

Attachment No. PC 5

ABJ&C Comment Letter, dated May 21, 2025

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May 21, 2025

Via Email and Overnight Mail

Chair Mark Rosene
Members of the Planning Commission
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Re: Agenda Item 3 - Coyote Canyon Landfill Gas to Energy Facility
(SCH No. 2024120012; PA2022-063)

Dear Chair Rosene, Commissioners, Ms. Perez and Mr. Murillo:

On behalf of Orange County Residents for Responsible Industry (“Residents”), we submit these comments regarding the City of Newport Beach (“City”) Planning Commission Meeting Public Hearing Agenda Item 3, the proposed Coyote Canyon Landfill Gas to Energy Plant Project (“Project”).¹ The Staff Report asks the Commission to approve the Project’s Initial Study/Mitigated Negative Declaration SCH No. 2024120012 (“MND”),² including the MND, May 2025 Responses to Comments (“Responses”),³ Mitigation Monitoring and Reporting

¹ City of Newport Beach Planning Commission Agenda (Thursday May 22, 2025 – 6:00 PM), available at: <https://newportbeach.legistar.com/gateway.aspx?M=F&ID=3ac0477a-d3de-41b0-aa57-9dbe51fd8b14.pdf> (hereinafter, “Staff Report”).

² City of Newport Beach, Initial Study Mitigated Negative Declaration, Landfill Gas to Energy Plan Project, (Nov. 27, 2024) available at: [https://www.newportbeachca.gov/pln/CEQA_REVIEW/Coyote%20Canyon%20Landfill%20Gas%20to%20Energy%20Plant%20Project%20\(P2022-063\)/PA2022-063_PublicReview_InitialStudy_MND.pdf](https://www.newportbeachca.gov/pln/CEQA_REVIEW/Coyote%20Canyon%20Landfill%20Gas%20to%20Energy%20Plant%20Project%20(P2022-063)/PA2022-063_PublicReview_InitialStudy_MND.pdf).

³ City of Newport Beach, Landfill Gas to Energy Plan Project, Responses (May 2025), available at: [https://www.newportbeachca.gov/pln/CEQA_REVIEW/Coyote%20Canyon%20Landfill%20Gas%20to%20Energy%20Plant%20Project%20\(P2022-063\)/PA2022-063_Response-to-Comments.pdf](https://www.newportbeachca.gov/pln/CEQA_REVIEW/Coyote%20Canyon%20Landfill%20Gas%20to%20Energy%20Plant%20Project%20(P2022-063)/PA2022-063_Response-to-Comments.pdf) (hereinafter, “Responses”).

Program (“MMRP”, collectively with MND and Responses as “Final MND”), and a Conditional Use Permit (PA2022-063).⁴ The Project is proposed by Biofuels Coyote Canyon Biogas LLC, on behalf of Archaea Energy Inc (“Applicant”). The Project site is located at 20662 Newport Coast Drive in the City of Newport Beach. The Project would be constructed under a lease agreement with OC Waste & Recycling (“OCWR”), within the boundary of the closed Coyote Canyon Landfill (“CCL”), which is owned by the County of Orange and operated by OCWR.

Residents submitted detailed comments in January 2025, supported by expert comments, which demonstrated that the MND was substantially deficient and failed to fulfill its mandate under CEQA as an informational document. Residents’ experts also provided substantial evidence supporting a fair argument that the Project results in significant, unmitigated air quality, public health, greenhouse gas emissions, and noise impacts which require the City to prepare an environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act.⁵

The Staff Report includes responses to public comments on the MND in the May 2025 Responses. Residents reviewed the Staff Report, Responses, and supporting documents with the assistance of air quality and hazards consultant Komal Shukla, Ph.D. of Group Delta Consultants, Inc. and noise consultant Jack Meighan of Wilson Ihrig. Dr. Shukla’s comments and curriculum vitae attached to this letter as Exhibit 1.⁶ Mr. Meighan’s comments and curriculum vitae are included as Exhibit 2.⁷

Based on our review, Residents and its experts conclude that the Final MND fails to resolve the majority of issues raised in our MND comments, relies on missing studies and deficient analysis, and still fails to mitigate many of the Project’s significant impacts, including significant air quality impacts from nitrogen oxide emissions (an ozone precursor), significant hazards and public health impacts from risk of upset at the facility, and significant noise impacts. An EIR must be prepared because substantial evidence supports a fair argument that the Project results in significant air quality, public health, greenhouse gas emissions, and noise impacts from Project construction and operation. Moreover, the Planning Commission lacks substantial evidence to make the findings required to approve

⁴ Staff Report, Attachment 1.

⁵ Pub. Res. Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.

⁶ **Exhibit 1:** Letter from Dr. Komal Shukla to Adams Broadwell Joseph & Cardozo, Comments on Archaea Landfill Gas to Energy Project (ALGEP) Response to Comments Orange County, California (May 21, 2025) (hereinafter “Shukla Comments”).

⁷ **Exhibit 2:** Letter from Jack Meighan to Adams Broadwell Joseph & Cardozo, Archaea Landfill Gas Project IS/MND City of Newport Beach, California Comments on Noise Analysis (May 19, 2025) (hereinafter “Meighan Comments”).

the Project due to significant, unmitigated impacts which obstruct compliance with local codes and constitute hazards to public health, interest, safety, and the general welfare of persons residing and working near the Project.⁸

Residents respectfully urges the Planning Commission to continue this hearing and remand the Project to staff to prepare an EIR to adequately analyze and mitigate the Project's potentially significant environmental impacts before bringing the Project back for further consideration. The City cannot approve the Project until it complies with CEQA, the Municipal Code, and applicable land use laws to ensure that the Project proceeds safely and mitigates its significant environmental and public health impacts.

I. STATEMENT OF INTEREST

Residents is a coalition of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The coalition includes Orange County residents, California Unions for Reliable Energy ("CURE"), and its local union affiliates and their members and their families. CURE is a coalition of labor organizations whose members encourage sustainable development of California's energy and natural resources. Residents was formed to advocate for responsible and sustainable industrial development in Orange County to protect public health and safety and the environment where Residents' members and their families live, work and recreate.

The individual members of Residents, and the members of its affiliated labor organizations, would be directly affected by the Project and may also work constructing the Project itself. They would therefore be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal stake in protecting the Project area from unnecessary, adverse environmental and public health and safety impacts. Thus, Residents, its participating organizations, and their members stand to be directly affected by the Project's impacts.

Residents supports the development of clean, renewable energy technology where properly analyzed and carefully planned to minimize impacts on public health and the environment. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live and recreate in the City and in Orange County. Continued degradation can, and has, caused construction moratoriums and other restrictions

⁸ Newport Beach Municipal Code ("NMBC"), Section 20.52.020.

on growth that, in turn, reduces future employment opportunities. Projects should avoid adverse impacts to natural resources and public health, and should take all feasible steps to ensure that unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can energy development truly be sustainable.

Finally, the organizational members of Residents are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment. It is in this spirit we offer these comments.

II. THE CITY HAS NOT COMPLIED WITH CEQA

A. The City Continues to Withhold Documents MND Reference Documents, in Violation of CEQA and the Public Records Act

The Final MND relies on a hidden study that has not been provided to the public to support the Final MND's conclusion that the Project would not result in significant, unmitigated hazards, public health and air quality impacts, despite multiple requests for access to MND reference documents since December 2024. The City is in violation of CEQA and the Public Records Act for failing to provide access to a study referenced and relied upon in the Final MND.

CEQA requires that "all documents referenced" – and the CEQA Guidelines require that "all documents incorporated by reference" – in a mitigated negative declaration shall be "readily accessible to the public during the lead agency's normal working hours" during the entire public comment period.⁹ Further, a CEQA document may not rely on hidden studies or documents that are not provided to the public.¹⁰ The City is in violation of these requirements because the City has failed to provide Residents with access to all MND reference documents despite timely requests for access made in December 2024,¹¹ and subsequent May 2025 requests.¹²

⁹ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

¹⁰ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

¹¹ **Exhibit 3** – Letter from ABJC to City of Newport Beach Re: Request for Immediate Access to Documents Referenced in the Initial Study/Mitigated Negative Declaration – Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063) (Dec. 3, 2024).

¹² **Exhibit 4** – ABJC emails with City regarding Preliminary Site Consequence Assessment (May 2025).

On December 3, 2024, Residents submitted a request for immediate access to all documents referenced or relied upon in the MND, as well as a request for immediate access to all public records related to the Project. The first request was made pursuant to the Public Resources Code § 21092(b)(1), which requires that all documents *referenced* in an environmental review document be made available to the public for the entirety of the public review period. The second request was made pursuant to Government Code § 7922.525, which requires public records to be “open to inspection at all times during the office hours of the state or local agency” and provides that “every person has a right to inspect any public record.”¹³

The November 2024 MND stated that a Preliminary Site Consequence Assessment was prepared to outline the potential for flammable vapor clouds, jet fire, and toxic vapor clouds from the Project and the potential impact to nearby sensitive receptors.¹⁴ However, the City did not provide the Preliminary Site Consequence Assessment in response to either Residents’ MND reference document request or its Public Records Act request, in violation of both CEQA and Public Records Act disclosure requirements.

The May 2025 Responses continue to reference and rely on the Preliminary Site Consequence Assessment to support the Final MND’s conclusions that the air quality, hazards, and public health risks from risk of upset at the Project facilities would be less than significant.¹⁵ Residents’ sent an additional Public Records Act request to the City on May 7, 2025 for Project-related records, and follow up emails to City staff on May 20 and May 21, 2025 specifically requesting access to the Preliminary Site Consequence Assessment.¹⁶ The City still has not provided access to the Preliminary Site Consequence Assessment.

