

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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 Staff: MV-LB
 Staff Report: 9/22/99
 Hearing Date: 10/12-15/99
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-99-224

APPLICANT: Cameo Community Association

AGENT: Ed Burgmans

PROJECT LOCATION: 107 Milford Dr., Corona del Mar, (Newport Beach),
 Orange County

PROJECT DESCRIPTION: Repair of a private beach access walkway consisting of replacement of an eroded scour wall with construction of gabion wall and related grading, placement of rip rap, and fill.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept No. 974-99

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Evaluation of Environmental Impacts of Proposed Slope Repair at the Third Beach Access Walkway, Corona del Mar, California, prepared by PCR, dated May 4, 1999 and expanded July 13, 1999; Update Geotechnical Investigation for Proposed Gabion Wall, Third Beach Access Walkway at Cameo Shores, Corona del Mar, California, prepared by Geofirm, and dated April 26, 1999 and expanded July 15, 1999; Coastal Development Permit No. 5-85-592.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends denial of the proposed project because it is inconsistent with Sections 30236 and 30240 of the Coastal Act. First, Section 30236 allows stream alteration only for water supply projects, flood control projects, or fish and wildlife habitat improvements. The proposed project, replacement of a private beach access walkway, does not constitute one of the uses allowed under Section 30236. Section 30236 further limits allowable flood control projects to those where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development. The proposed project to replace a private beach access walkway is neither a flood control project nor necessary to protect existing structures. Therefore, the proposed stream alteration is not permissible consistent with Section 30236. Second, Section 30240 requires that environmentally sensitive habitat (ESHA) areas be protected from significant disruption of habitat values and that development adjacent to ESHA prevent impacts that would degrade the ESHA. The proposed project is located in and

adjacent to an area designated in the certified Land Use Plan as an ESHA. Due to the nature and scale of the proposed project, significant disruption to the ESHA would result from it, inconsistent with Section 30240. Finally, two other private beach accessways that serve the Cameo Shores Community exist within walking distance of the subject site. Use of the two other accessways provide feasible alternatives to the proposed gabion wall, excavation, rip rap, fill, and walkway within the ESHA.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. DENIAL

The Commission hereby Denies a permit, for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, and will 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.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to replace a storm damaged private beach access walkway by removing the eroded scour wall and damaged walkway and constructing a gabion rock wall with a new walkway above. The damage was caused by intense storm flows on December 6, 1997 which resulted in erosion along approximately 10 lineal feet of the outer bend of the gully that undermined the existing walkway. The curvilinear gabion wall is proposed to be sixty eight feet long, eleven to fourteen feet high, three feet wide at the top, with the base width ranging from six feet to seven and a half feet. In addition, the proposed gabion wall includes an apron which extends out six feet from the base of the gabion wall and is one foot deep. The project includes excavations to the extent necessary to trim the existing irregular surface in order to accommodate the gabion wall, and to partially layback the cut for a safe working environment during construction. In addition, rip rap is proposed to locally replace existing shallow alluvium to support the gabion system (see exhibits D through G). The rip rap is proposed to be placed beneath the apron. Two feet of fill is proposed above the apron and within the stream bottom.

The subject site is located in Morning Canyon in the Corona del Mar area of the City of Newport Beach. The Cameo Shores community is located along the downcoast edge of Morning Canyon and along the bluffs above the ocean. Morning Canyon is located between the residential developments of Shorecliffs to the northwest and Cameo Shores

to the southeast. It originates inland in the Newport Coast area and extends to the beach. Morning Canyon is identified in the City's certified Land Use Plan as an environmentally sensitive habitat area.

In addition to the private beach access way proposed to be replaced, two additional private access ways to the sea serve the Cameo Shores Community. Both are located on Brighton Road (adjacent to 4533 and 4639 Brighton Road). One is located approximately a quarter mile downcoast of the subject site and the other is approximately a half mile downcoast of the subject site (see exhibit B). These accessways are locked and available only to residents and guests of Cameo Shores.

Although the Cameo Shores Community is not a locked gate community, no public access is available through the neighborhood to the sea. The nearest public access in the vicinity is located approximately a mile and a half down coast at Crystal Cove State Park and approximately three quarters of a mile upcoast at Little Corona Beach (see exhibit B).

B. Permit Required Because New Development Not Exempt Repair and Maintenance

The proposed project involves replacing a private beach accessway and construction of a gabion wall to support it. The previously existing walkway was damaged beyond use during storm flows in 1997. The storm flows undermined the 5 foot walkway up to 3.5 feet. The replacement project would remove remnants of the walkway and its supporting scour wall. The proposed project involves new construction of a gabion wall with a new walkway above. Thus, because it is an entirely new project with new and different materials, the proposed development cannot be construed as repair and maintenance of an existing structure. The proposed project constitutes new development and not repair and maintenance.

C. Stream Alteration and Disruption of Environmentally Sensitive Habitat

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed project is located within Morning Canyon which contains standing and slowing flowing water. The proposed project would result in substantial alteration of the stream within Morning Canyon. It involves excavation, construction of a massive structure (a sixty eight feet long by eleven to fourteen feet high by six to seven and a half feet wide structure with a sixty eight foot long, one foot high, six foot wide apron), placement of rip rap in areas beneath the apron and two feet of fill over the apron and within the base of the streambed (see exhibits D through G).

