

355 South Grand Avenue, Suite 100  
Los Angeles, California 90071-1560  
Tel: +1.213.485.1234 Fax: +1.213.891.8763  
www.lw.com

# LATHAM & WATKINS LLP

## FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

November 26, 2019

Mr. Shannon Hatcher, Air Pollution Specialist  
California Air Resources Board  
1001 I Street  
P.O. Box 2815  
Sacramento, CA 95812

Ms. Kate Gordon, Director  
Office of Planning and Research  
1400 10th Street  
Sacramento, CA 95814

Re: Inglewood Basketball and Entertainment Center Project – Response to the Supplement to the GHG Emissions Commitment Letter (Clearing House Tracking No. 2018021056)

Dear Mr. Hatcher and Ms. Gordon:

We are writing on behalf of MSG Forum, LLC in response to the Clippers’ “Supplement to the GHG Emissions Commitment Letter” submitted on November 18, 2019.

This is the Clippers’ fifth submission regarding its application for certification under AB 987. The piecemeal fashion in which the Clippers have proceeded makes their entire proposal largely unintelligible and makes it very difficult to determine compliance with AB 987. So that the public can understand what the Clippers propose as to GHG emissions, the Clippers should submit a single, comprehensive revised application. Anything less leaves the public and ARB guessing at what the Clippers actually propose.

Regarding the November 18 submission, the Clippers still do not get it right.

**First**, the Clippers continue to rely on their flawed “market shift” and “backfilling” theories to claim the arena project is net neutral for GHG emissions. For all the reasons we have outlined previously, these theories are without analytic support, run contrary to ARB methodology and ARB should not accept them. If ARB endorses the Clippers’ theories through approval of their application, ARB’s programs to reduce GHGs from development activities is in serious trouble. The accepted ARB methodology and the math in this matter should be simple.

The Clippers estimate that the project's GHG emissions are 568,185 MT CO<sub>2e</sub>.<sup>1</sup> They have claimed credit for the 40,902 MT CO<sub>2e</sub> from permanently demolishing buildings on the arena site. AB 987 requires the Clippers to offset the difference (527,283 MT CO<sub>2e</sub>) and achieve half of those reductions (263,641 MT CO<sub>2e</sub>) through local measures. The math is that simple.

*Second*, the Clippers do not offset 50% of their GHG emissions (263,641 MT CO<sub>2e</sub>) locally. The Clippers are thereby cheating the Inglewood community out of the co-benefits from the reduction in criteria pollutants and toxic air contaminants that AB 987 is intended to provide. As ARB has recognized, those benefits are critical. For example, at the ARB Board meeting on November 21, ARB staff presented on the health effects of particulate matter exposure. The many health risks from particulate matter, including from brake and tire wear and ultra-fine particulate matter, are exactly those AB 987 sought to target in requiring real, meaningful local offsets. These health impacts will occur in the low income community that is next to the proposed arena and its parking. Even if one accepts the efficacy of the Clippers' Transportation Demand Program (which we submit is fictional at best), the Clippers still shortchange the local community out of at least 100,000 MT CO<sub>2e</sub> of local reductions.

*Third*, the Clippers' supplemental "commitment" does not bring them close to meeting the required GHG emission reductions. The Clippers' November 18 submission proposes installing 1,000 residential electric vehicle ("EV") chargers. (The residents must first purchase an EV.) This proposal is inadequate for several reasons.

- The Clippers offer no support for assuming an EV charger incentivizes *anyone* to purchase an EV.
- The Clippers take full credit for the reduction in GHG emissions associated with the switch from a gas-powered car to an EV. The Clippers analysis requires ARB to conclude that a free EV charger is the *sole* reason someone decided to purchase an EV because the Clippers take 100% credit for the EV's reductions. The Clippers provide no independent study or analysis for this conclusion and we are aware of none. To the contrary, ARB-commissioned studies and other published reports demonstrate that an EV charger is unlikely to be a significant factor in the decision to purchase an EV.
- The Clippers ignore that residential EV charger rebates *already exist*.

The Clippers' assumptions almost certainly overstate *by more than 2,000%* the GHG emissions avoided. The scientific evidence shows that even applying the most generous assumptions to the Clippers' proposal *only about 5% of free EV residential charging stations would result in a new EV being purchased above baseline conditions*. Other erroneous assumptions lead to an even greater inflation of the purported benefits.

---

<sup>1</sup> We have previously commented that this estimate likely is understated. In addition, in light of the ARB directive of November 20, 2019, the total GHG emission must be recalculated as discussed further in Section III.B.

As of last year, with existing rebate programs in place, Inglewood's EV ownership was 169 vehicles. There is no reason to think that an offer to install 250 EV chargers per year for the next four years will make any meaningful difference in EV ownership in Inglewood and its undefined "surrounding communities." This proposal, like the Clippers' TDM program and other "local" measures, is illusory. ARB should not accept it.

*Fourth*, the Clippers propose to eliminate ARB from having any role in verifying the Clippers' predictions. This comes only 12 days after they took the position that ARB should play a critical role in the verification process. AB 987 requires the Clippers to establish *now* that the project will be net zero for GHG emissions. Even if ARB approves the Clippers' guesswork about "market shift" and "backfill," ARB must verify actual reductions annually to ensure compliance with AB 987.

