

Re: Item 10.4 on 08/23/2022 Council Agenda

Michele Lew <[REDACTED]>

Mon 8/22/2022 5:10 PM

To: City Clerk <[REDACTED]>

You don't often get email from [REDACTED] [Learn why this is important](#)

[External Email]

[External Email]

Dear Mayor Liccardo and Members of the San Jose City Council:

On behalf of The Health Trust, we are writing in support of Second Harvest of Silicon Valley's facility plans. For more than 40 years, Second Harvest has served as a trusted nonprofit partner with the City of San Jose. At present, Second Harvest is serving approximately 450,000 people every month, far exceeding pre-pandemic demand. A new facility will help Second Harvest more efficiently serve our community.

Second Harvest has been a lifeline, especially when the pandemic hit, immediately responding and adapting its food distribution model to safely provide food to residents. Although Second Harvest has managed to meet the incredible food needs of our community through temporary operational shifts, the organization has been working with inadequate infrastructure and across multiple facilities— a costly, inefficient, and unsustainable model. The new facility will allow Second Harvest to operate much more efficiently and effectively.

Please deny the appeal before you and allow Second Harvest to move forward with their facility.

Sincerely,

Michele Lew
CEO

Michele Lew

Pronouns: she, her, hers

CEO

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Because everyone's health matters.

Fw: letter for appeal hearing 2nd harvest food bank

Agendadesk <[REDACTED]>

Tue 8/23/2022 9:16 AM

Bcc: District1 <[REDACTED]> District2 <[REDACTED]> District3 <[REDACTED]> District4
<[REDACTED]> District5 <[REDACTED]> District 6 <[REDACTED]> District7
<[REDACTED]> District8 <[REDACTED]> District9 <[REDACTED]> District 10
<[REDACTED]> The Office of Mayor Sam Liccardo <[REDACTED]>

📎 1 attachments (9 MB)

OCA Letter to City Council_8-22-22.pdf;

From: City Clerk <[REDACTED]>

Sent: Tuesday, August 23, 2022 8:16 AM

To: Agendadesk <[REDACTED]>

Subject: FW: letter for appeal hearing 2nd harvest food bank

From: Tu, John <[REDACTED]>

Sent: Tuesday, August 23, 2022 7:59 AM

To: City Clerk <[REDACTED]>

Cc: Van Der Zweep, Cassandra <[REDACTED]> Manford, Robert <[REDACTED]> Burton, Chris <[REDACTED]>

Subject: Fw: letter for appeal hearing 2nd harvest food bank

Hello,

Please forward to Council and include as part of the record for item 10.4 on the Council Agenda for today.

Best,

Tong (John) Tu

Acting Division Manager | Planning Division | PBCE

City of San José | 200 East Santa Clara Street

Email: [REDACTED] | Phone: (408)-535-6818

For More Information Please Visit: <http://www.sanjoseca.gov/planning>

From: Mark Espinoza <[REDACTED]>

Sent: Tuesday, August 23, 2022 6:40 AM

To: Tu, John <[REDACTED]> Van Der Zweep, Cassandra <[REDACTED]>

Cc: [REDACTED] <[REDACTED]> [REDACTED] <[REDACTED]>

Subject: Re: letter for appeal hearing 2nd harvest food bank

[External Email]

Hi John & Cassandra,

Please submit this letter into the record & please provide a copy to each council member.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Thank you
Mark Espinoza
OCA President

August 22, 2022

By Email

Members of the City Council
c/o City Clerk
City of San José
200 E. Santa Clara Street
San José, CA 95113
[REDACTED]

Re: Environmental Appeal of Planning Director's Determination of Consistency with the 2000 Cisco Systems Site 6 Final Environmental Impact Report (Sch No. 199082003) for the Planned Development Permit No. PD21-016 (Second Harvest Foodbank Project)

Dear Councilmembers:

