DOCKETED	
Docket Number:	19-SPPE-04
Project Title:	SJ2
TN #:	241458
Document Title:	Ada E Márquez Comments - CEQA Comment Letter On Evidence of Significant Environmental Impacts (1 of 4)
Description:	N/A
Filer:	System
Organization:	Ada E. Márquez
Submitter Role:	Public
Submission Date:	2/7/2022 4:02:24 PM
Docketed Date:	2/7/2022

Comment Received From: Ada E. MÃ¡rquez
Submitted On: 2/7/2022
Docket Number: 19-SPPE-04

CEQA Comment Letter On Evidence of Significant Environmental Impacts

Document 1 of 4 (Main letter + 4 appendixes.)

Additional submitted attachment is included below.

February 7, 2022

Commissioner Karen Douglas, Presiding Member
Commissioner Patty Monahan, Associate Member
California Energy Commission

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Re: Draft Environmental Impact Report (DEIR) for the San Jose Data Center SCH # 2021020002 (SJDC or Project) (Docket Number 19-SPPE-04)[1]
Applicant Microsoft Corporation- Small Power Plant Exemption (SPPE)

Dear Commissioners Karen Douglas and Patty Monahan:

As documented on the Docket Log, as concerned residents we submitted comments and questions pertaining to this project (TN# 240572, 240562, 240189, 236959, and 236718). The SJDC DEIR did not adequately describe the environmental setting (baseline conditions) §15125, analyze environmental effects of the project: short-term, long-term, direct, in-direct, cumulative, significant irreversible, and/ or evaluate exacerbating hazards by locating the development within a hazardous area §15126.2(a).

Alviso[2]: The SJDC DEIR failed to adequately describe the existing baseline conditions

The community of Alviso is located at the most northern area of the City of San Jose and annexed by the City of San Jose in 1968 (Figure 1). The Alviso Specific Master Plan was approved in 1998 and amended in 2016 in which the community developed their vision for compatible land-uses, protection of natural resources, preservation of the Alviso village with local, state, and federally protected historical resources, and opportunities for employment.[3] The Los Esteros Facility is currently zoned Light Industrial. Additionally, Alviso is located adjacent to the Don Edwards San Francisco Bay National Wildlife Refuge, burrowing owl habitat, riparian corridors, and within the Santa Clara Valley Habitat Plan HCP/NCCP.[4] Per SB 1000, SB 535, AB 1550, and AB 617, Alviso is identified as a disadvantaged and low-income community with a pollution burden of 88% with $PM_{2.5}$ results that is 43% (**9.955 µg/m3**) higher than other CA census tracts.[5]

[1] California Energy Commission : Docket Log https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04
[2] §15125 Environmental Setting (CEQA Statute and Guidelines, 2021)
[3] Specific Plans | City of San Jose (sanjoseca.gov)
[4] Santa Clara Valley Habitat Agency, CA | Official Website (scv-habitatagency.org) per the California Endangered Species Act (CESA) and the Federal Endangered Species Act (ESA)
[5] Census Tract 6085504602 SB 535 Disadvantaged Communities | OEHHA (ca.gov). Auction Proceeds Disadvantaged Communities (ca.gov)

The Alviso residents are disproportionately affected by ground water contamination, air pollution, and many cumulative environmental issues: the former South Bay Asbestos Area on the National Priority List (NPL), the Union Pacific Railroad, Highway 237, methane vapor from the Newby Island Landfill and Zanker Recycling Zero Waste Energy, the Calpine Energy Plant, facilities with hazardous wastes, large Google warehouses, the (Approved Rezoning Development)Microsoft San Jose Data Center, RWF Cogeneration Project for the San Jose/Santa Clara Water Pollution Control Plant (WPCP), and numerous unpermitted business with diesel trucks, and Topgolf Entertainment Center with significant traffic impacts, etc.[6] Currently, Alviso is as much as 15 feet below sea level and is within the most impacted area known as Economic Impact Area 11.[7]

The proposed Microsoft SJDC Project is located adjacent to the Los Esteros Critical Energy Facility. The City of San Jose completed the DEIR for Los Esteros Critical Energy Facility/US Dataport in 2000 for the "Planned Development Rezoning from a (PD) Planned Development District to allow installation of 180 megawatt (MW) Natural Gas fired power plant in addition to the previously approved 2.2 million square foot telecommunication equipment facility on a 174 gross acre site."[8] In 2002, the CA Energy Commission issued the license for this project. Since then, several amendments and phases have approved authorization to operate as a 320 MW combined-cycle facility. The conversion of this peak power plant to a base load power plant was significant for this small community. Although a Title V Facility is incompatible with the City of San Jose's zoning requirements, the CA Energy Commission approved this expansion without any regards to the City's environmental and health concerns.[9]

The Purpose of the EIR

The applicant Microsoft Corporation is applying for an SPPE (PRC Section 25541). If the CEC Commissioners (the lead agency) *"finds that the proposed project would not create a substantial adverse impact on the environment or energy resources"* (SJDC DEIR, p. 2-1) per CEQA, the CEC Commissioners will approve the applicant's request for an exemption from CEC's jurisdiction.

- The DEIR states**, "*Upon granting of an exemption, the local permitting authorities—in this case the City of San Jose and the Bay Area Air Quality Management District—would perform any follow-up CEQA analysis and impose mitigation, as necessary, for granting approval of the project.*" (DEIR, p. 2-1)**. However, the BAAQMD's NOP comment letter (TN#236946) does not state that this project in the future would require CEQA analysis by their agency*: "Certain aspects of the Project will require a permit (Authority to Construct/Permit to Operate) from the Air District (for example, backup diesel generators). Please contact Barry Young, Senior Advanced Projects Advisor, at (415) 749-4721 or byoung@baaqmd.gov to discuss permit requirements. Any applicable permit requirements should be discussed in the EIR".* In addition, the project must comply with all air regulations such as Regulation 2 Rule 2: New Source Review[10] (TN# 236089). Per CEQA **§15281. AIR QUALITY PERMITS** *"CEQA does not apply to the issuance, modification, amendment, or renewal of any permit by an air pollution control district or air quality management district pursuant to Title V, as defined in Section*

[6] RWF Cogeneration Project | City of San Jose (sanjoseca.gov) San Jose City Data Center, Licensing Case - Docket # 2019-SPPE-04

[7] 2014-2015 SANTA CLARA COUNTY (scscourt.org)

[8] US Dataport/Los Esteros Critical Energy Facility SCH Number 2000062132 (ca.gov) SCH Number 2002079013 (ca.gov)

[9] CEC Overrides San Jose Zoning Ban on Power Plant Expansion - CA Current (A hard copy of DEIR is at the Alviso Library)

[10] Reg 2 Rule 2 New Source Review (baaqmd.gov) . For additional information about air quality permits, please refer to Permits (baaqmd.gov) and Online Permitting System (baaqmd.gov).

39053.3 of the Health and Safety Code, or pursuant to an air district Title V program established under Sections 42301.10, 42301.11, and 42301.12 of the Health and Safety Code, unless the issuance, modification, amendment, or renewal authorizes a physical or operational change to a source or facility."

- The City of San Jose approved the 237 Industrial Center DEIR[11] in 2017 which included the analysis of two project options simultaneously: Option 1 Light Industrial development, and Option 2 a Data Center, with rezoning from A(PD) Agricultural Planned Development to Light Industrial (Ll) (TN# 230762).[12] According to the correspondence between the CEC staff and the City of San Jose, the Special Use Permit (File No. SP16-053) expired on October 24th, 2020 (TN# 237358)..[13]

The CEC Staff explains under section 2.4.3 Final EIR: *"If the project is determined as qualifying for an exemption, the applicant would seek permits from the responsible agencies, in this case, the City of San Jose and Bay Area Air Quality Management District. Any required mitigation measures would be enforced by the appropriate responsible agency"* (SJDC DEIR, p.2-2).

The CEC Commission should not approve the SPPE, if substantial evidence which includes "facts, reasonable assumptions based on facts, and expert opinion supported by facts" that the project may have a significant effect to the residents of San Jose §15384.[14] The Project without the SPPE, would legally still be required to obtain permits from the City of San Jose to comply with California's land-use regulations and BAAQMD's regulations per the Clean Air Act. The lead agency, CEC is legally responsible to comply with the California Environmental Quality Act (CEQA) requirements in adequate preparation of the Environmental Impact Report (EIR) and implement the mitigation and monitoring reporting.[15]

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[11] Microsoft buys 64.5 acres of Silicon Valley land as it considers large data center - DCD (datacenterdynamics.com)

[12] 237 Industrial Center | City of San Jose (sanjoseca.gov)

[13] **Per the City of San Jose Code of Ordinances, Title 20 Zoning, Chapter 20.100, Part 7 Special Use Permits:**
20.100.840 - Renewal.[13]
A. The permit holder may seek renewal of a time-conditioned special use permit by filing a timely renewal application on the form provided by the director.
B. An application for renewal must be filed more than ninety calendar days but less than one hundred eighty calendar days prior to the expiration of the special use permit.
C. Once a renewal application has been filed in a timely manner, the expiration date of the special use permit is automatically extended until either the issuance or denial of the application for renewal has become final.
D. Any application filed after the renewal filing period has expired shall be deemed to be an application for a new special use permit. If a new special use permit is not issued prior to the expiration of the special use permit, the continuation of any use which requires such permit shall be in violation of this Code.
E. The procedures set forth in this chapter for the processing of an application for a special use permit shall equally apply to a renewal application except as hereinafter expressly set forth. 20.100.850 - Renewal findings
(Ord. 26248.)
https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TIT20ZO_CH20.100ADPE_PT7SPUSPE_20.100.850REFI

[14] Public Resources Code 21000-21189 and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387) California Legislative Information

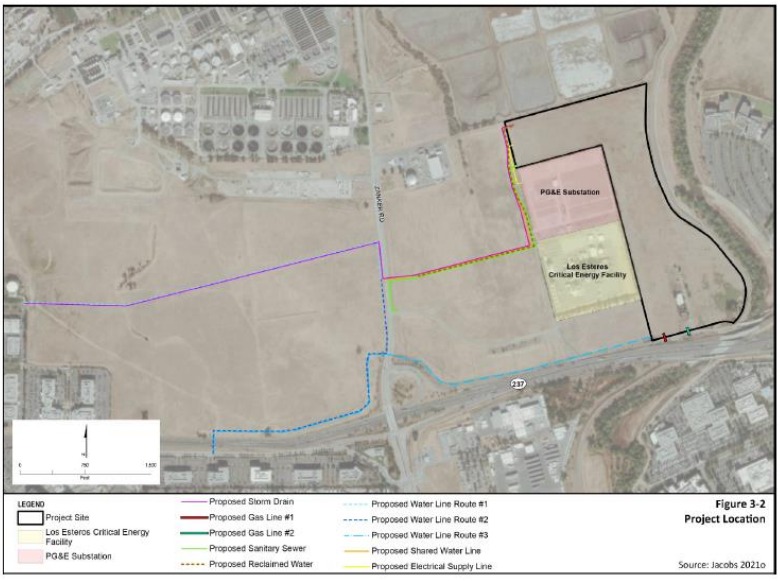
[15] Santa Clara Valley Water Dist. v. San Francisco Bay Regional Water Quality Control Board (Dec. 29, 2020) __ Cal.App.5th

Project Description: Microsoft San Jose Data Center with a maximum electrical load up to 99 megawatts (MW) but estimated at 77 MW.

The current Project site is zoned Light Industrial per the City of San Jose 2040 General Plan and the Alviso Master Plan consisting of 64.5 acres. The Project address is 1657 Alviso-Milpitas Road, San Jose, CA. The applicant proposes a data center with two single story buildings approximately 396,914 gross square feet (sq. ft.), paved parking, 224 (0.45-MW) natural gas generators for utility outages, two Tier 4 diesel generators, a new onsite 115-kilovolt (kV)substation connected to the existing PG&E's Los Esteros Substation, and "offsite infrastructure alignment areas" (Figure 1). Moreover, to provide power to the Project, the existing Los Esteros Substation will include two new 115 kV underground 1,100-foot-long cables that connect to the new SJDC Substation, which is in the northwestern corner of the project site. Two new independent PG&E natural gas pipelines will be approximately 75 feet in length from the project's boundary to the existing PG&E gas line at Alviso-Milpitas Road.

