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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

**PETITIONER AND PLAINTIFF'S
REPLY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

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)

I. INTRODUCTION

The opposition of the City of Burbank (City) largely avoids the motion that the Los Angeles County Metropolitan Transportation Authority (Metro) filed. Metro does not ask the Court to approve any plan, issue any permit, or prevent the City from applying valid construction, traffic-control, utility, safety, or other City Standards under the Cooperative Agreement (Agreement) governing the North Hollywood to Pasadena Bus Rapid Transit Corridor Project (Project). This motion concerns a narrower question: whether the City may withhold approvals contemplated by the Agreement unless Metro accepts four conditions the City has no authority to impose—subsequent environmental review under the California Environmental Quality Act (CEQA) based on Senate Bill (SB) 79, removal or modification of the Project’s approved dedicated bus lanes, amendments to the Agreement’s Project Description or Project Site, and action by the Southern California Association of Governments (SCAG) or another third party. The opposition identifies no source of law that permits any of these conditions.

The City responds as though this were a challenge to the pleadings. It argues that the Agreement is complex, that Metro pleads damages, that permitting involves discretion, and that the City holds police-power interests in its streets. To the degree the City addresses the bases for Metro’s motion, it does so by misunderstanding or misrepresenting the facts and the law here. The City ignores that Metro’s authority to build regional transit facilities in public rights-of-way comes from state law, not municipal permission. The Public Utilities Code grants Metro the right to construct and operate transit facilities along any public street “to the same extent that those rights and privileges ... are granted to municipalities,” so that no city along a multi-city route controls the form of a project built for all of them. (Pub. Util. Code, § 30633; *Rapid Transit Advocates, Inc. v. Southern Cal. Rapid Transit Dist.* (1986) 185 Cal.App.3d 996, 1000–1002 (*Rapid Transit*).)

The City also misconstrues the limits of the City’s ability to condition the Project under the Agreement or pursuant to CEQA. Nothing in the Agreement gives the City the authority to condition the Project on removing dedicated bus lanes or otherwise changing the Project Description. And CEQA does not supply the authority the Agreement withholds. CEQA operates through an agency’s discretionary approval power; it does not create approval power the agency otherwise lacks. The City has no authority to remove dedicated bus lanes, amend the Project Description or Project Site, or control SCAG mapping

under SB 79. Beyond that, the City simply ignores basic CEQA principles regarding the role of lead agencies and responsible agencies and the requirements for supplemental environmental review. Furthermore, the City did not merely “request” additional CEQA review as it now claims. The City stated that it could not approve Metro’s Approved-for-Construction Plans or issue an Excavation Permit unless Metro conducted subsequent environmental review or removed the dedicated bus lanes. (City of Burbank’s Compendium of Exhibits in Support of Opposition to Petitioner’s Motion for Preliminary Injunction (“City Comp.”), Exh. 11, BUR-0348–49.)

The City has long opposed the Project’s dedicated bus lanes. (Declaration of David Kriske in Support of City’s Opposition to Petitioner’s Motion for Preliminary Injunction (“Kriske Decl.”), ¶¶ 17, 26–31.) Metro has repeatedly rejected the City’s requests for mixed-flow lanes: during the EIR process, then again when negotiating and executing the Agreement, and then again in response to the City’s proposed conditions. This history does not demonstrate that the City still has the authority to negotiate mixed-flow lanes as the City now asserts. Interim relief is needed because continued delay threatens public benefits that damages cannot restore. The Project is a voter-funded transit line that will improve speed, reliability, and access along a 19-mile corridor. A later damages award cannot place the Project into revenue service before the 2028 Olympics if that window is lost. The City faces no comparable harm from returning to the Agreement process without conditions it lacks authority to impose. The preliminary injunction should issue.

II. ARGUMENT

A. The City's threshold objections do not defeat interim relief.

The City recasts Metro’s motion as a request to compel approval of every plan, permit, and future submittal. The proposed order does the opposite. It bars the four challenged conditions and leaves the City’s Agreement role intact: the City may still review plans for work on City facilities, apply valid City Standards, review traffic-control plans, coordinate utilities, address construction safety, and make proper Compliance Comments. What it may not do is use those functions to require changes to the approved Project or reopen CEQA.