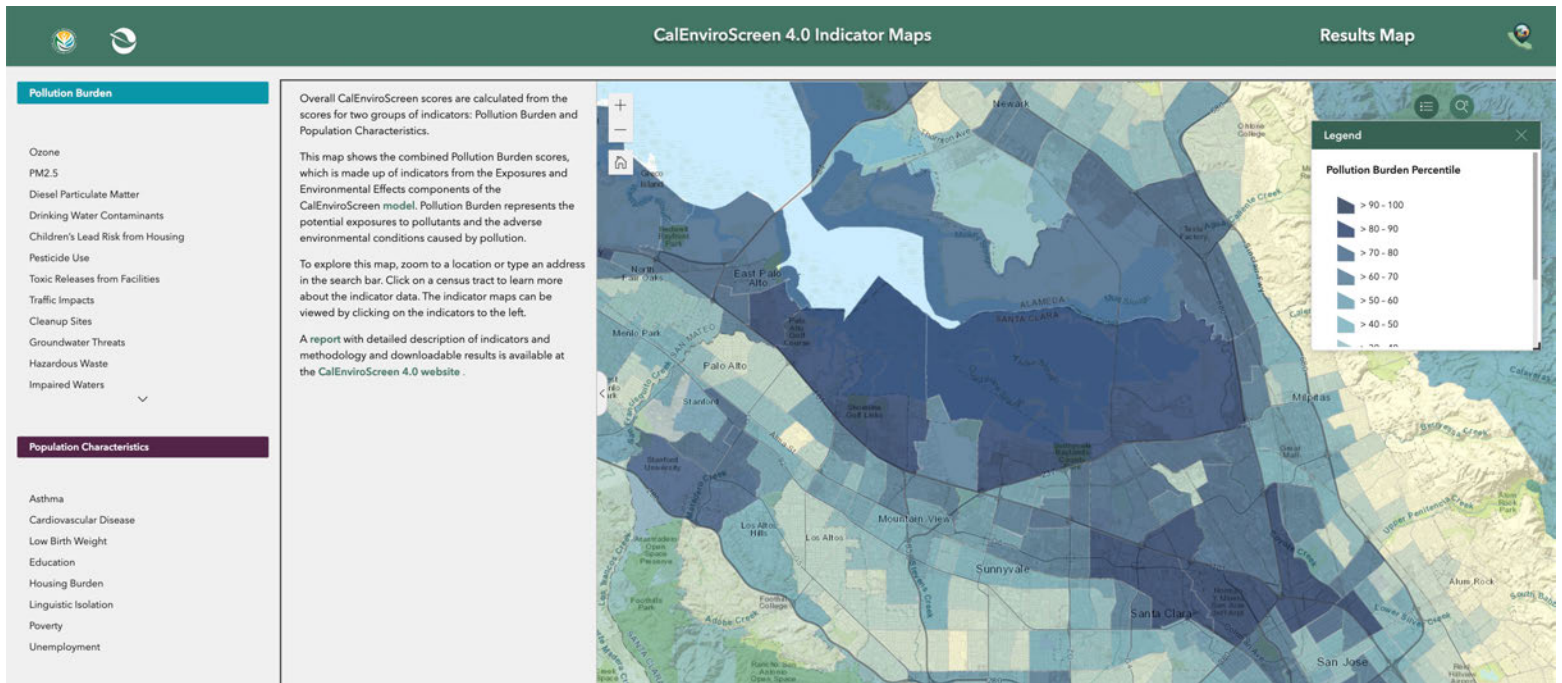
On behalf of Organizacion Comunidad de Alivso ("OCA") and Alivso resident Mark Espinoza, please accept and consider the following points in support of the above-referenced environmental appeal. For the reasons stated below, the City Council should UPHOLD the appeal and overturn the Planning Director's incorrect determination that the proposed Second Harvest Foodbank Project ("Project") is consistent with a 22 year-old, entirely outdated EIR prepared for a long defunct tech campus project in Alivso. In the over two-decade period since that EIR was certified, several large-scale, air pollution-generating projects have been developed in or near the Alivso community. Several such projects are in the pipeline, including a new hotel, power generation facility and Microsoft data center under review or already approved. Each of these project is contributing to air pollution emissions – most notably emissions of diesel particulate matter (DPM) – as well as to noise and traffic concerns.

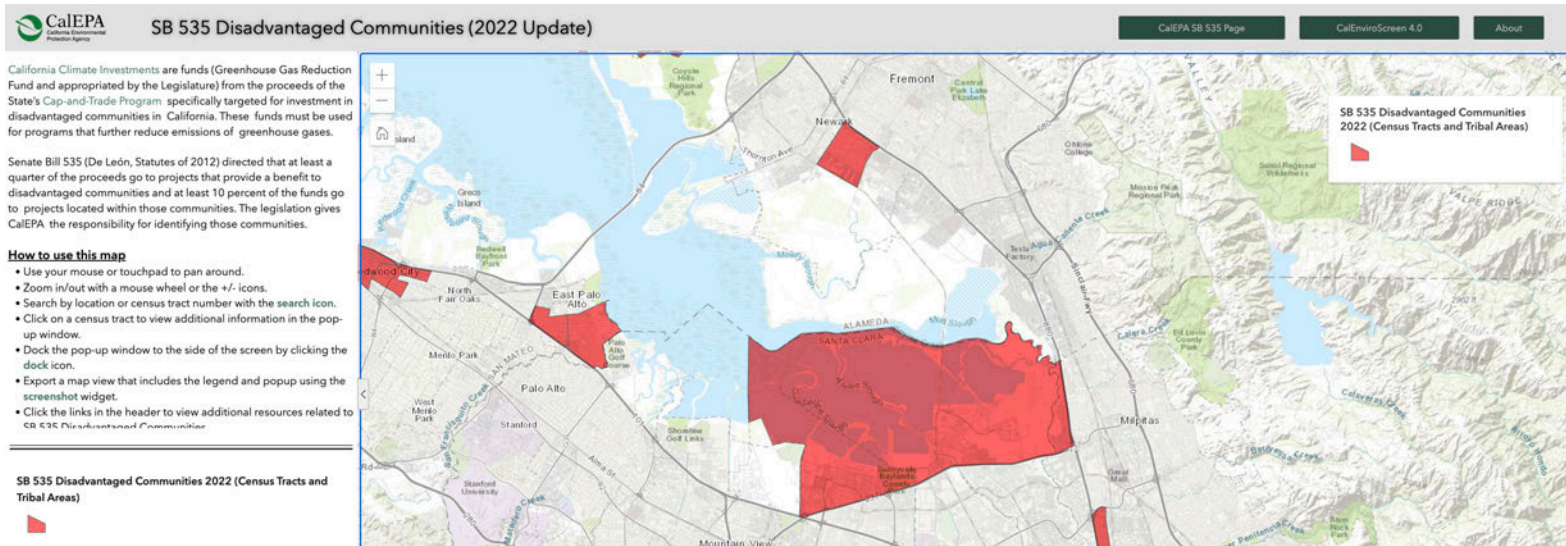
As the City Council should certainly know, Alivso is a lower income, predominantly Spanish-speaking community separated from the bulk of the City by Highway 237. It has long suffered the effects of overconcentration of pollution-generating industrial and commercial uses in close proximity to its residences and its local elementary school, George Mayne. Alivso 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 237 Industrial Center (now the Microsoft San Jose Data Center), RWF Cogeneration Project for the San Jose/Santa Clara Water Pollution Control Plant (WPCP), numerous unpermitted business with diesel trucks, and the Topgolf Entertainment Center.

