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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CITIZENS FOR OPEN AND PUBLIC PARTICIPATION, Plaintiff and Appellant, v. CITY OF MONTEBELLO, Defendant and Respondent;	B277060 (Los Angeles County Super. Ct. No. BS160192)
COOK HILL PROPERTIES, LLC, Real Party in Interest and Respondent.	

APPEAL from the judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Affirmed.

Briggs Law Corporation, Cory J. Briggs, and Anthony N. Kim for Plaintiff and Appellant Citizens for Open and Public Participation.

Best Best & Krieger, Michelle Ouellette, Alisha Winterswyk, and Andrew Skanchy for Defendant and Respondent City of Montebello.

Nossaman, John J. Flynn III, Benjamin Z. Rubin, and Elizabeth Klebaner for Real Party in Interest and Respondent Cook Hill Properties, Inc.

Linda Strong, in pro. per., for Amicus Curiae.

Citizens for Open and Public Participation (COPP), an unincorporated association, filed a petition for writ of mandate and complaint in the superior court challenging certain actions by the City of Montebello (the City) that enabled real party in interest Cook Hill Properties, LLC (Cook Hill) to pursue a residential development project (the project). The trial court denied the petition and entered judgment for the City and Cook Hill. COPP appealed.

COPP contends: (1) the court abused its discretion by striking portions of COPP's opening brief in support of its petition; (2) the City violated the Ralph M. Brown Act (Gov. Code, § 54950 et seq.) (the Brown Act); and (3) the City's approval of the project violated the Planning and Zoning Law (Gov. Code, § 65000 et seq.). We reject these arguments and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Cook Hill proposed the project on a 488-acre parcel of land in Montebello. The City published a draft environmental impact report (EIR) concerning the project in March 2009, a recirculated draft EIR in September 2014, and a final EIR in April 2015.

On June 10, 2015, the City certified the final EIR and took additional actions to permit the project to proceed. On June 24, 2015, the City enacted certain ordinances further enabling the project. The City timely filed notices of determination regarding its actions.

On July 13, 2015, COPP filed a petition for writ of mandate and complaint and, on September 21, 2015, a first amended petition and complaint (the petition).[1] The petition alleged that the City's

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[1] Cook Hill demurred to the original petition on the ground that COPP, an unincorporated association, can appear in a lawsuit

approval of the project violated the California Environmental Quality Act (CEQA), the Seismic Hazards Mapping Act (Pub. Resources Code, § 2690 et seq.) (the SHMA), the Brown Act, and the Planning and Zoning Law (Gov. Code, § 66473).

The petition alleged that the City violated CEQA in the following ways. The draft EIR and final EIR "fail[ed] to provide adequate identification and analysis of the significant adverse environmental impacts of the Project, including, but not limited to, the following: (i) hazards/hazardous materials[;] (ii) air quality; (iii) general plan consistency; (iv) traffic and transportation; (v) hydrology and water quality; (vi) greenhouse gas emissions; (vii) aesthetics; and (viii) biological impacts." "[N]either the analysis of impacts in the Project's EIR nor [the City's] certification of the EIR in this respect is supported by substantial evidence in the administrative record." The impact of the project on "air quality, biological resources, hydrology/water quality, hazards/hazardous materials, and urban decay" were inadequately analyzed in the EIR. The City failed to prepare a subsequent or supplemental EIR because: (1) the project would "involve significant environmental impacts not contemplated by the [direct EIR] or [final EIR] or a substantial increase in the severity of the previously identified significant effect"; and (2) new information of substantial importance shows that (a) the project would have significant effects not discussed in the EIR, (b) significant effects that were examined will be substantially more severe than previously shown, (c) mitigation measures or

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only through a lawyer, and the person who was purporting to represent COPP is not a lawyer. Prior to the hearing on the demurrer, COPP, through counsel, filed the operative first amended petition and complaint.

alternatives previously found not to be feasible are feasible and would substantially reduce significant effects of the project, and (d) mitigation measures or alternatives different from those analyzed in the EIR would substantially reduce significant effects of the project. The petition further alleged that, as a result of the City's violation of CEQA, "[COPP], its members, and the responsible decision-makers were not fully informed about the potential adverse environmental impacts of the Project, and insofar as [COPP] and its members did not have an opportunity to participate meaningfully in the analysis of such impacts prior to approval of the Project."

