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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES**

19 LOS ANGELES COUNTY METROPOLITAN
20 TRANSPORTATION AUTHORITY, a public
entity,

21 Petitioner and Plaintiff,

22 v.

23 CITY OF BURBANK, a municipal corporation;
24 and DOES 1-10, inclusive,

25 Respondents and Defendants.

Case No. 26STCP01904

**PETITIONER AND PLAINTIFF'S NOTICE
OF MOTION AND MOTION FOR
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

ASSIGNED FOR ALL PURPOSES:
Hon. Stephen Morgan

Hearing Date: July 16, 2026
Time: 1:30 p.m.
Dept.: 416

Action filed: May 19, 2026 (CEQA)

1 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 NOTICE IS HEREBY GIVEN that on **July 16, 2026 at 1:30 p.m.** or as soon thereafter as may
4 be heard in Department 416 of the Superior Court of California, County of Los Angeles, located at 111
5 North Hill Street, Los Angeles, California, Petitioner and Plaintiff Los Angeles County Metropolitan
6 Transportation Authority (Metro) will, and hereby does, move the Court, pursuant to Code of Civil
7 Procedure sections 526, 527, 1085, and 1060, for a preliminary injunction enjoining Respondent and
8 Defendant City of Burbank (City), its officers, employees, agents, representatives, and all persons
9 acting in concert with them, from conditioning the review, processing, issuance or approval of Metro’s
10 plans, submittals, permits, traffic-control plans, or other authorizations for the North Hollywood to
11 Pasadena Bus Rapid Transit Corridor Project (Project) on any of the following: (1) Metro’s preparation
12 of a subsequent or supplemental environmental impact report (EIR) or other additional review under
13 the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) based on
14 Senate Bill 79 (SB 79) (Gov. Code, § 65912.155 et seq.); (2) removal, modification, conversion,
15 deferral, suspension, or non-implementation of any element of the Project approved by the Metro Board
16 and defined in the Final EIR, including the Project’s dedicated bus lanes; (3) amendment of the Project
17 Description, Project Site, or other exhibits of the parties’ Cooperative Agreement (Agreement) to
18 remove, modify, or convert, suspend, condition, or make optional any element of the Project, including
19 its dedicated bus lane; or (4) action by the Southern California Association of Governments (SCAG) or
20 any other third party concerning SB 79 mapping; and, from withholding, delaying, or refusing to
21 process Metro’s pending or future Project submittals, permits, or other authorizations on any of those
22 grounds, as set forth in the accompanying memorandum of points and authorities.

23 This motion is brought on the grounds that Metro is likely to prevail on the merits, that Metro
24 will suffer irreparable harm absent an injunction, that the balance of harms favors Metro, and that
25 interim relief serves the public interest.

26 Metro certified the Final EIR and approved the Project in 2022. Metro and the City then entered
27 into the Agreement, which incorporates the approved Project’s scope, reserves Project-scope decisions
28 to Metro, and gives the City a defined implementation role. The City has nevertheless refused to

1 approve Metro's Approved-for-Construction plans or issue an Excavation Permit unless Metro conducts
2 subsequent CEQA review based on SB 79 or changes the Project by removing dedicated bus lanes.
3 Those conditions exceed the City's lawful authority.

4 The need for relief is immediate. Metro is at the threshold of the construction phase within the
5 City. Construction in the City cannot proceed on schedule under the Agreement until the City approves
6 Metro's Approved-for-Construction plans and issues an Excavation Permit. Metro agreed to obtain
7 those approvals and that permit under the Agreement, and the City agreed not only to provide them but
8 to keep its procedures and timelines consistent with the Agreement and to support the Project Schedule.
9 The City's refusal to process final plans and permits unless Metro accepts conditions the City is not
10 authorized to impose threatens Metro's schedule to begin construction in July 2026 to preserve a
11 February 2028 revenue-service date before the 2028 Olympic and Paralympic Games.

12 If the resulting delay compounds, it threatens that revenue-service date. A later damages award
13 cannot restore transit service the public did not receive when it was needed. The City faces no
14 comparable harm from performing the role it already accepted under the Agreement.

15 This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of
16 Points and Authorities, the supporting Declaration of Michael McKenna filed concurrently herewith,
17 the pleadings and papers on file in this action, including Metro's Verified Petition and Complaint, and
18 any documentary evidence or oral argument that may be presented to the Court at the hearing of this
19 Motion.

20 Respectfully submitted,

21 Dated: June 18, 2026

REMY MOOSE MANLEY, LLP

22
23 By: 
TIFFANY K. WRIGHT

24 Attorneys for Petitioner and Plaintiff
25 LOS ANGELES COUNTY METROPOLITAN
26 TRANSPORTATION AUTHORITY
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case concerns a regional transit project that has already been approved, environmentally
4 cleared, and reduced to a binding implementation agreement between Petitioner and Plaintiff Los
5 Angeles County Metropolitan Transportation Authority (Metro) and Respondent and Defendant City of
6 Burbank (City). Metro approved the voter-funded North Hollywood to Pasadena Bus Rapid Transit
7 Project (Project) in 2022 after certifying a Final Environmental Impact Report (Final EIR) under the
8 California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The approved
9 Project includes dedicated bus lanes on Olive Avenue in the City. Those lanes are integral to the
10 Project’s bus rapid transit (BRT) configuration because they allow buses to avoid mixed-flow traffic,
11 improving speed and reliability for riders along the 19-mile corridor. The City objected to the dedicated
12 lanes during the CEQA process but did not challenge the Project’s approval.