The Clippers assert that the forecasted emission reductions from the installation of EV chargers more than covers the maximum amount of emissions from backfilled events. But this, just like the entire "market shift" theory, is also a guess. What the Clippers are presenting again is a claim for credits based on an assumption on an assumption without any scientific basis. Just as ARB should not accept "market shift" theory, ARB should not accept illusory and unsupported assumptions regarding the EV charger program, particularly where the Clippers' analysis runs counter to ARB and other scientific studies. And even if it did accept them, ARB must verify these "hypotheses" with the processes outlined in our November 9 letter.

#### **I. THE CLIPPERS' CONTINUED EFFORTS TO ESTABLISH THAT THEIR PROJECT IS NET ZERO FURTHER CONFUSE THE ISSUES**

This is the Clippers' fifth attempt to explain their GHG emissions reduction program. Their analysis is now contained in over the five separate submittals. It is hard to know what the Clippers are even proposing and their November 18 submittal does not provide any assistance. In fact, it muddies the water even further.

On January 3, 2019, the Clippers submitted their initial application for certification under AB 987. Our February 1 letter (and many other commenters) outlined the numerous problems with the application, including the Clippers' use of a baseline emission theory that ARB had never accepted before. We advised that the acceptance of the Clippers' theory would mean that the Clippers would avert their responsibility to mitigate more than 300,000 MT CO<sub>2e</sub> of GHG emissions.

Four months later, the Clippers veered even further from a coherent analysis of GHG and air quality emissions with a "Supplemental Submittal" along with "Replies to Correspondence." These documents tried to explain the errors in the Clippers' initial submission. Instead of fixing the problems with their initial submission, the Clippers doubled down, providing admittedly unreliable market studies to support their unprecedented baseline analysis – studies whose authors said not to rely on them. Additionally, the Clippers increased their projected emissions up by more than 100,000 MT CO<sub>2e</sub>, but only increased their "net" emissions up by about 50,000 MT CO<sub>2e</sub>. Our June 28<sup>th</sup> letter explained why these studies should not be trusted and why

acceptance of the “market-shift” theory would move ARB from a bright-line standard to one that encourages mischief at every level by every applicant in every GHG and air emissions study.

Because it was clear that the application was still causing confusion, in August 2019, the Clippers submitted an “Application Information Summary.” This “summary” appears to have been a 12-page attempt to clarify their earlier submissions. This clarification made nothing clearer. The Clippers were still relying on a fundamentally flawed theory for its baseline emissions calculation. Our September 4<sup>th</sup> letter showed why the Clippers methodology was contrary to ARB’s standards and to other AB 900 applications.

On November 2, the Clippers submitted a “GHG Emissions Commitment Letter.” (The Clippers stated in their letter that there is an agreement with ARB on their program. We have asked for a copy of such agreement and were told by OPR staff that they did not have one. If there is an agreement, we respectfully request that it be posted for public review and comment.) The November 2 letter was in response to ARB’s request to address the issues with the baseline emissions theory on which the Clippers rely. In this fourth attempt at meeting the criteria under AB 987, the Clippers admit that they still had come up about 15,000 MT CO<sub>2</sub>e short of their own artificially calculated, low offset requirement. Our November 9 letter explained that this claimed shortfall is in fact significantly underestimated and why their new analysis did not fix the problems with the baseline. As we noted, the Clippers created assumptions that confused the picture further and proposed new mitigation that was not local and overstated its efficacy.

Now the Clippers propose an “Electric Vehicle Home Charger Program Commitment” that that they claim “exceeds the additional 15,563 MT CO<sub>2</sub>e of GHG Emissions reductions that would be necessary under the hypothetical 100% backfill scenario from local direct measures that have not already specifically been committed to pursuant to the Commitment Letter.” For the reasons more fully outlined below, this is a baseless conclusion. The premise that the Clippers are only 15,563 MT CO<sub>2</sub>e short from meeting AB 987’s requirements is faulty. Further, the Clippers provide no evidence that their program to offer 1,000 EV chargers will actually result in more than a small fraction of even their artificially low estimated GHG reductions.

## **II. THE CLIPPERS OFFER MINIMAL REAL LOCAL REDUCTION MEASURES; AB 987 LISTS THEM OUT FOR THE CLIPPERS**

AB 987 requires 50% of the project’s GHG emission offsets be local. The reason the legislature required this was because of the importance of the health co-benefits of localized reductions. AB 987 includes an exhaustive list of both on-site and off-site local measures. However, except for the questionable LEED credits and the Clippers’ ineffective TDM program that relies on shuttle buses running to and from train stations distant from the project site, the Clippers fail to meaningfully implement any of the other measures AB 987 defines as local.

AB 987 Suggested Local Reduction Measure	Have the Clippers implemented this measure?
Providing onsite renewable energy generation, including a solar roof on the arena with a minimum peak generation capacity of 500 kilowatts	No.
Providing onsite renewable energy generation, including a solar roof on the arena with a minimum peak generation capacity of 500 kilowatts	No.
Providing solar-ready roofs	No.
Temporarily expanding the capacity of a public transit line, as appropriate, to serve arena events	No.
Paying its fair share of the cost of measures that expand the capacity of public transit, if appropriate, that is used by spectators attending arena events	No.
Funding of an off-site mitigation project consisting of replacing buses, trolleys, or other transit vehicles with zero-emission vehicles	<i>Clippers have only committed to purchasing 10 zero-emission vehicles for Inglewood (which already has been implementing a program to replace its fleet).</i>
Providing off-site safety or other improvements for bicycles, pedestrians, and transit connections	No.
Providing zero-emission transit buses to serve arena events and to meet other local transit needs, including senior and public school transportation services	<i>Clippers have only committed to purchasing 2 shuttles.</i>
Undertaking or funding building retrofits to improve the energy efficiency of existing buildings	No.

