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**Petition for Inspection or Copying of Confidential Records and
Request for Clarification TN 271506, TN 271053, and TN 271503; L**

Letter attached again: OCR and links are broken per CEC requirements.

Additional submitted attachment is included below.

ADA E. MÁRQUEZ, AICP

**PETITION TO INSPECT OR COPY
and public comment by a concerned San José
resident**

July 17, 2026

VIA EMAIL AND E-FILING

Sanjay Ranchod

Chief Counsel

California Energy Commission

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Submitted electronically to Docket No. 03-AFC-02C

RE: Petition for Inspection or Copying of Confidential Records and Request for Clarification: TN 271506, TN 271053, and TN 271503; Los Esteros Critical Energy Facility, Tanager BESS (03-AFC-02C)

Dear Mr. Ranchod:

How this petition is organized

To help the community follow this complex record, the petition begins with the project description and the three overlapping confidentiality documents. Section I states the action requested. Section II explains why CEC has not established substantial similarity. Sections III and IV address the California Public Records Act and the state and federal clean-air disclosure laws. Section V discusses CEC's CEQA-equivalent review, and Section VI explains why transparency is particularly important for Alviso. The conclusion identifies the records and procedural relief requested.

Project description and purpose of this petition

I submit these comments and this petition in my personal capacity as a concerned resident of San José and a professional planner. The Los Esteros Critical Energy Facility (LECEF) is an existing 320-megawatt natural-gas-fired power plant at 800 Thomas Foon Chew Way in northern San José, near the Alviso community. In addition, the Los Esteros Critical Energy Facility is a Title V major source subject to a Bay Area Air District Major Facility Review operating permit (Facility No. B3289). The owner is seeking a post-certification amendment to add the Tanager Battery Energy Storage System, a 200-megawatt, approximately 1,600-megawatt-hour lithium-iron-phosphate battery facility on about 10 acres of the operating power plant property. The proposal includes battery containers, electrical equipment, a new switchyard and transformer, and an approximately one-half-mile generation interconnection. Because this is a very large battery installation proposed next to the operating Title V power plant, near homes, schools, businesses, workers, burrowing owl habitat, the Don Edwards Wildlife Refuge, and other industrial uses, the thermal-runaway, fire-emissions, air-dispersion, and health-risk analyses are important for public review.

The confidentiality record is unusually difficult to follow because it is spread across at least three overlapping docket documents: the applicant's June 26 repeated application TN 271053 (covering DR-A64 and DR-A65 materials, including electronic calculation spreadsheets, AERMOD files, and a technical memorandum); the applicant's later July 16 repeated application TN 271503 (covering additional DR-A65 supporting files and referring to similar or subsequent fire-test reports not separately submitted); and CEC's July 17 determination TN 271506 (granting confidentiality in response to TN 271053). These three direct CEC links show the procedural and technical complexity and also reveal an important unanswered question: whether TN 271506 was intended to decide the subsequent TN 271503 filing.¹

¹ TN 271506 expressly identifies TN 271053 as the repeated application being granted. TN 271503 was docketed later and concerns related DR-A65 supporting information. This petition therefore asks CEC to state clearly

CEC Staff's response changes the procedural posture, but it does not resolve the public-disclosure concern. I am therefore submitting this letter as a petition under Title 20 of the California Code of Regulations, section 2506. I am not requesting disclosure of a manufacturer's formula, proprietary test protocol, or other information that the applicant can prove is a trade secret. I am requesting the public portions of the air-quality analysis, including AERMOD inputs and outputs, the health-risk assessment (HRA), underlying air-emission data, and any information that state or federal clean-air laws require to be public. I also request every reasonably segregable portion needed to understand, reproduce, and test the conclusions that will be used to evaluate this project.

I. Requested action

I respectfully request that the Chief Counsel:

- Treat this letter as a petition under 20 CCR § 2506 for the records designated confidential by TN 271506 and TN 271053, and for any overlapping records in TN 271503 if CEC considers that later filing resolved or covered;
- Clarify in writing whether TN 271506 applies to TN 271503 and, if it does not, require a separate, public determination on TN 271503 rather than allowing an automatic extension of the earlier decision;
- Apply the section 2506(b)(4) standard and determine whether the applicant has met its burden under the California Public Records Act for each record and reasonably segregable field, rather than merely asking whether the initial application stated a reasonable claim;
- Provide the written summary and regulations required by section 2506(b)(2)(B), and issue the decision within the section 2506(b)(3) schedule; and
- Release a public version, redaction index, and reproducibility package sufficient for meaningful review, and place this petition and the decision in Docket No. 03-AFC-02C.

II. CEC's response does not establish that the later records are substantially similar

Section 2505(a)(4) permits the shortened repeated-application procedure only when the new information is substantially similar to information previously protected, and all facts and circumstances relevant to confidentiality remain unchanged. CEC's July 17 response states that this standard was met and grants confidentiality for the life of the facility (California Energy Commission [CEC], 2026b, TN 271506). The response, however, does not identify which records or fields were compared, explain why project-specific AERMOD files and health-risk support data are substantially similar to manufacturer fire-test reports, or address whether the July 16 filing is included.

