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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

LOS ANGELES GENERAL PLAN CONSISTENCY COALITION, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents, NAGI GARABET, Real Party in Interest and Respondent.	B291414 (Los Angeles County Super. Ct. No. BS161887)

APPEAL from a judgment of the Superior Court of Los Angeles, Mary H. Strobel, Judge. Affirmed.

Channel Law Group and Jamie T. Hall for Plaintiff and Appellant.

Best Best & Krieger and Amy Hoyt for Defendants and Respondents City of Los Angeles and Los Angeles City Council.

Shapero & Shapero and Steven J. Shapero for Real Party in Interest and Respondent Nagi Garabet.

Plaintiff and appellant Los Angeles General Plan Consistency Coalition (Coalition) challenges defendant and respondent City of Los Angeles's (City's) approval of real party in interest and respondent Nagi Garabet's applications to develop five single family homes on five contiguous lots in the Mount Washington neighborhood.[1] At bottom, Coalition complains that City's decision violates the state's planning and zoning law because the project's lot sizes and street frontages are inconsistent with City's General Plan and zoning ordinances, and that City failed properly to analyze the project's environmental effects under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The trial court conducted a bench trial and rejected all of Coalition's claims for writ, declaratory, and injunctive relief.

Although Coalition's arguments are multilayered, as detailed below, they fail for two basic reasons. First, they are procedurally deficient. In its appellate briefing, Coalition had the obligation to set forth the legal and factual bases underlying each claim of error that it had properly preserved below. Given the complexity of the subject matter and the voluminous appellate record, this obligation was of paramount importance to

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[1] This opinion refers to the City, City Council, and the real party in interest collectively as "respondents."

Coalition's appeal. Coalition fails to discharge this obligation because, among other things, it (a) raises certain arguments for the first time in its reply brief; (b) asserts arguments that it failed sufficiently to develop below; and (c) attempts to advance claims of error that are not clearly and coherently presented in its appellate briefing. Second, as detailed below, Coalition's remaining arguments are not well-founded on the merits.

Accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[2]

1. *The General Plan, the Specific Plan, and the Project*

City's "fundamental policy document" is called the "General Plan." The General Plan consists of: a Framework Element, which applies throughout the city; several other city-wide elements; and 35 community plans. The Framework Element "provides a comprehensive strategy for accommodating long-term growth." The Northeast Los Angeles Community Plan (NECP), which was adopted in 1979 and updated in 1992 and 1999, is the community plan that governs the Mount Washington neighborhood. Among other things, the NECP provides land use designations for property within its jurisdiction. City also has "a number of adopted specific plans which set detailed development regulations for local areas and include various types of regulatory limitations." The Mount Washington-Glassell Park Specific Plan (Specific Plan) governs the Mount Washington neighborhood.

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[2] Our procedural and factual background is largely taken from undisputed portions of the trial court's final ruling. (See *Baxter v. State Teachers' Retirement System* (2017) 18 Cal.App.5th 340, 349, fn. 2 [utilizing the summary of facts provided in the trial court's ruling].)

On June 27, 2013, real party in interest Nagi Garabet submitted applications to develop five single family houses on five contiguous lots on North Ganymede Drive in the Mount Washington neighborhood (the Project). The five lots were created with the filing of a tract map in 1924.

The parties do not dispute that the lots that are the subject of this appeal are in an area that the current version of the NECP designates as "very low residential," or that the 1979 version of the NECP included the same land use designation for the area. That land use designation has several corresponding zones, including RE11. In January 1990, the area in which the lots are located was downzoned from R1 to RE11.[3] Los Angeles Municipal Code[4] section 12.07.01.C.4 provides that in order to construct a single-family residence on a lot in an RE11 zone, the lot must have a minimum size of 11,000 square feet and a minimum width (i.e., street frontage) of 70 feet. The parties do not dispute that this minimum square footage requirement permits a landowner to build no more than four single family residences per acre. Additionally, Table I of the NECP acknowledges that the number of dwelling units in a very low

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[3] "Downzoning is a zoning change that increases the restrictions on the development and use of property. Such a change typically decreases the intensity or amount of use allowable on the affected parcel. . . . One common method [of downzoning] is a rezoning to increase the minimum lot size of each dwelling." (1 Delaney et al., Handling the Land Use Case: Land Use Law, Practice & Forms (3d ed. 2017), § 20:1, fn. omitted.)

[4] All undesignated section references are to the Los Angeles Municipal Code.

residential land use designation ranges from one to four dwelling units per net acre.

The approved Project specifications would allow each residence to have a lot size below 11,000 square feet and a street frontage below 70 feet. If the five houses are built in accordance with the Project specifications that were approved by City, then the density of the development would be approximately 7 dwelling units per acre.

2. *City's CEQA Review, Project Approvals, and the Appeals Relating Thereto*

City reviewed the Project under CEQA and considered the applications under section 11.5.7 for Project Permit Compliance. After City published an initial Mitigated Negative Declaration (MND) for the Project on May 15, 2014, it received comments from the Mount Washington Homeowners Alliance (MWHA) regarding alleged deficiencies in the MND.[5] City staff considered the comments and published a revised MND on September 19, 2014. The revised MND added certain mitigation measures with respect to fire safety, grading, and haul route restrictions.

On October 29, 2014, City's director of planning issued determination letters for four of the five lots, thereby adopting the MND and approving the Project Permit Compliance review pursuant to section 11.5.7. On March 13, 2015, the director of

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[5] Coalition's verified petition for writ of mandate and complaint for declaratory relief (petition) claimed that MWHA was one of Coalition's members. The trial court, however, noted in its ruling that MWHA was unaffiliated with Coalition. This ambiguity is immaterial to our analysis.

planning issued a determination letter for the remaining lot that adopted the MND and approved the Project Permit Compliance Review. The director found that each of the five proposed single family dwellings substantially complied with all applicable Specific Plan provisions.