The City's procedural objections do not change the question before the Court. The City argues that its demurrer should be heard first and that the Court cannot grant interim relief without discovery,

1 an evidentiary hearing, or a trial. (City of Burbank’s Opposition to [Metro’s] Motion for Preliminary
2 Injunction (“Opp.”) at pp. 4–5, 13, 18.) But a preliminary injunction may issue “at any time before
3 judgment” on a verified complaint or supporting declarations. (Code Civ. Proc., § 527, subd. (a).) And
4 the likelihood of success is part of the preliminary-injunction analysis; the inquiry is not one that can be
5 deferred to demurrer or trial. (*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160
6 Cal.App.4th 336, 344–345.) Nor must the Court decide damages, try Metro’s contract claims, or
7 approve any plan or permit. It need only decide whether Metro is likely to show that the City may not
8 condition Agreement-based review and permitting on the four challenged demands, a question that
9 turns on written instruments and statutory authority.

10 Contrary to the City’s assertion, Metro completed the Agreement’s dispute-resolution process
11 before filing suit. The City treats its May 18 letter as the start of the dispute. (Opp. pp. 14–15.) But the
12 dispute began when the City conditioned Project approvals on SB 79-based CEQA review or removal of
13 dedicated lanes. The parties then used the Agreement’s issue-resolution process: Metro responded in
14 writing, the City invoked Level 2 review, the parties met on April 2, and the City’s April 22 letter
15 confirmed that the dispute remained unresolved unless Metro accepted the City’s lane-removal,
16 Agreement-amendment, and SCAG-action conditions. (Petition, ¶¶ 72–81; Exhs. I–N; City Comp. Ex.
17 12, BUR-0354 [City 5-20-26 staff report describing the parties’ participation in the dispute-resolution
18 process].) Metro then gave the City until May 18 to cure. (Petition, ¶ 84; Exh. O.) Article 9 required
19 good-faith efforts to resolve the dispute; it did not require Metro to restart the process each time the City
20 repeated the same refusal at each stage of permit or design review.

21 Finally, the requested relief is prohibitory, not mandatory as the City argues. Metro asks the
22 Court to restrain the City from withholding Agreement-based review and permitting on four unlawful
23 grounds. The order would not compel approval of any submittal. It would prevent the City from
24 continuing the conduct that disrupted the agreed process and preserve the last peaceable status quo: the
25 approved Project, the certified Final EIR, and the Agreement process. In any event, even under the
26 heightened standard for a mandatory injunction, Metro has shown a clear right to relief because no
27 Agreement term, CEQA provision, Public Utilities Code section, or City Standard authorizes the four
28 challenged conditions.

1 **B. The Agreement gives the City implementation review, not project control.**

2 The City's opposition treats permits, City Standards, Rearrangement review, and police power as
3 though they give Burbank broad control over the Project. None does. Each operates within two limits:
4 Metro's state-law authority to build regional transit facilities, and the Agreement's defined process for
5 City review of the Project's implementation within Burbank. The challenged conditions exceed both.

6 **1. Metro's authority to build regional transit facilities in City streets comes from state law,**
7 **not municipal permission.**

8 Metro's authority to construct regional transit facilities in public rights-of-way comes from state
9 law. (Petitioner's Memorandum in Support of Motion for Preliminary Injunction ("Mot"), pp. 14–16;
10 Pub. Util. Code, §§ 30001, 30002, 30630, 30631, 30633.) Metro is not an ordinary local permit
11 applicant; it is the regional transit agency the Legislature created to deliver transit projects that cross
12 municipal boundaries. (Mot. at pp. 14–16.; *Rapid Transit, supra*, 185 Cal.App.3d at pp. 1000–1002.)

