November 11, 2024

Advocates for the Environment

A non-profit public-interest law firm
and environmental advocacy organization

Alfredo Garcia
Associate Planner
City of Perris
135 North "D" Street
Perris, CA 92570-2200

Via FedEx overnight

Re: Justification for Appeal of the Planning Commission's Approval of the Ellis Logistics Center Project and Certification of Environmental Impact Report, SCH No. 2023040144

Dear Mr. Garcia:

Advocates for the Environment submits the comments in this letter regarding the proposed Ellis Logistics Center Project (**Project**), located South of E Ellis Avenue between S. Redlands Avenue and Murrieta Road in the City of Perris (**City**). This Project proposes to construct a 643,419 square-foot warehouse on the 34.52-acre Project site. We have reviewed the Draft Environmental Impact Report (**DEIR**) released in May 2024 as well as the Final Environmental Impact Report (**FEIR**) released in September 2024.

Advocates for the Environment hereby appeals the City of Perris's Planning Commission November 6, 2024 approval of the Ellis Logistics Center Project (**Project**) and certification of the associated Environmental Impact Report. We are appealing the Planning Commission's decision to certify the Environmental Impact Report (**EIR**), which consists of the DEIR and the FEIR, because the EIR for the Project does not comply with the requirements of the California Environmental Quality Act (**CEQA**) (Pub. Resources Code §§ 21000-21189.91), as discussed below.

CEQA GHG Significance Analysis

The DEIR derived its GHG significance thresholds from the CEQA Appendix G Guidelines and concluded that the Project's GHG emissions would be less than significant, claiming that the Project would not generate GHG emissions that may have a significant effect on the environment and that the Project would be consistent with plans, policies, and regulations for the reduction of GHG emissions. (DEIR, p. 4.7-19.) The DEIR used CalEEMod to quantify the Project's annual emissions at 5,479 metric tons carbon dioxide equivalent (**MTCO2e**) per year. (DEIR, p. 4.7-19.)

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The Chosen Threshold Is Not Supported by Substantial Evidence

The City chose a GHG significance threshold of 10,000 MTCO2e/year (the **Threshold**) based solely on the SCAQMD's recommended threshold for industrial facilities, providing no other support for the threshold. (EIR, p. 4.7-12.) This is insufficient to provide substantial evidence for the Threshold. The City violated CEQA by relying on an unsubstantiated GHG significance threshold of 10,000 metric tons of carbon dioxide equivalent (**MTCO2e**). A lead agency must support its chosen threshold by substantial evidence. (CEQA Guidelines § 15064.7(b).) The DEIR contains no justification for its choice of threshold. CEQA also requires that significance determinations are based on current regulations, as well as scientific and factual data. (CEQA Guidelines § 15064.4(b).) Thus, the Threshold is outdated because it is not aligned with California's current reduction goals, including SB 32 and the 2022 Scoping Plan.

The City Cannot Solely Rely on the SCAQMD's Recommendation

The SCAQMD adopted the 10,000 MTCO2e threshold in 2009. It is summarized in a staff proposal that was adopted by motion on December 5, 2008 (the **Staff Proposal**).[1] A single-sheet summary of SCAQMD's Air Quality Significance Thresholds was posted in March 2023,[2] and includes a purported GHG threshold of 10,000 MTCO2e/year for industrial facilities, but cites no source for this threshold, even though the sheet cites the SCAQMD CEQA Handbook as a source for its daily thresholds, and AQMD Rule 1303 and Rule 403 as sources for criteria air pollutants and ambient air quality standards. The Staff Proposal is therefore the only available authority supporting the Threshold.

The City failed to analyze or provide its own support for why the SCAQMD GHG threshold of 10,000 MTCO2e/year (the **Threshold**) is valid for this Project. The Threshold is not applicable to this Project because:

- the SCAQMD has no authority to set CEQA thresholds for projects for which it is not the lead agency;
- the rationale the SCAQMD used in establishing the 10,000 MTCO2e threshold is not applicable to the Project;
- the City provides no substantial evidence supporting the Threshold in the DEIR.

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[1] http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/ghg-significance-thresholds - Board Letter and attachments

[2] https://www.aqmd.gov/docs/default-source/ceqa/handbook/south-coast-aqmd-air-quality-significance-thresholds.pdf?sfvrsn=25

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The SCAQMD Has no Authority to Set CEQA Thresholds for Other Agencies

The DEIR assumes, with no explanation, that the Threshold is applicable to the Project. But the SCAQMD has no legal authority allowing it to set CEQA thresholds to be used by other agencies.

