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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HUNTINGTON BEACH NEIGHBORS,

Plaintiff and Appellant,

v.

CITY OF HUNTINGTON BEACH et al.,

Defendants and Respondents.

G045732

(Super. Ct. No. 30-2009-00325686)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nancy Wieben Stock, Judge. Affirmed.

Skapik Law Group, Geralyn L. Skapik and Mark C. Allen III for Plaintiff and Appellant.

Jennifer McGrath, City Attorney, John M. Fujii, Deputy City Attorney; Kane, Ballmer & Berkman, Murray O. Kane and Donald P. Johnson for Defendants and Respondents.

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Defendants City of Huntington Beach (City) and Huntington Beach City Council (Council; collectively defendants) adopted a Downtown Specific Plan (DTSP) Update that modified the existing Downtown Specific Plan to allow for additional development. Plaintiff Huntington Beach Neighbors (plaintiff) filed a petition for writ of mandate and complaint for declaratory and injunctive relief complaining defendants violated the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.; all further statutory references are to this code) by improperly certifying an environmental impact report (EIR) that analyzed the impact of the DTSP Update. After the trial court entered judgment in favor of defendants, plaintiff appealed.

Plaintiff raises several issues, contending (1) the program EIR failed to analyze reasonably foreseeable impacts of future development; (2) the EIR does not sufficiently analyze the impacts of traffic and parking; (3) the court erred in augmenting the administrative record with two documents at trial to supplement the EIR's alleged defective solid waste analysis; (4) the DTSP Update approved a building height and lot size plan different from that analyzed by the EIR; (5) plaintiff sufficiently exhausted its administrative remedies as to a variety of issues; and (6) the statement of decision failed to address several issues.

Finding no merit in any of these claims, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

In 1983 City adopted the original DTSP to encompass about 330 acres in the downtown area. In 1995 the DTSP was amended to provide for a village development concept. The plan included commercial (stand alone and mixed-use), residential, tourist, and recreational development. The amended DTSP also included a master parking plan that set development thresholds based on available parking.

By 2006 further development was essentially halted based on parking limits. Some property owners had been unable to develop their lots for decades based on the restricted parking and development limits. A staff report noted “[r]esidential growth in the downtown core area has been relatively stagnant” with “a number of sites remain[ing] underutilized.” Defendants recognized that an increase in residential units would lead to a larger population downtown resulting in year-round use of retail businesses and restaurants, “create more of a demand for ‘neighborhood’ type services and retailers,” “contribute to the mix of uses in the downtown core and provide [a] balanced downtown environment.”

Defendants’ objectives as stated in the DTSP Update that was ultimately approved include: (1) “Creat[ing] a healthy mix of land uses that are geared toward creating an urban village that serves as a destination to both residents and visitors”; (2) “Implement[ing] development standards and design guidelines that encourage development or underused parcels with a mix of uses and unique architecture”; and (3) “Ensur[ing] that adequate parking is available and is integrated into the framework of pedestrian pathways within the downtown”

After comprehensive studies, that included extensive community participation, a Council study session, comments from the Design Review Board and notification to the Historic Resources Board, a draft of the proposed DTSP Update was circulated and subject to public comment.

Likewise, the draft EIR was prepared after a study, was promulgated for public comment, and then was the subject of several planning commission study sessions and meetings with stakeholders.

The planning commission certified the EIR and recommended Council approval. It also approved the DTSP Update and related documents. The Council denied appeal of the certification of the EIR and approved the CEQA Findings of Fact and related documents. Thereafter plaintiff filed a petition for writ of mandate and, after

briefing and a trial, the court denied the petition, as set out in a tentative statement of decision. After plaintiff filed objections to it, the court adopted it as the final statement of decision and entered judgment.

Additional facts are set out in the discussion.