The initial November 10, 2025, determination described the protected material as UL 9540A and battery-energy-storage-system fire-test reports (CEC, 2025b, TN 267113). It did not separately identify project-specific air modeling or HRA records. In contrast, the 2026 applications seek confidentiality for materially broader and analytically different categories: calculation spreadsheets, AERMOD input and output files, supporting electronic data, and a technical memorandum used to characterize emissions from LFP thermal runaway and fire (Los Esteros Critical Energy Facility, LLC [LECEF], 2026a, 2026b). A project-specific model may use a protected value without becoming identical to the protected source. Model configuration, receptor placement, meteorological selections, public chemical information, final emissions, and risk results remain distinct categories of information.

The later TN 271503 filing adds to the uncertainty because it refers to information from similar or subsequent large-scale fire-test reports that were not separately submitted. That statement suggests new sources, new circumstances, or both. Staff's conclusion that all relevant circumstances remain unchanged is therefore not self-explanatory. A life-of-facility designation is especially difficult to justify for project-specific air-modeling records that may change as the design, battery supplier, fire scenario, modeling assumptions, or staff analysis changes.

Most importantly, section 2506(b)(4) now places the burden on the entity seeking continued confidentiality to demonstrate that confidentiality is warranted under the Public Records Act, considering all facts and

whether TN 271503 remains pending, was implicitly covered, or requires a separate determination.

circumstances. That is a more complete review than the initial section 2505(a)(3)(A) inquiry into whether an applicant made a “reasonable claim.” On the public docket, I do not see a Commission confidentiality decision issued after a section 2508 hearing. Accordingly, the special “new information or changed circumstances” requirement for a petition following a section 2508 Commission decision does not appear to apply here.²

III. California law requires disclosure of air-quality emission data and segregable environmental information

California’s Public Records Act treats required air-pollution information and analyses as public records; monitoring data must be available to the public; and air-pollution emission data may not be withheld as a trade secret (Cal. Gov’t Code § 7924.510(a), (b), (d)). The Act also requires disclosure of every reasonably segregable portion after exempt material is removed (Cal. Gov’t Code § 7922.525(b)). Because access statutes are construed broadly in favor of disclosure and exemptions narrowly, the analysis cannot stop at a document-level label such as “spreadsheet,” “model file,” or “supporting data” (Sierra Club v. Superior Court, 2013).

California law distinguishes final emission data from information used to perform the calculations. Final emission data must be disclosed. Two separate Masonite cases address the underlying calculation information. *Masonite Corp. v. Superior Court* (1994) confirms that emission data are public and requires a separate trade-secret analysis for calculation information. Then, *Masonite Corp. v. County of Mendocino Air Quality Management District* (1996) explains that a proprietary emission factor may qualify as calculation data only if the operator proves that trade-secret protection applies. Together, the cases support field-specific redaction. They do not support withholding final air-emission rates, public chemical identities, nonproprietary assumptions, air-dispersion results, health-risk outputs, staff verification, or an entire project-specific modeling record.

At a minimum, the public record should disclose, in reviewable form:

- The compounds and release scenarios evaluated, together with final air-emission masses and rates, while allowing any independently protected calculation factor to be masked;
- The air-quality analysis model version, source configuration and release parameters, meteorological data set, terrain treatment, averaging periods, receptor grid, and sensitive-receptor locations;
- A public summary of AERMOD results, including maximum modeled concentrations, locations of maxima, and the results used in the health-risk assessment;
- Cancer, chronic, acute, and other health-risk outputs by scenario, along with toxicity values, exposure assumptions, and the basis for selecting or excluding compounds;
- Staff’s quality-control, sensitivity, and verification work, including any corrections or alternative runs; and
- A redaction log and a masked, aggregated, or surrogate-input reproducibility package that allows an informed reviewer to follow the analysis without disclosing a proven trade secret.

IV. The federal and California clean-air laws reinforce narrow treatment of confidentiality

The federal Clean Air Act reflects the same basic disclosure policy. Records obtained under section 114 are generally public, subject to trade-secret protection, but emission data are expressly excluded from that protection (Clean Air Act § 114(c), 42 U.S.C. § 7414(c)). I do not suggest that section 114(c) independently governs every record in CEC’s possession. It is nevertheless important in the federal context: trade-secret protection is not a basis for hiding the emission data needed to understand air-pollution consequences.

California’s Air Toxics “Hot Spots” law similarly requires public access to reports and treats information collected under that program, other than qualifying calculation data, as air-pollution emission data (Cal. Health & Safety Code §§ 44345, 44346(h)). CARB’s confidentiality regulation likewise states that emission

² Section 2506(a) and (b)(5) require new information or changed circumstances only when the records were deemed confidential after a Commission decision issued under section 2508. The cited docket determinations appear to have been issued by the Executive Director under section 2505, not after a section 2508 Commission hearing.

data submitted to CARB shall not be identified as confidential (Cal. Code Regs. tit. 17, § 91011). These provisions apply within their own programs. I cite them as additional evidence of California's consistent policy that genuine trade secrets may be protected, but emission data and nonexempt portions must remain public.