13 After Project approval, Metro and the City entered into a Cooperative Agreement (Agreement)
14 governing implementation of the Project within the City. The Agreement reflects Metro’s statutory
15 authority to deliver regional transit facilities—including determining the location and configuration of
16 transit facilities on the City’s streets—while giving the City a defined role in implementation:
17 reviewing Designs for Rearrangements for compliance with City Standards, processing Project-related
18 permits under the Agreement’s procedures and timelines, and coordinating construction in the public
19 right-of-way. The Agreement does not give the City authority to approve or disapprove the Project,
20 revise the Project Description, or decide whether the approved Project keeps its dedicated bus lanes.
21 Those Project-scope decisions remain exclusively Metro’s—an allocation of authority the City Council
22 agreed to when it approved the Agreement and expressly excluded staff-proposed language requiring
23 mixed-flow operation on Olive Avenue.

24 Having failed to secure mixed-flow lanes as a term of the Agreement, the City now seeks that
25 outcome another way. After the Agreement was approved, the Legislature enacted SB 79, which allows
26 greater residential density near certain transit stops, including some stops served by full-time dedicated
27 bus lanes. The City now contends that certain Project stations may qualify under SB 79; that housing
28 may someday be proposed near those stations; and that Metro must therefore conduct additional CEQA

1 review before the City will approve final plans for Rearrangements or issue construction permits. The
2 City has framed this as a choice: Metro may either conduct subsequent CEQA review or convert the
3 dedicated lanes on Olive Avenue to mixed-flow operation, amend the Agreement’s Project Description
4 and Project Site to reflect that change, and obtain action from the Southern California Association of
5 Governments (SCAG) regarding SB 79 mapping.

6 But the City’s proposed “choice” is no choice at all. The City’s lane-removal demand would not
7 solve the SB 79 concern the City invokes. For planned stops, SB 79 looks to whether the transit route
8 was identified in the applicable regional transportation plan (RTP) on or before January 1, 2026. (Gov.
9 Code, § 65912.156, subd. (p).) The Project was identified in SCAG’s Connect SoCal 2024 RTP before
10 that date. (See Petitioner’s Verified Petition for Writ of Mandate and Complaint for Declaratory and
11 Injunctive Relief (Petition), ¶ 27.) Removing dedicated lanes from Olive Avenue now would not undo
12 that RTP identification; it would only degrade the BRT service those lanes are designed to provide. The
13 demand therefore exposes the City’s real objective: to revive the mixed-flow outcome it failed to secure
14 during the CEQA process and in the Agreement.

15 The City’s demand also fails under CEQA. CEQA review attaches to a discretionary decision
16 an agency is authorized to make. The City has no such discretionary decision here. Under the
17 Agreement, the City reviews Rearrangement designs for compliance with City Standards, processes
18 construction permits under the Agreement’s procedures, and coordinates construction of the Project as
19 approved. None of those functions allow the City to change the Project’s lane configuration. And the
20 City cannot manufacture CEQA authority by withholding the Agreement-based approvals it is
21 obligated to issue.

22 The City’s CEQA theory fails for a second reason as well. SB 79 approves no housing,
23 identifies no specific development sites, and shows no new or more severe impact caused by Metro’s
24 Project. The City’s demand rests on a chain of speculation about what housing owners may someday
25 propose, where, and with what effects—not the substantial evidence CEQA requires to reopen a
26 certified EIR.

27 Metro seeks a preliminary injunction enjoining the City from unlawfully withholding permits
28 and approvals. The need for relief is immediate. Metro must begin construction of the Project in the

1 City in July 2026 to preserve a February 2028 revenue-service date before the 2028 Olympic and
2 Paralympic Games. The City’s refusal to process final plans and permits unless Metro accepts
3 conditions the City is not authorized to impose threatens Metro’s construction schedule. A later
4 damages award cannot restore transit service the public did not receive when it was needed for major
5 world-class events. The City faces no comparable harm from performing the role it already accepted.

6 Metro therefore asks the Court to preserve the approved Project and the agreed process while
7 this case is litigated. The status quo is the approved Project, the certified Final EIR, and the
8 Agreement’s expedited process for advancing the Project through construction. Metro asks only that the
9 City be enjoined from using its Agreement-based role to require subsequent CEQA review based on SB
10 79, removal or modification of dedicated bus lanes, amendments to the Project Description or Project
11 Site, or action by SCAG or another third party.