DISCUSSION

1. Standard of Review

“Where an EIR is challenged as being legally inadequate, a court presumes a public agency’s decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise. [Citations.] To establish noncompliance by the public agency in a CEQA proceeding, an opponent must show ‘there was a prejudicial abuse of discretion (§ 21168.5), which occurs when either ‘the agency has not proceeded in a manner required by law or . . . the determination or decision is not supported by substantial evidence’ [citations]. [¶] . . . Whether an ‘agency has employed the correct procedures,’ is reviewed ‘de novo . . . “scrupulously enforc[ing] all legislatively mandated CEQA requirements” [citation] . . .’ [Citation.] But an ‘agency’s substantive factual conclusions’ are ‘accord[ed] greater deference.’ [Citation.] ‘In reviewing for substantial evidence, the reviewing court “may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,” for, on factual questions, our task “is not to weigh conflicting evidence and determine who has the better argument.” [Citation.]’ [Citation.]” (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530-531.)

We do not review the trial court’s ruling for either substantial evidence or legal error but instead look at defendants’ action de novo. “We . . . resolve the substantive CEQA issues . . . by independently determining whether the administrative record demonstrates any legal error by the [defendants] and whether it contains

substantial evidence to support the [defendants'] factual determinations.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.) Thus, plaintiff’s recurrent challenges to the reasoning behind the trial court’s rulings are immaterial.

2. *Consideration of Reasonably Foreseeable Development*

The EIR under review is a program EIR, that is, one “prepared on a series of actions that can be characterized as one large project and are related . . . [¶] . . . [¶] [a]s logical parts in the chain of contemplated actions.” (Cal. Code Regs., tit. 14, § 15168, subd. (a)(2); the CEQA provisions of the Code of Regulations are commonly referred to as CEQA Guidelines.) The EIR states its purpose is “to evaluate the potentially significant environmental impacts that could occur from the proposed” DTSP Update. “[A] program EIR prepared in connection with redevelopment plan adoption is usually a more general document than an EIR that might be prepared for a discrete development project. The program EIR should focus on the “cumulative” or “synergistic” impacts of the entire program.” (*Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 608.)

A program EIR must “adequately analyz[e] reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.” (Cal. Code Regs., tit. 14, § 15152, subd. (b).)

Plaintiff claims the EIR fails to sufficiently analyze the environmental effects of the DTSP Update and further fails to inform the public and defendants of those effects. But plaintiff has not met its burden in presenting this argument.

“As with all substantial evidence challenges, an appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side and

show why it is lacking. Failure to do so is fatal. A reviewing court will not independently review the record to make up for appellant's failure to carry his burden. [Citation.]" (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.) Here plaintiff sets out no evidence of the DTSP Update's contents as to the environmental effects or what information it contains about those effects.

Plaintiff argues it is not required to do so, maintaining it wants us to decide only whether, by law, a program EIR is required to address "identifiable and quantifiable impacts." As framed, plaintiff presents a purely hypothetical question that we do not consider. (*Weber v. Nasser* (1930) 210 Cal. 607, 608 ["this court does not pass judgments which can have no practical effect"]; *Stockton Teachers Assn. CTA/NEA v. Stockton Unified School Dist.* (2012) 204 Cal.App.4th 446, 464, fn. 11 [appellate court does not consider hypothetical questions presented in absence of "appropriate facts"].) And in reality, this is not a question of law. Plaintiff seeks to have us invalidate the EIR as adopted. To do so, it must show why it is inadequate by setting out its contents and demonstrating what should have been included. Absent that, its argument fails.

3. Traffic, Parking, and Noise Analysis

a. Traffic

In determining the impact of additional traffic that would be generated by contemplated development, a traffic study was conducted midweek on a summer weekday between 7:00 and 8:45 a.m. and 4:00 and 5:45 p.m. at 12 different locations. Plaintiff complains the study was misleading and failed because it was based on an incorrect assumption that there would only be 400,000 additional square feet of development, claiming, as it does repeatedly throughout its briefs, the correct number is 1,330,483. But plaintiff is mistaken.