The proposed Project, which entails numerous daily trips by heavy diesel-fueled trucks, is also located near to the Los Esteros Critical Energy Facility. In 2002, the California Energy Commission (“CEC”) 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 CEC approved this expansion without any regards to the City’s environmental and health concerns. The CEC also recently approved the Microsoft Energy Project in this same community, which is now seriously overburdened by air pollution.

Alviso sits as much as 15 feet below sea level and is within an area known as Economic Impact Area 11.4 among CalEPA’s Disadvantaged Communities (DACs). It is also already identified as already overburdened by air pollution emissions, as the screenshots from CalEnviroScreen 4.0 Indicator Maps online resource reproduced below plainly show:





Needless to say, the foregoing facts concerning Alviso's status as a pollution-burdened, disadvantaged community, as well as the various recently developed large-scale projects generating even more air pollution, were not presented in the 2000 Cisco EIR. Under these circumstances, it would be irresponsible and unjust for the City to approve the current Project based only on a de facto addendum to the Cisco EIR, with a corresponding determination that the Project's impacts were adequately evaluated in that 22 year-old document.

We are aware that the Director's Consistency Determination is based in part on an "Air Quality Assessment" prepared earlier this year. This Assessment includes a Health Risk Assessment (HRA) purporting to evaluate the Project's individual and cumulative contributions to community health risk levels from DPM, toxic air contaminant (TAC) and criteria air pollutant emissions from the large number of heavy duty, diesel-powered trucks and other vehicles traveling to and from the Project in close proximity to Alviso residences and George Mayne Elementary School during both the construction and operational phases of the Project. Regardless of whether the Air Quality Assessment is sufficiently thorough and accurate to support the conclusion that the Project will have no significant health impacts on Alviso residents, the fact remains that the City has not formally circulated it for public and agency review and comment, thereby avoiding meaningful scrutiny of its assumptions and methodologies. This omission is stark given that the 2000 Cisco EIR did not include an actual HRA of this nature. As discussed below, this failure violates CEQA.

Our State Supreme Court has affirmed that when an agency is considering a project that has changed significantly from an earlier iteration examined in a previous EIR, it must determine whether the previous environmental document retains any relevance in light of the proposed changes and, if so, whether major revisions to the previous environmental document are nevertheless required due to the involvement

of new, previously unstudied significant environmental impacts. *Friends of College of San Mateo Gardens v. San Mateo Community College District* (2016) 1 Cal.4th 937, 944.

Rather, under CEQA, when there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations “turn on the value of the new information to the still pending decisionmaking process.” *Id.* at 947. If the original environmental document retains some informational value despite the proposed changes, then the agency proceeds to decide under CEQA’s subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects. *Id.* at 696. As a practical matter, if proposed modifications have rendered the prior environmental review wholly irrelevant to the ongoing decisionmaking process, and if the modifications create **potentially** significant environmental impacts, the two inquiries will yield substantially the same result: the agency must prepare an EIR. *Id.*, fn. 3, emphasis added.

Furthermore, an addendum to a previously certified EIR is appropriate only “if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” (*Id.*, § 15164, subd. (a).) Courts have explained that “[t]he purpose behind the requirement of a subsequent or supplemental EIR is to explore environmental impacts not considered in the original environmental document.... The event of a change in a project is not an occasion to revisit environmental concerns laid to rest in the original analysis. Only changed circumstances ... are at issue.” *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1296; *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1398–1399.

