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November 9, 2019

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

Inglewood Basketball and Entertainment Center Project under AB 987  
(Application No. 2018021056); response to Murphy's Bowl Submission of  
November 1, 2019

Dear Mr. Hatcher:

On behalf of Inglewood Residents Against Takings and Evictions ("IRATE"), we previously objected to certification of the Inglewood Basketball and Entertainment Center Project ("Project") pursuant to AB 987. Our concerns are detailed in our letter to you dated February 1, 2019 and in additional comments submitted after reviewing Murphy's Bowl, LLC's June 12, 2019 letter and the "AB 987 Replies to Correspondence" supplied by AECOM. We have now reviewed the November 1, 2019 letter of applicant Murphy's Bowl, LLC and its attachments ("Supplemental Application"). Although we appreciate the increased detail included in the supplemental materials, IRATE's key objections remain unaddressed.

Murphy's Bowl still fails to substantiate its proposed greenhouse gas reductions. The Project's greenhouse gas reduction and offset program lacks adequate enforceability to ensure that the Project will actually meet the mandates of AB 987. Unless the Project's greenhouse gas reductions are feasible, enforceable, additional, and verifiable, the Project will lead to increased traffic congestion, pollution, and emission of greenhouse gases in Inglewood, directly and negatively impacting the health and well-being of the community and IRATE's members. Such a Project would represent backsliding in California's ambitious goals to reduce greenhouse gas emissions to 80 percent below 1990 levels by 2050, a level necessary to limit the most dangerous impacts of climate change.

As we stated previously, the methodology used by the applicant, if accepted by the California Air Resources Board (“CARB”) and the Governor, would undermine compliance with the State’s established Greenhouse Gas (“GHG”) goals and established methodologies of air districts. This sets a very dangerous precedent for the entire state. AB 987 requires a Project certified under its authority to meet rigorous environmental standards. The applicant has failed to adequately describe how the Project will meet those standards required by AB 987 and therefore, the certification should be denied.

The community in Inglewood already faces unique and distinct environmental burdens. Inglewood is located adjacent to Los Angeles International Airport (LAX), is bounded by the 405 and 105 freeways, and contains major thoroughfares like Century Boulevard. These circumstances cause Inglewood to be vulnerable to environmental hazards, raising environmental justice concerns. Even the Mayor’s Office, in addressing noise impacts from LAX Airport, has recognized that environmental justice is an Inglewood issue and has called the city “An Advocate for Environmental Justice.” (See City of Inglewood Website, Mayor’s Office, “*Inglewood Issues*,” available at <https://www.cityofinglewood.org/496/Inglewood-Issues>.) CalEnviroScreen 3.0, the Office of Environmental Health Hazard Assessment’s (“OEHHA”) statewide mapping tool identifying communities most affected by environmental burdens, rates the census tract containing the proposed IBEC with an overall percentile score of 80-85%, the second most severe percentile category. (Office of Environmental Health Hazard Assessment (“OEHHA”), CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>. [The census tract containing the proposed IBEC site is Census Tract 6037601900].)

The existing community is severely burdened. According to CalEnviroScreen, the census tract containing the Project area ranks high for airborne PM 2.5 (82nd percentile), diesel particulate matter (67th percentile), and toxic releases pollution (79th percentile). In terms of health impacts, the community has high risk for asthma (93rd percentile), low birth weight (88th percentile), and cardiovascular events (89th percentile). (*Id.*) CalEnviroScreen also identifies numerous socioeconomic risk factors in the community, including lower educational attainment (93rd percentile), higher linguistic isolation (80th percentile), poverty (89th percentile), unemployment (86th percentile), and housing burden (93rd percentile). (*Id.*) Each of these factors—higher pollution, higher health impacts, higher socioeconomic risk factors—make the community disproportionately burdened by environmental impacts. In fact, as a result of these risk factors, in 2017 OEHHA identified the community as a Disadvantaged Community pursuant to SB 535, which directs cap-and-trade funding to projects benefitting such communities. (OEHHA, SB 535 Disadvantaged Communities, available at <https://oehha.ca.gov/calenviroscreen/sb535>.) Additionally, the Inglewood Project site is southeast of the Inglewood Oil Field and the nearby Baldwin Hills community, which

CARB has recently selected for further study of air quality impacts as a potential AB 617 community. (Press Release, CARB, *CARB Selects Los Angeles and Kern County Communities for In-Depth study of Air Quality Impacts Near Oil and Gas Facilities* (Sept. 7, 2018), available at <https://ww2.arb.ca.gov/news/carb-selects-los-angeles-and-kern-county-communities-depth-study-air-quality-impacts-near-oil>.) Thus, it is clear that Inglewood is vulnerable to environmental impacts, particularly increased air quality degradation and resulting health impacts. Therefore, sufficient mitigation of GHG emissions must also emphasize measures that include co-benefits for Inglewood residents. Environmental justice depends on this.