Based on data set out in the document, the EIR estimates total net additional square footage is 912,583. The number to which plaintiff cites is only an

estimate made by a citizen challenging the EIR. Plaintiff's accusation in the reply brief that the EIR's information is a "blatant misrepresentation" is not persuasive based on evidence in the EIR. Moreover, plaintiff mischaracterizes the document on which its estimated additional square footage is found as an official document requested by a planning commissioner. In actuality plaintiff's number derives from handwritten annotations on that official document that is copied on the reverse side, and apparently made a part of, a citizen's comments. Defendants' 912,583 square feet estimate is supported by substantial evidence to which we give deference. (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at pp. 530-531.)

Furthermore, the traffic study describes the DTSP Update as including development of an additional 400,000 square feet of retail, restaurant, hotels, office, and cultural projects "*as well as* new residential development." (Italics added.) And the traffic study looked at the trip generation to and from all of these types of developments.

Plaintiff also challenges the baseline used to analyze traffic for two reasons. It asserts the bulk of the additional development will not be open for business during the times used in the study. Additionally, it argues the study failed to monitor weekend traffic, particularly summer weekends, and special events. These claims do not persuade.

First, there is no support for the assertion office, retail, and tourist attractions will not be open during the times traffic was measured. Plaintiff points to no evidence in the record on which it bases this conclusion. The EIR sets out the methodology used, noting it complied with City, County, and California Department of Transportation (CalTrans) requirements and relied on the standard Level of Service system. Plaintiff does not overcome the substantial evidence supporting the findings of the traffic consultant, which relied on a nearly 1,000-page Traffic Impact Analysis to compile its almost 50-page Traffic Analysis. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 427.)

Indeed plaintiff failed, not only to set out its own evidence but “all material evidence on the point [Citation.] A failure to do so is deemed a concession that the evidence supports the findings. . . . This failure to present all relevant evidence on the point “is fatal.” [Citation.]” (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 529; *Creed*.)

The reply brief contained some additional evidence and argument, with plaintiff claiming the EIR should have analyzed peak traffic days and hours with a traffic study conducted for a 24-hour period on a weekend and weekdays. But plaintiff still included an incomplete summary of all material evidence, selecting only certain portions favorable to its argument, particularly in regard to summer weekend traffic. For example, it failed to point out that the Traffic Analysis stated summer weekday traffic was only slightly higher than weekday traffic during other seasons. Moreover, what plaintiff included, in addition to what was improperly omitted, should have been in the opening brief so defendants would have an opportunity to discuss and reply.

Second, defendants, not this court or plaintiff, decide the proper baseline to be used. In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, where the impact of a refinery was being considered, the court stated: “We do not attempt here to answer any technical questions as to how existing refinery operations should be measured for baseline purposes in this case or how similar baseline conditions should be measured in future cases. . . . [¶] Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. [Citation.]” (*Id.* at pp. 327-328.)

As noted above, plaintiff has not negated the existence of substantial evidence in support of the EIR’s conclusion and we must presume defendant’s

certification of the EIR was proper. (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at p. 530.)

b. Parking

Plaintiff argues there is insufficient evidence to support the adequacy of the parking plan analyzed in the EIR, relying on three grounds. First, it criticizes elimination of the former Downtown Master Parking Plan, contending that in doing so defendants “manipulat[ed] planning documents” to do “an end run around CEQA.” Second, it attacks the methodology used in conducting a parking survey. Finally, it takes exception to the method of implementing proposed mitigation measures. None of these arguments has merit.

The first two claims fail because plaintiff did not include a fair summary of the contents of the EIR in that regard. (*Creed, supra*, 196 Cal.App.4th at p. 529.) The same is true as to its argument the EIR should have considered the impact of buses driving to a performing arts center. As with the traffic argument, plaintiff did include some additional evidence in the reply brief but, similarly, it was too little, too late. Plaintiff has forfeited these claims.

