

Attachment G

Appeal Application



Appeal Application

City Clerk's Office
100 Civic Center Drive / P.O. Box 1768
Newport Beach, CA 92658-8915
949-644-3005

Clerk's Date & Time Stamp

Appeals are time sensitive and must be received by the City Clerk within the specified time period from a decision or final action by a decision-maker. It is advisable to consult with the Department managing the issue if there is question with regards to appealing an action. This is an appeal of the:

- ☐ (CDD222) Community Development Director Action to the Planning Commission - \$2116
- ☐ (CDD222) Zoning Administrator Action to the Planning Commission - \$2116
- ☐ (CDD222) Coastal Development Application CDP Appeal from Zoning Admin to the Planning Commission (only if appeal is solely based on the CDP portion of the application) – No Fee
- ☒ (CDD222) Planning Commission Action to the City Council - \$2116
- ☐ (CDD222) Community Development Director Action to the Harbor Commission - \$623
- ☐ (CDD222) Harbor Commission Action to the City Council (CDD – Planning) - \$498
- ☐ (CDD222) Hearing Officer Action to the City Council - \$2116
- ☐ (CDD223) Building Official/Fire Marshal Action to the Building/Fire Board of Appeals - \$1827
- ☐ (CDD224) Chief of Police Action on an Operator License to the City Manager - \$1033
- ☐ (RSS073) City Manager Action on a Special Events Permit to the City Council - \$1953
- ☐ (HBR001) Harbormaster Action to the Harbor Commission - \$622
- ☐ (HBR001) Harbor Commission Action to the City Council (Harbor Department) - \$498
- ☐ (PBW018) Public Works Director Action to Harbor Commission - \$1446
- ☐ (PBW018) Harbor Commission Action to City Council (Public Works Department) - \$691
- ☐ Other - Specify decision-maker, appellate body, Municipal Code authority and fee: _____

Appellant Information:

Name(s): Orange County Residents for Responsible Development c/o Kelilah D. Federman Adams Broadwell Joseph & Cardozo
Address: 601 Gateway Boulevard Suite 1000
City/State/Zip: South San Francisco CA 94080
Phone: (650) 589-1660 Email: kfederman@adamsbroadwell.com

Appealing Application Regarding:

Biofuels Coyote Canyon Biogas LLC, on behalf of Archaea Energy Inc.

Name of Applicant(s): _____ Date of Final Decision: July 17, 2025

Project No.: PA2022-063 Activity No.: _____

Application Site Address: 20662 Newport Coast Drive, Newport Beach CA 92658

Description of application: The Project proposes to develop the 4.14 acre Project site with a new renewable natural gas processing plant composed of a condensate tank, flare, thermal oxidizer, other processing equipment, and a pipeline interconnection facility.

Reason(s) for Appeal (attach a separate sheet if necessary): _____

The Planning Commission abused its discretion and failed to proceed in the manner required by law by approving the Project under an MND where substantial evidence supports a fair argument that the Project may result in potentially significant unmitigated environmental, air quality, public health, hazards, greenhouse gas, and noise impacts. The Commission lacked substantial evidence to approve the Project's CUP due to the Project's detriment to the General Welfare and inconsistency with the General Plan. The reasons for appeal are detailed in the attached letter.

Signature of Appellant:  Date: July 30, 2025

FOR OFFICE USE ONLY:

Date Appeal filed and Administrative Fee received: _____, 20____.

City Clerk

cc: Department Director, Deputy Director, Staff, File

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July 30, 2025

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Re: Appeal to City Council of Archaea Landfill Gas to Energy Plant Project (SCH No. 2024120012; Project No. PA2022-063)

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

Pursuant to Newport Beach Municipal Code ("NBMC") Section 20.64.020(D), Orange County Residents for Responsible Industry ("Residents") hereby appeals the Newport Beach Planning Commission's ("Commission") July 17, 2025 decision to approve the Landfill Gas to Energy Plant Project (PA2022-06; SCH No. 2024120012) ("Project").¹ Residents appeals all actions taken by the Planning Commission with regard to the Project on July 17, 2025, including the Commission's adoption of Resolution No. PC2025-008, adoption of the Mitigated Negative Declaration (SCH No. 2024120012) and approval of the Conditional Use Permit ("CUP") filed under PA2022-063.² This letter states the facts and basis for the appeal, as required by NBMC Section 20.64.030(B).³ This appeal is accompanied by the required appeal fee of \$2,116.00, pursuant to the City's master fee schedule.⁴

¹ City of Newport Beach Planning Commission Agenda (Thursday July 17, 2025 – 6:00 PM); City of Newport Beach Planning Commission Staff Report, Agenda Item No. 4 (July 17, 2025).

² Newport Beach Municipal Code ("NBMC") § 20.64.020(D); NBMC § 20.64.030(B)(1).

³ NBMC § 20.64.030(B).

⁴ NBMC § 20.64.030(B)(2); City of Newport Beach - Schedule of Rents, Fines and Fees Planning Fees, available at:

<https://www.newportbeachca.gov/home/showpublisheddocument/74913/638563868210800000>.

I. PROJECT DESCRIPTION

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.⁵ 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.⁶

The Applicant proposes to develop the 4.14-acre Project site with a new renewable natural gas (“RNG”) processing plant and a pipeline interconnection facility. The proposed RNG facility would have a total building footprint of 38,500 square feet composed of pipe racks, various vessels, a condensate tank, flare, thermal oxidizer, and other processing equipment. The first stage of primary treatment is covered by the existing landfill flaring facility on the Project site operated by OCWR. Landfill gas (“LFG”) from the existing flare yard would be conveyed to the proposed RNG facility through a proposed underground LFG supply line for secondary and advanced treatment. The treated LFG would then be injected into SoCalGas infrastructure via the proposed pipeline interconnection facility. The interconnection facility would include a point of receipt (“POR”) skid to monitor the quality of the RNG and an 8-inch pipeline extension dedicated to transfer the RNG from the POR to the existing fossil natural gas pipeline tie-in point in the western part of the site. Other Project components include vehicular access, installation of a fire hydrant, a water tank, a septic tank for the control room, and new underground power and telecommunication lines.

II. BASIS FOR APPEAL

Residents appeals the City Planning Commission’s approval of the Project because the Commission abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support the approval findings.⁷ The specific reasons for the appeal are detailed herein and in Residents’ prior comments to the City and Planning Commission, attached hereto.⁸

⁵ City of Newport Beach, Initial Study Mitigated Negative Declaration, Landfill Gas to Energy Plant Project, (Nov. 27, 2024), p. 3, (hereinafter “MND”).