The construction of the project will be approximately 17 months which will "begin in the 4th quarter of 2022, with completion in the 1st quarter of 2024" and includes the offsite infrastructure alignment areas (SJDC DEIR, p.3-13). The duration of construction including staging for the transportation improvements at Zanker Road and Nortech Parkway with a bike trail extension will be about 8 months. The project will be testing for maintenance diesel and gas generators "biweekly for approximately 20 minutes" (SJDC DEIR, p. 3-16). Moreover, the operation of the data center proposes participation in PG&E's Base Interruptible Program (BIP) (SJDC DEIR, p. 3-16)[16]. This Program would require the Project to use natural gas generators and disconnect from the PG&E electrical grid. The applicant provided air emission analysis for 500 hours of operation for "resource load shedding and behind-the-meter RA purposes and reflects 15 minutes of uncontrolled emissions" (SJDC DEIR, p. 3-16; Jacobs 2021o, 3.3 Air Quality, pg. 3.3-15).

Thus, the environmental impacts of the proposed project (§15124) must also include the offsite infrastructure alignment areas as well, and not only the footprint of the project site.



[16] See Jacobs 2021o, 3.3 Air Quality, p. 3.3 -15 for air emission analysis (include letter from CARB data centers

Figure 1: The Microsoft San Jose Data Center Project includes the footprint and the offsite infrastructure improvements (SJDC DEIR, p.3-3).

Title VI Civil Rights and ENVIRONMENTAL JUSTICE Executive Order 12898 (SJDC DEIR, pp. 4.21-1 to 4.21-25)

Although the CEC staff had a meeting with Mr. Mark Espinoza from the Organización de Comunidad de Alviso and Ada Márquez (TN# 236718) and provided numerous comments to share their concerns (TN# 240572, 240562, 240189, 236959), the Microsoft SJDC DEIR did not include an EJ environmental impact analysis of the community of Alviso. The Project is located within the City of San Jose's Alviso Master Plan and within the six-mile radius (Figure 2). Furthermore, the Project's offsite infrastructure areas has a construction phase of seven months which is less than one mile away (Figure 11). The impact analysis must also include the census tract within the Alviso Master Plan.

The Alviso community includes the George Elementary School, a city park, a County of Santa Clara Marina Park, a community center, and other amenities. George Mayne Elementary School's address is 5030 North 1 Street, Alviso, CA 95002, Census Tract 6085504602 with a population of approximately 2,355. OEHHA's methodology for geographic scale is at the census tract level and used by the CalEPA. The Alviso community triggers the threshold for SB1000, SB535 Disadvantaged Communities, AB 1550 Low-Income, and AB 617 (Figure 3). However, this census tract has an overall Pollution Burden of 82% The demographics include Hispanic 58.9%, White 20.2%, African American 5.2%, Native American 1.5 %, Other 0.3%, and Asian American 13.8%. Approximately 73.8% of the residents in Alviso are between 10-64 years old. Later this year, an update to the U.S. EPA's (2015) *Guidance on Considering Environmental Justice During the Development of Regulatory Action* will be available.[17] Alviso has an 84.08% Pollution Burden (Figure 4).

The SJDC DEIR omitted an EJ analysis for Alviso, a vulnerable and low socio-economic status (ses) community per the Cal EPA and U.S. EPA. Therefore, the SJDC DEIR lacks substantial evidence that this project will not have significant effects on the health and environment of the Alviso community (census tract 6,085,504,602.00).[18] The SJDC Project is located within the same census tract as the Alviso community. Note: The SJDC DEIR in the text uses "census blocks", but Table 4.21-3, Table 4.21-4, and Table 4.21-5 uses "census tracts", please use consistent units. This letter provides U.S EPA EJSCREEN maps incorporating data layers from the U.S. EPA, CalEPA, OEHHA, CA ARB, and the BAAQMD (Figure 5, Figure 6, Figure 8, and Figure 7).

[17] EJ 2020 Action Agenda: EPA's Environmental Justice Strategy | US EPA 2020 EJSCREEN User Guide 2020 by U.S. EPA)[17]
[18] EJSCREEN (epa.gov)

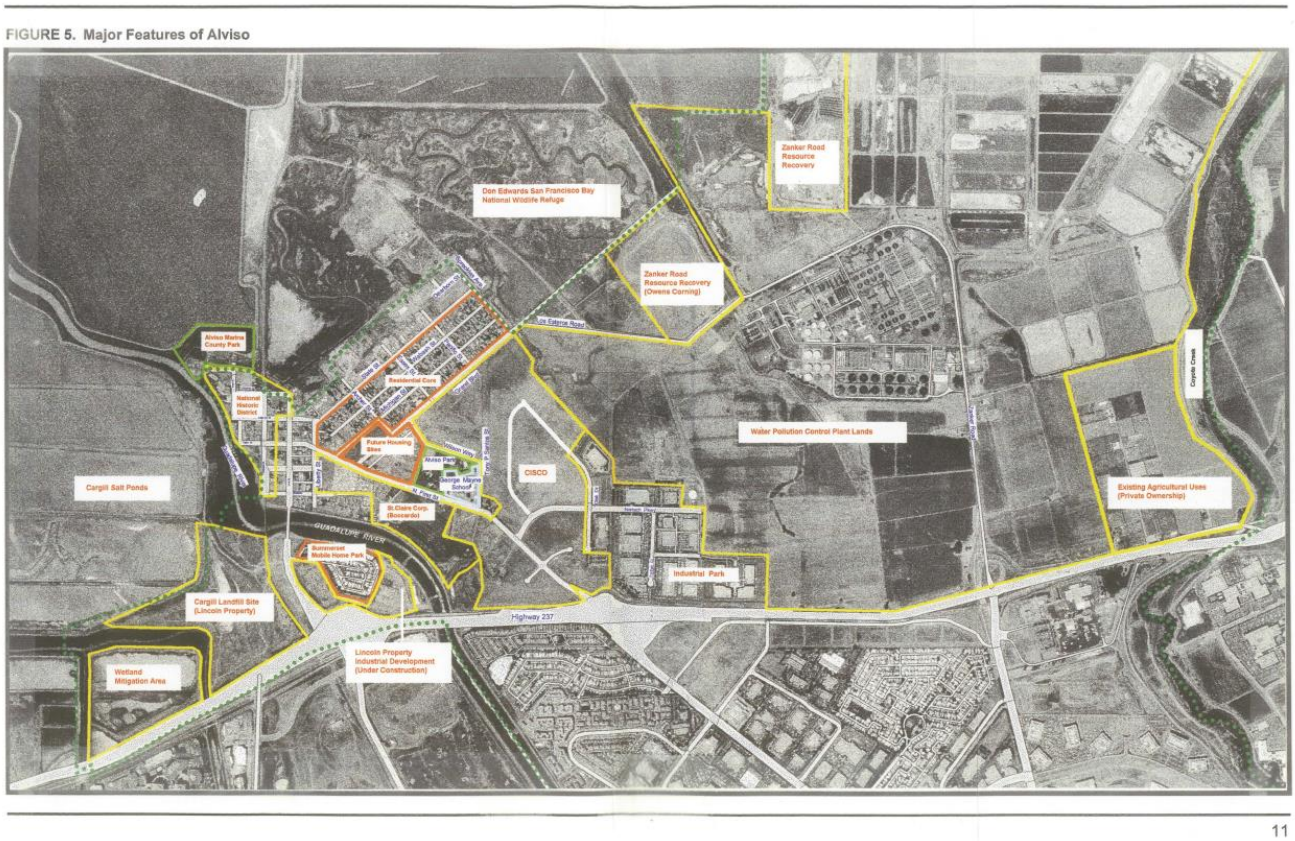


Figure 2: Major Features of Alviso Master Plan (City of San Jose, p. 11)[19]

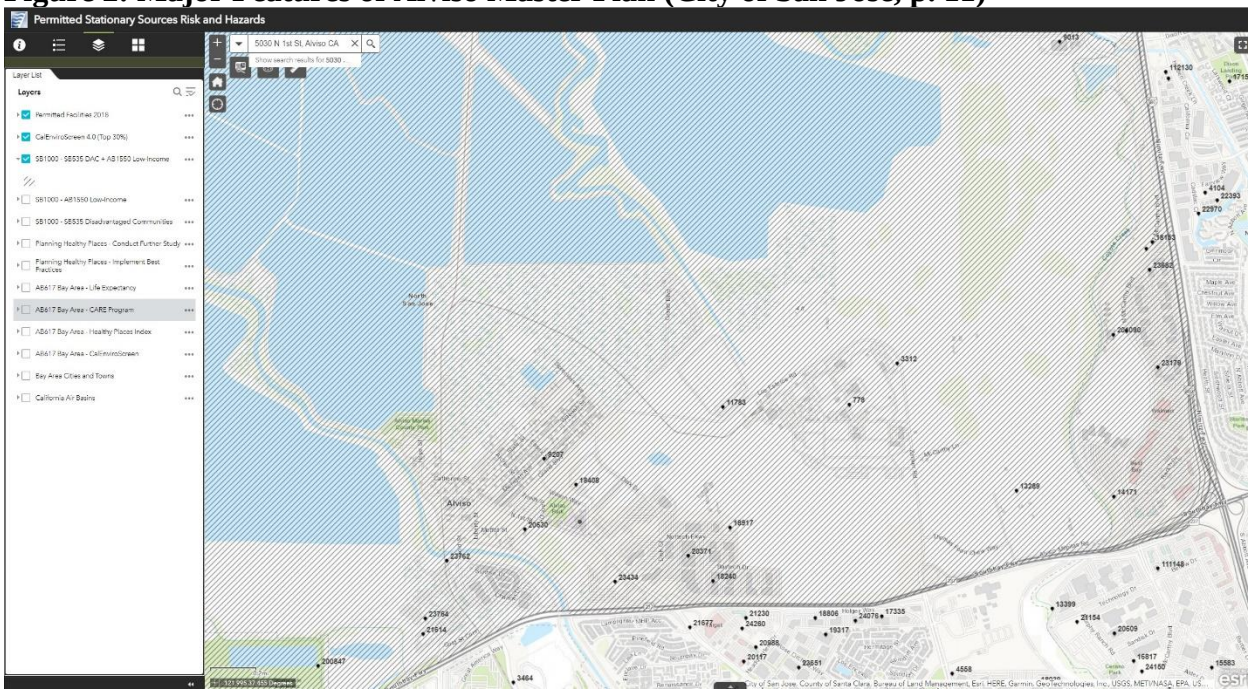


Figure 3: The Alviso community is identified per SB 1000+SB535+AB1550 (Source: BAAQMD, by Márquez, 2022).

[19] Specific Plans | City of San Jose (sanjoseca.gov)

Figure 4: Alviso has an 84.08% Pollution Burden (U.S. EPA EJSCREEN Map by Márquez, 2022).