13 The City does not respond to this statutory point, ignoring Metro's authority to build and operate
14 transit in the public right-of-way. The City instead argues that Metro ceded its statutory authority by
15 entering into the Agreement, and Metro therefore needs to "obtain the rights of way permission from the
16 City." (Opp. at p. 7.) Similarly, the City asserts that its authority to issue permits and approvals for the
17 Project consistent with "City Standards" gives it the authority to demand mixed-flow lanes or compel
18 CEQA review. (Opp. at pp. 11–12.) The City is wrong on both points.

19 The City cites Section 2.5(a) of the Agreement, arguing that Metro "contractually committed" to
20 obtain "all necessary City permits and approvals and comply with City Standards relating to the Design
21 and Construction" of the Burbank segment. (Opp. at pp. 7–8.)¹ The text of the Agreement defeats the
22 City's argument. Metro agreed to obtain permits and comply with City Standards within the Agreement's

23
24 ¹ The City quotes the middle of a three-part sentence. Section 2.5(a) begins by acknowledging Metro's
25 statutory position: "Under Applicable Law, [Metro] is not subject to certain local ordinances when
26 constructing the City Portion." It then provides that "[n]otwithstanding this," Metro shall obtain City
27 permits and approvals and comply with City Standards, "in each case to the extent required under and
28 in accordance with, the terms of this Agreement." (Agreement, § 2.5(a), City Comp. Ex. 1 at BUR-
0009.) Section 4.3(a) repeats the same structure for the Public Rights-of-Way, opening
"[n]otwithstanding any [Metro] rights to use the Public Rights-of-Way under Applicable Law" and
again capping both obligations "in each case to the extent required under and in accordance with" the
Agreement. (Agreement, § 4.3(a), City Comp. Ex. 1 at BUR-0014.)

1 defined review and permitting process. It did not give the City final policy control over the Project and it
2 did not authorize the City to condition the Project on removing dedicated bus lanes or changing the
3 Project Description or Project Site. Section 3.3(c) gives Metro “sole discretion to determine whether, and
4 which, features or facilities are required” to comply with Applicable Law, and only Metro may amend
5 the Project’s scope, including its dedicated bus lanes. (Agreement, §§ 3.3(c), 1.1(e), City Comp. Ex. 1 at
6 BUR-0012, BUR-0006.) The City’s review of drawings implementing those features does not give the
7 City authority to eliminate them.

8 The City’s review of Rearrangements also does not authorize the challenged conditions. The City
9 asserts that striping and lane assignments in City streets are “design of work performed on City
10 facilities,” and therefore subject to City review. (Opp. at pp. 7–13; Kriske Decl., ¶¶ 19–20.) Even
11 assuming the City may review that work as a Rearrangement, the Agreement limits the grounds for
12 withholding approval to compliance. Exhibit 7 permits the City to reject a submittal only for
13 “Compliance Comments”—comments explaining how the submittal fails to comply with the Agreement
14 or lacks required content. (Agreement, Art. 11 [defining “Compliance Comments”], City Comp. Ex. 1 at
15 BUR-0026–27; *id.* at Exh. 7, § 3.1, at BUR-0048.) “Remove the dedicated bus lanes” is not a
16 Compliance Comment. It identifies no defect in the plans. It demands a different Project.

17 The City’s “City Standards” argument fails on the Agreement’s definitions. The City asserts
18 that the General Plan is a City Standard (Opp. at p. 13), but the Agreement defines “City Standards” as
19 the technical design and utility standards specified in Exhibit 6 or later adopted and noticed under
20 Section 3.5. (Agreement, Art. 11, City Comp. Ex. 1 at BUR-0026.) The General Plan and Housing
21 Element appear nowhere in Exhibit 6. (Agreement, Exh. 6, § 2, City Comp. Ex. 1 at BUR-0046.) And
22 the City agreed not to reinterpret its City Standards “for the sole or primary purpose of affecting the
23 NoHo to Pasadena Project.” (*Id.*, § 3.5(a), City Comp. Ex. 1 at BUR-0012.) The City’s SB 79/General
24 Plan objection is not a City Standard, not a Compliance Comment, and not a basis to withhold
25 approval.