Regarding the SHMA, the petition alleged that the City violated the SHMA by: failing to review and approve a geotechnical report for the project; failing to submit a copy of an approved geotechnical report to the state geologist; and failing to take into account seismic hazard maps in preparing its general plan and in adopting or revising land use ordinances. Cook Hill allegedly violated the SHMA by failing to prepare a geotechnical report prior to the project's approval.

The City allegedly violated the Brown Act when it provided notice that a public meeting concerning the project would take place at the City's city council chambers when it actually took place at the Quiet Cannon restaurant. "As a result," the petition alleges, "interested members of the public were prevented from presenting their views to at least one of [the City's] decision-making bodies."

The City's approval of the project allegedly violated the Planning and Zoning Law because it "is not consistent with [the City's] General Plan." In particular, "the Project authorizes condominiums at the site," but "the General Plan authorizes single-family homes at the site."

Cook Hill and the City answered the petition on October 26, 2015. The City filed a notice of certification of the administrative record the same day. This filing triggered the statutory 30-day

deadline for COPP to file and serve a statement of the issues that it intended to raise in its brief or at the hearing on the petition. (See Pub. Resources Code, § 21167.8, subd. (f).)[2] COPP did not file or serve the required statement.

At a status conference held on December 8, 2015, the court established a briefing schedule by which COPP would file its opening brief no later than January 26, 2016, and the City and Cook Hill would file a joint brief no later than February 26, 2016. The hearing date was scheduled for April 7, 2016.

On January 26, 2016—the day COPP's opening brief was due—COPP's counsel sent an email to the City's and Cook Hill's counsel informing them that he would not be filing COPP's brief on that date due to a family medical issue. Counsel for the parties then agreed to extend COPP's deadline for filing its opening brief to February 2, 2016.

As of February 10, 2016, COPP had not filed its opening brief or the required statement of issues. That day, Cook Hill filed an ex parte application for an order dismissing the petition or, in the alternative, an order that COPP file by February 23, 2016, either a notice of dismissal or its opening brief, "limited to the issues in the first amended complaint." The City joined in the application.

On February 11, 2016, the court denied the request to dismiss the case, but granted the alternative remedy: an order that COPP file no later than February 23, 2016 "either an opening

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[2] In 2015, Public Resources Code section 21167.8, subdivision (f) provided: "[T]he petitioner or plaintiff shall file and serve on all other parties a statement of issues that the petitioner or plaintiff intends to raise in a brief or at a hearing or trial." (Stats. 2010, ch. 496, § 7.)

brief, limited to the issues and causes of action in the first amended petition and complaint . . . or a notice of dismissal with prejudice."

COPP filed its opening brief on February 23, 2016. The brief was structured with four headings in its argument section that corresponded with the claims asserted in the petition: the project violated CEQA, the SHMA, the Brown Act, and the Planning and Zoning Law. Substantively, the brief asserted arguments not raised in the petition, including arguments that (1) the City violated the Dymally-Alatorre Bilingual Services Act (Gov. Code, § 7290 et seq.) (the Bilingual Services Act),[3] the Equal Protection Clause of the United States Constitution (U.S. Const., 14th Amend.), and Government Code section 11135,[4] and (2) the City approved of the project's tentative subdivision map without making certain findings pursuant to Government Code section 66474.[5]

On March 1, 2016, Cook Hill notified COPP's counsel that it would apply ex parte to dismiss the petition or, alternatively, to strike the portions of COPP's opening brief that asserted arguments outside the scope of the petition. Cook Hill argued that COPP

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[3] The Bilingual Services Act provides that a city "serving a substantial number of non-English-speaking people, shall employ a sufficient number of qualified bilingual persons in public contact positions or as interpreters to assist those in such positions, to ensure provision of information and services in the language of the non-English-speaking person." (Gov. Code, § 7293.)