**I. In Light of the Federal Administration’s Recent Rollback of California Vehicle Mileage Standards, Reliance on California Emissions Factor (EMFAC) Standards Substantially Understates the Project’s Contribution to Greenhouse Gas Emissions.**

Murphy’s Bowl’s GHG emissions and emission reduction estimates utilize EMFAC, a model that takes into account regulations from the California Air Resources Board (CARB), including its Zero-Emission Vehicle (ZEV) mandate. However, due to the federal government’s recent withdrawal of the 2013 Clean Air Act waiver authorizing California to promulgate certain clean air regulations, and the resulting rollback of such regulations, the ZEV mandate may no longer apply. Thus, Murphy’s Bowl’s EMFAC estimates of so-called “backfill” emissions resulting from the replaced NBA events at the Staples Center and market-shifted non-NBA events at the new arena are likely to be *underestimates*, as the model assumes a certain, ratcheting percentage of ZEV market share that, without the ZEV mandate, is unlikely to be obtained. For the same reason, Murphy’s Bowl’s projections of emissions *reductions* resulting from its “local, direct” measures are likely to be *overestimates*. Thus, Murphy’s Bowl must not simply rely on EMFAC, but must account for the revocation of the ZEV mandate in its estimates of project emissions and emissions reductions, or else it will fail to meet the Net Zero standard of AB 987 given the new regulatory backdrop. Further, we request that CARB provide calculations of emissions and emissions reductions in the absence of the ZEV mandate.

**A. CARB’s ZEV Mandate.**

CARB’s Zero-Emission Vehicle (“ZEV”) mandate, part of its Advanced Clean Cars Regulations, requires automobile manufacturers to “offer for sale specific numbers of the very cleanest cars available.” (CARB, Zero-Emission Vehicle Program, available at <https://ww2.arb.ca.gov/our-work/programs/zero-emission-vehicle-program/about>.) Under this rule, manufacturers must produce a certain number of ZEVs and plug-in hybrid vehicles each year, depending on the manufacturer’s total car sales in California.

(*Id.*) Starting with model year 2018, the ZEV requirement increases each year. (Cal. Code Regs., tit. 13, § 1962.2, subd. (b)(1)(A).)

### **B. EMFAC, the Model Used by Murphy’s Bowl to Estimate Mobile Source Emissions.**

EMFAC is an emissions model that assesses emissions from on-road vehicles in California. (CARB, MSEI – Modeling Tools, available at <https://ww2.arb.ca.gov/our-work/programs/mobile-source-emissions-inventory/msei-modeling-tools>.) The most recent version of EMFAC was developed in 2017 (“EMFAC2017”) and approved by the U.S. EPA in August 2019. (Official Release of EMFAC2017 Motor Vehicle Emission Factor Model for Use in the State of California, 84 Fed. Reg. 41,717, 41,720 (Aug. 15, 2019).) Prior to EMFAC2017, the most recent version of EMFAC was developed in 2014 (“EMFAC2014”) and approved by the U.S. EPA in December 2015. (Official Release of EMFAC2014 Motor Vehicle Emission Factor Model for Use in the State of California, 80 Fed. Reg. 77,337, 77,340 (Dec. 14, 2015).) In its supplementary submittal to CARB, Murphy’s Bowl apparently uses output data from both EMFAC2014 and EMFAC2017. Murphy’s Bowl used EMFAC2014 to calculate its “backfill” mobile source emissions (See Supplemental Application (“Supp. App.”), Attach. 1, Table: Mobile Source Emissions, Backfill of 47 NBA Event Nights; Supp. App., Attach. 1, Table: Mobile Source Emissions, Backfill of Market Shifted Events-All Market Shifted Events Backfilled With Same Sized Event), and used EMFAC2017 to calculate emissions reductions for GHG mitigation measures, including replacing 10 municipal fleet vehicles (Supp. App., Attach. 2, p. 3), installing electric vehicle charging stations (EVCS) in the City of Inglewood (*id.* at p. 5), installing on-site EVCS (*id.* at p. 10), and creating on-site smart parking (*id.* at p. 15). Murphy’s Bowl should use a single, most recent model, EMFAC2017, to ensure its calculations are consistent and based on the most recent regulatory framework.

Each version of EMFAC contains different regulatory assumptions. EMFAC2017 incorporates “state and federal laws, regulations, and legislative actions that were adopted as of December 2017.” (CARB, EMFAC2017 Volume III – Technical Documentation (July 20, 2018) p. 20 (hereafter EMFAC2017 Technical Document).) EMFAC2017 includes assumptions from the Advanced Clean Cars Regulations as of 2017, such as updates to ZEV sales forecasts, CO<sub>2</sub> emission rate and fuel efficiency forecasts, criteria technology penetration, and in-use emission factors for vehicles certified to 3 and 1 mg/mi PM emissions standards. (*Id.* at p. 21.) EMFAC2017 updated emission standards “to reflect the Advanced Clean Cars program that will apply to new vehicles in model years 2017-2025.” (*Id.* at p. 33.) For projected CO<sub>2</sub> emission rates, the model contains

assumptions based on “revised estimates of ZEV sales” in 2021 and 2025. (*Id.* at p. 36.) EMFAC2017 contains assumptions that the market share of electric passenger vehicles will increase every year, from 2.5% in 2017 to 6.3% in 2025 and beyond. (*Id.* at p. 194.) Thus, it is clear that the ZEV mandate is an important regulatory assumption factored into EMFAC2017 calculations.

EMFAC2014, the older model, also contained assumptions regarding the ZEV regulation. EMFAC2014 assumed that market share of electric passenger cars increases from 0.08% in 2010 to 15.71% in 2025. (CARB, EMFAC2014 Volume III – Technical Documentation (May 12, 2015) p. 98.)

