechnical viewpoint provided the recommendations of the report are followed.

The proposed split-level residence will measure 14' from grade on the inland (street facing) side of the property and 23' 7" from grade on the seaward side. Approximately 900 cubic yards of grading (all cut) is proposed for lower level excavation. Excess material will be taken to an appropriate disposal site outside the Coastal Zone. No work is proposed to the existing hardscape improvements, landscaping or stairway that currently exist along the seaward side of the property. No irrigation currently exists, nor is any proposed, along the seaward side of the property. New drainage improvements, including a sump pump, are proposed to ensure that all surface and roof runoff will be directed to the frontage street as part of the proposed development. Directing runoff to the street is consistent with the recommendations contained in the geotechnical report. Filtering site runoff through vegetated areas is not feasible at the subject site due to limited landscaped areas and geotechnical concerns. No work is proposed along the bluff face.

#### **B. DEVELOPMENT IN HAZARDOUS AREAS**

Development adjacent to the edges of hillsides and bluffs 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 and visual resources. To minimize risks to life and property and to minimize the adverse effects of development on hillsides and bluffs, the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit construction of protective devices (such as a retaining wall) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or 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. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

#### **D. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed, incorporates design features to minimize the infiltration of water and the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought tolerant vegetation, 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 proposed, 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**

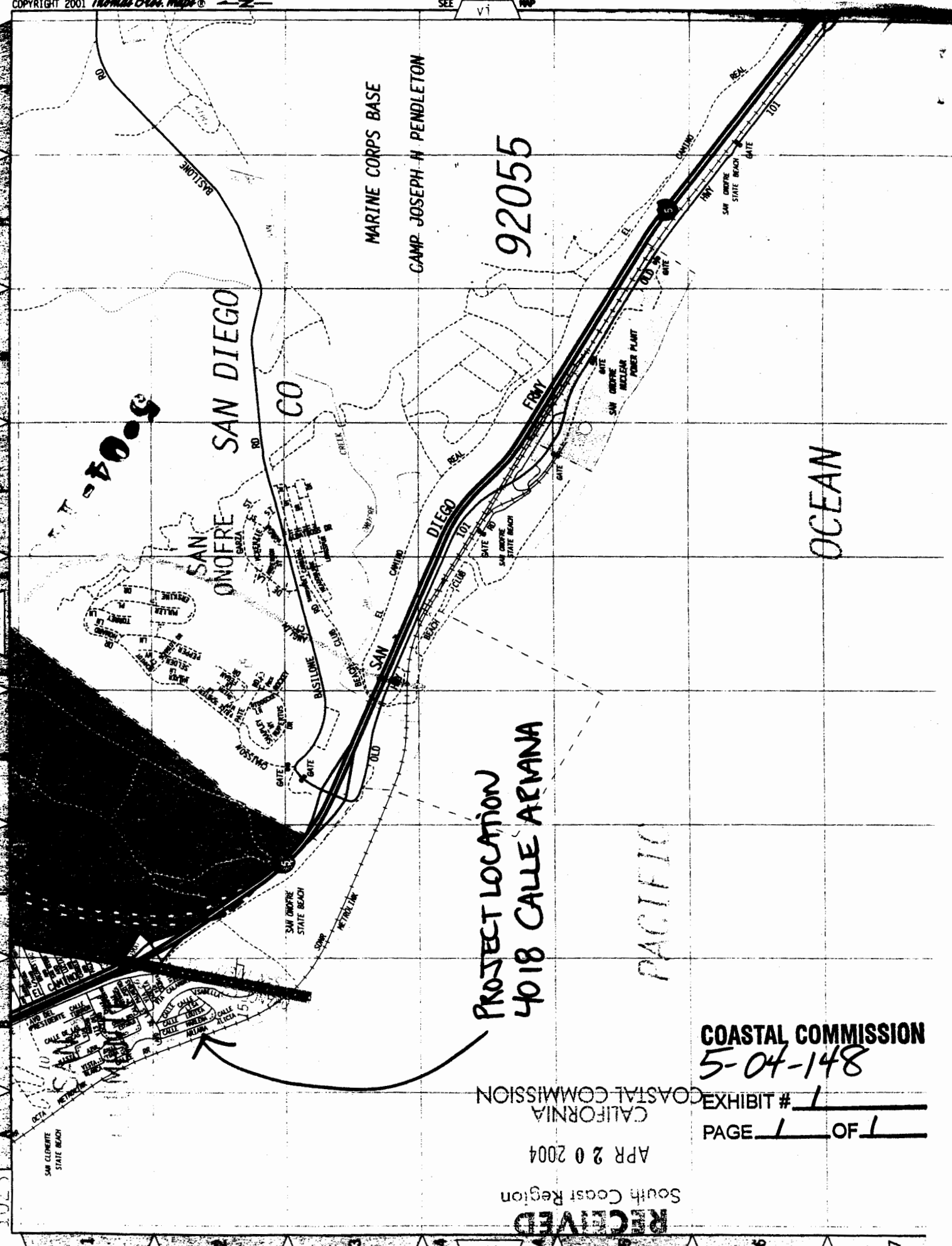
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The Commission certified the Land Use Plan for the City of San Clemente on May 11, 1988, and certified an amendment approved in October 1995. On April 10, 1998, the Commission certified with suggested modifications the Implementation Plan portion of the Local Coastal Program. The suggested modifications expired on October 10, 1998. The City re-submitted on June 3, 1999, but withdrew the submittal on October 5, 2000.