The City is in ongoing violation of CEQA’s requirement to provide access to documents referenced and relied upon in the MND. The City is also in violation of Public Records Act disclosure requirements, and has not provided any legal basis to exempt disclosure of the Preliminary Site Consequence Assessment under the Act. Nor could it, because CEQA prohibits the lead agency from relying on hidden studies to support its significance conclusions. Here, the Final MND relies on the Preliminary Site Consequence Assessment to support the City’s hazards and hazardous materials analysis, and to support the Final MND’s conclusions that air quality, hazards and public health impacts from risk of upset at the facility would be less than significant. The City’s failure to disclose this study renders the Final

¹³ Government Code § 7922.525.

¹⁴ MND, p. 101, Responses, p. 1-110.

¹⁵ Responses, p. 1-110.

¹⁶ Exhibit 4.

MND's analysis and impact conclusions unsupported by substantial evidence. The City must correct these violations by immediately providing public access to the Preliminary Site Consequence Assessment, and preparing and circulating a legally compliant EIR which analyzes and mitigates the impacts associated with risk of upset.

B. The Final MND Includes Substantial Revisions to the Project

The Responses include, for the first time, a July 2024 revised Air District Project application which predated the MND yet was not attached to it. The revised application identifies specific Project components that demonstrate significant impacts and result in substantial revisions to the MND.

The original MND attached a December 11, 2023 application for a Permit to Construct ("2023 Permit to Construct Application"), which the MND relied on.¹⁷ For the first time, the Responses attach the Applicant's revised July 22, 2024 application for a Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California ("2024 Permit to Construct Application").¹⁸ New information in the 2024 Permit to Construct Application regarding Project generators and other equipment demonstrate that the Project's emissions of nitrogen oxides ("NOx") are significant and exceed 4 tons per year, thus resulting in significant, unmitigated air quality impacts which require preparation of an EIR and require the Applicant to obtain offsets for the NOx emissions increase.¹⁹ This information constitutes substantial evidence supporting a fair argument that an EIR is required, and also constitutes substantial revisions to the MND which require, at a minimum, recirculation of the MND.²⁰

The 2024 Application was made available to the public for the first time in May 2025 with the Responses to Comments, and was not provided for public review during the MND's public comment period. Similarly, the City has not made the 2024 Permit to Construct Application available on CEQANet, as required by law.²¹ CEQANet includes only the unrevised 2023 Permit to Construct Application as

¹⁷ MND p. 63, 93, 155; MND Appendix B3.

¹⁸ Response to Comments, Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California Biofuels Coyote Canyon Biogas (December 11, 2023 Rev. July 22, 2024), pdf p. 135.

¹⁹ South Coast Air Quality Management District Rule 1304(d)(2)(B); Shukla Comments.

²⁰ 14 CCR § 15073.5

²¹ 14 CCR § 15147. [The CEQA Guidelines provide that "Appendices to the EIR...shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review."]

Appendix B3 of the MND.²² The City must correct these informational deficiencies by preparing an EIR to disclose and mitigate the Project's significant NO_x emissions.

C. An EIR is Required for the Project

Residents' comments and those of our expert consultants identified substantial evidence supporting a fair argument of significant environmental impacts. Under the fair argument standard, if there is *any* substantial evidence the project *may* have a significant impact – and regardless of the existence of other substantial evidence to the contrary – an MND is improper and an EIR *must* be prepared.²³ Most of the issues raised in Residents' MND comments remain unresolved by the Final MND. The City must prepare an EIR that analyzes, discloses, and mitigates these impacts before the Planning Commission can approve the Project.

A negative declaration may be prepared instead of an EIR only when a lead agency determines that a project “would not have a significant effect on the environment.”²⁴ Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”²⁵ Under the “fair argument” standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.²⁶ The fair argument standard creates a “low threshold” of favoring environmental review through an EIR, rather than through a negative declaration.²⁷ “[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among

²² City of Newport Beach, Landfill Gas to Energy Plan Project, MND, Appendix B3, (Dec. 11, 2023), available at: https://files.ceqanet.opr.ca.gov/309505-1/attachment/BkyfqJttH3aG4OFY8eH6vItzCM4IWnVyuTFIUNt-FpoqXG9_Eel9KMuS76_O1BY4n29WsO7AM6vXLe5q0.

²³ *Upland Community First v. City of Upland* (2024) 105 Cal.App.5th 1, 15.

²⁴ *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code, § 21080(c).

²⁵ *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

²⁶ Pub. Resources Code, §§ 21080(d), 21082.2(d); CEQA Guidelines, §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 1501-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

²⁷ *Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 575-576.

expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”²⁸

With respect to this Project, the Final MND fails to satisfy the basic purposes of CEQA. The Final MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the Final MND lacks basic information regarding the Project’s potentially significant impacts, the Final MND’s conclusion that the Project will have a less than significant impact on the environment is unsupported.²⁹ The City failed to include the relevant data to support its finding of no significant impacts, and substantial evidence shows that the Project may result in potentially significant impacts.

The Final MND’s impact analyses remain based on conclusory findings and hidden studies including the Preliminary Site Consequence Assessment. Conclusory findings are not legally sufficient to constitute substantial evidence.³⁰ Any findings made must be supported by substantial evidence in the record and must “bridge the analytic gap between the raw evidence and ultimate decision or order.”³¹ Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”³²

Substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,”³³ and does not include “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.”³⁴ While the courts review an MND using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”³⁵ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby

²⁸ CEQA Guidelines, § 15064(g).

²⁹ Pub. Resources Code, § 21064.5.

³⁰ Village Laguna, Inc. v. Board of Supervisors (1982) 134 Cal.App.3d 1022, 1033-34.

³¹ Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515.

³² 14 CCR § 15384(a).

³³ 14 CCR § 15384(b).

³⁴ 14 CCR § 15384(a).

³⁵ *Berkeley Jets*, 91 Cal. App. 4th at 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

thwarting the statutory goals of the [environmental review] process.”³⁶ Further, “an agency may abuse its discretion under CEQA by either failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.”³⁷

The Final MND lacks the basic information required by CEQA, relies on hidden studies, and lacks substantial evidence to support its impact findings. As detailed herein and in the attached expert comments, and in Residents’ prior comments on the MND, substantial evidence supports a fair argument that the Project may result in significant and avoidable impacts to air quality, public health, GHG emissions, and noise. The City must prepare an EIR to adequately analyze and mitigate the Project’s significant unmitigated impacts.³⁸

D. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant, Unmitigated Air Quality Impacts

Substantial evidence in Residents’ comments and those of its expert consultant supports a fair argument that the Project would result in significant, unmitigated air quality impacts requiring preparation of an EIR. Under the fair argument standard, if there is *any* substantial evidence the project *may* have a significant impact – and regardless of the existence of other substantial evidence to the contrary – an MND is improper and an EIR *must* be prepared.³⁹

1. NO_x Emissions from the Supplemental Fuel Thermal Oxidizer Are Significant and Require Offsets

Dr. Shukla determined that NO_x Emissions from the Thermal Oxidizer – Supplemental Fuel were severely underestimated in the Final MND (Table 4) and result in an exceedance of SCAQMD Offset Trigger Levels, requiring offsets.⁴⁰ Table 3 below provides that emissions from the Thermal Oxidizer - Supplemental Fuel will be 12 lbs/day.⁴¹ 12lb/day converted to tons per year is 2.19 tons per year.

³⁶ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

³⁷ PRC § 21168.5.

³⁸ Alternatively, the City must, at a minimum, recirculate the MND because the document must be substantially revised. A lead agency is required to recirculate a negative declaration when the document must be substantially revised after public notice of its availability has previously been given, but prior to its adoption.14 CCR 15073.5.

³⁹ *Upland Community First v. City of Upland* (2024) 105 Cal.App.5th 1, 15.

⁴⁰ *Id.*

⁴¹ MND, Table 3 Comparison of Project Emissions to Regional Daily Thresholds, p. 67.

When accurately calculated, Dr. Shukla concludes that total criteria air pollutant emissions from NO_x exceed 5.6 tons per year, exceeding the 4 tons per year SCAQMD Offset Threshold and requiring mitigation in the form of offsets.

Table 3 Comparison of Project Emissions to Regional Daily Thresholds

Source	Criteria Air Pollutants (lbs/day)					
	VOC	NO _x	CO	SO ₂	PM ₁₀	PM _{2.5}
Project Land Use Emissions¹						
Mobile ²	0.013	0.086	0.145	0.001	0.042	0.011
Area ³	0.051	0.001	0.069	0.000	0.000	0.000
Energy ⁴	0.001	0.018	0.015	0.000	0.001	0.001
Total	0.065	0.105	0.229	0.001	0.043	0.013
Project Permitted Equipment Emissions⁵						
Thermal Oxidizer – Main Fuel	12	17	58	11	5	5
Thermal Oxidizer – Supplemental Fuel	<1	12	40	<1	<1	<1
Enclosed RNG Flare	12	47	112	18	33	33
Natural Gas-Powered Emergency Generator	1	1	1	<1	<1	<1
Total	25	77	211	29	39	39
Total Daily Emissions						
Project Land Uses	0.065	0.105	0.229	0.001	0.043	0.013
Project Permitted Equipment ⁶	25	77	211	29	39	39
Project Total	25	77	211	29	39	39
Existing Flare Emissions ⁷	11	88	58	41	24	24
Net Change	14	(12)	153	(12)	15	15
South Coast AQMD Regional Threshold	55	55	550	150	150	55
Exceeds Limits?	No	No	No	No	No	NA

Source: CalEEMod Version 2022.1.