Section 30236 of the Coastal Act allows substantial alterations of streams only for three specified uses: (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat. The development proposed is intended to restore private access to the beach for the residents and guests of the Cameo Shores Community. Private beach access is not one of the specifically enumerated uses identified in Section 30236 for which a stream may be altered.

In addition, although Section 30236 of the Coastal Act allows streams to be altered for flood control projects, such flood control projects are limited to those where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development. As stated above the proposed project involves replacing a private beach accessway and construction of a gabion wall to support it. The proposed private beach accessway is not a flood control project and is not necessary to protect existing structures. The previously existing walkway was damaged beyond use during storm flows in 1997. The storm flows undermined the 5 foot walkway up to 3.5 feet. The replacement project would remove remnants of the walkway and its supporting scour wall. The proposed project involves new construction of a gabion wall with a new walkway above. Thus, because it is an entirely new project with new and different materials, the proposed development cannot be construed as repair and maintenance of an existing structure. The proposed project constitutes new development and not repair and maintenance. The proposed project cannot be considered necessary to protect an existing structure because the structure itself is new development. Therefore the proposed project is not an allowable use under 30236 as a flood control project necessary to protect an existing structure.

The Commission finds that the nature and scope of the proposed development would be a substantial alteration to the stream within Morning Canyon for a non-allowable use. Therefore, the Commission finds that the proposed project cannot be found consistent with Section 30236 of the Coastal Act and must be denied.

Furthermore, Section 30240(a) of the Coastal Act requires that environmentally sensitive habitat areas (ESHA) be protected against any significant disruption of habitat values. Section 30240(b) requires that development adjacent to an environmentally sensitive habitat area be sited and designed to prevent impacts which would significantly degrade those areas, and be compatible with the continuance of those habitat areas.

An Environmental Evaluation was prepared for the proposed development (titled Evaluation of Environmental Impacts of Proposed Slope Repair at the Third Beach Access Walkway, Corona del Mar, California, prepared by PCR, and dated May 4, 1999 and expanded on July 13, 1999). The Environmental Evaluation states:

Morning Canyon is a deep well defined gully that outlets to the Pacific Ocean. The mouth of the creek appears to be above the mean higher high water (MHHWM), but is subject to occasional tidal influence during extreme high tides. The gully varies between 25 and 50 feet wide and is approximately 20 feet deep with nearly vertical sideslopes. The gully depth appears to be bedrock controlled and the potential for upstream headcutting is reduced by the existence of a drop structure. There are existing homes at the tops of both banks. The gully contains standing and slowly flowing water, with little to no emergent vegetation. Algal mats are present in portions of the gully, possibly encouraged by nutrient-rich discharge from an upstream golf course. The banks and sideslopes are vegetated with a variety of ornamental plant species. Morning Canyon supports minimal habitat for native species within the gully, lacks a floodplain or terrace to support adjacent wetlands, and does not have an estuarine component. Options to introduce or create such resources to the system would be limited due to existing development adjacent to both sides of the creek.

However, the City's certified Land Use Plan (LUP) disputes this assessment of the site's habitat value. Describing the subject site, the City's certified LUP states:

Morning Canyon. Located north and south of Pacific Coast Highway, between Shorecliffs and Corona Highlands, and Cameo Shores and Cameo Highlands in Corona del Mar, Morning Canyon is similar in character and function to Buck Gully. Like Buck Gully, Morning Canyon contains riparian vegetation at its base, sage scrub vegetation on the lower slopes, and a mixture of native and horticultural species on the upper slopes. A mixture of introduced grasses and forbs also exists in spots at the base of the canyon. Vegetation in Morning Canyon is most lush in the area below Pacific Coast Highway, and progressively less well-developed farther up the canyon. Besides providing a high-quality wildlife habitat, Morning

Canyon acts as a buffer for the Marine Life Refuge and provides a wildlife corridor to the Irvine coastal area.

In addition, regarding the subject site the City's certified LUP states:

Morning Canyon. This area is a natural canyon between Shore Cliffs and Cameo Shores. It is designated for Recreational and Environmental Open Space. In order to provide an adequate buffer for the environmentally sensitive areas within Morning Canyon, all construction including but not limited to fences, retaining walls, pools of any size or depth, or tennis courts or other activity areas are expressly prohibited within 25 feet of the property lines of all properties adjacent to Morning Canyon. In addition, prior to the issuance of a grading permit, the Grading Engineer shall determine that there will be no grading activities, including the alteration of the existing landform or removal or deposition of material, within the 25 foot buffer area from the rear property line.

Regarding the uses allowed within the subject site's land use designation category, the LUP states, in pertinent part:

This land use category has been applied to land used or proposed for open space of both a public and private nature. Some areas which carry this designation are included due to the particular nature of the geographic land form, including beaches, bluffs, canyons and Newport Bay uplands. These areas provide for active or passive open space use, depending on the nature of the area.