The proposed development is consistent with the policies contained in the certified Land Use Plan. Moreover, as discussed herein, the development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

**F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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.

SEE MAP 903

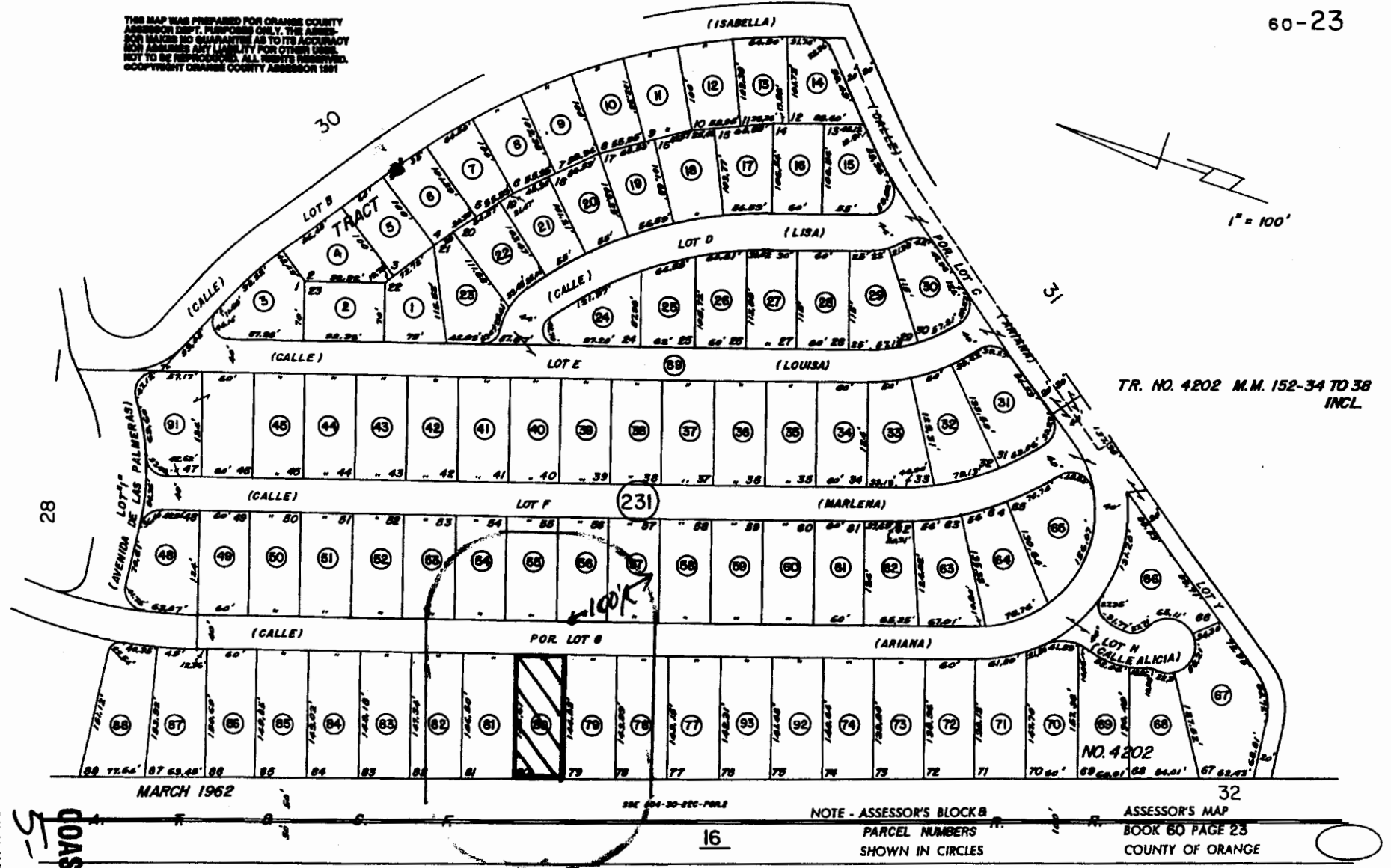


PROJECT LOCATION  
4018 CALLE ARMANA

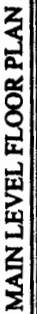
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5-04-148  
EXHIBIT # 1  
PAGE 1 OF 1

THIS MAP WAS PREPARED FOR ORANGE COUNTY  
ASSESSOR DEPT. PURPOSE ONLY. THE ASSESSOR  
MAKES NO GUARANTEE AS TO ITS ACCURACY  
AND ASSUMES NO LIABILITY FOR OTHER USES.  
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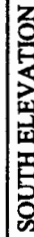
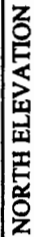
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## NOTES

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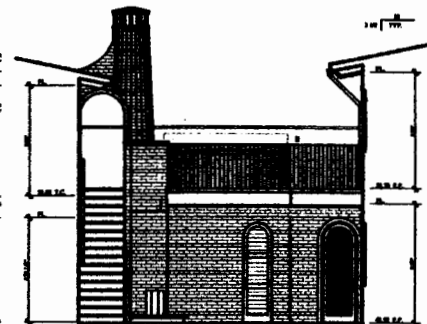
A. The South is the leading source of immigrants among