The practical consequence of the Director’s Consistency Determination is that the City has not subjected the new Air Quality Assessment and other newly generated information to formal public and agency scrutiny during a designated comment period. CEQA establishes mandatory information disclosure and public participation procedures to ensure that decision-makers and the public are informed of a project’s impacts, and that the public can evaluate and respond to the proposed actions of their elected representatives before those actions are taken. CEQA Guidelines, § 15002(a). Public participation “is an essential part of the CEQA process.” Guidelines, §§ 15002(j), 15201. “Public review provides the dual purpose of bolstering the public’s confidence in the agency’s decision and providing the agency with information from a variety of experts and sources.” *Schoen v. Cal. Dept. of Forestry & Fire Prot.* (1997) 58 Cal.App.4th 556, 574.

We submit that the cumulative air quality and human health impacts that were actually disclosed, evaluated, and mitigated 22 years ago in the Cisco EIR are

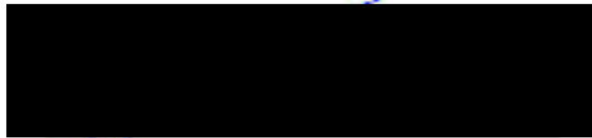
fundamentally different today, given the existing, documented cumulative health effects that Alviso residents are already suffering as a result of the numerous pollution-generating projects developed in the intervening years, and will continue to suffer with the construction and operation of various additional pollution-generating projects in the vicinity. The 2000 Cisco EIR simply could not have, and did not, meaningfully evaluate the incremental and cumulative health risks to Alviso residents and schoolchildren from construction and operation of the current Project.

For these reasons, it would be a violation of CEQA, and an irresponsible and unjust result, if the City were to uphold the Planning Director's Consistency Determination and approve the Project without subjecting the Air Quality Analysis and other newly generated information to formal public and agency scrutiny. The City Council should therefore UPHOLD OCA's and Mr. Espinoza's environmental appeal.

Thank you for your consideration of these concerns.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C

A large black rectangular redaction box covering the signature area.

Mark R. Wolfe

On behalf of Organizacion Comunidad de Alviso
and Mark Espinoza

MRW:

Fw: PD21-016

Agendadesk <[REDACTED]>

Tue 8/23/2022 10:35 AM

Bcc: District1 <[REDACTED]> District2 <[REDACTED]> District3 <[REDACTED]> District4 <[REDACTED]>
<[REDACTED]> District5 <[REDACTED]> District6 <[REDACTED]> District7 <[REDACTED]>
<[REDACTED]> District8 <[REDACTED]> District9 <[REDACTED]> District10 <[REDACTED]>
<[REDACTED]> The Office of Mayor Sam Liccardo <[REDACTED]>

From: City Clerk <[REDACTED]>

Sent: Tuesday, August 23, 2022 10:04 AM

To: Agendadesk <[REDACTED]>

Subject: FW: PD21-016

From: Tu, John <[REDACTED]>

Sent: Tuesday, August 23, 2022 9:56 AM

To: City Clerk <[REDACTED]>

Cc: Van Der Zweep, Cassandra <[REDACTED]> Keyon, David <[REDACTED]> Burton, Chris <[REDACTED]>
<[REDACTED]> Manford, Robert <[REDACTED]> Roberts, Rachel <[REDACTED]>
<[REDACTED]>

Subject: Fw: PD21-016

Hello,

Please send to council and include it as part of today's agenda for item 10.4

Best,
Tong (John) Tu

Acting Division Manager | Planning Division | PBCE

City of San José | 200 East Santa Clara Street

Email: [REDACTED] | Phone: (408)-535-6818

For More Information Please Visit: <http://www.sanjoseca.gov/planning>

From: Marcos Espinoza <[REDACTED]>

Sent: Tuesday, August 23, 2022 9:51 AM

To: Tu, John <[REDACTED]>; Van Der Zweep, Cassandra <[REDACTED]>

Subject: PD21-016

[External Email]

Dear John and Cassandra,

Please submit this letter into the record for PD21-016, Second Harvest Food Bank in Alviso.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council and Mayor,

My name is Marcos Espinoza and I am an Alviso resident. I oppose this development until there are more studies to determine the health and safety risks of this project. The current studies of the MND fail to mention the recently approved development of the Alviso hotel which will operate within 100 feet of this site. It also fails to mention the Alviso community park and two bus stops that operate on first street in front of this site. Were any residents in Oak Crest Estates notified about this project due to their close proximity of being within 1000ft? Was this development proposal sent to the George Mayne staff so they could notify all the students' parents? The planning department claims that the Cisco EIR is sufficient to address any concerns of negative impacts. How can a study conducted in the year 2000 be used to justify this development and relieve any residents of their concerns. This study was done before the invention of the iPhone and many other technological advances that we have today. As a city who claims to be worried about the effects of pollution on our climate, with initiatives like Climate Smart San Jose, why wouldn't you demand a new EIR for this site. An EIR that calculates the impacts of these developments and the cumulative impacts of all the new large scale facilities around this site. Even as the planning directors determined that this project is consistent with the 22 year old 2000 Cisco EIR the city has the full discretion to demand newer studies be conducted to ensure the safety and well being of the Alviso community. Why does Alviso have to deal with the operations of Second Harvest while only receiving a fraction of its services to our community. Wouldn't this development be better in San Mateo where it is closer to a larger proportion of the people they serve. As an Alviso resident who voices my concerns about new developments and the impacts to my community I have come to realize I can not count on my council member, members, and mayor to care about the impacts these projects cause. I can not count on them to demand new data using today's technology to actually get a stronger understanding of the harmful cause of diesel exhaust, noise, and other effects on our sensitive receptors. I can not count on them to protect and correct multiple injustices from businesses that impact the health of Alviso. There are still currently 11 outstanding code enforcement cases that have been reported over the last 5-10 years that the city fails to remedy. As a city you have failed the Alviso community and by denying this appeal you will continue that legacy.