26 The City’s police-power argument does not fill the gap. Metro does not contend that the City
27 surrendered every municipal power it otherwise holds. The issue is narrower: whether the City may use
28

1 Agreement-based review and permitting to force changes to a regional transit project’s scope and
2 features. Neither the Public Utilities Code nor the Agreement gives the City that authority.

3 The City opposed dedicated lanes and sought mixed-flow language in the Agreement. It did not
4 obtain it. (Kriske Decl., ¶¶ 7–8.) The Agreement gives the City no authority to require that outcome
5 now.²

6 **2. Mandamus lies to prevent the City from exceeding its lawful authority.**

7 The City argues mandamus is unavailable because its review of Metro’s submittals and permits
8 involves discretion rather than a purely ministerial duty. (Opp. at pp. 10–11.) That argument misses the
9 point. Metro does not ask the Court to exercise the City’s discretion or approve any particular submittal.
10 It asks the Court to restrain conditions outside the City’s authority. Mandamus lies to correct an agency’s
11 assertion of power the law does not give it. (Code Civ. Proc., § 1085; *Kern County Hospital Authority v.*
12 *Department of Corrections & Rehabilitation* (2023) 91 Cal.App.5th 1313, 1334 [mandamus lies to
13 correct discretionary action inconsistent with the law; rejecting argument that duty was “not a ministerial
14 act” and affirming writ].) Whatever discretion the City holds over permits, construction coordination, or
15 right-of-way work, it does not include discretion to demand that Metro undertake subsequent CEQA
16 review, remove dedicated lanes, amend the Agreement, or procure action by SCAG. (See *West Bay*
17 *Sanitary Dist. v. City of East Palo Alto* (1987) 191 Cal.App.3d 1507, 1511–1513 [writ compelling permit
18 without ultra vires condition].)

19 The City’s “complex contract” argument fares no better. The issue is narrow: whether the written
20 Agreement or any statute authorizes the four challenged conditions. The Agreement and the City’s
21 written conditions are before the Court. (See *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861,

22
23 ² The copy of the Agreement attached to Metro’s Petition is executed (Petition, Ex. C, p. 80), and the
24 City’s Compendium Copy matches in text but for a handwritten cover date. (Compare City Comp. Ex.
25 1 at BUR-0002 with Petition, Ex. C, p. 54.) Mr. Kriske’s suggestion that Exhibit 3’s black-and-white
26 graphic obscured the Project’s lane configuration (Kriske Decl., ¶ 21) fails: Metro transmitted a color
27 execution version, including a color Exhibit 3, on October 1, 2024, and the Exhibit 3 graphic is the
28 same graphic in the executed Agreement. (Declaration of Anthony DeFrenza ISO Metro’s Reply ISO
Motion for Preliminary Injunction (“DeFrenza Decl.”), ¶¶ 4–5.) The FEIR defines the configuration in
words regardless, stating that Olive Avenue “would be reconfigured to provide dedicated side-running
bus lanes.” (McKenna Decl., ¶ 4 & Exh. S.) The City has never doubted that the Project includes
dedicated bus lanes along Olive Avenue—it has objected to them since 2020. (Kriske Decl., ¶¶ 17, 26–
31; DeFrenza Decl., ¶¶ 2–6; City Comp. Ex. 4, BUR-0131, BUR-0209, Ex. 5, BUR-0229.)

865 [interpretation of a contract is “essentially a judicial function”].) The City still must identify a provision allowing the conditions it imposed. It identifies none.

C. CEQA does not authorize the City’s refusal to process Metro’s submittals.

The City treats CEQA as an independent source of leverage over Metro’s Project. It is not. CEQA applies through an agency’s discretionary approval power; it does not create approval power the agency otherwise lacks. (Pub. Resources Code, § 21004; 14 Cal. Code Regs. (“CEQA Guidelines”), § 15040.) The City therefore must identify an approval before it that gives it authority to address the SB 79 concern it invokes. It has not done so. Nor can the City direct Metro to conduct further review.

