

January 15, 2021

Brenda Cabral
Bay Area Air Quality Management District
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Email: bcabral@baaqmd.gov

Re: Cumulative Environmental Impacts in Alviso: Los Esteros Critical Energy Facility (B3289) Title V Major Facility Permit Revision (1515 Alviso-Milpitas Road, San Jose, CA)

Dear Ms. Cabral:

The community of Alviso has significant concerns regarding the Air District's preliminary decision for Los Esteros revised permit. As stated in the Notice for Public Comment, the "significant permit revision is to incorporate reductions in monitoring". The minor revision is to increase the maximum capacity for the S11 Cooling Tower from 73,000 gpm to 90,000 gpm. Per the federal Clean Air Act, Title V Major Facilities must also comply with the US EPA permitting standards, thresholds, and environmental justice. This comment letter includes the following: a brief description of the community of Alviso, environmental concerns, and our comments on the permit changes.

Alviso

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) attached to this email). The Alviso Specific Master Plan was approved in 1998 and amended in 2016 which the community developed their vision for compatible land-uses, protection of natural resources, preservation of the Alviso village with historical resources, and opportunities for employment.¹ 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.² Per SB 535, AB 1550, 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.³

Environmental Equity Concerns

The Alviso residents are disproportionately affected by 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

¹ [Specific Plans | City of San Jose \(sanjoseca.gov\)](https://www.sanjoseca.gov)

² [Santa Clara Valley Habitat Agency, CA | Official Website \(scv-habitatagency.org\)](https://www.scv-habitatagency.org) per the California Endangered Species Act (CESA) and the Federal Endangered Species Act (ESA)

³ Census Tract 6085504602 [SB 535 Disadvantaged Communities | OEHHA \(ca.gov\)](https://www.oehha.ca.gov). [Auction Proceeds Disadvantaged Communities \(ca.gov\)](https://www.oehha.ca.gov)

hazardous wastes, large Google warehouses, the (Approved Development)Microsoft San Jose Data Center, the RWF Cogeneration Project for the San Jose/Santa Clara Water Pollution Control Plant (WPCP), and numerous unpermitted business with diesel trucks, Topgolf Entertainment Center with significant traffic impacts, etc.⁴ Currently, Alviso is as much as 15 feet below sea level and is within the most impacted area known as Economic Impact Area 11 (EIA 11).

Consistently, government agencies do not adequately disclose all the information nor include cumulative environmental impact analysis for projects located in Alviso. For example, in 2017 Microsoft completed the City of San Jose's DEIR for the 237 Industrial Center Project⁵ which analyzed two different project options. Under (Option 2) the Data Center/Light Industrial Option, the project analyzed the impacts of 24 emergency diesel generators (2,000kW). This Option 2 for the 237 Industrial Center Project is now called the San Jose City Data Center and going through the CEC's Small Power Plant Exemption⁶ and the Notice of Preparation of an EIR. The San Jose Date Center will include 42 standby generators and not 24 as analyzed in the 237 Industrial Center Project DEIR.⁷ Other significant project differences create lack of transparency and disclosure per CEQA § 15002, 15020, 15021. CEC's project website does not disclose the City of San Jose's DEIR for this project. The community has the legal right to be informed about the nexus of these laws and agency's processes.

Similarly, 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 previously approved 2.2 million square foot telecommunication equipment facility on a 174 gross acre site."⁸ In 2002, the Energy Commission issued the license for this project. Since then, several amendments and phases have been approved which is authorized 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 Energy Commission and BAAQMD approved this expansion without any regards to the City's environmental and health concerns.⁹ The CA Energy Commission's Docket Log includes numerous documents from 2005 to 2020. However, the staff reports do not include all the technical reports and appendices submitted by the facility for public review.

