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March 20, 2023

Via Email and Overnight Delivery

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Re: Agenda Item 2 Conditional Use Permit No. 22-11, Heliogen R&D Facility (SCH #2023020184)

Dear Chairman Vose, Vice Chairperson Harvey, Commissioners: Birden, Derryberry, Moore, Tufts, Underwood, Ms. Swain, and Mr. Hogan:

On behalf of **Citizens for Responsible Industry** (“Citizens”), we submit these comments regarding Agenda Item 2 Conditional Use Permit No. 22-11 for the Heliogen R&D Facility Project (SCH No. 2023020184) (“Project”), proposed by Heliogen, Inc. (“Applicant”). The Staff Report prepared for the March 20, 2023 Lancaster Planning Commission (“Commission”) meeting was released Friday March 17, 2023.¹

On March 9, 2023, Citizens submitted extensive comments² supported by expert consultant reports which demonstrated that the Project will result in significant, unmitigated environmental impacts and that the Initial Study/Mitigated Negative Declaration (“MND”) prepared by the City does not

¹ City of Lancaster, CA, Planning Commission Regular Meeting, March 20, 2023 Agenda Packet, <https://cityoflancasterca.primegov.com/Public/CompiledDocument?meetingTemplateId=6210&compileOutputType=1> (“Staff Report”).

² **Exhibit A**, Letter from Adams Broadwell Joseph & Cardozo to Jocelyn Swain, Senior Planner and Jeff Hogan, Director Development Services Department City of Lancaster, Heliogen R&D Facility: Conditional Use Permit No. 22-11 Initial Study/Mitigated Negative Declaration (March 9, 2023) (“ABJC Comment Letter”).

satisfy CEQA. Our comments demonstrated that the MND failed to accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, hazards, biological resources, and noise, and provided substantial evidence supporting a fair argument that the Project will result in significant, unmitigated environmental impacts in each of these areas. Thus, the City may not approve the Project until the City prepares an Environmental Impact Report ("EIR") that adequately analyzes the Project's potentially significant impacts and incorporates all feasible mitigation measures to avoid or minimize these impacts.

For the reasons discussed herein, in the attached expert comments, and in our prior comments to the City, Citizens urges the City to remedy the deficiencies in the MND by preparing a legally adequate EIR and circulating it for public review and comment. Citizens and their expert consultants identified numerous potentially significant impacts that the MND either mischaracterized, underestimated, or failed to identify. Moreover, the Staff Report failed to respond to Citizens' comments or Citizens' experts' comments, or any comments received during the public comment period.

Citizens' experts reviewed the Staff Report prepared for the March 20, 2023 Lancaster Planning Commission meeting, and determined that the Staff Report contains no direct or indirect responses to their comments, and fails to address the legal errors and unmitigated impacts identified in their comments. As a result, the Staff Report fails to demonstrate that the City considered the comments received during the public comment period, as required by CEQA.³

Dr. Phyllis Fox, Citizens' air quality and public health expert, explains in her comments that the City failed to consider or respond to her original MND comments which demonstrated that the Project will result in potentially significant air quality, Valley Fever, and health risk impacts, that the Project does not conform with the General Plan or Specific Plan, and that the City cannot make the necessary findings to approve the Conditional Use Permit.⁴

Citizens' biological resource expert Scott Cashen determines that the Staff Report fails to respond to his comments on the MND's failure to provide a complete Project description, which precludes an accurate understanding of the proposed Project and its potential impacts on the environment. Mr. Cashen's MND comments further concluded that the MND failed to incorporate mitigation for potentially significant impacts to nesting birds and the MND failed to disclose,

³ Public Resources Code ("PRC") § 21091(d)(1); 14 Cal. Code Regs. ("CCR") § 15074(b).

⁴ **Exhibit C**, Letter from Phyllis Fox, Ph.D., PE to Kelilah D. Federman, Adams Broadwell Joseph & Cardozo (March 19, 2023) ("Fox Comments March 2023").

analyze, or provide mitigation for avian mortality associated with the Project.⁵ The Staff Report fails to mention or respond to these issues.