[4] Government Code section 11135 prohibits unequal access to benefits and unlawful discrimination in connection with programs that are operated, administered, or funded by the State of California.

[5] Government Code section 66474 requires a city to deny a tentative subdivision map if the city makes any of the findings that are specified in the section.

violated the terms of the court's February 11 scheduling order by failing to limit the opening brief to the claims and issues in the operative pleading. The City joined in the application.

At the ex parte hearing on March 2, the court allowed COPP two days to file an opposition to the application, which COPP did.

On March 4, 2016, after a further hearing on the ex parte application, the court granted the request to strike the portions of the brief that Cook Hill had asked be stricken. The court explained that it would be "unfair to require briefing of issues which . . . exceeded the scope of the issues and/or causes of action in the first amended petition and complaint."

On March 25, 2016, Cook Hill and the City filed a joint opposition to the petition. COPP filed its reply on April 8, 2016.

The court held a hearing on the merits of the first amended petition on May 20, 2016, and denied the petition in a statement of decision filed three days later. The court concluded that the City had not violated the Brown Act and, if it did, the violation was not prejudicial. The court also concluded that the project was compatible with the City's general plan and that the City's actions did not violate the Planning and Zoning Law. The court further found that the petition was "procedurally deficient" because COPP failed to file a valid request for hearing pursuant to Public Resources Code section 21167.4, subdivision (a), and failed to serve the operative petition on the Attorney General as required by Public Resources Code section 21167.7.

The court entered judgment in accordance with its statement of decision on June 17, 2016, and COPP timely appealed.

DISCUSSION

I. The Order Striking Portions of COPP's Opening Brief.

COPP contends that the court erred in striking portions of its opening brief because: (1) the trial court did not have authority to do so; (2) the court should have given COPP more time to prepare its opposition papers; and (3) the court incorrectly determined that the stricken portions of the brief were not within the scope of the petition.

The petition in an administrative mandamus proceeding, like the complaint in an ordinary civil action, frames and limits the issues to be tried and apprises the respondent of the basis upon which the petitioner seeks relief. (Cf. *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211-212.) " 'The pleadings are supposed to define the issues to be tried' " (*Simmons v. Ware* (2013) 213 Cal.App.4th 1035, 1048), and the issues delimit the scope of the judgment (*Tokio Marine & Fire Ins. Corp. v. Western Pacific Roofing Corp.* (1999) 75 Cal.App.4th 110, 123).[6] It follows that a court may decline to hear or decide issues outside the scope of the pleadings and preclude extraneous issues from being argued. Indeed, as our Supreme Court has stated, expressly limiting the issues to be tried to those issues joined by the pleadings is not only permissible, but is "eminently a proper practice, and one which would serve greatly to

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[6] A party may, of course, introduce new issues into a case by filing an amended pleading. (Code Civ. Proc., §§ 472, 473.) After the defendant has filed an answer, a plaintiff must obtain leave of court to amend. (*Id.*, § 473) COPP did not seek leave to amend its petition in this case.

expedite the trial of causes." (*Pastene v. Pardini* (1902) 135 Cal. 431, 433.)

The Legislature incorporated this principle into CEQA by requiring the plaintiff, no later than 30 days after the filing of the record of proceedings, to "file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial." (Pub. Resources Code, § 21167.8, subd. (f).) According to a respected treatise, "[t]he obvious intent of this requirement is to provide a method of limiting the issues to be briefed and raised at the hearing." (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2017) § 23:81, p. 23-94.)[7] Under applicable local rules, the statement of issues is "used by the opposing party and the court in identifying the legal and factual contentions at trial," and "must be consistent with, and may not expand on, the scope of the pleadings." (Super. Ct. L.A. County, Local Rules, rule 3.232 (k).)