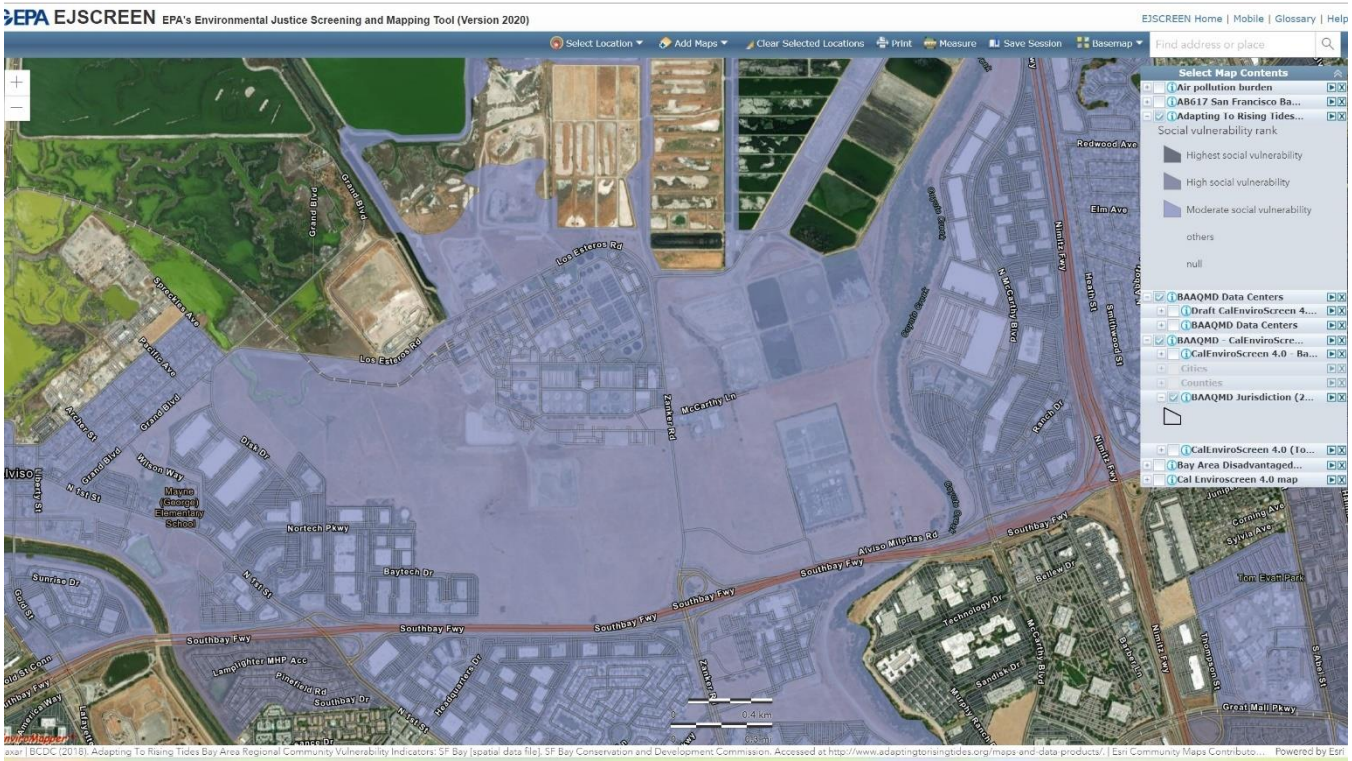


Figure 5: Alviso is identified as “Moderate Social Vulnerability” for climate change impacts (U.S. EPA EJSCREEN Map by Márquez, 2022) .

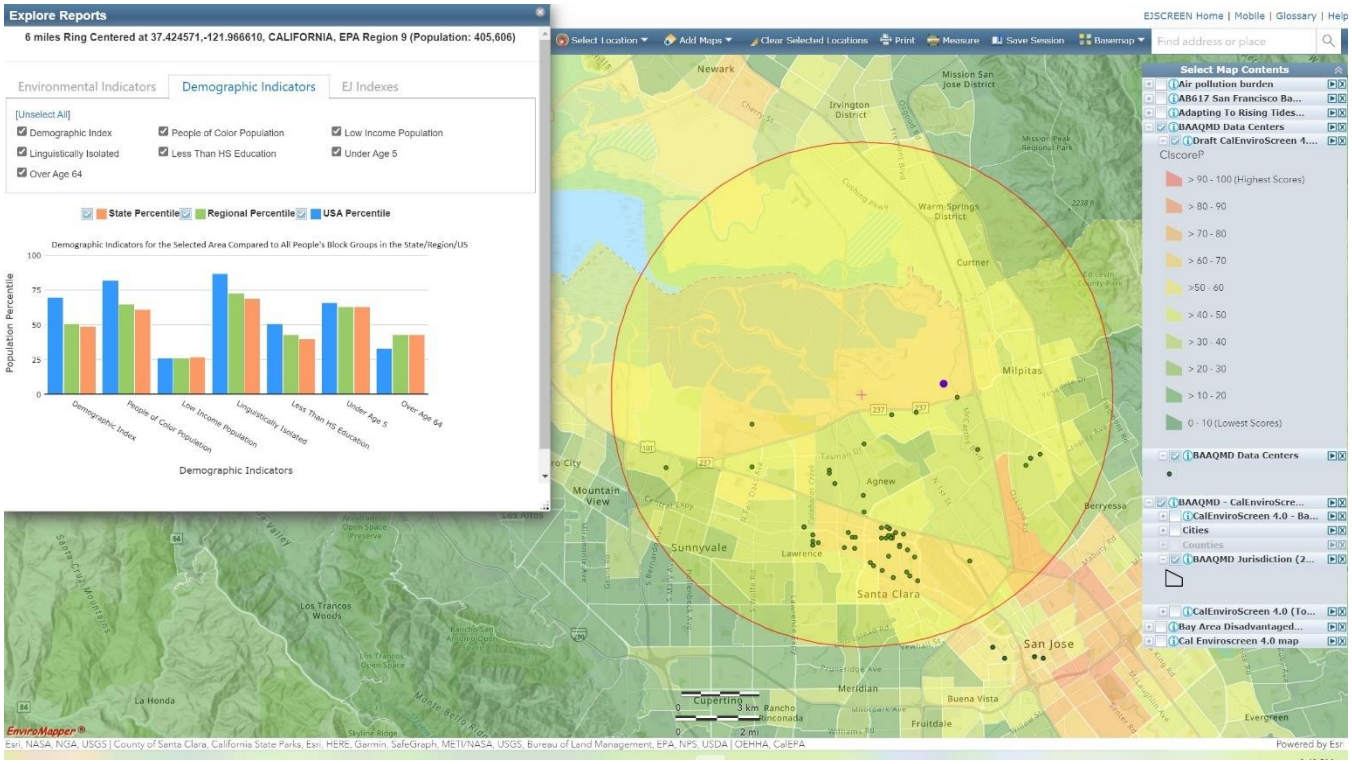


Figure 6: Alviso's demographic indicators with existing data centers permitted by BAAQMD (U.S. EPA EJSCREEN Map by Márquez, 2022).

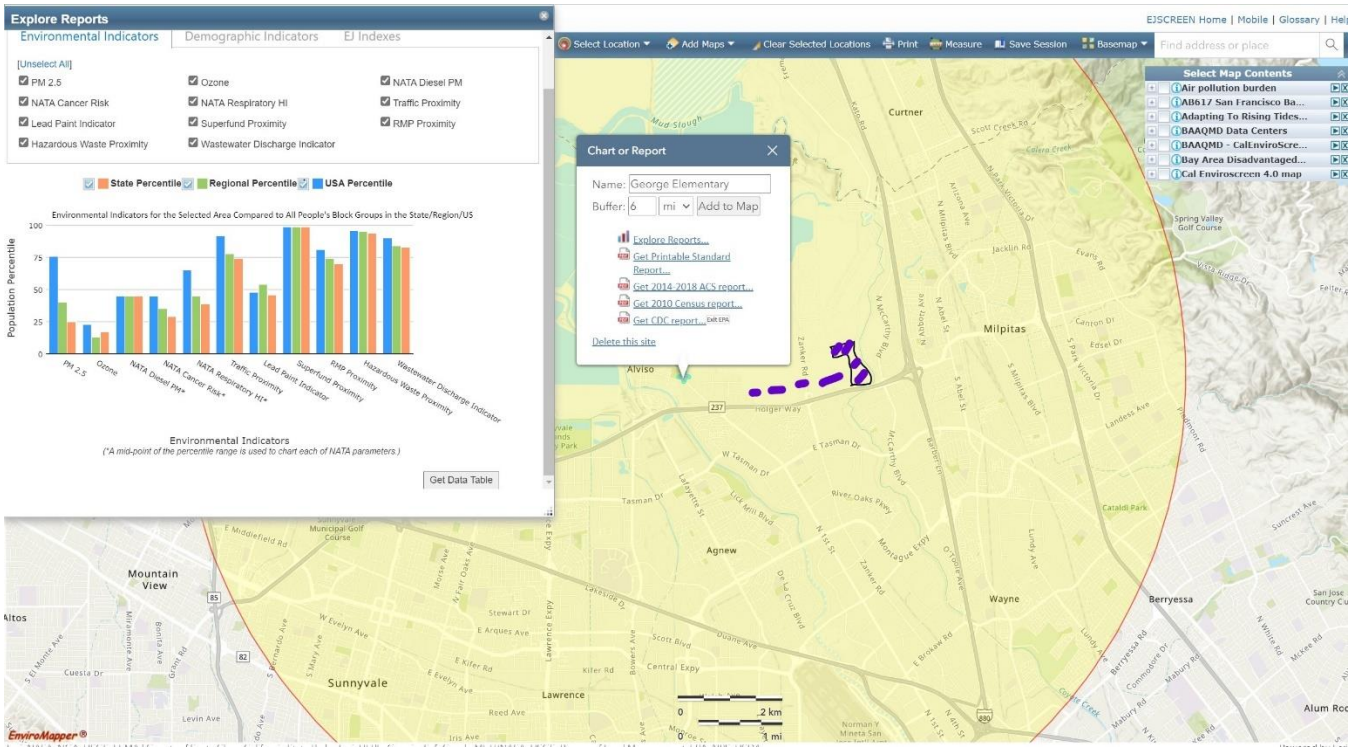


Figure 7: Alviso's Environmental Indicators with the proposed project (U.S. EPA EJSCREEN, Map by Márquez, 2022).

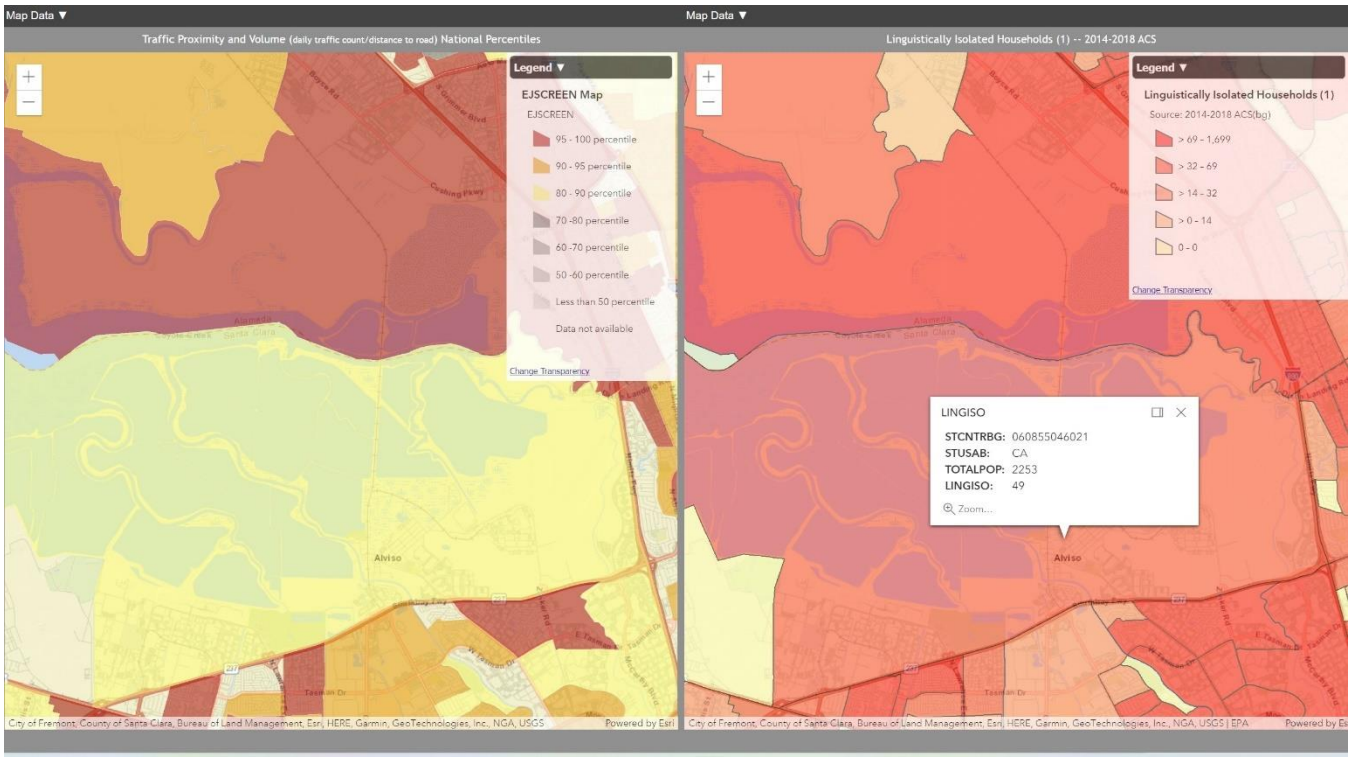


Figure 8: Alviso Map with Traffic volume and linguistically isolated data (U.S. EPA EJSCREEN Map by Márquez, 2022).