The “local” measures the Clippers claim beyond the TDM program are limited to (i) buying renewable energy credits and (ii) a waste diversion measure. As discussed in our letter dated November 9, these are not meaningful local measures, as most of the GHG reductions occur far from Inglewood. Most of any co-benefits associated with a reduction in these GHG emissions principally will not occur in Inglewood.

In a recent comment letter on a project that is a fraction of the size of the Clippers arena project, ARB stated that "protecting local communities from the harmful effects of air pollution" is a priority for the State of California.<sup>2</sup> How could ARB then certify the Clippers' project as an Environmental Leadership Development Project? The Inglewood community adjacent to the arena is a Disadvantaged Community. The pollution burdens are high for many of the Inglewood neighborhoods. Residents' homes are next door to the arena and parking structures. The Clippers' project will add thousands of daily vehicle trips compared with just 357 vehicle trips for the other project and will result in orders of magnitude more pollution to the Inglewood community. ARB should require the Clippers to provide real, meaningful local emissions reductions, as AB 987 requires.

### **III. THE PROPOSED EV CHARGER PROGRAM WILL NOT ACHIEVE THE PROJECTED REDUCTIONS**

While we appreciate the local benefits that EV charging stations may provide, the Clippers' proposal dramatically overstates the actual emissions reductions that would ever be achieved here.

The Clippers state that they will "implement a program to cover 100% of the cost of purchasing and installing 1,000 [EV] chargers for residential use in local communities near the Project site." The program's goal is to see 1,000 homes convert from a gasoline-powered vehicle to an EV. The Clippers fail to state what "local communities" qualify and fail to provide any science based analysis for their assumptions.

The Clippers' analysis implies that the availability of a free EV charger will lead to the purchase of an EV. The analysis then credits the Clippers' installation of an EV charger with the entire GHG reductions associated with that new EV. This is directly counter to an ARB-commissioned study that has been substantiated by other published reports.

Moreover, the South Coast AQMD already offers a \$500 rebate for low income residents in the City of Inglewood. This existing rebate likely further dampens any marginal benefit from the Clippers' proposal. The scientific evidence shows that even applying the most generous assumptions to the Clippers' proposal, only about 5% of free EV charging stations would result in a new EV being purchased above baseline conditions. On top of this, the Clippers' further assumptions are unsupported and lead to an even greater inflation of supposed benefits.

The take away? Instead of achieving 19,487 MT CO<sub>2</sub>e reductions as the Clippers purport, the Clippers' proposal will likely result in 804 MT CO<sub>2</sub>e of actual reductions.

---

<sup>2</sup> ARB, Comment Letter on the Bridge Point South Bay II Project Initial Study and Mitigated Negative Declaration, November 25, 2019, attached as Attachment A.

**A. A Residential EV Charger Does Not Equate to a New Electric Vehicle Above Baseline Conditions – Far From It**

The Clippers' letter never explains why offering a free residential EV charger would incentivize a resident to purchase an EV.

Research shows that the predictors for EV sales in the US “are incentives such as High Occupancy Vehicle (HOV) lane access and environmentalism (Diamond 2008, Diamond 2009), federal tax credits (Jenn et al 2013), state level sales tax waivers, gasoline price, income and age (Gallagher and Muehlegger 2011) .... In addition to these factors, for [EVs], the availability of public charging is identified as necessary to increase adoption (Zhou et al 2016).”<sup>3</sup> EV home chargers are not considered to be significant barriers to entry. However, the Clippers conclude, without any justification, that offering 1,000 EV home chargers will result in almost 20,000 MT CO<sub>2</sub>e reductions. Common sense and data from published literature easily rebukes this unsupported position.

As a threshold matter, while an EV charger is a necessary component to owning an EV, it is not the most critical barrier to EV market growth. All new EVs come with a free charger that can be plugged into a standard socket. What the Clippers are presumably offering, but never state, is the ability to upgrade to a Level 2 charger, which allows for faster charging time. While a faster charge is likely preferable in some cases, many residential users charge their EV overnight, which limits the need for higher-speed charge. The marginal difference in value between a standard charger and a Level 2 charger for a typical residential EV owner is likely modest.

In addition, since September 2015, the SCAQMD has offered up to \$500 in incentives for residential EV chargers to low income residents of the City of Inglewood. The Clippers never address that they are targeting the same audience that already has the benefit of a long existing rebate program.

Tellingly, the SCAQMD rebate program demonstrates that a rebate program does not incentivize people to purchase EVs at any rate close to what the Clippers assume. As of October 1, 2018, there were only 169 EVs registered in Inglewood. Therefore, even assuming a hypothetical that prior to 2015 there were zero EVs registered in Inglewood, an existing rebate for EV chargers could have only theoretically incentivized 169 EV purchases over a three year period, or approximately 50 EV purchases a year. In contrast, the Clippers are assuming that their program will incentivize 250 EV purchases per year. Again, even this hypothetical is based on the flawed assumption that an incentive for an accessory to a car that is not even required to use the car is the sole reason someone will buy an EV.