⁶ *Id.* at 15.

⁷ Code Civ. Proc § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

⁸ **Exhibit A** – Letter from ABJC to City of Newport Beach Planning Commission, Agenda Item No. 4 Coyote Canyon Landfill Gas to Energy Facility (SCH No. 2024120012; PA2022-063; PC2025-008) (July 17, 2025).

The City has not complied with CEQA. Residents' experts provided substantial evidence supporting a fair argument that the Project results in significant, unmitigated air quality, public health, hazards, greenhouse gas emissions, and noise impacts which require the City to prepare an environmental impact report ("EIR") for the Project pursuant to CEQA.⁹ CEQA requires the lead agency must prepare an EIR "whenever substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment."¹⁰ First, substantial evidence demonstrates that construction emissions and fugitive air pollutant emissions from leaks during Project operation may result in significant impacts absent additional analysis and mitigation in an EIR. Second, flammable vapor clouds, jet fire, and toxic vapor clouds from the Project would jeopardize the safety of nearby sensitive receptors, absent additional binding mitigation. Third, the annual shutdown and 10 potential shutdown days per year may result in significant emissions of powerful greenhouse gases. Fourth, construction of the Project for 12 months may result in significant health risk impacts, which was not analyzed in the MND and must be analyzed and mitigated in an EIR. Finally, construction noise would result in adverse impacts to nearby sensitive noise receptors, and the MND does not mitigate noise to less than significant levels. The Planning Commission failed to resolve these issues or require preparation of an EIR before approving the Project, in violation of CEQA.

The City has not complied with the Municipal Code or applicable land use laws. The Commission lacked substantial evidence to make the findings to support approval of the CUP pursuant to NBMC Section 20.52.020(F) which mandates that a Conditional Use Permit may only be approved where "Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor 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." Here, the Project results in a significant public detriment due to potentially significant fugitive air emissions, greenhouse gas emissions, flammable and toxic vapor clouds, fire hazards, and construction noise. These impacts are not reduced to less than significant levels by the Project's mitigation measures or conditions of approval, and may therefore result in a significant public detriment to the community, including endangering nearby sensitive receptors at Sage Hill High School, located within 1,700 feet of the Project site and residences located within 1,385 feet of the Project site.

⁹ Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq. *Laurel Heights Improvement Assn. v. Regents of University of California*, 6 Cal.4th at 1123.

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California*, 6 Cal.4th at 1123; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

The Commission also lacked substantial evidence that the Project is consistent with the General Plan because the Project's mitigation measures and conditions of approval do not require compliance with, or in some cases, conflict with General Plan policies for reductions in air pollutant emissions.¹¹

The Commission therefore abused its discretion and failed to proceed in the manner required by law by approving the CUP, in violation of Municipal Code Section 20.52.020(F). **Residents respectfully requests that the City Council uphold this appeal, vacate the Planning Commission's approvals, and remand the Project to Staff to prepare a legally adequate EIR which adequately analyzes and mitigates the Project's significant environmental and public health impacts before bringing the Project back for future approvals.**

A. Failure to Comply With CEQA

1. Air Quality Impacts from Fugitive Emissions and Leaks Are Significant and Unmitigated

Residents' prior comments on the MND and to the Planning Commission provided substantial evidence supporting a fair argument that the Project results in significant, unmitigated air quality impacts which require disclosure and mitigation in an EIR.

Dr. Shukla's comments on the MND provided substantial evidence demonstrating potentially significant fugitive emissions associated with reasonably foreseeable leaks from Project equipment.¹² But the final MND still failed to disclose or mitigate fugitive emissions from leaks in valves, pressure relief devices, flanges, connectors, and emissions during routine maintenance or operational interventions related to the Project's flaring system and closed-loop emissions system.¹³ The final MND failed to meaningfully to address the issue raised by Dr. Shukla or quantify the Project's potential fugitive emissions by simply asserting that there would be "no fugitive emissions" because the Project involves a closed-loop system.¹⁴

¹¹ City of Newport Beach General Plan Update EIR Section 4.2 Air Quality (2006), p. 4.2-20. ["Require developers to use construction equipment that use low polluting fuels, engines, and exhaust controls to the extent available and feasible."]

¹² Shukla 5/21/25 Comments, pp. 7 - 9.

¹³ *Id.*

¹⁴ *Id.* at 7.

In particular, Dr. Shukla's comments on the MND and the May 2025 Planning Commission Staff Report explained that, 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."¹⁵ Dr. Shukla referenced U.S. EPA and SCAQMD leak detection guidance which require consideration of potential fugitive emissions from components such as valves, flanges, compressors, and pump seals—even in enclosed and pressurized systems.¹⁶ Dr. Shukla explained that the final MND's unsupported conclusion that there would be "no fugitive emissions" lacked technical justification and may misrepresent the actual emissions profile of the facility.¹⁷

Neither the final MND, nor the Planning Commission's May or July 2025 Staff Report, resolved these issues. The record before the Commission failed to quantify fugitive emissions and failed to demonstrate that the Project's closed loop system would prevent them. The final MND simply relied on the unsupported conclusion that the Project would have no fugitive emissions.¹⁸ There was therefore no substantial evidence before the Planning Commission demonstrating that fugitive emissions would be less than significant, and the Commission ignored substantial evidence demonstrating that fugitive emissions may be significant and require a leak detection and reporting system. The Planning Commission's decision to adopt the MND and approve the Project without requiring an EIR violated CEQA.

2. Public Health and Hazards Impacts Are Significant and Unmitigated

As detailed in Residents' comments on the MND, the Project results in significant fire and hazards impacts which the MND failed to disclose or mitigate, including risk of upset from fire, vapor clouds, and other accidents or operational upsets in systems such as the Project's thermal oxidized ("TOX") system and flaring systems.¹⁹ These events can lead to uncontrolled emissions of criteria pollutants and hazardous air pollutants, which have significant implications for air quality and public health.²⁰

¹⁵ Shukla 5/21/25 Comments, p. 14, citing 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>.

¹⁶ *Id.*

¹⁷ Shukla 5/21/25 Comments, p. 7.

¹⁸ Shukla 5/21/25 Comments, p. 7.

¹⁹ Shukla MND Comments, pp. 24-25.

²⁰ Shukla MND Comments, pp. 24-25.