**Keywords:** *parenting, child development, child abuse, child neglect, child maltreatment, child welfare, child protection, child abuse prevention, child abuse investigation, child abuse assessment, child abuse intervention, child abuse treatment, child abuse recovery, child abuse prevention, child abuse investigation, child abuse assessment, child abuse intervention, child abuse treatment, child abuse recovery*

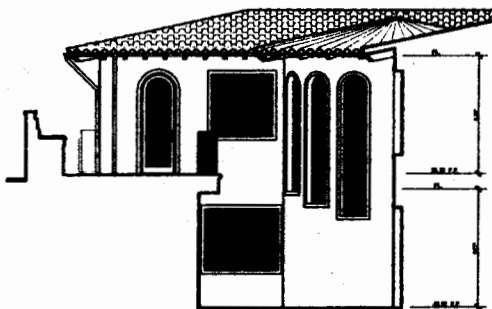
COASTAL COMMISSION  
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EXHIBIT # 3  
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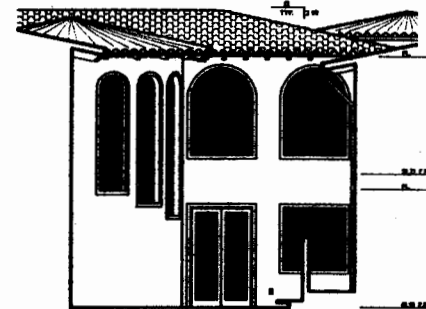
COURTYARD EAST ELEVATION



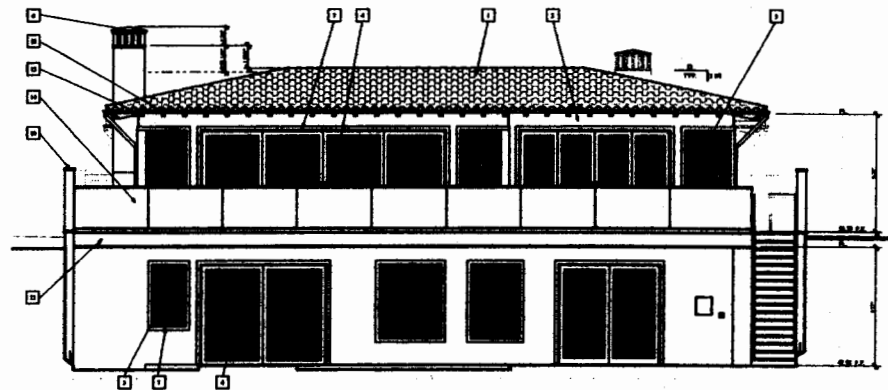
COURTYARD SOUTH ELEVATION



COURTYARD WEST ELEVATION



COURTYARD NORTH ELEVATION



WEST ELEVATION

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ADDITIONAL NOTES

- A. THE FRONT OF THE BUILDING, NORTH AND SOUTH ELEVATIONS.
- B. THE REAR OF THE BUILDING, WEST AND EAST ELEVATIONS.

