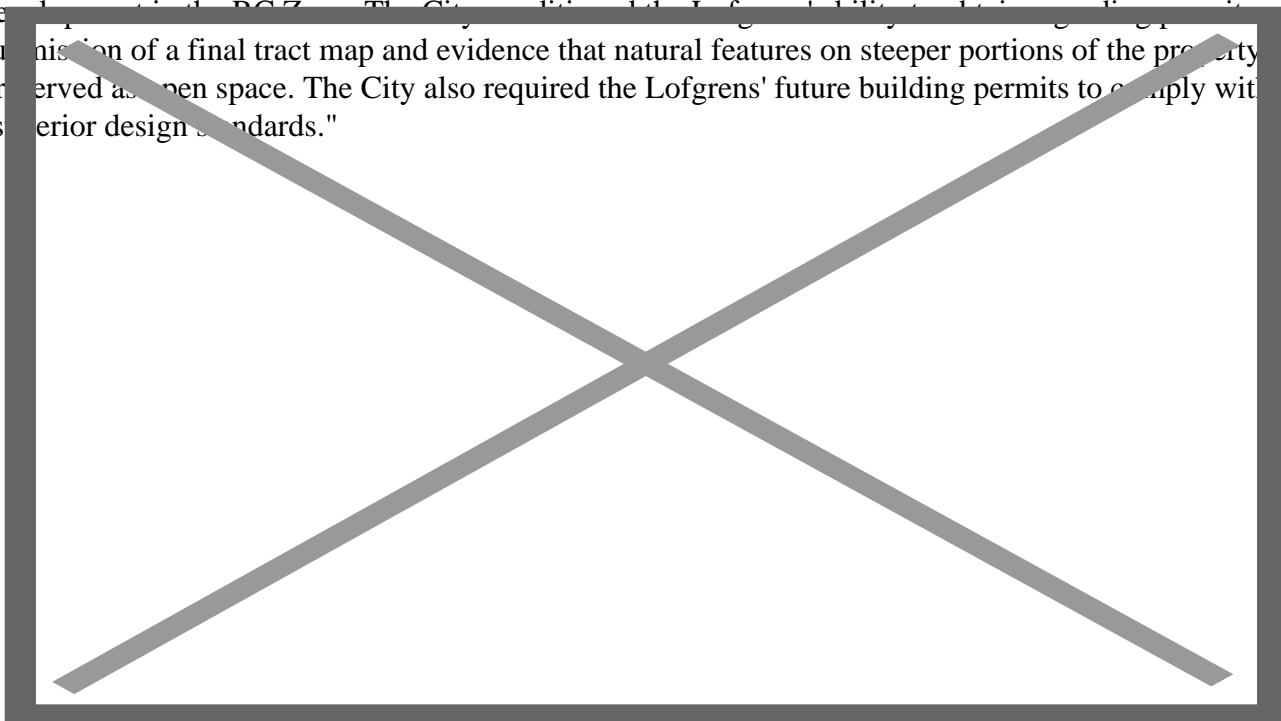


Possibility that Zoning Standards Might Be Violated in Final Design Did Not Mandate EIR at Tentative Map Stage

A project opponent's argument that the project might violate zoning laws in the future is not sufficient to require a city to prepare an EIR under CEQA. *Friends of Riverside's Hills v. City of Riverside*, 26 Cal.App.5th 1137 (2018). The Lofgrens requested a residential development permit to build six single-family homes on an 11-acre parcel in Riverside. The proposed development was within the City's RC - Residential Conservation Zone, which had unique zoning standards to preserve the area's topographic conditions. These included two different sets of standards for lot size, dwelling density, and lot coverage depending on whether the development was "conventional" or a "Planned Residential Development" ("PRD"). City zoning laws allowed subdivisions qualifying as PRDs more flexibility to create smaller lots in existing neighborhoods and promoted clustering of lots on less sensitive sections of the property to preserve open space. The Lofgrens applied for a PRD permit with a six-lot tentative tract map and a list of mandatory project requirements that would qualify the project as a PRD. In response to objections from Friends of Riverside's Hills to their original application, the Lofgrens also submitted a revised five-lot subdivision map that complied with conventional zoning requirements. The City of Riverside approved the PRD permit, finding the project in compliance with all PRD standards for residential development in the RCZ. The City issued the Lofgrens a building permit upon their submission of a final tract map and evidence that natural features on steeper portions of the property were preserved as open space. The City also required the Lofgrens' future building permits to comply with RC Zone "superior design standards."



The City

issued a negative declaration, concluding that the project did not require an environmental impact report under CEQA. The City reasoned the project did not conflict with any land use provisions that were adopted to avoid or mitigate environmental impacts. Friends of Riverside's Hills sued, contending an EIR was required because, in violation of RC Zone standards, the project would require excessive grading and did not cluster residential lots in

the least steep portion of the site. Additionally, they alleged the City abused its discretion when it approved the permit because it did not provide evidence of the average slope of the lots and deferred the selection of superior design elements to the building-permit stage. The court held these claims were too speculative at the tentative map stage because the Lofgrens did not yet have a proposal for the final lot placement and finish grading. The claim that a project *might* violate zoning standards was not enough to require the City to prepare an EIR. The appropriate time for the plaintiffs' CEQA challenge over RC Zone violations, the court said, would be when the City approved the grading permit for the proposed project. At that time, the Lofgrens would need to submit a final tract map that complied with RC Zone requirements. Only then would an EIR potentially be required based on deviation from zoning code standards. The court also rejected petitioners' claim that the project violated the zoning code because there was insufficient evidence in the record to determine the average slope of the lots. Petitioners argued that none of the Lofgrens' various maps submitted to the City had the same average natural slope, and therefore the lots might not be steep enough to qualify for the PRD density requirements, instead of the conventional requirements. The court called this argument "bordering on frivolous," because the revised conventional map alone contained enough evidence of the natural slopes to support a benchmark density of five lots. Lastly, petitioners' argument that the City incorrectly deferred the selection of the superior design elements to the building stage also failed. The record showed that the Lofgrens had, in fact, selected the design elements and included them on every submitted map. In any event, the court said, the RC Zone standards did not require PRD applicants to choose design elements before the permit approval stage.

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