

**CALIFORNIA COASTAL COMMISSION**

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**W11a****ADDENDUM****July 7, 2020**

**To:** Commissioners and Interested Persons

**From:** California Coastal Commission  
San Diego Staff

**Subject:** Addendum to **Item W11a**, Coastal Commission Permit Application **#A-6-ENC-19-0032 (DCM Properties Subdivision)**, for the Commission Meeting of July 8, 2020

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The purpose of this addendum is to respond to respond to public comments received after issuance of the staff report and to make minor additions and corrections to the staff report. Staff recommends the following changes be made to the above-referenced staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be underlined:

1. On Page 2 of the staff report, the first full sentence shall be modified as follows:

Specifically, the Commission identified that the siting of the four lots planned for very low-income housing, including the siting of ~~one~~three of the lots over the planned encapsulation areas for contaminated soil and the clustering of the affordable lots in the southeast corner of the site, could discourage affordable housing opportunities. . . .

2. On Page 3 of the staff report, the first full sentence shall be modified as follows:

The second phase will be constructed as the owners of specified lots ~~either develop or redevelop~~, triggering a requirement to remove all encroachments into the trail easement and for the permittee to build their respective segments of the Phase 2 trail. . . .

3. On Page 3 of the staff report, after the first paragraph, the following shall be added:

After issuance of the staff report, legal counsel for the appellants submitted comments objecting to the date that the staff report was posted to the July agenda on the Commission website ([Exhibit #9](#)). Pursuant to the Commission's

regulations, a reasonable time period is required for the issuance of a staff report (Cal. Code Regs. tit. 14, § 13059). The report was issued the morning of June 26, 2020, twelve days before the item is scheduled for the July hearing. Thus, the report was made available to the appellant within a reasonable time period consistent with the Commission regulations.

The appellants note that staff reached out to the appellants to request that comments be submitted by noon on Friday, July 3 to allow staff time to review and respond to comments, although the final deadline for the submission of comments is 5 pm on Friday. The appellants declined. The comment was received and accepted at 5pm on Friday, and the comments submitted have been added as [Exhibit #9](#).

The appellants further have raised objections to the Commission's current virtual hearing procedures, suggesting that members of the public will not be able to adequately address the Commission, and that speaker slips should be counted and positions identified. The Commission's virtual hearing procedures continue to evolve but from the first virtual meeting in May, every effort has been made to ensure due process and provide the opportunity for both general and item-specific public comment. Nothing requires the counting of speaker slips, and positions cannot be assumed. Commenters have positions that can be extremely nuanced, The Commission understands the full import of comments and the number of commenters as they speak.

4. On Page 4 of the staff report, under **EXHIBITS**, the following exhibits shall be added to the list:

[Exhibit 9 – Arie Spangler Letter](#)  
[Exhibit 10 – William McGee Letter](#)

5. Special Condition #1 on Page 6 of the staff report, shall be modified as follows:

**Revised Final Plans.**

- a. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, revised final project plans in substantial conformance with the plans prepared by Pasco Laret Suiter & Associates, revised 2/26/18, stamped approved by the City of Encinitas, except that they shall be modified to reflect the following:

[ . . . ]

- ii. No pedestrian or vehicular gates are permitted at the entrance to the proposed development at the La Costa Avenue/Seabreeze Court intersection. All publicly and privately maintained streets, roads, and public parking areas identified on the revised plans shall be for public purposes including, but not limited to, pedestrian, bicycle, and vehicular

access. All streets, roads, and public parking areas shall be open for use by general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads, and public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, red-curbing resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited. Access between the street ends and the public trails shall be provided. The permittee may apply for an amendment to this permit if they can provide evidence demonstrating a significant impact to community parking that results in the need for restrictions on overnight parking or other minor time restrictions on parking.

[ . . . ]

- iv. An approximately 620-foot long trail shall be depicted on the northern border of the site as the Phase 1 trail, and an approximately 520500-foot long Phase 2 trail on the northeast border of the site, as identified on [Exhibit #6](#).

[ . . . ]

- vii. The Grading Plan shall be modified to depict the location of the encapsulated soils only under lots #34-42 and #46-48.

- 6. On Page 14 of the staff report, the following shall be added after Special Condition #11:

**12. Liability for Costs and Attorneys' Fees.** By acceptance of this permit, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees that the Coastal Commission may be required by a court to pay—that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission or its officers, employees, agents, successors and assigns, challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

**13. Public Access Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the permittee shall execute and record documents(s) in a form and content acceptable to the Executive Director, restricting the use and enjoyment of the parcel, and providing public access and recreational uses in perpetuity as described by the Final Plans as required by Special Condition #1 and as shown on [Exhibit #5](#).