Notes: VOC = volatile organic compound; NO_x = nitrogen oxides; CO = carbon monoxide; SO₂ = sulfur dioxide; PM₁₀ = coarse inhalable particulate matter; PM_{2.5} = fine inhalable particulate; RNG = renewable natural gas; South Coast AQMD = South Coast Air Quality Management District; NA = not applicable.

"<1" = a value less than 1; () = negative value

¹ Emissions from non-permitted components of the proposed project.

² Emissions generated from employee vehicle trips. The quantified emissions are based on six average daily passenger vehicle trip ends generated by three employees and on two average daily truck trip ends generated by one heavy-duty truck.

³ Emissions from architectural coatings, general household cleaning products, and landscaping equipment.

⁴ Emissions from California Emissions Estimator Model (CalEEMod) default natural gas demand used for building heating.

⁵ Based on emissions data provided by SCS Engineers (see Appendix B1).

⁶ Represent the potential-to-emit scenario.

⁷ Represent the average daily based on actual annual emissions data as reported in the South Coast AQMD Annual Emissions Report (AER) for years 2021 and 2022 for the four existing Orange County Waste and Recycling flares (Appendix B1). Because the AER provides only annual emissions data, the annual emissions data are divided by 365 days per year to derive the average daily emissions.

Table 4 Comparison of Project Emissions to South Coast Air Quality Management District Offset Trigger Levels

Source	Criteria Air Pollutants (tons/year)					
	VOC	NO _x	CO	SO ₂	PM ₁₀	PM _{2.5}
Thermal Oxidizer – Main Fuel	2.12	2.60	8.65	2.01	0.92	0.92
Thermal Oxidizer – Supplemental Fuel	0.004	0.54	1.81	0.01	0.06	0.06
Enclosed RNG Flare	0.21	0.85	2.04	0.33	0.25	0.25
Natural Gas-Powered Emergency Generator	0.02	0.01	0.01	0.0001	0.002	0.002
Total Annual Emissions	2.352	3.996	12.515	2.347	1.236	1.236
Rule 1304 Offset Trigger Limits ¹	4	4	29	4	4	NA
Exceeds Limits?	No	No	No	No	No	NA

Source: SCS Engineers (see Appendix B1).

Notes: VOC = volatile organic compound; NO_x = nitrogen oxides; CO = carbon monoxide; SO₂ = sulfur dioxide; PM₁₀ = coarse inhalable particulate matter; PM_{2.5} = fine inhalable particulate; RNG = renewable natural gas; NA = not applicable.

¹ South Coast AQMD Rule 1304(d)(2)(B).

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NO_x emissions from the Supplemental Fuel Thermal Oxidizer exceed SCAQMD's Rule 1304 Offset Trigger Limit of 4 tons per year.⁴⁴ The Responses conclusion that offsets are not required is therefore not supported by substantial evidence.⁴⁵ Offsets are required pursuant to the following ratio: "Offset ratios shall be 1.2-to-1.0 for Emission Reduction Credits and 1.0-to-1.0 for allocations from the Priority Reserve, except for facilities not located in the South Coast Air Basin (SOCAB), where the offset ratio for Emission Reduction Credits only shall be 1.2-to-1.0 for VOC, NO_x, SO_x and PM₁₀ and 1.0-to-1.0 for CO."⁴⁶ An EIR must be prepared which includes accurate disclosure of significant NO_x emissions and an analysis of the offsets required for the Project.

2. NO_x Emissions from Backup Generators Are Significant and Require Offsets

The Responses includes revisions to the air quality and health risk sections of the MND and includes the revised 2024 Permit to Construct Application.⁴⁷ Residents' air quality and health risk expert consultant Dr. Shukla identified substantial evidence in the record supporting a fair argument that an EIR must be

⁴³ MND, p. 64, Table 4.

⁴⁴ *Id.*

⁴⁵ Response to Comments, p. 1-27.

⁴⁶ SCAQMD Rule 1303(b)(2)(A).

⁴⁷ Response to Comments, Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California Biofuels Coyote Canyon Biogas (December 11, 2023 Rev. July 22, 2024), pdf p. 135.

prepared because the Project results in significant air quality impacts from NOx from the Project's Emergency Generator.

Dr. Shukla's comments demonstrate that the Project results in significant NOx emissions due to the Project's Natural Gas-Powered Emergency Generator.⁴⁸ With the revised information in the 2024 Permit to Construct Application, Dr. Shukla was able to calculate that total emissions from NOx from the Project would exceed the threshold of 4 tons per year resulting in a significant air quality impact and requiring offsets pursuant to South Coast Air Quality Management District ("SCAQMD") Rule 1304.⁴⁹

Dr. Shukla calculated the actual annual emissions associated with operating the Natural Gas-Powered Emergency Generators operating onsite 200 hours per year.⁵⁰ Utilizing the Emergency Generator product information provided in the 2024 Permit to Construct Application,⁵¹ Dr. Shukla calculated that operating 200 hours per year, with NOx emissions of 1.5 grams per brake horsepower-hour, NOx emissions from the Emergency Generator would be 80,460 grams per year, or 0.087 tons per year.⁵² This would result in total NOx emissions from the Project of 4.073 tons per year.⁵³ This exceeds SCAQMD's Rule 1304 Offset Trigger Limit of 4 tons per year of NOx.⁵⁴ The Response to Comments conclusion that offsets are not required is therefore not supported by substantial evidence.⁵⁵ Offsets are required pursuant to the following ratio: "Offset ratios shall be 1.2-to-1.0 for Emission Reduction Credits and 1.0-to-1.0 for allocations from the Priority Reserve, except for facilities not located in the South Coast Air Basin (SOCAB), where the offset ratio for Emission Reduction Credits only shall be 1.2-to-1.0 for VOC, NOX, SOX and PM10 and 1.0-to-1.0 for CO."⁵⁶ An EIR must be prepared which includes accurate disclosure of significant NOx emissions and an analysis of the offsets required for the Project.

⁴⁸ Shukla Comments, p. 9.

⁴⁹ Response to Comments, Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California Biofuels Coyote Canyon Biogas (December 11, 2023 Rev. July 22, 2024), pdf p. 135 of 296.

⁵⁰ *Id.* at pdf p. 145 of 296.

⁵¹ *Id.* at C-6, pdf p. 235 of 296.

⁵² Shukla Comments, p. 9.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Response to Comments, p. 1-27.

⁵⁶ SCAQMD Rule 1303(b)(2)(A).

3. Emissions from the Existing Flares Were Not Adequately Quantified and May Be Significant

The Final MND provides that the proposed operating hours of the RNG facility would be 24 hours per day, seven days a week, with an annual scheduled shutdown for plant maintenance.⁵⁷ The Final MND provides that unplanned shutdowns are anticipated to be less than 10 times per year.⁵⁸ The Final MND further provides that existing “flares operated by OCWR would only be used as backup if the RNG facility goes offline, or to combust any excess LFG that is not used by the RNG processing plant.”⁵⁹

Dr. Shukla’s comments demonstrate that the Final MND does not quantify emissions associated with the annual scheduled shutdown for plant maintenance.⁶⁰ Dr. Shukla’s review of the MND and supporting documents demonstrates that emissions associated with the annual shutdown and 10 potential shutdown days per year may result in significant air pollutant emissions, which the Final MND fails to adequately analyze or mitigate. An EIR must be prepared which adequately quantifies and mitigates potentially significant emissions from Project operation.

E. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant, Unmitigated GHG Impacts

The Responses do not remedy the MND’s inadequate analysis associated with fugitive GHG emissions in Dr. Shukla’s comments.⁶¹ Dr. Shukla’s comments provide substantial evidence that the Final MND’s GHG emissions analysis may grossly underestimate potentially significant GHG impacts from the Project. Dr. Shukla found that the Final MND still fails to analyze fugitive GHG emissions from Temperature Swing Adsorption (“TSA”) Pretreatment Skid, Operating Chillers, Membrane Skid, Nitrogen Rejection Unit (“NRU”) and Associated Skids, Valves, Pumps, Flanges, Flaring/Blowdown, Pressure Relief Valves, and Process Drains.⁶² When accounting for fugitive GHG emissions from these sources, GHG emissions may be significant and require mitigation.⁶³

Moreover, the Final MND fails to analyze GHG emissions associated with the annual shutdown and unplanned shutdowns associated with Project operation. The

⁵⁷ MND, p. 22.

⁵⁸ *Id.*

⁵⁹ MND, p. 15.

⁶⁰ MND, p. 22.

⁶¹ Shukla Comments, p. 9.

⁶² *Id.*

⁶³ *Id.*

Final MND provides that the existing “flares operated by OCWR would only be used as backup if the RNG facility goes offline, or to combust any excess LFG that is not used by the RNG processing plant.”⁶⁴ Dr. Shukla’s comments demonstrate that the Final MND does not quantify GHG emissions associated with the annual scheduled shutdown for plant maintenance.⁶⁵ The Final MND provides that unplanned shutdowns are anticipated to be less than 10 times per year.⁶⁶ Dr. Shukla’s review of the Final MND and supporting documents demonstrates that emissions associated with the annual shutdown and 10 potential shutdown days per year may result in significant GHG emissions, which the MND fails to adequately analyze or mitigate. An EIR must be prepared which adequately quantifies and mitigates potentially significant GHG emissions from Project operation.

E. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant, Unmitigated Hazards Impacts

Residents commented on the MND that the record fails to contain a Risk of Upset analysis. The Responses provides that “Fire hazards to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment are addressed in the IS/MND under impact 3.9(b).”⁶⁷ The Final MND provides that a Preliminary Site Consequence Assessment was prepared to outline the potential for flammable vapor clouds, jet fire, and toxic vapor clouds from the proposed project and the possible effect they pose on the surrounding community.⁶⁸ But, a copy of the Preliminary Site Consequence Assessment was not included in the MND or Responses and has not been provided to Residents in response to requests for public records pursuant to CEQA and the California Public Records Act.⁶⁹ The conclusions of the Final MND under impact 3.9(b) with respect to hazardous materials are therefore unsupported by substantial evidence in the record.

The Final MND provides that the Preliminary Site Consequence Assessment found no adverse effects to public receptors which included: Sage Hill Highschool, Car passengers on Newport Coast Drive, and Car passengers on SR 73.⁷⁰ But the

⁶⁴ MND, p. 15.

⁶⁵ MND, p. 22.

⁶⁶ *Id.*

⁶⁷ Response to Comments, p. 1-110.

⁶⁸ MND, p. 101, Response to Comments, p. 1-110.

⁶⁹ Response to Comments, p. 1-31 Letter from Adams Broadwell Joseph & Cardozo to the City of Newport Beach Re: Request for Immediate Access to Public Records – Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063) (Dec. 3, 2024); Government Code §§ 7920.000, *et seq.*

⁷⁰ MND p. 101; Response to Comments, p. 1-110.

list of public receptors does not include residential receptors within 1,890 feet (576 meters) feet of the Project site, even though the MND provides that residential receptors as close as 1,890 feet are assumed to be exposed 24 hours/day to particulate matter emissions from the Project.⁷¹ The 2024 Permit to Construct Application provides that residential receptors may be as close as 1,385 feet to the Project site.⁷² The Responses provide that residential sensitive receptors are as close as 1,200 feet to the south.⁷³ The hazardous impact analysis is therefore not supported by substantial evidence.

As discussed above, the hazardous impact analysis is based on hidden studies and conclusory findings. Boilerplate or conclusory findings are not legally sufficient to constitute substantial evidence.⁷⁴ Any findings made must be supported by substantial evidence in the record and must “bridge the analytic gap between the raw evidence and ultimate decision or order.”⁷⁵ Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁷⁶ Substantial evidence “shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts,”⁷⁷ but it should not include “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.”⁷⁸ While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”⁷⁹ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”⁸⁰ Further, “an agency

⁷¹ MND, p. 69.

⁷² Response to Comments, Receptor Map Emergency Generator Receptor Distances Biofuels Coyote Canyon Biogas, pdf p. 295 of 296.

⁷³ Response to Comments, p. 1-108.

⁷⁴ Village Laguna, Inc. v. Board of Supervisors (1982) 134 Cal.App.3d 1022, 1033-34.

⁷⁵ Topanga Assn. for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 515.

⁷⁶ 14 CCR § 15384(a).

⁷⁷ 14 CCR § 15384(b).

⁷⁸ 14 CCR § 15384(a).

⁷⁹ *Berkeley Jets*, 91 Cal. App. 4th at 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

⁸⁰ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

may abuse its discretion under CEQA by either failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.”⁸¹

The Final MND fails as an informational document under CEQA for failing to disclose the potential impact from flammable vapor clouds, jet fire, and toxic vapor clouds from the Project on the surrounding community. These errors and omissions associated with the Final MND’s hazardous materials impact analysis must be remedied in an EIR circulated for public review and scrutiny.

Moreover, the Final MND lacks substantial evidence to support the conclusion that the Project would be adequately served by fire protection services. The Applicant requested clarification from the Newport Beach Fire Department that the Project is adequately served by fire services.⁸² The Applicant stated “We understand the Fire Marshall has expressed concerns about the possibility of an offsite fire reaching the facility due to the surrounding dry vegetation.”⁸³ The Newport Beach Fire Department stated that “[t]he concern is not only an off-site fire reaching a facility but an on-site fire reaching the wildland urban interface, resulting [in] a fire expanding to the existing commercial and residential in the area.”⁸⁴ The Fire Department recommended fuel modification measures which were implemented in the MND’s Fuel Modification Plans pursuant to Mitigation Measure HAZ-1.⁸⁵ However, the record does not contain substantial evidence to support the conclusion that the mitigation measures for hazards and hazardous material impacts are sufficient to mitigate potentially significant hazards, fire, and wildfire impacts from the Project.

The record before the Planning Commission is also unsupported regarding whether the Fire Department has the capacity to put out “worst-case scenario jet fires [which] could affect vegetation up to 10 feet beyond the perimeter wall in the northeast portion of the site.”⁸⁶ The Final MND concludes that, with the implementation of design features such as equipment layout, hazardous area classification, ignition source controls, fire and gas detection systems, process control alarms, process control shutdowns, and emergency shutdown systems... impact of jet fires to the surrounding vegetation would be less than significant.”⁸⁷ associated with the hazardous materials which will be used onsite. But, these

⁸¹ PRC § 21168.5.

⁸² MND, Appendix L Service Provider Questionnaire Responses, p. L-9.

⁸³ MND, Appendix L Service Provider Questionnaire Responses, p. L-9.

⁸⁴ *Id.*

⁸⁵ MND, p. 106.

⁸⁶ MND, p. 101.

⁸⁷ MND, p. 101.

conclusions are unsupported by substantial evidence in the record. The City must prepare a legally adequate EIR for public review and comment, which includes detailed analysis and substantial evidence to support the City's hazards and fire protection analyses, before the Project can lawfully be approved.

F. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant Noise Impacts

In response to Residents' comments on the MND, the City revised the noise analysis related to excessive noise levels for nearby sensitive receptors.⁸⁸ But, the Final MND's noise analysis is still inadequate for failure to analyze significant noise emissions above ambient levels.

The Final MND provides that the average noise level experienced during construction was assessed based on the distance of activities to the surrounding sensitive receptors at 1,700 feet from the property line of the existing school used to the north and 1,380 feet from the existing single-family homes to the south.⁸⁹ At those distances, the combined construction noise levels from pipe installation and equipment installation would be 55 dBA Leq and 56 dBA Leq, respectively.⁹⁰ Therefore, the school would experience an increase in ambient noise levels ranging from 1 to 11 dBA Leq for four months.⁹¹ The single-family home would experience an increase in ambient noise levels ranging from 8 to 18 dBA Leq for four months.⁹² The Final MND provides that the change in ambient noise levels at the sensitive receptors would be minimal and would only last for four months.⁹³ This analysis fails to account for construction noise from equipment installation which the Final MND provides, will last nine months.⁹⁴

Jack Meighan's comments provide substantial evidence supporting a fair argument that the Project may result in significant adverse noise impacts to nearby sensitive receptors due to a significant noise increase above ambient noise levels. Mr. Meighan's comments demonstrate that a 10 dBA increase is perceived as a doubling of the sound and thus would cause an adverse impact on nearby sensitive receptors.⁹⁵ This results in a significant impact pursuant to CEQA. The Project's

⁸⁸ Response to Comments, p. 1-113.

⁸⁹ MND, p. 127.

⁹⁰ MND, p. 127.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Response to Comments, p. 1-105.

⁹⁵ Meighan Comments, p. 2.

significant noise impacts must be analyzed in an EIR before the Project can be approved.

Moreover, Mr. Meighan reviewed Conditions of Approval 20 and 21 in the Staff Report's Draft Resolution to Approve the Project and Adopt the IS/MND. Mr. Meighan concludes that Conditions of Approval 20 and 21 do not mitigate the Project's significant noise from construction.⁹⁶ First, Condition 20 does not apply for construction noise and therefore Condition 20 would not mitigate the Project's significant construction noise increase above ambient levels.⁹⁷ Second, Condition 21 does not mitigate construction noise impacts to less than significant because Condition 21 only limits the hours of construction between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday.⁹⁸ Condition 21 does not mitigate the Project's significant construction noise impacts because the Project's significant construction noise will occur during daytime hours.⁹⁹ Mr. Meighan's comments provide substantial evidence that Project construction noise impacts remain significant and unmitigated. Substantial evidence in these comments and in the record before the Planning Commission support a fair argument that the Project results in significant unmitigated noise impacts requiring preparation of an EIR.

III. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT APPROVAL FINDINGS

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the NBMC, the Planning Commission must make the following findings for approval of a use permit:

1. The use is consistent with the General Plan and any applicable Specific Plan;
2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and Municipal Code;
3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;

⁹⁶ Meighan Comments, p. 3.

⁹⁷ *Id.*

⁹⁸ Staff Report, Attachment 1, Draft Resolution to Approve the Project and Adopt the IS/MND, available at: <https://newportbeach.legistar.com/gateway.aspx?M=F&ID=3a59b8ec-031e-4a0c-9b11-1d4d64b4da54.pdf>.

⁹⁹ Meighan Comments, p. 3.

4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and
5. Operation of the use at the proposed location would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.¹⁰⁰

The Planning Commission lacks substantial evidence to make the findings required to approve the Project due to significant, unmitigated impacts which obstruct compliance with local codes and constitute hazards to public health, interest, safety, and the general welfare of persons residing and working near the Project.¹⁰¹

IV. CONCLUSION

There is substantial evidence supporting a fair argument that the Project will have potentially significant, unmitigated impacts on air quality, greenhouse gases, public health, and noise. The Final MND is inadequate as a matter of laws because it fails to identify, analyze, and mitigate all potentially significant impacts to air quality, greenhouse gases, public health, and noise. Due to these deficiencies, the City cannot conclude that the Project's impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁰² As discussed in detail above, there is more than a fair argument based on substantial evidence that the Project would result in significant adverse impacts not identified in the Final MND. Moreover, there is substantial evidence the proposed mitigation measures will not reduce potentially significant impacts to a level of insignificance.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the Final MND and preparing an EIR to address the issues raised in this comment letter, the attached comments from Dr. Shukla and Mr. Meighan, and other public

¹⁰⁰ Staff Report, p. 11; NBMC Section Section 20.52.020.