Citizens' noise and acoustical expert Derek Watry also confirms in the attached letter that the City failed to consider and respond to his MND comments. Furthermore, Mr. Watry reviewed the noise control measures proposed in the Conditions of Approval and Mitigation Monitoring and Reporting Program ("MMRP") attached to the Staff Report, and concludes that they are insufficient to reduce noise levels such that they would not cause significant impacts to the surrounding community.⁶

CEQA requires that, when considering whether to approve a project, the Lead Agency must consider the comments received during its consultation and review periods for the ND or MND.⁷ In addition to Citizens' and their experts' MND comments, the Staff Report also fails to mention or respond to MND comments received from the Antelope Valley Air Quality Management District (AVAQMD), CalTrans, and local residents. Based on the Staff Report's failure to include, or even mention, *any* comments received, it is therefore apparent that the City failed to consider the comments received by the City during the CEQA public comment period.⁸ Due to these procedural deficiencies, the Commission cannot approve the Project at this time. There is also substantial evidence in the record before the Planning Commission that the Project have several significant, unmitigated impacts that are not addressed by the MND. The City must therefore prepare a legally adequate EIR which adequately responds to public comments and

⁵ **Exhibit B**, Letter from Scott Cashen, M.S. Senior Biologist to Kelilah D. Federman Adams Broadwell Joseph & Cardozo, *Comments on the Staff Report for the Heliogen R&D Facility Project (Conditional Use Permit No. 22-11)* (March 19, 2023) ("Cashen Comments March 2023).

⁶ **Exhibit D**, Letter from Derek Watry, Principal, Wilson Ihrig to Kelilah D. Federman, Adams Broadwell Joseph & Cardozo, *Heliogen R&D Facility Project City of Lancaster, California Review and Comment on Project Staff Report, Conditions of Approval, and Mitigation Monitoring and Report Program (MMRP)* (March 17, 2023) ("Watry Comments March 2023).

⁷ PRC § 21092.5; 14 CCR § 15073(e).

⁸ In response to Citizen's Public Records Act records request, the City provided four comment letters received during the comment period, attached hereto as: **Exhibit A**, ABJC Comment Letter; **Exhibit E**, *Letter from Antelope Valley Air Quality Management District to Jocelyn Swain City of Lancaster, Notice of Availability/Notice of Intent to Adopt a Mitigated Negative Declaration Pursuant to the California Environmental Quality Act (CEQA) for Conditional Use Permit (CUP) No. 22-11* (Feb. 16, 2023); **Exhibit F**, Letter from California Department of Transportation (CalTrans) to Jocelyn Swain, *Conditional Use Permit No. 22-11 (Heliogen R&D – Mitigated Negative Declaration (MND) SCH # 2023020184 GTS# 07-LA-2023-04165 Vic. LA Multiple* (Feb. 22, 2023); and **Exhibit G**, Letter from Homeowner 43458 5th St. East, Lancaster CA 93535 to State Clearinghouse, Agencies, Interested Parties and City of Lancaster Development Services Department Community Development Division, *Conditional Use Permit (CUP) No. 22-11* (Feb. 18, 2023).

adequately analyzes and mitigates the Project's potentially significant impacts, as required by CEQA.

I. PROJECT BACKGROUND

The Project consists of expansion of the existing Heliogen Research & Development facility at 431 East Avenue K4.⁹ The Project proposes installation of an additional 55-foot tower and receiver; a 100-kilowatt (kW) photovoltaic ("PV") solar field (approximately 400 panels); a stationary electrolyzer cell power system; six 300 cubic foot (volume) hydrogen gas cylinders; a hydrogen transfer line; a hydrogen compression/storage/dispensing unit; a Thermal reactor for synthetic fuel production; and a Fischer Tropsch reactor for synthetic fuel production. The Project site is zoned Specific Plan 80-02 (SP80-02), which is the Lancaster Business Park Specific Plan, and designated as Light Industrial in the City of Lancaster General Plan Land Use Map. The Project site is bounded by E Ave K and E Ave K4 to the north and south, respectively, and 5th Street E and the Sienna Heights Apartment Homes to the east and west, respectively. The Applicant is requesting a Conditional Use Permit ("CUP") from the City of Lancaster ("City") for the Project which proposes uses beyond those that the City's Development Services Department Community Development Division approved in the Director's Review No. 19-57 on June 14, 2019.

