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VIA EMAIL & U.S. MAIL

December 4, 2019

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

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Re: Inglewood Basketball and Entertainment Center Project – Lack of Consistency with the RTP/SCS & AB 987 Requirements (Clearing House Tracking No. 2018021056)

Dear Ms. Gordon:

We are writing on behalf of MSG Forum, LLC regarding the Clippers' arguments in support of their application for the Governor's certification under AB 987.

As we have detailed in prior letters, there are many AB 987 requirements that the Clippers' arena do not meet. Here, we highlight three critical requirements that the Clippers' arena do not satisfy.

First, the Clippers' project is not consistent with a Sustainable Communities Strategy ("SCS") that CARB has determined will achieve the state's mandated greenhouse gas ("GHG") reduction goals. Second, the Clippers' project does not meet AB 987's requirements to reduce project trips by 15%. Third, the Clippers' project does not create "high wage, highly skilled jobs that pay prevailing wages and living wages."

Regarding the SCS consistency requirement, an SCS identifies "general location of uses, residential densities, and building intensities"¹ within a region and how to reduce GHG emissions associated with those land uses. An SCS is designed to encourage dense, urban land uses, and discourage suburban land uses that will result in increased vehicle miles traveled ("VMTs").

The Clippers' project must be "consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board ... has accepted a metropolitan planning organization's determination that the sustainable

¹ See Gov. Code § 65080(b)(2)(B)(i).

communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.”²

The Clippers argue that the proposed arena is consistent with the Southern California Association of Governments (“SCAG”) 2016-2040 Regional Transportation Plan / Sustainable Communities Strategy (“RTP/SCS”). The Clippers are wrong and the Clippers’ position is unsupported.

As a threshold matter, the 2016 SCAG RTP/SCS does not achieve ARB’s GHG reduction targets. Therefore, even if the Clippers’ arena were consistent with the 2016 SCAG RTP/SCS—which it is not—it would not matter because that plan does not meet AB 987’s standards. Further, even if the 2016 SCAG RTP/SCS satisfied AB 987’s requirements, the proposed arena is not consistent with the 2016 SCAG RTP/SCS.

A. The 2016 SCAG RTP/SCS Does Not Meet AB 987’s Requirements Because It Does Not Achieve ARB’s GHG Emission Reduction Target

The RTP/SCS, with which the Clippers argue consistency, includes an emission reduction target of 18%. This target is out of date. Therefore, the RTP/SCS does not achieve ARB’s greenhouse gas emission reduction targets for Southern California. As such, the RTP/SCS is not a sustainable communities strategy that “would, if implemented, achieve the greenhouse gas emission reduction targets.”

On March 22, 2018, CARB adopted Resolution 18-12 – Proposed Update to Senate Bill 375 Greenhouse Gas Emission Reduction Targets.³ Resolution 18-12 *increases* the emission target for SCAG from 18% for 2035 to 19% for 2035.⁴

The 2016 RTP/SCS does not achieve this 19% greenhouse gas emission reduction target. If implemented, the 2016 RTP/SCS would only achieve the 18% greenhouse emission reduction target that CARB has now disavowed.

SCAG is forecasted to adopt a new RTP in April 2020.⁵ Thus, while the 2016 RTP/SCS may have been consistent with CARB’s target at one time, is not consistent with CARB’s current

² Pub. Resources Code, § 21168.6.8(a)(3)(D).

³ Proposed Update to Senate Bill 375 Greenhouse Gas Emissions Reduction Targets, *available at* https://www.arb.ca.gov/cc/sb375/finalres18-12.pdf?_ga=2.184341926.1236776461.1547160254-1005937483.1501549482.

⁴ Appendix A, MPO Target Recommendations and CARB Staff Recommendations, *available at* https://www.arb.ca.gov/cc/sb375/appendix_a_feb2018.pdf?_ga=2.172308515.1236776461.1547160254-1005937483.1501549482.

⁵ Appendix D, MPO RTP Update Schedule, *available at* https://www.arb.ca.gov/cc/sb375/appendix_d_feb2018.pdf?_ga=2.79484564.1236776461.1547160254-1005937483.1501549482.

“greenhouse gas emission reduction targets” established in 2018 (before the adoption of AB 987) for SCAG.