Its challenge to the mitigation measures is deficient for a different reason. Plaintiff cites to the Draft EIR that shows approximately 300 to 400 new parking spaces will be needed over the course of new development and potential elimination of about 50 on-street spaces. One of several mitigation measures is in-lieu parking fees, which a developer would pay to City in lieu of providing parking.

Plaintiff argues the EIR is defective because a particular developer could select a mitigation solution that would not create additional parking spaces and there is no “guarantee[.]” any particular measure will mitigate increased demand for parking, including City’s use of the in-lieu fees.

The EIR contradicts this. It states that any new development under the DTSP Update “will be required to provide adequate parking and removal of any existing public parking will be required to be replaced at a one-to-one ratio” Further CEQA does not require guaranteed mitigation measures. “[A]n EIR need not be exhaustive or perfect; it is simply required to ‘describe feasible measures which could minimize significant adverse impacts.’ [Citations.]” (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 696.) In undertaking a review of an EIR, “[i]t is not our task to determine whether adverse effects could be better mitigated. [Citations.]” (*Ibid.*)

We do not rely on a Coastal Commission staff report plaintiff cites in support of this claim for several reasons. First, plaintiff states the trial court failed to rule on its request for judicial notice of the report. But if plaintiff intended to appeal from that ruling it has failed to make that clear and satisfy court rules requiring a discrete heading. (Cal. Rules of Court, rule 8.204(a)(1)(B).) Second, the request for judicial notice, including a copy of the report, is not in the clerk’s transcript. We may only consider what is in the record. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246.) Finally, by plaintiff’s own admission, the report was issued after the hearing on plaintiff’s petition and thus not properly before the trial court. Plaintiff’s claim in the reply brief that the report was not “‘evidence’” but a legal opinion “‘entitled to deference’” or “‘consideration’” is off base. Legal opinion or not, the contents of the report are evidence.

c. Noise

Plaintiff challenges a portion of the methodology used in the noise study. Specifically it claims the study measured noise on only two occasions in December between approximately 10:30 a.m. and either 1:00 or 2:00 p.m. in the afternoon. It maintains, without citation to the record, that all other studies were done in the summer and that this somehow invalidates the noise study. Plaintiff’s argument has several flaws.

It fails to summarize the lengthy noise assessment, noise analysis, and noise mitigation measures, as required, thus forfeiting its argument. In addition, as discussed above, CEQA does not require use of any specific baseline; the choice belongs to the City so long as it is supported by substantial evidence. (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 337.) Since, as here, where plaintiff failed to set out all relevant evidence on this issue, we presume the EIR is based on substantial evidence. (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at p. 530.)

4. Waste Analysis

At the trial defendants moved to augment the administrative record with two documents dealing with waste analysis for two specific proposed projects. The court allowed the augmentation, in part based on its finding the “documents were available to the public and the decision-makers through the EIR, as evidenced by numerous references to them in the Administrative Record.” The court also found the EIR incorporated several documents dealing with those two projects.

Plaintiff argues augmentation was error because the waste analysis in the EIR was “admittedly inadequate” and the court’s reasons for augmenting were incorrect. Plaintiff’s claims do not persuade.

First, the mere fact defendants sought to augment the record is not an admission the waste analysis was insufficient, as plaintiff apparently argues; it points to nothing in the record where defendants made such an admission. More importantly, plaintiff fails to demonstrate the EIR analysis is insufficient. There is no summary of the EIR’s discussion of solid waste or citation to any portion of the administrative record. Further, plaintiff does not explain why the analysis is lacking, as is its burden. (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at pp. 530-531.) The reply brief did

nothing to correct these shortcomings, despite the fact defendants clearly pointed them out in the respondents' brief.