12 II. FACTUAL BACKGROUND

13 A. Metro approved the Project with dedicated lanes; that approval is final.

14 The Project is a 19-mile BRT corridor connecting the San Fernando and San Gabriel valleys. It
15 includes 22 stations, six of them in Burbank. (Petition, ¶¶ 26, 29.) Within this corridor, the Project
16 includes dedicated bus lanes on portions of Olive Avenue, Alameda Avenue, and Glenoaks Boulevard.
17 (*Id.*, ¶ 30.) Dedicated bus lanes allow buses to operate outside general traffic for the specified segments,
18 improving speed and reliability compared to conventional mixed-flow bus service, where buses travel
19 in the same lanes as other vehicles and are subject to the same traffic conditions. These dedicated lanes
20 are therefore part of the Project’s premium BRT service and a core feature of this voter-funded Project.
21 (*Id.*, ¶¶ 30, 70.)

22 During the Project’s CEQA review, the City objected to dedicated bus lanes on Olive Avenue
23 and requested other Project changes. (Petition, ¶¶ 32, 34.) Metro revised the Project to address some
24 City concerns, but it retained dedicated lanes. (*Id.*, ¶¶ 33–34.) The Metro Board certified the Final EIR
25 and approved the Project on April 28, 2022; Metro filed its NOD the next day. (*Id.*, ¶ 35.) No action
26 was filed within CEQA’s 30-day limitations period to challenge Metro’s approval of the Project. (*Id.*, ¶
27 36.) The Final EIR and Project approval are therefore final. (Pub. Resources Code, §§ 21167.2,
28 21080.1, subd. (a).)

1 **B. Metro has authority to deliver the regional transit Project, and the Agreement gives the**
2 **City a defined review and permitting role.**

3 Metro is the regional transit agency that is authorized by the Legislature to plan, construct, and
4 operate transit facilities throughout Los Angeles County. (Pub. Util. Code, §§ 30001, 30630, 30631,
5 30633, 130051.13–130051.14.) Exercising those statutory powers, Metro may acquire, construct,
6 develop, operate, and maintain transit facilities, including in and along the public streets and rights-of-
7 way within the County. (*Id.*, §§ 30630, 30631, 30633.) These statutes give Metro authority to build
8 regional transit facilities, including within local rights-of-way, subject to the limited requirements the
9 Legislature imposed, which do not apply here.

10 After the Project was approved, Metro and the City entered the Agreement to define their
11 respective roles in delivering the Project within the City. (Petition, ¶¶ 37, 40–41; *id.*, Exh. C (hereafter,
12 “Agreement”).) The Agreement incorporates the Project’s scope, schedule, and site through Exhibits 1,
13 2, and 3. (Agreement, § 1.1(b)(i), Exhs. 1–3; McKenna Decl., ¶ 4.) It reserves Project-scope decisions
14 to Metro: Metro may amend the Project scope set out in Exhibit 1 “in its sole discretion subject to the
15 FEIR and any required board approvals,” and Metro has “sole discretion” to determine whether and
16 which features or facilities are required to comply with Applicable Law. (Agreement, §§ 1.1(e), 3.3(c).)
17 The Agreement does not provide for City approval of the Project Description, the Project Site, or the
18 Project’s characteristics, including the configuration of dedicated and mixed-flow bus lanes. (*Id.*, §
19 1.1(b)(i), Exhs. 1, 3; see also McKenna Decl., ¶ 5.)

20 The Agreement gives the City a defined implementation role for the Burbank segment, not
21 authority to change the Project. The City reviews Designs for Rearrangements, issues permits and
22 approvals to the extent required by the Agreement, and coordinates construction. (Agreement, §§
23 2.5(a)-(b), 3.3, 4.1; *id.*, Exh. 7; McKenna Decl. ¶¶ 6–7.) Rearrangements involve work on conflicting or
24 new City facilities needed to accommodate the Project; the City’s review of that work is limited to
25 Agreement compliance and City Standards. (Agreement, Art. 11; *id.*, Exh. 7, §§ 2.2, 3.1, 3.3, 3.4;
26 McKenna Decl., ¶¶ 6–9.) Likewise, Metro obtains City permits only “to the extent required under and
27 in accordance with” the Agreement, and the City must keep permit procedures and timelines consistent
28 with the Agreement and reasonably streamline the process to support the Project Schedule.

1 (Agreement, §§ 2.5(a), 2.5(b)(iii), 4.3(a).) These review and permitting functions address
2 implementation, construction coordination, traffic control, safety, utilities, and work in the public right-
3 of-way. (McKenna Decl., ¶¶ 6–9.) They do not give the City authority to approve or disapprove the
4 Project, alter the Project’s lane configuration, or require mixed-flow operation where the approved
5 Project includes dedicated bus lanes. City approvals may not be unreasonably withheld, conditioned, or
6 delayed. (Agreement, §§ 2.10, 10.13(b).)

