

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government:	City of Imperial Beach
Decision:	Approved with Conditions
Appeal Number:	6-IMB-23-0026
Applicant:	Buckeye Investments, Inc.
Location:	757 Seacoast Drive, Imperial Beach, San Diego County. (APN 625-192-04-00)
Project Description:	Demolition of 1,625 sq. ft. detached commercial structure and two detached residential duplexes, and construction of a new, three-story 34 ft. 2 in. high mixed-use development with eight residential condominiums units and 2,700 sq. ft. of ground-floor commercial space for a restaurant on an existing 10,608 sq. ft. lot.
Appellants:	Larry Zajonc
Staff Recommendation:	No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local

government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed, which would result in approval of the subject project as authorized by the City of Imperial Beach. The project site is located at 757 Seacoast Drive, Imperial Beach ([Exhibit 1](#)) on a 10,608 square foot lot, zoned C/MU-2 (Seacoast Commercial and Mixed-Use Zone). A 1,625 square foot detached commercial structure and two detached residential duplexes, with a total of four residential units, exist on the subject lot. The project will demolish these structures and construct one, 4,200 square foot mixed-use structure with eight residential units, resulting in a net increase of four residential units.

The appellant contends that 1) the project will have a cumulative adverse impact on the quality of life for residents and visitors; 2) the project does not provide sufficient parking and therefore will impact public access to the beach and will result in congestion for residents and businesses; and 3) the City provided a Conditional Use Permit with exemptions for increased height and density, and reduced parking that will adversely impact the community, and these exemptions should not have been granted.

The project is consistent with the density bonus provisions in the City's LCP, which allow increased density, increased height, and reduced parking when the project complies with two of the seven development incentives. Up to seven residential units are allowed on the subject lot by right; however, because the project meets the density bonus criteria, nine residential units are allowed. The project includes eight residential units, which typically require 12 parking spaces and the commercial building requires three parking spaces for a total of 15 parking spaces. With the density bonus provisions, the project is allowed a 25% reduction for off-street parking and therefore, 11 total parking spaces are required, and of which this project provides. In order to mitigate the reduction in parking, the City's approval requires a comprehensive transportation demand management program that includes provisions for bike racks, one electric bike per residential unit, and public transit vouchers provided by the commercial lessee. The on-street parking will also increase by 1-2 spaces, due to removal of curb cuts.

There will be no significant impacts to coastal resources. Since there are no identified inconsistencies with the LCP or the public access and recreation policies of the Coastal Act, staff recommends that the Commission determine that the project raises no substantial issue. The motion and resolution can be found on page 6.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – City Determination, Local CDP No. CP-22-0012](#)

[Exhibit 4 – Appeal](#)

I. APPELLANTS CONTEND

The appellant contends that the project as approved by the City does not conform to the City of Imperial Beach's certified Local Coastal Program (LCP), and that the project will have a cumulative adverse impact on the quality of life for residents and visitors. The appellant also contends that the project does not provide sufficient parking and therefore will impact public access to the beach and will result in congestion for residents and businesses. The appellant also claims that the City provided a Conditional Use Permit with exemptions for increased height and density, and reduced parking that will adversely impact the community, and these exemptions should not have been granted.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the City Council on June 21, 2023 (CP-22-0012).

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will

proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the development is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§ 30625(b)(2).) Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Imperial Beach has a certified Local Coastal Program (LCP), and the subject site is located approximately 300 feet from the beach in an area where the Commission

retains appeal jurisdiction. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-IMB-23-0026 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-6-IMB-23-0026 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The project includes demolition of one 1,625 square foot detached commercial structure and two detached residential duplexes, and construction of a new, three-story, 34 foot 2 inch high mixed-use development with eight residential condominium units and 2,700 square foot of ground-floor commercial space for a restaurant on an existing 10,608 square foot lot. ([Exhibit 2](#)). There are four existing residential units, and the project will result in a net increase of four residential units for a total of eight residential units on the subject site. At least three residential units will be made available for long term housing, and up to five residential units will be utilized for short-term rentals based on the City's provisions.

The lot is currently occupied by a single-story restaurant building, a single-story residential duplex, and two-story residential duplex (with a total of four residential units).

The remainder of the lot is currently utilized for parking. A multi-family residence exists north and south of the subject site. A three-story mixed-use structure exists west of the subject site. A single-family residence exists to the east of the subject site across an existing alleyway. The subject lot is immediately adjacent to Seacoast Drive which is a major coastal accessway in the City of Imperial Beach.

On June 21, 2023, the City Council approved with conditions the appealable Coastal Development Permit (CDP) No. CP-22-0012 for the demolition of three existing structures and construction of a mixed-use development. The appellant, along with three other members of the public, shared public testimony objecting to the project. On the day of the hearing, six members of the public shared public testimony in support of the project. There were 11 written public comments, 10 in support and one in opposition of the project. All conditions are outlined in the signed resolution ([Exhibit 2](#)).