The low rate of EV ownership in Inglewood is more likely a result of the income-level of Inglewood residents. In the census tracts directly surrounding the arena (i.e. those that stand to be hurt the most from the pollution caused by the arena), the median household incomes range

---

<sup>3</sup> Easwaran Narassimhan and Caley Johnson 2018 Environ. Res. Lett. 13 074032, available at <https://iopscience.iop.org/article/10.1088/1748-9326/aad0f8/pdf>.

from \$26,488 - \$32,939.<sup>4</sup> A new EV costs at least \$20,000 - \$30,000<sup>5</sup> and an ARB-commissioned study shows the average household income of buyers of new and used EVs is, at a minimum, \$100,000.<sup>6</sup>

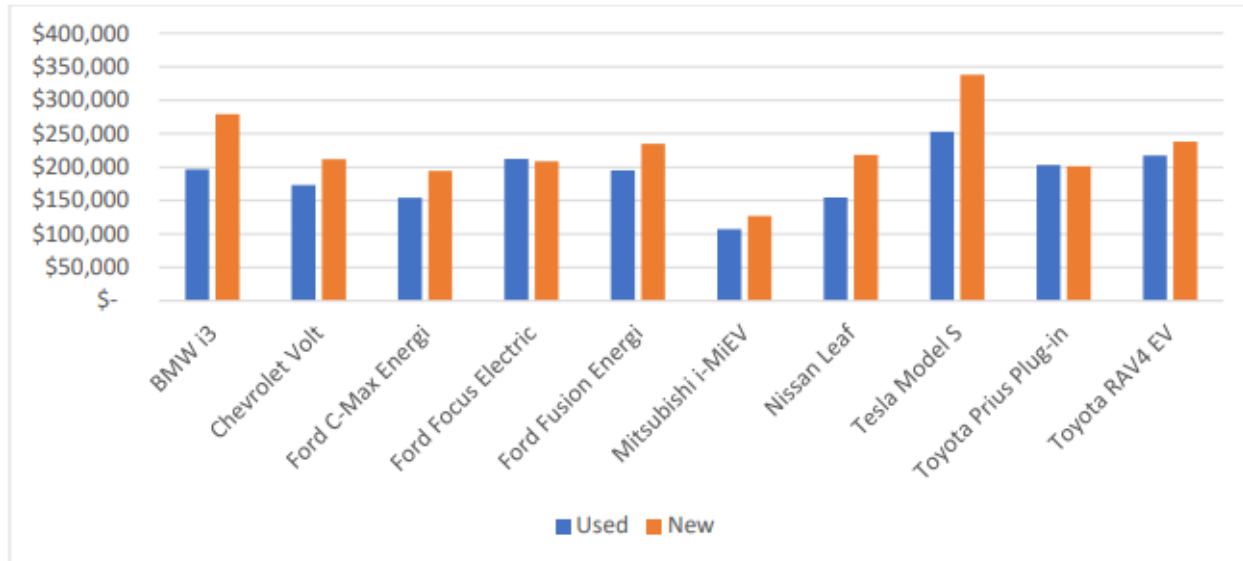


Figure 2—7: Average household income of buyers of new and used PEVs

It is doubtful the sole reason that anyone would actually purchase an EV would be because they receive a free Level 2 EV charger. Although new EVs come with a free standard charger, for owners that wish to achieve faster chargers, the average cost of installing a standard, 240V EV Level 2 charging station ranges from \$1,100-\$1,200. This figure includes the price of the charger as well as the labor charge for installation at home.<sup>7</sup> Essentially, the value that the Clippers would provide to a home is a \$1,100 incentive to convert to an EV by allowing faster chargers than a standard charger. It is unrealistic to claim that the incentive offered from one free upgraded EV charger would be enough to make someone convert to driving an EV. Published studies show it is not.

In a 2017 ARB-commissioned study entitled “Factors Affecting Plug-In Electric Vehicle Sales in California,” researchers from UCLA examined the effects of various rebates offered for

<sup>4</sup> Census Data, available at: <https://www.census.gov/censusexplorer/censusexplorer.html>.

<sup>5</sup> How much do electric cars cost? Available at <https://www.energysage.com/electric-vehicles/costs-and-benefits-evs/electric-car-cost/>.

<sup>6</sup> UC Davis, The Dynamics of Plug-in Electric Vehicles in the Secondary Market and Their Implications for Vehicle Demand, Durability, and Emissions, prepared for ARB (April 13, 2018), available at <https://ww3.arb.ca.gov/research/apr/past/14-316.pdf>.

<sup>7</sup> FIXR. Home Electric Vehicle Charging Station Cost. Available at: <https://www.fixr.com/costs/home-electric-vehicle-charging-station>. Accessed: November 2019.



the purchase of an EV. The study found that the California rebate, with a weighted value across both full electric and plug-in hybrids of \$1,838, induced a 7% increase in EV sales.<sup>8</sup>

This ARB-commissioned study is consistent with other published studies. In a 2013 study, researchers from Carnegie Mellon University concluded that for hybrid EVs, sales increase by 0.0046% per dollar of incentive, on average, but only if the incentive is more than \$1000.<sup>9</sup>

A 2015 study conducted by the National Renewable Energy Laboratory (“NREL”) addressed the relationship between EV incentives and purchases. The goal of this study was to analyze the effects of various incentives offered in different states on the increase in EV sales. According to the results of the report, it was found that incentive or rebate programs offered on average between a -0.2% change and a 3.3% change in EV adoption (referred to as “impact”) per \$1,000 of incentive. The report also dissected the results in several states which offered varying incentive/rebate values. For example, for Maryland, a state with nearly two million households and a maximum incentive of \$1,000, the report was only able to attribute 17-86 EV purchases to the incentive program.<sup>10,11</sup>

Applying the conclusions from the relevant studies to this situation, the UCLA study would expect the Clippers program to induce an approximately 4% increase in EVs<sup>12</sup>, the Carnegie Mellon study would predict it would induce about 5% increased EV sales<sup>13</sup>, and the NREL study would predict, at best, the program would induce a 3.3% increase in EV sales. Therefore, the best case scenario for the Clippers is that their EV charger program will induce an approximately 5% increase in EV sales.