The MND referenced a Preliminary Site Consequence Assessment (“PSC”) which was purportedly prepared to analyze the potential for flammable vapor clouds, jet fire, and toxic vapor clouds from the Project and the potential impact to nearby sensitive receptors.²¹ The MND relied on the PSC to conclude that risk of upset hazards would be less than significant.²² However, the PSC was not provided to the public until the Planning Commission’s July 2025 Staff Report was released, in violation of CEQA’s requirement that documents referenced and relied upon in the MND be made available for public review during the CEQA public comment period.²³ Residents’ subsequent review of the PSC confirmed that the PSC fails to adequately disclose or mitigate potential risks from fire, explosion and other catastrophic events at the facility. Residents described the PSC’s inadequacies in their comments to the Planning Commission,²⁴ but the Planning Commission failed to resolve the issues before approving the Project.

As Residents’ comments explained, Dr. Shukla concluded that the MND’s analysis underreported impacts on sensitive receptors by omitting them from its analysis. Dr. Shukla explained that the MND considered only a limited subset of potential sensitive receptors, specifically Sage Hill High School and vehicle occupants on Newport Coast Drive and SR-73, and omitted 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.²⁵ This limited analysis was confirmed by the PSC’s list of nearby receptors, which includes Sage Hill Highschool, Newport Coast Drive, California State Route 73/ San Joaquin Hills Transportation Toll Road, and the landfill county building.²⁶ Of these receptors, the county building was the only close receptor identified in the PSC. By limiting its scope, the PSC did not adequately characterize the full extent of public exposure risks under potential accident scenarios and therefore did not provide a sufficient technical basis to support the MND’s findings of less-than-significant impact.²⁷ The Planning Commission relied on these unsupported findings to approve the Project.

The PSC also identified significant impacts from risk of upset associated with fire and explosion, and recommended mitigation. Specifically, the PSC found

²¹ MND, p. 101, Responses, p. 1-110.

²² *Id.*

²³ 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”).

²⁴ Exhibit A, p. 6.

²⁵ Shukla 5/21/25 Comments, p. 10, citing MND, p. 101.

²⁶ PSC, p. 7.

²⁷ Shukla 5/21/25 Comments, p. 10.

impacts on the occupied county landfill building and surrounding vegetation to be significant.²⁸ The City's own report therefore provided the Planning Commission with substantial evidence supporting a fair argument that hazards impacts are significant. The PSC recommended mitigation to prevent catastrophic events from occurring, including: (1) Fire and gas detection; (2) Process control alarms; (3) Process control shutdowns (Pressure safety high-highs, (4) Pressure safety low-lows, composition analyzers); (5) Plant ESD (emergency shutdown) System; (6) Ignition Source Control, Hazardous Area Classification.²⁹ However, the PSC's proposed mitigation measures were not included in the Project's Mitigation Monitoring and Reporting Program ("MMRP") or the Project's conditions of approval. CEQA prohibits reliance on unenforceable measures or design features to mitigate these impacts; all mitigation must be incorporated into the MMRP.³⁰

Dr. Shukla's comments and the evidence in the PSC provided the City with substantial evidence supporting a fair argument that the Project's risk of upset remains potentially significant and unmitigated. The Planning Commission's decision to approve the Project and adopt the MND violated CEQA because the MND underreported potential hazards, ignored substantial evidence from Residents' expert documenting significant, unmitigated hazards impacts, relied on an inadequate PSC which did not disclose the full extent of the Project's impacts, and failed to incorporate mitigation recommended by the City's own experts into the Project's MMRP or conditions of approval. The Commission's approvals should be vacated and the City Council should require staff to prepare an EIR which protects public safety and complies with CEQA by disclosing and mitigating these impacts.

3. Greenhouse Gas Emissions May Be Significant and Unmitigated

Residents' comments on the MND demonstrated that GHG emissions released during the annual shutdown and 10 potential shutdown days per year may be significant, but were not quantified in the MND or the Staff Report, and are not mitigated by measures in the MMRP or conditions of approval.

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

²⁸ PSC, pp. 4-10.

²⁹ PSC, p. 8.

³⁰ *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651; CEQA Guidelines § 15126.4(a)(2) (mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments).

shutdown for plant maintenance.³¹ The final MND states, without support, that unplanned shutdowns are anticipated to be less than 10 times per year.³² Emissions associated with the annual shutdown and 10 potential shutdown days per year may result in significant GHG emissions, which the MND, Staff Report, and Draft Resolution fail to disclose or mitigate.³³ An EIR must be prepared which adequately quantifies and mitigates potentially significant GHG emissions from Project operation. Due to the Project's significant GHG impacts, the Commission's approvals should be vacated and the City Council should require staff to prepare an EIR which adequately discloses and mitigates the Project's significant GHG impacts.

4. Health Risk Impacts from Construction Emissions Are Underreported

Residents commented that the MND underreported the health risk associated with Project construction because the MND's health risk analysis relied on a 9-month completion timeline, truncating the analysis of emissions exposure by 3 months.³⁴ Rather than correct the health risk analysis, the City responded in the Final MND by deleting references to 12 months and replacing them with references to 9 months.³⁵ However, neither the MMRP or the Project's conditions of approval restrict Project construction to less than 12 months, and the Planning Commission Staff Report and Approval Resolution continued to refer to the Project's construction period as lasting "up to 12 months."³⁶ The Planning Commission therefore approved a project which may involve 12 months of Project construction, yet the MND only analyzed impacts from the first 9 months.

Because the City has not analyzed the health impacts to nearby sensitive receptors from exposure to construction emissions during the Project's projected 12-month construction period, the Planning Commission lacked substantial evidence to conclude that the Project's construction health risk impacts would be less than significant. The health risk analysis should be revised in an EIR to analyze the full 12-month duration of Project construction, and require mitigation for impacts that exceed thresholds.

³¹ MND, p. 22.

³² *Id.*

³³ Shukla 5/21/25 Comments, p. 26.

³⁴ MND, p. 69.

³⁵ May 2025 Responses, p. 1-105.

³⁶ Staff Report, p. 8; see also Draft Resolution, Finding No. C.6, p. 25 ("Vehicle traffic will increase during the 9-to-12-month Project construction period.").

5. Construction Noise Impacts Are Significant and Unmitigated

The Planning Commission lacked substantial evidence to approve the Project or adopt the MND because the Project's construction noise impacts are significant and unmitigated. Residents' comments and acoustical expert Mr. Meighan's comments on the MND demonstrated that the Project results in significant adverse noise impacts to nearby sensitive receptors due to a significant noise increase above ambient noise levels. Neither the final MND, MMRP, conditions of approval, nor the July 2025 Planning Commission Staff Report resolved these issues.

