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16 TRANSPORTATION AUTHORITY

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.
26
27
28

Case No. 26STCP01904

**[PROPOSED] ORDER ON PETITIONER
AND PLAINTIFF'S EVIDENTIARY
OBJECTIONS TO THE DECLARATION
OF DAVID KRISKE**

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)

[PROPOSED] ORDER

The Court having read and considered Petitioner and Plaintiff Los Angeles County Metropolitan Transportation Authority's (Metro) evidentiary objections to the Declaration of David Kriske (Kriske Decl.) filed in support of Respondent and Defendant City of Burbank's (City) Opposition to Metro's Motion for Preliminary Injunction, having read and considered any responses thereto, hereby orders as follows:

NO.	MATERIAL OBJECTED TO:	GROUND(S) FOR OBJECTION	RULING
1.	Kriske Decl., ¶ 4, p. 3, lines 6–9: “At that time the LA Metro’s Draft EIR Report at Chapter 4, p. 4-14 indicated that the bus route system would not impact land uses, including building height, density and floor area ratios. (Comp. Ex. 1).”	Lacks foundation and misidentifies the source. The cited exhibit, Compendium Exhibit 1, is the Cooperative Agreement, not the Draft EIR, and the referenced Draft EIR page is not authenticated or before the Court. (Evid. Code, §§ 403, 702, 1400.) The statement is also improper secondary evidence of the contents of a writing, particularly where the cited writing has not been submitted and the content and meaning attributed to it are disputed. (Evid. Code, § 1521, subd. (a).) In any event, the statement misstates the referenced document: page 4-14 of the Draft EIR addresses whether the Project would physically divide an established community or cause a significant impact from changes in land use, not whether the Project would affect building height, density, or floor area ratios. The statement also constitutes improper lay opinion, legal conclusion, and argument regarding the scope and effect of the Draft EIR’s land-use analysis. (Evid. Code, § 800.) To the extent offered to show that the Draft EIR analyzed and eliminated any potential density, height, or floor-area-ratio effects, the statement is irrelevant and misleading. (Evid. Code, §§ 210, 350, 352.)	Sustained _____ Overruled _____

1	2.	Kriske Decl., ¶ 7, p. 3, lines 10–14: “[I] heard that the Burbank City Council approved the Staff Report, including this comment. A true and correct copy of the meeting minutes of the City Council for that date, including a portion of the presentation (led by myself) in a video format and the resulting City Council vote is contained as Comp. Ex. 5.” (Objection is limited to the characterization “approved the Staff Report, including this comment” and to the description of Comp. Ex. 5 as “including a portion of the presentation ... in a video format.”	Misstates and mischaracterizes the document; improper secondary evidence of the contents and legal effect of the Council minutes. (Evid. Code, §§ 1520, 1521, subd. (a).) The minutes reflect approval of the Cooperative Agreement subject to the City’s redline changes, excluding the mixed-flow lane redline changes on pages 1-32 (BUR-0127) and 1-33 (BUR-0128), together with a direction to staff to determine whether to require a more detailed project description—not approval of the staff report or “this comment.” (See City Comp. Ex. 5, BUR-0229, and BUR-0127 – BUR-0128 for redlines excluded.) The statement lacks foundation and personal knowledge to the extent the characterization conflicts with the minutes. (Evid. Code, § 702.) The statement also constitutes improper lay opinion and legal conclusion as to the meaning and legal effect of the Council’s vote. (Evid. Code, § 800.) To the extent the statement relies on or purports to describe a video that was not served on Metro, including in the City’s Compendium, it lacks foundation and authentication and constitutes improper secondary evidence. (Evid. Code, §§ 403, 702, 1400, 1521, subd. (a).) The statement is argumentative and should be disregarded. (Evid. Code, §§ 210, 350, 352.) We object to evidence not served timely.	Sustained _____ Overruled _____
22	3.	Kriske Decl., ¶ 8, p.4, lines 16-17: “Despite the City’s requests, a more detailed description of the project scope was not included in the final version of the Cooperative Agreement.”	The statement lacks foundation and personal knowledge to the extent the declarant purports to know what was requested by the City, deliberately vague as to time, and deliberately misleading/misstating evidence. The statement is argumentative and offered as a conclusory opinion rather than a fact. (Evid. Code, §§ 210, 350, 352.) See Declaration of Anthony. DeFrenza in Support of Metro’s Reply in Support of Motion for	Sustained _____ Overruled _____