### **C. Federal Rollback and its Effect on EMFAC Estimates.**

On September 19, 2019, NHTSA and EPA announced that the federal agencies were revoking California’s 2013 Clean Air Act waiver, which authorized California to promulgate the ZEV regulation. (Press Release, U.S. EPA, *Trump Administration Announces One National Program Rule on Federal Preemption of State Fuel Economy Standards*, Sept. 19, 2019, available at <https://www.epa.gov/newsreleases/trump-administration-announces-one-national-program-rule-federal-preemption-state-fuel>.) In doing so, the federal government withdrew California’s authority to issue the ZEV rule. (*Id.*) The revocation of California’s waiver, including the rollback of the ZEV rule, is bound to have a chilling effect on ZEV market share in California, a key component of EMFAC analyses. A report from the Rhodium Group has estimated that relative to existing standards, nationwide the rollback “will reduce ZEV sales by 7 to 8 percentage points in 2035, depending on the projected price of oil.” (Report, Emily Wimberger and Hannah Pitt, Rhodium Group, *Come and Take It: Revoking the California Waiver*, Oct. 28, 2019, available at <https://rhg.com/research/come-and-take-it-revoking-the-california-waiver/>.)

Although California and others are rightfully challenging the federal government’s action as unlawful (See Press Release, CA Office of the Attorney General, *Attorney General Becerra Files Lawsuit Challenging Trump Administration’s Attempt to Trample California’s Authority to Maintain Longstanding Clean Car Standards* (Sept. 20, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-files-lawsuit-challenging-trump-administration%E2%80%99s>), the fact remains that as of now, EMFAC emissions calculations that rely on the ZEV mandate cannot be assumed. CARB itself recognized the “potentially serious consequences” of the rollback in commenting to EPA and NHTSA on the rollback’s impact on transportation project conformity. (Letter, CARB, Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks – Transportation Conformity

Implications, Jun. 17, 2019, p. 1 [attached].) CARB noted that EMFAC reflects the ZEV mandate rule, and observed that withdrawal of the rule will result in “[n]ecessary model updates” that are “complex.” (*Id.* at p. 3.) Though CARB’s comments were relating to transportation projects and SIP conformity, the concerns with EMFAC model reliability are equally applicable to the use of EMFAC to calculate emissions reductions for development projects. Because EMFAC incorporates and relies on regulatory assumptions with the ZEV mandate in place, in light of the ZEV mandate’s withdrawal, calculations using EMFAC will likely be an underestimate of emissions.

#### **D. The ZEV Rollback’s Impact on Murphy’s Bowl’s Emissions Estimates.**

As described above, Murphy’s Bowl relies on two versions of EMFAC—EMFAC2014 and EMFAC2017—to calculate estimated emissions and emissions reductions from mobile sources. Murphy’s Bowl uses EMFAC2014 to calculate the mobile source emissions (which they describe as “backfill”) from events replacing Clippers games at the Staples Center, as well as non-NBA events that will be hosted at the new arena. However, withdrawal of the ZEV mandate means that this estimate is likely an *underestimate* of the amount of emissions from these activities. First, EMFAC2014 uses outmoded estimates of ZEV sales, which were updated in EMFAC2017. (EMFAC2017 Technical Document, p. 193.) Second, EMFAC2014 assumes that in 2024, the year proposed IBEC operations are set to begin, market share of electric passenger cars will be 14.43% (EMFAC2014 Technical Document, p. 98.) If the rollback reduces ZEV sales, as it is predicted to do, then this ZEV market share will likely be much smaller, correlating to a much larger amount of GHG and criteria emissions as fewer gasoline passenger cars are replaced. Thus, Murphy’s Bowl’s calculations of “backfill” emissions are underestimates, because they reflect calculations based on ZEV regulatory policy that not only are outdated following the publication of EMFAC2017, but that may no longer be valid due to the federal administration’s rollback of the ZEV mandate.

Murphy’s Bowl used EMFAC2017 to calculate three types of emissions reductions from “local, direct measures”—replacing 10 municipal fleet vehicles with electric vehicles (Supp. App., Attach. 2, p. 3), installing 20 electric vehicle charging stations (EVCS) in the City of Inglewood (*id.* at p. 5), installing 330 EVCS on-site at the arena (*id.* at p. 11), and installing a “smart parking” system on-site (*id.* at p. 15). Each of these calculations contains an assumption that the ZEV mandate will be in place. If the ZEV mandate is no longer in place due to the federal rollback, the market share of ZEVs will likely decrease relative to EMFAC’s assumptions, and EMFAC will *overestimate* the reduction in emissions that each of the GHG mitigation measures reportedly produce. Thus, because the regulatory assumptions in EMFAC may overestimate these emissions

reductions, Murphy's Bowl must compensate for this overestimate by analyzing and making additional emissions reductions in order to meet the Net Zero Standard required by AB 987. Furthermore, we request that CARB provide calculations of these emissions and emissions reductions in the absence of the ZEV mandate.

## **II. The Applicant Fails to Substantiate Claimed Greenhouse Gas Reductions.**

Attachment 2 to the Supplemental Application purports to present an analysis and supporting evidence for use of additional GHG reduction measures. The discussions in Attachment 2 do *not* provide substantial evidentiary support for most measures they discuss, failing either to provide support for the assumptions upon which the analyses are based, or to provide evidence that the measures proposed for adoption are feasible or fully enforceable, or both. Several measures are discussed below.

### **A. Purchase of Electricity-Powered Transit and Municipal Vehicles. (Attach. 2, pp.1-3)**

Replacement of conventionally-fueled vehicles with electric vehicles is, in theory, a feasible measure. Here, however, feasibility for this measure has not been fully demonstrated. For one thing, there is no commitment by IBEC to also install EV charging stations for these vehicles. Is the City expected to provide the charging stations for these vehicles, or does it already possess this infrastructure? Also, at whose expense will the vehicles be maintained? If the City is expected to provide such maintenance, IBEC should show that the City has the money and expertise to keep these vehicles in service for the full time they are assumed to be operating.

