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Alviso In Action comment letter

Additional submitted attachment is included below.

Alviso in Action Community Letter to the CEC

10/14/2026

California Energy Commission
Attn John Heiser, Compliance Project Manager, and the Public Advisor's Office
715 P Street
Sacramento, CA 95814

Re: Tanager Battery Energy Storage System at Los Esteros Critical Energy Facility — Docket 03-AFC-02C

Dear Commissioners and CEC Staff:

On behalf of *Alviso in Action*, we request a clear explanation of the Tanager battery storage project's potential effects on our community, written answers to the questions below, and a public meeting in Alviso before the Commission makes its decision. Residents need to understand what is proposed, how their health and safety will be protected, and how they can participate in the review.

I am Marcos Espinoza, President of Alviso in Action, and I submit this letter on behalf of our organization. Alviso in Action is a community based organization which focuses on Alviso's environment and community health. Started in 2022 AIA has earned the deep trust from our community by leading beneficial engagement and workshops in Alviso. From topics such as disaster readiness, gardening, and hosting monthly United Alviso for Change community meetings. While interacting with community residents regularly AIA has been privy to their opinions and concerns on the cumulative impacts large development projects bring to Alviso.

We understand that the Tanager Project is being considered as a proposed amendment to the existing Los Esteros facility's CEC license. We ask CEC to address the following concerns to ensure that residents can understand the environmental and health impacts to the Alviso community.

Alviso and the community affected by this decision

Alviso is a historic community at the southern edge of San Francisco Bay. The City of San José identifies Alviso as an early port and a town incorporated in 1852. Its historic district reflects this long history (City of San José, n.d.-b). Today, the review must account for the people who live, attend school, work, and spend time here.

History of community participation

On January 15, 2021, *Organización Comunidad de Alviso* submitted *Cumulative Environmental Impacts in Alviso: Los Esteros Critical Energy Facility (B3289) Title V Major Facility Permit Revision* to BAAQMD. Mark T. Espinoza, then President of the organization, signed the letter. It raised concerns about cumulative pollution, monitoring and disclosure, sensitive receptors, and biological protections (Espinoza, 2021).

On February 7, 2022, Ada E. Márquez submitted comments to CEC on the Microsoft San José Data Center Draft Environmental Impact Report, Docket 19-SPPE-04. The letter addressed baseline conditions, cumulative impacts, public health, soil and water, and biological resources, including the refuge setting and the wastewater facility's Bufferlands. The CEC docket identifies the principal letter as TN 241458, with supporting materials; the Final EIR includes responses to that comment package (Márquez, 2022a; CEC, 2022b, § 7, Comment Set B).

On July 11, 2022, Ada E. Márquez (Shute, Mihaly & Weinberger LLP) submitted further comments on the Microsoft San José Data Center Final EIR (TN 243991). The letter addressed environmental setting, cumulative impacts, public health, biological resources, and mitigation responsibilities, and incorporated earlier comments (Márquez, 2022b).

These records show sustained participation by Alviso community members and advocates. We ask CEC and the Air District to explain how the current Tanager review addresses the continuing concerns, identify relevant prior responses and commitments, and provide current evidence. The historical letters document the concerns raised; their older statistics and program labels require the updates discussed in section 7.

Alviso is a small, quiet bayside community in San José with about 2,039 residents in ZIP code 95002 [1], roughly 58% of whom identify as Hispanic or Latino [2]. In my experience it is a working-class community, and many families have lived here for generations. Founded in 1852 as a port that shipped goods from the Santa Clara Valley to San Francisco, Alviso became part of San José in 1968 [3]. Because it sits at the bottom of the bay, it has long faced flooding, made worse by groundwater pumping: Valley Water reports that the land at the Alviso Marina sank more than six feet between the early 1900s and the 1970s, and levees now hold back the bay [4]. Today, Mayne Elementary School, the library, Community Park, the Community Garden, and the Youth Center sit close together at the center of daily life. Children attend school and after-school programs, and the park hosts youth soccer and family parties. Over time, Alviso has changed from a quiet port into a community surrounded by landfills, the regional wastewater facility, and the South Bay Asbestos Area Superfund Site, whose landfills accepted asbestos waste for over three decades [5]. More recently it has drawn warehouses, large data centers, energy projects, and housing developments.