AIR QUALITY (SJDC DEIR, pp. 4.3-1 to 4.3-54)

The SJDC DEIR applies the BAAQMD thresholds of significance for the air quality analysis. As noted in the NOP comment letter (TN# 236959), these thresholds were adopted in 2010 which complied with the 2010 Clean Air Plan. The BAAQMD CEQA Air Quality Guidelines (May 2017) states on the cover:[20]

> "**Note: This May 2017 version of the Guidelines includes revisions made to the Air District's 2010 Guidelines to address the California Supreme Court's 2015 opinion in Cal. Bldg. Indus. Ass'n vs. Bay Area Air Quality Mgmt. Dist., 62 Cal.4th 369**. The May 2017 CEQA Guidelines update does not address outdated references, links, analytical methodologies or other technical information that may be in the Guidelines or Thresholds Justification Report. The Air District is currently working to update any outdated information in the Guidelines. Please see the CEQA webpage at http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa for status updates on the Air District's CEQA Guidelines or contact Jaclyn Winkel at jwinkel@baaqmd.gov for further information."

Moreover, the BAAQMD guidelines were never updated from URBEMIS to CalEEMod.[21] The BAAQMD adopted the 2017 *Clean Air Plan: Spare the Air, Cool the Climate* to comply with

[20] BAAQMD CEQA Guidelines - May 2017
[21] Download Model (aqmd.gov)

California's 2030 and 2050 GHG's reduction targets, and more protective public health strategies[22] Most importantly, the 2017 Clean Air Plan includes control measures that will reduce approximately 4.4 million metric tons of GHGs CO_2 equivalent basis per year by 2030; and 5.6 MMT based on 20-year global warming potential factors. Since the 2010 adoption of BAAQMD's CEQA Air Quality Thresholds and Guidelines, significant updates to the CEQA Statutes and Guidelines (Public Resources Code 21000-21189) and the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387), case law, regulatory standards. and scientific methodologies for avoiding and/or mitigation measures (Appendix A Air Quality). Although the BAAQMD provides CEQA comment letters[23]for air quality and greenhouse gas emissions analysis, lead agencies cannot legally implement them unless the thresholds and mitigation measures are included in the adopted BAAQMD CEQA thresholds.[24] A random sample of approved CEQA documents from the Fall of 2019 to most recent, revealed that many lead agencies disregarded the BAAQMD's CEQA comments if they are not in the Air District CEQA Guidelines, for example AB 617 and SB 1000[25]. Unlike *§15064.4 Determining the Significance of Impacts from Greenhouse Gas Emissions[26] and §15126.4(c) Consideration and Discussion of Mitigation Measures Related to Greenhouse Gas Emissions[27]*, air quality does not have a separate CEQA discussion and mitigation. However, CEQA Guidelines Appendix G Environmental Checklist Form Air Quality states: *II. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations.* Pursuant to California Health and Safety Code Section 40200, "Bay Area Air Quality Management District" means the air quality agency for the San Francisco bay area. For example, the City of San Jose adopted the 2030 Greenhouse Gas Strategy to comply with the CEQA GHGs section, but legally relies on the BAAQMD's CEQA Air Quality Thresholds and Guidelines. To illustrate the importance: Per the City of San Jose's Ordinance Chapter 11.105 Transportation Demand Management, employers with 100 or more employees at a work site must comply with the BAAQMD's Rule 1, Regulation 13.[28] Additionally, the City of San Jose's 2040 General Plan specifically includes air quality goals[29] and requires new development to comply

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[22] Current Plans (baaqmd.gov)

[23] Comment Letters (baaqmd.gov); Reg 2 Permits (baaqmd.gov) , Public Hearings (baaqmd.gov), and Rules Under Development (baaqmd.gov) ; Furthermore since 2010, the BAAQMD has adopted important regulations and amendments such as, Regulation 2, Rule 2-301, Regulation 11, Rule 18, Regulation 2, Rule 5: New Source Review of Toxic Air Contaminants (Amended 2021), Final Air District Health Risk Assessment Guidelines (Updated 12/15/2021), etc.

[24] §15064.7 Thresholds of Significance and §15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

[25] General Plan Guidelines and Technical Advisories - Office of Planning and Research

[26] §15064.4 "(c) A lead agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. The lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change."

[27] Local Government Actions for Climate Change | California Air Resources Board Portal map shows local government climate action planning

[28] Chapter 11.105 - TRANSPORTATION DEMAND MANAGEMENT | Code of Ordinances | San Jose, CA | Municode Library

[29] Not included in the SJDC DEIR (2021): MS-11.3 Review projects generating significant heavy duty truck traffic to designate truck routes that minimize exposure of sensitive receptors to TACs and particulate matter. MS-11.4 Encourage the installation of appropriate air filtration at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources. MS-11.5 Encourage the use of pollution absorbing trees and vegetation in buffer areas between substantial sources of TACs and sensitive land uses. Goal MS-13 – Construction Air Emissions (Chapter 3 Environmental Leadership); MS-10.6, MS-10.7, MS-10, MS-11.3, MS-1.1, MS-2.2, MS-2.3, MS-2.8, MS-2.11, MS-3.1, MS-3.3, MS-14.4, LU-

with the BAAQMD CEQA Guidelines. The City of San Jose also has "non" CEQA disclosure[30] in DEIRs for new residential development located near TACs sources. The community of Alviso submitted an Environmental Appeal (CEQA comment letter) and a Permit Appeal to the City of San Jose for a Mitigated Negative Declaration (MND) of a proposed corporation yard/warehouse[31] with the California Attorney General's Bureau of Environmental Justice (Bureau) "*Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act".*[32] The City of San Jose's response was that the City cannot legally require the CA Attorney's Warehouse Projects mitigation measures because it was not included in the City of San Jose's adopted BAAQMD's Air Quality CEQA Guidelines (2017). Many communities in the Bay Area with environmental justice impacts do not have the financial resources to hire environmental attorneys to review CEQA documents.

It is commendable that the BAAQMD is in the process of preparing CEQA GHG Thresholds and Guidelines; however, except for the stationary source thresholds, their effort is redundant of existing government resources.[33] Vulnerable communities are in desperate need of updated air quality thresholds to address local cumulative impacts. Although AB 617[34] is in its fourth year, this law will not reach its fullest effectiveness of protecting health and reducing air toxics exposure until the air quality thresholds are updated and guidelines in the Bay Area are available[35] [36] Simultaneous co-benefits can occur upon updating the air quality thresholds such as, reducing criteria pollutants (reduces ozone precursors- (ROG and NOx) (Clean Air Plan 2017, p.2/4); therefore, potentially reducing GHG emissions as well.

1.1, LU-1.2, LU-1.3, LU-1.7, LU-3.5, LU-5.1, LU-9.1, LU-9.3, LU-10.3, LU-10.4, TR-1.1, TR-1.2, TR-1.3, TR-4.1, TR-4.3, and TR-9.1. EC-6.4, EC-6.6, EC-6.8, EC-6.9, EC-7.2, EC-7.4, EC-7.5, EC-7.8, and EC-7.10.

[30] To address Cal. Building Industry Association vs. Bay Area Air Quality Mgmt. Dist., 62 Cal.4th 369

[31] 1436 State Street Project Initial Study/Mitigated Negative Declaration **FILE NOS: H21-049 (FORMERLY SP18-058) AND ER21-110)**

[32] Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act

[33] General Plan Guidelines - Chapter 8 (ca.gov) Climate Change; 2017 Scoping Plan Documents | California Air Resources Board; 2017 Scoping Plan, Appendix B Local Action ; 2030 Scoping Plan, Appendix C Vibrant Communities and Strategies to Reduce VMT (ca.gov); SB 743 §15064.3 Determining the Significance of Transportation Impacts

[34] Assembly Bill (AB 617) requires air districts and communities with disproportionate impacts from air pollution to adopt and implement a community emissions reduction plan. The cumulative exposure to air pollutants has a significant impact to human health, especially to sensitive receptors. The District adopted the West Oakland Community Action Plan (2019) which analyzed the sources, PM2.5, diesel PM, and toxic air contaminants (TACs) emissions to develop an integrated multi-pollutant plan to eliminate air pollution disparities and protect public health. Prior to AB 617, the District's air toxics program was established to address the adverse health effects from exposure to TACs. The Community Air Risk Evaluation (CARE) Program identified areas in the Bay Area with high levels of air pollution, to reduce local health impacts, and develop strategies to protect health. Regulation 11, Rule 18: Reduction from Air Toxic Emissions at Existing Facilities adopted in 2017, requires screening analyses for facilities, HRA's, and require Best Available Retrofit Control Technology for significant sources of TAC pollutants.

[35] The scientific evidence of air pollutant levels below government thresholds impacting public health is well documented across various disciplines (public health, environmental health sciences, environmental engineering, toxicology, epidemiologist, etc.); which the District held a symposia on October 28, 2019. Dr. Christopher Frey's presentation made the compelling argument that the current standards for $PM_{2.5}$ annual and 24-hour standards are not adequate to protect public health. https://www.baaqmd.gov/news-and-events/conferences/pm-conference ; ac_particulate_matter_reduction_strategy_report.pdf (baaqmd.gov)

[36] 'The Jury's Out': Is California's Landmark Environmental Justice Law Helping Communities With the Dirtiest Air? | KQED ; Fighting for justice in California's polluted places - CalMatters ; Why isn't California's signature environmental justice law working? | Grist

The adoption of an updated air quality thresholds with the most current guidance, mitigations[37], and methodologies e.g., health, implementation of AB 617 strategies for communities not yet selected for funding (i.e., San Jose) are important for consistency, transparency, and environmental equity. Historically, the BAAQMD CEQA Air Quality Guidelines was the standard to emulate and provided an analytical tool for the public and not just accessible for paid consultants. The current BAAQMD's CEQA Guideline Update web page does not include any information about future updates to the air quality thresholds or guidelines.

Significance Criteria: The SJDC DEIR (p.4.3-22) discussion pertaining to sensitive receptors and health impacts from criteria pollutants is erroneous.[38] The Sacramento Metro Air District published the *Guidance to Address the Friant Ranch Ruling for CEQA*[39]which will assist the CEC Staff, The analysis is inadequate and does not comply with current case law. *§15064 (b)(1) "An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." §(2) Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant."*

Environmental Setting:
The SJDC DEIR omitted air quality data for the City of San Jose and Santa Clara County. Therefore, this CEQA comment letter establishes the air quality baseline conditions to provide decision-makers the "most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts" (§15125).

Per CEQA, the CEC Staff must also use the Envision San Jose 2040 General Plan Draft Program EIR Technical Appendix D Air Quality Existing Conditions Report.[40] Moreover in 2019, the BAAQMD published a fine particulate matter data analysis of the San Francisco Bay Area to comply with AB 617. The City of San Jose in 2016 had the "highest Bay Area annual average $PM_{2.5}$ concentration (9.2 $\mu g/m^3$)" (p.7) (Table 1) .[41]

[37] §15126.4 (A) There must be an essential nexus (i.e., connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and
(B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an *ad hoc* exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.

[38] 2108 *Sierra Club v. County of Fresno*, 6 Cal.5th 502 (Friant Ranch)

[39] CEQA Guidance & Tools (airquality.org)

[40] https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/completed-eirs/envision-san-jose-2040-general-plan-4-year/envision-san-jos-2040-general-plan

[41] *Fine Particulate Matter Data Analysis and Regional Modeling in the San Francisco Bay Area to Support AB617* (BAAQMD, 2019). baaqmd_2016_pm_modeling_report-pdf.pdf *Air Toxics Data Analysis and Regional Modeling in the San Francisco Bay Area to Support AB617* (BAAQMD, 2019). baaqmd_2016_toxics_modeling_report-pdf.pdf

Table 1: “PM stations in the 1-km modeling domain with their annual and quarterly average $PM_{2.5}$ values” (BAAQMD, 2016, p,7).

Table 2.1: PM stations in the 1-km modeling domain with their annual and quarterly average $PM_{2.5}$ values.