II. STATEMENT OF INTEREST

Citizens is an unincorporated association of individuals and labor organizations whose members encourage sustainable development of California's energy and natural resources. The association includes California Unions for Reliable Energy ("CURE") and its local affiliates, the affiliates' members and their families, as well as other individuals who live, recreate, work, and raise families in Los Angeles County and in communities near the Project site. Thus, Citizens, its participating organizations, and its individual members stand to be directly affected by the Project's impacts.

CURE supports the development of renewable energy and the critical role it plays in the effort to reduce greenhouse gas emissions. Since its founding in 1997, CURE has been committed to building a strong economy and healthier environment and it works to construct, operate, and maintain renewable energy power plants and other facilities throughout California. CURE supports the development of

⁹ City of Lancaster, Community Development, Initial Study/Mitigated Negative Declaration, Conditional Use Permit No. 22-11, Heliogen R&D Facility
<https://www.cityoflancastrca.org/home/showpublisheddocument/45067/638115454600670000>.

clean, renewable energy technology, including solar power generation, where properly analyzed and carefully planned to minimize impacts on public health and the environment. Development of all projects subject to CEQA should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can energy produced from the development of new solar installations truly be sustainable.

The individual members of Citizens 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. The coalition includes members who live, recreate, work, and raise families in Los Angeles County and in communities near the Project site. They each have a personal stake in protecting the Project area from unnecessary, adverse environmental and public health and safety impacts. Citizens, its participating organizations, and their members stand to be directly affected by the Project's impacts.

Finally, the organizational members of Citizens 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.

III. THE STAFF REPORT DOES NOT REMEDY THE MND'S FAILURE TO PROVIDE A COMPLETE PROJECT DESCRIPTION AND ENVIRONMENTAL SETTING

CEQA requires that an Initial Study include a description of the project and an identification of the environmental setting.¹⁰ "An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action."¹¹ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.¹² Further, "[a]n accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action... Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other

¹⁰ CEQA Guidelines, § 15063, subd. (d).

¹¹ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.

¹² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").

alternatives in the balance.”¹³ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.¹⁴

As demonstrated in our prior comments and in Scott Cashen’s comments, the MND’s failure to provide an accurate Project Description precludes the public from understanding the Project in its entirety, and precludes a complete understanding of the Project’s resultant impacts on biological resources.¹⁵ The MND provides only a vague Project Description which does not provide the public with sufficient information to adequately weigh the environmental consequences of the Project, particularly with respect to migratory birds.

CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”¹⁶ Dr. Fox demonstrated that the Project Description underestimated the full scope of the Project and failed to analyze the whole of an action which includes future development on the site over the next ten years.¹⁷ Dr. Fox noted that Heliogen indicated that the demonstration project evaluated in the MND is the first step to develop a pipeline for approximately three million barrels of fuel over ten years.¹⁸ As such, the MND failed to adequately analyze the full scope of the Project and failed to include an adequate Project Description. The Staff Report provided no response to these comments or acknowledgment of receipt of these comments, which demonstrates the City’s failure to consider the comments received on this issue during the consultation and review periods for the MND, as required by CEQA.¹⁹ The City must prepare an EIR which accurately analyzes the Project’s components and their resultant environmental impacts.

The MND’s analysis of the Project also resulted in impermissible piecemealing of the Project components and resulted in a failure to analyze the full scope of resultant impacts. CEQA forbids piecemealed review of the significant environmental impacts of a project.²⁰ Agencies cannot allow “environmental considerations [to] become submerged by chopping a large project into many little

¹³ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193.

¹⁴ *See, e.g., Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

¹⁵ Cashen Comments March 2023.