		Preliminary Injunction (DeFrenza Decl.), Paragraphs 4 through 7, and Exhibits A through C thereto, which show that the City did not request a more detailed description during negotiations after the March 26, 2024 Board Meeting during six months of negotiating the Agreement terms. See also City Comp. Ex. 5, BUR-0229, and Ex. 4, BUR-0127-28, showing that the City Council directed that the more detailed description of the alignment proposed by City staff be excluded from the approved Agreement, which directly contradicts this statement.	
4.	Kriske Decl., ¶ 12, p. 7, lines 2–3: “That schedule... is clearly unrealistic.”	Improper lay opinion. (Evid. Code, § 800.) The statement lacks foundation and personal knowledge because the declarant does not establish any basis to opine on the feasibility of Metro’s construction schedule. (Evid. Code, §§ 403, 702.) The statement is argumentative and offered as a conclusory opinion rather than a fact. (Evid. Code, §§ 210, 350, 352.) To the extent offered as expert opinion, the statement is inadmissible because the declarant has not been qualified as an expert and no reliable factual basis for the opinion is provided. (Evid. Code, §§ 720, 801, 802, 803.)	Sustained _____ Overruled _____
5.	Kriske Decl., ¶ 13, p. 7, lines 13–15: “That schedule, however, is again just a schedule subject to yet further changes. There was no explanation by Metro as to why it was able to cut five-months off the prior schedule for this Project.”	The statement lacks foundation and personal knowledge to the extent the declarant purports to characterize Metro’s internal scheduling decisions, the reasons for schedule changes, or the absence of any explanation by Metro. (Evid. Code, §§ 403, 702.) The statement is speculative and constitutes improper lay opinion regarding the basis for and reliability of Metro’s construction schedule. (Evid. Code, § 800.) To the extent the statement is offered to prove what Metro did or did not communicate outside this declaration, it is inadmissible hearsay. (Evid. Code, § 1200.) The statement is argumentative	Sustained _____ Overruled _____

		and should be excluded or disregarded because it is not evidence of any disputed fact and risks misleading the Court. (Evid. Code, §§ 210, 350, 352.) The statement is also misleading—the schedule attached to the Agreement was for the entire project, the more recent shorter schedule is for Burbank segment only. (See DeFrenza Decl., ¶ 12.)	
6.	Kriske Decl., ¶ 16, p. 8, lines 7–8: “I am unaware of Mr. McKenna’s involvement in the Project prior to his participation in the parties’ dispute resolution meeting in April 2026.”	Irrelevant. Mr. Kriske’s personal lack of awareness of Mr. McKenna’s involvement in the Project before April 2026 has no tendency in reason to prove any disputed fact on this motion. (Evid. Code, §§ 210, 350.) To the extent the statement is offered to imply that Mr. McKenna was not involved in the Project before April 2026, it lacks foundation, lacks personal knowledge, and is speculative. (Evid. Code, §§ 403, 702.) To the extent offered to attack the foundation for Mr. McKenna’s testimony, the statement is argumentative and constitutes improper lay opinion. (Evid. Code, § 800; see also DeFrenza Decl., ¶ 9.)	Sustained _____ Overruled _____
7.	Kriske Decl., ¶ 19, pp. 8–9, lines 27–28, 1–7: “The striping and assigning of bus lanes on a City 1 roadway is indeed ‘design of work performed on City facilities to accommodate the project.’ It is therefore a Rearrangement subject to City review because the public street is a City Facility (Comp. Ex. 1, § 11.1 [definition of “City Facility”]. Metro is rearranging the City streets upon which the bus transit system is operating, including by changing roadway signing and striping on City public streets to accommodate the Project.”	Improper legal conclusion and contract interpretation. Whether the Cooperative Agreement makes the challenged signing and striping work a “Rearrangement” subject to City review, and the scope of any such review, are legal questions for the Court. (Evid. Code, § 310.) The statement also misstates and mischaracterizes the Cooperative Agreement: the Agreement’s definition of “City Facility” does not make every change to a City street a “Rearrangement” or expand the scope of City review beyond the review authorized by the Agreement; the Agreement separately defines “Rearrangement” and limits the City’s review of “LACMTA Submittals” to whether they comply with the Agreement, as specified in timely	Sustained _____ Overruled _____