Station Name	$PM_{2.5}$ Averages (µg/m^3) for 2016				
Stations in the Bay Area	**ANNUAL**	**QTR_01**	**QTR_02**	**QTR_03**	**QTR_04**
Berkeley Aquatic Park	7.2	--[a]	--[a]	7.7	6.6
Concord	6.2	6.0	4.3	4.6	9.4
Gilroy	5.7	5.9	6.1	6.8	4.1
Laney College	8.8	8.9	9.4	8.7	8.1
Livermore	7.6	7.4	7.2	8.4	7.3
Napa	8.9	6.5	7.2	10.4	11.1
Oakland	6.2	5.2	5.9	6.4	7.2
Oakland West	8.7	9.6	8.9	7.6	8.6
Redwood City	8.7	6.8	10.3	10.6	6.7
San Francisco	7.8	8.5	8.1	5.9	8.4
San Jose - Jackson	8.3	8.0	8.0	8.8	8.4
San Jose - Knox Avenue	9.2	9.0	8.6	9.9	9.2
San Pablo	8.1	7.6	8.9	7.8	8.2
San Rafael	6.6	7.0	6.1	5.9	7.1
Sebastopol	5.1	4.9	4.6	4.0	6.5
Vallejo	7.6	8.4	5.6	6.0	10.2
Stations outside the Bay Area					
Manteca	9.9	10.8	7.5	8.8	12.3
San Lorenzo Valley Middle School	5.3	5.4	5.2	4.7	5.8
Roseville - N Sunrise Ave	6.8	6.7	5.7	6.7	8.3
Sacramento Health Department - Stockton Blvd.	6.9	7.8	5.7	6.6	8.3
Sacramento - 1309 T Street	7.6	7.2	5.6	7.1	10.9
Sacramento - Bercut Drive	--[a]	--[a]	--[a]	--[a]	14.6
Sacramento - Del Paso Manor	8.7	8.6	6.1	7.2	13.2
Santa Cruz	5.4	5.8	5.9	5.3	4.5
Stockton - Hazelton	11.8	13.9	8.2	10.0	15.2
Woodland - Gibson Road	6.3	5.2	5.4	8.1	6.9

[a]Data missing or invalidated.

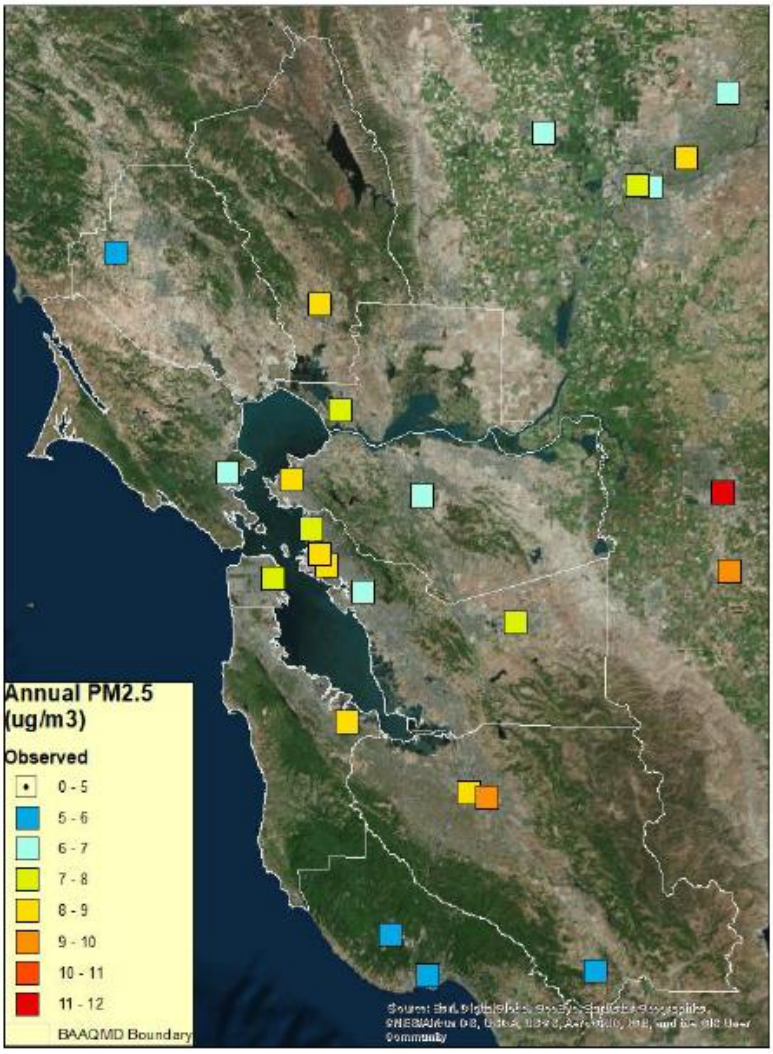

Figure 2.1: Spatial distribution of observed annual average $PM_{2.5}$ concentrations for 2016 within the 1-km modeling domain.

Figure 9: "Spatial distribution of observed annual average $PM_{2.5}$ concentrations for 2016 within the 1-km modeling domain" (BAAQMD, 2016, p. 8)

Table 2: "Summary of $PM_{2.5}$ anthropogenic emissions (tpd) by geographic area and source sector" 2016 (BAAQMD, 2016, p. 13)

Table 3.2: Summary of 2016 $PM_{2.5}$ anthropogenic emissions (tpd) by geographic area and source sector.

Geographic Area	Area	Nonroad	Onroad	Point	Total
Alameda	3.0	0.5	1.4	1.3	6.2
Contra Costa	3.1	0.5	0.8	4.2	8.7
Marin	0.8	0.2	0.2	0.1	1.3
Napa	0.8	0.2	0.1	0.1	1.2
San Francisco	1.2	1.0	0.3	0.1	2.7
San Mateo	1.4	0.5	0.5	0.4	2.7
Santa Clara	3.9	0.6	1.3	0.7	6.5
Solano[a]	1.3	0.1	0.3	0.5	2.1
Sonoma[a]	1.4	0.3	0.3	0.2	2.2
BAAQMD Subtotal	*17.0*	*3.9*	*5.2*	*7.5*	*33.7*
Non-BAAQMD Counties	23.7	2.2	2.9	2.4	31.2
Domain Total	**40.7**	**6.1**	**8.0**	**9.9**	**64.9**

[a]Emissions totals for Solano and Sonoma counties only include the portion of those counties in BAAQMD's jurisdiction.

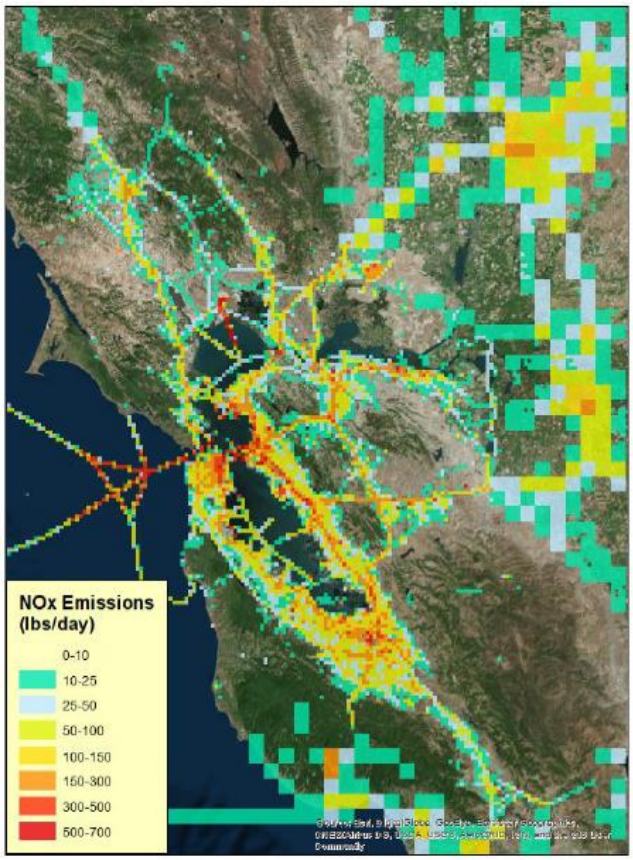

Figure B3: Spatial distribution of annual average NO_x emissions for the 1-km modeling domain.

Figure 10: "Spatial distinction of annual average NOx emissions for the 1-km modeling domain.

Sensitive Receptors (SJDC DEIR, pp.4.3-12 to 4.3-14 did not include the Alviso community)

The applicant used only the project footprint to measure the outside 1,000-foot zone of influence for environmental impact analysis. Per §15126 "all phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation". The impacts from offsite infrastructure improvements areas to sensitive receptors must also be included in the air quality analysis. As documented in the CEC Docket, Alviso residents expressed numerous concerns about the impacts to the George Mayne Elementary School and residential area of Alviso (Figure 11). The applicant must include the Alviso community's sensitive receptors which are located within the Alviso Master Plan. To fully disclose the cumulative impacts within Alviso, the CEC Staff must provide a map with different sizes of radius, for example at 500 feet, 1,000 feet, 1,500 feet, 2,000 feet, etc.

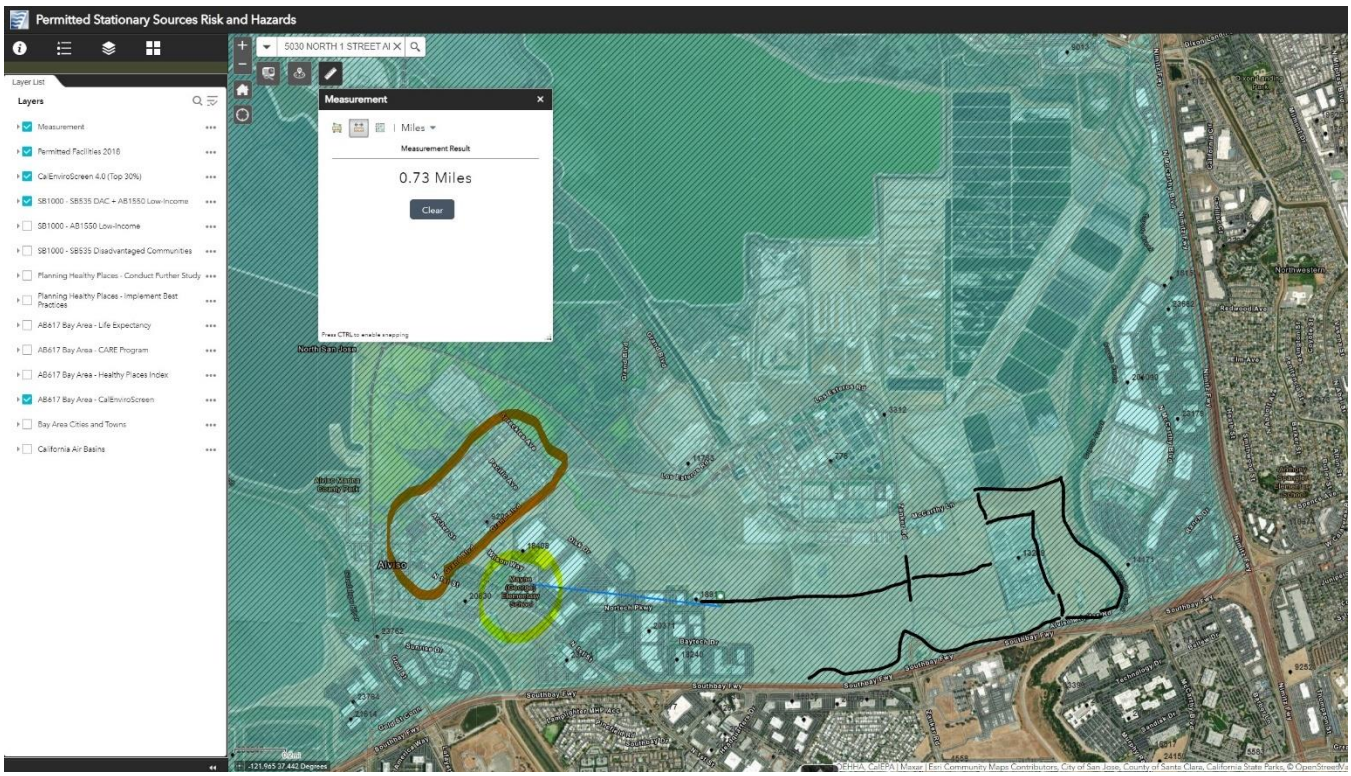

Figure 11: The Microsoft SJDC Project includes the footprint of 64.5 acres and areas of infrastructure improvements. (Source: BAAQMD, Map created by Márquez, 2022)