The legislature knew in 2018 when it passed AB 987 what the “greenhouse reduction targets” were for the SCAG area. The legislature did not set consistency with the 2016 RTP/SCS as the standard. Rather, the legislature demanded that the project be consistent with an RTP/SCS that meets CARB’s greenhouse gas reduction targets. It is uncontroverted that the 2016 RTP/SCS does not do so.

Therefore, until SCAG adopts an RTP/SCS that is consistent with CARB’s 19% emission reduction target, the Governor cannot legally find that the project is consistent with an RTP/SCS that meets CARB’s emission reduction target. Such a finding would directly undermine CARB’s Resolution 18-12.

B. The Proposed Arena is Not Consistent With The 2016 RTP/SCS

Even if the 2016 RTP/SCS were an appropriate benchmark under AB 987, the Clippers cannot demonstrate their proposed arena’s consistency with it.

1. The Project is Not Accessible to Transit

The 2016 RTP/SCS states that “[High Quality Transit Areas] HQTAs are a cornerstone of land use planning best practice in the SCAG region because they concentrate roadway repair investments, leverage transit and active transportation investments, reduce regional life cycle infrastructure costs, improve accessibility, avoid greenfield development, create local jobs, and have the potential to improve public health and housing affordability.”⁶

The Clippers argue that the project “is consistent with and furthers” the 2016 RTP/SCS’s strategy to “encourage development in HQTAs and along ‘Livable Corridors.’” The Clippers also state that the project is consistent with the 2016 RTP/SCS’s goal of encouraging compact growth in areas accessible to transit.⁷ Both statements are incorrect.

The Clippers’ argument is completely reliant on the acceptance of the absurdity that the project site is “accessible to transit.” The proponents of AB 987 repeatedly argued the opposite – that the proposed project site is “transit starved” when seeking approval of AB987.

The project is not in an HQTA.⁸ The Livable Corridor Strategy specifically advises local jurisdictions to plan and zone for increased density at key nodes along the corridor and replace single-story underperforming strip retail with well-designed higher density housing and

⁶ SCAG 2016 RTP/SCS, at p. 76.

⁷ *See id.*, at p. 2.

⁸ Only one of the project’s parking structures is located within an HQTA. The arena, sports medicine clinic, offices, and hotel are outside of the HQTA. It is wrong for the application to state that the project is in an HQTA.

employment centers. The goal is to encourage local residents to use mixed-use retail centers that discourage long car trips to get things they need. Instead of promoting this type of use, the project will attract visitors into the neighborhood, congesting local streets, and making it more difficult for residents to move around their own neighborhood.

The Clippers admit that the project is not accessible to transit. The proposed location for the arena is 1.3 miles from the nearest rail transit station via roadway. The only transit service that directly serves the proposed arena site consists of two bus lines adjacent to the site and one line within 0.5 miles. Future rail service would include a station in downtown Inglewood that is located at a distance of 1.6 miles from the proposed arena. The fact that the project's TDM program is required to include extensive additional multi-passenger services to connect with the distant transit facilities is an admission that the project would not be located in an area that is easily accessed by transit.

Given that the project is not in an HQT, is not along a "livable corridor," and not accessible to transit, it is not consistent with even those limited 2016 RTP/SCS policies with which the Clippers selectively claim consistency.

2. The Project Will Not Reduce VMTs

A key component of the 2016 RTP/SCS, as adopted by SCAG, is the "focus on reducing the number of drive-alone trips and overall vehicle miles traveled" through transportation demand management.⁹ Under the 2016 RTP/SCS, the "number of VMT per capita would be reduced by more than seven percent and Vehicle Hours Traveled per capita by 17 percent... as a result of more location efficient land use patterns and improved transit service."¹⁰

The Clippers' project likely will increase VMT as compared to existing conditions because it will relocate uses from downtown Los Angeles, probably the best location for an arena from a VMT perspective, to an area in Inglewood that the project's proponents repeatedly referred to as "transit starved" to obtain deviations from AB 900's standards.¹¹ They cannot take the opposite position now and overstate the viability of transit alternatives to try to meet the VMT requirements.