The third example of an inadequate review and the protection of human health for sensitive receptors in Alviso is the Agnews East School Campus Project SCH# 2018032018. The children in Alviso attend Santa Clara Unified School District. An elementary, middle, and high school

⁴ [RWF Cogeneration Project | City of San Jose \(sanjoseca.gov\)](#) [San Jose City Data Center, Licensing Case - Docket # 2019-SPPE-04](#)

⁵ [showpublisheddocument \(sanjoseca.gov\)](#)

⁶ [CEQA Pre-filing Guidelines PEA Checklist Nov 2019.pdf](#)

⁷ [San Jose City Data Center, Licensing Case - Docket # 2019-SPPE-04](#)

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 \(A hard copy of DEIR is at the Alviso Library\)](#)

will be located at 3500 Zanker Road in San Jose (Figure (2) attached to this email).¹⁰ The Final Supplemental EIR (2019) air quality analysis is erroneous; for example, both the individual and cumulative Risk and Hazards analysis have incorrect methodology for a school site analysis. Despite the lack of rigor and using incorrect modeling data from 2011, the Bay Area Air Quality Management (BAAQMD) failed to review and comment on this DSEIR school project in Alviso. The families of Alviso experience significant cumulative environmental impacts continuously where they live, work, go to school, and play from stationary and mobile sources.

The City of San Jose's General Plan with other adopted sustainability and climate change strategies¹¹ show residents' dedication to improve quality of life. Yet, CEC and BAAQMD do not encourage alternatives to fossil fuels and reduction of air pollution, by continuously approving permits without considering the cumulative impacts of air pollutants and greenhouse gas emissions. Public Agencies are required to comply with the 2017 Scoping Plan, the 2017 Clean Air Plan, BAAQMD's Diesel free by '33, the 2020 CEQA Statute and Guidelines, AB 617, and Environmental Justice per US EPA¹² and Cal. Gov. Code, § 65040.12, subd. (e).¹³

Requests

We respectfully request that the significant revision to the Title V Major Facility Permit to Los Esteros Critical Energy Facility #B3289 not be approved until the applicant and agencies can provide full disclosure and availability for community review:

- The most recent inspections by BAAQMD to confirm the monitoring reports with all emissions outputs submitted by the project applicant are accurate
- The recent Health Risk Assessment, Air Quality, and Environmental Justice Analysis with technical reports for this facility.¹⁴ BAAQMD's and CEC's webpages with Staff Assessments and Reports do not include the documents submitted by the facility.¹⁵
- The Biological Monitoring Reports submitted by the Los Esteros to comply with the HCP "incidental take permit under Section 10(a) of the Endangered Species Act (ESA); by the 10(a)(1)(B) permit for long-term operation of the LECEF for 50 years, the estimated useful life of the facility" for the impacts of nitrogen deposition by this facility¹⁶. The community requests that permits do not remove the mitigation for nitrogen deposition per the ESA.¹⁷

¹⁰ [Bond Projects / Agnews Campus \(santaclarausd.org\)](#)

¹¹ [Climate Smart San Jose | City of San Jose \(sanjoseca.gov\)](#) [Greenhouse Gas Reduction Strategy | City of San Jose \(sanjoseca.gov\)](#)

¹² [Guidance on Considering Environmental Justice During the Development of an Action | Environmental Justice | US EPA](#) [Title VI of the Civil Rights Act of 1964 | CRT | Department of Justice](#) [Comment Letters | State of California - Department of Justice - Office of the Attorney General](#)

¹³ SB 100, Executive Order B-55-18, EO S-3-05, EO B-18-12, SB350, Mobile Source Strategy, AB341,

¹⁴ Neither CEC or BAAQMD have the full technical reports available [TN231123_20191211T094415_Annual Compliance Report 2018-2019.pdf](#) [TN234382_20200820T085410_SSAPC Los Esteros \(3\).pdf](#) [Title V Permit Evaluation \(baaqmd.gov\)](#)

¹⁵ [Los Esteros Critical Energy Facility \(baaqmd.gov\)](#) [California Energy Commission : Docket Log](#) Note: Reviewed CEC's Staff Report Phase 1 and Phase 2 Final Commission Decision (2006) Docketed Date 9/10/2018.