V. CEC's CEQA-equivalent review still depends on meaningful public disclosure

CEC's power-plant siting program is a certified regulatory program under Public Resources Code section 21080.5 and title 14, California Code of Regulations, section 15251(j). Certified programs may use a functional-equivalent document, but they remain subject to CEQA's policy of identifying and avoiding significant environmental effects (Cal. Code Regs. tit. 14, § 15250). Post-certification project changes are reviewed under Title 20, Section 1769. These provisions are also collected in the 2026 CEQA Statute and Guidelines compilation (Association of Environmental Professionals [AEP], 2026); the official statutes and regulations remain controlling.

An environmental document must contain enough analysis to permit informed decision-making and meaningful public participation. For air quality, the analysis must connect the project's pollution to health consequences in a manner the public can understand (*Sierra Club v. County of Fresno*, 2018). It must also provide sufficient detail for intelligent consideration of the environmental consequences (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 2007). Staff's ability to review confidential files is not a substitute for public access to nonexempt inputs, air-quality assumptions, analytical methods, and results. The community should not be asked to accept a health conclusion that it cannot examine, verify, or meaningfully challenge.

VI. Alviso's designation and the limits of screening data make transparency especially important

Alviso should not be treated as invisible because one screening score falls below a cutoff. CARB's operative Priority Populations map identifies Census Tract 6085504602, which includes Alviso, as both a disadvantaged community and a low-income community (California Climate Investments, 2026). OEHHA released CalEnviroScreen 5.0 on July 1, 2026. The current data place the tract at approximately the 70.7th percentile overall and the 86.5th percentile for pollution burden (Office of Environmental Health Hazard Assessment [OEHHA], 2026a). Although the overall score is below the automatic top-quartile threshold, that does not erase the tract's formal priority-population classification shown on CARB's operative map. CalEPA's preliminary 2026 proposal expressly retains areas designated as disadvantaged in 2022 while the public process remains open through August 14, 2026 (OEHHA, 2026b).

Screening tools are useful, but they are not a substitute for site-specific analysis, evidence, or community knowledge. OEHHA explains that several socioeconomic indicators rely on American Community Survey sample estimates. When an estimate has unacceptable statistical uncertainty, it receives no indicator score and is not included in the overall CalEnviroScreen score (OEHHA, 2021, p. 183). Census research has also identified privacy concerns, fear of repercussions, and distrust of government as barriers to participation (U.S. Census Bureau, 2019). In the Bay Area and South Bay, researchers have identified additional undercount risks associated with immigration and privacy concerns, rental housing, and overcrowded housing (Thorman et al., 2018).³

The point is not that CalEnviroScreen has no value. The point is that no single tract-level rank can capture the full lived experience of a small, historically underserved, predominantly Latino community next to industrial, transportation, energy, and flood-related burdens. Public agencies have an ethical and legal obligation to protect all communities. Here, that responsibility begins with full disclosure of the project's nonexempt air-quality and health-risk information.

³ The decennial census and the American Community Survey are different data collections. The cited participation research does not prove that a particular Alviso ACS estimate is inaccurate; it supports caution against treating one tract-level screening result as the complete record of local conditions.

Conclusion

For these reasons, I respectfully ask the Chief Counsel to grant this petition in full or, at a minimum, require disclosure of all air-emission data, health-risk results, project-specific methodology, assumptions, staff verification, and reasonably segregable air-model information. Please require a public redaction index and reproducibility package, and clarify whether TN 271506 was intended to decide TN 271503. If CEC treats TN 271503 as already covered, please treat this petition as applying to those records as well.

Moreover, I respectfully request that CEC provide the section 2506(b)(2)(B) summary within five working days and issue the decision on the petition within the regulatory schedule. I also request that this letter, the applicant's response, and the Chief Counsel's decision be placed in the administrative record for Docket No. 03-AFC-02C.

Thank you for considering this petition and these comments.

Sincerely,

Ada E. Márquez, AICP

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I submit these comments solely in my personal capacity. The views expressed are my own and do not represent San José State University or the California State University.

cc:

Drew Bohan, Executive Director, CEC; John Heiser, Compliance Project Manager, CEC

CEC Office of the Public Advisor, Energy Equity, and Tribal Affairs; CEC Docket Unit

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Legal authorities

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- California Code of Regulations, title 17, § 91011 (CARB confidentiality regulation; emission data). <https://www.law.cornell.edu/regulations/california/17-CCR-91011>
- California Code of Regulations, title 20, § 1769 (post-certification amendments and project changes). <https://www.law.cornell.edu/regulations/california/20-CCR-1769>
- California Code of Regulations, title 20, §§ 2505 through 2508 (confidential records, petitions, disclosure, and Commission hearings). <https://www.law.cornell.edu/regulations/california/20-CCR-2506>
- California Government Code § 7922.525(b) (reasonably segregable portions). https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=7922.525

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