Mr. Meighan's comments provided substantial evidence supporting a fair argument that Project construction will result in a significant increase above the ambient noise levels to sensitive receptors at Sage Hill Highschool and residences on Renata Street, and that the MND relied on an excessively high and unsupported noise threshold to conclude that noise impacts would be less than significant.³⁷ Therefore, there was no substantial evidence before the Planning Commission that construction noise impacts would be less than significant.³⁸ To the contrary, substantial evidence in the record before the Planning Commission supported a fair argument that the Project results in significant unmitigated construction noise impacts requiring preparation of an EIR.

As Mr. Meighan's comments on the MND demonstrated, ambient daytime noise levels identified in the MND ranged from 38 to 48 dBA at the nearest noise measurement location to the single-family homes to the south.³⁹ The MND found that the "combined construction noise levels from pipe installation and equipment installation would be 55 dBA Leq and 56 dBA Leq, respectively."⁴⁰ Mr. Meighan explained that this would exceed the existing noise levels by 7 to 18 dB and result in a significant impact due to a "substantial temporary or permanent increase in ambient noise levels in the vicinity of the project."⁴¹ A 10 decibel increase is perceived as a doubling of the sound and thus would cause a significant adverse impact on nearby sensitive receptors.⁴²

Moreover, Mr. Meighan's comments explained that the Project's mitigation measures and conditions of approval do not mitigate the significant construction noise impact to less than significant levels. Mr. Meighan's comments demonstrated

³⁷ Meighan Comments, p. 2.

³⁸ MND, p. 127.

³⁹ Meighan Comments, p. 2; MND, Appendix K Table F.

⁴⁰ Meighan Comments, p. 2, citing MND, page 127.

⁴¹ MND, p. 123.

⁴² Meighan Comments, p. 2.

that municipal code requirements in Condition 20 and 21 will not sufficiently mitigate the Project's significant adverse noise impacts due to the significant noise increase above ambient levels during Project construction.⁴³ First, Mr. Meighan explained that 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.⁴⁴ Second, he explained that 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.⁴⁵ Mr. Meighan concluded that Condition 21 does not mitigate the Project's significant construction noise impacts because the Project's significant construction noise will occur during daytime hours.⁴⁶ Neither the final MND, the Planning Commission Staff Reports, or the Project's conditions of approval include any additional mitigation to reduce the Project's significant noise impacts beyond those measures already required by municipal code. The measures therefore remain inadequate.

Mr. Meighan's comments provided the City with substantial evidence supporting a fair argument that Project construction noise impacts remain significant and unmitigated. The Planning Commission's decision to adopt the MND and approve the Project without requiring an EIR violated CEQA. The City Council should uphold this appeal, vacate the Planning Commission's approvals, and remand the Project to staff to prepare a legally adequate EIR for public review and comment, which includes analysis and mitigation of the Project's significant noise impacts before bringing the Project back for further consideration.

B. Municipal Code Violations

The Planning Commission lacked substantial evidence to support the findings required for approval of the Conditional Use Permit pursuant to NBMC Section 20.52.020(F)(5). In particular, the Commission lacked substantial evidence to make the necessary finding that "[o]peration 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."⁴⁷

⁴³ Meighan Comments, p. 3.

⁴⁴ Meighan Comments, p. 3.

⁴⁵ Staff Report, Attachment 1, Draft Resolution to Approve the Project and Adopt the IS/MND.

⁴⁶ Meighan Comments, p. 3.

⁴⁷ NBMC Section 20.52.020(F)(5).

First, Residents' comments on the MND provided substantial evidence supporting a fair argument that the Project results in significant air quality, health risk, greenhouse gas emissions, and noise impacts which may jeopardize the public health and general welfare of the City. These impacts are not mitigated by the mitigation measures in the MMRP or the Project's conditions of approval. For instance, unmitigated flammable vapor clouds, jet fire, and toxic vapor clouds from the Project would jeopardize the safety of nearby sensitive receptors, absent additional mitigation. Construction air emissions and fugitive air pollutant emissions from leaks during Project operation are significant and unmitigated. Greenhouse gas emissions from the annual shutdown and 10 potential shutdown days per year may be significant, but are not mitigated by the final MND or conditions of approval. Finally, construction noise would result in severe adverse impacts to nearby sensitive noise receptors, but the Project's mitigation measures and conditions of approval do not mitigate the significant construction noise impact to less than significant levels. The Planning Commission abused its discretion and failed to proceed in the manner required by law by approving the CUP given the detrimental impacts of the Project on the "public convenience, health, interest safety, or general welfare" of the residents of the City.⁴⁸

Second, the Project may not be adequately served by fire protection services. The record before the Commission lacks substantial evidence to support the conclusion that the Project would not result in a hazard to the public convenience, health, interest, safety, or general welfare. Following the Applicant's request for clarification regarding whether the Project is adequately served by fire services, the Newport Beach Fire Department responded 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."⁴⁹ The Fire Department recommended fuel modification measures which were implemented in the MND's Fuel Modification Plans pursuant to Mitigation Measure HAZ-1.⁵⁰ 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 fully mitigate the significant hazards, fire, and wildfire impacts from the Project in the event of a fire, explosion, or other catastrophic equipment failure at the Project site.

In particular, evidence in the record demonstrates that the Fire Department may not have the capacity to put out worst-case scenario jet fires from the Project. The Commission did not have substantial evidence to conclude that the Fire

⁴⁸ NBMC Section 20.52.020.

⁴⁹ MND, Appendix L Service Provider Questionnaire Responses, p. L-9.

⁵⁰ MND, p. 106.

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.”⁵¹ The final MND continued to conclude 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.”⁵² But, these measures are not included as enforceable mitigation. Fire impacts are not sufficiently mitigated to less than significant levels. The record before the Planning Commission lacked substantial evidence to support the conclusion that the Project would not result in a hazard to the public convenience, health, interest, safety, or general welfare. The Commission therefore abused its discretion and failed to proceed in the manner required by law by approving the CUP, in violation of Municipal Code Section 20.52.020(F).

Third, the record does not demonstrate that the Project is consistent with the General Plan. NBMC Section 20.52.020(F)(1) requires that a conditional use permit may be approved only after first finding that “[t]he use is consistent with the General Plan and any applicable specific plan.” Residents’ comments on the MND and to the Planning Commission explained that the Project did not demonstrate compliance with General Plan policies directed at reducing construction air quality impacts from projects built in the General Plan area. For example, the Responses assert that the Project would comply with Policy NR 8.1 because construction contractors would be required to comply with CARB Rule 2485, which restricts idling to 5 minutes.⁵³ However, the Project’s condition of approval No. 33 allows idling up to “30 minutes for trucks and heavy equipment”⁵⁴ – six times longer than CARB standards. These and other General Plan measures were not included in the Final MND or Conditions of Approval. The Planning Commission therefore abused its discretion by approving the CUP given the Project’s nonconformance with General Plan policies.