- "People have asked, 'Why can't AB 900 work for this process?' There are essentially two primary things. One is that under AB 900, it requires a 15% reduction in vehicle trips to the facility within the first year of the operation of the

⁹ 2016 RTP/SCS, at p. 6, *available at* <http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf>.

¹⁰ *Id.*, at p. 9.

¹¹ Surprisingly, while repeatedly describing the project's location as "transit starved" in pursuit of legislation providing extraordinary judicial relief, the Clippers now frames the project location as "currently developed with access to high quality transit." (Application, at p. 4.) Which one is it? Is the area "transit starved," as stated before legislative committees or "currently developed with access to high quality transit"?

facility. *As we've discussed, this is a transit starved, disadvantaged community.*" (Joe Lang Testimony, June 26, 2018, Senate Judiciary Committee.)

- "Because we are a *transit starved community* we know that that standard could not be met within the first year, and as a result we have asked for a longer period of time to comply with that standard." (Joe Lang Testimony, June 26, 2018, Senate Judiciary Committee.)
- "*Given the fact that we have a transit starved community* and we're still focusing on the 15% emissions reduction that would have to be met well before as we've stated, it could be in this instance given this community." (Sen. Kamlager-Dove Testimony, June 26, 2018, Senate Judiciary Committee.)
- "We're happy to have the 15% vehicle trip production standard in the bill, but *because we are transit starved* we need a few more years to comply with that standard." (Joe Lang Testimony, June 20, 2018, Senate Environmental Quality.)

Staples Center on the other hand, where the Clippers currently play, is in downtown Los Angeles. Downtown Los Angeles is anything but "transit starved." In fact, the Clippers *admit* that the average trip length for attendees *will increase by over two miles*. (Application, Attachment G, at pp. 11, 18 [trip length for attendees based on ZIP Code data of ticket purchasers is 19.38 miles from Staples Center and 21.59 miles from the project site].) There is no attempt to calculate the aggregate amount of VMT that either Staples Center or the project will generate. Further, the average "trip length" of 19.38 miles for attendees to Staples Center is very likely inflated because it does not account for the fact that many attendees are already in downtown Los Angeles or close to it for work. As a result, these attendees, even if they drive, are traveling a far shorter distance than whatever number was used to calculate the "average trip distance" of 19.38 miles. As a result, the average increase in trip distance is likely much larger than the over two miles the Clippers assume.

3. The Project is Not Consistent With General Use Designation, Density, Building Intensity For Project Area

The Clippers argue that the specific general use designation, density, building intensity, and applicable policies do not matter so long as the project is consistent "against the RTP/SCS's numerous provisions and policies that encourage growth in infill areas accessible to transit." As described above, even using this formulation of consistency, the project falls short.

To certify a project under AB 987, the Governor must be able to find that the project is "consistent with the general use designation, density, building intensity, and applicable policies in a sustainable communities strategy."¹² That finding cannot be made here.

The 2016 RTP/SCS was adopted in April 2016. The project was proposed in mid-2017 and AB 987 became law in 2019. As such, the Clippers were fully aware of these land use

¹² Pub. Resources Code, § 21168.6.8(a)(3)(D).

consistency requirements and of the content of the 2016 RTP/SCS when the project was proposed and AB 987 was adopted.

The project is largely concentrated at the southwest corner of Century Boulevard and Prairie Avenue in the City of Inglewood. The project area is immediately adjacent to a residential neighborhood comprising single-family homes and one- to two-story multi-family apartment buildings. The immediately adjacent residential community is largely a lower income, minority community. Within the project area are two residential properties and a series of commercial properties.

SCAG developed the 2016 RTP/SCS, in part, based on Inglewood's General Plan and zoning. Inglewood's General Plan Land Use Map designates most of the project area as "Industrial" with some small slivers of "Commercial." Under the Inglewood Zoning Code, the project area is zoned various categories: Residential Multiple Family (R-4), Residential Limited Multi Family (R-2), Airport Commercial (C-2A), and Limited Manufacturing (M-1L).

Arenas are not permitted in any of the zones applicable to the project site. Arenas are solely permitted in the C-R zone.¹³ Thus, the project is inconsistent with the site's existing zoning and General Plan land use designations.

More importantly, the project also is flatly inconsistent with SCAG's general use designation, density, and building intensity for the project site.