Second, plaintiff did not show why augmentation was error. It argues the augmented documents were not properly incorporated into the EIR, claiming failure to do so violates section 21061 and California Code of Regulations, title 14, section 15150, and it challenges the findings the two augmented documents were available to the public and to defendants in making their decision about the EIR. It focuses on its claim the EIR did not state the location where the public could view the documents or summarize those portions of the documents on which defendants were relying. (§ 21061 [definition of EIR allowing incorporation of data if “generally available to the public” or “briefly described” with source “reasonably available for inspection”]; Cal. Code Regs., tit. 14, § 15150, subds. (a), (b), (c) [guideline setting out essentially same requirements regarding incorporation of documents].)

“[N]oncompliance with CEQA’s information disclosure requirements is not per se reversible; prejudice must be shown.” [Citations.] Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decisionmaking and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. [Citations.]” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197-1198.) Plaintiff conclusorily claims the alleged omission was prejudicial because defendants did not comply with the CEQA statutes and Guidelines. But this circular argument is insufficient. Plaintiff fails to show if or how alleged omission of the documents interfered with defendants’ decisionmaking or the public’s participation, and thus did not meet its burden to show prejudice.

Finally, alleged error in the court’s rationale for augmentation is irrelevant. We review the trial court’s ruling, not the reasoning. (*Paniagua v. Orange County Fire*

Authority (2007) 149 Cal.App.4th 83, 87.) The issue, as framed by plaintiff, is why augmentation was erroneous. Other than the claim the documents were not properly incorporated, plaintiff makes only the most conclusory argument on this point, failing to meet its burden to affirmatively show error.

5. *Reduced Scale*

Plaintiff next challenges the fact that the DTSP Update approved development on a smaller scale than that which the EIR analyzed. Specifically, it complains the EIR addressed five-story developments on 25,000-square-foot parcels but defendants approved four-story buildings on lots of 8,000 square feet or larger. It claims that this was a “significant change” from what the EIR analyzed and that, contrary to what the trial court ruled, the EIR never discussed or assessed the impact of the smaller developments. On that ground, it argues, the trial court ruling must be set aside. But again we review only defendants’ decision, not that of the trial court. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 427.)

As to the substantive argument itself, the decision to approve development on the reduced scale, plaintiff again does not meet its burden. It merely maintains the decision “would have an impact on the environment” and complains the public had no chance to make comments on the change. But it completely fails to make any reasoned legal argument or cite to any authority in support of the claim. This forfeits the issue. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.)

Plaintiff’s assertion that adoption of the DTSP Update violated City’s General Plan and Amended General Plan fails as well. Defendants amended City’s General Plan and Land Use Element to be consistent with the DTSP Update.

6. *Exhaustion of Administrative Remedies*

a. *Applicable Law*

“An action or proceeding shall not be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination.” (§ 21177, subd. (a).) Compliance with this “requirement is jurisdictional.” (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at p. 535.) Plaintiff has the burden to show the claim it is asserting here was first presented in the administrative proceedings (*id.* at p. 536) and it must have been the “exact issue” (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1394). “[T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them.” [Citation.]” (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909.)

b. *Cumulative Impacts Analysis*

“‘Cumulative impacts’ refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (Cal. Code Regs., tit. 14, § 15355.) An EIR must discuss cumulative impacts “when the project’s incremental effect is cumulatively considerable” (Cal. Code Regs., tit. 14, § 15130.)

The trial court ruled plaintiff failed to exhaust its administrative remedies as to the cumulative impacts of four portions of the EIR and thus any challenges to them were forfeited. Our de novo review of the administrative record leads us to the same conclusion. (*Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 873.)

c. Cumulative Traffic Analysis

Plaintiff relies solely on a letter sent by CalTrans raising questions about the draft EIR to show the issue of cumulative traffic analysis was preserved for appeal. In the letter CalTrans noted the lists of cumulative projects for traffic were not the same on two different pages. It asked for an explanation and why the cumulative analysis did not discuss certain projects, including the Edinger/Beach Specific Plan. Defendants replied that most of the development for the Edinger/Beach Specific Plan was more than three miles from downtown, and traffic beyond a one-mile range was included in two other portions of the EIR. In its reply, although CalTrans discussed defendants' responses to two of its other comments, it made no further mention of the cumulative traffic analysis. Thus, defendants' response presumably adequately addressed CalTrans's concerns.