Further, the emissions reductions calculated for the transit and municipal vehicles have not been shown to be well-supported. The annual mileage calculations are based on generic assumptions, rather than actual data about the mileage actually driven by Inglewood's transit, paratransit, and municipal vehicles. (Attach., p. 2, fns. 1, 2.) Specific, verifiable data should be used here, in order to provide actual, not generic, evidence to support the GHG emissions reductions attributed to this measure.

We also note that the electric transit and municipal vehicles are only assumed to be provided/driven for two sets of ten years each (Attach., p. 3), while the assumed lifespan of the Project is 30 years. Therefore, even if the GHG reductions do occur as projected, there will be no local co-benefits, e.g., decreased conventional pollutant emissions, from replacing the transit and municipal vehicles for those additional ten years.

**B. Planting 1,000 Trees. (Attach. 2, pp. 3-4).**

Again, planting trees can be a very effective GHG reduction measure, also providing the co-benefits of lowered ambient temperatures, beauty, shade, and sense of place. Here, however, the Supplemental Application makes no showing that it is feasible to plant that many—or any definite number of—trees in Inglewood. Problems include identifying locations physically suitable for each tree species proposed for planting (including determining local community acceptance of the tree species proposed), ensuring availability of adequate quantities and quality of water over the life of the trees, and maintenance costs (e.g., periodic trimming and inspection for pests) for these trees. Major cities can spend between \$30 and \$70 per year on each tree in their jurisdiction, as reported last year by LAist. (Caleigh Wells, *LA's Trees Need a Little More TLC (\$50 Million Would do the Trick)*, LAist (Dec. 18, 2018), [https://laist.com/2018/12/18/las\\_trees\\_need\\_a\\_little\\_more\\_tlc\\_50\\_million\\_would\\_do\\_the\\_trick.php](https://laist.com/2018/12/18/las_trees_need_a_little_more_tlc_50_million_would_do_the_trick.php); downloaded Nov. 6, 2019.) No showing has been made that Inglewood has \$30,000 to \$70,000 available to devote to maintaining the new trees, and no commitment has been made in the Supplemental Application that Murphy's Bowl will supply those resources.

Trees that die will not remove GHGs from the air, making it essential that full responsibility for providing the necessary care, water, and support for the proposed trees be determined, rather than merely making a vague statement that IBEC will “develop or enter into partnerships with existing organizations to develop a program” (Supp. App., p. 5) to plant the trees, without specifying how and by whom the trees will be selected, nourished, watered, and maintained. The measure, as it stands, is essentially unenforceable. In addition, the number of trees proposed to be planted has not been shown to be additional to any other tree-planting program or mitigation measure. No GHG emissions reductions can be viewed as demonstrated until all the essential components of an effective tree-planting program are established.

**C. On-Site Waste Reduction and Diversion.  
(Attach. 2, pp. 8-9)**

IBEC has apparently responded to public comments on its original Application by committing to a greatly enhanced on-site waste reduction and diversion plan, intended to last the life of the Project. This GHG reduction measure relies on Murphy's Bowl designing and carrying out a waste reduction and diversion program that is highly effective: the EMFAC assumptions presented in Section 1.3 of the EMFAC supporting analysis claim the program will be 96.58% effective. This would require that it be on par with the most effective waste reduction and diversion programs of existing arenas. While

the Project's expressed intent to reduce waste to this level may be commendable, it appears to be based on optimism that Murphy's Bowl can replicate the success of these highly effective, proven existing programs. No actual program details are provided, only the claim that the Project can produce these GHG reductions. The Supplemental Application provides absolutely no proof that Murphy's Bowl has the ability and expertise to do so. The measure, because it does not specify the components of the proposed program, is also unenforceable. The very substantial GHG reductions claimed for this measure— 31,587 MTCO<sub>2</sub>e over the assumed life of the Project— are not supported by substantial evidence.

Furthermore, the waste reduction measure leaves out the hotel portion of the Project, without justification. What is the justification? The hotel, since it is part of the Project, should be included in the Project's GHG reduction measures.

**D. Construction of Electric Vehicle (EV) Charging Stations.  
(Attach. 2, pp. 10-14)**

The Supplemental Application contains a commitment to expand the number of on-site EV charging stations in the Project's parking structures to 330 stations, with an additional 20 such charging stations being constructed at unspecified locations in the community. GHG reductions of nearly 14,000 MTCO<sub>2</sub>e are claimed for this measure. (Attach. 2, p. 10.) This claim lacks substantial evidentiary support. The Supplemental Application's estimate of the hours that the chargers will be used is based on a CARB report that addressed use of EV chargers in multifamily housing, *not* at sports arenas. (*Id.*, p. 10, nt. 1 and p. 11, nt. 1.) No evidence or references are provided to show that attendees at a sports arena will use EV chargers at the same rate that residents of multifamily housing will if they are provided. Nor are data given as to what percentage of the vehicles driven to the arena can be expected to be EVs as to any given day, time, or category of event. Further, for the reasons set out above, the amount of GHG emissions displaced per hour of actual use of an EV charging station is now in considerable doubt, and cannot be relied upon. Even if the EMFAC emissions assumptions remain accurate, the hourly rate of GHG reduction is useless without a data-driven analysis of how many hours of charging will actually occur. The analysis seems to assume that every charger in each parking structure will be used on every day that the individual parking structure is used, an assumption that is not supported by substantial evidence. If this is not the assumption, that is not clear in the document.