		Compliance Comments. (See City Comp. Ex. 1, §§ 3.2 (BUR-0011), 3.3 (BUR-0012); Exs. 6 (BUR-0046–0047), 7 (BUR-0048–0049); <i>id.</i>, § 11.1 [definitions of “City Facility” (BUR-0026), “Conflicting Facility” (BUR-0027), “Rearrangement” (BUR-0030), “City Standards” (BUR-0026), and “Compliance Comment” (BUR-0026–0027)].) The statement is improper lay opinion on the legal effect of the Agreement and Metro’s rights and obligations under it. (Evid. Code, § 800.) To the extent offered as factual testimony about the design, ownership, or legal status of the relevant street improvements, the statement lacks foundation and personal knowledge. (Evid. Code, §§ 403, 702.) The statement is argumentative and should be disregarded. (Evid. Code, §§ 210, 350, 352.) Mr. Kriske fails to identify any published City Standards which would make removal of the dedicated lanes a “Compliance Comment.”	
8.	Kriske Decl., ¶ 20, p. 9, lines 8–10: “This is just one example of the City’s retained right to review and approve portions of the Project that affect a City Facility.”	Improper legal conclusion regarding the parties’ contractual rights. Whether the Cooperative Agreement gives the City a “retained right to review and approve portions of the Project that affect a City Facility,” and the scope of any such right, are questions of contract interpretation for the Court. (Evid. Code, § 310.) The statement also misstates and mischaracterizes the Cooperative Agreement. The Agreement does not give the City a general right to review and approve all portions of the Project that affect a City Facility; it defines the circumstances in which City review applies, including for Designs for Rearrangements and other “LACMTA Submittals” submitted under the Agreement. (See City Comp. Ex. 1, §§ 3.2, 3.3 (BUR-0011–0012); Exs. 6, 7 (BUR-0046–49); <i>id.</i>, § 11.1 [definitions of “City Facility”	Sustained _____ Overruled _____

		(BUR-0026), “Rearrangement” (BUR-0030), “LACMTA Submittals” (BUR-0029) and “Compliance Comment” (BUR-0026–0027)].) The statement is improper lay opinion on the legal effect of the Agreement. (Evid. Code, § 800.) The statement is argumentative and should be disregarded. (Evid. Code, §§ 210, 350, 352.)	
9.	Kriske Decl., ¶ 21, p. 9, lines 15–21: “This assertion is without merit for several reasons. First, the purpose of the Exhibit 3 graphic is to provide the ‘Project Site,’ a general, illustrative identification of the project alignment in Burbank—it does not provide the granularity, appropriate map scale, or detail from which specific project attributes like lane configuration information can be accurately inferred.”	Improper legal conclusion and contract interpretation. Whether Exhibit 3 may be used to interpret the Cooperative Agreement, and whether it identifies Project attributes including lane configuration, are questions of contract interpretation for the Court. (Evid. Code, § 310.) The statement also misstates and mischaracterizes the Cooperative Agreement and Exhibit 3. Exhibit 3 is part of the Agreement and identifies the “Project Site,” while Exhibit 1 describes the Project as operating in “various configurations of mixed-flow and dedicated bus lanes depending on location.” (See City Comp. Ex. 1, Exs. 1 (BUR-0034), 3 (BUR-0037).) Mr. Kriske’s assertion that Exhibit 3 is merely “general” or “illustrative” and cannot be used to identify lane configuration is improper lay opinion regarding the meaning and legal effect of the Agreement and its exhibits. (Evid. Code, § 800.) To the extent offered as factual testimony about the purpose, scale, or intended use of Exhibit 3, the statement lacks foundation and personal knowledge. (Evid. Code, §§ 403, 702.) The statement is argumentative and misleading and should be disregarded. (Evid. Code, §§ 210, 350, 352.) Also see DeFrenza Decl., ¶ 2 indicating that M. Kriske was well aware of the dedicated side running lanes on Olive Avenue in explaining slides BUR-0209 and BUR-0211.	Sustained _____ Overruled _____