7 The City Council’s approval of the Agreement confirms that the City did not reserve authority
8 to require mixed-flow operation, including on Olive Avenue. Before the Council acted, City staff
9 advised that Metro and the City disagreed over whether the Agreement should specify mixed-flow
10 operation on Olive Avenue between Buena Vista Street and Lake Street. (Petition, Exh. D [3-26-24
11 City Staff Report].) Staff therefore asked the Council to decide whether to require that language. The
12 Council approved the Agreement, but expressly excluded the mixed-flow lane redline changes
13 proposed by City staff to the Project Description on pages 1-32 and 1-33 of the Agreement. (Petition,
14 Exh. E, p. 5 [3-26-24 City Council Meeting Minutes].) The City therefore did not obtain any language
15 in the Agreement allowing it to require mixed-flow operation on Olive Avenue.

16 **C. After SB 79, the City conditioned approvals on subsequent CEQA review or removal of**
17 **dedicated bus lanes from the approved Project.**

18 In October 2025, the Legislature enacted SB 79, which allows greater residential density and
19 building heights near qualifying transit stops. (Gov. Code, § 65912.157.) A BRT stop may qualify only
20 if, among other things, the service operates in full-time dedicated lanes or a separate right-of-way. (*Id.*,
21 § 65912.156, subd. (p); Pub. Resources Code, § 21060.2, subd. (a)(1).) For planned stops, SB 79 also
22 looks to whether the transit route was identified in the applicable RTP on or before January 1, 2026.
23 (Gov. Code, § 65912.156, subd. (p).)

24 On January 16, 2026, Metro submitted 100-percent design plans to the City. (Petition, ¶ 52.) On
25 February 17, 2026, the City responded that it could not issue a construction permit unless Metro
26 completed subsequent CEQA review to analyze potential SB 79-related density increases near
27 qualifying stations. (Petition, ¶¶ 64–68.) The City’s comments on the plans also stated that all of the
28 City’s comments, redlines, and attachments were “contingent upon Metro’s completion of subsequent

1 environmental analysis.” (*Id.*, ¶ 65.) The City also stated that, in the alternative, Metro could remove
2 dedicated bus lanes from the Project. (*Id.*, ¶ 66; *id.*, Exh. H [2-17-26 City letter].)

3 Metro rejected the City’s CEQA position and advised that conditioning approvals on additional
4 CEQA review or removal of dedicated lanes breached the Agreement. (Petition, ¶¶ 72–73; *id.*, Exhs. I
5 & J [3-5-26 & 3-18-26 Metro letters].) The parties then proceeded through the Agreement’s dispute-
6 resolution process. (*Id.*, ¶¶ 74–75.) They met on April 2, 2026, but did not resolve the dispute; the City
7 stated it would respond to Metro with a compromise offer by April 22. (*Id.*, ¶ 75.)

8 Metro submitted Approved-for-Construction plans under Section 3.3 and Exhibit 7 of the
9 Agreement on April 16, 2026. (McKenna Decl., ¶ 14.) Those plans are the final stage of Final Design.
10 The City’s 30-day review period ended on May 16, 2026. (Petition, ¶¶ 53, 83.)

11 In a letter dated April 22, 2026, the City responded to the dispute resolution process. But rather
12 than compromise, the City expanded and formalized its conditions. (Petition, ¶¶ 77–81; *id.*, Exh. N [4-
13 22-26 City Letter].) The City proposed that Metro convert specified dedicated-lane segments to mixed
14 flow, amend the Agreement’s Project Description and Project Site to reflect those changes, and
15 coordinate with SCAG to revise its SB 79 maps. In exchange, the City would agree that no subsequent
16 environmental review was necessary with respect to SB 79 and would issue the permits required by the
17 Agreement. (*Ibid.*)

18 Metro responded by notifying the City that it would file the instant lawsuit if the City did not
19 approve the Approved-for-Construction Plans by May 18, 2026. (Petition, ¶ 84; *id.*, Exh. O [5-8-26
20 Metro Letter].) But on May 18, 2026, the City again refused to approve the plans or issue an
21 Excavation Permit unless Metro either conducted subsequent CEQA review or modified the Project to
22 avoid what the City characterizes as SB 79-related impacts. (Petition, ¶ 84; *id.*, Exhs. P [5-18-26 City
23 Letter] and Q [4-16-26 Metro Plan Submission].)

24 As discussed in more detail in Section IV.C, below, the City’s refusal now threatens the
25 Burbank construction schedule, which requires construction of the Burbank segment to begin July 27,
26 2026 so that revenue service can begin in February 2028 before the 2028 Olympic and Paralympic
27 Games. (McKenna Decl., ¶¶ 21-26.)
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III. LEGAL STANDARD

A preliminary injunction may issue when the moving party shows a likelihood of success on the merits and that the balance of interim harms favors relief. (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678 (*Butt*); *White v. Davis* (2003) 30 Cal.4th 528, 554.) These factors operate on a sliding scale: the required showing on one decreases as the showing on the other increases, so long as the moving party shows at least some possibility of success. (*Butt, supra*, 4 Cal.4th at p. 678.) The court also considers the public interest. (*Anderson v. County of Santa Barbara* (2023) 94 Cal.App.5th 554, 577-578.) As a public agency, Metro is exempt from any bond or undertaking requirement. (Code Civ. Proc., § 995.220.)