Without explanation, the Clippers take credit for 100% of the emissions reductions associated with 1,000 EV purchases. However, the literature shows that at best, 5% of those 1,000 new EVs would be purchased because of their EV charging program. So, for every 1,000 chargers the Clippers provide, the Clippers could only take credit for emissions reductions

---

<sup>8</sup> UCLA, Factors Affecting Plug-In Electric Vehicle Sales in California, Prepared for ARB (May 23, 2017), available at <https://ww3.arb.ca.gov/research/apr/past/13-303.pdf>.

<sup>9</sup> Azevedo, Ferreira, and Jenn, The impact of federal incentives on the adoption of hybrid electric vehicles in the United States (2013), available at <https://cedmcenter.org/wp-content/uploads/2017/10/The-impact-of-federal-incentives-on-the-adoption-of-hybrid-electric-vehicles-in-the-United-States.pdf>.

<sup>10</sup> Clinton et. Al. National Renewable Energy Laboratory. February 2015. Impact of Direct Financial Incentives in the Emerging Battery Electric Vehicle Market: A Preliminary Analysis. Available at: <https://www.nrel.gov/docs/fy15osti/63263.pdf>. Accessed: November 2019.

<sup>11</sup> U.S. Census Bureau. 2000. Maryland Census Data: Households & Families. Available at: <http://www.census-charts.com/HF/Maryland.html>. Accessed: November 2019.

<sup>12</sup>  $\$1,100/\$1,838 = 60\%$ .  $7\% \times 60\% = 4\%$ .

<sup>13</sup>  $.0046\% \times \$1,100 = 5.06\%$ .

associated with 50 of those vehicles. Instead of 19,487 MT CO<sub>2</sub>e reductions that the Clippers claim, a more accurate assessment of the GHG emissions avoided due to the EV chargers is 975 MT CO<sub>2</sub>e before other corrections, as noted below.

<b>Total Net GHG Emissions Reductions</b>					
Year of Installation	Clippers' Claimed Reductions per EV Charging Unit (MT CO <sub>2</sub> e)	Corrected (5%) Reductions per EV Charging Unit (MT CO <sub>2</sub> e)	Number of EV Charging Units	Clippers' Claimed Total Net Reductions (MT CO <sub>2</sub> e)	Corrected Total Net Reductions (MT CO <sub>2</sub> e)
2021	20.173	1.01	250	5,043	252.5
2022	19.667	.98	250	4,917	245
2023	19.233	.96	250	4,808	240
2024	18.874	.94	250	4,719	237.5
<b>Total</b>			<b>1,000</b>	<b>19,487</b>	<b>975<sup>14</sup></b>

## **B. The Clippers' Improper Assumptions**

In addition to the flawed logic upon which the entire program rests, the Clippers make additional errors in their analysis that further inflates the expected GHG mitigation.

First, the Clippers assume the vehicles are operated for 347 days per year. This is an inflated figure. There are typically 250 working days in year, with potentially up to 30 other days where people are on vacation or holiday. Accounting for non-work days, vacation days, and other factors, it is more reasonable to assume that the EV would be used for 220 days per year as opposed to 347 days. The point is the Clippers have not supported the assumption that EVs would be used 347 days. Should the vehicle days of operation per year be less than 347 days per year, which is a reasonable assumption, the annual VMT reductions and the GHG emissions reductions presented in Exhibit A of the Clippers' letter would be overestimated.

Second, the Clippers assume that VMT remains constant from 2021 to 2033. However, based on data from EMFAC 2017 for calendar year 2033, average daily VMT is projected to decrease to 34.48 in 2033, a 12% reduction from the value assumed in the calculations. Therefore, the current calculations overestimate net GHG reductions in future years. The

---

<sup>14</sup> Note that this number is still inflated because of the improper assumptions discussed in Section III.B below.

applicant should account for declining VMTs in future years when estimating net GHG emissions reductions.

Taking these two errors into account, in addition to the errors outlined above, results in a dramatic reduction in mitigated GHG emissions, even when one assumes the EV is used 300 days per year.

<b>Summary of GHG Emission Reductions from Inglewood EV Home Charging Program</b>				
	<b>MT CO<sub>2</sub>e Reduced Original<sup>1</sup></b>	<b>MT CO<sub>2</sub>e Reduced Program Participation Adjustment<sup>2</sup></b>	<b>MT CO<sub>2</sub>e Reduced Annual Operational Days Adjustment<sup>3</sup></b>	<b>MT CO<sub>2</sub>e Reduced Vehicle Miles Traveled Adjustment<sup>4</sup></b>
2021-2030 emissions reductions from residential EV charging units installed in 2021	5,043	252	218	207
2022-2031 emissions reductions from residential EV charging units installed in 2022	4,916	246	213	217
2023-2032 emissions reductions from residential EV charging unit installed in 2023	4,809	240	208	193
2024-2033 emissions reductions from residential EV charging unit installed in 2024	4,720	236	204	187
<b>Total 2021-2033 emissions reductions achieved from all residential EV charging units</b>	<b>19,488</b>	<b>974</b>	<b>842</b>	<b>804</b>
<b>% Change from Original Calculations</b>	<b>0%</b>	<b>-95%</b>	<b>-95.7%</b>	<b>-96%</b>

Notes:

<sup>1</sup> Emission calculations provided by the Clippers. Clippers assumed that EV owners will use their home chargers 347 days per year (annual operational days).