III. CONCLUSION

For the forgoing reasons, the Planning Commission abused its discretion and failed to proceed in the manner required by law by approving the CUP and the Project’s MND after being presented with substantial evidence supporting a fair argument that the Project will have potentially significant, unmitigated impacts on

⁵¹ MND, p. 101.

⁵² MND, p. 101.

⁵³ May 2025 Responses, p. 1-112.

⁵⁴ Draft Resolution, p. 18.

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air quality, greenhouse gases, public health, hazards and noise. The Planning Commission violated the City's Municipal Code by approving the Project's CUP after being presented with substantial evidence that the Project is detrimental hazards to public health, interest, safety, and the general welfare of persons residing and working near the Project and is not consistent with the General Plan.

The City Council should uphold this appeal, vacate the Planning Commission's approvals, and remand the Project to staff to prepare an EIR to address the impacts identified by Residents and its experts. These actions are critical to ensure that the Project complies with CEQA and all applicable laws, and to ensure that the health and safety of City residents and workers is protected.

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 A

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July 17, 2025

Via Email and Overnight Mail

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Re: Agenda Item No. 4 - Coyote Canyon Landfill Gas to Energy Facility (SCH No. 2024120012; PA2022-063; PC2025-008)

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 4, the proposed Coyote Canyon Landfill Gas to Energy Plant Project ("Project") for hearing on July 17, 2025.¹ 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.²

¹ City of Newport Beach, Planning Commission Agenda (Thursday, July 17, 2025 – 6:00 PM), available at: https://www.newportbeachca.gov/PLN/planning_commission/current_agenda.pdf.

² City of Newport Beach, Planning Commission Staff Report, July 17, 2025, Agenda Item No. 4, Coyote Canyon Landfill Gas to Energy Facility (PA2022-063)

The Staff Report asks the Commission to approve the Project's Initial Study/Mitigated Negative Declaration SCH No. 2024120012 ("MND")³, including the MND, May 2025 Responses to Comments ("Responses")⁴, Mitigation Monitoring and Reporting Program ("MMRP"), (collectively with MND and Responses as "Final MND"), the Conditional Use Permit (PA2022-063) and Draft Resolution No. PC 2025-008 including Conditions of Approval 1 through 36 ("Conditions").⁵

Residents submitted detailed comments in January 2025⁶ and May 2025⁷, supported by expert comments, which demonstrated that the Final 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 CEQA.⁸ Residents' comments were prepared with the assistance of air quality and hazards consultant Komal Shukla, Ph.D. of Group Delta Consultants, Inc. ("Shukla Comments"), and noise consultant Jack Meighan of Wilson Ihrig.⁹

<https://newportbeach.legistar.com/gateway.aspx?M=F&ID=a028ab42-b4ff-4018-a9be-8323106755c0.pdf>.

³ City of Newport Beach, Initial Study Mitigated Negative Declaration, Landfill Gas to Energy Plant 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).

⁴ City of Newport Beach, Landfill Gas to Energy Plant 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, "May 2025 Responses").

⁵ Staff Report, Attachment 1, Draft Resolution No. PC2025-008 to Approve the Project and Adopt the IS/MND, available at: <https://newportbeach.legistar.com/gateway.aspx?M=F&ID=98663746-f4d2-470b-8614-b632f37aa5c6.pdf>.

⁶ May 2025 Responses, p. 1-35.

⁷ **Staff Report, Attachment No. PC 5:** Letter from ABJC to City of Newport Beach Planning Commission, Agenda Item 3 - Coyote Canyon Landfill Gas to Energy Facility (SCH No. 2024120012; PA2022-063) (May 21, 2025).

⁸ Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq.

⁹ Mr. Meighan's response to the July 17, 2025 Staff Report is attached as **Exhibit A:** Letter from Jack Meighan to Adams Broadwell Joseph & Cardozo, Archaea Landfill Gas Project IS/MND City of Newport Beach, California Comments on Noise Analysis (July 14, 2025) (hereinafter "Meighan Comments").

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The Staff Report includes responses to ABJC's May 2025 Comments ("July Responses")¹⁰ which still fail to resolve the majority of issues raised in our comments, continue to rely on deficient analysis, and still fail 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 the Project because the Project does not conform to local codes and results in significant, unmitigated impacts which constitute hazards to public health, interest, safety, and the general welfare of persons residing and working near the Project.¹¹

Residents respectfully requests the Planning Commission continue this hearing and remand the Project to staff to prepare a legally adequate EIR which analyzes and mitigates the Project's potentially significant environmental impacts before the Project can be brought back for further consideration. The City cannot approve the Project until it complies with CEQA, the Municipal Code, and all other applicable land use laws to ensure that the Project proceeds safely and mitigates its significant environmental and public health impacts.

I. STATEMENT OF INTEREST

Orange County Residents for Responsible Industry 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.

¹⁰ Staff Report, Attachment 6, Response to Adams, Broadwell, Joseph & Cardozo 5/21/25 Comment Letter Regarding the Initial Study and Mitigated Negative Declaration for the Coyote Canyon Landfill Gas to Energy Plant Project (July 9, 2025) (hereinafter, "July 2025 Responses").

¹¹ Newport Beach Municipal Code ("NMBC"), Section 20.52.020.
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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 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 STAFF REPORT FAILS TO RESOLVE THE MND'S DEFICIENCIES

A. Air Quality and Hazards Impacts Remain Significant and Unmitigated

1. Fugitive Emissions and Leaks

The MND and Staff Report fail to resolve Dr. Shukla's comments addressing the Project's potentially significant, unmitigated air quality impacts from fugitive emissions.

Dr. Shukla's MND comments described potentially significant fugitive emissions associated with reasonably foreseeable leaks from Project equipment which the MND failed to disclose, including fugitive emissions from leaks in valves, pressure relief devices, flanges, connectors, and emissions during routine maintenance or operational interventions related to the Project's flaring system and closed-loop emissions system.¹² The Final MND refused to address this issue or quantify the Project's potential fugitive emissions, simply asserting that there would be "no fugitive emissions" because the Project involves a closed-loop system.¹³

Dr. Shukla explained that this conclusion was incorrect and unsupported. She clarified that, 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."¹⁴ Dr. Shukla referenced U.S. EPA and SCAQMD leak detection guidance which require consideration of potential fugitive emissions from components such as valves, flanges, compressors, and pump seals—even in enclosed and pressurized systems.¹⁵ Dr. Shukla explained that the Final MND's unsupported conclusion that there would be "no fugitive emissions" lacked technical justification and may misrepresent the actual emissions profile of the facility.¹⁶

The Staff Report still fails to quantify fugitive emissions, and asserts that the Final MND resolved Dr. Shukla's comments, which is incorrect. There is therefore no evidence before the Planning Commission demonstrating that fugitive emissions would be less than significant, and the City's failure to require a leak detection and reporting system is likely to leave fugitive emissions significant and unmitigated.