MWHA appealed the director's determinations. On June 8, 2015, the East Los Angeles Area Planning Commission (Planning Commission) denied the appeal and sustained the director's determinations. Planning Commission's decisions as to each lot rested in part on the applicability of two zoning exceptions: (1) section 12.22.C.18, and (2) section 12.23.E (collectively, Zoning Exceptions).

The current version of section 12.22.C.18, which became effective on January 31, 1970, provides: "Lot Area in Hillside Subdivisions—On land located within an RA or RE Zone and also within the 'H' Hillside or mountainous area, there may be lots having less than the minimum lot area specified within said zones and there may be a single-family dwelling on each lot if the lot is shown with a separate letter or lot number on a recorded Subdivision Tract Map or Parcel Map." (Boldface omitted.)

The current version of section 12.23.E, which became effective on April 19, 1969, provides: "Use of Nonconforming Lot. A Nonconforming lot may be occupied by any use permitted in the zone in which it is located except for those uses which require a width, area or other lot dimension other than the minimum specified in the area requirements of said zone. However, no more than two dwelling units shall be permitted on a lot with an area less than 4,000 square feet, except on lots located in an RW Zone." (Boldface omitted.) Section 12.03 defines a nonconforming lot as "[a] lot whose width, area or other

dimensions does not [*sic*] conform to the regulations of this chapter and which lawfully existed at the time the regulations with which it does not conform became effective."[6]

MWHA appealed Planning Commission's determinations. On March 29, 2016, the Los Angeles City Council adopted the Planning and Land Use Management Committee's recommendation to deny the appeal.

3. *The Trial Court Proceedings*

On April 29, 2016, Coalition filed the petition against City, the Los Angeles City Council, and real party in interest Nagi Garabet.[7] Coalition raised two causes of action in the petition: (1) violation of CEQA; and (2) violation of "the Planning and Zoning Law," Government Code sections 65000–66499.58. Among other things, Coalition's prayer for relief sought: (1) a peremptory writ of mandate setting aside the adoption of the MND, the planning director's determination of Project Permit Compliance with the Mount Washington-Glassell Park Specific Plan, and any other "Project approvals," and requiring the preparation of an Environmental Impact Report (EIR) for the Project; (2) an injunction requiring respondents and real parties in interest to refrain from taking any action to implement the Project that requires approval by City until the approval of the Project and CEQA documentation for the Project are brought into compliance with the Planning and Zoning Law and CEQA,

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[6] On September 4, 2019, we granted respondents' request for judicial notice of, inter alia, sections 12.00, 12.02, 12.03, 12.04, and 12.21.

[7] Although the petition named "Gonzalez Law Group, APC" as a party, that entity did not appear at trial.

respectively; and (3) a judicial declaration that City may not use the exceptions in sections 12.22.C.18 and 12.23.E to approve projects that do not conform to the minimum lot sizes required by the General Plan.[8]

The parties thereafter submitted extensive briefing, and the trial court conducted a two-day bench trial. The trial court characterized Coalition's claims as follows: (1) Coalition "contends that City violated the Planning and Zoning Law by approving the Project with street frontages and lot sizes smaller than allowed by the General Plan"; (2) "[i]n its CEQA claim, [Coalition] contends that City should have prepared an [EIR] and not [an MND]"; and (3) Coalition "seeks a judicial declaration that [the] zoning exceptions relied on by City in approving the Project conflict with the General Plan and are therefore void." On May 21, 2018, the trial court denied the entirety of the petition and entered a final judgment in favor of respondents on all of the petition's claims. The trial court explained its decision in a detailed 32-page ruling.

With regard to Coalition's Planning and Zoning Law cause of action, the trial court concluded, inter alia, that in approving the Project, City was not obligated to make an express finding that the Project is consistent with the General Plan. The court considered Coalition's arguments regarding General Plan consistency, however, because "arguably the project approval must nonetheless be consistent with the General Plan." The trial court found that the Zoning Exceptions were consistent with the General Plan in part because "the Framework Element

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[8] In its trial briefing, Coalition later clarified that it sought "a judicial declaration that the Zoning Exceptions cannot be used in RE-11, RE-20, and RE-40 zones."

(adopted after the exceptions contained in the Zoning Ordinance) contemplated the continued use of 'exceptions' to relieve hardships from strict adherence to the zoning regulations." It also concluded that Coalition, "who has the burden, has not clearly identified any language, including from a community plan map, that shows that the *current* 1999 Community Plan includes a density limit of 1 to 3 dwelling units per acre, or similar density limit, for the 'very low' land use designation." In addition, the trial court rejected Coalition's claim that section 12.22.C.18 "only applies to certain lots in Hillside Subdivisions created after 1960" because the "plain language" of the provision "does not support [Coalition's] argument."

The trial court also denied Coalition's request for an "injunction requiring City to amend LAMC section 11.5.7 to make it consistent with the general plan" on the ground the request is time-barred. It declined to issue "a declaration that the zoning exceptions cannot be used in the RE11, RE20, and RE40 zones" because "[t]he court cannot predict how the City would balance any diverse policies in the General Plan when determining whether application of the zone exception ordinances should be applied to any proposed development in these zones city-wide."

In connection with the CEQA cause of action, the trial court rejected Coalition's argument that "the initial study incorrectly concluded that the Project conforms to the Community Plan" because Coalition had not shown an inconsistency with the NECP. In discussing the grading required to complete the Project, the lower court acknowledged Coalition had shown that "the Project would require up to 7,000 cubic yards of soil export," and not the 3,154 cubic yards of soil provided in the MND. Nonetheless, the trial court found that CEQA did not require City

to prepare an EIR because Coalition had not shown that "the difference in the amount of soil exported would require any different mitigation measures" that were not already included in the MND.[9]

Coalition filed a notice of appeal on July 18, 2018.