1. The City identifies no discretionary approval that could trigger subsequent review.

Metro’s opening brief made the threshold CEQA point: subsequent review can attach only to a discretionary approval, and only to the extent the agency has discretion to address the environmental concern asserted. (Mot. at pp. 17–18; Pub. Resources Code, § 21080, subd. (a); CEQA Guidelines, §§ 15060, subd. (c)(1), 15162, subd. (c); *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 937–941.) The City responds that its permitting role involves discretion. (Opp. at pp. 10–12.) But CEQA does not turn on discretion in the abstract. It turns on whether the specific approval before the agency gives it authority to address the asserted concern.

The approvals the City is withholding are review of Designs for Rearrangements and construction permits under the Agreement. Those approvals concern how the approved Project is carried out in Burbank. They do not give the City authority to remove dedicated bus lanes, amend the Project Description or Project Site, or require action by SCAG. Whatever land-use, utility, or General Plan authority the City holds in other contexts, those powers are not the approvals before it here.

The City’s own causation argument proves the threshold CEQA defect. The City asserts that “Metro claims to control the frequency of stops which trigger a TOD determination.” (Opp. at p. 13.) On the City’s theory, qualification under SB 79 flows from the approved Project’s features and SCAG’s statutory mapping process. No City approval appears anywhere in that chain. That is why no City discretionary decision exists to which subsequent review could attach.

The City’s theory that Metro controls SB 79 qualification also exposes what the City’s conditions actually seek: not environmental review, but a downgraded Project. The City’s demand is that Metro

1 remove dedicated lanes, or otherwise degrade the Project’s features, until stations no longer qualify
2 under SB 79. (Petition, Exh. N.) CEQA authorizes an agency with the requisite discretion to mitigate a
3 project’s environmental impacts. It does not authorize an agency to withhold permits until a project is
4 degraded so that a state housing statute ceases to apply. Nor could the demand deliver the City from SB
5 79. For planned stops, qualification looks in part to whether the Project was included in the regional
6 transportation improvement program on or before January 1, 2026, which it was. (Gov. Code, §
7 65912.156, subd. (p); Petition, ¶ 27.)

8 Because the City identifies no discretionary approval that allows it to modify the Project in
9 response to SB 79, CEQA does not allow it to withhold Agreement-based approvals until Metro
10 undertakes subsequent environmental review.

11 **2. *Calling Metro the lead agency does not let the City withhold approvals.***

12 The City next asserts that it was not proposing to conduct subsequent review itself, but merely
13 “requesting” that Metro, as lead agency, do so. (Opp. at pp. 6–7, 10.) That response fails twice. First, the
14 City did not merely request review—it conditioned its own approvals on Metro conducting that review or
15 changing the Project. (Petition, ¶¶ 64–68, 84; Exhs. H, P–Q.) Second, CEQA does not work that way.
16 Subsequent review is prepared only by the agency that grants “the next discretionary approval for the
17 project, if any”—which the City never identifies. (CEQA Guidelines, §§ 15162, subd. (c); 15096, subd.
18 (e).) Without a “next discretionary approval,” section 21166 requires nothing. With one, the review
19 would be the City’s to perform, not Metro’s. (*Ibid.*) Either way, the City may not convert construction-
20 permit review into leverage to force Metro to reopen the EIR or change the Project.

21 **3. *SB 79 does not supply substantial evidence of a new Project-caused environmental***
22 ***impact.***

23 Even if the City had a discretionary approval broad enough to trigger CEQA, SB 79 would not
24 require a subsequent EIR (SEIR). After an EIR is certified, the question is not whether the City can make
25 a “prima facie showing” of concern. (Opp. at pp. 12–13.) Section 21166 requires substantial evidence
26 that the Project will cause a new significant environmental effect or a substantial increase in the severity
27 of a previously identified effect. (Mot. at pp. 18–20; CEQA Guidelines, § 15162, subd. (a).) The City
28 offers three things: SB 79 allows increased density near qualifying stops; that density may conflict with

1 the City’s General Plan and Housing Element; and SCAG’s draft map identifies five TOD stops within
2 the City. (Opp. at pp. 12–13.) None is substantial evidence of a new or more severe impact caused by
3 Metro’s Project. SB 79 does not change the Project. SCAG’s map approves no development. And a
4 conflict with local planning policy is not a physical environmental impact of Metro’s construction plans.