In light of the general principles limiting the issues at trial to those framed by the pleadings, the CEQA rule requiring the plaintiff to specify the issues prior to filing the opening brief—with which plaintiff did not comply—and the correlated local rule, the court's February 11, 2016 order directing COPP to limit its opening brief to the issues in its petition was appropriate and valid. Indeed, COPP does not challenge that order. Because the order limiting the issues in the case to those asserted in the petition was authorized and proper, the court had the authority to compel compliance with

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[7] Although the same treatise notes that "it is not uncommon for the parties in CEQA cases to stipulate that their briefs shall be served as the statement of issues," the parties in this case did not enter into such a stipulation. (Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 23:81, p. 23-94.)

the order (Code Civ. Proc., § 128, subd. (a)(4)), and its act of striking the portions of COPP's opening brief that argued points outside the issues raised in the pleadings was a reasonable means of doing so. (Cf. *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1595 ["[c]ourts have inherent power . . . to control the litigation before them and to adopt any suitable method of practice"].)

COPP contends that, even if the court had the authority to strike portions of its opening brief, it could not do so without providing more than the two days it was given to prepare opposition papers. It analogizes the court's decision to an order striking a pleading, which requires a hearing after at least 16 days notice. (Code Civ. Proc., §§ 435, subd. (a)(2), 1005, subd. (b).) We reject the analogy.

The court's act of striking portions of COPP's opening brief was not akin to striking a pleading or a portion thereof. Rather, the court's act was, in substance, a ruling that it would not consider or decide certain arguments because they were outside the scope of the pleadings and, therefore, the City and Cook Hill need not respond to them. Thus, a more apt analogy is where the court sustains an objection to a plaintiff's argument at trial asserting a theory not alleged in the complaint. (See *Leet v. Union Pac. R. R. Co.* (1944) 25 Cal.2d 605, 619 [a party "may not prove a case outside the scope of his pleading"].) In that situation, as in the instant case, the court is merely limiting the plaintiff to arguing the issues raised in the pleadings, and the plaintiff may be so constrained—be it by interrupting the party's argument at trial or by striking the arguments asserted in a pretrial brief—whenever that party exceeds that limit.

Svistunoff v. Svistunoff (1952) 108 Cal.App.2d 638, which COPP cites, is inapposite. In that case, the court held that an order setting aside a default was void because the hearing on the motion

to set aside the default was heard on fewer days than a statute mandated. (*Id.* at p. 641.) Here, by contrast, no statute mandates notice to a party before a court decides that an argument asserted by the party is not within the scope of the pleadings.

We now turn to the question whether the court erred in determining that the portions of COPP's brief that the court struck were outside the scope of the pleadings. We review the court's ruling for abuse of discretion, which must appear affirmatively from the record. (*Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376, 387; *In re Marriage of Eustice* (2015) 242 Cal.App.4th 1291, 1309.)

The first amended petition alleged violations of CEQA based on allegations that: (1) the EIR failed "to provide adequate identification and analysis of the significant adverse environmental impacts of the Project"; (2) the analysis of the impacts specified in the EIR was not supported by substantial evidence; and (3) the City failed to prepare a supplemental EIR in light of new information regarding environmental impacts, mitigation measures, and project alternatives. Although COPP's opening brief includes a heading asserting that the project violated CEQA, the substantive arguments under that heading that the court struck are unrelated to grounds asserted in the petition.

In its opening brief, COPP asserts, for example, that the EIR "fails as an information document because . . . it was not provided in both English and Spanish despite the large population of Spanish-speakers" living in the area. That failure, COPP argued, violated the Bilingual Services Act, the Equal Protection Clause, Government Code section 11135, and CEQA's requirement that the EIR be written in "plain language." The court did not abuse its discretion in concluding that these arguments are not within the scope of the operative pleading, which provided no indication that COPP had raised or would assert a claim based on the City's failure

to provide Spanish language versions of the EIR or related documents and notices. Accordingly, the court did not err in striking the portions of the brief asserting those new arguments.