STANDARDS OF REVIEW

A. CEQA

"CEQA and [its accompanying Guidelines in the Code of Regulations] 'have established a three-tiered process to ensure that public agencies inform their decisions with environmental considerations.' [Citation.] A public agency must 'conduct a preliminary review in order to determine whether CEQA applies to a proposed activity.' [Citation.] At this stage, the agency must determine whether any of CEQA's statutory exemptions apply." (See *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 774, fn. 4, 776 (*Parker*).)

"If the project is not exempt from CEQA, the next step is to conduct an initial study. [Citation.] The initial study determines whether there is ' "substantial evidence that the project may have a significant effect on the environment." ' [Citation.] . . . If there is such evidence, ' "but revisions in the project plans 'would avoid the effects or mitigate the effects to a point where clearly no

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[9] The trial court noted that the MND's mitigation measures include "compliance with all conditions in the Department of Building and Safety's Geology and Soils Report Approval Letters; Department approval of a construction staging and parking plan; development of an emergency response plan with the Fire Department; restrictions on construction and demolition hours; and a haul route."

significant effect on the environment would occur' and there is no substantial evidence that the project as revised may have a significant effect on the environment, [an MND] may be used." ' [Citation.] [¶] If [an MND is not] appropriate, the final step is to prepare an EIR. [Citation.] Given that 'the EIR is the "heart of CEQA," ' doubts about whether an EIR is required are resolved in favor of preparing one." (*Parker*, *supra*, 222 Cal.App.4th at pp. 776–777.)

"An agency's decision under CEQA is reviewed for abuse of discretion. [Citations.] ' "Abuse of discretion is shown if (1) the agency has not proceeded in a manner required by law, or (2) the determination is not supported by substantial evidence." ' [Citation.] Review is de novo in the sense that '[t]he appellate court reviews the agency's action, not the trial court's decision . . . .' " (*Parker*, *supra*, 222 Cal.App.4th at p. 777.) To determine whether a public agency must prepare an EIR, we assess whether " 'substantial evidence supports a fair argument that a proposed project "may have a significant effect on the environment." ' " (See *ibid.*) "When determining whether sufficient evidence exists to support a fair argument, 'deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.' " (*Id.* at pp. 777–778.) The party asserting a CEQA claim bears "the burden of proof 'to demonstrate by citation to the record the existence of substantial evidence supporting a fair argument of significant environmental impact.' " (See *id.* at p. 778.)

B. General Plan Consistency

"A project is consistent with the general plan ' "if, considering all its aspects, it will further the objectives and

policies of the general plan and not obstruct their attainment." ' [Citation.] A given project need not be in perfect conformity with each and every general plan policy. [Citation.] To be consistent, a subdivision development must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan." (*Families Unafraid to Uphold Rural etc. v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 (*Families Unafraid*).) A project cannot be consistent with the general plan if it violates a "fundamental, mandatory and specific land use policy." (See *id.* at pp. 1341–1342.) A local government's determination that a project is consistent with a general plan is ordinarily reviewed for abuse of discretion: "The [local government's] determination that [a project] is consistent with the . . . General Plan carries a strong presumption of regularity. [Citation.] This determination can be overturned only if the [local government] abused its discretion—that is, did not proceed legally, or if the determination is not supported by findings, or if the findings are not supported by substantial evidence. [Citation.] As for this substantial evidence prong, it has been said that a determination of general plan consistency will be reversed only if, based on the evidence before the local governing body, '. . . a reasonable person could not have reached the same conclusion.' "[10] (See *id.* at p. 1338.)

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[10] Coalition claims that the abuse-of-discretion standard is inapplicable because the City did not make any General Plan consistency findings during the administrative proceedings. We need not resolve this issue because, for the reasons discussed in this opinion, Coalition's claims of General Plan inconsistency would fail under the de novo standard of review as well.

C. Presumption of Correctness of the Trial Court's Judgment

"On appeal, a judgment of the trial court is presumed to be correct. [Citation.] Accordingly, if a judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning. [Citations.] All intendments and presumptions are made to support the judgment on matters as to which the record is silent." (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*).) The presumption of correctness imposes a burden on appellant to " ' "affirmatively" ' " show that the lower court "committed reversible error." (See *Yu v. University of La Verne* (2011) 196 Cal.App.4th 779, 787 (*Yu*); see also 4 Cal.Jur.3d (2019) Appellate Review, § 213, pp. 295–296, fn. omitted ["[T]he appellant bears the burden of overcoming the presumption of correctness by an affirmative showing of reversible error"].) The appellant must discharge this burden regardless of the applicable standard of review. (See *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6.)

DISCUSSION

Coalition argues the trial court erred in granting judgment in respondents' favor on the CEQA and Planning/Zoning Law causes of action, and in refusing to grant a peremptory writ of mandate and declaratory and injunctive relief. Regarding the CEQA claim specifically, Coalition contends City's initial study erroneously concluded that the Project conforms to the NECP and the RE11 zoning restrictions.

With respect to its cause of action regarding consistency with the General Plan, Coalition argues that the director of

planning should not have issued determination letters approving Project Permit Compliance review because: (1) City failed to make findings regarding whether the Project was consistent with the NECP's very low residential land use designation for the Ganymede Lots; (2) the Project was not consistent with that designation; and (3) the director could not rely on the two Zoning Exceptions to override the land use designation. Coalition seeks declaratory and injunctive relief because "City persists in its contention that it may properly use a subordinate Zoning Exception provision to override" the land use designation. We reject these arguments for the reasons discussed below.