¹⁶ CEQA Guidelines § 15378.

¹⁷ Fox Comments March 2023.

¹⁸ *Id.*

¹⁹ PRC § 21091(d)(1); 14 Cal. Code Regs. CCR § 15074(b).

²⁰ 14 CCR § 15165; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222; *Berkeley Jets*, 91 Cal.App.4th at 1358.

ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences.”²¹ The CEQA Guidelines provide “Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project.”²²

Further, CEQA prohibits a project proponent from seeking approval of a large project in smaller pieces in order to take advantage of environmental exemptions or lesser CEQA review for smaller projects.²³ This “segmenting” violates CEQA, as it inhibits the full disclosure, analysis and mitigation of impacts, and discussion of alternatives.²⁴ CEQA prohibits such a piecemeal approach and requires review of a Project’s impacts as a whole.²⁵ Here, the MND’s failure to provide an accurate Project Description resulted in impermissible piecemealing, in violation of CEQA.

The MND failed to adequately describe the environmental setting against which the Project’s environmental impacts are to be measured for several critical aspects of the Project, including noise and biological resources. This contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.²⁶ CEQA requires that a lead agency include a description of the physical environmental conditions, or “baseline,” in the vicinity of the project as they exist at the time environmental review commences.²⁷ As the courts have repeatedly held, the impacts of a project must be measured against the “real conditions on the ground.”²⁸ The description of the environmental setting constitutes the “baseline” physical conditions against which the lead agency assesses the significance of a project’s impacts.²⁹ An Environmental Setting is

²¹ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284.

²² 14 CCR § 15165.

²³ *Arviv Enterprises, Inc. v. South Valley Area Planning Com.*, 101 Cal. App. 4th 1337, 1340 (2002).

²⁴ E.g., Pub. Resources Code, §§ 21002, 21002.1(a); CEQA Guidelines, §§ 151363, 15121, 15140, 15151 (An EIR is informational document whose purpose is to disclose and mitigate impacts, analyze a reasonable range of alternatives, and select as the project any alternative which can achieve project objectives, but is more protective of the environment, consistent with CEQA’s substantive mandate); CEQA Guidelines, § 15378 (project description must include all project components).

²⁵ 14 Cal. Code Reg. § 15378, subd. (a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

²⁶ CEQA Guidelines, § 15063, subd. (d).

²⁷ CEQA Guidelines, § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321 (“*CBE v. SCAQMD*”).

²⁸ *CBE v. SCAQMD*, 48 Cal. 4th at 321; *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the-Sea v. Bd. of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 246.

²⁹ CEQA Guidelines, § 15125(a); *CBE v. SCAQMD*, 48 Cal. 4th at 321.

required “to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.”³⁰

Absent an accurate baseline analysis, the public and the City cannot fully determine “the conditions of the environment that preceded the project [as] the baseline against which to measure the adverse environmental change.”³¹ The MND is inadequate as a matter of law for failure to provide an accurate baseline against which to measure project impacts related to biological resources and noise. An EIR must be prepared which adequately analyzes the Project’s baseline noise levels and environmental setting for nesting birds.

IV. THE STAFF REPORT FAILS TO CONSIDER OR MITIGATE THE PROJECT’S SIGNIFICANT ENVIRONMENTAL IMPACTS

A negative declaration is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact.³² “[S]ignificant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”³³ An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.”³⁴ Substantial evidence, for purposes of the fair argument standard, includes “fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”³⁵ Here, Citizens’ prior comments, and those of our experts, provided substantial evidence supporting a fair argument that the Project will result in potentially significant effects on the environment, requiring the preparation of an EIR.

Citizens’ experts reiterated in their comments that substantial evidence supports a fair argument that the Project results in significant environmental impacts, related to air quality, public health, biological resources and noise.

³⁰ 14 CCR § 15125(a).

³¹ *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1279, quoting *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, 836.

³² Pub. Resources Code § 21151; CEQA Guidelines § 15064(f); *Citizens for Responsible Equitable Env’tl Dev. v. City of Chula Vista* (“*CREED*”) (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“*CBE v. SCAQMD*”).