The claim of such a substantial reduction in GHG emissions must be carefully supported by solid evidence. Here, it is not. Nor can the use of the charging stations be

compelled or enforced; only their installation is enforceable, and installation alone does not reduce GHG emissions.<sup>1</sup>

#### **E. Smart Parking. (Attach. 2, pp. 11-16)**

The Smart Parking measure proposes to reduce GHG emissions from vehicles using the parking lots by “more efficiently” directing drivers to available parking spaces, and thereby reducing their idle time and its attendant emissions. There are no data given or studies cited that support the assumption that between 0.5 and 3.0 minutes per vehicle will be saved by this program, and therefore there is no evidentiary support that the projected 1,220,129 minutes per year of driving within the parking structures will be eliminated. (Attach. 2, p. 16.) While the GHG reduction claimed for this measure is more modest than for other measures, only 1,480 MTCO<sub>e</sub> per year of Project operation, it still needs to be supported by substantial evidence to justify reliance on the measure.

In addition, this is another measure that depends for its success on the behavior of Project attendees, which Murphy’s Bowl cannot control. The measure is enforceable only to the extent that the Smart Parking infrastructure and operation can be compelled; its actual effectiveness cannot be. Skepticism and possible discounting of GHG reductions from this measure are advisable.

#### **F. Use of “Renewable Natural Gas” by the Project. (Attach. 2, pp. 19-20)**

The Supplemental Application claims possible GHG reductions of 30,827 MTCO<sub>2e</sub> over the life of the Project from use of renewable natural gas. While fracking has made natural gas from gas or oil fields more available, such gas is inherently a non-renewable resource. Renewable natural gas derives from processing methane and other gases captured from landfills or from such confined animal facilities as dairy farms. However, it must be transported from those sites to where it can be used, and infrastructure for transporting renewable natural gas is not yet well-developed or widespread. The Supplemental Application provides no evidence that Murphy’s Bowl possesses the ability or expertise to procure, transport, and store renewable natural gas for use at the Project site, or to do so in the quantities that would be needed to produce the 30,827 MTCO<sub>2e</sub> reduction claimed as possible from the use of such gas at pages 19-20.

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<sup>1</sup> We also observe that the charging stations would surely be more useful in reducing GHGs if distributed across the community. There are 330 stations proposed at one sports facility while only 20 are planned in places that benefit the general community. More charging stations throughout the community should be provided.

(Attach. 2, p. 19.) The feasibility of this measure has not been demonstrated through substantial evidence.

### **III. The Applicant's Program is Not Enforceable, as Required.**

The AB 987 process envisions CEQA streamlining for Projects that comply with the zero net emissions mandate. This streamlining is premised on the idea that emissions reductions and offsets used to meet the mandate are real, quantifiable, verifiable, and additional. Instructively, CEQA requires that mitigation measures needed to reduce a project's GHG emissions below a threshold of significance- which should be net zero- be concrete and enforceable. Mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures." (Pub. Resources Code § 21081.6(b); *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2007) 155 Cal. App. 4th 425, 445.) Courts have noted, "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." (*Federation of Hillside & Canyon v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261; *Katzeff v. California Dept. of Forestry and Fire Protection* (2010) 181 Cal.App.4th 601, 612; *Lincoln Place Tenants Assn v. City of Los Angeles* (2005) 130 Cal.App.4th 1491.) This is particularly important here: greenhouse gas emissions are the cause of global climate change, the greatest environmental challenge of our time. Greenhouse gas reduction measures that "are not guaranteed to occur at any particular time or in any particular manner" are inadequate. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119.) As discussed below, the Applicant's proposed emissions reductions measures lack detail, funding, and other enforceability mechanisms that will ensure they truly reduce the Project's greenhouse gas emissions to zero.

### **IV. The Applicant's Program is Not Verifiable.**

The supplemental materials declare that the Applicant has "committed to an annual verification process under which the Applicant would submit to the City, with a copy provided to CARB, annual verification reports." These reports would (1) determine the actual number of incremental events in the regional market that can be attributed to the Project; (2) report on the implementation and efficiency of local direct emissions reduction measures; and (3) identify any new local direct measures to be implemented the following year. The materials further declare that any excess reductions shall be credited toward the verification reports of future years. Thus, the Applicant will calculate its own emissions, verify its implementation of direct emissions reduction measures that will cost

it money, and calculate the effectiveness of the emissions reductions measures it hopefully paid for and implemented. This amounts to self-verification without oversight.

A robust verification system is necessary, but we are deeply concerned about accountability if the fox will be guarding the hen house. Although the Applicant assures the public that AB 987 compliance will occur because it will provide a copy of the verification report to CARB, how will anyone at CARB be able to verify the accuracy of the calculations contained in the report or the verification of the implemented reductions measures? Such a system would encourage self-dealing, to the Applicant's benefit and the detriment of Inglewood residents and the California public. Any inaccuracies in the reports could be amplified by the proposed system, since it allows extra emissions reductions to be credited to future years. Greater third-party oversight is required, beginning with the provision of the raw inputs of the verification calculations to CARB, inclusion of CARB and the public or third parties in the inspection of emission reductions measures, and public posting of the annual verification reports online.