The City's certified Land Use Plan identifies the subject site, Morning Canyon, as an environmentally sensitive habitat area. The area was designated as an ESHA based on the presence of riparian and sage scrub vegetation, its high quality wildlife habitat, and the fact that it serves as a buffer for the Marine Life Refuge and provides a wildlife corridor to the Irvine (now Newport) Coast area.

The Environmental Evaluation states that there is little or no emergent vegetation within the gully and that prior to the storm the vegetation was probably a mixture of invasive plants, cattails, and ornamentals. The Environmental Evaluation also states that the banks and side slopes are vegetated with a variety of ornamental plant species. However, the LUP recognized that there is a mixture of native and horticultural species in the canyon when it identified the area as an ESHA. In any case, whether the vegetation in the canyon is primarily native or not, the stream itself constitutes an ESHA. In addition, the canyon serves as a wildlife corridor linking the beach with the Newport Coast area inland. As a wildlife corridor, the canyon serves a valuable habitat purpose. As a wildlife corridor the canyon constitutes an ESHA. As such 30240(a) prohibits development that would disturb the ESHA.

The location of the proposed development is within the stream and canyon. The size and placement of the proposed development would result in a significant disruption to the ESHA, inconsistent with Section 30240(a).

In addition, Section 30240(b) requires that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade the ESHA and that development be compatible with its continuance. Portions of the proposed development are not located directly in the streambed but are adjacent to it. Development adjacent to the stream must be consistent with the requirements of 30240(b). The proposed development adjacent to the stream would degrade the value of the stream. In addition, placement of the massive structure within the canyon would encroach into the overall, undeveloped wildlife corridor area. To protect the canyon/stream ESHA the City's certified LUP includes a policy which requires all development to be setback from the ESHA. Though used only as guidance when reviewing coastal development permit applications, the City's certified LUP would preclude all development within 25 feet of the canyon side property line. The proposed development is located within a thirty foot wide drive and walkway easement. The easement extends along the property line at the base of the canyon within the buffer area. Thus the proposed development would not be consistent with the twenty five foot buffer zone required by the certified LUP. The City's LUP requires a 25 foot setback to assure that development adjacent to the ESHA does not degrade the ESHA. This is the same requirement of Section 30240(b) of the Coastal Act. In certifying the LUP the Commission found the 25 foot setback an appropriate method to protect the ESHA. However the proposed development is not consistent with this setback.

Finally, the subject accessway is not the only way that the residents of the Cameo Shores community can access the sea. Two additional accessways exist within walking distance of the subject site (see exhibit B). Use of the two other accessways provides feasible alternatives to the proposed gabion wall, excavation, rip rap, fill and walkway within the environmentally sensitive stream area.

The proposed development is not minor in nature. As discussed above the proposed structure is massive and would result in substantial disturbance within and adjacent to an ESHA. The Commission finds that the proposed development would constitute a significant disruption of the habitat values, inconsistent with Section 30240 of the Coastal Act, and therefore must be denied.

D. 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 Newport Beach on May 19, 1982. As proposed the project is inconsistent with Section 30236 of the Coastal Act which limits alterations to streams. In addition, as proposed the project is inconsistent with Section 30240 of the Coastal

Act which precludes significant disruption of sensitive habitats. The Commission, therefore, finds that the proposed project will not be consistent with the Chapter 3 policies of the Coastal Act and will prejudice the ability of the City to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Previous sections of these findings contain documentation of the significant adverse impacts of the proposed development. Specifically, the significant adverse impact resulting from the proposed project is substantial alteration of a stream for a non-allowable use and significant disruption of an environmentally sensitive habitat area. Feasible alternatives exist that eliminate the need for the project. The feasible alternatives are use of the two existing accessways that serve the Cameo Shores Community which are located within walking distance of the subject site. Denial of the proposed project will not eliminate the community's ability to access to the sea via private walkway. In addition, the community can access the sea at the public beach access points located approximately three quarters of a mile and one and a half miles from the subject site. Therefore, there are feasible alternatives available which would substantially lessen any significant adverse impact which the activity would have on the environment. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act.

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South Coast Region

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99-224

Figure 1. Geologic Index Map (Edgington & Tan, 1976)