JAMES L. GLOVER JR., DESIGNER

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EXHIBIT # 3  
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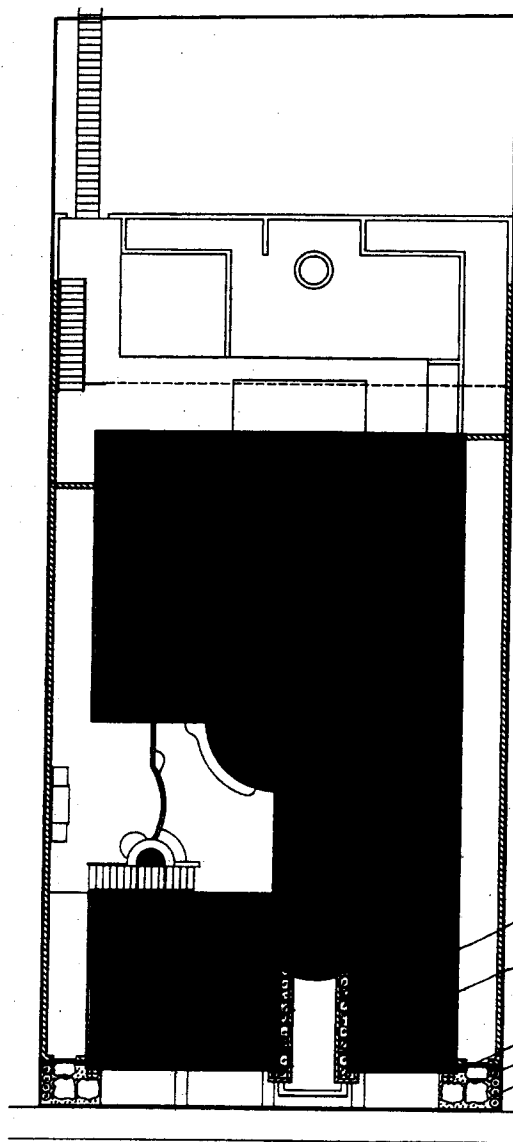
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South Coast Region

APR 20 2004

CALIFORNIA  
COASTAL COMMISSION

5004-148



Notes:

- all other plantings to remain undisturbed & protected during construction process. Any plants damaged during construction process shall be replaced to original plant species & sizing.
- Irrigation watering to be conducted manually

8-15 cal/yr *Chamaedorea elegans* palm

24-5 cal/yr *Pumila arifantiformis* (leather fern)

2-15 cal/yr *Dracaena marginata* (match other side)

8-15 cal/yr *Liriodendron giganteum* - Giant Tree Lily (match other side)

3-plots *Soleni solarii* - Baby Tears (match other side)  
② 6" ac

COASTAL COMMISSION

504-148

EXHIBIT # 3

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~~REVISED~~ 6-23-04

**Mitch and Becky Kahn**  
3824 Vista Azul  
San Clemente, Ca 92672  
Ph. (949) 492-0413

To: California Coastal Commission  
Attn: Anne L. Blemker  
200 Ocean Gate 10<sup>th</sup> Floor  
Long Beach, Ca 90802-4416

Re: Application and Appeal No. 5-04-164

Site Address: 4018 Calle Ariana  
San Clemente, Ca 92672

To Whom It May Concern:

I'm writing this letter to address the concern about the existing exterior stairs at our residence at 4018 Calle Ariana, San Clemente, Ca., that go down the rear slope facing the beach. My family for beach access has used these stairs for the past 33 years.

My parents were the original owners, these home has remained in the family for the past 33 years, they started construction on the home on August 22, 1972.

Wally Duealer a long time family friend was the general contractor. The stairs in question were started immediately as my family would regularly spend time on the beach while watching our home being built. The stairs where not used for any construction use.

The stairs have not been alter or relocated, and will not be used for future construction use. During the construction of our remodel and addition the stairs and rear slope facing the beach will be left undisturbed (preserved in its natural state).

Please contact me regarding any questions that you my have.

Thank you,

*Mitch Kahn 6-23-04*

Mitch Kahn  
Ph. (949) 492-0413  
Date 6-22-04

COASTAL COMMISSION  
5-04-148  
EXHIBIT # 4  
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