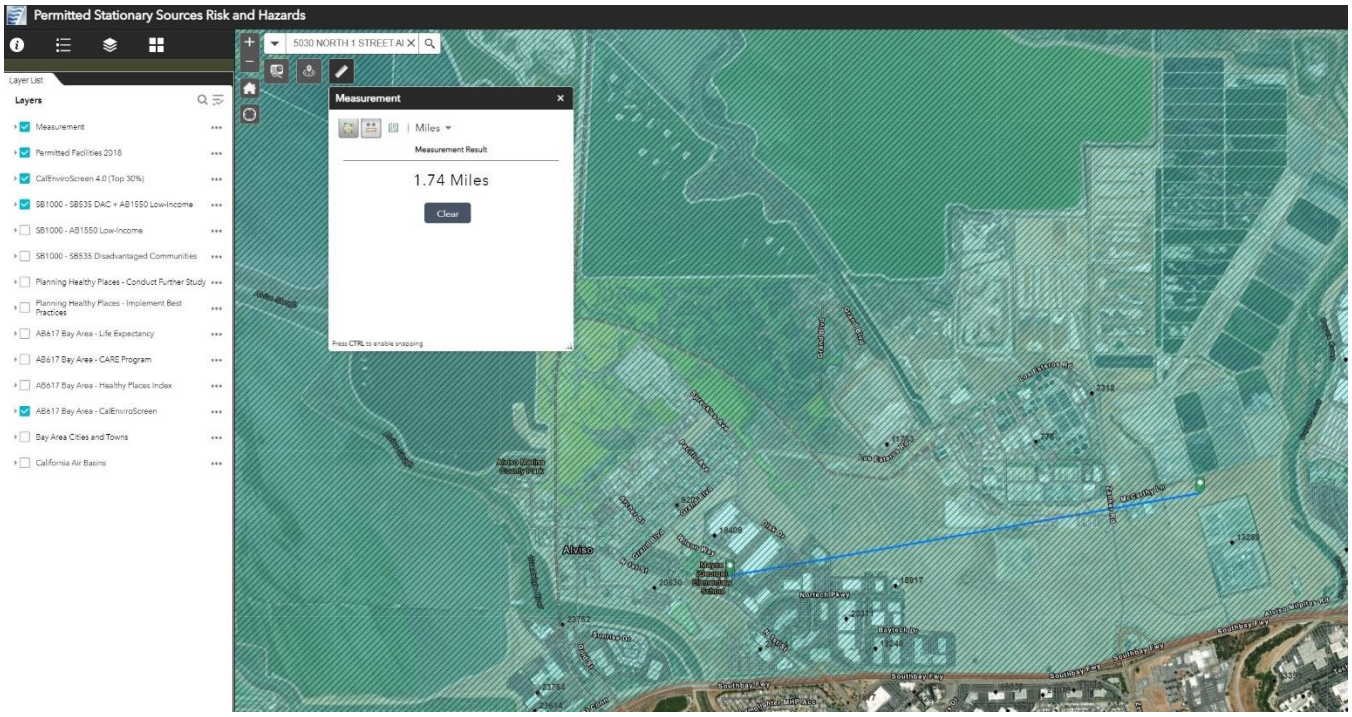

Figure 12: The primary project entrance for the Microsoft SJDC Project to George Mayne Elementary School (Source BAAQMD, Map created by Márquez, 2022).

a. Applicable Clean Air Plan: The DEIR states that the Project would be less than significant impact per the BAAQMD's Bay Area 2017 Clean Air Plan. The DEIR analysis does not provide substantial evidence that it would not be significant. The Clean Air Plan's 85 control measures with specific actions to reduce air and climate pollutants is comprehensive. Complying with the BAAQMD's permitting process is insufficient. The Applicant did not provide evidence for an exception from the City of San Jose's Greenhouse Gas Strategy; therefore, the impact is significant.

b. Cumulatively considerable net increase of any criteria pollutant for construction and operation

The project will have 224 natural gas-fired engine-generators, two certified Tier 4 diesel engine generators, mobile sources, emissions associated with the buildings, a new substation on the project site; and to provide power to the Project, two new 115 kV underground 1,100-foot-long cables will connect from the new SJDC Substation to the existing Los Esteros Substation.
Missed Impacts: The analysis did not include an analysis of the criteria pollutants with the emissions associated with the Los Esteros Power Plant. The CalEEMod Version provided by the applicant (e.g., TN#239419) used the 2016.3.2 version instead of the CalEEMod Version 2020.4.0.[42] In addition, to address further air quality analytical inadequacies of the SJDC DEIR, comments from CARB are provided (Appendix B).[43]

[42] Download Model (aqmd.gov)
[43] (#TN235271) Sequoia Data Center

In addition to the impacts from criteria pollutants, energy and greenhouse gas impacts are also significant per the City of San Jose's Natural Gas Infrastructure Prohibition Ordinance[44] which was approved to comply with the City of San Jose's Climate Action Plan (Greenhouse Gas Strategy) and with the State's Scoping Plan. The Project applicant submitted an exception; however, the DEIR has no evidence of approval by the City of San Jose. The CEC staff cannot assume that the City of San Jose will grant approval. Therefore, the impacts for criteria air pollutants, energy, and greenhouse gas are significant per the City of San Jose Climate Action Plan and Scoping Plan.[45]

c. Impacts to Sensitive Receptors (SJDC DEIR, pp. 4.3-31 to 4.3-48)

Air Quality Impact Analysis (AQIA) for Criteria Pollutants and Health Risk Assessment HRA for Toxic Air Contaminants (Construction, Operation, and Cumulative)

As a concerned citizen, I disagree that the air quality and health impacts are less than significant for the following facts:

- The Sacramento Metro Air District published the *Guidance to Address the Friant Ranch Ruling for CEQA*[46]. The CEC Staff analysis is inadequate and does not comply with current case law.
- The CEC staff did not include the community of Alviso in the SJDC DEIR analyses. The SJDC does not provide an adequate environmental and health baseline conditions for the community of Alviso. In addition, the link between air pollution and COVID deaths and other existing health data must be included[47]. Please contact the County of Santa Clara Health Department for the most updated health/demographic information for COVID patients by zip codes or census tracts.

- The CEC staff did not disclose that City of San Jose has AB 617 protected communities; the Alviso community is located within the same census tract as the proposed Microsoft Project; and vulnerable communities are legally protected per SB 1000, SB535, and AB1550.
- *§15064 (b)(1) "An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area." §(2) Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant."* See above comments in Environmental Justice for evidence.
- The CEC staff did not include an analysis of impacts to sensitive receptors within 1,000 feet of construction activity, the truck routs, and location of equipment for staging areas for the offsite infrastructure improvement areas.

  "Modeling Assumptions. The applicant grouped the emission sources for the construction site into two categories: exhaust emissions and dust emissions. The applicant modeled the

[44] SAN JOSE REACH CODE | City of San Jose (sanjoseca.gov)
[45] 2017 Scoping Plan Documents | California Air Resources Board
[46] CEQA Guidance & Tools (airquality.org)
[47] Fine particulate matter and COVID-19 mortality in the United States (harvard.edu) Wu, X., Nethery, R. C., Sabath, M. B., Braun, D. and Dominici, F., 2020. Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis. *Science advances,* 6(45), p.eabd4049.

combustion equipment exhaust emissions as 437-point sources with horizontal releases placed at regular intervals around the site. The applicant modeled the construction fugitive dust emissions a single area source covering the site with an effective release height at ground level (Jacobs 2021aa)." (TN# 240407). (SJDC DEIR, p. 4.3-32)

  - The analysis of the effects of construction at the "offsite infrastructure alignment areas were not completed by the applicant because *"Although some of the demolition, excavation, and construction activities would occur offsite in proximity to the project, all emissions were modeled as being released from the project site due to the temporary nature of the offsite emissions (Jacobs 2021o, pg. 3.3-29)."*(SJDC DEIR, p. 4.3-38)

- The construction analysis and mitigations measures are required for the entire Project, including all offsite infrastructure improvements. Moreover, the project must include an analysis as shown in the yellow highlighted areas, as well (Figure 14). CEQA requires to analyze environmental effects of the project: short-term, long-term, direct, in-direct, cumulative, significant irreversible, and/ or evaluate exacerbating hazards by locating the development within a hazardous area §15126.2(a).
- The modeling assumptions for construction workers and the location of sensitive receptors are erroneous. The impact analysis must also include the community of Alviso and George Mayne Elementary School. The analysis did not disclose and analyze the truck routes for construction and project operations, and of the tanker trucks when refueling the backup generators at the SJDC (Figure 13).

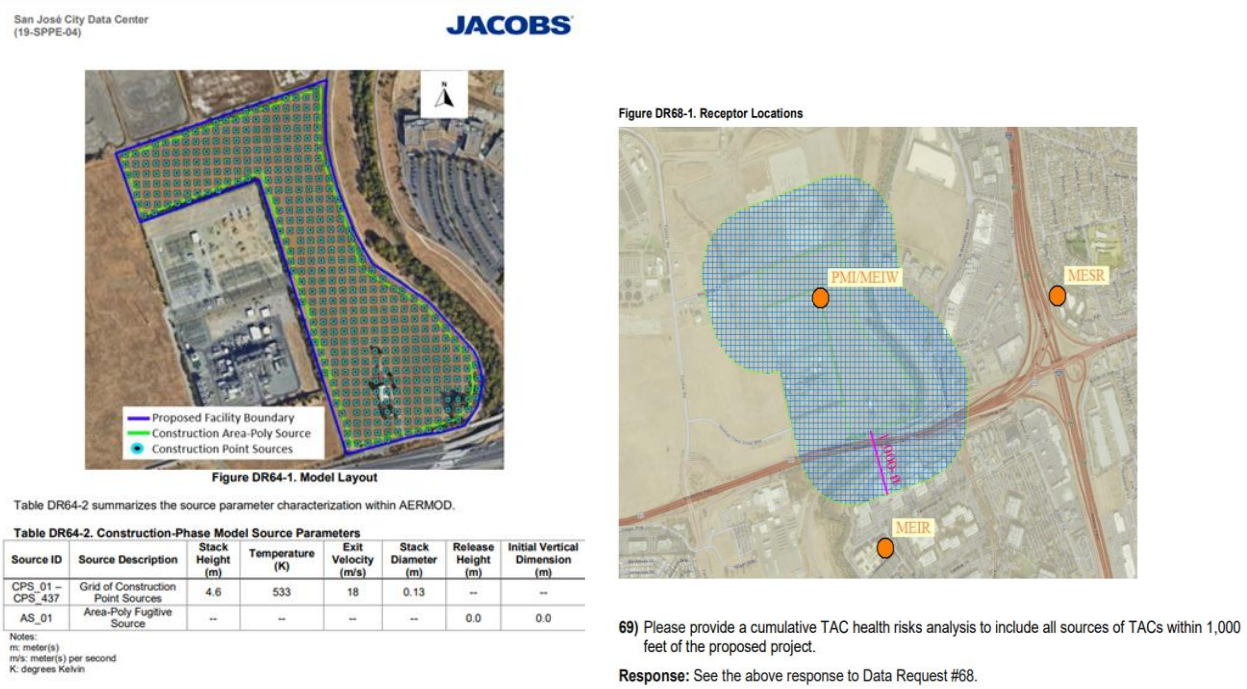

Figure 13: The applicant's modeling provided by Jacobs (TN# 240407), p.4 and (TN#240082), p.5 (2021) .

- The HRA does not comply with the most current Air District Risk Assessment Guidelines.[48]
- The CEC staff did not use the BAAQMD Air Quality Data **(**TN#237463, submitted on 4/15/2021) for the PMI, MESR, MEIW, MEIR, and the mobile health risk for 2014 (Table 3).
- To provide power to the Project, it will have two new 115 kV underground 1,100-foot-long cables that will connect from the new SJDC Substation to the existing Los Esteros Power Plant Facility, the HRA must analyze the health impacts of existing conditions plus the proposed Project (Figure 15).
- Please provide the total number of existing Data Centers within a six-mile radius of the community of Alviso and within the city of San Jose. How many data centers is the CEC reviewing and approved within the last two years? According to online research: California has a total of 136 data centers. A total of 55 data centers are located within San Jose/Santa Clara County.
- The HRA did not include all stationary and mobile sources within the Alviso census tract which the Project is within a vulnerable community per the federal, state, and regional agencies.
- "CUMULATIVE IMPACTS

  A Lead Agency's analysis shall determine whether TAC and/or PM2.5 emissions generated as part of a proposed project would expose off-site receptors to risk levels that exceed BAAQMD's applicable Thresholds of Significance for determining cumulative impacts.