FW: 2nd harvest food bank appeal hearing today

City Clerk <[REDACTED]>

Tue 8/23/2022 11:43 AM

To: Agendadesk <[REDACTED]>

From: Tu, John <[REDACTED]>

Sent: Tuesday, August 23, 2022 11:19 AM

To: City Clerk <[REDACTED]>

Cc: Van Der Zweep, Cassandra <[REDACTED]>

Subject: Fw: 2nd harvest food bank appeal hearing today

Hello,

Additional letter for 10.4 for today's City Council.

Best,

Tong (John) Tu

Acting Division Manager | Planning Division | PBCE

City of San José | 200 East Santa Clara Street

Email: [REDACTED] | Phone: (408)-535-6818

For More Information Please Visit: <http://www.sanjoseca.gov/planning>

From: Mark Espinoza <[REDACTED]>

Sent: Tuesday, August 23, 2022 11:10 AM

To: Tu, John <[REDACTED]>; Keyon, David <[REDACTED]>

Subject: Re: 2nd harvest food bank appeal hearing today

[External Email]

Please submit for the record

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Sent from my iPhone

August 22, 2022

Mayor Sam Liccardo

mayoremail@sanjoseca.gov

Vice Mayor Chappie Jones

District1@sanjoseca.gov

Council Member Sergio Jimenez

District2@sanjoseca.gov

Council Member Raul Peralez

District3@sanjoseca.gov

Council Member David Cohen

District4@sanjoseca.gov

Council Member Magdalena Carrasco

District5@sanjoseca.gov

Council Member Devora Davis

district6@sanjoseca.gov

Council Member Maya Esparza

District7@sanjoseca.gov

Council Member Sylvia Arenas

district8@sanjoseca.gov

Council Member Pam Foley

District9@sanjoseca.gov

Council Member Matt Mahan

District10@sanjoseca.gov

Christopher Burton, Director

Cassandra van der Zweep

Environmental Project Manager

Planning, Building and Code Enforcement

200 E. Santa Clara Street, 3rd Floor

San José, CA 95113

Cassandra.vanderZweep@sanjoseca.gov

Re: Initial Study Second Harvest Food Bank Warehouse Project May 2022 (File NOS: PD21-016 and ER21-143)

Dear Honorable Mayor Liccardo and City Council Members:

The City of San José's website states "Planned Development Permit to allow the construction of an approximately 249,230-square foot warehouse/distribution building on an approximately 10.47-gross acre portion of a 152.6-acre site zoned for 2.325 million square feet of office/R&D/light manufacturing uses."¹

¹ [Second Harvest Foodbank Warehouse Project | City of San Jose \(sanjoseca.gov\)](#)

On behalf of the children at George Mayne Elementary School and the families in Alviso, we implore that you reconsider this project by requiring a Subsequent EIR per CEQA Guidelines §15162, to allow a formal public process which includes all residents and other expert government agencies, explore alternative Project locations, and require adequate mitigations measures. It is important to clarify that the Second Harvest Food Bank Warehouse Project is desperately needed in Santa Clara County. However, we are concerned that this large distribution center was not adequately analyzed with the most current environmental baseline conditions, scientific methodologies, and mitigations measures. During the past few years, the Alviso community has endured a substantially amount of development without adequate health protection of the cumulative environmental impacts.

1. The Initial Study does not accurately disclose the “Review Criteria” per CEQA Statutes and Guidelines 2022.

The purpose of the initial study lacks transparency and disclosure per CEQA Guidelines §15002 and §15063. For example, the City of San José’s Project website and the cover page of the Initial Study does not disclose that the City of San José prepared an Addendum for this project. Although on page 3 of the Initial Study includes the following information, it is extremely ambiguous:

“CEQA Guidelines Section 15164 states that the Lead Agency or a Responsible Agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 (see above) calling for preparation of a subsequent EIR have occurred. Therefore, pursuant to Section 15162 of the CEQA Guidelines, the City of San José has determined that the project described below does not involve new significant effects beyond those analyzed in the Final EIR for the Cisco Systems, Inc. Site 6 Project (File No. PDC99-054), as addended.”

Nevertheless, the Initial Study does provide the history of the 2000 Cisco Site 6 EIR Development Entitlements from June 2000 to 2014 with a total of four Addendums (p.2). After 22 years, the Alviso community and other concerned public members should have the opportunity to participate in a formal CEQA public participation process to incorporate current mitigation measures.