2. Public Health Impacts and Hazards Associated with Risk of Upset Are Significant and Unmitigated

Residents' comments on the MND identified significant fire and hazards impacts which the MND failed to disclose or mitigate, including risk of upset from fire, vapor clouds, and other accidents or operational upsets in systems such as the Project's thermal oxidized ("TOX") system and flaring systems.¹⁷ Dr. Shukla

¹² Shukla 5/21/25 Comments, pp. 7. 9.

¹³ Shukla 5/21/25 Comments, p. 7.

¹⁴ Shukla 5/21/25 Comments, p. 14, citing 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>.

¹⁵ *Id.*

¹⁶ Shukla 5/21/25 Comments, p. 7.

¹⁷ Shukla MND Comments, pp. 24-25.

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explained that these events can lead to uncontrolled emissions of criteria pollutants and hazardous air pollutants, which have significant implications for air quality and public health.¹⁸ The MND referenced a Preliminary Site Consequence Assessment (“PSC”) which was purportedly 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.¹⁹ The MND relied on the PSC to conclude that risk of upset hazards would be less than significant.²⁰ However, the City did not attach the PSC to the MND, and failed to provide it in response to multiple public record requests by Residents.

The PSC has now been made available for the first time as an attachment to the Staff Report. Review of the PSC confirms that the Project’s risk of upset hazards are potentially significant and may result in significant impacts if not properly mitigated. The PSC also continues to underreport potential hazards, and recommends mitigation that is not incorporated into the Project’s MMRP or conditions of approval. Both Dr. Shukla’s comments and the PSC therefore provide substantial evidence supporting a fair argument that risk of upset impacts remain potentially significant and unmitigated.

Dr. Shukla previously explained that the MND’s analysis considered only a limited subset of potential sensitive receptors, specifically Sage Hill High School and vehicle occupants on Newport Coast Drive and SR-73, and omitted 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.²¹ This limited analysis is confirmed by the PSC’s list of nearby receptors, which includes Sage Hill Highschool, Newport Coast Drive, California State Route 73/ San Joaquin Hills Transportation Toll Road, and the landfill county building.²² Of these receptors, the county building is the only close receptor identified in the PSC. Dr. Shukla explained that excluding other nearby receptors from the risk of upset analysis is problematic because the it does not consider impacts on all potentially affected sensitive receptors.²³ By limiting its scope, the PSC did 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 the MND’s findings of less-than-significant impact.

¹⁸ Shukla MND Comments, pp. 24-25.

¹⁹ MND, p. 101, Responses, p. 1-110.

²⁰ *Id.*

²¹ Shukla 5/21/25 Comments, p. 10, citing MND, p. 101.

²² PSC, p. 7.

²³ Shukla 5/21/25 Comments, p. 10.

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The PSC also identifies significant impacts from risk of upset associated with fire and explosion, and recommends mitigation. Specifically, the PSC finds impacts on the occupied county landfill building and surrounding vegetation to be significant.²⁴ The City's own report therefore provides substantial evidence supporting a fair argument that hazards impacts are significant.

The PSC next recommends mitigation to prevent catastrophic events from occurring, including:

- Fire and gas detection
- Process control alarms
- Process control shutdowns (Pressure safety high-highs, Pressure safety low-lows, composition analyzers)
- Plant ESD (emergency shutdown) System
- Ignition Source Control, Hazardous Area Classification (Vapor cloud must find an ignition source to create jet fire depicted).²⁵

However, the PSC's proposed mitigation measures are not included in the MMRP or the Project's conditions of approval. The City cannot rely on unenforceable design features to mitigate these impacts; all mitigation must be incorporated into MMRP if agency intends to rely on measures for a significance determination.²⁶ The Project's hazards and public health impacts associated with risk of upset therefore remain significant and unmitigated.

3. The MND Failed to Analyze Construction Health Risk Impacts for the Project's Reasonably Foreseeable Construction Period

The MND originally stated that the Project's construction period was anticipated to take 12 months.²⁷ Residents commented that the MND underreported the health risk associated with Project construction because the MND's health risk analysis relied on a 9-month completion timeline, truncating the analysis of emissions exposure by 3 months.²⁸

²⁴ PSC, pp. 4-10.

²⁵ PSC, p. 8.

²⁶ *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651; CEQA Guidelines § 15126.4(a)(2) (mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments).

²⁷ MND, p. 38.

²⁸ MND, p. 69.

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Rather than correct the health risk analysis, the City responded in the Final MND by deleting references to 12 months and replacing them with references to 9 months.²⁹ However, the Staff Report and Draft Planning Commission Resolution continue to refer to the Project's construction period as lasting "up to 12 months,"³⁰ and neither the MMRP or the Project's conditions of approval restrict Project construction to less than 12 months. It is therefore reasonably foreseeable that Project construction may last up to 12 months. The City has not analyzed the health impacts to nearby sensitive receptors from exposure to construction emissions during a 12-month construction period, and therefore lacks substantial evidence to conclude that the Project's construction health risk impacts are less than significant. The health risk analysis should be revised in an EIR to analyze the full 12-month duration of Project construction.

4. The City Has Not Demonstrated Compliance with General Plan Air Quality Policies

Residents' MND comments explained that the Project did not demonstrate compliance with General Plan policies directed at reducing construction air quality impacts from projects built in the General Plan area. Specifically, Newport Beach General Plan Policy NR 8.1 requires the City to "Require developers to use construction equipment that use low polluting fuels, engines, and exhaust controls to the extent available and feasible."³¹ Policy NR 8.2 requires the City to "Require developers maintain construction in good operating condition to minimize air pollutants."³² Policy NR 8.3 requires the City to "Require developers to turn off construction equipment when not in use for an extended time period."³³ Residents commented that the MND did not demonstrate conformance with these policies and the MND's mitigation measures did not require that the Applicant to use available low-emission construction equipment.

The Responses to Comments assert that the Project complies with these General Plan Air Quality policies because existing clean air laws require the use of cleaner fuel and engines, and lower emissions thresholds, than were required in 2006 when the General Plan was adopted.³⁴ This argument is specious and unsupported. The General Plan EIR concluded that construction air quality

²⁹ May 2025 Responses, p. 1-105.