¹⁶ [Federal Register :: Los Esteros Critical Energy Facility Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Endemic Plant Species, Santa Clara County, CA](#)

¹⁷ "The Applicant has purchased 40 acres of critical serpentine bunchgrass ecosystem habitat in the Coyote Ridge area, has dedicated this land to the Land Trust for Santa Clara County and

- The monitoring reports for the Coyote Creek Outfall per SWRCB and CA Fish and Wildlife.¹⁸
- Install a local monitoring station in the community of Alviso to collect and analyze air pollutant levels for an accurate air quality analysis
- Disclose the cumulative health impacts from all stationary and mobile sources in Alviso
- Cease any additional approvals by BAAQMD, CEC, and US EPA until a cumulative health risk assessment is completed for the community of Alviso
- BAAQMD's Public Notice for Lost Esteros states, *"The purpose of the proposed significant permit revision is to incorporate reductions in monitoring. The maximum rated capacity for S11, Cooling Tower, is being increased from 73,000 gpm to 90,000 gpm. This is a minor revision. The potential to emit for PM10 will increase by 1.12 tons per year. All proposed changes to the permit are clearly shown in "strikeout/underline format" and have been addressed in the statement of basis."*

The assumption by public agencies that disadvantaged communities have the resources or expertise to understand a technical permit is unreasonable. Public Notices are meaningless if the public is not able to participate in government processes. We request staff to include a summary of the environmental and health implications for future permits in Alviso. The above information in the Public Notice is an oversimplification and does not provide an opportunity for public comments.

The community of Alviso is specifically concerned with the following in the BAAQMD's *Proposed Permit Evaluation and Statement of Basis*¹⁹:

- Source testing: Table VII-A (p.13-14, 25,42): "The source test frequency for the emissions and parameters below has been reduced to every 8000 hours of

has established an endowment fund to manage the donated land in perpetuity for the conservation of these sensitive species. Phase 1 would thus have no significant adverse impact on the Bay checkerspot butterfly or serpentine bunchgrass ecosystem. Condition 35 of the CEC Preliminary Determination of Compliance (PDOC)[currently in production] requires LECEF, LLC. to provide 27.945 tons/year of NOx Emission Reductions Credits (ERCs) prior to the issuance of the Authority to Construct. To date, NOx ERCs equivalent to 29.029 tons/year have been banked for the LECEF project and will be surrendered to BAAQMD prior to construction. These NOx ERCs are intended to offset potential nitrogen deposition impacts so that construction and operation of the Phase 2 LECEF would have no significant adverse impact on listed plant species in serpentine bunchgrass habitats." (p.2) [Federal Register :: Los Esteros Critical Energy Facility Low-Effect Habitat Conservation Plan for the Bay Checkerspot Butterfly and Serpentine Endemic Plant Species, Santa Clara County, CA](#)

¹⁸ [Los Esteros Critical Energy Facility](#) SAAR3-2002-0037. The California Department of Fish and Wildlife Lake and Streambed Alteration Agreement number 1600-2005-0087-3 pursuant to Section 1602 of the Fish and Game Code. [Los Esteros Critical Energy Facility](#)

¹⁹ Permit Evaluation and Statement of Basis: Site B3289, Los Esteros Critical Energy Facility, LLC, 800 Thomas Foon Chew Way, San Jose, CA 94134

operation or every 3 years, whichever is sooner. The source test may be postponed if the power train is not operating on the deadline date.”

Since this is a Major Title V Base Power Plant Facility, the source testing should not be decreased for any pollutants, unless the Air District has documented inspections by staff that this facility’s monitoring is accurate. The permit should not be issued based on assumptions this facility will not increase throughput in the future. As noted on page 14, this facility does not have permit shields per EPA or the District. The community requests documentation that this facility will not be allowed to increase any current emissions for all pollutants.