¹⁰¹ Newport Beach Municipal Code ("NBMC"), Section 20.52.020.

¹⁰² CEQA Guidelines § 15063(b)(1).

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comments in the record. Until an EIR has been circulated, as described herein, the City may not lawfully approve the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Kelilah D. Federman

Attachments
KDF:acp

EXHIBIT 1



Adams Broadwell Joseph Cardozo

601 Gateway Blvd. Suite 1000
South San Francisco, CA 94080

May 21, 2025

Proposal No. EN8484

Attention: Kelilah D. Federman

Subject: Comments on Archaea Landfill Gas to Energy Project (ALGEP) Response to Comments Orange County, California

Dear Ms. Kelilah,

Dr. Komal Shukla of Group Delta Consultants, Inc. (Group Delta) is pleased to submit this detailed commentary to Adams Broadwell Joseph & Cardozo (ABJC, Client) concerning the comprehensive evaluation of the Response to Comments (RTC) document for the Archaea Landfill Gas to Energy Project (ALGEP). The RTC report was prepared by Placeworks (Applicant) as part of their formal response to the public review process for the project's Mitigated Negative Declaration (MND).

INTRODUCTION

The initial comment letter prepared for ALGEP focused extensively on critical issues related to emissions control strategies and emissions reporting accuracy, as well as the associated health and environmental risks posed by the project's air pollutant emissions. Key areas of concern highlighted included the identification and characterization of emissions sources, the assessment of cumulative air quality impacts in the project vicinity, and the potential formation of secondary pollutants such as ozone and particulate matter resulting from precursor emissions. This letter specifically addresses the inadequacy and incompleteness of the Applicant's responses to the original comments.

1. INTRODUCTION OF NEW PERMITTING DOCUMENTS

1.1 Disclosure of ATC/PTO After Public Review

The revised Authority to Construct/Permit to Operate (ATC/PTO) for the Biofuels Coyote Canyon Biogas Renewable Natural Gas (RNG) Plant, dated July 2024, was introduced for the first time in the Response to Comments (RTC). This document was not disclosed during the public review period for the Mitigated Negative Declaration (MND). This revised permit introduces substantive modifications to both the emissions estimates and design parameters compared to the 2023 version, which served as the basis for environmental analysis in the MND. Specifically, the RTC states: "Appendix B3 is updated to include the latest version of the 'Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport

Beach, California,' with a revision date of July 2024."¹ This updated version was attached to the RTC as Attachment 2 and included changes to the Initial Study using strikeout formatting for deletions and underlined text for additions.

The following substantive changes were introduced in the 2024 ATC that were not disclosed in the MND:

1. Emergency Generator (Section 3.5 & 3.5.1)

• **2023 ATC Application:**

- Emissions data are incomplete; emergency generator emissions are not quantified.
- Only includes emissions from Thermal Oxidizer (TOX) and enclosed flare, not from the emergency generator.²
- No Statement of Exhaust Emissions for the emergency generator included.
- Table 11 addresses PTE for toxics and criteria pollutants but not for the emergency generator.³
- Table 12 lists potential to emit (PTE) estimates for emergency generator, but lacks detail.⁴

• **2024 ATC Application:**

- Includes new Statement of Exhaust Emissions for the 2024 Spark-Ignited Generator.⁵
- Identifies emergency generator model as the **SG200 14.2L 200 kW Industrial Spark-Ignited Generator Set**, EPA-certified for emergency and non-emergency applications.⁶

¹ Refer to Landfill Gas to Energy Plant Project for City of Newport Beach: Response to Comments, Pg. 1-26, A3-7

² Refer to Pg. B3-11 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach Appendix B3: Permit to Construct/Permit to Operate

³ Refer to Pg. B3-33 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach Appendix B3: Permit to Construct/Permit to Operate

⁴ Refer to Pg. B3-34 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach Appendix B3: Permit to Construct/Permit to Operate

⁵ Refer to Pg. C-7 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

⁶ Refer to PDF Pg. 103 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

- Quantifies GHG emissions at 27 metric tons CO₂/year, based on 200 hours/year of operation.⁷

2. Best Available Control Technology (BACT) and Emissions Limits – Section 5.3.1.3⁸

- The manufacturer-certified Best Available Control Technology (BACT) emission rates for the emergency generator were included exclusively in the 2024 ATC application:
 - **NOx**: 1.5 g/bhp-hr
 - **CO**: 2.0 g/bhp-hr
 - **PM₁₀/PM_{2.5}**: 9.91E-03 lb/MMBtu
 - **VOC**: 1.0 g/bhp-hr
 - **SO₂**: 5.88E-04 lb/MMBtu

3. Toxic Air Contaminants (TACs) – Table 5.3.7 (2024) vs. Table 4 (2023)

- **2024 ATC Application:**⁹
 - Identifies new TACs emissions specifically associated with the emergency generator, including:
 - 1,1,2-Trichloroethane (Vinyl Trichloride)
 - 1,3-Butadiene
 - Acetaldehyde
 - Acrolein
 - Benzo(b)Fluoranthene
 - Methanol
 - Phenol

⁷ Refer to Pg. 16, Table 7. Project Total GHG Emissions of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

⁸ Refer to Pg. 12 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

⁹ Refer to Pg. 13-15 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

- Styrene PAHs
 - **2023 ATC Application:**¹⁰
 - Asserts that TACs are only emitted from the TOX, not the emergency generator.
 - Omits all TACs later identified in the 2024 revision.
-

4. Health Risk Assessment

- **MND Analysis:**¹¹
 - Asserts evaluation of carcinogenic health risks from the emergency generator.
 - Appendix B3 omits the generator entirely, and health risk calculations do not reflect emissions data provided in the 2024 ATC.
-

5. Greenhouse Gas (GHG) Emissions

- **2024 ATC Application:**¹²
 - Estimates 27 metric tons of CO₂/year from the emergency generator for 200 hours of operation.
 - Provides updated calculations not reflected in the MND.
 - **MND:**¹³
 - Estimates 0.03 metric tons of CO₂/year from the emergency generator without clarifying assumed hours of operation.
-

6. Proximity to Sensitive Receptors

- The 2024 ATC Application contains inconsistencies in the reported distances to nearby sensitive receptors when compared to both the Mitigated Negative Declaration (MND) and the 2023 ATC Application. Further details on these discrepancies are provided below:
-

¹⁰ Refer to Pg. B3-16 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach Appendix B3: Permit to Construct/Permit to Operate

¹¹ Refer to Pg. 72, Table 7: Off-site Health Risk Assessment Results – Air Toxics, Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

¹² Refer to Pg. 16 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

¹³ Refer to Pg. 64, Table 5: Project Related Greenhouse Gas Emissions of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

- **2024 ATC Application:**¹⁴
 - Includes a site-specific map detailing generator proximity to sensitive receptors.
 - 1,385 feet to residences
 - 1,703 feet to Sage Hill High School
 - 1,835 feet to other non-residential receptors
- **MND:**¹⁵
 - Reports on inconsistent distances:
 - 1,400 feet to high school
 - 1,250 feet to Tesoro residential community
- **2023 ATC Application:**¹⁶
 - Reports equipment distance to:
 - Nearest residence: 1,369 feet
 - Nearest business: 1,870 feet

The revised ATC/PTO was not made available for public review during the formal circulation of the MND in November 2024, thereby depriving the public and reviewing agencies of the opportunity to comment on substantial changes to project design and emission assumptions. This procedural deficiency is inconsistent with the requirements of the California Environmental Quality Act (CEQA), and omitted basic Project information from the MND during the public comment period.

2. INCONSISTENCIES BETWEEN SUPPORTING DOCUMENTS

2.1 Inconsistent Methane and Output Data in Project Descriptions

The Option Agreement now reports methane content from raw biogas at 44%, with a methane recovery rate of 93.1%, a renewable natural gas (RNG) plant peak output of 1,958 mmBtu/day

¹⁴ Refer to PDF Pg. 161 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

¹⁵ Refer to Pg. 123 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

¹⁶ Refer to Pg. B3-105 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach Appendix B3: Permit to Construct/Permit to Operate

(or 715,178 mmBtu/year), and gas energy content of 975 Btu per cubic foot.¹⁷ In contrast, the MND described methane content from raw biogas as 40-45% and purified RNG methane content as 96-98%, but did not specify peak plant output or gas energy content in the project description.¹⁸ The absence of these critical operational metrics from the MND—while they are provided in other permitting or contractual documents—demonstrates an inconsistency in the disclosure of the Project’s fundamental design and performance parameters. Such discrepancies result in underinformed or inaccurate estimates in key areas of the City’s environmental analysis, including greenhouse gas emissions, energy efficiency, and air quality modeling. Incomplete and inconsistent data presentation across the Project record also impedes meaningful public and agency review.

Updated or revised information about Project components should not only be made available to the public but also be accompanied by adequate explanation and analysis to ensure that resulting air quality impacts are accurately calculated and disclosed. Merely including new data points in appendices or supplemental attachments, without contextualizing their significance or evaluating their implications, fails to meet industry standards. Where, as here, updated figures alter key technical assumptions in the MND—such as gas composition, output capacity, or energy content – the City must clearly articulate how those changes affect environmental outcomes and whether they warrant further study or recirculation of the environmental document. The MND fails to provide this information.