Metro seeks a narrow order. The order would enjoin the City from conditioning its Agreement-based review and permitting of the Project on Metro’s performance of subsequent CEQA review based on SB 79, removal or modification of dedicated bus lanes, amendment of the Project Description or Project Site, or action by SCAG or any other third party. It would leave the City’s Agreement role untouched. It would not direct the City to approve any submittal; it would enjoin the City from withholding action on grounds the Agreement forbids. An order in those terms would preserve the status quo, which is the last actual, peaceable, uncontested condition preceding this dispute: the approved Project, the certified Final EIR, and the Agreement’s process for moving the Burbank segment into construction. (See *United Railroads v. Superior Court* (1916) 172 Cal. 80, 87.)

IV. ARGUMENT

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A. Metro is likely to prevail because the City has no authority to use local approvals to control Metro’s regional transit Project.

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Metro’s authority to deliver the Project derives from the Legislature, not the City. (See § II.B above.) The Legislature charged Metro with developing and operating a regional transit system for Los Angeles County and gave Metro authority to acquire, construct, develop, operate, and maintain transit facilities, including in and along the public streets and rights-of-way within the County. (Pub. Util. Code, §§ 30001, 30630, 30631, 30633, 130051.13–130051.14.) That statutory structure reflects the regional nature of Metro’s work. A transit line that crosses municipal boundaries cannot be subject to redesign by each city along the route. For that reason, construction and operation of a regional transit

1 system is a matter of statewide concern, and Metro is generally not subject to local regulation in
2 carrying out that function. (*Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986)
3 185 Cal.App.3d 996, 1000–1002 (*Rapid Transit*) [transit project that “transcends the boundaries of a
4 municipality” is not a municipal affair]; see also *Regents of University of California v. Superior Court*
5 (2024) 102 Cal.App.5th 852, 858–859 [local rules may not interfere with “the state’s substantive
6 judgments about how to perform its assigned functions”].) Government Code section 53090,
7 subdivision (a) likewise excludes rapid transit districts and rail transit districts from the definition of
8 “local agency,” so the requirement that local agencies comply with building ordinances under sections
9 53090, subdivision (b) and 53091, subdivision (a) does not apply to Metro.

10 The Agreement must be read against that statutory background. Metro agreed to give the City a
11 defined implementation role in the Burbank segment, including review of Designs for Rearrangements,
12 processing of agreed upon Project-related permits, and construction coordination in the public right-of-
13 way. But the Agreement did not give the City authority to approve or disapprove the Project itself, alter
14 the Project’s lane configuration, require mixed-flow operation, or decide whether the approved Project
15 retains its dedicated bus lanes. Those Project-scope decisions remain exclusively within Metro’s
16 authority. (Agreement, §§ 1.1(e), 3.3(c).)

17 The City’s conditions breach that allocation. The City has made its review of Metro’s
18 Rearrangement design submittals and its processing of Project-related permits contingent on Metro
19 surrendering decisions the Agreement reserves to Metro. The City offered to withdraw its CEQA
20 demand only if Metro removes and modifies dedicated bus lane locations, amends the Agreement’s
21 Project Description and Project Site to reflect that redesign, and coordinates with SCAG to revise SB
22 79 mapping.

23 The City’s dedicated-lane condition is not a Compliance Comment, a City Standard, or a
24 permit-processing requirement under the Agreement. Dedicated bus lanes are an essential part of the
25 Project scope and features the City acknowledged when it entered the Agreement. (Agreement, §
26 1.1(b)(i), Exhs. 1, 3.) Any amendment to that scope rests with Metro, in its “sole discretion,” subject
27 only to the Final EIR and Metro Board approval. (*Id.*, §§ 1.1(e), 3.3(c).) The Agreement gives the City
28 a defined review and permitting role. It does not give the City a vote on the Project’s dedicated lanes,

1 and it does not let the City withhold approvals to obtain one. (*Id.*, §§ 2.10, 2.5(a)–(b), 3.1, 3.3, 3.4, 4.1,
2 4.3(a); 10.13(b).; McKenna Decl. ¶¶ 6–9.)) The SCAG condition also exceeds the City’s role. It
3 demands action by a third party the Agreement does not require and Metro does not control.

4 The result is the same even if the City’s permit role rested on municipal power rather than the
5 Agreement. A city that requires a permit for excavation in its streets still may not use that permit to
6 control matters “unrelated to and beyond the scope of” the work the permit governs. (*West Bay*
7 *Sanitary Dist. v. City of East Palo Alto* (1987) 191 Cal.App.3d 1507, 1511 (*West Bay*)). In *West Bay*, a
8 statute expressly conditioned a sanitary district’s street excavations on the city’s consent. (*Id.* at p.
9 1510.) The city conditioned its consent on the district amending its wastewater permitting regulations.
10 The court held that the condition imposed by the city usurped powers the Legislature vested exclusively
11 in the district and affirmed a writ of mandate compelling the city to issue the permit without the
12 condition. (*Id.* at pp. 1511–1513.) The City’s position here is weaker. No comparable statute conditions
13 Metro’s work on the City’s consent, and the Agreement provides that City approvals may not be
14 unreasonably withheld, conditioned, or delayed. (Agreement, §§ 2.10, 10.13(b).) Whatever the source
15 of the City’s permit role, it does not include authority to demand changes to the Project’s dedicated bus
16 lanes or action from SCAG. Nor can the City obtain that authority by recasting its demands as a CEQA
17 condition, as Section IV.B explains below.