**V. The Applicant has Not Demonstrated Long-term Funding of the Reductions and Offset Program.**

Funding of the Project's AB 987 compliance program must be substantial and ongoing. Without assured funding, the Applicant's claims of zero net GHG emissions are illusory. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189-90.) Accordingly, we suggest the imposition of a trust fund, bond, or other method of ensuring that adequate funding is available to implement *and maintain* the required GHG emissions reductions measures, purchase offsets, and finance the Applicant's verification and reporting obligations. Relatedly, we question the identity of the entity that will be charged with administering the Project's AB 987 compliance program. The Applicant, Murphy's Bowl, LLC, apparently is a single-purpose Delaware corporation created to apply for Project permits. Will Murphy's Bowl, LLC continue as the responsible entity? If so, is its capitalization sufficient for this purpose? If the Clippers organization or Steve Ballmer will be the responsible party, this should be determined now.

**VI. The Project Results in an Increase in GHG Emissions.**

Public Resources Code § 21168.6.8 subdivision (b)(3) requires that the project not cause a net increase in GHGs: certification is only allowed if "The project does not result in any net additional emissions of greenhouse gases." To demonstrate net zero GHG emissions, the applicant must show that future Project emissions, minus baseline emissions, minus mitigation measures, equal zero. In this case, the Applicant admits, even with its flawed calculations, that "the Project would result in an additional 146,052

MT CO<sub>2</sub>e of GHG emissions above the total calculated in the AB 987 Application, for a total of 304,683 MT CO<sub>2</sub>e over the 30-year operational life of the Project.” (November 1, 2019 Letter, p. 4.) Again, as we identified in our prior letters, the applicant manipulates the baseline emissions level to decrease the amount of emissions it must mitigate. This “methodology” runs counter to CEQA and every well-respected air emissions methodology on the books.<sup>2</sup> If accepted by CARB, it will create a precedent that will undermine achievement of the State’s GHG reduction standards, and established policies of air agencies.

The Applicant claims to present a 100% backfill scenario where all events at other venues are backfilled after moving to the IBEC. However, Table 10 still shows the “Baseline Emissions” as being 1,200 in the first three years, and then jumping up to 13,289 MT CO<sub>2</sub>e in every single subsequent year. There is no basis for this assumption of 13,289 MT CO<sub>2</sub>e in years after the first three. This is not a 100% backfill scenario but rather still remains a partial backfill scenario.

If the Clippers did not take credit inappropriately with their “backfill” numbers games, the amount of emissions would be 510,081 MT CO<sub>2</sub>e rather than the 304,683 MT CO<sub>2</sub>e that are currently calculated.

## **VII. The Application Fails to Demonstrate Sufficient *Local* GHG Mitigation Measures.**

### **A. Local Direct Emissions Reductions Measures Are Insufficient.**

As we have stated previously, the Applicant does not comply with AB 987’s mandate that “Not less than 50 percent of the greenhouse gas emissions reductions necessary to achieve [net zero emissions] shall be from *local, direct greenhouse gas emissions reduction measures*.” (Pub. Resources Code § 21168.6.8 subd. (j)(3), emphasis added.) This directive was included to ensure that the local community is not burdened with shouldering the full weight of the Project’s harmful emissions. We

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<sup>2</sup> Existing conditions on the ground at the Project site consist of a hotel, restaurant, commercial building, and light industrial buildings. (Application Attachment G, p. 7.) These are the source of the GHG emissions that should be included in the baseline. Table 10 records these sources as emitting 1,209 MTCO<sub>2</sub>e each year in 2021-2023. (Murphy’s Letter, Attachment 3, p. 11.) Yet somehow, baseline emissions jump to 13,289 MT CO<sub>2</sub>e in 2025 and stay at that level through 2054. (*Ibid.*) Baseline emissions should not change for purposes of comparing to project emissions as baseline should reflect existing conditions. (*Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315.)

reiterate our prior comments on this issue. Every feasible means of local direct emissions reductions should be undertaken because of the severe air pollution burden the community is already suffering.

We previously proposed additional local, direct measures that should be required before offsets are used include the following:

1. Urban tree planting throughout Inglewood.
2. Mass transit extensions.
3. Subsidies for weatherization of homes throughout Inglewood.
4. Incentives for carpooling throughout Inglewood.
5. Incentives for purchase by the public of low emission vehicles.
6. Free or subsidized parking and charging for electric vehicles throughout Inglewood.
7. Solar and wind power additions to Project and public buildings, with subsidies for additions to private buildings throughout Inglewood.
8. Subsidies for home and businesses for conversion from gas to electric throughout Inglewood.
9. Replacement of gas water heaters in homes throughout Inglewood.
10. Creation of affordable housing units throughout Inglewood.
11. Promotion of anti-displacement measures throughout Inglewood.

In the Supplemental Response, we now see Item 1 (tree planting) addressed, and to a small extent item 6 (electric vehicle charging for only 20 EV charging stations in the community). However, Items 2-5 and 7-11 are also necessary and should be included in a mitigation program.

The creation of affordable housing units and promotion of anti-displacement measures throughout Inglewood (items 10 and 11) could ensure current residents are able to maintain their homes in Inglewood, thus not having to relocate elsewhere to places that might require substantial increases in vehicle miles traveled (VMT) to maintain current jobs and social connections.

We have heard that the Clippers have agreed to give the city of Inglewood a \$100 million community benefits package, including \$75 million that will be set aside for up to 400 affordable housing units, a rent relief program, and financial assistance for first-time homebuyers. However, we have seen nothing that is enforceable or in writing about this rumored benefits package. If there are meaningful commitments to affordable housing and anti-displacement measures, they should be included in a verifiable mitigation measure package. Meanwhile, median home prices in Inglewood shot up 64 percent from

2014 to 2018, according to PropertyShark, but Inglewood did not produce any affordable housing, according to a report from the California Department of Housing and Community Development.