- Heat input limits -Quarterly analyses (p.40,41)

The community disagrees with Air District’s strikeout for 24. Operational Limits part b. on page 41. As a Title V Facility, it must continue with its current monitoring requirements for the sulfur content of the natural gas. This facility should not be allowed to “use the quarterly sulfur data on PG&E’s website except during any source tests” (p.41). As documented on page 49, PG&E does “not have sulfur analyzers located at any of the CEC-licensed Bay Area power plants.” Therefore, it should be required to test at the facility for the higher heating value of the natural gas on a quarterly basis to show compliance with the hourly, daily, and annual throughput limits. The District and CEC clearly used subjective judgement and assumptions to reduce the burden for this facility by using their six factors for monitoring decisions (p.10).

- Cooling tower- “The maximum throughput of the six-cell cooling tower, S11, has been increased to 90,000 gallons per minute.” (p.9)

The cooling tower capacity was increased from 73,000 gal/min to 90,000 gal/min. The total calculated potential to emit is 5.92 tons of particulate matter (PM₁₀) per year. The annual potential to emit increased by 1.12 tons particulate matter per year (PM₁₀/yr). However, the changes to the permit do not disclose PM_{2.5} emission levels (Appendix B, pp. 26,27, 28) . In addition, “The increase of toxic air contaminants (TAC) was not included in Application 8859” (p.27). The TAC emissions from the cooling towers are from 2010 (p.30) The community requests the most recent TAC levels from this facility and cumulatively from both stationary and mobile sources with the boundary of Alviso per the City of San Jose’s General Plan. On page 29 (Appendix B), it states for mitigations for particulate matter (PM₁₀) emissions per CEC in 2012:

“This mitigation shall be developed from the following sources in order of preference:

1. The Bay Area Air Quality Management District, Wood Stove Retrofit or Replacement Program.
2. The Lower-Emission School Buses Program.
3. Other mitigation measures approved by the CPM via written CEC Air Quality Staff review.
4. The California Air Resources Board, Carl Moyer Program.

5. Emission Reduction Credits banked with the Bay Area Air Quality Management District and approved by the CPM via written CEC Air Quality Staff review.”

The community of Alviso requests how much of the mitigation was implemented in Alviso to improve lowering school bus emissions and specifically what other type of mitigations. The community request an explanation and the implications of the results of a health risk assessment with the current air flow and with the proposed. The assumption that this facility does not have the potential to increase throughput is misleading. Although, the incremental increases are below thresholds, cumulative impacts must be considered in AB536 and AB 617 communities. The language for this revised permit is based on too many assumptions, lacking factual data and evidence for PM_{2.5} and toxic air contaminates. Please justify legally and with adequate analysis the reasons why this permit is needed by the applicant now. We request full disclosure with inspections by BAAQMD of air pollutant levels and health risks at this facility as a base load power plant with the current permit and the cumulative health impacts in Alviso.²⁰ As documented by BAAQMD’s air monitoring stations, the City of San Jose in 2016 had the “highest Bay Area annual average PM_{2.5} concentration (9.2 µg/m³)” (p.7).²¹

Unlike most neighborhoods in Silicon Valley, Alviso residents must endure social, environmental, and health inequities. The magnitude of courage of the Alviso families are to be admired and respected. Public agencies have an ethical and legal obligation to protect all communities. Reductions in monitoring for a Title V facility is unacceptable. Since Alviso is both AB 535 and AB617 community, monitoring and testing are important to ensure current and future compliance. We look forward to a response to address the cumulative environmental and health impacts in Alviso.

Sincerely,

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²⁰ [Tools and Methodologies \(baaqmd.gov\)](https://baaqmd.gov) shows for Los Esteros Facility (outdated data): Cancer (63.63), Hazard (0.4), and PM_{2.5} (122.75)

²¹ *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](#)

cc:

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