The site is within an appealable area of the certified LCP, therefore the City of Imperial Beach's certified LCP and the public access and recreation policies of the Coastal Act are the standard of review.

B. Community Character

The appellant contends that the project will have a cumulative adverse impact on the quality of life which may impact community character for residents and visitors. The appellant also claims that the City provided a Conditional Use Permit with exemptions for increased height and density, and reduced parking that will adversely impact the community, and these exemptions should not have been granted.

Table L-2 of the Land-Use Element section of the certified LCP, in relevant part, states:

C/MU-2 Seacoast Commercial land use designation provides for land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in this designation will be visitor-serving retail such as specialty stores, surf shops, restaurants, hotels and motels, etc. [...] Mixed use development with residential uses above first commercial uses is also allowed with approval of a CUP.

The project includes mixed-use development with residential uses above the first floor commercial uses, which is consistent with the type of development envisioned in the Seacoast Commercial and Mixed-Use Zone. The purpose of the C/MU-2 Zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. The project provides a commercial use on the ground floor with an open patio as well as eight residential uses which would serve both the local and tourist population, meeting the intent of the land use designation.

The City of Imperial Beach offers a density bonus for development that meets two of the seven development incentives as outlined in Section 19.27.020 (A)(5) of the LCP:

Multiple-family residential dwelling units are permitted at a maximum density of one unit per every one thousand five hundred gross square feet of lot area, except that exclusively residential developments are required to comply with the development standards of the R-1500 (High Density Residential) Zoning District; or if a mixed-use project is located on the east side of Seacoast Drive or on Palm Avenue, east of Seacoast Drive, residential dwelling units may be increased to a maximum density of one dwelling unit for each one thousand two hundred ten gross square feet of lot area with approval of a conditional use permit by the City Council that demonstrates compliance with two or more of the following development incentives:

- a. Project sites that are consolidated to a final size greater than twenty thousand square feet;
- b. Entire project achieves Leadership in Energy and Environmental Design (LEED) Green Building Rating System certification, a comparable green building certification, or can demonstrate the ability to achieve certification;
- c. Entire project provides a minimum of seventy-five percent “active commercial uses” on the ground floor;
- d. At least twenty-five percent of proposed residential units must be three-bedroom units;
- e. Provide an additional one hundred square feet of common open space or plaza space with minimum dimensions of six feet by ten feet;
- f. Dedicate a minimum of one foot of private property frontage to public use (creates a one-foot front setback dedicated to public use);
- g. Floors above first floor provide additional stepback of five feet beyond required stepback.

The project complies with subsection c, which requires a minimum of 75% active commercial uses on the ground floor, and subsection e, which requires an additional 100 square feet of open space or plaza space with minimum dimensions of six feet by ten feet. The project provides 84% (or 2,700 square feet) of active commercial uses on the ground floor and a 1,100 square foot plaza open space.

Since the project meets two of the listed development incentives, the project is entitled to density bonuses such as additional dwelling units, increased building height by 5 feet, and off-street parking reduction by 25%. The LCP allows for seven dwelling units on the subject site, but with the density bonus up to nine dwelling units are allowed. Thus, the eight dwelling units included in the subject project are allowed per the LCP’s density bonus provisions.

The City’s LCP outlines specific zones that allow short term rentals, including within commercial and commercial mixed-use zones; however, they are not listed as an allowable use in any residential zone. The LCP designates the site as Seacoast Commercial and Mixed-Use land use, and it is zoned as C/MU-2 Zone, which is one of the few zones that allows short-term rentals as a permitted use. There is no restriction on the density of short term rentals; however a short term rental business license is required to operate a short term rental within the City. Thus, the existing four residential units on-site could be operated as short-term rentals if the owners obtained a valid short

term rental business license from the City. A maximum of five residential units will be used for short-term rentals and a minimum of three residential units will be used for long-term housing. The City's approval of the project ([Exhibit 3](#)) included the following special condition to ensure there is an opportunity for the City to reassess the impacts of the short-term rentals on the surrounding community: "Short term rentals shall be limited to five (5) of the residential units (concurrently or otherwise). The use of the residential units as short-term rentals may be reviewed/revisited by the City every two (2) years to assess the impact of the short-term rentals on the surrounding neighborhood and community."

Since the project is consistent with the City's LCP and the applicable policies of the Coastal Act, the Commission finds that the project would not impact coastal resources or community character. Therefore, the Commission finds that there is no substantial issue with respect to this ground on which the appeal was filed.

C. Public Access and Recreation

The appellant contends that the project does not provide sufficient parking and therefore will impact public access to the beach and will result in congestion for residents and businesses.

Section 30210 in the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 in the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation [...]

Section 19.48.035 of the certified LCP states:

For new development or expansion of existing structures designed to accommodate a variety of shops, stores, offices, restaurants, personal convenience services, and athletic and health clubs in the C/MU-1, C/MU-2, and C/MU-3 zones, off-street parking shall be provided in accordance with the standard listed in the following table. During site plan review, the City would determine whether the standard for required parking could be reduced based on the types of proposed land uses and existing land use, and the availability of parking (both private and public parking) in the project area. Shared parking shall be permitted and shall only be approved when technical evidence is presented to justify the shared use. The Urban Land Institute Guidebook Shared Parking Second Edition (2005) shall be used as a guideline and supplemented by additional findings, where appropriate.