³³ Pub. Resources Code § 21068; CEQA Guidelines § 15382; *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1581.

³⁴ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

³⁵ Pub. Resources Code § 21080(e)(1) (emphasis added); *CREED*, 197 Cal.App.4th at 331.

A. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Air Quality and Public Health Risk Impacts Requiring an EIR for the Project

The Staff Report fails to respond to Citizens' prior comments on the Project's potentially significant air quality impacts. Citizens' expert Dr. Phyllis Fox demonstrated that impacts from construction wind erosion fugitive PM_{2.5} and PM₁₀ emissions from graded but undeveloped portions of the Projects site are significant and unmitigated. Dr. Fox's comments also demonstrated that acute health impacts from diesel particulate matter ("DPM") to on-site construction workers, off-site workers, and nearby residents during construction are significant and unmitigated. Further, Valley Fever impacts during construction are significant and inadequately mitigated, and cumulative air quality impacts are significant and unmitigated.³⁶ These issues were not addressed in the Staff Report prepared by the City and require the City to prepare an EIR. The MND thus fails as an informational document under CEQA and cannot be adopted by the Commission.

Dr. Fox demonstrated that the MND failed to comply with CEQA for failure to analyze construction worker health impacts from pesticides in soils from historical agricultural uses of the site which are potentially significant and may pose severe health risks to construction workers and nearby residents and workers.³⁷ Dr. Fox concluded that the MND failed to provide sufficient information on the process that will be used to generate hydrogen which bars the City from accurately estimating operational impacts.³⁸ Further, the MND failed to accurately analyze the impacts from solar panel washing emissions which are significant and unmitigated.³⁹ Moreover, the MND failed to include a risk of upset analysis to analyze the risk of upset impacts from hydrogen production and storage which are potentially significant.⁴⁰

Citizens' prior comments, and those of Dr. Fox, demonstrated that the Project will result in potentially significant construction emissions impacts requiring preparation of an EIR. Dr. Fox demonstrated that Project construction will result in significant and unmitigated PM_{2.5} and PM₁₀ emissions from previously graded areas and graded undeveloped portions of the site that will be developed under the proposed Project.⁴¹ Project construction will also result in significant acute health

³⁶ Fox Comments March 2023, p. 1.

³⁷ *Id.*

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Fox Comments March 2023, p. 2.

impacts to on-site construction workers and off-site workers and residents.⁴² The Conditions of Approval⁴³ and MMRP⁴⁴ fail to provide mitigation to sufficiently reduce these impacts to less than significant levels. The Staff Report and the MND therefore fail to consider or remedy these potentially significant impacts.

Operation of the Project will also result in potentially significant air quality and public health impacts which the MND failed to adequately analyze and mitigate, and the Staff Report failed to address. Dr. Fox concluded that emissions of particulate matter from mirror washing and noise and criteria pollutant emissions from the washing vehicle will adversely impact adjacent residents and workers.⁴⁵ The Staff Report and MND fail to identify, analyze, and mitigate these impacts.⁴⁶

The Project will generate, store, transport, use, and dispose of hazardous materials, including six 300-cubic foot cylinders and one 1,000 kg storage unit of hydrogen gas and 50 gallons of synthetic crude.⁴⁷ Dr. Fox explained that leakage of these materials from cylinders, pipelines, and fugitive components can result in fires and explosions that would pose significant health risks to on-site workers and nearby off-site workers and residents at and beyond the property boundary. The MND failed to identify, analyze, and mitigate these impacts, and the Staff Report failed to remedy these deficiencies.⁴⁸ The Staff Report also asserted that the proposed use is consistent with Policy 4.7.2 of the General Plan: “Ensure that the design of new development minimizes the potential for fire.”⁴⁹ The Project will generate, store, transport, and use hydrogen, which is highly flammable.⁵⁰ Leakage of hydrogen from cylinders, pipelines, and fugitive component can result in catastrophic fires. Thus, the Project will increase the potential for fires at the site, rendering the Project inconsistent with Policy 4.7.2. Neither the MND nor the Staff Report adequately address or mitigate these risks.