<sup>2</sup> Emission calculations provided by the Clippers were adjusted to more accurately reflect the true new EV purchaser participation based on economic studies that this is an incentive program.

<sup>3</sup> Emissions calculations provided by the Clippers were recalculated with a revised assumption of 300 annual operational days and the updated EV purchaser participation.

<sup>4</sup> Emission calculations provided by the Clippers were recalculated with revised vehicle miles traveled (VMT) numbers from EMFAC2017, a revised assumption of 300 annual operational days, and the updated EV purchaser participation. The Clippers' original calculations assumed that VMT would stay the same from 2021 to 2023. EMFAC2017 numbers show that VMT changes by year.

As this table shows, after correcting the Clippers' (i) premise (5% inducement versus 100%), (ii) faulty assumption regarding operational days, and (iii) failure to reduce VMTs over time, the Clippers' program offers only 804 MT CO<sub>2</sub>e in reductions, only 4% of what is claimed in their November 18 letter.

Critically, in addition to fixing these errors, the Clippers must adjust their entire GHG model to account for the Federal SAFE rule that revokes California's authority to set its own GHG emissions standards for vehicles. ARB, recognizing that the SAFE rule will lead to increased emissions, has already released off-model adjustment factors for EMFAC 2014 and EMFAC 2017 for criteria pollutant estimates.<sup>15</sup> GHG emissions are also likely to increase due to the SAFE rule. Therefore, the Clippers' entire GHG analysis, which relies on EMFAC 2017 factors, is out-of-date and needs to be recalculated to take these changes into account.

#### **IV. THE ELIMINATION OF THE VERIFICATION PROGRAM IS IMPROPER**

AB 987 requires the Clippers to prove now, in advance of obtaining certification, that they will achieve net zero GHGs and real local reductions. Recognizing that their entire GHG reduction program is based on guesses as to what will happen in the future, the Clippers offered a "verification program" to ARB two weeks ago to try to kick the proverbial can down the road. This latest submission has not changed the fact that the entire application is based on guesses. Guesses as to how many events will "market-shift." Guesses as to what the GHG emissions of those "market-shifted" events will be. Guesses as to the GHG emissions of the "backfilled" events.

The Clippers now further guess as to how many people will purchase an EV because of their EV charger program that is completely at odds with established scientific evidence, including ARB studies. The November 18 submission does not obviate the need for a verification program. If anything, it confirms why one would be necessary if ARB were to accept the Clippers' faulty analyses—which it should not.

\* \* \* \*

We appreciate your attention to this matter. If you have any questions, please do not hesitate to call me at 213-891-7540.

Very truly yours,

s/ Maria Pilar Hoye  
Maria Pilar Hoye  
of LATHAM & WATKINS LLP

---

<sup>15</sup> CARB, EMFAC Off-Model Adjustment Factors to Account for the SAFE Vehicle Rule Part One, November 20, 2019, available at [https://ww3.arb.ca.gov/msei/emfac\\_off\\_model\\_adjustment\\_factors\\_final\\_draft.pdf](https://ww3.arb.ca.gov/msei/emfac_off_model_adjustment_factors_final_draft.pdf).

LATHAM & WATKINS<sup>LLP</sup>

cc: Mary D. Nichols, Chairwoman, California Air Resources Board  
Richard Corey, Executive Director, Air Resources Board  
Steven Cliff, Executive Office, Air Resources Board

# **Attachment A**

November 25, 2019

Erica Gutierrez  
Department of Regional Planning  
County of Los Angeles  
320 West Temple Street  
Los Angeles, California 90012

Dear Erica Gutierrez:

Thank you for providing California Air Resources Board (CARB) staff with the opportunity to comment on the Bridge Point South Bay II Project (Project) Initial Study and Mitigated Negative Declaration (IS/MND), State Clearinghouse No. 2019099067. The Project consists of the construction and operation of a 203,877 square-foot warehouse building, which includes 10,000 square feet of office space. Once in operation, the Project is projected to introduce an additional 357 total vehicle trips daily, including 283 daily passenger vehicle trips, and 74 daily heavy-duty truck trips. The Project is located within an unincorporated area of Los Angeles County (County), which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Freight facilities, such as warehouse and distribution facilities, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts, yard tractors, etc.) that emit toxic diesel emissions and contribute to regional air pollution and global climate change. CARB staff has reviewed the IS/MND and is concerned about the air pollution impacts that would result should the County approve the Project.

**I. The Project Would Expose Disadvantaged Communities to Elevated Air Pollution**

The Project, if approved, will expose nearby disadvantaged communities to elevated air pollution. Residences are located north, south, east, and west of the Project. The closest residences are located approximately 70 feet from the Project's southern boundary. In addition to residences, two schools (Van Deene Avenue Elementary School and Halldale Elementary School) and four daycare centers (Zhou Family Daycare, Learn N' Play Daycare, Night and Weekend Child Care, and Harbor-UCLA KinderCare) are located within 1 mile of the Project. The community is surrounded by existing toxic diesel particulate matter (diesel PM) emission sources, which include existing warehouses and vehicular traffic along Interstate 110 (I-110) and Interstate 405 (I-405). Due to the Project's proximity to residences, schools, and daycare centers already disproportionately burdened by multiple sources of air pollution, CARB staff is



concerned with the potential cumulative health impacts associated with the construction and operation of the Project.