10.	Kriske Decl. ¶ 21, p. 9, lines 20–24: “Some of those details were originally included as a textual project description in Exhibit 1 but were removed by Metro in January 2024 during negotiation of the Agreement.”	Lacks foundation and personal knowledge. Mr. Kriske does not establish a competent basis for asserting that specific lane-configuration details were “removed by Metro” during negotiation of the Cooperative Agreement, as opposed to being revised through the parties’ negotiation and final approval of the Agreement. (Evid. Code, §§ 403, 702.) To the extent the statement purports to describe prior drafts, redlines, emails, negotiation communications, City Council action, or other writings, it is improper secondary evidence of writings whose contents and legal effect are disputed. (Evid. Code, § 1521, subd. (a).) The statement is also argumentative and misleading because it characterizes the negotiation history in a manner that implies Metro unilaterally removed controlling Project language. The City Council minutes reflect that the Council approved the Cooperative Agreement subject to incorporation of the City’s redline changes excluding the mixed-flow lane redline changes on pages 1-32 (BUR-0127) and 1-33(BUR-0128), and separately directed staff to determine whether to require a more detailed project description specifying mixed-flow lanes on Olive Avenue between Buena Vista Street and Lake Street. (See City Comp. Ex. 5, BUR-0229; see also DeFrenza Dec., ¶¶ 2–3.) The executed Agreement includes Exhibit 1 and Exhibit 3 as part of the final Agreement, and those exhibits—not Mr. Kriske’s characterization of negotiation history—control the Court’s interpretation of the Agreement. (Evid. Code, §§ 210, 350, 352.) To the extent offered to interpret the meaning or legal effect of the final Cooperative Agreement, the statement is an improper legal conclusion and	Sustained _____ Overruled _____
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		improper lay opinion. (Evid. Code, §§ 310, 800.)	
11.	Kriske Decl., ¶ 21 pp. 9–10, lines 23–28, 1–7: “Second, the color version of the graphic submitted in Metro’s declaration that depicts the Burbank Project segment as approved by the Board was not included in the executed copy of the Agreement. The graphic in Exhibit 3 of the executed copy of the Agreement is in black and white and therefore cannot be used to identify specific lane configuration.”	Improper legal conclusion and contract interpretation. Whether Exhibit 3 may be used to interpret the Cooperative Agreement, and the legal or evidentiary effect of Exhibit 3 being reproduced in black and white in the executed copy, are questions for the Court. (Evid. Code, § 310.) The statement misstates and mischaracterizes the Agreement and Exhibit 3. Exhibit 3 is part of the Agreement and identifies the Project Site; the Agreement does not state that Exhibit 3 has no interpretive effect if reproduced in black and white, and the Agreement includes its exhibits as part of the operative contract. (See City Comp. Ex. 1, Ex. 3 (BUR-0037); <i>id.</i> , § 11.2 (BUR-0031–0032).) The assertion that Exhibit 3 “therefore cannot be used to identify specific lane configuration” is improper lay opinion regarding the meaning and evidentiary effect of the Agreement and its exhibits. (Evid. Code, § 800.) To the extent the statement purports to prove the contents, form, or legal effect of the executed Agreement, Exhibit 3, or the color and black-and-white versions of the graphic through Mr. Kriske’s characterization, it is improper secondary evidence of writings whose contents and legal effect are disputed. (Evid. Code, § 1521, subd. (a).) The statement is argumentative and misleading because Metro’s reply evidence establishes that the parties negotiated using the same Exhibit 3 graphic in color and that the final draft transmitted for execution included that same Exhibit 3 graphic in color. (Evid. Code, §§ 210, 350, 352.) See DeFrenza Decl., ¶¶ 4–7 regarding the negotiated version being in color; see also City Comp. Ex. 4, BUR-0131 and Ex. 5, BUR-0229, indicating that	Sustained _____ Overruled _____