  A project would have a cumulative significant impact if the aggregate total of all past, present, and foreseeable future sources within a 1,000-foot radius (or beyond where appropriate) from the fence line of a source, or from the location of a receptor, plus the contribution from the project, exceeds the following:

  • An excess cancer risk levels of more than 100 in one million or a chronic hazard index greater than 10 for TACs; or

  • 0.8 µg/m3 annual average PM2.5. (BAAQMD CEQA Guidelines, 2017, p. 5-16)

Consequently, air quality impacts to sensitive receptors are significant.

[48] https://www.baaqmd.gov/rules-and-compliance/rules/reg-2-permits?rule_version=2021%20Amendments

Table 3: BAAQMD submission for Mobile Source Health Risk -YR2014 and Stationary Sources (TN#237463).

THRESHOLDS OF SIGNIFICANCE BASED ON CEQA GUIDANCE:

Local community risk and hazard impacts are associated with Toxic Air Contaminants (TACs) and fine particulate matter with an aerodynamic resistance diameter of 2.5 micrometers or less ($PM_{2.5}$) because emissions of these pollutants can have significant health impacts at the local level. If emissions of TACs or $PM_{2.5}$ exceed any of the Thresholds of Significance, a project would result in a significant impact.

	SIGNIFICANCE THRESHOLD (CUMULATIVE)
CANCER	100 in a million
AMBIENT PM2.5	0.8 ug/m^3

RECEPTOR ID: PMI		37.4230326377571, 121.928701731414
	Type	Risk
Cancer	Highway	46.597
	Major Street	1.529
	Rail	0.648
PM2.5	Highway	0.909
	Major Street	0.037
	Rail	0.001

RECEPTOR ID: MESR		37.4225072385361, 121.90639731508
	Type	Risk
Cancer	Highway	15.808
	Major Street	1.648
	Rail	0.493
PM2.5	Highway	0.333
	Major Street	0.039
	Rail	0.001

RECEPTOR ID: MEIW		37.4230326377571, 121.928701731414
	Type	Risk
Cancer	Highway	46.597
	Major Street	1.529
	Rail	0.648
PM2.5	Highway	0.909
	Major Street	0.037
	Rail	0.001

RECEPTOR ID: MEIR		37.4185964451612, 121.927529766093
	Type	**Risk**
Cancer	Highway	15.178
	Major Street	2.193
	Rail	0.559
PM2.5	Highway	0.311
	Major Street	0.053
	Rail	0.001

Permitted Facilities

FID	OBJECTID	FACID	Name	Address	City	St	Zip	County	Cancer (per million)	Hazard	PM_2.5 (ug/m3)	Type	Latitude	Longitude	x	y
1511	1,511	13289	Los Esteros Critical Energy Facility	800 Thomas Foon Chew Way	San Jose	CA	95134	Santa Clara	63.63	0.4	122.75	Turbine (5), Fire Pump (1), Boiler (4), Cooling Tower (1)	37.426	-121.933	-1.4E+07	4498686
1538	1,538	13399	KLA Tencor	Technology Drive	Milpitas	CA	95035	Santa Clara	84.53	0.16	0.35	Generator (6), Solvent Cleaning (4), Boiler (3)	37.419	-121.93	-1.4E+07	4497664
1936	1,936	14171	Pacific Gas and Electric	66 Ranch Drive	Milpitas	CA	95035	Santa Clara			0.0029	Natural Gas Generator (2)	37.426	-121.925	-1.4E+07	4498636
5020	5,020	21154	Fairfield Development, LP	501 Murphy Ranch Rd	Milpitas	CA	95035	Santa Clara	0.32	0	0	Generators	37.418	-121.928	-1.4E+07	4497552
7955	7,955	111148	McCarthy Ranch Chevron & Carwash	367 Cypress Dr	Milpitas	CA	95035	Santa Clara	0.03	0	0	Gas Dispensing Facility	37.421	-121.922	-1.4E+07	4498016

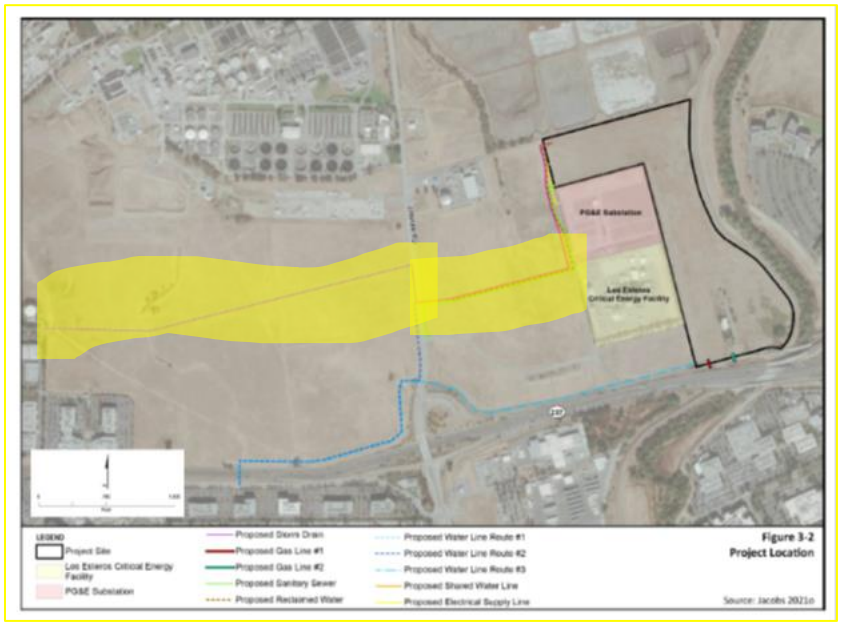

Figure 14: The yellow highlighted area was not included in the air impact analysis by the CEC Staff.

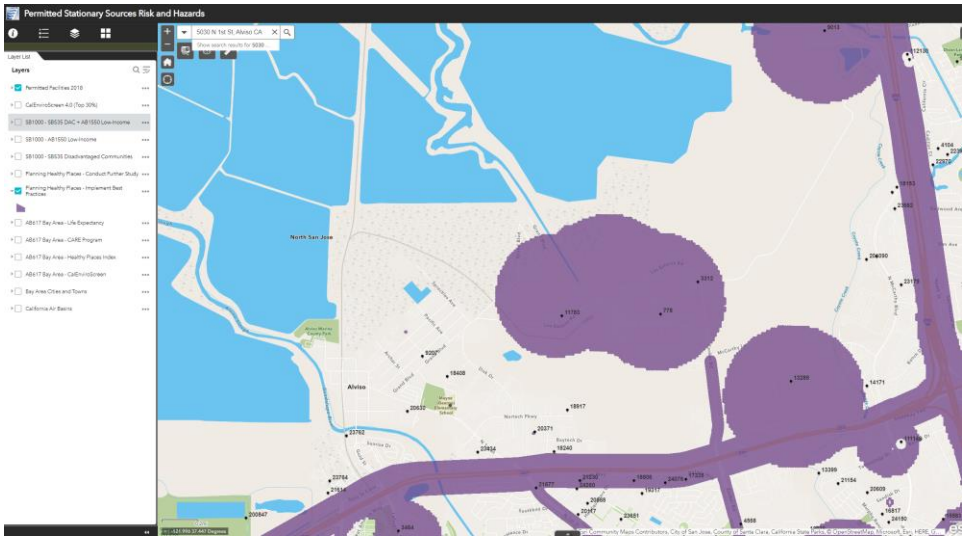

Figure 15: Areas within Alviso need to implement Best Practices per BAAQMD (Map by Marquez, 2022).

BIOLOGICAL RESOURCES (pp. 4.4-1 to 4.4-37) (§15380, CA Migratory Bird Protection Act, The Bald and Golden Eagle Protection Act, CDFW code 1601-1603, 3503, 3503.5, 3513, 3800)
The Microsoft SJ Data Center offsite infrastructure alignment areas will run through the San Jose-Santa Clara Regional Wastewater Facility Bufferlands Management Area (Figure 16)[49] which provides habitat to numerous legally protected flora and fauna (Figure 16).[50] As noted in our NOP comment letter, Alviso is located adjacent to the San Francisco Bay Don Edwards Wildlife Refuge, a biological hotspot, and one of the few remaining locations for burrowing owls; and golden eagles recorded in the valley for the first time in 128 years. The DEIR failed to analyze and mitigate the impacts for the active golden eagle nest. The recommended buffer zones for nesting site of golden eagles in California, depending on human activities is from one mile to two miles (Appendix C) , U.S. Fish and Wildlife Service, 2020).[51] The construction phase of the proposed storm drain and proposed water line will have short-term, long-term, and cumulative, irreversible significant impacts to nesting and/or wintering burrowing owls (Figure 17 and Figure 18), golden eagles (Figure [52], and the congdon tarplant. The mitigation measures must include the entire project area, and not only the project footprint. The DEIR must also disclose the "alterations to ecological systems" §15126.2. The San Jose-Santa Clara Regional Wastewater Facility Bufferlands Management area are public lands; it belongs to the residents of San Jose. The SJ Data Center offsite infrastructure alignment areas are included in the project, Microsoft does not own these public lands. The current and future generations of San Jose residents and the community of Alviso are entitled to full disclosure and information of the cumulative loss of species and habitat (Figure 20). The CEC Staff must mitigate all areas of the project; therefore, the impacts are significant. The CEC Staff

[49] San José – Santa Clara Regional Wastewater Facility Construction Gives Wide Berth to Golden Eagles | Environmental Services News | City of San Jose (sanjoseca.gov)
[50] U.S. Fish and Wildlife Service: Final Environmental Assessment for the Issuance of a Short-Term Eagle Take Permit for SJ Wastewater Facility Headworks Improvements (2021).
[51] USFWS_PacificSouthwestRegion_GoldenEagle_NestBuffers_Oct_2020.pdf
[52] U.S. Fish & Wildlife Service - Migratory Bird Program | Conserving America's Birds (fws.gov)

should contact the biologists at the City of San Jose and the Santa Clara Valley Habitat Agency for adequate mitigation measures.[53]

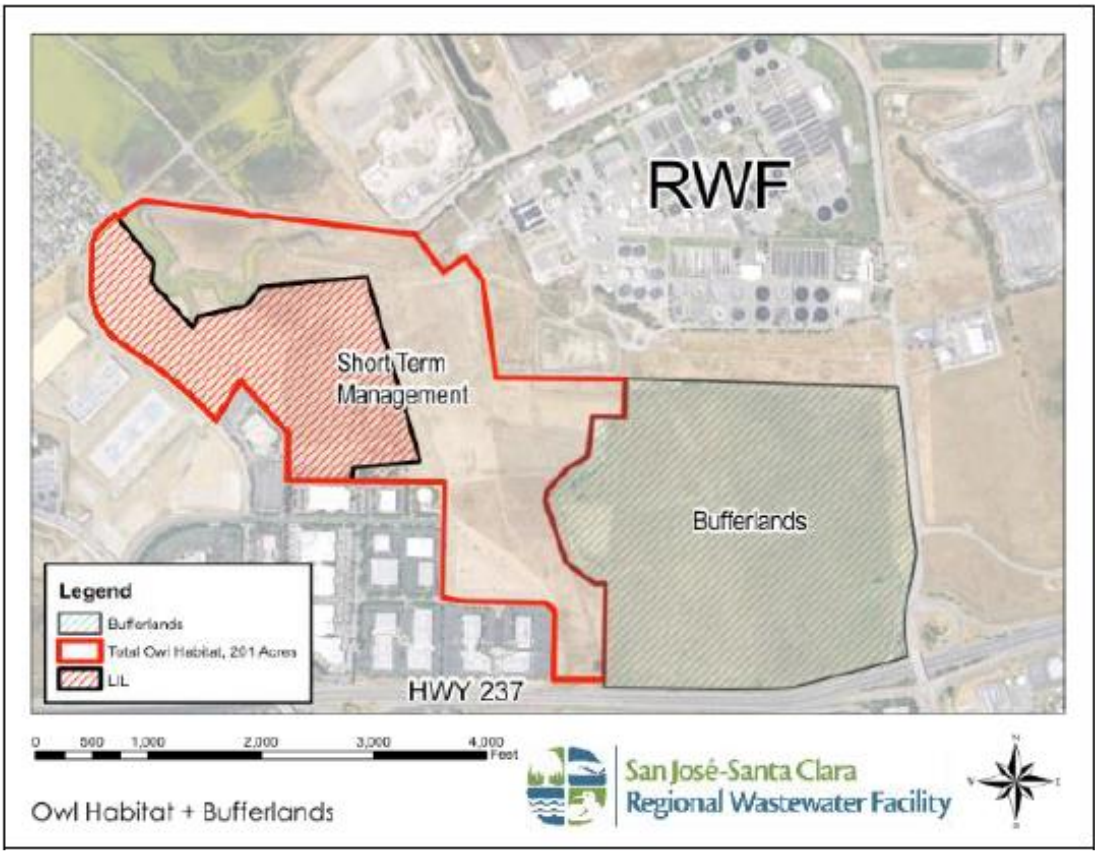

Figure 16: Burrowing Owl Management Area at the San Jose-Santa Clara Regional Facility (RWF).