We also reject certain new arguments that Coalition did not properly preserve during the trial court proceedings. Further, we observe that Coalition's briefing not infrequently meanders for several pages referencing seeming irrelevancies without tying-in those references to an argument. For example, the introduction to Coalition's opening brief courses 11 pages and discusses numerous matters that are of minimal (if any) relevance to the instant case (e.g., "[i]t took more than 10 years for the parties" to a different lawsuit to "agree that the City had sufficiently addressed its consistency problem to be relieved of trial court supervision"). We have no obligation to scour through such unvarnished briefing to decipher whether it includes any potential other challenges to the trial court's judgment.[11] (See *Cahill*, *supra*, 194 Cal.App.4th at p. 956 [" 'Appellate briefs must provide argument and legal authority for the positions

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[11] We also note that Coalition's briefing repeatedly violates California Rules of Court, rule 8.204(a)(1)(B) by failing to "[s]tate each point under a separate heading or subheading summarizing the point."

taken.' . . . . 'We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived' "].)

I. Coalition Has Not Shown that the Project Was Inconsistent with the Land Use Designation

Coalition contends City violated CEQA by checking a box marked "No Impact" on the initial study, thereby indicating that the Project did not " 'conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.' " In particular, Coalition contends that the NECP's very low residential land use designation and the RE11 zoning are "CEQA mitigation measures . . . to avoid or reduce environmental impacts." It argues that the inconsistency between the land use designation and the RE11 zoning on the one hand, and the Project on the other, "results in adverse environmental effects that must be adequately analyzed under CEQA, either in a[n MND] or an [EIR]."

As noted above, City relied upon sections 12.22.C.18 and 12.23.E to reject MWHA's challenges to the Project. The trial court's ruling upholding that determination relies on the premise that if these two Zoning Exceptions are consistent with the General Plan and apply to the lots at issue, then the Project did not need to comply with the density ranges included in the NECP or the lot size or street frontage requirements required in RE11 zones.

More specifically, the trial court's resolution of Coalition's Planning and Zoning Law cause of action hinged on the validity of the two Zoning Exceptions and whether they apply to the lots at issue here. Coalition does not explicitly contest this premise.[12]

Rather, Coalition argues: Section 12.22.C.18 is inapplicable to the Project; City "implicitly overruled section 12.23.E" in 1979 "when it adopted community plan maps across the City down planning sensitive hillside areas to lower densities"; and "no zoning ordinance can be used to obstruct fundamental, mandatory and specific general plan density limits expressed in Land Use Designations." For the reasons set forth below, we disagree.

A. Applicability of Section 12.22.C.18

Coalition asserts section 12.22.C.18's legislative history demonstrates that it applies only to lot subdivisions created on or after June 15, 1960, and only insofar as each lot is at least 8,800 square feet in size. In particular, Coalition contends "[section] 12.22.C.18 was enacted in the same [June 15, 1960] ordinance as LAMC [section] 17.05H.1," and section 17.05.H.1 allows an owner of a lot in a Hillside subdivision to reduce the lot size to 8,800

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[12] Coalition contends for the first time in its reply that even if section 12.22.C.18 applies to the Project, that provision does not exempt Ganymede lots from the required minimum lot width of 70 feet. Because this challenge was first raised in Coalition's reply brief, we disregard it. (*Regency Outdoor Advertising, Inc. v. Carolina Lanes, Inc.* (1995) 31 Cal.App.4th 1323, 1326, 1333 (*Regency*) ["To the extent [appellant] raised new arguments either in its reply papers below or in its reply brief on appeal, we do not reach them"].)

square feet. Coalition points out that each Project lot was created in 1924 and is smaller than 8,800 square feet.

The trial court found that the plain language of section 12.22.C.18 disposes of Coalition's argument. By its terms, the provision applies to a lot that has a "separate letter or lot number on a recorded Subdivision Tract Map or Parcel Map" and is "within an RA or RE Zone and . . . the 'H' Hillside or mountainous area . . . ." The text does not limit the scope of this exception to lots that (1) were created on or after June 15, 1960 and (2) are at least 8,800 square feet in size. Thus, the trial court appropriately concluded, "[b]ecause the language is clear, there is no need to look to legislative history." (See *Red Mountain, LLC v. Fallbrook Public Utility Dist.* (2006) 143 Cal.App.4th 333, 347 ["Words of a statute are to be given a plain and commonsense meaning. When they are clear and unambiguous, there is no need to resort to other indicia of legislative intent, such as legislative history, to construe the statute"]; *Russ Bldg. Partnership v. City and County of San Francisco* (1988) 44 Cal.3d 839, 847, fn. 8 ["The rules of statutory construction apply equally to the construction of ordinances"].)

Coalition argues for the first time in its reply brief that: (1) section 12.22.C.18 is somehow ambiguous simply because it exempts property from "the LAMC minimum lot size regulations"; and (2) the provision "contains an obvious drafting error"—i.e., it should "contain a cross-reference to LAMC § 17.05.H.1." Being raised initially in Coalition's reply brief, these arguments are not properly before us. (*Regency*, *supra*, 31 Cal.App.4th at p. 1333.)

We further note that, even if resort to legislative history were appropriate, Coalition has failed properly to present

legislative materials to us. Coalition supports its interpretation of the legislative history with a 99-page record citation. Coalition makes no effort to parse through any *particular* documents within this large record citation to explain why any document within its cited group supports its position. We reject Coalition's claim of error for this independent reason as well. (See *Inyo Citizens for Better Planning v. Inyo County Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 4, 14 [" 'We are not required to search the record to ascertain whether it contains support for [appellant's] contentions' "].)