3. INCONSISTENCIES IN DATA REPORTING EMISSIONS

3.1 Incomplete Assessment of NOx Emissions and Fugitive Sources

The RTC contends that nitrogen oxides (NOx) are exclusively by-products of combustion and therefore not associated with fugitive emissions. Further asserting that all NOx emissions originate solely from controlled point sources, specifically the thermal oxidizers, enclosed flare, and emergency generator.¹⁹ While it is accurate that NOx is not typically emitted through fugitive leaks due to its formation via high-temperature combustion processes, this characterization does not diminish the significance of NOx emissions in the context of regulatory compliance and air quality impact assessment.

As indicated in Table 4 of the MND, the total annual NOx emissions from all identified combustion sources are projected to be 3.996 tons per year(tpy).²⁰ This total is marginally below the South

¹⁷ Refer to Pg. 2, Para. 4, Coyote Canyon Landfill Energy Redevelopment Project Option Agreement Exhibit 1: Conversion Facility Project Description

¹⁸ Refer to Pg. 15, Para. 1.5.2.1, Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

¹⁹ Refer to Landfill Gas to Energy Plant Project for City of Newport Beach: Response to Comments, Pg. 1-109, O2-11

²⁰ Refer to Pg. 68, Table 4: Comparison of Project Emissions to SCAQMD Offset Trigger Levels of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

Coast Air Quality Management District (SCAQMD) offset threshold of 4.0 tons per year. Given this minimal buffer of only 0.004 tons/year, any deviation from expected operating conditions could result in exceedance of the offset threshold, triggering additional permitting requirements and potential mitigation obligations. The MND fails to analyze reasonably foreseeable changes in operating conditions, such as increased biomass processing.

Moreover, although the project is designed as a closed-loop system, this design does not completely eliminate the potential for fugitive emissions. Closed systems are engineered to minimize leaks, but they are not inherently leak-free.²¹ The U.S. EPA and SCAQMD both require consideration of potential fugitive emissions from components such as valves, flanges, connectors, compressors, and pump seals—even in enclosed and pressurized systems. Therefore, the assertion in the RTC that there would be “no fugitive emissions” lacks technical justification and may misrepresent the actual emissions profile of the facility. Furthermore, the RTC references implied safety factors; however, merely implying these factors is insufficient and must be explicitly defined and documented.²² The presence of Lower Explosive Limit (LEL) and hydrogen sulfide (H₂S) sensors indicates potential emission risks, yet the RTC does not explain why the emissions outputs are reported as zero in the CalEEMod modeling files. This missing information demonstrates that the MND’s emissions estimates are underestimated.

3.2 Emergency Generator Emissions Updated Post-Public Review

As outlined in Section 1.1, the emissions profile for the emergency generator was significantly revised after the public circulation of the MND and presented new data supporting a fair argument under CEQA that emissions from the emergency generator could be significant and may necessitate preparation of a full EIR.

Specifically, the 2024 ATC application identifies the emergency generator as an SG200 14.2L 200 kW Industrial Spark-Ignited Generator Set, certified by the U.S. EPA for both emergency and non-emergency operation.²³ The application includes a Statement of Exhaust Emissions estimating GHG emissions at approximately 27 metric tons of CO₂ per year, based on an assumed operational duration of 200 hours annually.²⁴ While this level of GHG emissions remains below CEQA’s significance thresholds, the generator’s emissions of criteria pollutants, most notably NOx pose considerably greater environmental and regulatory concerns.

²¹ U.S. EPA, Leak Detection and Repair Compliance Assistance Guidance Best Practices Guide; <https://www.epa.gov/sites/default/files/2014-02/documents/ldarguide.pdf>

²² Refer to Landfill Gas to Energy Plant Project for City of Newport Beach: Response to Comments, Pg. 1-122, O2A-8

²³ Refer to Pg. C-7 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

²⁴ Refer to PDF Pg. 103 of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California



According to the MND, total project NOx emissions from all combustion sources—including the thermal oxidizers, enclosed flare, and emergency generator projected at 3.996 tpy.²⁵ This figure lies just 0.004 tpy below the SCAQMD offset threshold of 4.0 tpy for NOx, leaving an extremely narrow margin for errors. This minimal compliance buffer presents a credible risk that any unanticipated increase in emergency generator runtimes, such as those caused by prolonged power outages, grid instability, or other emergency conditions, could push emissions above the regulatory threshold, triggering mandatory offset requirements or other mitigation obligations.

Given the narrow margin between the total projected NOx emissions and the SCAQMD offset threshold, it is important to quantify the specific contribution of the emergency generator to these emissions. The following calculation uses the manufacturer-certified emission factor and operational assumptions to estimate the generator's annual NOx emissions and illustrate how it impacts the overall emissions profile.

Given Data:

- Generator power rating: 200 kW
- Operating hours per year: 200 hours
- NOx emission factor (BACT certified): 1.5 grams per brake horsepower-hour (g/bhp-hr)
- Conversion factors:
 - 1 kW = 1.341 bhp (brake horsepower)
 - 1 ton = 907,200 grams

1. Convert generator power from kW to bhp

$$200 \text{ kW} * 1.341 \text{ bhp} = 268.2 \text{ bhp}$$

$$\text{Generator Power in bhp} = \underline{268.2 \text{ bhp}}$$

2. Calculate annual NOx emissions in grams

$$\text{NOx emissions (g)} = \text{Emission factor} * \text{Generator Power (bhp)} * \text{Operating Hours (hour/year)}$$

$$1.5 \text{ g/bhp-hr} * 268.2 \text{ bhp} * 200 \text{ hours/year} = 80,460 \text{ grams/year}$$

$$\text{NOx emissions in grams} = \underline{80,460 \text{ grams/year}}$$

3. Convert annual NOx emissions into grams to tons

$$\text{NOx emissions (tons)} = \text{NOx emissions (grams)} \div 907,200 \text{ grams/ton}$$

²⁵ Refer to Pg. 16, Table 7. Project Total GHG Emissions of 2024 Permit to Construct/Permit to Operate for a Renewable Natural Gas Plant for Biofuels Coyote Canyon Biogas, LLC Newport Beach, California

NOx emissions (tons) = 80,460 grams/year ÷ 907,200 grams/ton

NOx emissions (tons) = 0.087 tons/year

Combustion Sources Total NOx Emissions = 3.996 tons/year + 0.087 tons/year

Combustion Sources Total NOx Emissions = 4.083 tons/year

The emergency generator is estimated to emit approximately 0.087 tons of NOx annually based on 200 hours of operation at the certified emission rate. When added to the existing NOx estimation of 3.996 tpy, the new estimate (0.087 tpy) from the emergency generator brings the total emissions to **approximately 4.083 tpy, exceeding the 4.0 tpy threshold by 0.083 tons or 3%**. Such an exceedance would trigger additional permitting requirements, including the need to obtain emission offsets or implement further mitigation measures. The slightest increase of emergency generator runtime can push overall emissions well above the regulatory threshold.

The risk posed by NOx emissions is particularly critical because nitrogen oxides are key precursors to ground-level ozone and fine particulate matter, pollutants with well-documented adverse effects on human health and the environment. Controlling NOx emissions is therefore essential to maintaining compliance with regional air quality standards and protecting public health. Given that projected NOx emissions are already extremely close to the SCAQMD significance threshold, even minor increases in generator operating hours or emission rates could result in regulatory exceedances. This risk is further amplified by multiple nearby facilities that also operate emergency generators, which may simultaneously emit NOx during grid outages or emergencies, exacerbating cumulative air quality impacts.

3.3 Mischaracterization of Fugitive GHG Emissions from RNG Flare

The RTC's characterization of fugitive GHG emissions associated with the enclosed Renewable Natural Gas flare system was inaccurate and failed to adequately address the original inquiry. The initial comment explicitly focused on fugitive emissions potentially emanating from components of the flare system, including but not limited to leaks from valves, pressure relief devices, flanges, connectors, and emissions during routine maintenance or operational interventions. These fugitive emissions are inherently intermittent and diffuse, and, critically, are neither explicitly quantified nor separately analyzed within the existing emissions dataset or inventory.

RTC's response conflates process-related combustion emissions, those generated from the controlled combustion of gas within the flare, with possible uncontrolled releases or venting that may occur from ancillary system components.²⁶ This distinction is vital, as process emissions are

²⁶ Refer to Landfill Gas to Energy Plant Project for City of Newport Beach: Response to Comments, Pg. 1-23, A3-2

generally monitored and estimated based on combustion efficiency and gas throughput, whereas fugitive emissions require targeted leak detection and quantification methodologies such as Optical Gas Imaging (OGI) or component-level emission factor assessments.²⁷ The current dataset does not clearly disaggregate these fugitive sources from overall flare system emissions, resulting in a lack of clarity regarding the magnitude and impact of uncontrolled venting events or leak-related emissions. Consequently, RTC's treatment does not fully address the technical concerns regarding the unaccounted-for fugitive emissions in the flare system.

3.4 Deficiencies in Disclosure and Scope of the Preliminary Site Consequence Analysis

The MND, ATC application, and RTC documents reference a Preliminary Site Consequence (PSC) Analysis as part of the environmental review process. However, these documents do not clearly provide or link to the referenced analysis, which is a significant procedural omission. Under CEQA guidelines, any technical studies or supporting documents that form the basis for conclusions regarding environmental impact must be fully disclosed and made accessible to the public.²⁸ The omission of the PSC from the publicly available record prevents meaningful evaluation of its assumptions and findings.