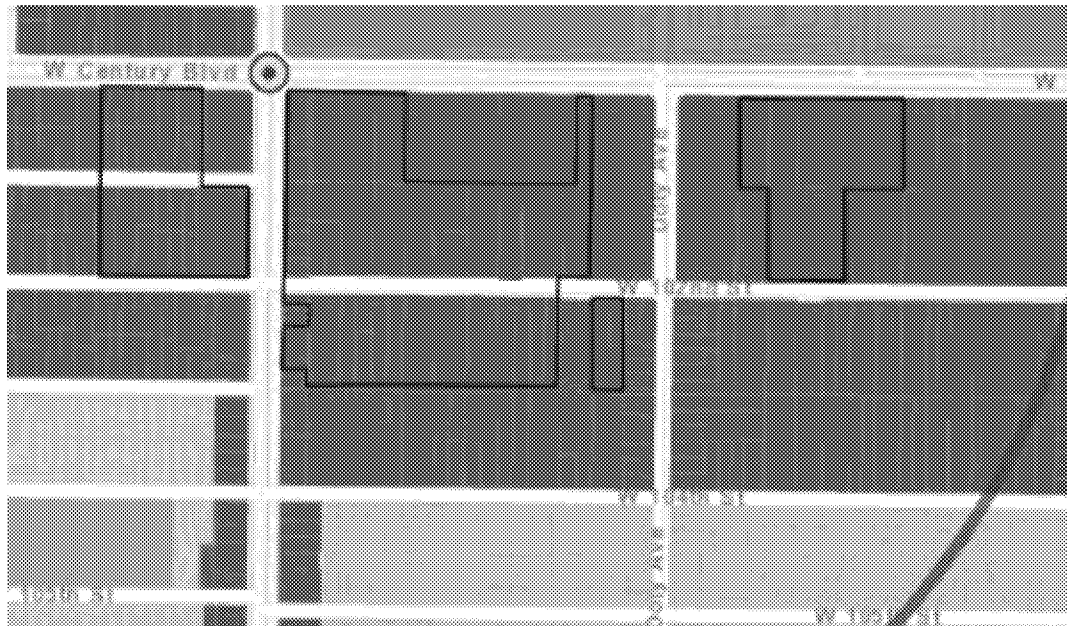
The land use maps SCAG generated as part of the 2016 RTP/SCS process were based on the City's General Plan and Zoning Map designations. The 2016 RTP/SCS general use designation, density, and building intensity for the project area classifies the project area's land uses as including "Single Family Residential" (yellow), "Multi-Family Residential" (beige), "Industrial" (blue) and "Commercial and Services" (red).

Below is a SCAG's "Existing Land Use (Year 2016)" map and map index for the project area. The project site is outlined in black.

¹³ See Inglewood Municipal Code Sec. 12-27(3) for zoning uses permitted in the C-R zone [permitting "Athletic events (professional and amateur) including, but not limited to, football, baseball, track, tennis, soccer, wrestling, boxing, skating (ice or roller), golf, hockey, rodeos, and basketball."].



Under SCAG's General Plan Land Use Codes, the project area was then designated "Industrial" (blue) and "Commercial and Services" (red). Here is the project site outlined in black on SCAG's General Plan Land Use map of the area.



The project is not an industrial use project. It contains an arena, ancillary office, retail, medical, and hotel uses. Therefore, it is inconsistent with the 2016 RTP/SCS's general use designation.

The information in the above maps and additional information provided to SCAG from Inglewood and other jurisdictions in SCAG's region was used to develop maps forecasting the Regional Development Types.¹⁴ These SCAG maps illustrate the three Land Development Categories that SCAG developed for purposes of mapping future growth and predicting future growth, studied and assumed, within the 2016 RTP/SCS. The three Land Development Categories are Urban, Compact Walkable, and Standard Suburban.

Additionally, the project area is designated Standard Suburban on both the Forecasted Regional Development Types (2012) and Forecasted Regional Development Types (2040) maps in the RTP/SCS. Both of these designations are inconsistent with the project's proposed dense arena development.