The State of California has placed additional emphasis on protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017). AB 617 is a significant piece of air quality legislation that highlights the need for further emission reductions in communities with high exposure burdens, like those in which the Project is located. Diesel PM emissions generated during the construction and operation of the Project would negatively impact the community, which is already disproportionately impacted by air pollution from existing freight facilities and vehicular traffic along I-110 and I-405.

Through its authority under Health and Safety Code, section 39711, the California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen). CalEnviroScreen uses a screening methodology to help identify California communities currently disproportionately burdened by multiple sources of pollution. The census tract containing the Project is within the top 1 percent for Pollution Burden<sup>1</sup> and is therefore considered a disadvantaged community. CARB staff urges the County to ensure that the Project does not adversely impact neighboring disadvantaged communities.

## **II. The IS/MND Did Not Model Mobile Air Pollutant Emissions Using CARB's 2017 Emission Factor Model (EMFAC2017)**

The Project's air quality and health impacts were modeled using mobile emission factors obtained from CARB's 2014 Emission Factors model (EMFAC2014). Project-related air pollutant emissions from mobile sources should be modeled using CARB's latest EMFAC2017. One of the many updates made to EMFAC included an update to the model's heavy-duty emission rates and idling emission factors, which results in higher PM emissions as compared to EMFAC2014. Since EMFAC2017 generally shows higher emissions of particulate matter from trucks than EMFAC2014, the Project's mobile source NO<sub>x</sub> and diesel PM emissions are likely underestimated. CARB staff urges the applicant and County to model and report the Project's air pollution emissions from mobile sources using emission factors found in CARB's latest EMFAC2017.

---

<sup>1</sup> Pollution Burden represents the potential exposures to pollutants and the adverse environmental conditions caused by pollution.



### **III. It is Unclear Whether the Proposed Warehouse Building would be Used for Cold Storage**

The Project's description explicitly states that the proposed warehouse will not include cold storage. However, according to the Project's health risk assessment (HRA) (see Appendix B of the IS/MND), 20 percent of the total trucks visiting the Project would have operational transport refrigeration units (TRU).<sup>2</sup> This seems to imply that refrigerated goods can be stored on-site.

CARB staff urges the applicant and County to revise the IS/MND to clearly define the use of the proposed warehouse. The Project's description should clearly define the Project so the public can fully understand the potential environmental effects of the Project on their communities.

If the Project will not be used for cold storage, as presently stated in the Project's description, CARB staff urges the County to either include in the IS/MND:

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project site; or
- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

If the County does allow TRUs within the Project site, CARB staff urges the County to incorporate in the Final EIR and associated HRA the operational emission reduction measures outlined in Attachment A.

### **IV. The IS/MND Does Not Adequately Analyze Potential Air Quality Impacts from the Project's Transport Refrigeration Units**

Although the stand-alone HRA prepared for the Project evaluated cancer risks from on-site TRUs, the applicant and County did not model and report air pollutant emissions from TRUs in the IS/MND. The air pollutant emission estimates, found in Table 3-6 (Operational Regional Criteria Pollutant Emissions) of the IS/MND, were modeled using the California Emission Estimator Model (CalEEMod). Although CalEEMod can estimate air pollutant emissions from area, energy, and mobile sources, the current version of CalEEMod does not account for air pollutant emissions from TRUs. If the Project will be used for cold storage, which is unclear in the current draft of the IS/MND, CARB staff urges the applicant and County to model and report the Project's air pollution emissions from TRUs in a recirculated IS/MND. Air pollutant emissions from TRUs should reflect CARB's latest emission factors assuming a conservative

---

<sup>2</sup> TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport in an insulated truck and trailer vans, rail cars, and domestic shipping containers.

percentage of the Project's truck fleet is equipped with TRUs, as well as a conservative idling duration for each TRU.

#### **V. The Health Risk Assessment Used Inappropriate Assumptions when Modeling the Project's Health Risk Impacts from On-Site Transport Refrigeration Units**

CARB staff has reviewed the Project's HRA and has concerns regarding the emission factors and idling duration assumptions used to estimate the Project's health impacts. In the HRA, the applicant and County assumed that all TRUs visiting the Project site would be 34-horsepower (hp) units and would not idle longer than 30 minutes. TRUs with a power rating of less than 25 hp have a higher air pollutant emission rate (0.3 grams per brake horsepower-hour (g/bhp-hr)) than those greater than 25 hp (0.02 g/bhp-hr). Data obtained by CARB staff indicates that TRUs can operate for as long as two hours per visit, which is well above the 30-minute duration assumed in the HRA. Unless the applicant and County prohibit TRUs with a power rating of less than 25 hp from accessing the site or restrict idling times to less than 30 minutes, the Project's HRA should be revised. The revised HRA should assume a conservative percentage of the TRUs entering the Project site have a power rating of less than 25 hp and a TRU idling duration legitimized by substantial evidence. If the results of the revised HRA show new significant health impacts, the IS/MND should be revised and recirculated for public review.

#### **VI. Conclusion**

Lead agencies may only adopt mitigated negative declarations if the "initial study shows that there is no substantial evidence, in light of the whole record before the agency that the project, as revised, may have a significant effect on the environment" (14 CCR section 15070(b)(2)). Based on the comments provided above, CARB staff is concerned that the County's current IS/MND does not meet this threshold.