Many of these changes are close to where families live and children learn. Across from Mayne Elementary, Topgolf opened in 2021 [6], Second Harvest is building a warehouse (which I have seen under construction) [7], and a proposal for 292 affordable housing apartments at 7 Topgolf Drive, first filed in 2025 with 780 units, was resubmitted, according to city application materials I received on June 4, 2026 [8]. Microsoft has broken ground on a data center campus in Alviso with a maximum electrical load of up to 99 megawatts [9], and the city selected Prologis in 2025 as preferred developer for 159 acres of wastewater-facility land [10]. Google has proposed R&D facilities with a planned 250-megawatt capacity at 5087 Disk Drive. Google says this is not a data center, while critics say the design resembles one, and the city plans to rely on environmental reports from 2000 and 2013 rather than a new full review [11]. Diesel exhaust is classified as carcinogenic to humans, and children are especially vulnerable to it [12]. In my experience, I have noticed dust on the road when driving down Zanker Road, and a heavy sulfur smell, especially at night and stronger on Zanker Road; I do not know its source. I have also seen heavy traffic on First Street at peak highway times, which I believe comes from drivers cutting through town to avoid highway traffic. As a resident, I know Zanker Road is one of only three roads out of Alviso; First Street and Gold Street are the other two. This raises safety concerns when Zanker Road is also the main route for heavy trucks. Each project may meet state and city standards on its own, but I have not seen anyone measure their combined effect, which is what CEQA calls a cumulative impact: individually minor projects that are collectively significant [13]. Residents can take part by submitting written comments during San José's environmental review periods [14], attending community meetings such as the railroad adaptation study meetings held at the Alviso Branch Library [15], and reporting odors to the Bay Area Air Quality Management District's 24-hour line, 1-800-334-ODOR [16].

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<https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/ser/ceqa-guidelines-for-cumulative-and-indirect-impacts-a11y.pdf>
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The project table in Attachment A will identify existing, approved, and proposed projects that our organization believes deserve consideration. We ask CEC to verify their status and determine which could contribute to the same environmental effects. The table is intended to guide investigation; it does not establish that every listed project causes a significant impact.

1: Clarify the project being reviewed and the timing of safety findings

The draft hazard mitigation analysis (HMA), dated April 2026 and posted October 2, 2026 (TN 272997), describes a 200 MW, four-hour Lithium system and states that an HMA will be prepared after CEC approval and design finalization. Its conclusion allows supplemental analysis if the final design affects its product-based safety findings. The March 26, 2026 staff request describes approximately 1,600 megawatt-hours (MWh) of storage. A 200 MW discharge over four hours corresponds to approximately 800 MWh of delivered energy. CEC should reconcile these descriptions and identify the maximum installed battery energy evaluated for hazards; delivered energy and installed capacity may differ (Draft BESS hazard mitigation analysis, 2026, §§ 1, 7; California Energy Commission Staff, 2026, p. 1).

CEC's amendment rule requires a complete project description, environmental-effects analysis and proposed mitigation, analysis of compliance with applicable laws and standards, and effects on nearby residents (20 CCR § 1769(a)(1)(A), (D), (E), (H)). Commission approval requires the applicable § 1748(b) findings, including those addressing significant environmental effects (§ 1769(a)(4)(A); § 1748(b)(8)). CEC's certified regulatory program retains substantive CEQA obligations (14 CCR §§ 15250, 15251(j)).

CEQA permits later development of mitigation details when including them during environmental review is impractical or infeasible, provided the agency commits to mitigation, adopts specific performance standards, and identifies feasible actions to achieve them. Measures must be enforceable (14 CCR § 15126.4(a)(1)(B), (a)(2)). Sundstrom rejected approval conditioned on later impact studies (1988, 202 Cal.App.3d 296, 306–308). Endangered Habitats League allowed later mitigation plans with adequate commitments and standards (2005, 131 Cal.App.4th 777, 793–794). POET applied CEQA's timing and deferred-mitigation requirements to a certified regulatory program (2013, 218 Cal.App.4th 681). Sierra Club allowed later substitution of better mitigation where existing measures had already been evaluated (2018, 6 Cal.5th 502).