[53] About Us | Santa Clara Valley Habitat Agency, CA (scv-habitatagency.org)

Figure 17: Observations during a survey for burrowing owls east of the burrowing owl management area within the Bufferlands/RWF facility on 9 November 2021 (Santa Clara Valley HCP).

Figure 18: Three single males inside a hacking enclosure during soft-release as part of the Juvenile Overwintering Project in February 2021 (Santa Clara Valley HCP).

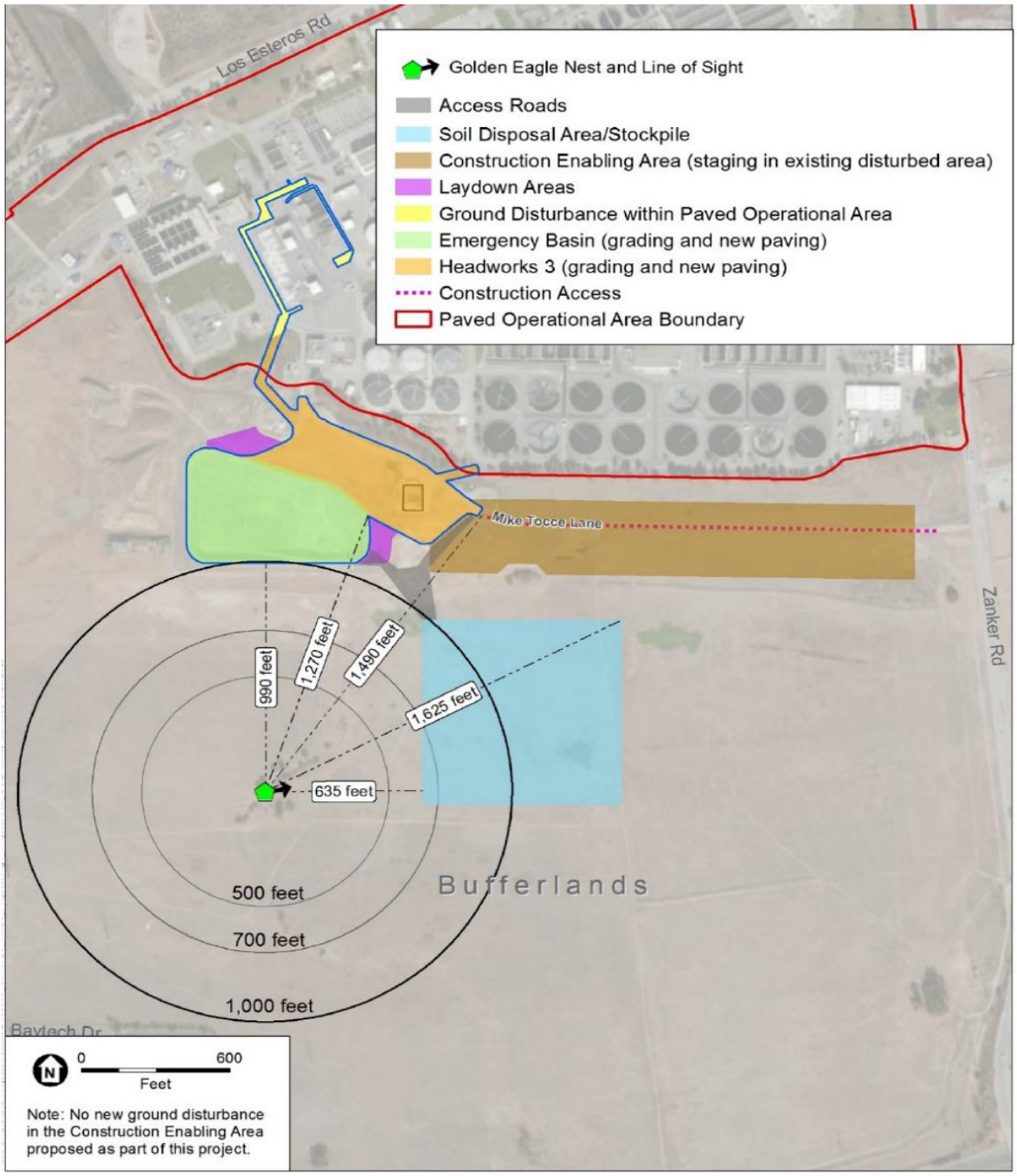

Figure 2. San José Headworks Improvements and New Headworks Project areas and golden eagle nest location and distance from project areas (Source: City of San José/ Environmental Science Associates)

Figure 19 : The Microsoft SJDC Project will have direct impacts to golden eagles and burrowing owls.

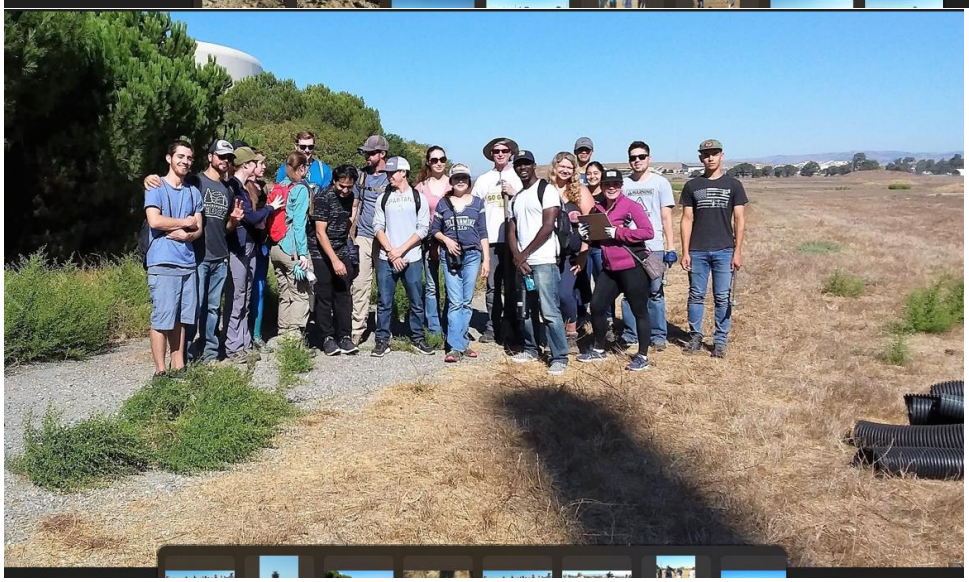

Figure 20: Since 2010, instructor Ada Márquez and students from SJSU's Department of Environmental Studies volunteer with field experts to enhance habitat for endemic flora and fauna in Alviso. Students constructed artificial burrows at the Bufferlands/RWF facility Habitat Management Area (Fall 2018). SJSU is a Minority Serving Institution (Hispanic, Asian American, and Native American Pacific Islander) per the U.S. Department of Education.[54]

[54] SJSU Institutional Information | Office of Research

§15065 Mandatory Findings of Significance[55] (2021) (SJDC DEIR, p.4.20-1)

(a) Biological Resources: This letter provides substantial evidence that biological resources were not adequately analyzed for short-term, long-term, direct, and indirect impacts. The Project's footprint and offsite infrastructure improvements will directly impact the City of San Jose's Bufferlands/RWF facility which is critical habitat for various species including the golden eagles. The analysis did not analyze the cumulative impacts of the loss of foraging habitat, interference in wildlife corridor movements, and effects of habitat fragmentation. The CEC Staff should contact the Santa Clara Valley Habitat Agency to obtain the most recent data for biological resources within the Project area. The DEIR also lacked to disclose the long-term impacts of ecological systems and the benefits of carbon sequestration due to climate change. Governor Newsom in October 2020 signed the Pathways to 30X30 (Executive Order N-82-20), to conserve 30% of lands and coastal waters by 2030. The City of San Jose's Bufferlands belong to the residents of San Jose, and not the Applicant Microsoft.

(b) Cumulatively considerable: The Project conflicts with the General Plan and the City of San Jose's Greenhouse Gas Strategy. The General Plan had many amendments and citing the General Plan's Program DEIR significant unavoidable impacts does not provide substantial evidence. For example, the CEC Staff did not include a list of past, current, and future projects within the Alviso Master Plan, a disadvantaged community per SB1000, AB 617, AB1550, and AB535. The aforementioned comments provide substantial evidence that this project will have significant impacts at the project level and cumulatively.[56] Per CARB's comments: "Compliance with laws and regulations should not be used exclusively to mitigate the Project's impact on air quality."; "implement all feasible mitigation measures to reduce the Project's

[55] (a) A lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where there is substantial evidence, in light of the whole record, that any of the following conditions may occur:
(1) The project has the potential to*:* substantially degrade the quality of the environment*;* substantially reduce the habitat of a fish or wildlife species*;* cause a fish or wildlife population to drop below self-sustaining levels*;* threaten to eliminate a plant or animal community*;* substantially reduce the number or restrict the range of an endangered, rare or threatened species*;* or eliminate important examples of the major periods of California history or prehistory.
(2) The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
(3) The project has possible environmental effects that are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
(4) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

[56]

significant and unavoidable impact on air quality prior to implementing an offset program or paying into the Bay Area Clean Air Foundation."; not rely solely on existing regulations and off-site credits to mitigate the Project's air quality impacts. CEQA requires that all feasible mitigation measures be incorporated into the EIR before a lead agency can determine if an impact is still significant and unavoidable (see California Public Resources Code§ 21081; title 14 CCR § § 15092, 15126.2(b))." (Appendix B)

(c) Substantial adverse effects on human beings, either directly or indirectly: The CEC Staff omitted the Project's environmental and health impacts to the Alviso community. The DEIR did not consider the children's health at George Mayne Elementary School and the future attendance at Santa Clara Unified School District's Agnews East School Campus Project SCH# 2018032018, located at 3500 Zanker Road, San Jose, CA. The HRA must be revised with the most current HRA guidelines. On behalf of the Alviso community, the CEC Staff should contact the experts at the BAAQMD (APPENDIX D) and CARB for air quality analysis.

The DEIR states that it would be too expensive to find an alternative location; yet the applicant Microsoft is one of the most successful companies on the planet. Microsoft committed in January of 2020 to become a carbon negative company by 2030 and by 2050 "remove from the environment all the carbon that Microsoft has emitted directly or through electricity use since the company was founded in 1975". The residents of San Jose and decision-makers must have full disclosure whether this environmental commitment will follow through in Alviso, as well. The CEC Staff, Commissioners, and Microsoft should develop an environmental justice and community benefits agreement with the families in Alviso. For example, convert the City of San Jose's WPCP/RWF Bufferlands to a permanent wildlife sanctuary, a climate change carbon sequestration area for adaptation and mitigation, PTA parent fellowships, retrofit George Mayne Elementary School to protect children's health, and university scholarships for the children of Alviso.[57] This comment letter includes Appendices A-D, as substantial evidence that the Microsoft San Jose Data Center Draft EIR is inadequate with significant unmitigated environmental impacts per CEQA.

Sincerely,

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Attachments: Appendix A: Air Quality; Appendix B: CARB; Appendix C: Biotics; Appendix D: BAAQMD

cc: See next page

[57] The Google Project in San Jose created a Fund for many community benefits. NEWS RELEASE: San José Announces Unprecedented Community Investment From Google Project | News | City of San Jose (sanjoseca.gov)

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