As it stands, the IS/MND does not meet the bare legal minimum of serving as an adequate informational document relative to informing decision makers and the public that there is no substantial evidence<sup>3</sup> in the record that the Project, as revised, may have a significant effect on the environment (see *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 520). CARB staff believes that there would be substantial evidence in the record to find that the Project may have a significant effect on the environment if the air quality and health impact analysis: 1) used EMFAC2017 to better estimate the Project's mobile source diesel PM and NO<sub>x</sub> emissions; 2) clearly defined the use of the proposed warehouse in the Project's description; and 3) adequately analyzed potential air quality impacts from the Project's TRUs. In this event, the County

---

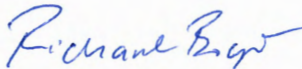
<sup>3</sup> "Substantial evidence" is defined, in part, as "enough relevant information and reasonable information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

would be required to prepare a full Environmental Impact Report (EIR) for the Project under the “fair argument” standard (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83).<sup>4</sup>

CARB staff recommends that the County revise the air quality section and the HRA for the Project, and recirculate the IS/MND for public review. Should the updated and recirculated IS/MND find, after adequately addressing informational deficiencies noted in this letter, that there is substantial evidence in the record to support a fair argument that the Project may have a significant effect on the environment, the County must prepare and circulate a draft EIR for public review, as required under CEQA.

In addition to the concerns listed above, CARB staff encourages the applicant and County to implement the measures listed in Attachment A of this comment letter in order to reduce the Project’s construction and operational air pollution emissions. CARB staff appreciates the opportunity to comment on the IS/MND for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at (916) 440-8242 or via email at [stanley.armstrong@arb.ca.gov](mailto:stanley.armstrong@arb.ca.gov).

Sincerely,



Richard Boyd, Chief  
Risk Reduction Branch  
Transportation and Toxics Division

Attachment

cc: See next page.

---

<sup>4</sup> The adequacy of an IS/MND is judicially reviewed under the “fair argument” standard should a party challenge the lead agencies CEQA determination. Under this standard, a negative declaration is invalid if there is substantial evidence in the record supporting a fair argument that a project may have a significant effect on the environment. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4<sup>th</sup> 1359, 1399.) This is the case “even though [the lead agency] may also be presented with other substantial evidence that the project will not have a significant effect.” (CEQA Guidelines, Title 14 CCR section 15064(f)(1).)

The California Environmental Quality Act (CEQA) places the burden of environmental investigation on the public agency rather than on the public. If a lead agency does not fully evaluate a project’s environmental consequences, it cannot support a decision to adopt a negative declaration by asserting that the record contains no substantial evidence of a significant adverse environmental impact. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) If a lead agency does not study a potential environmental impact, a reviewing court may find the existence of a fair argument of a significant impact based on limited facts in the record that might otherwise not be sufficient to support a fair argument of a significant impact. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

Erica Gutierrez  
November 25, 2019  
Page 6

cc: State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812

Cynthia Babich, Director  
Del Amo Action Committee  
P.O. Box 549  
Rosamond, California 93560

Morgan Capilla  
NEPA Reviewer  
U.S. Environmental Protection Agency  
Air Division, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

Carlo De La Cruz  
Sierra Club  
714 West Olympic Boulevard, Suite 1000  
Los Angeles, California 90015

Jo Kay Gosh  
Health Effects Officer  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765

Lijin Sun  
Program Supervisor - CEQA  
South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, California 91765

Andrea Vidaurre  
Center for Community Action and Environmental Justice  
P.O. Box 33124  
Riverside, California 92519

Stanley Armstrong  
Air Pollution Specialist  
Exposure Reduction Section  
Transportation and Toxics Division

## ATTACHMENT A

### Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers

California Air Resources Board (CARB) staff recommends developers and government planners use all existing and emerging zero to near-zero emission technologies during project construction and operation to minimize public exposure to air pollution. Below are some measures, currently recommend by CARB staff, specific to warehouse and distribution center projects. These recommendations are subject to change as new zero-emission technologies become available.

#### Recommended Construction Measures

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-NO<sub>x</sub> standard starting in the year 2022.<sup>1</sup>

---

<sup>1</sup> In 2013, CARB adopted optional low-NO<sub>x</sub> emission standards for on-road heavy-duty engines. CARB staff encourages engine manufacturers to introduce new technologies to reduce NO<sub>x</sub> emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model years 2010 and later. CARB's optional low-NO<sub>x</sub> emission standard is available at: <https://www.arb.ca.gov/msprog/onroad/optionnox/optionnox.htm>.

6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB staff is available to assist in implementing this recommendation.

### **Recommended Operation Measures**

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included lease agreements.<sup>2</sup>
3. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.
4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
5. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.
6. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available.
7. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later today, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.

---

<sup>2</sup> CARB's Technology Assessment for Transport Refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: [https://www.arb.ca.gov/msprog/tech/techreport/tru\\_07292015.pdf](https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf).



8. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,<sup>3</sup> Periodic Smoke Inspection Program (PSIP),<sup>4</sup> and the Statewide Truck and Bus Regulation.<sup>5</sup>
9. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
10. Include contractual language in tenant lease agreements that limits on-site TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted and the health impacts fully mitigated.
11. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.

---

<sup>3</sup> In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://www.arb.ca.gov/cc/hdghg/hdghg.htm>.

<sup>4</sup> The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

<sup>5</sup> The regulation requires newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.