- a. **Public Access Area.** The deed restriction shall reflect that the permittee shall provide public access for passive recreational uses consistent with the terms and conditions of this coastal development permit in the following locations (as generally shown in [Exhibit #5](#)):
  - i. Phase 1 trail
  - ii. Phase 2 trail
  - iii. Access improvements within the deed restricted area shall be ambulatory, including that the deed restricted area boundaries and amenities (e.g., path, trail, benches, etc.) shall move inland within the permittee's property, if relocation and/or reconstruction of access amenities in the deed restricted area are necessary to retain their continuity and/or utility.
- b. **Development and Use Restrictions.** No development, as defined in Section 30106 of the Coastal Act, shall occur within any of the public access areas described in subsection (a) of this condition, and as described and depicted in [Exhibit #5](#) of this staff report, except for the following development authorized by this coastal development permit:
  - i. Development of trails and access amenities as described in the Final Plans required by Special Condition #1, including the grading and construction necessary to complete public access amenities, vegetation removal and planting in accordance with final landscaping plan or for fire management, and the maintenance and repair of approved development within the restricted area(s) approved by this coastal development permit.
  - ii. The document shall also provide that access shall be uninterrupted at all times.
- c. The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated public access area(s) prepared by a licensed surveyor based on an on-site inspection of the public access area(s).
- d. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

7. On Page 15 of the staff report, the first sentence of the first paragraph shall be modified as follows:

The site was used for agricultural purposes until 1958 when the site was converted to a greenhouse operation that ceased approximately ~~four~~five years ago. . . .

8. On Page 15 of the staff report, the following shall be added after the second paragraph:

After issuance of the staff report, a member of the public submitted a comment indicating that demolition occurred on-site without a permit (Exhibit #10). On September 6, 2019, City of Encinitas staff contacted Commission staff to explain that the presence of collapsed wooden greenhouse structures on the site presented a fire hazard. The Encinitas Fire Department instructed the applicant to mitigate the fire hazard by removing the fallen structures. No grading or ground disturbance occurred and no other structures were removed. The removal of debris has not been identified as a violation by the City or the Commission, and full demolition of the site will be authorized through the subject permit.

9. On Page 23 of the staff report, after the first paragraph, the following shall be added:

The appellants have suggested in order to ensure that the phase 2 trail will be completed in a timely manner, the project should be conditioned to require a date certain for trail completion or a specific deadline such as no later than the date upon which more than 75% of the future communities' certificates of occupancy are issued. However, as explained in detail above, the homeowners of the two existing residences have legal entitlements to the encroachments that currently prevent construction of the phase 2 trail. Removal of these residences is not part of the current proposal, and thus, trail construction cannot occur until these sites are redeveloped. This could occur in the near future but it may not; as conditioned, the project will include construction of a trail where one can legally and practically be constructed, and at such time the existing encroachments are removed, additional public access will be constructed.

10. On Page 24 of the staff report, after the first paragraph under the subsection titled "Traffic" the following shall be added:

After issuance of the staff report, the appellants submitted comments asserting that the project did not analyze cumulative impacts from probable future projects. However, the EIR for the project lists nine future projects within the vicinity of the subject site that were considered in addition to the current proposal for their cumulative impacts on the surrounding area at the time the project was first submitted to the City of Encinitas including, but not limited to, the Surfer's Point

Hotel project at 100 La Costa Avenue and another hotel project at 2100 N. Coast Highway 101, tentatively called the Encinitas Beach Hotel. Thus, the cumulative traffic analysis for the project did analyze the current project and future projects within the vicinity of the site.

11. On Page 25 of the staff report, the first paragraph shall be modified as follows:

All 47 spaces are unrestricted and will be protected by a parking easement to prevent private landowners from usurping these spaces. To further ensure that the 47 unrestricted parking spaces always remain available to the public, **Special Condition #1** requires the applicant to submit revised final plans that acknowledges that the 47 unrestricted parking spaces shall remain open for use by the general public and that also prohibits any obstructions including red curbing or time restricted parking limitations on the unrestricted parking spaces. **Special Condition #1** also allows the permittee to apply for an amendment to this coastal development permit if the permittee can provide evidence demonstrating a significant impact to community parking that potentially raises a need for restrictions on overnight parking or other minor time restrictions on parking.

12. On Page 29 of the staff report, the second sentence of the last paragraph shall be modified as follows:

As originally approved by the City, the parcels designated for very low-income residences were all located on the southeast corner of the site, near the approved location of the buried soils, and ~~one~~three of the lots ~~was~~were above the encapsulated soils.

13. On Page 41 of the staff report, the following shall be added after the first paragraph:

After issuance of the staff report, the appellants submitted comments indicating that the City's approval of the project included "numerous waivers of development standards" to facilitate high density development out of character of the surrounding community. However, as indicated, the density of the proposed project is fully consistent with the LCP standards for R-3 residential, which allows for a density bonus. The LCP standards would actually allow for 49 units on the site, one more than the 48 proposed. Given the project's inclusion of parks, trails, and public parking, which will provide recreational access to a site which is currently entirely private, the development waivers granted by the City to reduce lot size, width, etc. will not have any significant impact on character, views, or visual quality.

14. On Page 43 of the staff report, the following shall be added after the last paragraph:

#### **L. Attorneys' Fees and Costs**

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See also Cal. Code Regs. tit. 14, § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition #12**, requiring reimbursement of any costs and attorneys' fees the Commission incurs "in connection with the defense of any action brought by a party other than the Applicant/Permittee . . . challenging the approval or issuance of this permit."