⁴² *Id.*

⁴³ Lancaster CA, Attachment to PC Resolution No. 23-05 Conditional Use Permit No. 22-11 Conditions List (March 20, 2023), <https://cityoflancasterca.primegov.com/meeting/attachment/3242.pdf?name=CUP%2022-11%20Conditions%20of%20Approval>.

⁴⁴ Lancaster CA, Mitigation Monitoring and Reporting Program, Conditional Use Permit No. 22-11, <https://cityoflancasterca.primegov.com/meeting/attachment/3243.pdf?name=CUP%2022-11%20MMRP>.

⁴⁵ Fox Comments March 2023, p. 4.

⁴⁶ *Id.*

⁴⁷ Fox Comments March 2023, p. 4.

⁴⁸ *Id.*

⁴⁹ Staff Report, p. 5.

⁵⁰ Fox Comments March 2023, p. 5.

Further, Dr. Fox found that the measures included in the MMRP attached to the Staff Report are incomplete and inadequate to control potential Valley Fever impacts from Project construction.⁵¹ Dr. Fox's comments provided effective Valley Fever mitigation measures to reduce Valley Fever risk to the greatest extent feasible, but the Staff Report failed to include them in the MMRP or Conditions of Approval. Absent the inclusion of these measures in an MMRP of an EIR, the Project's Valley Fever risk remains significant and unmitigated.

The City must circulate an EIR which adequately analyzes the Project's impacts from construction and operational air quality, Valley Fever, public health, and hazards impacts and mitigates such impacts to the greatest extent feasible before the Project can be approved.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts to Biological Resources Requiring an EIR for the Project

Substantial evidence supports a fair argument that the significant risk to avian mortality posed by solar PV facilities, combined with the Project's location, size, and technology, is significant and insufficiently mitigated.⁵²

Mr. Cashen's MND comments and comments in response to the Staff Report provided substantial evidence demonstrating an increased risk to biological resources as a result of the Project's location near the intersection of two major avian migration routes, its relatively large size, and the use of PV technology, which appears to be especially hazardous to birds.⁵³ Mr. Cashen confirmed that many of the bird species killed at renewable energy facilities are vulnerable to population or subpopulation-level effects, and that cumulative effects of renewable energy appear to be more extensive than previously understood, especially for migratory species.⁵⁴ These findings are particularly relevant to the Project because it is located near the intersection of two major migration routes: one used by landbirds, and one used by waterbirds.⁵⁵

⁵¹ *Id.*

⁵² Cashen Comments, p. 3.

⁵³ Cashen Comments, p. 3; Walston LJ Jr, KE Rollins, KE LaGory, KP Smith, SA Meyers. 2016. A preliminary assessment of avian mortality at utility-scale solar energy facilities in the United States. *Renewable Energy* 92:404-414.

⁵⁴ Cashen Comments p. 4.

⁵⁵ Cooper DS. 2016. Industrial-scale solar projects and birds in the California desert: Assessing impacts & developing mitigation. Technical report prepared for Sonoran Joint Venture, Tucson, AZ. Figure 3.

Substantial evidence also supports a fair argument that the Project would have significant, unmitigated cumulative impacts on biological resources. As Mr. Cashen explained in his comments, the Project may result in a significant and cumulatively significant impact to biological resources, through mortality associated with bird strikes on the PV and heliostats on the Project site.⁵⁶ Mr. Cashen wrote that “[b]ecause the IS/MND does not incorporate mitigation, the Project’s contribution to cumulatively significant impacts on bird populations remain considerable.”⁵⁷ The Staff Report failed to address or consider Mr. Cashen’s comments⁵⁸, in violation of CEQA.