The Second Harvest Food Bank Warehouse Project Initial Study does not comply with the CEQA Guidelines §15162.

“(3) **New information of substantial importance, which was not known and could not have been known** with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.”

A subsequent EIR should be required per CEQA Guidelines §15162 to include new information in regard to the baseline environmental conditions in Alviso, updated scientific methodologies for analysis, case law, potential project alternatives, and updated mitigation measures.

2. The Initial Study does not adequately disclose the existing (current) 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.² 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.³ 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.⁴

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 RWF Cogeneration Project for the San Jose/Santa Clara Water Pollution Control Plant (WPCP), and numerous unpermitted business with diesel trucks, new hotels, and Topgolf Entertainment Center with significant traffic impacts, etc.⁵ Currently, Alviso is as much as 15 feet below sea level and is within the most impacted area known as Economic Impact Area 11.⁶

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

² [Specific Plans | City of San Jose \(sanjoseca.gov\)](https://www.sanjoseca.gov/SpecificPlans)

³ [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)

⁴ Census Tract 6085504602 [SB 535 Disadvantaged Communities | OEHA \(ca.gov\)](https://www.sanjoseca.gov/SB535). [Auction Proceeds Disadvantaged Communities \(ca.gov\)](https://www.sanjoseca.gov/AuctionProceeds)

⁵ [RWF Cogeneration Project | City of San Jose \(sanjoseca.gov\)](https://www.sanjoseca.gov/RWFCogenerationProject) [San Jose City Data Center, Licensing Case - Docket # 2019-SPPE-04](https://www.sanjoseca.gov/SanJoseCityDataCenter)

⁶ [2014-2015 SANTA CLARA COUNTY \(scscourt.org\)](https://www.scsccourt.org/2014-2015-SANTA-CLARA-COUNTY)

gross acre site.”⁷ 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.⁸

Moreover, the CA Energy Commission approved the Microsoft’s Corporation San Jose Date Center DEIR for a Small Power Plant Exemption in Alviso. To review the DEIR and public comments, please go to [California Energy Commission : Docket Log](#). Again, without the approval of the City of San José decision-makers, a Supervising Environmental Planner was allowed to submit a letter to the CA Energy Commission that includes, “The City of San José will serve as the enforcement agency for the MMRP, ensuring the San José Data Center complies with all requirements outlined in the MMRP.” (May 4, 2022) Please see attachment.

CEQA Guidelines § 15097(a) provides that “[a] public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.” The letter from the City of San José’s Staff to the CA Energy Commission was submitted prior to the project approval and the certification of the FEIR. The Commission cannot delegate its ultimate responsibility for Project mitigation to a responsible agency until mitigation is complete. As a result of the improper delegation, “Project mitigation cannot be considered adequate or enforceable, and cannot form the basis of the findings required by either CEQA or Public Resources Code section 25541.” Would the City Staff be able to make this kind of decision without review of the DEIR analysis and comment in an affluent community? As documented in the [California Energy Commission : Docket Log](#), the Microsoft Data Center will release significant amounts of Greenhouse Gas Emissions from Project Stationary Sources. The operation of the Microsoft Data Center Project’s natural gas-fired generators will emit a total of 33,577 metric tons CO₂- equivalent per year (MTCO₂e/yr), which exceeds the BAAQMD’s Thresholds (FEIR, p. 4.8-13). The Microsoft Project alone triggers the Cap-and Trade Program threshold of 25,000 MTCO₂e/yr.

The community of Alviso identified per SB 535 and AB 1550 and deserves equitable protection. We ask City leaders to provide an analysis of the Second Harvest Food Bank Warehouse Project with the most current baseline conditions to adequately analyze the cumulative impacts of recent projects.

3. The Initial Study must adequately analyze the Project’s cumulative air quality impacts.

⁷ [US Dataport/Los Esteros Critical Energy Facility](#) [SCH Number 2000062132 \(ca.gov\)](#) [SCH Number 2002079013 \(ca.gov\)](#)

⁸ [CEC Overrides San Jose Zoning Ban on Power Plant Expansion - CA Current](#) (A hard copy of DEIR is at the Alviso Library)

The Proposed Second Harvest Food Bank Warehouse Project Initial Study discloses that it will have the same significant and unavoidable air quality impacts as the (Approved) 2000 Cisco Site 6 EIR, which conflicts with the BAAQMD Clean Air Plan (2017) and creating cumulatively considerable net increase of criteria air pollutants per federal and state ambient air quality standards. The Initial Study must analyze the Proposed Project with the most current software to identify feasible mitigation measures and not subtract the Proposed Project Operational emissions from the Approved 2000 Cisco Site 6 EIR emission. For example, the Proposed Project will have “Additionally, of the 50 trucks using the project site daily (each assumed to make one trip in and one trip out, for 100 total daily truck trips), 45 trucks would be refrigerated, with the use of transportation refrigeration units (TRUs) which are powered by small diesel engines that have air pollutant and TAC emissions.” (p.29) Moreover, the health risk analysis should include the Proposed Project’s operational truck traffic and the existing truck traffic in Alviso, with the Proposed Project’s diesel generators. The truck traffic from the Proposed Project will directly impact the school children at George Mayne Elementary, along N. First Street. Please see the attachment as evidence of the impacts of transport refrigeration units (TRUs).