5 Further, for all its talk of “immediate statutory impact,” the City’s theory still depends on future
6 private development. (Opp. at p. 13.) No housing project exists. No site, design, unit count, timing,
7 infrastructure demand, or utility connection is known. CEQA does not require an SEIR for impacts of
8 hypothetical future projects. (See *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266,
9 293–295; *The Committee for Tiburon LLC v. Town of Tiburon* (2026) 118 Cal.App.5th 259, 280.) The
10 City’s own analysis shows the same problem. Its January 2026 staff report did not identify Olive Avenue
11 stations as qualifying stops because it assumed the City’s preferred mixed-flow configuration; its May
12 report, applying different assumptions, identified five. (Kriske Decl., ¶ 37.) Shifting assumptions are not
13 substantial evidence that the approved Project will cause a new significant environmental effect.

14 *Diamond Alternative Energy, LLC v. EPA* (2025) 606 U.S. 100 is beside the point. (Opp. at pp.
15 17–18.) Whether the City could sue over SB 79 says nothing about whether substantial evidence shows a
16 new or substantially more severe Project-caused environmental effect (CEQA Guidelines, § 15162, subd.
17 (a)), and the City’s remedy for the Legislature’s housing policy does not run through Metro’s permits.

18 **D. The balance of harms and public interest favor relief.**

19 The City does not dispute that delay costs the public the Project’s benefits for as long as delay
20 continues. It argues instead that Metro is already behind an earlier schedule, that the current schedule is
21 uncertain, and that the Project’s role in the 2028 Games is overstated. (Opp. at pp. 4–5, 15–17.) None
22 of that helps the City. The Project is at the threshold of construction in Burbank. If the City continues
23 withholding approvals unless Metro prepares an unauthorized SEIR or changes the Project, the risk to
24 the February 2028 revenue-service date only grows. (Mot. at pp. 20–22; McKenna Decl., ¶¶ 18–27;
25 DeFrenza Decl., ¶¶ 16, 18.)

26 The City’s own evidence shows why delay is irreparable. Mr. Kriske states that the Agreement
27 schedule showed a 26-month construction period. (Kriske Decl., ¶ 11; City Comp. Ex. 1 at BUR-0036.)
28 It is now July 2026; the Games begin in about 24 months. The City cannot invoke schedule pressure as

1 a reason to deny relief when its own conditions are adding delay to an already time-sensitive public
2 project.

3 Nor does the possibility of delay damages defeat irreparable harm. A damages award years later
4 cannot place the Project into revenue service before the Games, restore transit service the public did not
5 receive, or replace the mobility, reliability, air-quality, and greenhouse-gas benefits of a voter-funded
6 regional transit project delayed at the threshold of construction. (Petition, ¶¶ 2, 85–91.) And the City
7 cannot dismiss the certified EIR’s ridership and air-quality findings as “at best speculation” while
8 demanding a new EIR to study housing no one has proposed.

9 The City faces no comparable harm from the requested injunction. The order would bar only the
10 four challenged conditions and leave the City free to perform its valid Agreement role, including review
11 of City Standards, Compliance Comments, traffic control, utilities, and construction safety. The
12 immediate construction approvals do not themselves approve housing, amend the General Plan, or
13 determine SB 79 mapping. The City has no equitable interest in preserving conditions it lacks authority
14 to impose.

15 III. CONCLUSION

16 Metro asks only that the City be required to return to the Agreement process without the four
17 unauthorized conditions. Because the City identifies no authority for those conditions, because CEQA
18 does not supply it, and because continued delay threatens public benefits that damages cannot restore, the
19 Court should grant the preliminary injunction.

20
21 Respectfully submitted,

22 Dated: July 9, 2026

REMY MOOSE MANLEY, LLP

23
24 By: _____
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27 LOS ANGELES COUNTY METROPOLITAN
28 TRANSPORTATION AUTHORITY