The SCAQMD's enabling statute (Health & Safety Code §§ 40400-40540) provides no authority to the agency to issue CEQA regulations or thresholds for other agencies. CEQA Guidelines § 15064.7(b) encourages each agency to develop thresholds of significance for the agency itself to use but provides no authority for the SCAQMD to develop CEQA thresholds for other agencies to use. The Staff Report itself limits the application of the Threshold to "projects where the AQMD is the lead agency." (Staff Report, p. 3.)

The SCAQMD does not have the authority to prescribe significance thresholds for which it is not the lead agency. Lead agencies may choose their own significance thresholds, but they must be supported by substantial evidence, which means "facts, reasonable assumptions predicated on facts, and expert opinion supported by facts." (14 CCR § 15064.7(b).) The burden is on the City to provide substantial evidence for the threshold that they chose, but merely adopting the SCAQMD threshold without providing supporting evidence is not sufficient. The City cannot rely on the SCAQMD's evidence supporting the threshold because the evidence that the SCAQMD used, which itself is inadequate and insufficient to provide substantial evidence, does not apply to this Project.

Furthermore, it makes no sense for different thresholds to apply in the various air districts; global warming is a global phenomenon, and a ton of GHGs emitted in Los Angeles has the same impact as a ton emitted in Madera County. Other districts have adopted much lower thresholds, such as the 1,100 MTCO2e threshold recommended by the Sacramento Metro Air Quality Management District,[3] or the County of San Bernardino's 3,000 MTCO2e per year screening level.[4] The DEIR did not explain why the Threshold is more appropriate for the Project than these lower thresholds adopted by other air districts.

The SCAQMD's Basis for the Threshold Is Not Valid for Projects for Which SCAQMD is not the Lead Agency

The SCAQMD's rationale for adopting its 10,000 MTCO2e numerical threshold does not apply to this Project. The SCAQMD recommended the threshold based on the rationale

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[3] See Greenhouse Gas Thresholds for Sacramento County, SMAQMD https://www.airquality.org/LandUseTransportation/Documents/SMAQMDGHGThresholds2020-03-04v2.pdf

[4] See County of San Bernadino Greenhouse Gas Emissions Development Review Process Screening Tables, available at: https://www.sbcounty.gov/uploads/LUS/GreenhouseGas/GHG_2021/GHG%20Revised%20Screening%20Tables%20-%20Adopted%209-20-2021.pdf

that it would reduce 90% of emissions from projects for which the SCAQMD is the lead agency. To arrive at the threshold, SCAQMD reviewed the natural-gas consumption for projects it permitted in 2006 and 2007, assuming that the vast majority of emissions came from burning natural gas. These tend to be heavy industrial projects such as manufacturers of cement and steel. The SCAQMD is *not* a lead agency for land use projects generally, which include "shopping malls, housing tracts, commercial or industrial parks, sports stadiums, etc."[5]

The kinds of projects for which the SCAQMD is the lead agency are different from commercial or warehousing projects, which are typically much smaller. The vast majority of GHG emissions from warehouse projects come from mobile emissions, not the burning of natural gas, as is the case for this Project. Very few warehouses in Perris have emissions over 10,000 MTCO2e, making the Threshold unreasonably high. We have commented on eight other warehouses in the City of Perris, including this one, only one of which had emissions over 10,000 MTCO2e, but was also much larger than this Project. While reducing emissions to below 10,000 MTCO2e might achieve 90% emissions reductions for large industrial projects for which the SCAQMD is the lead agency, the mix of land-use projects in general, and warehouse projects in particular is very different from the mix of projects the SCAQMD analyzed when it decided that a 10,000 MTCO2e threshold would capture 90% of GHG emissions within their district.

The City Failed to Support its Chosen Threshold with Substantial Evidence

Since the City cannot rely on the SCAQMD's threshold, CEQA requires the City to support its choice of threshold with substantial evidence.

The City has information available to determine an applicable significance threshold and support it with substantial evidence given the current regulatory setting, but instead of doing so, it improperly relied on an inapplicable threshold. The average warehouse emits 0.001171 MTCO2e per square foot according to one recent study.[6] Therefore, a warehouse with an average emissions intensity would be over 8 million square feet for it to emit 10,000 MTCO2e per year.[7] This is an unreasonably high threshold, and would effectively exempt almost all warehouse projects from mitigating their GHG emissions.

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[5] https://www.aqmd.gov/home/rules-compliance/ceqa/frequently-asked-questions#:~:text=The%20South%20Coast%20AQMD%20typically,previously%20undergone%20a%20CEQA%20analysis.

[6] Dobers, et al., "Emission intensity factors for logistics hubs," German, Italian and Latin American consortium for resource efficient logistic hubs & transport (GILA), p. 3 [warehouse intensity values converted from kg CO2e per m^2.]