Zone/Land Use	Standard	25% Reduction for Vertical Mixed-Use	Eligible for Waiver for Commercial Uses Less Than 1,000 SF	Eligible for Additional Parking Reduction for Shared Parking
C/MU-1 and C/MU-3	1 space per 500 gross SF of commercial	X	X	X
C/MU-2	1 space per 1,000 gross SF of commercial	X	X	X
Multiple-family residential	1.5 spaces per dwelling unit	X		X
Hotel without cooking facilities	1 space per guest room	X		
Hotel with cooking facilities	1.5 spaces per guest room	X		

The project includes a 2,700 square foot commercial building which would typically require three parking spaces, and the eight residential units would require 12 parking spaces for a total of 15 required spaces. However, due to the density bonus provisions for vertical mixed-use, the project is allowed a 25% reduction for off-street parking. Therefore, only 11 total parking spaces are required. The project provides a total of 11 parking spaces: eight covered parking spaces, two commercial parking spaces, and one ADA commercial parking space. The off-street parking requirements are met in accordance with the LUP. The project also includes removal of two driveway aprons, and thus will increase on-street parking in the public right of way by one to two parking spaces. This additional street parking would increase parking opportunities for the general public, including beachgoers.

In addition, the applicant is providing a wide range of transportation demand management (TDM) strategies to encourage alternate modes of transportation. This comprehensive TDM program will help reduce the demand for parking by tenants of the subject development, so that the tenants and visitors are not likely to have significant spillover impacts on existing on-street parking, which provides access to the coast. The City’s approval includes a special condition memorializing the required TDM strategies, including:

- Public bicycle racks (for eight bicycles)
- Private covered hanging bicycle racks (commercial and residential tenant use only)

- Map of the bike routes
- Bus route and schedule signage would be posted to encourage transit use and pedestrian/bike (multimodal) use
- One (1) electric bike will be provided per residential unit (8 total) with built-in charging station
- On all long-term residential leases, there will be language for reduced rent (10%) for tenants who do not need a parking space
- Any and all short-term rental tenants will receive one voucher for e-bike rental for each stay
- Any commercial lease must include language for the property owner or designee to provide bus passes to employees of the commercial tenant upon employee request to offset parking demands

In summary, the Commission finds that the development is consistent with the City's LCP and the applicable policies of the Coastal Act, and would not adversely impact public access. Therefore, the Commission finds that there is no substantial issue with respect to this ground on which the appeal was filed.

D. Visual Resources

The appellant contends that the project as approved by the City does not conform to the City of Imperial Beach's certified Local Coastal Program (LCP), and that the City provided a Conditional Use Permit with exemptions for increased height and density, and these exemptions should not have been granted.

Section 19.27.070(A)(2) states, in relevant part, in the certified LCP:

No building in the C/MU-2 (Seacoast Commercial and Mixed-Use) zone shall exceed three stories or thirty feet in height, whichever is less, except as follows:

2. Properties east of Seacoast Drive that do not provide exclusively residential uses shall have a height limit not to exceed three stories and thirty five feet with approval of a conditional use permit that demonstrates compliance with the following:
 - b. Two or more of the development incentives listed in Section 19.27.020(A)(5);

The subject parcel is located within the Seacoast Commercial and Mixed-Use zone, east of Seacoast Drive, which has a maximum height requirement of 30 feet; however, the density bonus provisions allow mixed-use projects to increase the building height by 5 feet to a maximum of 35 feet to accommodate the increased height required for commercial uses. Therefore, the project's height of 34 feet 2 inches does not exceed the 35 foot height limit.

Although the site is located close to the shoreline, an existing three-story building on the west side of Seacoast Drive blocks any public views of the beach from the site. There are no existing public views that would be further impacted by the project. The appellant is a neighbor to the subject site. Although the increased height might impact private views, there would be no adverse impacts to public views.

In summary, the development would not impact any public views. Therefore, the Commission finds that there is no substantial issue with respect to this ground on which the appeal was filed.

E. Substantial Issue Factors

As discussed above, there is strong factual and legal support for the City's determination that the project is consistent with the certified LCP. The project is consistent with the type of development envisioned and required in the certified LCP, and the City's approval is consistent with the LCP taking into account density bonus allowances. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of no substantial issue. Regarding the scope of the project, it is a single project that delivers four additional residential units to the neighborhood. There is no significant impact on coastal resources, including public access. To the extent that the project creates any precedential value, it is a positive one, and the City's approval does not raise issues of regional or statewide significance. The objections to the project asserted by the appellant do not raise a substantial issue.

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Buckeye Investments, Inc.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. City of Imperial Beach certified Local Coastal Program.