The City must prepare an EIR which adequately analyzes and mitigates potentially significant impacts to avian mortality from Project components.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Noise Impacts Requiring an EIR for the Project

Substantial evidence supports a fair argument that noise impacts from construction and operation of the Project remain significant and unmitigated. The Staff Report fails to remedy the deficiencies of the MND’s noise analysis. Mr. Derek Watry’s MND comments confirmed that 400 heliostats will be installed by driven piles, yet the MND’s construction noise analysis did not include an analysis of the noise which will result from pile driving nor the significant vibration impacts that will result from pile driving on nearby residents and the nearby radio station studio.⁵⁹ Mr. Watry’s comments provided substantial evidence that both pile driving noise and non-pile driving noise exceed the established threshold of significance and that noise from project construction will significantly impact the nearest residents.⁶⁰ Neither the Staff Report nor the MND address these issues, and the City failed to prepare an EIR before presenting the Project to decision makers for approval, in violation of CEQA.

The MND also failed to analyze the noise from cleaning the solar panels⁶¹, nor does it appear to account for the noise from all 500 heliostats operating simultaneously.⁶² Mr. Watry’s MND comments confirmed that the MND fails as an

⁵⁶ Cashen Comments, p. 4.

⁵⁷ *Id.*

⁵⁸ Cashen Comments March 2023, p. 1.

⁵⁹ Watry Comments March 2023, p. 2.

⁶⁰ *Id.*

⁶¹ This impact was briefly mentioned elsewhere in the project documents but not in the Noise analysis.

⁶² Watry Comments March 2023, p. 2.

informational document under CEQA for failing to establish an adequately baseline to accurately analyze noise impacts.⁶³ This results in a failure to analyze potentially significant noise impacts from Project construction and operation which the Staff Report fails to resolve.

The City must prepare an EIR which adequately analyzes and mitigates the Project's potentially significant noise and vibration impacts before the Project can be approved.

D. Substantial Evidence Supports a Fair Argument that the Project is Inconsistent with the General Plan and Specific Plan

CEQA requires analysis of a Project's inconsistencies with any land use plan, policy, or regulation adopted for the purpose of avoiding an environmental effect.⁶⁴ Here, the MND failed to accurately analyze the Project's inconsistency with the General Plan, and thus fails as an informational document under CEQA. The Staff Report further failed to remedy this deficiency. The Staff Report states that the Project is consistent with Policy 3.3.4 of the General Plan, which provides that it is the Policy of the City to "Protect sensitive uses such as homes, schools, and medical facilities from the impacts of air pollution."⁶⁵ The General Plan specifically requires: "Protection of sensitive uses from the impacts of air pollution by ensuring that potential air pollution sources are located away from residential areas and other sensitive receptors."⁶⁶ Substantial evidence reveals that the Project will result in a major source of operational emissions, solar panel washing, which will be located immediately adjacent to Sienna Heights Apartments to the north and northwest and the iLEAD Lancaster Charter School to the southwest.⁶⁷ Further, the major source of construction emissions will also be located immediately adjacent to these sensitive receptors, resulting in significant and unmitigated health impacts at these locations during construction.⁶⁸ The City received a comment letter from a concerned community member addressing this issue specifically, but the MND and Staff Report fail to address or mitigate the impacts on the neighboring

⁶³ *Id.*

⁶⁴ CEQA Guidelines, Appendix G.

⁶⁵ Staff Report, p. 4: General Plan Policy 3.3.4.

⁶⁶ General Plan, p. 1-31, pdf 39.

⁶⁷ IS/MND, pdf 31.

⁶⁸ Fox Comment March 2023, p. 4.

community.⁶⁹ Thus, Dr. Fox concluded that the Project is inconsistent with General Plan Policy 3.3.4.⁷⁰

Moreover, the Project is inconsistent with the Lancaster Business Park Specific Plan which requires that “[n]o use or operation shall be conducted in the business park which is noxious, objectionable, unsightly or detrimental to others in any manner and due to any cause, such as, but not limited to vibration, sound, electromechanical disturbances, electro-magnetic disturbances, radiation, air or water pollution, dust, or emission of odorous toxic and non-toxic matters, light or glare.”⁷¹ Our experts provided substantial evidence that solar panel washing would generate noise, fugitive dust PM10 and PM2.5, and exhaust emissions (NOx, ROG, PM10, PM2.5, CO, and GHG) from the washing vehicle.⁷² These emissions would adversely affect nearby residents and workers, thus violating Section 14, Nuisances, of the Lancaster Business Park Specific Plan.