[7] $10{,}000\ MTCO2e\ \div 0.001171\ MTCO2e\ per\ square\ foot = 8{,}539{,}709.65\ square\ feet$

The Threshold Does Not Conform to California's Climate Policy Goals

The Threshold is invalid because it is not aligned with the goals of the California Air Resources Board (**CARB**), which is the governing authority for the regulations of GHGs in California.[8] CARB developed the 2022 Scoping Plan, which emphasizes that "any delays in action or insufficient action are a threat to public health and the environment." (2022 Scoping Plan, p. 22.) It also specifies that all of the actions in the 2022 Scoping Plan are necessary to achieve climate goals. (2022 Scoping Plan, p. 11.) Accordingly, if the Project is any of the specified actions in the 2022 Scoping Plan from being carried out without delay, then it will be inconsistent with the 2022 Scoping Plan. A numeric threshold, particularly one as large as 10,000 MTCO2e, does not require that any certain measures are achieved. Therefore, staying under the threshold would not mean that the Project would adhere to the measures in the 2022 Scoping Plan in a timely manner.

The 2022 Scoping Plan also notes that "[d]ecarbonizing industrial facilities depends upon displacing fossil fuel use with a mix of electrification, solar thermal heat, biomethane, low- or zero-carbon hydrogen, and other low-carbon fuels to provide energy for heat and reduce combustion emissions." (2022 Scoping Plan, p. 208.) The Project would not need to displace fossil fuel use to reduce its GHG emissions to below 10,000 MTCO2e, and therefore it would be able to meet the existing threshold without complying with the 2022 Scoping Plan. Thus, the Threshold does not ensure that the Project would conform to California's climate goals as summarized in the 2022 Scoping Plan, and the City did not meet its burden as the lead agency to provide substantial evidence for the adoption of this significance threshold.

The Threshold Does Not Comply with SB 32

The Threshold also failed to account for the conflict between the Project and Senate Bill 32 (**SB 32**). The implementation of SB 32 is carried out by the California Air Resources Board's 2017 Climate Change Scoping Plan (**2017 Scoping Plan**), which reflects SB 32's GHG emissions reduction goal of 40% below 1990 levels by 2030. To assess statewide implementation of this goal, the 2017 Scoping Plan created a per-capita target of 6 MTCO2e by 2030 (2017 Scoping Plan, p. 99.)

Here, the Project's emissions would be approximately 18 MTCO2e per service population,[9] vastly exceeding the target necessary to achieve SB 32's goal as reflected in the CARB 2017 Scoping Plan. Accordingly, the fact that the Project's GHG emissions estimate does not exceed the SCAQMD's recommended threshold of 10,000 MTCO2e does not

[8] Assembly Bill 32, known as the Global Warming Solutions Act of 2006, mandated CARB to set and enforce GHG emissions standards across the state.

[9] $5{,}479\ MTCO2e\ per\ year\ \div 300\ employees = 18.26\ MTCO2e\ per\ capita$. Employee estimate obtained from EIR p. 4.10-9.

provide substantial evidence that the Project would have a less than significant impact under California's current regulatory scheme.

Only two of California's air districts (Bay Area and Sacramento) have created thresholds which address SB 32's reduction goal of GHG emissions 40% below 1990 levels by 2030. (California Air Resources Board 2022 Climate Change Scoping Plan, Appendix D, p. 26, footnote 67.) All the other thresholds adopted by air quality management districts, including the 10,000 MTCO2e threshold recommended for industrial projects by the SCAQMD, are not consistent with current environmental policy in California. Consequently, the chosen Threshold is an outdated threshold not supported by substantial evidence.

Consistency with Identified Applicable Plans

The DEIR discussed the Perris Climate Action Plan (**CAP**), Regional Transportation Plan/Sustainable Communities Strategy (**RTP/SCS**), and the 2022 Scoping Plan as applicable plans. This significance analysis violates CEQA by failing to acknowledge and analyze all applicable plans for the reduction of GHGs and the Project's inconsistency with the 2022 Scoping plan.

The 2022 Scoping Plan sets a goal for 50% of all industrial energy demand to be electrified by 2045 (2022 CARB Scoping Plan, p. 77).[10] The DEIR does not demonstrate that the Project is consistent with this goal. Furthermore, the 2022 CARB Scoping Plan emphasizes decarbonizing industrial facilities by "displacing fossil fuel use with a mix of electrification, solar thermal heat, biomethane, low- or zero-carbon hydrogen, and other low-carbon fuels to provide energy for heat and reduce combustion emissions" (2022 CARB Scoping Plan, p. 208). Based on the analysis provided in the DEIR, the Project does not align with this objective.