- a) What site-specific hazard and public-health analyses will be completed and publicly reviewed **before approval**? Identify the findings on thermal runaway, off-site chemical exposure, contaminated firefighting water, and affected community locations, and show where each is documented.
- b) Exactly what work will remain for the later HMA, and why is deferral justified? Explain why those details cannot reasonably be completed during environmental review and how the information available **before approval** supports the significance and mitigation findings.
- c) What enforceable design limits and performance standards will constrain the final installation? Identify the conditions, responsible reviewers, compliance deadlines, and requirements that must be met before construction or operation.
- d) How will CEC reconcile the capacity descriptions and review later equipment or design changes that could alter impacts? Confirm the manufacturer and model, chemistry, container count and capacity, maximum installed MWh, discharge duration, and layout, and explain which configuration the emissions and safety studies evaluate.

These unresolved matters provide grounds to question **potentially unlawful deferral**. Whether an approval violates CEQA will depend on the complete analysis, findings, and enforceable conditions CEC adopts. We ask CEC to complete and disclose all hazard analysis necessary to support its decision before approving the amendment.

2: Explain what the health studies do and whether they are complete

A health risk assessment, or HRA, estimates how pollution exposure could affect people. A study of a possible battery fire asks a different question from studies of construction dust or everyday operations. Residents need to know which study answers each question. California’s health risk guidance addresses cancer risk and both short-term and long-term health hazards from air toxics (Office of Environmental Health Hazard Assessment [OEHHHA], 2015).

- a) Does CEC consider the construction analysis, routine-operation health review, accidental-fire analysis, and cumulative air-quality review complete?
- b) For each impact analysis, identify the document, its main findings, what remains to be done, the responsible agency, and the expected completion date. Please explain any assessment staff considers unnecessary and why.
- c) Please provide a short community summary explaining what pollution could reach people, what the results mean for health, and the important uncertainties. If staff concludes that an impact is low or below a threshold, explain the evidence and limits of that conclusion.

3: Identify Alviso homes, schools and other places people use

Technical studies use the word “receptor” for a location where exposure is evaluated. We ask that the public maps and results identify actual community places, including locations used by children, older adults, and people with health conditions. A model point shown only as a number is difficult for residents to recognize.

- a) Please show Alviso’s residential areas, George Mayne Elementary School and its outdoor activity areas, childcare locations, parks, community gathering places, and nearby workplaces on a readable map.
- b) Identify which were evaluated, which were omitted, and why. Invite residents to identify additional locations without requiring anyone to disclose private health information.
- c) Provide the results for Alviso and George Mayne Elementary School, or explain with evidence how other modeled locations adequately represent them.
- d) Also identify the two locations or groups requested in A70, about 500 meters south-southeast and 822 meters west-southwest of the project, and show their results separately.
- e) These distances describe the staff-requested locations; they are not asserted distances to the school or Alviso village (California Energy Commission Staff, 2026, A70).

- f) How were the study boundaries chosen? Do the weather patterns and modeled locations adequately cover pollution that could travel toward Alviso under different wind conditions? Please explain any distance cutoff and its limitations.

4: Explain possible fire emissions and the evidence behind them

In case of an accidental fire, residents need to understand what substances might be released, how much could be released, and how the estimates were developed. The August 31 letter requested a clear connection between the fire assumptions, chemical release amounts, air modeling, and health conclusions (Márquez, 2026).

- a) What fire or overheating scenarios did staff evaluate, including the number of batteries involved, the duration, and the possibility of spread between containers? Explain how test results apply to the proposed equipment and actual site, including failures of protective systems and less favorable conditions.
- b) Please disclose the final estimated amount and release rate for each chemical, the assumptions behind those estimates, and the resulting concentrations outside the site. Explain the coverage of toxic gases, fine particles, and other relevant substances, including any chemicals that were not measured or could not be evaluated.
- c) For test results reported as “not detected,” explain what the tests could detect and how smaller or unmeasured releases were treated. Provide the releasable test methods and quality checks. Please distinguish the chance of an incident from its possible consequences if it occurs.