B. Implied Repeal of Section 12.23.E

Coalition does not supply any legal authority to support its claim that City "departed from and implicitly overruled" section 12.23.E by adopting the NECP in 1979. Accordingly, Coalition has waived this contention.[13] (*Cahill*, *supra*, 194 Cal.App.4th at p. 956.)

C. Density Limits of the NECP

Coalition urges that the Zoning Exceptions cannot be used to "obstruct fundamental, mandatory and specific general plan density limits expressed in Land Use Designations." As Coalition correctly points out, Table I indicates that "zoning categor[y] . . . RE-11 . . . allows a range of densities between 1 to 4 dwellings [*sic*] units per acre."

Coalition further claims that the RE11 zoning category implements the land use designation by allowing only "about 4

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[13] To the extent that this argument is a reformulation of Coalition's "general plan notice argument," we reject it for the reasons stated in Part IV of our Discussion.

single-family dwelling units . . . [to] be lawfully developed within an acre of land." According to Coalition, City cannot validly apply the Zoning Exceptions to the Project because it would have "a density of 7 single-family dwelling units per acre."

Table I of the NECP does not impose mandatory density limits. First, the table does not state that its density ranges are mandatory. Second, the NECP explicitly states that it contains "land use *recommendations*" and "land use and zoning *recommendations*." (Italics added.) This language does not express a mandatory land use policy. (See *Families Unafraid*, *supra*, 62 Cal.App.4th at pp. 1340, 1342, italics added [concluding that a land use policy was mandatory because it provided that land designated as Low Density Residential " '*shall be* further restricted to those lands contiguous to Community Regions and Rural Centers' " and " '*shall not be* assigned to lands which are separated from Community Regions or Rural Centers by the Rural Residential land use designation' "].)

Third, during the proceedings below, Coalition conceded Table I is a "*non-mandatory* table" that "is used to show how population is distributed among the categories of land-use designations, [and] *does not specify a rule of any kind*." (Italics added.) This admission further demonstrates that the Zoning Exceptions do not contravene a mandatory density limit. (See *Artal v. Allen* (2003) 111 Cal.App.4th 273, 275, fn. 2 [" '[B]riefs and argument . . . are reliable indications of a party's position on the facts as well as the law, and a reviewing court may make use of statements therein as admissions against the party' "]; 9 Witkin, Cal. Procedure (5th ed. 2019) Appeal, § 704, p. 773 ["An express concession or assertion in a brief is frequently

treated as an admission of a legal or factual point, controlling in the disposition of the case"].)

Nonetheless, Coalition apparently argues that City of Los Angeles Ordinance No. 159748 (Ordinance No. 159748), an uncodified ordinance enacted on April 2, 1985, establishes that Table I's density range is mandatory. Coalition apparently claims this ordinance requires all permits issued by City to be consistent with the land use element provided in an applicable Community Plan. As discussed below, the problem with Coalition's argument is that it ignores the trial court's findings undermining its argument.

The trial court found that the Project is exempt from Ordinance No. 159748. Section 3G of the ordinance provides: "The provisions of this ordinance shall not apply to the following: [¶] . . . [¶] G. A building permit, use of land permit or change of occupancy on a lot or lots for which a zone change, conditional use permit, use variance, or other action where a consistency determination has been made, was adopted or approved after January 1, 1979, and has not expired, provided such action was taken subsequent to adoption of the Community or District Plan for the area involved." The lower court found that: (1) City "rezoned the project lots in January 1990 and made consistency findings to support the rezone," and (2) "[t]he rezoning occurred after adoption of the Community Plan for the area." Coalition does not contest these findings or claim that the consistency determination for the rezoning expired. Therefore, Coalition has not rebutted the presumption of correctness accorded to the

trial court's conclusion that Ordinance No. 159748 does not apply to the Project.[14]

Moreover, the trial court found that another component of the General Plan, the Framework Element, "contemplate[s] the continued use of 'exceptions' to relieve hardships from strict adherence to the zoning regulations." The Framework Element provides: "Zoning, specific plans and other discretionary approvals and designations are implementing tools of the general plan as reflected in the community plans. The City Charter and the Los Angeles Municipal Code provide for variances, specific plan exceptions, exceptions and other tools to provide a means for relieving hardships from strict adherence to the zoning regulations or dealing with special situations."

Coalition counters with the following text that is also in the Framework Element: " 'The Framework Element is not sufficiently detailed to impact requests for entitlements on individual parcels. Community plans will be more specific and will be the major documents to be looked to for consistency with the general plan for land use entitlements.' " Coalition claims that, because this excerpt purportedly shows that "nothing in the Framework [Element] should be used to determine particular land use entitlements,' " City could not rely upon the Zoning Exceptions to show the Project is consistent with the General Plan. We do not agree.

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[14] Coalition claims that section 3G of Ordinance No. 159748 is inapplicable because City did not determine whether the *instant Project* was consistent with the General Plan. The trial court, however, correctly observed that section 3G's exemption applies if the *rezoning* itself was subject to a consistency finding.

The language in the Framework Element to the effect that it lacks sufficient detail to govern entitlements for particular parcels has no bearing on whether—as a *general matter*—the Framework Element preserves the validity of zoning exceptions and other "tools" that can relieve hardships resulting from strict compliance with zoning regulations that were enacted to implement community plans. Indeed, the Framework Element "provid[es] a comprehensive long-range view of the City *as a whole*." (Italics added.)