COPP argues that these language-based claims are within the scope of the operative petition because the claims asserted in the petition and the arguments raised in its opening brief are all "premised on" the final EIR. The argument, which is neither well-developed nor supported by citation to authority, appears to be that the arguments in the brief are within the scope of the issues raised in the petition because the arguments and claims in the petition all arise from the same EIR. The preparation and certification of an EIR, however, implicates a broad and varied array of statutory duties, the breach of which may give rise to causes of action that share few or no common legal issues. This case illustrates this point: The question whether the City was required to circulate a Spanish-language EIR pursuant to the Bilingual Services Act has nothing in common with the question raised in the petition whether the EIR failed to identify or analyze adequately the significant environmental impacts of the project. Nor could the CEQA claims alleged in the petition have apprised the City or Cook Hill that COPP would be seeking relief under the Bilingual Services Act, the Equal Protection Clause, or Government Code section 11135.

COPP relies on a statement Cook Hill's counsel made regarding the possibility of COPP amending the petition to add the new theories. According to COPP, its counsel believed that an amendment was unnecessary after Cook Hill's counsel informed him that, regarding the "new legal theories, . . . all such issues are framed by the [final EIR]." COPP contends that its counsel

"reasonably relied on that representation and concluded that an amendment was not necessary."[8]

The statement upon which COPP relies was made during an email exchange between COPP's and Cook Hill's attorneys and must be viewed in its context. In early February 2016, counsel for COPP informed counsel for the City and Cook Hill in an email that COPP would seek leave to amend the petition to add allegations regarding violations of the Bilingual Services Act, the Equal Protection Clause, Government Code section 11135, the California Building Code, and Los Angeles County regulations. He added: "[I]f all parties do not object to us using these theories in our opening brief, we will forgo the amendment process." The next day, Cook Hill's attorney responded, stating: "We are unable to stipulate to the amendment because of the significant (additional) delay and further disruption it would cause."

On February 6, 2016, counsel for COPP then emailed Cook Hill's counsel, stating that "if all goes well with my parent [who had been ill], we will get our moving papers filed on [February 11, 2016]." He indicated that he had only recently learned of the new issues, and added that "we are only talking about different legal theories. The evidence hasn't changed."

Cook Hill's counsel responded by expressing concerns about what he perceived as COPP's dilatory conduct as to seeking an amendment, and concluded: "Enough is enough." Six minutes later, Cook Hill's counsel sent a further email with the language COPP relies on here: "As for your new legal theories, . . . all such issues are framed by the [final EIR], which you presumably

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[8] Although COPP's states that its counsel "reasonably relied" on the quoted statement, it does not appear from its brief on appeal that it is asserting an estoppel theory based on the statement.

reviewed as soon as you began work on the case." The conversation then continued:

COPP's counsel: "In that case, . . . we can forego the amendment. Please send a stip[ulation] to [COPP's co-counsel]."

Cook Hill's counsel: "OK, now that it's understood that you won't be briefing your new legal theories. Thank you."

COPP's counsel: "That is not understood. We will brief without the amendment since you think everything is already covered by the EIR."

Cook Hill's counsel: "The issue is not what's covered in the [final EIR], but what's covered by your complaint. The [final EIR] covers a great deal that's not covered by your complaint. By your own admission, your new legal theories are not covered by your complaint."

The record does not reflect any further discussion on this subject.

When viewed in isolation, the meaning of the statement COPP relies upon is arguably unclear. When viewed in its context and particularly in light of the exchange that followed it, it is clear that Cook Hill's counsel did not concede or represent that the "new legal theories" were "covered by," or within the scope of, COPP's petition.