Arenas are consistent with an Urban designation, which are "[o]ften found within and directly adjacent to moderate and high density urban centers" and are "supported by high levels of regional and local transit service."¹⁵ In contrast, Standard Suburban areas are lower density and generally not well served by regional transit service and most trips are made via automobile.¹⁶ As the project area is low density and not well served by transit, it is characteristic of SCAG's definition of Standard Suburban areas.

Because the project is inconsistent with Inglewood's General Plan and zoning, inconsistent with SCAG's general plan designation, and inconsistent with SCAG's proposed density, and building intensity, the project is not consistent with the RTP/SCS.

Accordingly, the Governor cannot certify the project as "consistent with the general use designation, density, building intensity, and applicable policies in a sustainable communities strategy." If the Governor makes such a finding in this circumstance when the nature and extent of the inconsistency is clear and unambiguous, the ramifications for other required consistency determinations statewide relating to the RTP/SCS are significant.

C. The Project Does Not Reduce Vehicle Trips by 15%

AB 987 "requires a transportation demand management program that, upon full implementation, will achieve and maintain a 15-percent reduction in the number of vehicle trips, collectively, by attendees, employees, visitors, and customers as compared to operations absent the transportation demand management program."¹⁷

The project's TDM program is likely never to achieve a 15% reduction and certainly will not achieve a 7.5% reduction by the end of the first NBA season that the arena is operational.

¹⁴ See Sustainable Communities Strategy Background Documentation, Appendix, *available at* http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS_SCSBackgroundDocumentation.pdf.

¹⁵ See Sustainable Communities Strategy Background Documentation, at p. 43, *available at* http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS_SCSBackgroundDocumentation.pdf.

¹⁶ *Ibid.*

¹⁷ Pub. Resources Code § 21168.6.8(a)(3)(B)(i).

The TDM program relies on incorrect and unsubstantiated data, does not contain a plan detailing how results will be verified, and relies on optimistic trip reduction assumptions that have never been achieved. Without additional data and substantiation, the Governor cannot certify that the project will reduce trips as AB 987 requires.

On a macro level, it is easy to see why the project's TDM program will not work.

First, the TDM program must work for all events and all project elements, not just Clippers basketball games. The applicant's TDM program assumes that concert attendees as well as basketball game attendees have the same travel patterns. Transportation data suggests exactly the opposite and indicates that few one-time attendees to a concert at the arena will use transit.

Second, the Clippers are moving from high-density urban downtown Los Angeles to a suburban area typified by relatively low-density single-family homes and low-rise multifamily homes. Staples Center has immediate proximity to multiple heavy and light rail transit lines and stations. The downtown Los Angeles core also has one of the highest bus line concentrations in the region, is home to the region's largest workday population (over 74,000 people), and has over 43,000 residential units. Even with all of these factors, the application states that Clippers only achieve an 11% rail transit usage at Staples Center.

In fact, this 11% transit usage figure may be inflated. A data collection effort at a sold out Clippers basketball game at Staples Center found that only 2.6% of attendees arrived by way of Metro train and only 1.8% left by train. Data was collected on January 18, 2019, for two hours before and after the event and conservatively assumed that every transit rider leaving the station was going to the Staples Center event.

The applicant then forecasts a similar, likely overstated, rail transit usage (7%) of the transit advantaged Staples Center location for a suburban arena that lacks the office and residential density and pedestrian amenities of the Staples Center, that is up to two miles from rail stations that will require attendees to exit the rail station and then get on a shuttle to the arena. The applicant's reliance on a 7% rail ridership assumption is completely without foundation.

The applicant also predicts that only 77% of attendees to the entire project will come by personal car. The balance coming by transit/shuttles, park and ride buses and Uber/Lyft. This is an astounding number when compared to Clippers games at Staples Center, where, per the application, 80% arrive by personal car.¹⁸

The applicant should have substantiated this critical assumption with data. The applicant likely has data regarding the home addresses of season ticketholders and many other ticket purchasers. The applicant could have used this data to calculate average distance to a Metro rail transit line serving the project area (i.e., Metro Green or Crenshaw Line). With this data, the applicant could better predict how many basketball game attendees are likely to use rail transit

¹⁸ Application, Attachment D, at 10.

based on proximity to their homes (or their office if the Clippers have reliable data as to office locations for season ticket holders). The percentage of concert attendees would be even less as one time or irregular users of a venue are much less likely to use transit than attendees to athletic events who are more likely to attend multiple events per year.