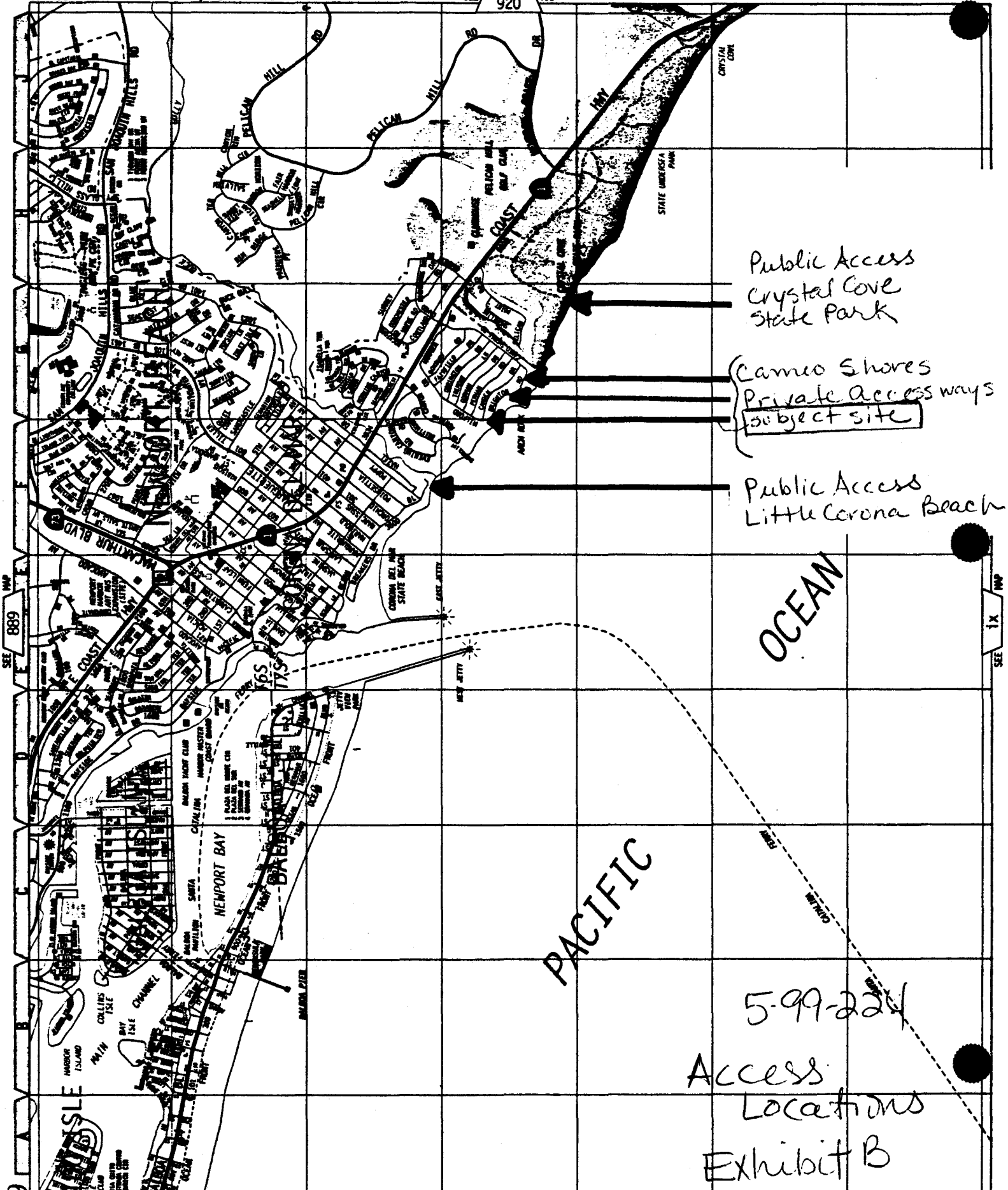
Scale: 1:12,000

5-99-224

VICINITY MAP

Exhibit A





Public Access
Crystal Cove
State Park

Cameo Shores
Private Access ways
subject site

Public Access
Little Corona Beach

OCEAN

PACIFIC

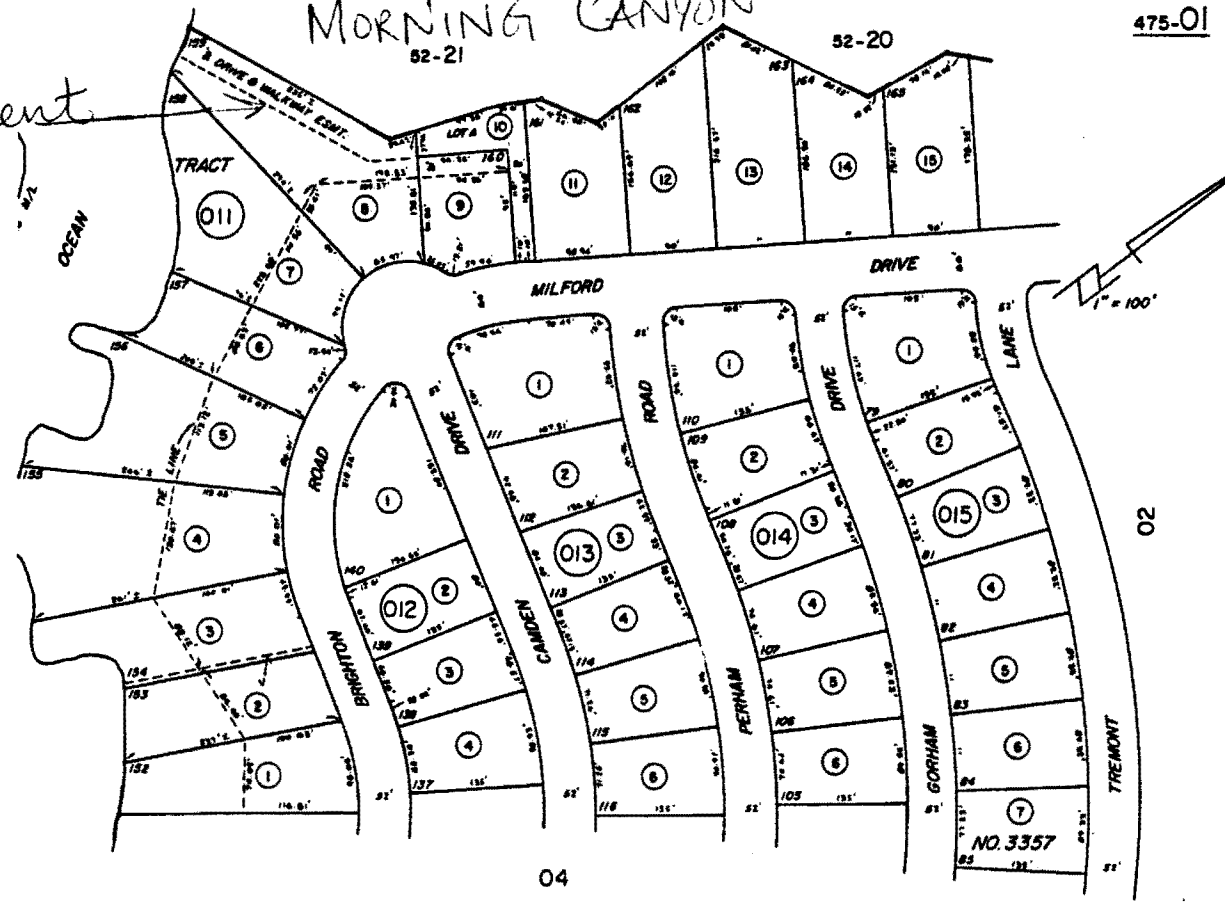
5-99-224

Access
Locations
Exhibit B

MORNING CANYON

475-01

easement



982 TRACT NO. 3357 M. M. 107-1 TO 7 INC.

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 475 PAGE 01 COUNTY OF ORANGE

2

21-99-224