Moreover, the PSC presented in the available project materials appears incomplete. The analysis considers only a limited subset of potential sensitive receptors, specifically Sage Hill High School and vehicle occupants on Newport Coast Drive and SR-73.²⁹ It omits evaluation of other nearby non-residential receptors as well as the nearest residential areas, which are located within approximately 1,385 feet of the project site. This exclusion is problematic given that the MND identifies these residents as sensitive receptors and CEQA requires a comprehensive assessment of impacts on all potentially affected sensitive receptors. By limiting its scope, the PSC does not adequately characterize the full extent of public exposure risks under potential accident scenarios and therefore does not provide a sufficient technical basis to support findings of less-than-significant impact.

3.5 Impact from Existing Flares Not Considered within Emissions Assessment

The MND states that the existing flares at the Coyote Canyon Landfill, currently operated by OC Waste and Recycling (OCWR), will remain in operation under the proposed project as secondary

²⁷ U.S. EPA, EPA Issues Final Requirements for Using Optical Gas Imaging in Leak Detection; https://www.epa.gov/system/files/documents/2023-12/technical-fact-sheet.-using-optical-gas-imaging-in-leak-detection-appendix-k_0.pdf

²⁸ Cal. Code Regs. Tit. 14, § 15147

²⁹ Refer to Pg. 101 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

or backup units.³⁰ However, even in a backup capacity, emissions from the flares must be accounted for, as they continue to contribute to the project's overall environmental impact. The MND identifies a planned one-day annual shutdown of the proposed RNG facility, as well as the potential for up to ten unplanned shutdowns per year, during which landfill gas (LFG) would be redirected to the flares for combustion.

To ensure a comprehensive and accurate assessment of air quality impacts, the City must identify and disclose the anticipated volume of LFG expected to be routed to the flares during both planned and unplanned shutdown events. In addition, the City should quantify the associated emissions of criteria air pollutants and greenhouse gases resulting from flare operations during these periods. This information is necessary to fully evaluate the operational emissions profile of the project and determine compliance with applicable air quality thresholds and regulatory standards.

3.6 Inconsistencies in Emissions Conversions Presented in MND

The emissions data presented in Tables 3 and 4 of the MND are inconsistent and require further attention. To verify the reported values, annual emissions were recalculated using standard conversion factors, 365 days per year and 2,000 lbs per ton, and daily emissions reported in Table 3. The recalculated emissions were then compared with the annual emissions reported in Table 4. Emissions listed as less than 1 lb/day were excluded from recalculation due to the absence of a supporting baseline and the inconsistent presentation of annual totals in Table 4. The discrepancies between the reported and recalculated values raise questions about the accuracy and methodology used in the original analysis.

Below is a summary of the recalculated emissions compared to those presented in the MND:

Presented TOX – Main Fuel

- VOC: 12 lbs/day and 2.12 tons/year
- NOx: 17 lbs/day and 2.60 tons/year
- CO: 58 lbs/day and 8.65 tons/year
- SO₂: 11 lbs/day and 2.01 tons/year
- PM₁₀/PM_{2.5}: 5 lbs/day and 0.92 tons/year

³⁰ Refer to Pg. 4, Para. 4 of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

Recalculated TOX – Main Fuel

- VOC: $12 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 2.19 \text{ tons/year}$
- NOx: $17 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 3.10 \text{ tons/year}$
- CO: $58 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 10.59 \text{ tons/year}$
- SO₂: $11 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 2.01 \text{ tons/year}$
- PM₁₀/PM_{2.5}: $5 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 0.913 \text{ tons/year}$

Presented TOX – Supplemental Fuel

- NOx: 12 lbs/day and 0.54 tons/year
- CO: 40 lbs/day and 1.81 tons/year

Recalculated TOX – Supplemental Fuel

- NOx: $12 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 2.19 \text{ tons/year}$
- CO: $40 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 7.30 \text{ tons/year}$

Presented Enclosed RNG Flare

- VOC: 12 lbs/day and 0.21 tons/year
- NOx: 47 lbs/day and 0.85 tons/year
- CO: 112 lbs/day and 2.04 tons/year
- SO₂: 18 lbs/day and 0.33 tons/year
- PM₁₀/PM_{2.5}: 33 lbs/day and 0.25 tons/year

Recalculated Enclosed RNG Flare

- VOC: $12 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 2.19 \text{ tons/year}$
- NOx: $47 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 8.58 \text{ tons/year}$
- CO: $112 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 20.44 \text{ tons/year}$
- SO₂: $18 \text{ lbs/day} \times 365 \text{ days} / 2,000 \text{ lbs} = 3.29 \text{ tons/year}$

- $PM_{10}/PM_{2.5}$: $33 \text{ lbs/day} \times 365 \text{ days}/2,000\text{lbs} = 6.02 \text{ tons/year}$

Presented Emergency Generator

- VOC: 1 lb/day and 0.02 tons/year
- NOx: 1 lb/day and 0.01 tons/year
- CO: 1 lb/day and 0.01 tons/year

Recalculated Emergency Generator

- VOC: $1 \text{ lb/day} \times 365 \text{ days}/2,000\text{lbs} = 0.183 \text{ tons/year}$
- NOx: $1 \text{ lb/day} \times 365 \text{ days}/2,000\text{lbs} = 0.183 \text{ tons/year}$
- CO: $1 \text{ lb/day} \times 365 \text{ days}/2,000\text{lbs} = 0.183 \text{ tons/year}$

The discrepancies between the daily emissions values and the corresponding annual totals raise significant concerns about the reliability of the emissions data used in the MND. These inconsistencies suggest that either incorrect conversion factors were applied or that emissions were selectively adjusted without sufficient explanation. Notably, the recalculated daily NOx emissions of 12 lbs per day from the TOX – Supplemental Fuel source converts to 2.19 tons per year, increasing the total project-related NOx emissions to approximately 5.65 tons per year (adding 2.60 tpy, 2.19 tpy, 0.85 tpy and 0.01 tpy) .³¹ This value is well above the 4 tons per year SCAQMD offset threshold and indicates a significant impact that was not discussed. To ensure transparency and regulatory compliance, the emissions tables must be revised to reflect accurate and consistently calculated values, and any assumptions or calculation methodologies must be clearly disclosed.

CONCLUSION

Based on a thorough expert review, it is evident that the Response to Comments document does not adequately address several critical issues. These deficiencies include the failure to incorporate and analyze newly submitted permitting documents, unresolved discrepancies and inconsistencies among various supporting materials and data sets, and significant gaps in the accuracy and completeness of emissions reporting.

Sincerely,

³¹ Refer to Pg. 67, Table 3: Comparison of Project Emissions to Regional Daily Thresholds of Landfill Gas to Energy Plant Project Initial Study/MND City of Newport Beach

GROUP DELTA CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read 'Komal Shukla', with a horizontal line drawn underneath the name.

Dr. Komal Shukla
Technical Director – Air Quality

EXHIBIT 2



May 20th, 2025

Kelilah Federman
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

SUBJECT: Response to Comments on Archaea Landfill Gas Project

We are writing in response to the Response to Comments document for the Archaea Landfill Gas Project in the City of Newport Beach. The project involves the construction, operation, and maintenance of a new renewable natural gas processing plant and a pipeline interconnection facility. The approximately 4-acre site is located to the west of Newport Coast Drive and south of Highway 73. There are noise-sensitive uses flanking the site - Sage Hill School 1400 feet to the north and single-family houses as part of the Tesoro Crest gated community 1250 feet to the south.

Wilson Ihrig is an acoustical consulting firm that has practiced exclusively in the field of acoustics since 1966. During our almost 58 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Roadway Construction Noise Model (RCNM), SoundPLAN, and CadnaA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

Adverse Effects of Noise¹

Although the health effects of noise are not taken as seriously in the United States as they are in other countries, they are real and, in many parts of the country, pervasive.

Noise-Induced Hearing Loss. If a person is repeatedly exposed to loud noises, he or she may experience noise-induced hearing impairment or loss. In the United States, both the Occupational Health and Safety Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) promote standards and regulations to protect the hearing of people exposed to high levels of industrial noise.

Speech Interference. Another common problem associated with noise is speech interference. In addition to the obvious issues that may arise from misunderstandings, speech interference also leads to problems with concentration fatigue, irritation, decreased working capacity, and automatic stress reactions. For complete speech intelligibility, the sound level of the speech should be 15 to 18 dBA higher than the background noise. Typical indoor speech levels are 45 to 50 dBA at 1 meter, so any noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher

¹ More information on these and other adverse effects of noise may be found in *Guidelines for Community Noise*, eds B Berglund, T Lindvall, and D Schwela, World Health Organization, Geneva, Switzerland, 1999. (<https://iris.who.int/handle/10665/66217>)

background noise levels is to raise one's voice. If this is required persistently for long periods of time, stress reactions and irritation will likely result.

Sleep Disturbance. Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as increased fatigue, depressed mood, and decreased work performance.

Cardiovascular and Physiological Effects. Human's bodily reactions to noise are rooted in the "fight or flight" response that evolved when many noises signaled imminent danger. These include increased blood pressure, elevated heart rate, and vasoconstriction. Prolonged exposure to acute noises can result in permanent effects such as hypertension and heart disease.

Impaired Cognitive Performance. Studies have established that noise exposure impairs people's abilities to perform complex tasks (tasks that require attention to detail or analytical processes) and it makes reading, paying attention, solving problems, and memorizing more difficult. This is why there are standards for classroom background noise levels and why offices and libraries are designed to provide quiet work environments.