Third, AB 987 requires that the TDM program contain “specific annual status reporting obligations”¹⁹ and that the “applicant shall verify achievement [of the 15% reduction] to the lead agency and the Office of Planning and Research.”²⁰ Given the multiple access points and requirement to monitor 24 hours a day, 365 days per year, it is unclear how this reporting obligation can possibly be met.

The “IBEC Project Transportation Demand Management Program,” presented in a total of only four pages (Application, Attachment C), does not explain how the reporting obligations can be met or how achievement could be verified. Without an implementation plan to verify results, the TDM plan does not meet AB 987’s requirements and the Governor cannot certify the project.

D. The Project Does Not Provide High Paying Jobs

AB 987 requires that the project create “high-wage, highly skilled jobs that pay prevailing wages and living wages... and permanent jobs for Californians.”²¹ The application is bereft of information as to how this standard will be met. No information on the number of permanent jobs to be created is provided. No information as to the job types, their classifications, or their numbers is provided.

1. The Application Ignores The Project’s “Living Wage” Obligations

There is no evidence provided that the project will pay living wages. The applicant does not state what wages it will pay its employees. Although the applicant does not provide any breakdown as to what jobs are provided, it is reasonable to assume that the overwhelming majority of jobs will be part-time concession, maintenance service, and security jobs at the arena, hotel, and retail stores. AB 987 requires that employees of the project receive “prevailing wages and living wages.”

While CEQA does not define “living wage”²², the Massachusetts Institute of Technology defines a “living wage” as the “hourly rate that an individual must earn to support their

¹⁹ Pub. Resources Code, § 21168.6.8(a)(6).

²⁰ Pub. Resources Code, § 21168.6.8(a)(B)(iii).

²¹ Pub. Resources Code, § 21168.6.8(b)(2)(A)(i).

²² AB 987 defines “jobs that pay prevailing wages” (Pub. Resources Code, § 21168.6.8(b)(2)), but does not define “living wage.” The two are separate concepts. “[J]obs that pay prevailing wages” applies to construction workers. “Living wages” apply to permanent employees and non-construction workers.

family.”²³ The Massachusetts Institute of Technology calculated that the 2017 living wage for Los Angeles County was \$13.54 per hour for a single adult and \$29.25 per hour for one adult with one child.²⁴ The applicant has provided no commitment or evidence that it will provide a “living wage” to the project’s permanent employees. Absent information, and any commitment to defined pay levels, it hard to understand how the finding required under section 21168.6.8(b)(2)(A)(i) that the project will pay “living wages” can be made.

2. The Project Will Not Create New “Highly Skilled Jobs”

AB 987 requires that the project create “highly skilled jobs.” The applicant has not provided any information as to what permanent highly skilled jobs are being created. In fact, since the Clippers organization is a going concern, as the application admits, it is merely moving from one office to another.²⁵ There is no evidence that this move will create any new highly skilled jobs. The applicant must detail how moving from existing facilities will create new highly skilled jobs beyond temporary construction positions. Absent this information, it is unclear how a finding can be made that the project will create highly skilled jobs under AB 987.

* * * *

For the foregoing reasons, the Clippers’ arena does not meet the requirements of AB 987. Certification under AB 987 is, therefore, not appropriate.

Thank you for considering our comments. If you have questions, you may reach me at (213) 891-7540.

Very truly yours,

s/ Maria Hoyer
Maria P. Hoyer
of LATHAM & WATKINS LLP

²³ See Living Wage Calculation for California, *available at* <http://livingwage.mit.edu/states/06>.

²⁴ *Id.*

²⁵ The applicants’ GHG analysis credits its existing operations against the emissions that the project will generate. While we disagree with this approach and believe it is fundamentally incorrect under CEQA and inconsistent with CARB’s goals of reducing GHGs and AB 987’s intent, if the applicant treats existing operations as a “baseline” for purposes of GHG, then those existing operations are the “baseline” for purposes of job creation. Thus, beyond construction labor, there is no indication that any new “highly skilled jobs” will be created. Per the applicant and consistent with its position in calculating GHG emissions, existing jobs are merely going to move from Los Angeles to Inglewood. Therefore, these jobs should not be credited as “new.”