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Assessor's Parcel Map w/ Easement Exhibit C

Generalized Geotechnical Map
Cameo Shores
Corona del Mar, California



PROJECT NO. 70861-01 DATE: April, 1999 PLATE: 1

CITY OF NEWPORT BEACH
 APPROVAL IN CONCEPT NO. 974-99

This project conforms to all applicable planning regulations and policies in effect on this date.

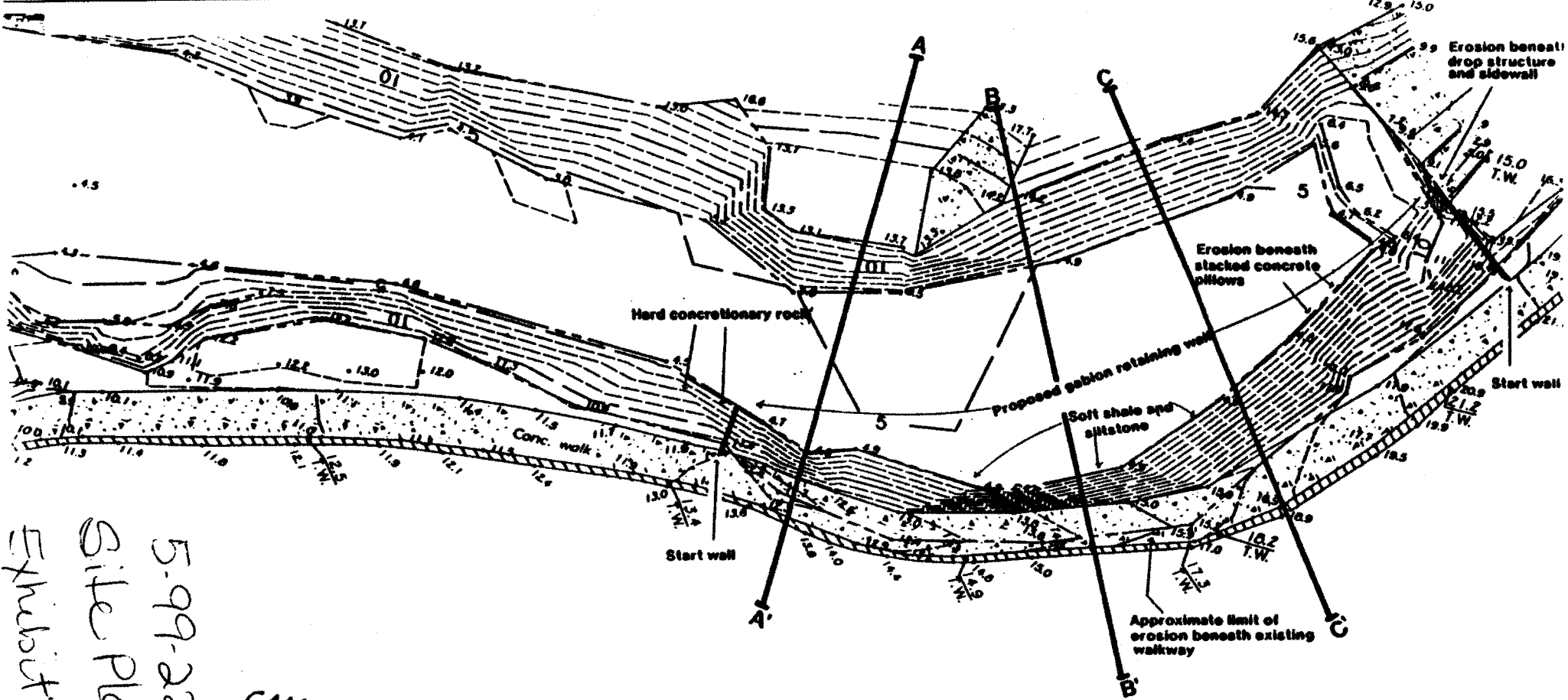
These plans are not to be used for construction purposes. No building permit will be issued until approval is received from the California Coastal Commission.