Furthermore, City's zoning scheme does not bar it from applying the Zoning Exceptions to the instant Project. Section 12.07.01.C.4 explicitly provides that "[e]xceptions to area regulations are provided for in Sec. 12.22 C." Sections 12.00 and 12.02 provide that the purpose of City's zoning scheme is to "consolidate and *coordinate* all existing zoning regulations and provisions into one comprehensive zoning plan." (Italics added.) In accordance with those two provisions, the Zoning Exceptions and section 12.07.01.C.4's restrictions for RE11 zones should be interpreted to be harmonious and consistent with one another, to wit, the zoning scheme contemplates exceptions to zoning restrictions. These Zoning Exceptions are thus not discordant with restrictions imposed in the zoning ordinances, including section 12.07.01.C.4. Consequently, section 12.07.01.C.4's lot width and size requirements do not prevent City from relying on the Zoning Exceptions.

In sum, Coalition has failed to show that City violated CEQA by concluding in its initial study that the Project did not conflict with any applicable land use plan, policy, or regulation.

II. Coalition's Eschewing a Contest to the Validity of Section 11.5.7 and the Specific Plan Is Fatal to Its Challenge to the Determinations of Project Permit Compliance

"Generally, the inquiry for the issuance of a writ of administrative mandamus is whether the entity whose decision is challenged committed a prejudicial abuse of discretion by failing to proceed in the manner required by law, by making a decision that is not supported by the findings it made, or by making findings that are not supported by the evidence." (*Habitat Trust for Wildlife, Inc. v. City of Rancho Cucamonga* (2009) 175 Cal.App.4th 1306, 1319–1320; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 [noting that in mandamus cases, an appellate court's standard of review is the same as that employed by the trial court].) For the reasons discussed in this section, we conclude that Coalition has not properly shown that the director of planning prejudicially abused his discretion in granting Project Permit Compliance for the instant Project.

Section 11.5.7.C.2 provides: "The Director *shall* grant a Project Permit Compliance upon written findings that the project satisfies each of the following requirements: [¶] (a) That the project substantially complies with the applicable regulations, standards and provisions of the specific plan; and [¶] (b) That the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically

feasible."[15] (Italics added.) The plain language of this provision obligates the director to grant a Project Permit Compliance if the official makes both of those findings. (See *California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 306 [" ' " ' "It is a well established rule of statutory construction that the word 'shall' connotes mandatory action and 'may' connotes discretionary action" ' " ' "].)

Coalition argues that before granting the applications for Project Permit Compliance, the director of planning should have made findings regarding whether the Project was consistent with the General Plan.

Respondents counter that Coalition's argument "necessarily challenges" the Specific Plan and section 11.5.7. In particular, respondents contend Section 11.5.7 requires the director to grant any application that substantially complies with the Specific Plan and incorporates all of the mitigation and monitoring measures identified through the environmental review process. Respondents contend such a challenge to the Specific Plan and Section 11.5.7 would be time-barred under Government Code section 65009, subdivision (c)(1)(A)'s 90-day statute of limitations.

Apparently, to avoid this limitations statute, in its reply, Coalition states it "does not seek invalidation" of the Specific Plan or Section 11.5.7, and that its "contention that a consistency finding requirement resides in the NECP is not a challenge of other laws, including the Specific Plan and Section 11.5.7."

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[15] We refer to requirement (a) as the specific plan substantial compliance finding, and to requirement (b) as the environmental review finding.

As set forth below, Coalition has not shown that either the specific plan substantial compliance finding or the environmental review finding was erroneous. Thus, contesting the validity of section 11.5.7 and/or the Specific Plan is Coalition's only remaining path to prevailing on a claim to set aside the director's Project Permit Compliance determination. Coalition's disavowal of any such challenge is thus dispositive as to its effort on appeal to set aside the director's Project Permit Compliance determinations. (See *Artal v. Allen*, *supra*, 111 Cal.App.4th at p. 275, fn. 2 [holding that a party's admission in a brief may be held against that party].)

During the proceedings below, the trial court noted that Coalition did not challenge the director's Specific Plan substantial compliance finding. On appeal, Coalition again does not challenge that finding. (See *Yu*, *supra*, 196 Cal.App.4th at p. 787 [noting that, as " ' "a general principle of appellate practice," ' " an appellant must " ' "affirmatively show[ ]" ' " an error was committed].) Also, for the reasons discussed in Parts I and IV of our Discussion, Coalition has not shown that the director's environmental review finding was erroneous. Thus, section 11.5.7.C.2 required the director to grant the Project Permit Compliance without having made any written findings concerning General Plan consistency.

To put a fine point on our conclusion, given that Coalition does not properly challenge either of the director's findings, section 11.5.7.C.2 entitled real party in interest to that favorable decision regardless of whether the Project was consistent with the General Plan or City could validly apply the Zoning Exceptions to the Project. (See *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 793

["[A] statute that enumerates things upon which it operates is to be construed as excluding from its effect all those things not expressly mentioned"].) Hence, Coalition's request for mandate relief setting aside that decision necessarily fails.

Coalition points out that section 11.5.7.A provides: "A specific plan shall provide by ordinance regulatory controls or incentives for the systematic execution of the General Plan and shall provide for public needs, convenience and general welfare." (Boldface omitted.) Coalition insists this provision establishes that City must "make a general plan consistency finding" because the failure to do so would "defeat or obstruct 'systematic execution' of the General Plan." Again, the operative provision, section 11.5.7.C.2, does not require a General Plan consistency finding. At most, section 11.5.7.A suggests that the Specific Plan may be invalid if it does not actually "systematic[ally] execut[e] . . . the General Plan." Yet, Coalition eschewed a claim of invalidity. Coalition also correctly notes the NECP states that " 'City actions on most discretionary projects requires [*sic*] a finding that the action is consistent or in conformance with the General Plan.' " Although this passage could potentially support a challenge to the validity of section 11.5.7, as previously discussed, Coalition "does not seek invalidation" of section 11.5.7.

For these reasons, we conclude there was no error in the director's decision to grant Project Permit Compliance for the Project.