The City must prepare an EIR which adequately analyzes the Project’s inconsistency with the General Plan and Specific Plan before the Project can be considered for approval.

E. Substantial Evidence Supports a Fair Argument that the City Cannot Make the Necessary Findings to Approve the Conditional Use Permit

The Lancaster Municipal Code provides that in order to receive a Conditional Use Permit approval, the applicant shall substantiate to the satisfaction of the zoning board and/or the commission the following facts:

- A. That the requested use at the location proposed will not:
 - 1. Adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area, or
 - 2. Be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site, or

⁶⁹ See **Exhibit G**, Letter from Homeowner 43458 5th St. East, Lancaster CA 93535 to State Clearinghouse, Agencies, Interested Parties and City of Lancaster Development Services Department Community Development Division, *Conditional Use Permit (CUP) No. 22-11* (Feb. 18, 2023).

⁷⁰ *Id.*

⁷¹ Lancaster Business Park Specific Plan No. 80-02, Section 14, p. 9; <https://www.cityoflancastrca.org/home/showpublisheddocument/13296/638029842425300000>.

⁷² Fox Comments March 2023, p. 4; Watry Comments March 2023, p. 2.

3. Jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.⁷³

As shown herein, in Citizens' prior comments, and in our experts' comments, the Project will result in significant unmitigated health risk impacts from construction and operational air emissions and potential risk of upset. Dr. Fox demonstrated that that Project operation will generate, store, transport, use, and dispose of hazardous materials, including hydrogen gas and synthetic crude.⁷⁴ Impacts of a hydrogen accident would be significant due to the proximity of numerous sensitive receptors including a multi-family residential development immediately adjacent to the site on the northeast and single family residential uses to the east and north across 5th Street East and Avenue K.⁷⁵ Thus, Dr. Fox found, based on the substantial evidence in the record, that the Project could: (1) adversely affect the health, peace, comfort or welfare of persons residing or working in the surrounding area; (2) be materially detrimental to the use, enjoyment or valuation of property of other persons located in the vicinity of the site; and (3) jeopardize, endanger or otherwise constitute a menace to the public health, safety or general welfare.

The MND failed to evaluate these impacts, and thus fails as an informational document under CEQA. As such, the City cannot make the necessary finding that the Project will not adversely affect the health, peace, comfort, or welfare of persons residing or working in the surrounding area, as required by the Municipal Code.⁷⁶

V. CONCLUSION

The Staff Report fails to remedy the deficiencies of the MND and fails to provide any evidence that the City considered the comments received by Citizens and other commenters during the CEQA public comment period. CEQA requires that, when considering whether to approve a project, the Lead Agency must consider the comments received during its consultation and review periods for the MND.⁷⁷

The MND also lacks the basic information and analysis required by CEQA, deficiencies which "cannot be dismissed as harmless or insignificant defects."⁷⁸ As

⁷³ Lancaster Municipal Code § 17.32.040.

⁷⁴ Fox Comments March 2023, p. 5.

⁷⁵ *Id.*

⁷⁶ Lancaster Municipal Code § 17.32.040.

⁷⁷ PRC § 21092.5; 14 CCR § 15073(e).

⁷⁸ *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1220.

discussed herein, and in our prior comments, there is substantial evidence supporting a fair argument that the Project would result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. CEQA requires that an EIR be prepared if there is substantial evidence demonstrating that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.⁷⁹

CEQA and the City's Municipal Code require the Planning Commission to make specific findings to approve the Project. The Staff Report's proposed findings regarding Project impacts do not comply with the law and are not supported by substantial evidence because the Project's significant impacts have not been fully disclosed and mitigated. The City cannot approve the Project until it prepares an EIR that resolves these issues and complies with CEQA's requirements.

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

⁷⁹ PRC § 21151; 14 CCR §15063(b)(1).