PLANNING DEPARTMENT

By: [Signature] Date: 5/17/99

SOUL COAST DISTRICT OFFICE
 APPROVED 5-99-224
 PER [Signature]

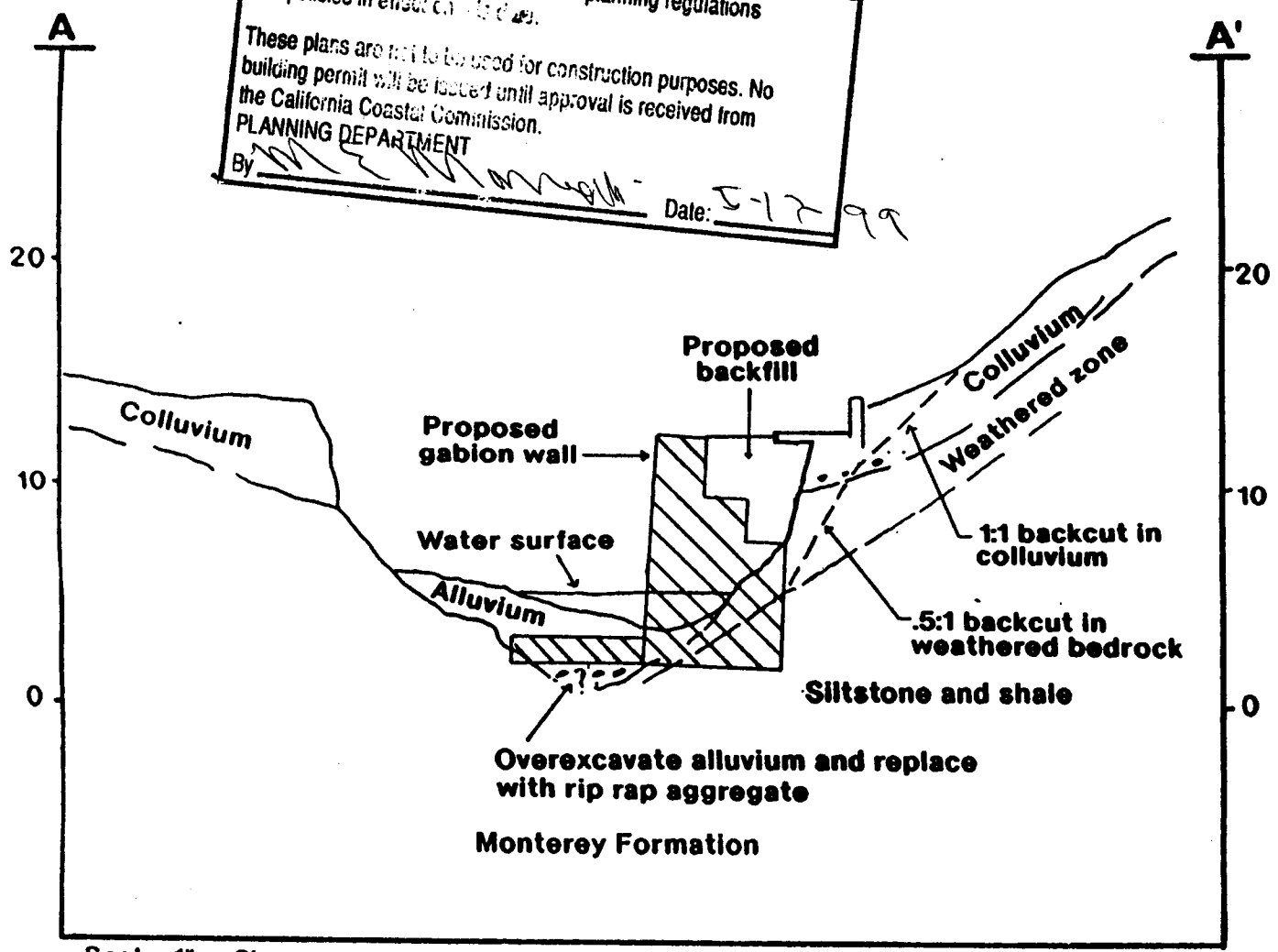
EFFECTIVE
 DATE:



5-99-224
 Site Plan
 Exhibit D

CAMEO SHORES DEVELOPMENT

CITY OF NEWPORT BEACH
 APPROVAL IN CONCEPT NO. 974 99
 This project conforms to all applicable planning regulations
 and policies in effect on 5-17-99.
 These plans are not to be used for construction purposes. No
 building permit will be issued until approval is received from
 the California Coastal Commission.
 PLANNING DEPARTMENT
 By [Signature] Date: 5-17-99



Scale: 1" = 8'

Exhibit E
 X-Section A-A'
 5-99-224

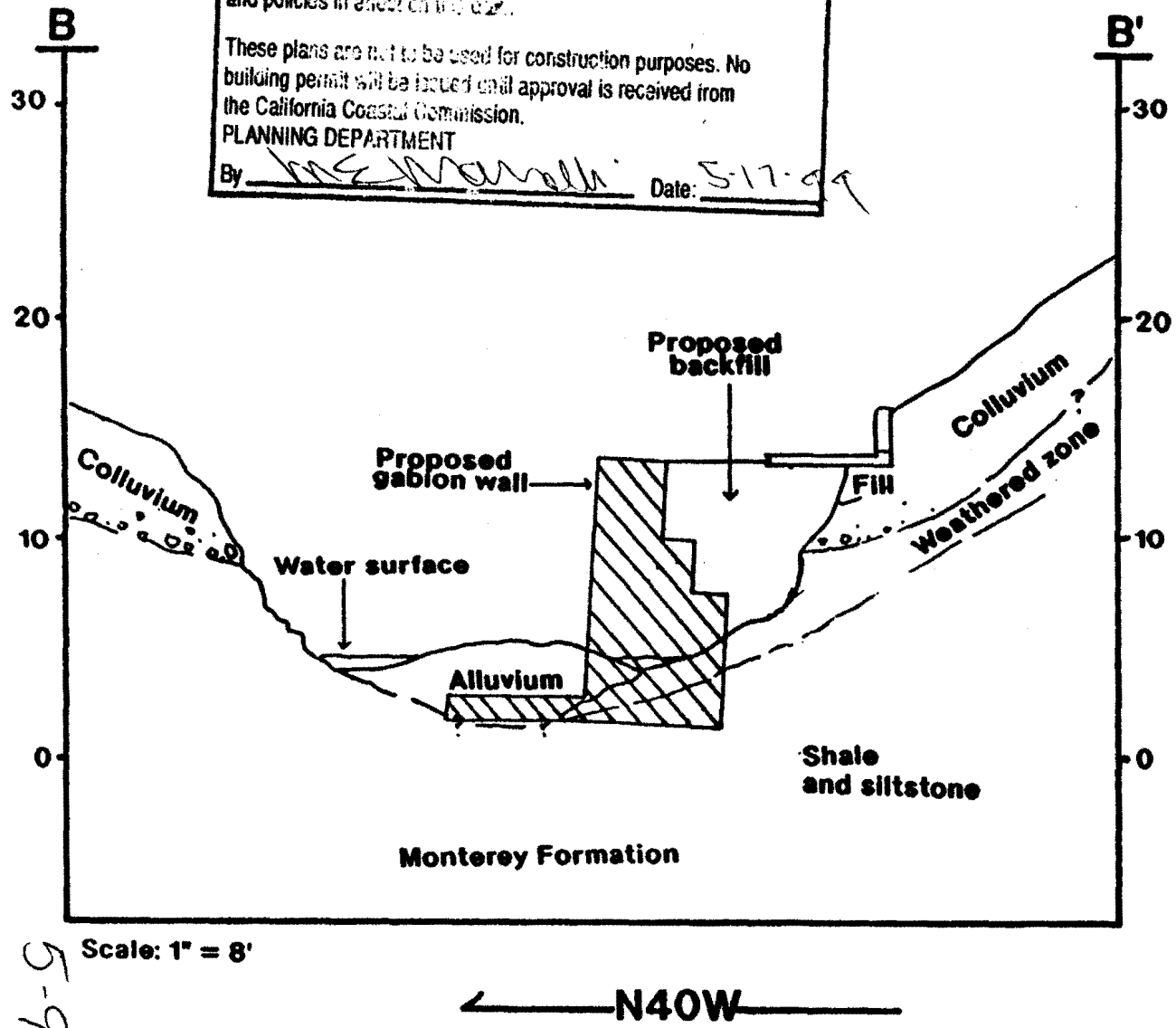
Geotechnical Cross Section A-A'
Cameo Shores
Corona del Mar, California

South Coast District Office
 APPROVED [Signature] Permit No. 2224
 By: [Signature] EFFECTIVE DATE:
 PROJECT NO. 70861-01 DATE April, 1999 PAGE 2

GeoFirm

Exhibit F
 X-Section B-B
 5-99-224

CITY OF NEWPORT BEACH
 APPROVAL IN CONCEPT NO. 974-99
 This project conforms to all applicable planning regulations
 and policies in effect on this date.
 These plans are not to be used for construction purposes. No
 building permit will be issued until approval is received from
 the California Coastal Commission.
 PLANNING DEPARTMENT
 By [Signature] Date: 5-17-99