18 **B. Metro is likely to prevail because the City has no authority under CEQA to demand**
19 **subsequent review, and SB 79 would not trigger it in any event.**

20 The City’s CEQA demand fails for the same root reason its demand to change the approved
21 Project fails. The City has no authority to shape, condition, or deny the Project in response to the SB 79
22 housing impacts it asserts. That defeats the demand for subsequent review at the threshold. In any
23 event, SB 79 is not the kind of changed circumstance that requires subsequent review. Either ground for
24 rejecting the City’s demand for additional CEQA review is independently sufficient.

1 ***1. The City lacks the discretionary authority CEQA requires before it may demand***
2 ***subsequent environmental review.***

3 CEQA applies only when an agency holds discretionary authority over the activity at issue.
4 (Pub. Resources Code, § 21080, subd. (a); 14 Cal. Code Regs. (CEQA Guidelines), § 15060, subd.
5 (c)(1).) Not any discretion will do. The agency must have authority to shape, condition, or deny the
6 project in a way that could respond to the environmental concern asserted. (CEQA Guidelines, §§
7 15002, subd. (i), 15357; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.)
8 That requirement continues after EIR certification. (*San Diego Navy Broadway Complex Coalition v.*
9 *City of San Diego* (2010) 185 Cal.App.4th 924, 938–940 (*San Diego Navy*)). A subsequent EIR may be
10 prepared only if a later discretionary approval remains. (CEQA Guidelines, §§ 15162, subd. (c), 15096,
11 subd. (e).)

12 The City has no such approval for this Project. As shown above, the Agreement gives Metro
13 authority over the Project’s scope and features, and gives the City no authority to approve or
14 disapprove the Project itself. (Agreement, §§ 1.1(e), 3.3(c).) The City’s role is limited to conformance
15 review of Designs for Rearrangements, permit processing under the Agreement, and construction
16 coordination. (*Id.*, §§ 2.5(a)–(b), 3.3, 4.1; *id.*, Exh. 7.) None of those functions allow the City to shape,
17 condition, or deny the Project in response to asserted SB 79 housing impacts. (*Id.*, §§ 2.5(a), 4.3(a),
18 10.13(b); *id.*, Exh. 7, §§ 3.1, 3.3.) The City therefore has no discretionary approval to which CEQA
19 could attach for purposes of the subsequent review it demands.

20 *San Diego Navy* applied that rule in a closely analogous setting. There, the agency reviewed
21 construction submittals for consistency with a development agreement and urban design guidelines.
22 (*San Diego Navy, supra*, 185 Cal.App.4th at pp. 929–930, 937–938.) The petitioner argued that this
23 consistency review required a subsequent or supplemental EIR addressing climate-change impacts. The
24 court rejected that theory because the agency’s review authority was limited to design consistency.
25 Even assuming the agency exercised judgment over aesthetic issues, that did not give it authority to
26 modify the project to address climate-change impacts. (*Id.* at pp. 938–940.)

27 The same principle applies here. The relevant question is not whether the City has any judgment
28 to exercise under the Agreement, but whether that judgment allows the City to address the impacts it

1 asserts. It does not. The City asserts land use, sewer, utility, and infrastructure impacts from possible
2 future housing under SB 79. (Petition, Exh. F [1-27-26 City Staff Report], Exh. P [5-18-26 City
3 Letter].) But the City’s role in the Agreement concerns Metro’s BRT Project, not future private
4 housing. The City may review the Project for compliance with the Agreement, process permits under
5 the Agreement, and coordinate construction; it may not use those functions to compel CEQA review of
6 housing impacts it cannot address through Metro’s Project. Those impacts would be addressed, if at all,
7 through the City’s land-use and infrastructure authority over that future housing.

8 Finally, responsible-agency status would not help the City.¹ Even if the City were a responsible
9 agency, CEQA would not require that Metro perform subsequent review as a condition of Agreement-
10 bound approvals. CEQA assigns any later responsible agency review to the agency granting the next
11 discretionary approval, if one exists. (CEQA Guidelines, §§ 15096, subd. (e), 15162, subd. (c).) A
12 responsible agency that concludes a subsequent EIR is required has options under the Guidelines; it
13 cannot convert those options into a permit condition imposed on the lead agency (*Id.*, §§ 15096, subd.
14 (e)(1)–(4).)