III. Coalition Is Not Entitled to Declaratory and/or Injunctive Relief

During the proceedings below, LAPCC sought (1) a declaration that the two Zoning Exceptions at issue cannot be used in RE11, RE20, and RE40 zones; and (2) an injunction

requiring City to amend section 11.5.7 to make it consistent with the General Plan. The trial court refused to issue the requested declaration, reasoning that it could not "predict how the City would balance any diverse policies in the General Plan when determining whether application of the zone exception ordinances should be applied to any proposed development in these zones city-wide." It also found that the injunctive relief sought was time-barred.

On appeal, Coalition does not explicitly discuss—let alone challenge—either of these findings. Indeed, as noted in the previous section, Coalition explicitly abandoned any challenge to the validity of section 11.5.7. Instead, Coalition apparently tries to avoid the trial court's conclusions by reformulating the relief sought.

Coalition argues that City's "continuing insistence" that it can utilize the Zoning Exceptions demonstrates that Coalition is entitled to declaratory and injunctive relief to halt City's supposed practice of overriding the NECP. (Capitalization and boldface omitted.) Coalition suggests that appropriate "[r]elief might be declaratory/injunctive relief to require all Project Permit Compliance decisions in the NECP to make the general plan consistency finding expressly required in the Plan."

Because Coalition has declined to address the trial court's rationale for denying declaratory and injunctive relief, it fails to overcome the presumption of correctness afforded to that ruling. (See *Yu*, *supra*, 196 Cal.App.4th at p. 787 [" ' "A judgment or order of the lower court is *presumed correct*" ' "].)

IV. Coalition Has Forfeited Its Other Claims of Error[16]

Coalition contends that "City's 'no-impact' determination and analysis deprived the public of its right of public participation—one of the fundamental purposes of CEQA." Similarly, Coalition claims that "the MND circulated by the City fail[ed] to analyze the land use inconsistencies and grading issues to such an extent that the public was prejudicially deprived of its right to meaningful participation in the CEQA process."

Coalition also claims that, with regard to the grading effects of the Project, the mitigation measures included in the MND were "necessarily deficient" because: (1) the Baseline Hillside Ordinance (BHO) provides that a Zoning Administrator's approval is required for the amount of soil to be excavated; (2) in enacting the BHO, the City Council found that the prior absence of any limit on the quantity of grading had caused environmental impacts, including " 'increased loads on under-improved hillside streets during construction' "; (3) City's failure to disclose the BHO's zoning administrator approval requirement constituted unlawful "piecemealing"; and (4) MWHA had explained during the administrative proceedings that: (a) the amount of soil to be extracted would require 3,500 truck trips; and (b) the mitigation measures included in the MND are appropriate for only flat lots

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16 After this appeal was fully briefed, we asked the parties to address whether Coalition waived and/or forfeited claims of error by failing sufficiently to develop arguments relating thereto during the trial proceedings. The parties thereafter submitted supplemental letter briefs addressing that question. (See also *Estate of Herzog* (2019) 33 Cal.App.5th 894, 907 [suggesting that Government Code section 68081 bars this court from addressing an unbriefed claim of forfeiture].)

and not hillside lots that have inadequate infrastructure and substandard roads. (Boldface omitted.)

Further, Coalition raises what it calls a "general plan notice argument"—i.e., City cannot utilize sections 12.22.C.18 and 12.23.E to approve the Project because "City never disclosed any intent to use any Zoning Exceptions in any community plan or environmental document issued in the NECP area."

Coalition, moreover, asserts that "[i]f either of the Zoning Exceptions were applied by the City to exempt each lot from the NECP Land Use Designation and RE-11 development standards," then the "cumulative impact would be that none of the down-planned and down-zoned lots would be reconfigured to the required density levels," thereby "thwart[ing] and obstruct[ing] attainment of the fundamental purpose of the citywide down-planning process."

Lastly, Coalition apparently maintains that, even if this court were to find that sections 12.22.C.18 and 12.23.E rendered the Project consistent with the General Plan and/or RE11 zoning, the Project would still have significant environmental impacts that City failed to analyze properly.

The trial court's ruling does not address any of these contentions, no doubt because Coalition failed to present them properly below.

In its trial court briefing, Coalition did not contend that City's CEQA determinations should be set aside because they deprived the public of its right to participate in that process. Instead, at oral argument before the trial court, Coalition's counsel merely suggested—in passing—that City "should have disclosed the potential inconsistency and nonconformity of the Project to the General Plan."

Coalition argues in its supplemental letter brief that "[a]llegations that the presence of incorrect and/or substantially missing information in the MND's initial study appeared" in portions of its petition. Coalition further contends that "[a]rguments/record citations to show the trial court and City that down planning was adopted as mitigation by the City Council in findings when the 1975 CEQA EIR was adopted for the 1979 [NECP] approval, the continuance of those mitigations as they were enacted into law, and their being undisturbed on the operative 1999 [NECP] map to this day, and the failure to disclose any of this critical history as part of analyzing whether the Project was consistent with those enacted mitigation measures and implementing RE-11 zoning, or any disclosure of the Zoning Exceptions themselves, were all made below." Yet, Coalition does not direct us to any part of the record in which it argued to the trial court that these omissions deprived the public of its right to participate in the CEQA process.

Coalition apparently argues it alerted the trial court to this claim by including in its opening brief a citation to a document from the administrative record that stated, among other things, " 'Because of the City's failure to make a 'good faith effort' to disclose to the interested public [required information], CEQA's public input and participation process has been derailed to the prejudice of the community.' " (Alteration supplied by Coalition.)