5: Explain the health comparison levels and combined chemical effects

Different health comparison levels answer different questions. Some evaluate health hazards from facility emissions; others guide emergency planning for a chemical release. The applicant’s June response favors emergency benchmarks and disputes the use of California acute reference exposure levels for the fire scenario. Residents need CEC’s own explanation of which approach it accepts (Los Esteros Critical Energy Facility, LLC, 2026).

- a) For each study, identify the health comparison levels used, the exposure duration, and the health effects they address. Explain how the analysis accounts for children and other people who may be more vulnerable. If staff changes or replaces the comparisons it requested in A66, please explain why.
- b) Staff also requested an acute hazard index in A67, a calculation that considers combined short-term effects of chemicals affecting the same body system. Please provide that calculation or explain why staff no longer requires it. What does the result mean, and what protections would be required if the applicable threshold is exceeded? (California Energy Commission Staff, 2026, A66–A67).
- c) Please explain which Bay Area Air District requirements apply to routine emissions and which standards govern an accidental release. Identify any role for Rule 2-5 without assuming that every permitting limit automatically applies to an accidental battery fire.

6: Explain how CEC checked the air modeling and health calculations

Computer modeling estimates where pollution might travel. A large collection of model outputs is useful supporting information, but residents also need a clear explanation of how those numbers become health findings. The August 31 letter identified this concern in the released air-modeling records (Márquez, 2026).

- a) How did staff independently check the weather data, fire location and heat assumptions, study coverage, chemical release estimates, and final calculations? Explain whether missing weather data or model warnings affected the conclusions and whether changes to the battery design or test information required updated calculations.

- b) Please make the current, releasable modeling and calculation files available in usable electronic form, with a file list, dates, and instructions explaining which versions support the conclusions. If HARP health-calculation files were not created, identify the method used instead and explain how it answers the relevant health questions.

7: Evaluate cumulative pollution and Alviso vulnerability

Alviso families experience disproportionate cumulative environmental impacts in Silicon Valley. The review should explain Tanager's contribution in the context of existing and relevant future sources. Air District guidance addresses both project-level and cumulative air-quality effects (Bay Area Air Quality Management District [BAAQMD], 2022b).

- a) Where will CEC evaluate the combined air-quality and health effects of construction and routine emissions, including existing Los Esteros emissions, nearby data-center generators such as those associated with Microsoft's San José Data Center, traffic, and other relevant sources identified in Attachment A? Please verify each source's status and explain which are included or excluded.
- b) What study area and time periods will be used? Will overlapping construction or generator activity be considered where supported by evidence? Identify which agency is responsible for each part and where the public can find the results.
- c) Please address everyday pollution and a possible accidental fire through methods suited to each issue. For the fire analysis, explain any relevant nearby hazards or background conditions and the reasons for including or excluding them.

Earlier community concerns and agency responses

The January 2021 Los Esteros letter described above raised questions about monitoring, cooling-tower changes, particulate pollution, cumulative health risks, and protections for Alviso. The Air District also received a joint letter from the Sierra Club Loma Prieta Chapter and Santa Clara Valley Audubon Society (Espinoza, 2021; BAAQMD, 2021a).

The Air District responded to both letters. Its response to Alviso explained that an assessment of health risks from all stationary and mobile pollution sources was outside that permit action's scope. Its response to Sierra Club and Audubon distinguished reduced monitoring from reduced mitigation and stated that cooling water returned to the wastewater facility rather than being discharged directly into Coyote Creek (BAAQMD, 2021b, pp. 3, 6; 2021c, pp. 1–2).

- d) How will the current CEC review address the community's continuing concern about combined exposures? Please identify current emissions and monitoring information for Los Esteros, explain what earlier studies do and do not establish about Alviso, and disclose the status of continuing mitigation and compliance obligations, including habitat protections where applicable. We ask for an assessment based on current conditions and the proposed amendment.