³⁰ Staff Report, p. 8; see also Draft Resolution, Finding No. C.6, p. 25 ("Vehicle traffic will increase during the 9-to-12-month Project construction period.").

³¹ City of Newport Beach General Plan Update EIR Section 4.2 Air Quality (2006), p. 4.2-20.

³² *Id.*

³³ *Id.*

³⁴ See May 2025 Responses, pp. 1-111 to 1-112.

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impacts would be significant and unavoidable, and explained that compliance with Policies 8.1 through 8.5 was intended to reduce impacts to the greatest extent feasible.³⁵ The General Plan EIR also contemplated that “additional mitigation may also be required to further reduce emissions and potential impacts” associated with individual projects.³⁶ Accordingly, the City must require all feasible mitigation to reduce the Project’s construction emissions to the greatest extent feasible.³⁷

The MND includes no air quality mitigation measures, and the City’s assumption that existing laws, like CARB’s low-emission vehicle standards and US EPA’s phased-in Tier 4 standards, require the most stringent available mitigation is incorrect. For example, existing regulations do not currently require the use of Tier 4 Final construction engines (the cleanest and lowest emission construction equipment) because they are subject to phase-in requirements. U.S. EPA, and by agreement, CARB, have slowly adopted more stringent standards to lower the emissions from off-road construction equipment since 1994. Since 1994, Tier 1, Tier 2, Tier 3, Tier 4 Interim, and Tier 4 Final construction equipment have been phased in over time.³⁸ Tier 4 Final represents the cleanest burning equipment and therefore has the lowest emissions compared to other lower tiers, which are still utilized in many construction industry fleets.³⁹ Without mitigation measures requiring the use of Tier 4 equipment for Project construction, it would not otherwise be required. And given that the MND underestimated construction health risk by up to 3 months, Tier 4 Final equipment may also be necessary to reduce health risks associated with the Project’s construction emissions.

The Project’s conditions of approval may also thwart compliance with General Plan Air Quality policies. For example, the Responses assert that the Project would comply with Policy NR 8.1 because construction contractors would be required to comply with CARB Rule 2485, which restricts idling to 5 minutes.⁴⁰ However, the Project’s condition of approval No. 33 allows idling up to “30 minutes for trucks and heavy equipment”⁴¹ – six times longer than CARB standards.

³⁵ *Id.* at p. 4.2-14.

³⁶ *Id.* at p. 4-2-13.

³⁷ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

³⁸ See <https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements>.

³⁹ *Id.*

⁴⁰ May 2025 Responses, p. 1-112.

⁴¹ Draft Resolution, p. 18.

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The City lacks substantial evidence to support MND's conclusion that the Project complies with General Plan Air Quality policies. The City must include a detailed analysis and additional air quality mitigation measures in an EIR.

5. Emissions from the Annual Shutdown and Ten Potential Yearly Shutdowns Are Significant and Unmitigated by the MND, Staff Report, or Conditions of Approval

Residents' comments on the MND demonstrated that air pollutant emissions released during the annual shutdown and 10 potential shutdown days per year may result be significant, but were not analyzed in the MND or the Staff Report, and are not mitigated by measures in the MMRP or conditions of approval in the Draft Resolution. 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.⁴² The Final MND states, without support, that unplanned shutdowns are anticipated to be less than 10 times per year.⁴³ 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."⁴⁴ An EIR must be prepared which adequately quantifies and mitigates potentially significant emissions from Project operation.

Moreover, the MND and Staff Report before the Commission fails to analyze GHG emissions associated with the annual shutdown and unplanned shutdowns associated with Project operation. Emissions associated with the annual shutdown and 10 potential shutdown days per year may result in significant GHG emissions, which the MND, Staff Report, and Draft Resolution fail to adequately analyze or mitigate. An EIR must be prepared which adequately quantifies and mitigates potentially significant GHG emissions from Project operation.

B. The Staff Report, MND and Conditions of Approval Still Fail to Disclose or Mitigate the Project's Significant Noise Impacts

The Staff Report continues to ignore substantial evidence provided by Residents' noise consultant, Mr. Meighan, which supports a fair argument that the Project's construction noise impacts are significant and unmitigated. Mr. Meighan's comments demonstrated that the Project may result in significant adverse noise impacts to nearby sensitive receptors due to a significant noise increase above

⁴² MND, p. 22.

⁴³ *Id.*

⁴⁴ MND, p. 15.

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ambient noise levels which is not mitigated by the measures in the MMRP or the Project's conditions of approval.

Mr. Meighan explained that Project construction will result in significant increase above the ambient noise levels to sensitive receptors at Sage Hill Highschool and residences on Renata Street, and that the MND relied on an excessively high and unsupported noise threshold to conclude that noise impacts would be less than significant.⁴⁵ These problems have not been corrected. As Mr. Meighan reiterates, ambient daytime noise levels identified in the MND ranged from 38 to 48 dBA at the nearest noise measurement location to the single-family homes to the south.⁴⁶ The MND found that the "combined construction noise levels from pipe installation and equipment installation would be 55 dBA Leq and 56 dBA Leq, respectively."⁴⁷ Mr. Meighan explained that this would exceed the existing noise levels by 7 to 18 dB and result in a significant impact due to a "substantial temporary or permanent increase in ambient noise levels in the vicinity of the project."⁴⁸ As the MND shows, and as demonstrated in Mr. Meighan's comments, a 10 dBA increase is perceived as a doubling of the sound and thus would cause an adverse impact on nearby sensitive receptors.⁴⁹ The MND did not disclose this significant noise impact, and the Staff Report continues to ignore it.

The July Responses assert that Mr. Meighan's comment that the Project would result in excessive noise levels to nearby sensitive receptors "was addressed in the response to comment O2-24 in the Final MND, and no additional issues were raised or substantiated in the most recent letter."⁵⁰ This is incorrect. The May 2025 Responses did not acknowledge the significant construction noise impacts identified by Mr. Meighan and did not add any additional mitigation to reduce impacts to less than significant levels. The impacts therefore remain unaddressed.

Moreover, Mr. Meighan explains that the Project's mitigation measures and conditions of approval do not mitigate the significant construction noise impact to less than significant levels. Mr. Meighan's comments demonstrate that municipal code requirements in Condition 20 and 21 will not sufficiently mitigate the Project's significant adverse noise impacts due to the significant noise increase above ambient levels during Project construction.⁵¹

⁴⁵ Meighan Comments, p. 2.

⁴⁶ Meighan Comments, p. 2; MND, Appendix K Table F.

⁴⁷ Meighan Comments, p. 2, citing MND, page 127.

⁴⁸ MND, p. 123.

⁴⁹ Meighan Comments, p. 2.