This argument is misleading. Coalition's opening brief actually provided a *32-page* citation to this part of the administrative record to support a different proposition—i.e., MWHA's master appeal document detailed the "history of down-planning across the City, including the Project Site." Thus, Coalition did not provide the trial court with "sufficient notice" of

the issue it now advances on appeal. (See *Simplon Ballpark, LLC v. Scull* (2015) 235 Cal.App.4th 660, 668 (*Simplon*) [noting that an appellant must provide the trial court with "sufficient notice of the issue presented or the relief requested"].)

Coalition also did not claim in its briefing below that City's supposed failure to identify sections 12.22.C.18 and 12.23.E in a community plan or an environmental document barred it from relying on those provisions to approve the Project.[17] Admittedly, Coalition's counsel orally noted at trial that: These two Zoning Exceptions were not mentioned in the prior and current versions of the NECP and environmental documents relating thereto; and our high court ruled in a prior case that a particular uncodified resolution regarding land use " 'never became integrated' " into a later-adopted general plan. (Quoting *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 146, 157.) Yet, it appears that counsel made these observations in an effort to establish the legislative intent underlying the NECP. For instance, on the first day of trial, Coalition's counsel claimed that these documents did not mention the Zoning Exceptions and remarked, "[T]here's no evidence to demonstrate what the legislative—[the director of planning's] version of what the

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[17] Coalition's second supplemental reply instead raised a similar, yet distinct argument—i.e., "[t]he City offers no evidence that when it was released from court supervision [in a prior litigation], . . . the City's current position that the Zoning Exceptions would trump the RE-11 zoning was disclosed to the other parties and the Court." The trial court properly disregarded this argument because Coalition raised it for the first time in a reply brief. (*Regency*, *supra*, 31 Cal.App.4th at p. 1333.)

legislators so-called intended. They did not intend to bootstrap the zoning exceptions onto the downzoning."

Counsel did not argue that City's failure to provide adequate notice of its intent to utilize these Zoning Exceptions precluded it from doing so. To the extent Coalition intended to raise this argument, it failed to provide the trial court with sufficient notice of it. (See *Simplon*, *supra*, 235 Cal.App.4th at p. 668.)

At trial, Coalition also failed adequately to develop its claims of error regarding the grading effects of the Project. Although its opening brief cursorily asserted that the Project's grading volume violated the BHO, Coalition did not assert that this violation undercut the sufficiency of the MND's mitigation measures. In its trial briefing and at oral argument, Coalition did not further develop this argument, nor did Coalition raise its claims concerning: the City Council's findings supporting the enactment of the BHO, City's supposed "piecemealing" of the Project, or MWHA's assertions regarding the environmental impact of the soil extraction.[18]

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[18] Coalition argues for the first time in its reply on appeal that "[t]here is no substantial evidence in the MND or the record to support the City's determination that [a mitigation measure included therein] will in fact mitigate the significant impacts on *aesthetics* below thresholds of significance." (Italics added.) Coalition also argues for the first time in its supplemental letter brief that the "effectiveness of the City's mitigation measures would only become relevant if the houses were all credibly within the BHO limit" because exceeding that limit would "simply" be "unlawful." We disregard these arguments because Coalition failed to raise them in the opening brief. (*Regency*, *supra*, 31 Cal.App.4th at p. 1333.)

During the trial court proceedings, Coalition abandoned its claim concerning the supposed consequences of systematically applying the Zoning Exceptions to other downzoned lots. In fact, Coalition "concede[d] that a facial challenge to sections 12.22.C.18 and 12.23.E may be time-barred" and "only provide[d] legal argument with respect to an as-applied challenge."[19]

Further, absent from its lower court briefing and the two-day trial is any discernible argument that even if the trial court upheld City's application of sections 12.22.C.18 and 12.23.E to the Project, certain significant environmental impacts would still exist. Consequently, the trial court considered only whether the Zoning Exceptions could validly be applied to the Project.

To raise these complex and multi-faceted arguments below properly and to avoid forfeiting them, Coalition should have "fully developed" these contentions at trial. (See *Simplon*, *supra*, 235 Cal.App.4th at pp. 669–670.) Coalition contends we should allow it to pursue these arguments because the facts underlying them are undisputed and they merely raise new questions of law.

Even assuming arguendo that the facts were undisputed, although we have the *discretion* to consider new questions of law, we are not *required* to do so. (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767 ["[T]he issue is one within our

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[19] Coalition points out in its supplemental letter brief that it "requested judicial notice of the City's ongoing conduct . . . to approve more multi-house projects on lots with safety risks like Ganymede." Nevertheless, Coalition does not dispute the trial court's finding that Coalition supplied argument regarding only an as-applied challenge to the Zoning Exceptions, apparently because any facial challenge to them would have been time-barred.

discretion, and we are not required to consider this new theory, even if it raised a pure question of law"]; see also *In re Sheena K.* (2007) 40 Cal.4th 875, 887–888, fn. 7 [" '[D]iscretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue' "].)

We decline to exercise our discretion to consider new theories not articulated properly below. Coalition had ample opportunity to develop arguments below, as the voluminous record here evidences. It had ample opportunity to argue its cause on appeal as its more than 100 pages of briefing evidence. We gave Coalition yet another opportunity to argue its cause on the above forfeiture issues in supplemental briefing. Despite these opportunities, Coalition has provided no basis for exercising our discretion to excuse its forfeitures of the arguments set forth above. We cannot help but observe that it would have been better practice for Coalition to articulate its arguments clearly and cogently below and on appeal. These efforts would have better preserved the trial court's scarce resources, as well as our own.[20]

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[20] Coalition suggests in its supplemental letter brief that its forfeiture should be excused because Coalition retained new trial counsel 10 days prior to trial. We reject any such contention because Coalition does not support it with any citation to authority. (See *Cahill*, *supra*, 194 Cal.App.4th at p. 956.)

DISPOSITION

We affirm the trial court's judgment in its entirety. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.