Document Contains Unreported Significant Construction Noise Impacts

In our letter dated December 13th, 2024, we detailed how the Mitigated Negative Declaration (MND) contains unreported significant construction noise impacts, primarily due to construction noise lacking evaluation of a substantial increase. This concern – that construction noise would be considered significant if compared to thresholds based on existing noise levels – was not addressed and noise impacts remain significant and unmitigated. The MND states that the "combined construction noise levels from pipe installation and equipment installation would be 55 dBA Leq and 56 dBA Leq, respectively" (MND, page 127). Ambient daytime noise levels ranged from 38 to 48 dBA at the nearest noise measurement location to the single-family homes to the south (IS/MND, Table F of Appendix K). This would exceed the existing noise levels by 7 to 18 dB and result in a significant impact pursuant to CEQA since CEQA law requires project to avoid a "substantial temporary or permanent increase in ambient noise levels in the vicinity of the project" (MND, page 123). As noted in the MND, a 10 dBA increase is perceived as a doubling of the sound and thus would cause an adverse impact (MND, page K-5).

The selected construction noise threshold of 80 dBA is 42 dBA higher than the baseline noise conditions and threshold does not appear to take into account the baseline condition. While no impact threshold for substantial increase is specified in the City of Newport Beach General Plan or Municipal Code, it is the responsibility of the project applicant to assess the noise increase over ambient levels against the human response observations noted in the IS/MND, or against a 3 dBA or 5 dBA limit that is typically identified by other jurisdictions as the impact threshold. Whether a 3, 5, or 10 dBA threshold is selected to evaluate the significance of a substantial increase, based on the construction noise analysis presented in the IS/MND the noise increase would be substantial and significant. The Project's noise impacts are potentially significant, and must be analyzed in an Environmental Impact Report (EIR) before the Project can be approved.

Conditions of Approval do not Mitigate Potential Noise Impacts

The Project is required to comply with Conditions 20 and 21. Conditions 20 and 21 do not resolve the aforementioned increase above ambient noise, and thus construction noise still results in a significant impact. Condition 20 states that “noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control), under Sections 10.26.025 (Exterior Noise Standards) and 10.26.030 (Interior Noise Standards), and other applicable noise control requirements” of the Newport Beach Municipal Code. However, section 10.26.035.D states that “Noise sources associated with construction, repair, remodeling, demolition or grading of any real property. Such activities shall instead be subject to the provisions of Chapter 10.28 of this title”² meaning that Condition 20 does not apply for construction noise.

Condition 21 states that construction activities “shall comply with Section 10.28.040” of the Newport Beach Municipal Code, which exempts noise-generating construction activities from section 10.28. of the code as long as construction occurs between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. This, again, does not change the potential impact of this project since all construction work is planned during daytime hours.

As such, these conditions do nothing to reduce the potential for impacts due to construction noise that are presented in both this and our previous letter. As such, we believe there is a potential for a significant noise impact, and the construction noise issue must be studied more thoroughly in an EIR.

Very truly yours,
WILSON IHRIG



Jack Meighan
Associate

² Newport Beach Municipal Code 10.26.035
<https://www.codepublishing.com/CA/NewportBeach/#!/NewportBeach10/NewportBeach1026.html#10.26>

EXHIBIT 3

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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RACHAEL E. KOSS
AIDAN P. MARSHALL
ALAURO R. MCGUIRE
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

December 3, 2024

Via U.S. Mail and Email

Jaime Murillo, Deputy Director
Community Development Department
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660
Email: murillo@newportbeachca.gov

Leilani I. Brown, City Clerk
City of Newport Beach
Office of the City Clerk
P.O. Box 1768
Newport Beach, CA 92658
Emails: lbrown@newportbeachca.gov;
cityclerk@newportbeachca.gov

Via Email Only

Joselyn Perez, Senior Planner
Email: jperez@newportbeachca.gov

Re: Request for Immediate Access to Documents Referenced in the Initial Study/Mitigated Negative Declaration – Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063)

Dear Mr. Murillo, Ms. Brown, and Ms. Perez:

We are writing on behalf of California Unions for Reliable Energy (“CURE”) to request ***immediate access*** to any and all documents referenced, incorporated by reference, and relied upon in the Initial Study/Mitigated Negative Declaration (“IS/MND”) prepared Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063) (“Project”), proposed by Archaea Energy Inc. (d.b.a. Biofuels Coyote Canyon Biogas, LLC). *This request excludes a copy of the IS/MND. This request also excludes any documents that are currently available on the Newport Beach website, as of today’s date.*¹

The Project proposes the installation and operation of a new renewable natural gas (RNG) processing plant and a pipeline interconnection facility (collectively referred to as the RNG facility) in the City of Newport Beach, Orange County, California. The proposed RNG facility would have a total footprint of 38,500 square feet (SF) and would convert existing landfill gas (LFG) into a pipeline-quality natural gas equivalent. The pipeline interconnection facility would be approximately 6,000 SF, and the RNG processing plant would be approximately

¹ Accessed <https://www.newportbeachca.gov/government/departments/community-development/planning-division/projects-environmental-document-download-page/environmental-document-download-page> on December 3, 2024.

December 3, 2024

Page 2

32,500 SF. The proposed RNG facility would be built on an approximately 0.88-acre portion of a 4.14-acre property with Assessor's Parcel Number 478-03-071. The project site is located within the boundary of the closed Coyote Canyon Landfill at 20662 Newport Coast Dr, Newport Beach, CA.

Our request for ***immediate access*** to all documents referenced in the IS/MND is made pursuant to the California Environmental Quality Act ("CEQA"), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.²

Please use the following contact information for all correspondence:

U.S. Mail

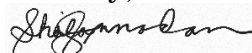
Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Email

ssannadan@adamsbroadwell.com

If you have any questions, please call me at (650) 589-1660 or email me at ssannadan@adamsbroadwell.com. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

² See Public Resources Code § 21092(b)(1) (stating that "all documents referenced in the draft environmental impact report or negative declaration" shall be made "available for review"); 14 Cal. Code Reg. § 15072(g)(4) (stating that all documents incorporated by reference in the MND . . . "shall be readily accessible to the public").

EXHIBIT 4



RE: Landfill Gas to Energy Plant Project - Preliminary Site Consequence Assessment

From Sheila M. Sannadan <ssannadan@adamsbroadwell.com>

Date Wed 5/21/2025 11:48 AM

To Lee, Amanda <ALee@newportbeachca.gov>; CHawks@newportbeachca.gov
<CHawks@newportbeachca.gov>; jperez@newportbeachca.gov <jperez@newportbeachca.gov>;
cityclerk@newportbeachca.gov <cityclerk@newportbeachca.gov>; lbrown@newportbeachca.gov
<lbrown@newportbeachca.gov>

Cc jmurillo@newportbeachca.gov <jmurillo@newportbeachca.gov>; Kelilah D. Federman
<kfederman@adamsbroadwell.com>

 1 attachment (176 KB)

7499-004acp - Archaea Landfill Gas to Energy Plant Project - MND Ref (12-03-24).pdf;

Good Morning,

We would like to follow up on our inquiry below, sent on May 20, 2025.

Can you please provide us with a copy of the Preliminary Site Consequence Assessment prepared for the Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063)? The Preliminary Site Consequence Assessment is not attached to the Initial Study/Mitigated Negative Declaration (IS/MND). For your reference, I am resending you our December 3, 2024 request for immediate access to any and all documents referenced, incorporated by reference, and relied upon in the IS/MND prepared for the Project.

Thank you for your assistance.

Regards,
Sheila

Sheila Sannadan
Legal Assistant
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
Phone (650) 589-1660
Fax (650) 589-5062
ssannadan@adamsbroadwell.com

From: Sheila M. Sannadan <ssannadan@adamsbroadwell.com>

Sent: Tuesday, May 20, 2025 9:09 AM

To: Lee, Amanda <ALee@newportbeachca.gov>; CHawks@newportbeachca.gov; jperez@newportbeachca.gov;
cityclerk@newportbeachca.gov; lbrown@newportbeachca.gov

Cc: jmurillo@newportbeachca.gov; Kelilah D. Federman <kfederman@adamsbroadwell.com>

Subject: Landfill Gas to Energy Plant Project - Preliminary Site Consequence Assessment

Good Morning,

Thank you for the documents provided below on May 19, 2025 related to the Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063).

Can you please provide us with a copy of the Preliminary Site Consequence Assessment prepared for the Landfill Gas to Energy Plant Project? It is not attached to the Initial Study/Mitigated Negative Declaration (IS/MND). For your reference, I am resending you our December 3, 2024 request for immediate access to any and all documents referenced, incorporated by reference, and relied upon in the IS/MND prepared for the Project.

Thank you for your assistance.

Regards,
Sheila

Sheila Sannadan
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ssannadan@adamsbroadwell.com

From: Lee, Amanda <ALee@newportbeachca.gov>
Sent: Monday, May 19, 2025 4:23 PM
To: Sheila M. Sannadan <ssannadan@adamsbroadwell.com>
Subject: PRAR - PA2022-063

Hi Sheila,

See attached for Notice of Determination and responsive records. Please download at your earliest convenience, as the link will expire on June 18, 2025.

Thank you,

Amanda Lee, CDD Records Specialist

City of Newport Beach

949-718-1865

Files attached to this message

Filename	Size
PRAR 05-19-2025 20662 Newport Coast Dr_PA2022-063.pdf	1.82 MB
Exchange_625289.pdf	101 MB

Please click on the following link to download the attachments:
<https://send.newportbeachca.gov/message/XOrmiSH7pqb41z8XtYXX6c>

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The attachments are available until: **Wednesday, 18 June.**

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