The Initial Study also did not disclose discussion pertaining to sensitive receptors and health impacts from criteria pollutants.⁹ The Sacramento Metro Air District published the *Guidance to Address the Friant Ranch Ruling for CEQA*, (please see attachment).¹⁰ 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.*” Published court cases, apply to the entire state of California.

4. The Initial Study must include all feasible mitigation measures for significant impacts per CEQA § 15126.4.

The City of San José does not have any of the prior EIR Addendums or the 2000 Cisco 6 Site EIRs available for the public to review. The City should have all permit conditions to mitigate environmental impacts clear and enforceable for both construction and operations. To properly serve as an informational document, this Proposed Project’s Initial Study should include the MMRP for the benefit of the City’s decisionmakers and the public.

5. The City of San José should require additional feasible mitigation measures.

The Proposed Project should include the San José Envision 2040 General Plan Applicable Goals – Air Pollutant Emission Reduction as identified in the Initial Study Technical Report Appendix A: Air Quality Assessment. Please also see attachments for additional mitigation measures.

⁹ 2108 *Sierra Club v. County of Fresno*, 6 Cal.5th 502 (Friant Ranch)

¹⁰ [CEQA Guidance & Tools \(airquality.org\)](https://www.airquality.org/CEQA-Guidance-&-Tools)

MS-10.2 Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.

Applicable Goals – Toxic Air Contaminants Goal MS-11 Minimize exposure of people to air pollution and toxic air contaminants such as ozone, carbon monoxide, lead, and particulate matter. Applicable Policies – Toxic Air Contaminants

MS-11.2 For projects that emit toxic air contaminants, require project proponents to prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level. Alternatively, require new projects (such as, but not limited to, industrial, manufacturing, and processing facilities) that are sources of TACs to be located an adequate distance from residential areas and other sensitive receptors.

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.

Actions – Toxic Air Contaminants

MS-11.6 Develop and adopt a comprehensive Community Risk Reduction Plan that includes baseline inventory of toxic air contaminants (TACs) and particulate matter smaller than 2.5 microns (PM_{2.5}), emissions from all sources, emissions reduction targets, and enforceable emission reduction strategies and performance measures. The Community Risk Reduction Plan will include enforcement and monitoring tools to ensure regular review of progress toward the emission reduction targets, progress reporting to the public and responsible agencies, and periodic updates of the plan, as appropriate

The City of San José applies the BAAQMD thresholds of significance for the air quality analysis. 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:¹¹

“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.¹² The BAAQMD adopted the 2017 *Clean Air Plan: Spare the Air, Cool the Climate*

¹¹ [BAAQMD CEQA Guidelines - May 2017](#)

¹² [Download Model \(aqmd.gov\)](#)

to comply with California’s 2030 and 2050 GHG’s reduction targets, and more protective public health strategies¹³ Most importantly, the 2017 Clean Air Plan includes control measures that will reduce approximately 4.4 million metric tons of GHGs CO₂ 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 letters¹⁴ 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.¹⁵ 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 1000¹⁶. Unlike *§15064.4 Determining the Significance of Impacts from Greenhouse Gas Emissions*¹⁷ and *§15126.4(c) Consideration and Discussion of Mitigation Measures Related to Greenhouse Gas Emissions*¹⁸, 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 13.¹⁹ Additionally, the City of San Jose’s 2040 General Plan specifically includes air quality goals²⁰ and requires new development to

¹³ [Current Plans \(baaqmd.gov\)](https://www.baaqmd.gov/Current-Plans)

¹⁴ [Comment Letters \(baaqmd.gov\)](https://www.baaqmd.gov/Comment-Letters); [Reg 2 Permits \(baaqmd.gov\)](https://www.baaqmd.gov/Reg-2-Permits) , [Public Hearings \(baaqmd.gov\)](https://www.baaqmd.gov/Public-Hearings), and [Rules Under Development \(baaqmd.gov\)](https://www.baaqmd.gov/Rules-Under-Development) ; 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.

¹⁵ §15064.7 Thresholds of Significance and §15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

¹⁶ [General Plan Guidelines and Technical Advisories - Office of Planning and Research](https://www.baaqmd.gov/General-Plan-Guidelines-and-Technical-Advisories)

¹⁷ §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.”