**B. The Application May Underestimate Human Health Risks.**

The Supplemental Response still fails to address human health impacts or potential benefits from mitigation measures. AB 987 mandates that the Project should “*maximize public health, environmental and employment benefits*” by reducing GHG emissions “*in the project area and in the neighboring communities.*” (Pub. Resources Code § 21168.6.8 subd. (j)(2), emphasis added.)

The Supplemental Application fails to show how public health benefits are maximized. In fact, the Supplemental Application fails to sufficiently address the points we raised regarding public health impacts.

One of our prior comment letters stated:

The applicant’s use of a seriously flawed methodology for its GHG emissions analysis has additional consequences beyond an increase in GHG emissions. GHG emissions and local criteria pollutant emissions are closely correlated. By underestimating the GHG emissions of the Project and failing to properly mitigate those emissions locally, the applicant has also underestimated the local criteria pollutant emissions of the Project. Therefore, the health impacts to the community of Inglewood may also be underestimated. Exposure to criteria pollutants such as NOx, PM10, PM2.5, and diesel particulate matter (designated as an airborne toxic contaminant by the Air Resources Board, and as known to the State of California to cause cancer by the state’s experts pursuant to Proposition 65 [Cal. Code of Regs., tit. 17, § 93000; tit. 27, § 27001, respectively] lead to health impacts, including respiratory and cardiovascular problems, and potentially cancer. The applicant does not account for these increased health risks.”

(CBCM Feb. 1, 2019 Comment Letter, p. 10.)

Instead of proposing and discussing feasible, effective, and enforceable mitigation measures, the Supplemental Application proposes various measures without substantial evidence to support them. Certification should not be granted without a current demonstration of meaningful mitigation measures to protect public health and “*maximize public health... benefits*” as required by Public Resources Code section 21168.6.8 subdivision (j)(2), with emphasis added.

Mr. Shannon Hatcher  
November 9, 2019  
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**Conclusion.**

We respectfully request that the Governor not certify this Project. It does not meet the requirements of AB 987 and will, instead, increase GHGs emissions to the detriment of Inglewood residents and the entire state.

Thank you for your careful consideration.

Sincerely,



Douglas P. Carstens

Enclosure 1: Letter, CARB, Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks – Transportation Conformity Implications, Jun. 17, 2019

**ENCLOSURE 1**



Gavin Newsom, Governor  
Jared Blumenfeld, CalEPA Secretary  
Mary D. Nichols, Chair

June 17, 2019

Mr. Christopher Lieske  
U.S. Environmental Protection Agency  
EPA Docket Center (EPA/DC)  
EPA West, Room B102  
1301 Constitution Avenue NW  
Washington, D.C. 20460

Mr. James Tamm  
National Highway Traffic Safety Administration  
U.S. Department of Transportation  
West Building, Ground Floor, Room. W12-140  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

Attention: NHTSA Docket ID Nos. NHTSA-2018-0067 and NHTSA-2017-0069  
U.S. EPA Docket ID No. EPA-HQ-OAR-2018-0283

RE: Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years  
2021-2026 Passenger Cars and Light Trucks – Transportation Conformity  
Implications

Dear Mr. Lieske and Mr. Tamm:

I am writing to ensure that you are aware of the potentially serious consequences if the "Safer Affordable Fuel-Efficient" (SAFE) rule is finalized, including its provisions purporting to preempt California's long-standing zero emission vehicle programs. The United States Environmental Protection Agency (U.S. EPA) and the National Highway Traffic Safety Administration (NHTSA) have indicated they may finalize the rule this summer. That would have serious implications for public health and for transportation infrastructure projects. The rule results in dirtier cars, for years to come; this means that transportation projects that increase use of these cars may often result in greater emissions – and so be in conflict with state and federal air quality goals. These conflicts (referred to as "conformity" issues) may disrupt transportation funding, with large negative consequences for jobs and local governments, as well as undermining California's air quality plans.

Although the California Air Resources Board (CARB) identified many of these issues in its prior comments on the proposed rule,<sup>1</sup> the initial comment period was inadequately short, and many critical analyses were not provided to the public. From continued analysis after the close of the comment period, we have identified additional impacts of the rule and thus are submitting this supplemental comment that is "of central relevance to the rule making" (42 U.S.C. § 7607(d)(4)(B)(i)) to supplement the record. These issues relate to how SAFE finalization will destabilize key transportation and public health planning activities.

Transportation emissions are the lion's share of air pollution in California. This means that transportation projects can have substantial effects on air pollution because they can change how much people drive. In general, the dirtier cars are, the more air pollution certain transportation projects can emit over time. Because these projects last for decades, estimating these project-related emissions is important to ensuring air quality plans stay on track.

Accordingly, the federal Clean Air Act links transportation planning and public health through the transportation conformity program, which is intended to ensure that federally funded transportation projects conform to state implementation plans to attain air quality standards. (See 42 U.S.C. § 7506). As you know, these determinations must be based upon "the latest emission estimation model available" (40 C.F.R. § 93.111(a)) and reflect the "most recent planning assumptions in force at the time the conformity analysis begins" (40 C.F.R. § 93.110(a)).