In addition to the portions of COPP's brief concerning the absence of Spanish-language materials, the court struck portions of COPP's brief in which COPP argued that the EIR incorrectly used the wrong "baseline" date for analyzing the impact of the project, and that the approval of the project violated the SHMA, the California Building Code, and the Los Angeles County Building Code by relying on outdated and inadequate geotechnical reports. COPP challenges the court's striking of these points by arguing that these arguments "relied on the Final EIR," and are "encompassed by and based on the EIR." COPP, however, provides no citations to

authority and no meaningful attempt to connect the arguments made in the stricken portions of the brief to the claims asserted in the petition. Accordingly, we may reject them without further discussion. (See *Spates v. Dameron Hospital Assn.* (2003) 114 Cal.App.4th 208, 220 [arguments raised without citation to authority or argument require no discussion by the reviewing court]; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 [same].)

II. The Brown Act

COPP contends that the City violated the Brown Act by holding a hearing on May 27, 2015 at a restaurant, when the City's website stated that a regular session of the city council would be held on that date at the Montebello City Hall. Because COPP has failed to establish that any violation of the Brown Act was prejudicial, we reject this argument.

A.

The following additional facts are relevant.

The City scheduled a public hearing regarding the project to be held at 6:30 p.m. on May 27, 2015 at the Quiet Cannon restaurant in Montebello. The City posted notices of the hearing at the Montebello City Hall, outside the council room chambers, and at the Quiet Cannon. The notice was also posted on the City's Internet website and published in local newspapers.

During the relevant time, the City's website included a "Calendars" page. At some point prior to the May 27 hearing, the Calendars page stated that a city council meeting would take place at 6:30 p.m. on May 27, 2015 at the Montebello City Hall. The website did not refer to the project or identify any subject matter of the meeting. Nor did it mention the Quiet Cannon restaurant.

One person who planned to attend the hearing went to the city hall at the time it was scheduled on May 27 and, finding

the building "locked and dark," returned home. Meanwhile, at the Quiet Cannon, the city council heard from members of the public regarding the project, then adjourned the meeting without taking any action affecting the project, and continued the hearing to June 10, 2015.

At the June 10 hearing, the City's counsel acknowledged receiving a complaint about the misleading information on the City's website about the location of the May 27 meeting. Counsel noted that the correct location had been identified in all postings, publications, and mailings regarding the meeting, and that "[i]n an abundance of caution," the City, on June 6, 2015, changed the website "to make it absolutely clear" that the June 10 meeting would be held at the Quiet Cannon restaurant.

Among the speakers at the June 10, 2015 meeting was the person who went to the city hall on May 27 and returned home without attending the meeting at the Quiet Cannon.

B.

Under the Brown Act, a local agency must, at least 72 hours prior to a regular meeting of the agency, "post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. . . . The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one." (Gov. Code, § 54954.2, subd. (a)(1).) "A major objective of the Brown Act is to facilitate public participation in all phases of local government decision[-]making and to curb misuse of democratic process by secret legislation by public bodies." (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555 (*Cohan*).)

A city's action made in violation of the agenda-posting provision of the Brown Act "shall not be determined to be null

and void if" it "was in substantial compliance with" the statute. (Gov. Code, § 54960.1, subd. (d)(1); see *North Pacifica LLC v. California Coastal Com.* (2008) 166 Cal.App.4th 1416, 1431-1432.) In addition, an appellant challenging an action taken in violation of the Brown Act "must show prejudice." (*Cohan*, *supra*, 30 Cal.App.4th at p. 556; accord, *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1410.)

COPP does not dispute that the paper copies of the notice of the May 27 meeting were posted and published at least 72 hours before the meeting, or that the postings accurately identified the Quiet Cannon restaurant as the location of the meeting. COPP contends, however, that the statement on the City's website was inaccurate, and thereby violated the Brown Act, by stating that the city council meeting would take place at the city hall.

We need not decide whether the misleading information on the City's website violated the Brown Act or whether the City had substantially complied with the agenda-posting requirement because COPP has failed to establish that any violation was prejudicial. On the issue of prejudice, the only point COPP asserts is that "at least one member of the public"—the person who went to the city hall on May 27—"was prevented from presenting his or her reasoning and views to the City Council." Although the phrase "at least one" suggests there may have been more than one member of the public that had been misled, COPP offered evidence of only one. Although that person did not present her views to the city council on May 27, she attended the hearing on June 10 and expressed her views at that time. There is nothing in the record to suggest that the city council would have taken any different action regarding the project if it had heard her views at the earlier meeting.

