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[COASTAL COMMISSION'S NO SUBSTANTIAL ISSUE DETERMINATION WILL BE UPHELD EVEN IF PROJECT TECHNICALLY NOT CONSISTENT WITH LCP](#)

[Hines v. California Coastal Commission, No. A125254 \(1st Dist. June 17, 2010\)](#)

By [Michael Wilmar](#) and Alex Merritt

In *Hines v. California Coastal Commission*, the First District Court of Appeal upheld the Coastal Commission's determination that an appeal raised no substantial issue under the California Coastal Act, and went so far as to state in dicta that even if a development were technically inconsistent with a Local Coastal Program ("LCP"), the Commission could still reject an appeal of the approval of that development as not presenting a substantial issue.

The case arose when Steven and Carol Star sought a coastal permit to build a house within the Sonoma County coastal zone. The Stars sited the proposed project *within* 100 feet of a riparian area. However, under the Sonoma County LCP, permanent structures must ordinarily be set back *at least* 100 feet from riparian vegetation. Therefore, the Stars also applied for a use permit to allow a reduced riparian setback of 50 feet. The County approved both the coastal permit and the use permit.

The Stars' neighbors, Brian and Jane Hines, appealed the County's decision to the California Coastal Commission. The Coastal Commission declined to hear the appeal after finding that it presented "no substantial issue" under the California Coastal Act.

The Hineses then filed a petition for administrative mandate, challenging the County's approvals and the Coastal Commission's refusal to hear the appeal. The trial court denied the petition, and the Hineses appealed, arguing that the County and the Coastal Commission had abused their discretion.

County did not abuse its discretion in approving the project

The Hineses first argued that the County abused its discretion in approving the Stars' project. At issue was an LCP policy to "[p]rohibit construction of permanent structures within riparian areas as defined, or 100 feet from the lowest line of riparian vegetation, whichever is greater" The Hineses argued that this policy forbid the Stars from constructing their house within 100 feet of the riparian area, and that the County abused its discretion when it approved the reduced setback.

The court rejected the Hineses' argument. First, the court noted that the LCP stated on its face that the policies were only *recommendations*. Second, the court noted that a certified Administrative Manual, which implemented and interpreted the LCP, expressly allowed a reduced riparian buffer when the applicant could demonstrate that a 100-foot buffer was unnecessary to protect riparian resources. The County found that the Stars had showed a 100-foot buffer to be unnecessary, and that their project satisfied the criteria in the Administrative Manual for a reduced buffer.

The Hineses made arguments that the buffer exception did not apply to Stars' project, but the court rejected them as illogical and contrary to the plain text of the Administrative Manual. The Hineses also cited to authority that purportedly forbid construction of homes within 100 feet of riparian areas, but the court quickly distinguished the authority and found it inapplicable to the Stars' project. After rejecting all the Hineses' arguments, the Court concluded that the County had not abused its discretion in approving the project and allowing a reduced riparian buffer.

Coastal Commission did not abuse its discretion in refusing to hear appeal

Next the opinion considered whether the Coastal Commission was required to hear the Hineses' appeal. The County's approval was appealable to the Coastal Commission. However, Public Resources Code section 30625(b) allows the Coastal Commission to avoid hearing an appeal if it determines "that no substantial issue exists with respect to the grounds on which an appeal has been filed" The Coastal Commission determined that the Hineses' appeal did not raise a substantial issue and refused to hear it. The Hineses argued that their appeal did raise a substantial issue and that the Coastal Commission had erred by refusing to hear it.

The First District began its analysis by defining "substantial issue" and setting forth the applicable standard of review. Quoting *Alberstone v. California Coastal Commission*, 169 Cal.App.4th 859 (2008), the court observed that under Coastal Commission regulations, "[a] substantial issue is defined as one that presents a 'significant question' as to conformity with the certified local coastal program."

The court, also relying on *Alberstone*, decided that it should review the Coastal Commission's determination for an abuse of discretion; that it should "grant broad deference" to the Coastal Commission's interpretation of the LCP and Coastal Act; and that it should depart from a Coastal Commission interpretation only if it was "clearly erroneous."

Guided by these principles, the court found that the Coastal Commission had properly refused to hear the appeal. The Coastal Commission made its "no substantial issue" determination by applying five factors that it had used in determining whether previous appeals presented a substantial issue: (1) the degree of factual

and legal support for the local government's decision that the development is consistent with the LCP and Coastal Act; (2) the extent and scope of the development; (3) the significance of the coastal resources affected by the decision; (4) the precedential value of the local government's decision; and (5) whether the appeal raises only local issues, or those of regional or statewide significance.

In analyzing the first factor, the Coastal Commission determined that the County had a "high degree of factual and legal support for its decision" that the development was consistent with the LCP. The Coastal Commission staff had analyzed the Stars' project under the LCP and determined that the County had correctly found it consistent with LCP policies. Based on this analysis, the Coastal Commission determined that the appeal, on that ground alone, did not present a "significant question" as to the project's conformity with the LCP, and therefore, that the appeal did not raise a substantial issue. The court, giving broad deference to the Coastal Commission's interpretation of the LCP, approved this determination.

However, the Coastal Commission also argued that even if the project did not technically conform to the LCP, the appeal still failed to raise a substantial issue because of the other four factors. Applying the remaining factors to the Hineses' appeal, Coastal Commission staff had found that the Stars' project was limited in scope and extent; the project did not threaten significant coastal resources; the determination would not have precedential effect; and the appeal raised a purely local issue, and implicated no regional or statewide concerns. Based on these findings, the Coastal Commission had concluded that the appeal raised no substantial issues even if the project did technically violate an LCP policy. The court accepted the Coastal Commission's argument, and concluded, in dicta, that the Commission's application of these factors further supported its "no substantial issue" determination.

No CEQA Review Required

The Hineses also argued that the County and the Coastal Commission violated CEQA because they approved the project without considering mitigation measures and alternatives. The Hineses acknowledged that single-family residential projects are categorically exempt from CEQA. But they argued that CEQA review was nevertheless warranted because the approval would open the door to similar projects, causing cumulative impacts to riparian habitat.

The court first noted that CEQA did not apply to the Coastal Commission's "no substantial issue" determination because it did not constitute a project approval for purposes of CEQA. Furthermore, even if the determination had been a project approval, the court noted that the Coastal Commission had no jurisdiction to conduct CEQA review; it was limited to reviewing compliance with the Coastal Act and LCP.

As to the County approvals, the court ruled that the CEQA challenge was barred because the Hineses raised their CEQA argument for the first time on appeal and had failed to exhaust their administrative remedies.

Moreover, the court noted that that the Hineses' argument was entirely speculative, and that it would have rejected the CEQA argument even if the Hineses had exhausted their administrative remedies.

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