

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE SOLAR4AMERICA ICE FACILITY EXPANSION PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Solar4America Ice Facility Expansion Project under Planning File Nos. C19-029, CP19-024, and PP18-037 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

WHEREAS, the Solar4America Ice Facility Expansion Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of a rezoning from the R-2 Residential Zoning District to the Public/Quasi-Public Zoning District and the demolition of the existing Municipal firing range, associated pavement, and the removal of approximately 33 ordinance-sized trees; and to construct an approximately 201,193 square foot expansion to the existing ice facility including a practice rink, a competition rink, associated ancillary uses, and approximately 20,000 square feet of medical office space, and a long-term offsite use and alternative parking arrangement, on an approximately 21.23-gross acre site located at the southeast corner of East Alma Avenue and South 10th Street, in the City of San José (Assessor’s Parcel Number 477-38-003); and

WHEREAS, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

WHEREAS, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

WHEREAS, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

WHEREAS, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

WHEREAS, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director

of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

THAT THE CITY COUNCIL does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program prepared for the Project (Planning File Nos. C19-029, CP19-024, and PP18-037). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor

Tower, San José, California, 95113, and (2) available for inspection by any interested person.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

MITIGATION MONITORING AND REPORTING PROGRAM

**Solar4America Ice Facility Expansion Project
File Nos. C19-029, CP19-024, and PP18-037**

December 2019



P R E F A C E

EXHIBIT "A"

(File Nos. C19-029; CP19-024; PP18-037)

Section 21081.6 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring and reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Solar4America Ice Facility Expansion Project (C19-029, CP19-024, PP18-037) concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program identifies those measures and how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative concluded that the impacts from implementation of the project would be less than significant.

I, Jon Gustafson, the applicant, on the behalf of Sharks Ice, LLC, hereby agree to fully implement the mitigation measures described below which have been developed in conjunction with the preparation of an Initial Study/Mitigated Negative Declaration for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less-than-significant level.

Project Applicant's Signature  Jon Gustafson Vice President
Date 12/5/19

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.



Planning, Building and Code Enforcement
ROSALYNN HUGHEY, DIRECTOR

**Solar4America Ice Facility
Expansion Project**
File Nos. C19-029, CP19-024, PP18-037

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Monitoring Reporting Responsibility	Actions/Reports	Monitoring Timing or Schedule
Biological Resources					
Impact BIO-1: Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment.					
MM BIO-1.1: To avoid disturbance of nesting and special-status birds, the project applicant shall schedule activities related to the project, including, but not limited to, vegetation removal, ground disturbance, construction, and demolition to occur outside of the bird nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31 (inclusive).	Avoidance of construction activities during nesting season.	Prior to the issuance of any grading permits.	City of San José Director of Planning, Building and Code Enforcement or Director’s designee.	Confirm construction activities are scheduled outside of nesting season.	Prior to issuance of any grading or demolition permits and during construction activities.
MM BIO-1.2: If demolition and construction activities cannot be scheduled between September 1 and January 31 (inclusive), pre-construction surveys for nesting birds shall be completed by a qualified biologist or ornithologist prior to the issuance of any grading permits to ensure that no nests shall be disturbed during project implementation. The nesting bird pre-construction survey shall be conducted within the project boundary, including a 300-foot buffer (500-foot for raptors). The survey shall be conducted by a qualified biologist familiar with the identification of avian species known to occur in the area. The pre-construction survey shall be completed no more than 14 days prior to the initiation of construction	If construction activities cannot be scheduled to avoid nesting season, pre-construction surveys shall be conducted by a qualified biologist or ornithologist and construction-free buffer zones shall be designated around active nests. Submit a report indicating the results of the survey	No more than 14 days prior to the initiation of construction.	City of San José Director of Planning, Building and Code Enforcement or Director’s designee.	Review and approve a report indicating the results of the survey and designated buffer zones; verify implementation in field.	Prior to issuance of grading or demolition permits and during construction activities.

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activities during the early part of the breeding season (February 1 through April 30, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31, inclusive).	and any designated buffer zones to the Director of Planning or Director's designee. The approved plan shall be implemented during grading and construction.				
MM BIO-1.3: If active nests are found, the qualified biologist or ornithologist, in consultation with California Department of Fish and Wildlife (CDFW), shall determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests will not be disturbed during project construction (which depends upon the species, the proposed work activity, and existing disturbances associated with land uses outside the site). The buffer zone shall be demarcated by the qualified biologist or ornithologist with bright orange construction fencing, flagging, construction lathe, or other means to mark the boundary. All construction personnel shall be notified as to the existence of the buffer zone and shall be instructed to avoid entering the buffer zone during the nesting season. No ground disturbing activities shall occur within this buffer until the qualified biologist or ornithologist has confirmed that breeding/nesting is completed, and the young have fledged the nest.	Same as MM BIO 1-2.	To be determined by qualified biologist or ornithologist.	Same as MM BIO 1-2.	Same as MM BIO 1-2.	Same as MM BIO 1-2.

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Encroachment into the buffer shall occur only at the discretion of the qualified biologist.					
MM BIO-1.4: The project applicant shall submit a report to the City's Director of Planning, Building and Code Enforcement or Director's designee indicating the results of the survey and any designated buffer zones, and is to be completed to the satisfaction of the Director of Planning, Building and Code Enforcement prior to the issuance of any demolition or grading permits.	Project ornithologist will prepare a report indicating the results of the survey and any designated buffer zones.	Prior to the issuance of any grading or demolition permits.	City of San José Director of Planning, Building and Code Enforcement or Director's designee.	Review memo of results.	Prior to issuance of any grading or demolition permits.
Hazards and Hazardous Materials					
IMPACT HAZ-1: The proposed project could result in impacts to construction workers during construction due to potentially hazardous soil resulting from the previous plant nursery and firing range operations in the southern portion of the site.					
MM-HAZ-1.1: Prior to demolition and issuance of any grading or demolition permits, the applicant will complete a limited soil investigation to address potential lead contamination in the sand pit/backstop area at the firing range and potential pesticide and pesticide-based metals (arsenic and lead) contamination due to the former nursery that occupied the southern portion of property. If contaminated soil is found in concentrations above regulatory environmental screening levels for construction worker safety the applicant shall share results of the limited soil sampling with the Santa Clara County Department of Environmental Health. The SCCDEH will then decide upon appropriate further action including but	Retain qualified hazardous materials consultant to collect and test soil samples. Provide memo of results to Director of Planning, Building and Code Enforcement or the Director's designee and the Municipal Environmental Compliance Officer.	Prior to issuance of any grading or demolition permits.	Director of Planning, Building and Code Enforcement or the Director's designee and the Municipal Environmental Compliance Officer.	Review memo of results.	Prior to issuance of any grading or demolition permits.

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<p>not limited to more testing, and/or the development of a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document.</p> <p>The Plan and evidence of regulatory correspondence shall be provided to the Supervising Environmental Planner of the City of San Jose Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San Jose’s Environmental Services Department.</p>					

Source: Solar4America Ice Facility Expansion Project IS/MND, November 2019.