		the City Council approved the Cooperative Agreement with a color copy of Exhibit 3 included in the version attached to the Board's Agenda. Mr. Kriske's slides presented at the City Council on March 26, 2024 included BUR-0209 and BUR-0211, which makes clear that the City understood the orange designation on Olive Avenue was a side running dedicated bus lane.	
12.	Kriske Decl. ¶ 22, p. 10, lines 13–15: “This further confirms that the Agreement did not include all of the necessary details to provide a final ‘as is’ Design.”	Improper legal conclusion and contract interpretation. Whether the Cooperative Agreement was required to include “all of the necessary details” for a final “as is” Design, and the legal effect of the Agreement's level of detail, are questions for the Court. (Evid. Code, § 310.) The statement misstates and mischaracterizes the Agreement, which establishes the Project scope and design-review procedures but does not require the Agreement itself to contain a final “as is” Design. (See City Comp. Ex. 1, §§ 1.1 (BUR-0004–0005), 3.1–3.4 (BUR-0011–0012); Exs. 1 (BUR-0034), 3 (BUR-0037), 6 (BUR-0046–0057), 7 (BUR-0048–0049).) The statement is improper lay opinion, lacks foundation to the extent offered as factual testimony regarding what design details were “necessary,” and is argumentative and misleading. (Evid. Code, §§ 403, 702, 800, 210, 350, 352.	Sustained _____ Overruled _____
13.	Kriske Decl., ¶27, p. 11, lines 15–19: “wherein Metro indicated it would ‘maintain an open dialog’ regarding mixed-flow operations on the Olive Avenue Segment” and “The objection was further memorialized ... on line 214...”	Misstates and mischaracterizes the cited Comment Response Matrix (CRM) responses and is misleading because it selectively describes Metro's responses without the full context. (Evid. Code, §§ 210, 350, 352, 356.) Metro's response to line 163 stated in full: “Metro's Board selected a configuration with dedicated bus lanes on Olive Avenue between Buena Vista Street and Lake Street. Metro will maintain an open	Sustained _____ Overruled _____

		dialogue with the City during the Project’s design phase.” (City Comp. Ex. 8, BUR-0246.) The statement also mischaracterizes the later CRM response at line 214, which stated: “Comment noted. Current direction is to move forward with dedicated bus lanes until agreement has been reached with Metro and City.” (<i>id.</i>, BUR-0271.) To the extent Mr. Kriske’s statement is offered to prove the contents or legal effect of the CRM responses through his characterization rather than the writings themselves, it is improper secondary evidence of writings whose contents and meaning are disputed. (Evid. Code, § 1521, subd. (a).) The statement is also argumentative and constitutes improper lay opinion regarding the significance of Metro’s CRM responses. (Evid. Code, § 800.)	
14.	Kriske Decl., ¶ 28, p. 11, lines 23–25: “City upper management was still evaluating whether it could allow bus lanes on the Olive Avenue Segment.”	Misstates and mischaracterizes the cited CRM. The City comment at line 122 states: “City upper management is evaluating dedicated bus lane on Olive Ave. Will provide comments later,” and Metro’s response states: “Will evaluate comments as they are provided.” (City Comp. Ex. 9, BUR-0294.) The CRM does not state that the City was evaluating “whether it could allow” dedicated bus lanes, and that characterization improperly implies a City approval right or veto authority not stated in the CRM. The statement is argumentative and misleading. (Evid. Code, §§ 210, 350, 352.) To the extent offered to prove the contents or legal effect of the CRM through Mr. Kriske’s characterization rather than the writing itself, it is improper secondary evidence of a writing whose contents and meaning are disputed. (Evid. Code, § 1521, subd. (a).) To the extent offered to interpret the legal significance of the CRM or the City’s authority under the Cooperative	Sustained _____ Overruled _____

		Agreement, it is improper lay opinion and legal conclusion. (Evid. Code, §§ 310, 800.)	
15.	Kriske Decl., ¶ 40, p. 14, lines 22–27: “SCAG staff confirmed its methodology for how to qualify BRT stops located near bus lanes that begin and end near stations and confirmed that SCAG had received recent project ‘diagrams’ from Metro that provided the limits for the full-time dedicated bus lanes—which included bus lanes on the Olive Avenue Segment.”	Hearsay. The statement recounts out-of-court statements allegedly made by SCAG staff regarding SCAG’s methodology and what SCAG allegedly received from Metro, and offers those statements for their truth. (Evid. Code, § 1200.) The statement also lacks foundation and personal knowledge as to SCAG’s methodology, what SCAG received from Metro, and whether any Metro-provided materials “provided the limits for the full-time dedicated bus lanes.” (Evid. Code, §§ 403, 702.) To the extent the statement purports to prove the contents or meaning of SCAG’s draft map, Metro’s alleged “diagrams,” or other writings not before the Court through Kriske’s characterization, it is improper secondary evidence of writings whose contents and meaning are disputed. (Evid. Code, § 1521, subd. (a).) The statement is also argumentative and misleading to the extent it is offered to imply that SCAG’s draft mapping methodology or receipt of diagrams establishes the legal effect of SB 79, the Agreement, or Metro’s design obligations. (Evid. Code, §§ 210, 350, 352, 800.)	Sustained _____ Overruled _____

IT IS SO ORDERED.

Date: _____, 2026

The Honorable Stephen Morgan
JUDGE OF THE SUPERIOR COURT