Screening results and community designations

Alviso is not listed among the Bay Area communities selected for AB 617's community-specific air monitoring or emissions-reduction plans. Program selection is not a finding that Alviso has no pollution or health concerns. The Air District's 2018 submission included Alviso in its discussion of candidate communities and explained that the communities recommended for the first five years did not represent all Bay Area communities with high pollution levels (BAAQMD, 2018, pp. vi, 15; California Air Resources Board, n.d.).

Please distinguish AB 617 selection, the Air District’s CARE Impacted Communities map, its Overburdened Communities map for permitting, and CalEPA’s SB 535 disadvantaged-community designation. These programs serve different purposes and use different criteria. Please identify the current boundaries and applicable requirements for the project and affected Alviso locations; a status under one program does not determine status under all the others (BAAQMD, n.d.-a).

OEHHA released final CalEnviroScreen 5.0 on July 1, 2026, and CalEPA released its final 2026 SB 535 designation on September 18, 2026. Please consider these updates in the environmental review while identifying the separate criteria that govern Air District permitting. CalEnviroScreen 5.0 updates data, census geography, and methods, and adds small air toxics sites and diabetes indicators. Differences between versions alone do not establish a pollution or health trend (OEHHA, 2026a; CalEPA, 2026a).

For census tract 06085504602, used in earlier Alviso comments, the official 4.0 data show an overall percentile of 66.97 and a pollution-burden percentile of 82.46. The final 5.0 values are 70.71 and 86.47, respectively. The 5.0 traffic indicator is at a statewide percentile of 95.22, and several environmental-effects indicators are above the 95th percentile. Attachment B gives the verified figures. These are statewide rankings, not percentages of residents who are ill or estimates of Tanager’s emissions. The tract was absent from the official 2026 SB 535 census-tract layer checked October 4, 2026 (OEHHA, 2021, 2026b; CalEPA, 2026b).

CalEPA’s 2026 SB 535 designation covers the highest 25 percent of CalEnviroScreen 5.0 overall scores, the highest 5 percent of pollution-burden scores, qualifying 4.0 carryover areas, and lands under federally recognized tribal control. These funding criteria differ from the Air District’s permitting threshold (CalEPA, 2026a, pp. 2, 10–12).

CalEPA’s May 2022 designation retained communities designated in 2017 regardless of their 4.0 scores, providing the earlier carryover basis discussed in the Alviso comments. The 2026 decision carries forward qualifying 4.0 communities where the new tract has at least 25 percent geographic overlap; it does not automatically retain communities qualifying only under 3.0. Please explain the effect on this tract and identify any remaining low-income or other funding eligibility (CalEPA, 2022; 2026a, pp. 11–12, 20).

A lack of designation does not establish a lack of vulnerability. CalEPA explains that its threshold balances community burdens and vulnerabilities against limited funding, and recognizes that statewide tract rankings can miss highly localized conditions.

- e) We therefore ask CEC to evaluate Alviso’s documented pollution, sensitive receptors, flood exposure, and local conditions independently of funding eligibility (CalEPA, 2026a, pp. 19, 22).

Questions for CEC and the Air District

- f) CEC: Which CalEnviroScreen version and geographic boundaries will inform the environmental setting, cumulative assessment, and community outreach? How will staff address the newer 5.0 findings and high individual pollution indicators if a location falls outside an older program map? Please explain the significance findings and proposed protections using project-specific evidence and local knowledge.
- g) Air District: Please confirm in writing the current version used by Rule 2-1-243, the Overburdened Communities map, and CEQA Chapter 2. Has the District adopted or proposed a transition to 5.0? If so, identify the action, effective date, and map changes. If not, explain how 5.0 and local evidence can inform review under the existing framework.

The Air District’s posted CEQA guidance, including its 2025 supplement, still references CalEnviroScreen 4.0. The guidance is advisory; Rule 2-1-243 separately defines Overburdened Communities using a 4.0 overall percentile of at least 70 or a 1,000-foot buffer. Tract 06085504602 ranks 66.97 under 4.0 and 70.71 under 5.0; the newer score does not automatically change the rule (BAAQMD, 2022a, pp. 2-3, 2-9; 2025, pp. 6–7; n.d.-b; 2021d, § 2-1-243; OEHHA, 2021, 2026b).