15 **2. In any event, SB 79 is not a changed circumstance requiring subsequent review.**

16 Even if the City possessed discretionary authority of the kind CEQA requires, its demand for
17 subsequent environmental review would still fail. After an EIR is certified, CEQA’s low-threshold
18 standard governing whether to prepare an EIR in the first instance no longer applies. CEQA’s
19 subsequent review provisions (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162–15163)
20 reflect “a quite different intent”: after in-depth review has already occurred, further review is required
21 only if changed circumstances justify “repeating a substantial portion of the process.” (*River Valley*
22 *Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 166 (*River*
23 *Valley*).) The changed circumstance the City asserts must therefore require major revisions to the prior
24

25 _____
26 ¹ Under CEQA, the “lead agency” is the public agency with principal responsibility for carrying out or
27 approving a project, and it prepares the EIR. (CEQA Guidelines, § 15367.) Metro is the lead agency for
28 the Project and certified the Final EIR. (Petition, ¶¶ 31, 35.) A “responsible agency” is a public agency,
other than the lead agency, that has discretionary approval power over the project. (CEQA Guidelines,
§ 15381.) A responsible agency relies on the lead agency’s EIR and exercises its own approval
authority over the aspects of the project it will carry out or approve. (*Id.*, § 15096, subs. (a), (f).)

1 EIR “due to the involvement of new significant environmental effects or a substantial increase in the
2 severity of previously identified significant effects.” (CEQA Guidelines, § 15162, subd. (a)(2).)

3 The City has not made that showing. SB 79 does not change Metro’s Project. It does not
4 approve housing, require construction, establish a unit count, identify a development site, or show that
5 any future housing will be built because of the Project. Nor has the City identified substantial evidence
6 that the Project, as approved, will cause any new or substantially more severe environmental impacts.
7 At most, the City points to the possibility that some Project stations may qualify as SB 79 transit-
8 oriented development stops and that private property owners may later propose housing near them.
9 That is not enough to trigger preparation of a subsequent EIR. (CEQA Guidelines, § 15162, subd.
10 (a)(2).)

11 The City’s theory also lacks sufficient detail needed for meaningful environmental review. No
12 site, design, timing, unit count, infrastructure demand, or approval path has been identified. The areas
13 surrounding the BRT stations within the City are already developed, so any future housing would
14 require a private owner to remove or redevelop existing structures and is not reasonably foreseeable.
15 Metro could not meaningfully analyze traffic, utility, sewer, public-service, land-use, or other impacts
16 from future housing. It could only speculate about what private owners might later propose and what
17 environmental effects might result from those proposals. CEQA does not require that exercise. (See
18 *Marina Coast Water Dist. v. County of Monterey* (2023) 96 Cal.App.5th 46, 73–74 [new regulatory
19 developments did not require supplemental review where the measures to be implemented, their timing,
20 and their effects remained uncertain].) Nor does CEQA require environmental review where there is not
21 yet a specific development proposal capable of meaningful analysis. (Pub. Resources Code, § 21080,
22 subd. (e)(2); CEQA Guidelines, § 15384; see *Committee for Tiburon LLC v. Town of Tiburon* (2026)
23 118 Cal.App.5th 259, 280 [“Absent a specific project proposal ..., requiring environmental review of
24 site-specific resources under CEQA is premature and unlikely to yield any meaningful analysis”].)

25 *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437 illustrates this
26 point. There, the court held that an EIR for a 27-lot subdivision was not required to analyze second
27 units that future owners might someday lawfully seek, because the record did not show how many
28 would be built, where, or with what effects. (*Id.* at pp. 1450–1451.) So too here. Even if SB 79 creates

1 an entitlement path near some Project stations, no housing projects have been proposed, and their site,
2 design, timing, infrastructure demand, and effects are unknown. (See also *Aptos Council v. County of*
3 *Santa Cruz* (2017) 10 Cal.App.5th 266, 293–295 [ordinance easing hotel-development standards did
4 not require analysis of future hotels, which were too speculative to be reasonably foreseeable, even
5 though the county hoped the ordinance would spur development].)²

6 CEQA requires substantial evidence of new or substantially more severe environmental effects.
7 (CEQA Guidelines, § 15162, subd. (a).) It does not require Metro to reopen the approved EIR for the
8 Project because a subsequently-enacted housing statute may influence development choices by others.

9 **C. The balance of harms and the public interest favor preserving the approved Project**
10 **schedule.**

11 The balance of harms favors interim relief. The City is disrupting the status quo by refusing to
12 process final plans and permits unless Metro reopens CEQA or fundamentally changes the Project. The
13 requested order would prevent that disruption while preserving the City’s Agreement-based role in
14 review, permitting, and construction coordination.