Plaintiff complains the cumulative traffic section in the EIR omitted nine projects, including the Edinger/Beach project, and claims these projects should have been included. But, as defendants point out, CalTrans did not challenge the methodology used in the EIR or contend that these nine projects should have been analyzed in the cumulative traffic section. Its question about including projects, that defendants sufficiently answered, was not the "exact issue" plaintiff now argues. (*Mani Brothers Real Estate Group v. City of Los Angeles, supra*, 153 Cal.App.4th at p. 1394.) The argument was forfeited.

d. Cumulative Project Analysis and Performing Arts Center

Plaintiff fails to point to anything in the record showing administrative remedies were exhausted for either of these issues and they are forfeited.

e. Public Services

Plaintiff asserts the EIR and DTSP Update fail to sufficiently discuss how the additional visitors to newly constructed restaurants, bars, hotels, retail, and other facilities will affect police and fire services. We agree plaintiff sufficiently exhausted its administrative remedies but it failed to adequately argue the issue. It claims the factual conclusions that the impacts would be insignificant are not supported by substantial evidence. But plaintiff did not include the material evidence relevant to this issue as required and this issue is also forfeited. (*Creed, supra*, 196 Cal.App.4th at p. 529.)

7. Adequacy of Statement of Decision

Plaintiff maintains the statement of decision was inadequate because it did not address several issues it raised in its trial brief. But we agree with defendants that because we review their administrative decision and not the trial court's ruling, this claim is irrelevant. Plaintiff did not rebut this argument in its reply brief, but instead seeks reversal based solely on this alleged inadequacy. Its argument is not persuasive.

Five of the six issues plaintiff maintains should have been included in the statement of decision, i.e., water supply, hazardous waste, air quality and global warming, the no-project alternative, and an unreasonable range and description of alternatives, have not been properly briefed. For several of them plaintiff fails to even explain the specific issue, merely stating the EIR did not sufficiently address it. And as with other claims, plaintiff does not set out all of the material evidence dealing with the issues. Thus they are forfeited.

The last issue deals with cultural resources and specifically the Main Street Library, what plaintiff refers to as the "Historic City Library." The DTSP Update mentioned its location as a possible site for a performing arts building. Plaintiff argues the EIR failed to "identify the Library as an historical resource" or "analyze impacts to it" if the cultural center were constructed. Not so.

The draft EIR lists the Main Street Library as a local landmark and points out that “potential alteration to the library building” would have to comply with City’s procedure for demolishing historical sites, and would require additional environmental review, including analysis by “a qualified architectural historian.” Further the Final EIR contained a lengthy response to comments on this subject, stating that there were no “specific development proposals . . . contemplated for [a cultural arts center], including development of the library site.” (Italics & boldface omitted.) It reiterated that if a specific project was proposed for the site, “further environmental review would be required in accordance with CEQA.” (Italics & boldface omitted.) It also stated the “Draft EIR does not negate the cultural significance of the Main Street Library” and repeated the necessity of an architectural historian if development was contemplated and implementation of mitigation measures if recommended.

8. *Miscellaneous*

Finally, to the extent plaintiff made arguments that do not have a discrete heading setting out the issue, in violation of court rules (Cal. Rules of Court, rule 8.204(a)(1)(B)), or are not sufficiently supported by reasoned legal argument or citations (*Benach v. County of Los Angeles, supra*, 149 Cal.App.4th at p. 852), they are forfeited. Likewise we do not consider claims made for the first time in the reply brief because plaintiff failed to make showing of good cause for omission in the opening brief. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 894, fn. 10.)

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

THOMPSON, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.