¹⁸ [Local Government Actions for Climate Change | California Air Resources Board](https://www.baaqmd.gov/Local-Government-Actions-for-Climate-Change) Portal map shows local government climate action planning

¹⁹ [Chapter 11.105 - TRANSPORTATION DEMAND MANAGEMENT | Code of Ordinances | San Jose, CA | Municode Library](https://www.baaqmd.gov/Chapter-11.105-TRANSPORTATION-DEMAND-MANAGEMENT)

²⁰ 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

comply with the BAAQMD CEQA Guidelines. The City of San Jose also has “non” CEQA disclosure²¹ in DEIRs for new residential development located near TACs sources. The community of Alviso also 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/warehouse²² 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*”.²³ 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. Unlike the BAAQMD, many other air districts in California have updated their CEQA Air Quality Guidelines. Please see attachments for examples.

The adoption of an updated air quality thresholds with the most current guidance, mitigations²⁴, and methodologies e.g., health, implementation of AB 617 strategies for communities not yet selected for state 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. Similarly, to the Greenhouse Gas Strategy and the SB 743 thresholds, we hope that the City of San José leaders can take the initiative to implement more stringent and protective thresholds and mitigation measures for air quality.

Conclusion

This letter includes substantial evidence that a subsequent EIR should be prepared to properly analyze the impacts and disclose the mitigation measures to protect the vulnerable population in Alviso. We also implore City leaders to implement SB 100 Environmental Justice in the General Plan as required by the State. Ironically, the Google Project will be providing a

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-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.

²¹ To address Cal. Building Industry Association vs. Bay Area Air Quality Mgmt. Dist., 62 Cal.4th 369

²² 1436 State Street Project Initial Study/Mitigated Negative Declaration **FILE NOS: H21-049 (FORMERLY SP18-058) AND ER21-110)**

²³ [Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act](#)

²⁴ §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.

substantial amount of funding to the City; yet the Microsoft Data Center in Alviso will have permission to exceed the Cap- and Trade Program thresholds without any contributions for community benefits. The Second Harvest Foodbank Warehouse Project is desperately needed. However, all stakeholders have an ethical obligation to create all feasible solutions that will protect the Alviso children, as well. At minimum, a community fund should be required from all developers in Alviso to provide the most protective air filtration system for the local school and residents.

Thank you,

Mark Espinoza

[REDACTED]
[REDACTED]
[REDACTED]

Attachments:

1. City of San José Concurrence to Mitigation Monitoring and Reporting Program (MMRP) for the San José Data Center Small Power Plant Exemption Environmental Impact Report (SCH#2021020002)
2. CA EPA, Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways (2017)
3. Guidance to Address the Friant Ranch Ruling for CEQA Projects (2020)
4. BAAQMD's Advisory Council Particulate Matter Reduction Strategy Report (2020)
5. CARB 2022 Amendments to the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate
6. State of CA, Department of Justice, Warehouse Projects: Best Practices and Mitigation Measures to Comply with CEQA
7. Example City of Fontana Ordinance for Industrial Commerce Centers
8. OPR General Plan Guidelines, Chapter 4 Required Elements, Environmental Justice

Fw: open code violators (State Street) failure of City's code enforcement department to timely address these multiple violations in Alviso

Agendadesk <[REDACTED]>

Tue 8/23/2022 8:46 AM

Bcc: District1 <[REDACTED]> District2 <[REDACTED]> District3 <[REDACTED]> District4
<[REDACTED]> District5 <[REDACTED]> District 6 <[REDACTED]> District7
<[REDACTED]> District8 <[REDACTED]> District9 <[REDACTED]> District 10
<[REDACTED]> The Office of Mayor Sam Liccardo <[REDACTED]>

From: City Clerk <[REDACTED]>

Sent: Tuesday, August 23, 2022 8:20 AM

To: Agendadesk <[REDACTED]>

Subject: FW: open code violators (State Street) failure of City's code enforcement department to timely address these multiple violations in Alviso

From: Tu, John <[REDACTED]>

Sent: Tuesday, August 23, 2022 8:03 AM

To: City Clerk <[REDACTED]>

Cc: Manford, Robert <[REDACTED]> Burton, Chris <[REDACTED]> Roberts, Rachel
<[REDACTED]>

Subject: Fw: open code violators (State Street) failure of City's code enforcement department to timely address these multiple violations in Alviso

Hello,

Please forward to councilmembers and include as record for 10.4 for today's City Council Agenda.

Best,
Tong (John) Tu

Acting Division Manager | Planning Division | PBCE

City of San José | 200 East Santa Clara Street

Email: [REDACTED] | Phone: (408)-535-6818

For More Information Please Visit: <http://www.sanjoseca.gov/planning>

From: [REDACTED]

Sent: Tuesday, August 23, 2022 6:55 AM

To: Tu, John <[REDACTED]> Van Der Zweep, Cassandra <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

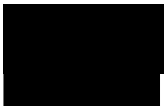
Subject: Fwd: open code violators (State Street) failure of City's code enforcement department to timely address these multiple violations in Alviso

[External Email]

Hi John & Cassandra,

Please submit this email from your city's code enforcement department regarding a complete list of violations that continue to go Uncorrected over the years. Today 11 out of 12 of these violations continue, many of these cases were generated years ago and the city's code enforcement department continues turn a blind eye and do nothing of very little enforcement. Which equals unfair treatment to my community.

Thank you for your time



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