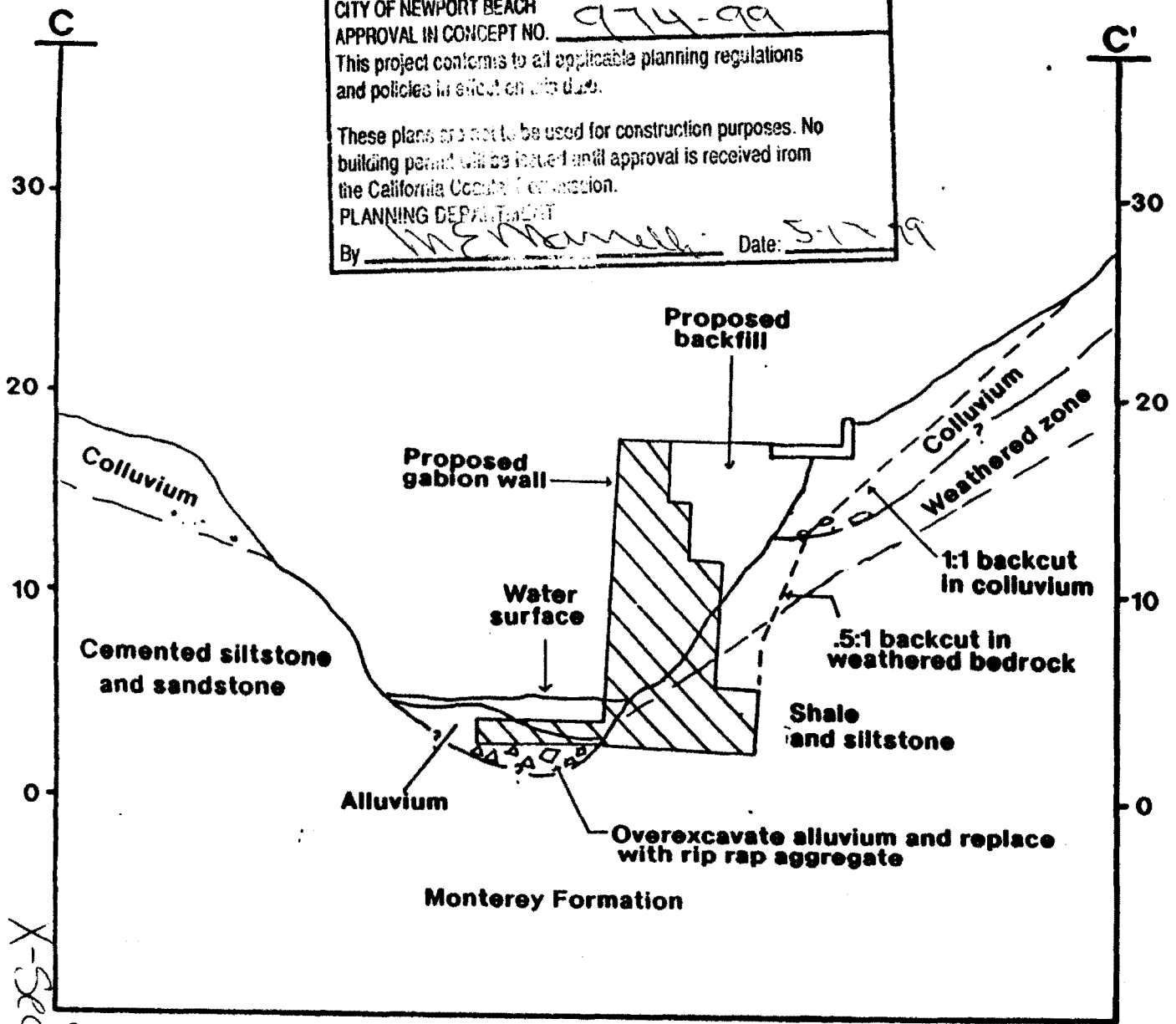
South Coast Planning Dept
 APPROVED
 5-99-224

Geotechnical Cross Section B-B'
Cameo Shores
Corona del Mar, California

Geofirm

PROJECT NO.: 70861-01	DATE: April, 1999	PLATE: 3
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CITY OF NEWPORT BEACH
 APPROVAL IN CONCEPT NO. 974-99
 This project conforms to all applicable planning regulations and policies in effect on this date.
 These plans are not to be used for construction purposes. No building permit will be issued until approval is received from the California Coastal Commission.
 PLANNING DEPARTMENT
 By M. J. McNeill Date: 5-17-99



Geotechnical Cross Section C-C'
Cameo Shores
Corona del Mar, California



PROJECT NO.: 70861-01

DATE: April, 1999

EFFECTIVE DATE: PLATE 4

By: _____

APPROVED Permit No. _____

South Coast District Office
 APPROVED 99-224

Exhibit G
 X-Section C-C'
 5-9-99



5-9904

Photo of Undercut Walkway Exhibit A