The Project is likely to rely on diesel fuel in its operations, potentially conflicting with the 2022 Scoping plan's objectives. Although the DEIR mentions several measures and regulations aimed at reducing GHG emissions from mobile sources, such as the Advanced Clean Truck Regulation and Executive Order N-79-20, it does not specifically address how the Project will contribute to or comply with the goal of electrifying 50% of industrial energy demand by 2045. Therefore, the Project conflicts with the goals of the 2022 Scoping Plan by not adequately reducing its reliance on fossil fuels and failing to incorporate sufficient low- or zero-carbon energy sources.

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[10] 2022 Scoping Plan located at: https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf

Some of the Chosen Plans, Policies, and Regulations are Not Applicable Because They are Outdated

The City's CAP is outdated and doesn't adequately align with current state-level climate policies and scientific understandings. While the CAP outlines measures aimed at reducing GHG emissions, it relies on metrics and estimations dating back to as early as 2010, which do not accurately reflect the current GHG emissions in Perris. Moreover, the CAP's framework is primarily based on achieving targets set by AB 32, which aimed to reduce emissions to 1990 levels by 2020, a goal already achieved. Given the evolving climate policy landscape, the CAP cannot adequately demonstrate that the Project would have a less than significant GHG impact, as it is based on an outdated and inapplicable policy.

The DEIR Should Have Analyzed All Applicable Plans

The City chose, as its second GHG threshold, whether the Project would "conflict with an applicable plan, policy or regulation of an agency adopted for the purpose of reducing GHG emissions." (DEIR, p. 4.7-19.) This language requires that the DEIR analyze the Project's consistency with all other applicable plans, not just the plans that the City prefers to analyze.

An agency must consider a project's GHG impact over time to reasonably evaluate the full extent of environmental impact as CEQA requires. The City estimated that the Project lifespan would be 30 years. (DEIR, p. 4.7-19.) Accordingly, the Project must show consistency with long-term State GHG goals to comply with CEQA. In particular, the DEIR must also demonstrate consistency with Executive Order B-55-18 (**EO B- 55-18**).

EO B-55-18 requires the State of California to achieve carbon neutrality—net zero GHG emissions—by 2045. The Project is inconsistent with EO B-55-18 because it does not prohibit the use of gasoline, diesel, and natural gas. The use of truck fleets is expected to significantly contribute to fossil fuel consumption. Burning such non-renewable fuels results in substantial GHG emissions, preventing the Project from ever achieving carbon neutrality, unless it enters into agreements with the applicant and/or future tenant to ensure that fossil fuel use is on track to be eliminated by 2045 as required by EO B-55-18.

Consequently, because the Project is inconsistent with applicable plans for the reduction of GHGs, it is significant under the second threshold.

The EIR's GHG Analysis was an Inadequate Informational Document

The EIR did not include enough information to inform the public about the impact of GHGs on climate change. An EIR must be prepared with sufficient analysis to provide decision-makers with enough information to make an informed decision regarding potential environmental consequences. (14 Cal Code Regs §15151). Conclusions or opinions alone

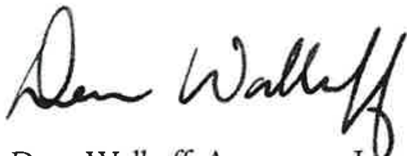
comprise an insufficient basis for an informational document; the DEIR must contain facts and analysis to support its significance conclusions. (*Sierra Club v County of Fresno* (2018) 6 Cal 5th 502, 522; *Citizens of Goleta Valley v Board of Supervisors* (1990) 52 C3d 553, 568.)

Here, the Project's annual emissions were estimated to be 5,479 MTCO2e, which was determined to be less than significant because of the exceedingly large chosen threshold of 10,000 MTCO2e. The City did not describe the lifetime impact that the Project would have over its 30-year lifespan, which would amount to 164,370 MTCO2e.[11] The EIR did not include any information of the annual impact or lifetime impact of the project on humans or the environment, which makes it impossible to make an informed decision on the potential environmental consequences of approving this project. Accordingly, the brief analysis that compared the estimated annual emissions to the numeric significance threshold is not sufficient on its own to demonstrate the potential environmental impact of this Project.

Conclusion

Even if there are not mitigation measures available to reduce a project's impact to a non-significant level, CEQA requires the maximum feasible mitigation for significant impacts. The EIR fails to require all feasible mitigation, despite concluding that the significant GHG impact will be unavoidable. The lead agency has not met its burden of showing that such measures are infeasible, and therefore the EIR is inadequate and cannot be used to support a finding of significant and unavoidable GHG impact. The Planning Commission erred in certifying the EIR and approving the Project because the EIR did not demonstrate that the GHG impact would be mitigated to the maximum feasible extent.

Sincerely,



Dean Wallraff, Attorney at Law
Executive Director, Advocates for the Environment

[11] $5{,}479\ MTCO2e\ per\ year \times 30\ years = 164{,}370\ MTCO2e$. The Project lifespan was estimated to be 30 years. (EIR, p. 4.7-18.)