15 ***1. Delay now threatens time-sensitive public benefits that damages cannot remedy.***

16 Metro is now at the threshold of the Project’s construction phase. The Metro Board approved
17 the life-of-project budget on May 28, 2026. (McKenna Decl., ¶ 18.) The current Project schedule
18 achieves a February 2028 revenue-service date before the 2028 Olympics, when the regional transit
19 system is expected to carry approximately one million additional daily riders. (*Id.*, ¶ 26.) To meet the
20 public’s need for enhanced transit services, the Project schedule requires the City to issue an
21 Excavation Permit prior to July 27, 2026, the date construction in Burbank is scheduled to commence.
22 (*Id.*, ¶ 20.) Construction on the Burbank segment must be completed by October 2027; a delay into late
23

24 ²See also, e.g., *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 398–
25 401 (no duty to analyze future offramp that was ill-defined and speculative); *Berkeley Keep Jets Over*
26 *the Bay Committee v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1361 (future projects in long-
27 range plans were too conceptual); *National Parks & Conservation Assn. v. County of Riverside* (1996)
28 42 Cal.App.4th 1505, 1518–1519 (future plants too uncertain where location and operator were
unknown); cf. *Friends of the Sierra Railroad v. Tuolumne Park & Recreation Dist.* (2007) 147
Cal.App.4th 643, 654–657 (review premature when planning had not advanced enough for meaningful
analysis).

1 November risks the City’s holiday construction moratorium, adding weeks to the schedule. (*Id.*, ¶ 24;
2 Agreement, Exh. 8, § 5.3(c); Petition, ¶ 13.)

3 The benefits at stake are corridor-wide. If the City continues to condition its Agreement-based
4 approvals on extra-contractual CEQA review or lane changes, riders throughout the corridor will lose
5 the Project’s benefits during any resulting delay. (McKenna Decl., ¶ 27.) The Project is expected to
6 serve 35,000 daily riders, reduce end-to-end travel time from roughly two hours to approximately 70
7 minutes, improve reliability and access, reduce vehicle miles, and provide associated air quality and
8 greenhouse gas benefits. (*Ibid.*; Petition, ¶ 26.)

9 Nor can Metro protect the schedule by waiting. The City has maintained the same position since
10 at least February 2026, and Metro should not have to choose between entering construction without the
11 City’s approvals or risking the February 2028 revenue-service date.

12 **2. *The City will suffer no comparable harm from complying with the Agreement.***

13 The requested relief would take nothing from the City that the Agreement gives it. The City
14 could still review submittals, process permits, coordinate construction, and enforce the Agreement’s
15 safety and construction requirements. The injunction would bar only conditions the Agreement does not
16 permit. Being held to the bargain is it struck is not a comparable interim harm.

17 The City also faces no cognizable harm from being enjoined against demanding changes to the
18 Project’s dedicated bus lanes. The City’s asserted harm rests on SB 79, but the SB 79 consequences the
19 City invokes arise from the Legislature’s housing policy decision, not from Metro’s final plans or
20 construction permits. For planned or approved transit projects, SB 79 ties qualifying stop status in part
21 to preexisting planning facts, including the route’s identification in the applicable regional
22 transportation plan on or before January 1, 2026. (Gov. Code, § 65912.156, subd. (p).) The Project was
23 identified in SCAG’s regional transportation planning documents before that date. To the extent SB 79
24 requires stop-specific mapping determinations, those determinations belong in the statutory mapping
25 process—not in the City’s review of Metro’s final plans and construction permits. The requested
26 injunction therefore would not worsen the City’s lawful position under SB 79; it would simply prevent
27 the City from imposing an unauthorized condition on Metro’s Project. Holding the City to the
28 Agreement forecloses no decision about the lanes. The construction scheduled to begin in July 2026

1 will not physically fix Olive Avenue’s lane configuration, because demarcation occurs through striping
2 at a later stage of construction. (McKenna Decl., ¶ 22.) Yet the City is withholding the Excavation
3 Permit itself, blocking even work that could not affect the SB 79 qualification it asserts. The City loses
4 nothing while this case proceeds, whereas Metro and the public risk losing the February 2028 service
5 date if the City withholds construction permits.

6 The public interest also favors interim relief. The public has already received the environmental
7 review CEQA required for the approved Project, and CEQA allows renewed review by a responsible
8 agency only under the limited subsequent-review standards. (Pub. Resources Code, § 21166; CEQA
9 Guidelines, §§ 15162–15163; *River Valley, supra*, 37 Cal.App.4th at p. 166–178.) Reopening that EIR
10 to study speculative housing projects would disserve that interest. Delay also would postpone a voter-
11 funded regional transit project whose corridor-wide benefits cannot be retroactively restored after trial.
12 And because SB 79 was enacted to encourage housing near transit, using it to force removal of
13 dedicated bus lanes or delay the construction of an approved transit line would undercut, not advance,
14 that public purpose. (Gov. Code, § 65912.155.)

15 **V. CONCLUSION**

16 Metro asks only that the City be held to the role it accepted through the Agreement. Metro
17 approved the Project years ago, with dedicated bus lanes, after completing CEQA review. The City
18 allowed that approval to become final. It cannot use its Agreement-based role to reopen CEQA, require
19 lane changes, or demand amendments or third-party action it has no authority to compel. Because those
20 unauthorized conditions threaten immediate and irreparable harm to a time-sensitive public transit
21 project, Metro respectfully requests that the Court grant the preliminary injunction in the terms set forth
22 in Metro’s proposed order.

23 Respectfully submitted,

24 Dated: June 18, 2026

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25
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