Transportation conformity and state implementation plan (SIP) development in California depend upon a growing share of zero emission vehicles (ZEVs) in the vehicle fleet. This is because, as CARB discussed in its initial comments at length, ZEVs provide meaningful reductions in criteria pollutants, beyond Low Emission Vehicle (LEV) standards, which should be accounted for in emissions and transportation planning. These benefits grow over time as the ZEV regulation (including likely future amendments to that regulation) supports greater ZEV penetration and commercialization in the California fleet; indeed, accelerating commercialization of ZEV technology in both light- and heavy-duty sectors is critical to meeting federal and state air quality mandates and climate goals.

Transportation conformity analyses also are rooted in the growing share of ZEVs within the fleet; without increased ZEV penetration, transportation projects may have greater

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<sup>1</sup> See California Air Resources Board, Analysis in Support of Comments of the California Air Resources Board on the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, pp. 282-293, docket no. EPA-HQ-OAR-2018-0283-5054.

air pollution impacts than currently modeled. Therefore, the California Emissions FACTor (EMFAC) model reflects CARB's Advanced Clean Car (ACC) regulation including the Zero-Emission Vehicle (ZEV) mandate.

U.S. EPA and NHTSA's proposal to preempt CARB's GHG and ZEV regulations jeopardizes attainment of the SIP and conformity for critical transportation projects. This proposal would call into question whether projects and plans set to be implemented can remain in conformity going forward.<sup>2</sup> Certainly, SAFE finalization would call into question how projects may demonstrate conformity because conformity determinations may no longer reflect the latest planning assumptions with regard to ZEV vehicles.

Emissions from transportation dominate California's air pollution mix, so addressing these emissions without the current ZEV rules will raise long-lasting challenges to conformity and SIP planning. Because transportation projects can last decades, marked changes in ZEV penetration rates resulting from SAFE may result in very different emissions impacts from these projects than forecasted earlier in the planning process, especially in later years when ZEV penetration was projected to further increase. Put simply, a highway project that increases vehicle use might be consistent with air quality needs if cars are getting commensurately cleaner; but if cars are no longer moving towards zero emissions, the project will be substantially dirtier, and potentially inconsistent with the air quality plan.

Necessary model updates and SIP revisions alone are complex, and may take years to complete, and transportation projects and air quality planning will be disrupted in the interim. In the longer term, the substantive challenge of addressing increased emissions will be hard to meet. These major consequences threaten to imperil critical infrastructure planning and air quality planning efforts.

This problem will potentially undermine transportation planning as well, including many billions of dollars of projects now in the pipeline, because they may not be able to demonstrate conformity. Projects intended to move freight, improve connectivity, and get people to work may well be disrupted if they can no longer demonstrate they

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<sup>2</sup> We note that the conformity model used elsewhere in the country, MOVES, may face similar issues. Unlike EMFAC, which models emissions based on aggregated emissions over drive cycles, MOVES uses Vehicle Specific Power (power per unit mass, or vehicle specific power - VSP) to model criteria emissions where VSP is a function of vehicle aerodynamics, road grade and road load. For example, under MOVES assumptions, higher VSP results in higher emissions. The SAFE rule, which would eliminate the gradual increase in fuel efficiency requirements, will result in vehicles requiring more power to operate which in turn will contribute to higher GHG and possibly criteria emissions. As a result, it might be necessary for U.S. EPA to revisit the MOVES model if the SAFE rule is adopted.

Mr. Christopher Lieske and Mr. James Tamm  
June 17, 2019  
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are consistent with air quality needs. This rule will therefore also put substantial pressure on attainment of air quality standards, and likely require revisions to the California SIP, including new measures, if ZEV-related reductions are not assured.<sup>3</sup>

Placing this burden upon the states is in conflict with the Clean Air Act's cooperative federalism framework (see 42 U.S.C. § 7401) and further demonstrates the irrationality of the SAFE proposal. The Regulatory Impact Analysis for SAFE did not consider these impacts; nor did the National Environmental Policy Act (NEPA) documents despite the environmental impacts of changes to major transportation projects; and the agencies did not conduct a federalism consultation with the states per Executive Order 13132 to consider the impacts of affecting critical state/federal transportation projects. All these matters were required to be addressed; instead, the agencies failed to incorporate these issues into their proposal or to seek comment upon them.

SAFE should, therefore, not be finalized. It is arbitrary and inappropriate for the federal agencies to, on the one hand, mandate that the states work hard to attain air quality goals, and to model transportation impacts on those goals based on the latest planning assumptions and, with the other hand, undermine the tools necessary to make progress towards those goals by weakening critical public health protections.<sup>4</sup> You may contact Mr. Kurt Karperos, Deputy Executive Officer, California Air Resources Board, at (916) 322-2739 or kurt.karperos@arb.ca.gov to discuss any of these issues.

Sincerely,

  
Richard W. Corey  
Executive Officer  
California Air Resources Board

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<sup>3</sup> Accurate modelling is critical to the adequacy of Clean Air Act plans and conformity determinations (See, e.g., *Association of Irrigated Residents v. U.S. E.P.A.* (9th Cir. 2012) 686 F.3d 668, 677).

<sup>4</sup> U.S. EPA is proposing many rulemakings which are collectively undermining air quality planning and attainment. CARB has opposed these ill-founded efforts, but their collective impacts, if finalized, will further amplify the damage done by SAFE to the conformity and SIP processes. See, e.g., Comments of the California Air Resources Board on the Advance Notice of Proposed Rulemaking, "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process"; Docket No. EPA—HQ—OA-2018-0107; Comments of the California Air Resources Board Responding to The United States Environmental Protection Agency Request for Comment on Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces: Proposed Amendments, Docket No. EPA-HQ-OAR-2018-0195.