⁵⁰ July Responses

⁵¹ Meighan Comments, p. 3.

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First, Mr. Meighan explains that 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.⁵² 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.⁵³ Condition 21 does not mitigate the Project's significant construction noise impacts because the Project's significant construction noise will occur during daytime hours.⁵⁴ The Staff Report and proposed conditions of approval do not include any additional mitigation to reduce the Project's significant noise impacts beyond those measures already required by municipal code. The measures therefor remain inadequate.

Mr. Meighan's comments provide substantial evidence supporting a fair argument that Project construction noise impacts remain significant and unmitigated. The City must prepare a legally adequate EIR for public review and comment, which includes analysis and mitigation of the Project's significant noise impacts before the Project can lawfully be approved.

III. THE PLANNING COMMISSION CANNOT MAKE THE NECESSARY FINDINGS TO SUPPORT APPROVAL OF THE CONDITIONAL USE PERMIT

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

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

⁵² *Id.*

⁵³ Staff Report, Attachment 1, Draft Resolution to Approve the Project and Adopt the IS/MND.

⁵⁴ Meighan Comments, p. 3.
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E. 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.⁵⁵

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.⁵⁶

The Draft Resolution states that the Project “should not be a risk to the health or general welfare of people residing or working nearby.”⁵⁷ But this statement is not supported by substantial evidence in the record. Residents’ comments on the MND provided substantial evidence supporting a fair argument that the Project results in significant air quality and health risk impacts which may jeopardize the public health or the general welfare of the City. These impacts are not mitigated by the mitigation measures in the MMRP or the Project’s conditions of approval. The Planning Commission therefore lacks substantial evidence to support the findings required to approve the Project, and many of the Draft Resolutions proposed “Facts in Support of Finding” are wrong or unsupported by the record.

For example, Dr. Shukla’s comments explained that the MND’s conclusion that total annual NOx emissions from all identified combustion sources would be less than significant was not supported by substantial evidence. The MND concluded that NOx emissions would be 3.996 tons per year(tpy),⁵⁸ just marginally below the SCAQMD offset threshold of 4.0 tons per year.⁵⁹ Dr. Shukla explained that any deviation from expected operating conditions could result in an exceedance of the offset threshold, triggering additional permitting requirements and

⁵⁵ Staff Report, p. 11; NBMC Section 20.52.020.

⁵⁶ Newport Beach Municipal Code (“NBMC”), Section 20.52.020.

⁵⁷ Staff Report, Attachment 1, Draft Resolution, p. 27.

⁵⁸ 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

⁵⁹ Shukla 5/21/25 Comments, pp. 6-7.

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mitigation.⁶⁰ The Staff Report fails to rebut these conclusions or provide any new evidence demonstrating that NOx emissions would never exceed the threshold. The MND's less than significant conclusion therefore remains unsupported.

Residents' comments on the MND identified significant fire and hazards impacts which the MND failed to analyze or mitigate. The PSC also acknowledges significant hazards impacts from risk of upset associated with fire and explosion at the Project site, and recommends mitigation. But the PSC's proposed mitigation measures are not included as enforceable measures in either the MMRP or the Project's conditions of approval. These hazards impacts therefore remain significant and unmitigated.

The record before the Commission similarly lacks substantial evidence to support the conclusion that the Project would be adequately served by fire protection services. The Staff Report and July Responses fail to resolve this issue. The Applicant requested clarification from the Newport Beach Fire Department that the Project is adequately served by fire services.⁶¹ 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."⁶² 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."⁶³ The Fire Department recommended fuel modification measures which were implemented in the MND's Fuel Modification Plans pursuant to Mitigation Measure HAZ-1.⁶⁴ 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."⁶⁵ 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

⁶⁰ *Id.*

⁶¹ MND, Appendix L Service Provider Questionnaire Responses, p. L-9.

⁶² MND, Appendix L Service Provider Questionnaire Responses, p. L-9.

⁶³ *Id.*

⁶⁴ MND, p. 106.

⁶⁵ MND, p. 101.

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control alarms, process control shutdowns, and emergency shutdown systems... impact of jet fires to the surrounding vegetation would be less than significant.”⁶⁶ associated with the hazardous materials which will be used onsite. But, these measures are not included as enforceable mitigation.

Additionally, the Planning Commission cannot make the necessary findings for approval because the Resolution and the Final MND do not demonstrate compliance with conditions in the Newport Beach General Plan EIR including:

- i. Policy NR 7.2 Source Emission Reduction Best Management Practices Require the use of Best Management Practices (BMP) to minimize pollution and to reduce source emissions.
- ii. Policy NR 8.1 Construction Equipment Require developers to use construction equipment that use low polluting fuels, engines, and exhaust controls to the extent available and feasible.
- iii. Policy NR 8.4 Non-Polluting and Non-Toxic Building Materials Require developers to use building materials, paints, sealants, mechanical equipment, and other improvements that yield low air pollutants and are nontoxic.⁶⁷

The record before the Commission does not demonstrate that the Project is consistent with all applicable requirements of Municipal Code Section 20.52.020.⁶⁸ The Planning Commission therefore lacks substantial evidence to make the necessary findings to approve the Conditional Use Permit. The Project’s impacts on air quality, public health, hazards, and noise must be fully disclosed and mitigated to provide the substantial evidence needed to approve the Project.

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, hazards and noise. We urge the Planning Commission to continue this hearing and remand the Project to Staff to prepare an EIR to address the

⁶⁶ MND, p. 101.

⁶⁷ Newport Beach General Plan EIR, p. 4.19 - 4.21.

http://newportbeachca.gov/PLN/General_Plan/GP_EIR/Volume_1/07_Sec4.2_Air_Quality.pdf.

⁶⁸ Staff Report, p. 8.
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impacts identified by Residents and its experts. These actions are critical to ensure that the Project complies with CEQA and all applicable laws, and to ensure that the health and safety of City residents and workers is protected.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelilah D. Federman".

Kelilah D. Federman
Christina Caro

CMC:lj1

EXHIBIT A



July 14th, 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. This letter is based on two documents – attachment number 6 of the Staff Report, prepared by Placeworks and dated July 9th 2025. This references the Response to Comments dated May 2024.

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

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>)

noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher 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 results in potentially significant noise impacts which 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 two conditions do nothing to reduce the potential for impacts due to construction noise there are presented in both this and our previous letter. As such, we believe there is a potential for a significant impact, and the construction noise issue should be studied more thoroughly in an EIR.

Very truly yours,
WILSON IHRIG

A handwritten signature in blue ink, appearing to read 'Jack Meighan', is written over a horizontal line.

Jack Meighan
Associate

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