III. Planning and Zoning Law Issues

COPP contends that the City's approval of the project violates the Planning and Zoning Law because the project is inconsistent with the City's general plan. (See Gov. Code, §§ 66473.5, 65860; see also Cal. Code Regs., tit. 14, § 15125, subd. (d).) COPP refers to the general plan's goals of: promoting the "availability of safe, sanitary and decent housing for all segments of the community," and creating "availability of housing to meet the special needs of groups including but not limited to the elderly and the handicapped." COPP contends that the project is inconsistent with these goals because the project does not address the needs of low-income, elderly, or "handicapped" members of the community. We agree with the trial court that the City reasonably concluded that the project did address those needs and is consistent with the general plan.

Before a local agency can approve a tentative subdivision map, it must find that the project "is consistent with [its] general plan." (Gov. Code, § 66473.5.) Zoning ordinances must also be consistent with the general plan. (*Id.*, § 65860.) A project is "consistent" with the general plan if it "is compatible with the objectives, policies, general land uses, and programs specified in" the plan. (Gov. Code, §§ 66473.5, 65860; see *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 99.) Consistency, in this context, "does not require perfect conformity between a proposed project and the applicable general plan," rather, the project need only be " ' "in agreement or harmony with" the applicable plan. [Citations.]' [Citation.]" (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817; see also *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 678 [project does not need to be "in rigid conformity with every detail" of the general plan].)

A city's determination that a project is consistent with its general plan "carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion." (*Friends of Lagoon Valley v. City of Vacaville*, *supra*, 154 Cal.App.4th at p. 816.) Our "review is highly deferential" because we recognize " 'that "the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. [Citations.] Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes. [Citations.] A reviewing court's role 'is simply to decide whether the city officials considered the applicable policies and the extent to which the proposed project conforms with those policies.' " ' " (*Ibid.*)

Here, the administrative record shows that the City evaluated the consistency of the project as to each goal of the general plan. Regarding the general plan's goal of providing for the availability of safe, sanitary, and decent housing for all segments, the final EIR stated that the project "includes detached single-family residential dwellings, and attached single-family dwellings consisting of duplexes, triplexes, town homes, and stacked flat condominiums," and that it "does not preclude the City's ability to provide sufficient affordable housing elsewhere in the City. Furthermore, the proposed project is consistent with the City's most recently adopted ["2014-2021 Housing Element" (Housing Element)], which identifies long term housing goals and shorter-term policies to address identified housing needs, including the City's [regional housing needs assessment]." The City concluded that the project was consistent with the stated goal.

Regarding the general plan's goal that concerns the availability of housing to meet the special needs of the elderly and handicapped, the final EIR provides that the project "does not preclude the City's ability to provide sufficient affordable housing elsewhere in the City," and that "the City has special programs in place that assist the elderly with affordable housing and housing maintenance. Disabled and handicapped persons are also assisted by the City with special programs aimed at the removal of physical barriers to housing." The City further found that the project is consistent with the City's Housing Element, which addresses "housing opportunities for all income groups, and equal housing opportunities[] on a City-wide basis, rather than necessarily on each development site." Again, the City concluded that the project is consistent with this goal.

The fact that the project itself will not necessarily provide "housing for all segments of the community" or provide for the "special needs of groups including . . . the elderly and handicapped" does not render it inconsistent with these general plan's goals. "Indeed," as one court stated, "it is beyond cavil that no project could completely satisfy every policy stated in the [general plan], and that state law does not impose such a requirement." (*Sequoyah Hills Homowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 719.) " 'It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan.' " (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1563.) The City's findings that the project is so compatible are supported by substantial evidence and its conclusions do not constitute an abuse of discretion.

IV. Failure to Comply with Procedural Prerequisites to Relief under CEQA

The City and Cook Hill argue that COPP's CEQA claims should be dismissed because COPP failed to satisfy certain statutory prerequisites for relief under CEQA. Specifically, COPP failed to request a hearing on its petition within 90 days from the date the petition was filed (see Pub. Resources Code, § 21167.4), and failed to serve a copy of the petition on the Attorney General (see *id.*, § 21167.7). The trial court agreed with the City and Cook Hill. Because the court did not err in striking the portions of COPP's opening brief addressing its CEQA claims and COPP has not asserted any other CEQA claim on appeal, the issues concerning COPP's compliance with procedural requirements for relief under CEQA are moot. We do not, therefore, address those issues.

V. Issues Raised by Amicus Curiae

Amicus curiae Linda Strong asserts that the City was required under the SHMA to conduct an independent peer geotechnical review regarding the project, but failed to do so. She further contends that the EIR did not refer to or include certain information and documents pertaining to seismicity issues concerning the project.

Strong refers to a report dated April 23, 2013 from an engineering firm, AECOM, to the City's Director of Community Development. In the report, AECOM provides its "peer review" comments on certain reports prepared by another engineering firm, NMG Geotechnical, Inc. (NMG). AECOM states that the NMG reports did not acknowledge or incorporate a particular recommendation in a report by a third engineering firm, Diaz Yourman & Associates (DYA). Strong states that the AECOM

report and the DYA report should have been, but were not, included in the EIR.

There are, as the City points out, procedural and evidentiary problems with Strong's arguments. She relies on documents that were not presented to the trial court and are not part of the record on appeal. She has not asked that we take additional evidence on appeal (Code Civ. Proc., § 909), or requested that we take judicial notice of the documents (Evid. Code, §§ 450-451, 459). Moreover, Strong's argument that the EIR improperly omitted the particular documents was not asserted in the trial court proceeding or by appellant on appeal. (See *Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1 [arguments not raised in the trial court cannot ordinarily be asserted on appeal]; *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 502 [appellate court does not ordinarily consider issues raised by amicus that were not raised by appellant].) Because of these omissions, Strong's arguments are not reviewable on appeal.

Even if we considered the documents Strong has presented, she has not established that her argument has merit. She relies on Public Resources Code section 2697, subdivision (a) and section 3724, subdivision (c) of the regulations promulgated under the SHMA. The statute provides that "[c]ities and counties shall require, prior to the approval of a project located in a seismic hazard zone, a geotechnical report defining and delineating any seismic hazard." (Pub. Resources Code, § 2697, subd. (a).) The regulation Strong relies on provides that prior to approval of a project within a seismic hazard zone, a registered civil engineer or certified engineering geologist must evaluate "the nature and severity of the seismic hazards" at the project site and propose "appropriate mitigation measures." (Cal. Code Regs., tit. 14, § 3724, subds. (a) & (b).) The report must fulfill certain criteria, including providing "[r]ecommendations for appropriate mitigation

measures." (*Id.*, § 3724, subd. (b)(4).) In addition, another registered civil engineer or certified engineering geologist must, on behalf of a city, "independently review" the report to determine that it satisfies the specified criteria and "to determine the adequacy of the hazard evaluation and proposed mitigation measures." (*Id.*, § 3724, subd. (c).)

The documents Strong relies on as well as additional documents included in the EIR and in our record, indicate that the engineering reports required by the cited statute and regulation were prepared and received by the City prior to the approval of the project. The fact that one engineering firm observed that a report written by a second firm did not incorporate the recommendation of a third firm does not indicate a violation of the statute or regulation; nor does it preclude the City from approving the project.

To the extent that Strong is asserting any other grounds for reversal, she fails to support the assertions with cogent arguments, citations to the record, or pertinent authority. We therefore decline to address them. (See *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956; *McComber v. Wells* (1999) 72 Cal.App.4th 512, 523.)

DISPOSITION

The judgment is affirmed. Respondents City of Montebello and Cook Hill Properties, LLC, are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.