

SOLAR4AMERICA ICE FACILITY EXPANSION

File No. C19-029, CP19-024, PP18-037

Initial Study/Mitigated Negative Declaration

RESPONSES TO PUBLIC COMMENTS AND TEXT CHANGES

January 23, 2020

CEQA Lead Agency:



**City of San José
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, California 95113 Phone: (408) 535-3555**

In Consultation with:



**Starbird Consulting
115 S. 14th Street
San Jose, CA 95112**

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SECTION 1

SUMMARY OF COMMENTS

The Solar4America Ice Facility Expansion Project Initial Study/Mitigation Negative Declaration (IS/MND) was officially circulated for public review for a 20-day review period, from November 20, 2019 to December 12, 2019. The Santa Clara County Department of Environmental Health (SCCDEH) requested additional time for comment, which was granted by the City. Their final letter was received on December 19, 2019. During the circulation period, the City of San José received four comment letters from Martin Delson, Terry Christensen, County of Santa Clara Department of Environmental Health, Consumer Protection Division, and County of Santa Clara Department of Environmental Health, Hazardous Materials Compliance Division.

In summary, the comments received on the draft IS/MND did not raise any new issues about the project's environmental impacts, or provide information indicating the project would result in new environmental impacts or impacts substantially greater in severity than disclosed in the IS/MND. CEQA does not require formal responses to comments on an IS/MND, only that the lead agency consider the comments received [CEQA Guidelines §15074(b)].

Nevertheless, responses to the comments are included in this document to provide a complete environmental record.

The following pages contain a list of the agencies and persons that submitted comments on the IS/MND and the City's responses to comments received on the IS/MND. The specific comments have been excerpted from the letters and are presented as "Comment" with each response directly following ("Response"). Copies of the actual letters and emails submitted to the City of San Jose are included in Section 5. Text edits to the IS/MND as a result of the comments have been included in Section 4.

SECTION 2 AGENCIES AND PERSONS COMMENTING ON THE IS/MND

	Comment Received From	Date of Letter	Page Number
A.	Martin Delson	December 10, 2019	5
B.	Terry Christensen	December 11, 2019	6
C.	Santa Clara County Department of Environmental Health – Consumer Safety Division	December 16, 2019	6
D.	Santa Clara County Department of Environmental Health – Hazardous Materials Compliance Division	December 19, 2019	8

SECTION 3

RESPONSE TO COMMENTS

This memo responds to comments on the IS/MND as they relate to the potential environmental impacts of the project under CEQA. Numbered responses correspond to comments in each comment letter. Copies of the comment letters are attached.

A. RESPONSE TO A LETTER FROM MARTIN DELSON

COMMENT A1: In the Section 4.17 (“Transportation”) of the Department’s review of the Solar4American project, there is a section entitled “Existing Pedestrian and Bicycle Facilities”. In that section, on pages 121-123 there is very brief mention of the Guadalupe River Trail. The report says, “The Guadalupe River trail is an 11-mile continuous Class I bikeway from Curtner Avenue in the south to Alviso in the north.” That happens to not be correct. Although there are plans to extend to Guadalupe River Trail to the south, the southernmost gateway is currently at W. Virginia Street, not Curtner Ave. The dotted green line shown exiting to the right on the map on page 122 is incorrectly labeled “Guadalupe River Tr”; in fact, that line represents the Highway 87 Bikeway, and its northernmost end is at Willow Street, not halfway to Virginia Street as shown. (The Coyote Creek Trail is actually somewhat closer to the facility, so that trail could equally deserve mention in this paragraph.) But I mention that really in passing; it is not the reason for sending these comments.

RESPONSE A1: The comment is correct that the official current terminus of the Guadalupe River Trail is at Virginia Street, although there is also a 2.4-mile segment of the trail located in south San Jose between Chynoweth Avenue and Coleman Road. The City has plans (Guadalupe River Trail Master Plan, 2017) to extend the trail from Virginia Street to Chynoweth Avenue. The comment is also correct that the Highway 87 Trail is mislabeled on Figure 10.

The northern portion of the Coyote Creek Trail ends at Selma Olinder Park northeast of the project area. The southern portion begins at Tully Road, southeast of the project area, traveling south to Morgan Hill. The comment does not affect the environmental analysis contained in the IS/MND. No further response is required.

COMMENT A2: What is much more significant for this project than either the Highway 87 Bikeway or the Coyote Creek Trail is the planned expansion of the Three Creeks Trail* (*Ref: <https://www.sanjoseca.gov/home/showdocument?id=20713>) which will go right along the south and the east boundary of the property, following the curve all the way from the southwest corner of the project site on S. 10th Street to the northwest corner of the site at Senter Rd. and E. Alma Avenue. (Somewhere along this path the trail will transition into the projected continuation of the Five Wounds Trail.) Lack of mention of this planned trail in the Mitigated Negative Declaration is a significant omission.

In truth, a project plan should do more than simply acknowledge that a trail will be passing along the boundary of the project; the project should take advantage of the trail! It might provide a swath of land adjacent to the existing right-of-way to make the trail more spacious, and it might plan for an entrance to the facility from the trail with a welcome pavilion for people who will be coming to the expanded Ice Facility by foot, scooter, or bicycle along the new trail. Neglecting the link to this planned transportation link would be neglecting a wonderful opportunity for a friendlier and more inviting facility.

RESPONSE A2: CEQA requires that the IS/MND include an analysis as to whether the proposed project would conflict with a program, plan, ordinance or policy addressing the

circulation system, including transit, roadway, bicycle and pedestrian facilities. The proposed project site is located north of the future trail alignment planned for the property adjacent to and south of the project site. However, the trail would not be affected by the proposed project, nor would it preclude its ultimate development. As stated on page 135 of the IS/MND, the proposed project would maintain all existing sidewalks, crosswalks, and bicycle facilities, including bike lanes in the project area. The project also includes bicycle parking in accordance with Municipal Code requirements.

The future extension of the Three Creeks and Five Wounds Trails as mentioned in this comment would not be affected by the proposed project, as the City has determined that the right-of-way for the future trail is sufficient on the property adjacent to the southern boundary of the project site. The proposed ice facility expansion project is a public project providing recreational opportunities in the City in an area with existing bicycle and pedestrian facilities. For these reasons, the project does not conflict with any plans or policies related to bicycle and pedestrian facilities and would not result in any additional significant environmental impacts than described in the IS/MND. Therefore, no additional review or response is required.

B. RESPONSE TO A LETTER FROM TERRY CHRISTENSEN

COMMENT B1: May I please second the comments of Martin Delson regarding the Three Creeks Trail adjacent to the Ice Facility on behalf of the Friends of Five Wounds Trail? We have been advocating for development of the Five Wounds Trail from Story Road to I-280 and on to US 101 for a decade and we've made some progress. But the ultimate success of our trail depends on its connection to the Three Creek Trail at Story Road -- and that connection won't be possible without the section of the trail adjacent to the Ice Facility.

RESPONSE B1: As stated in Responses A1 and A2, above, the proposed project would not preclude the development of the future Three Creeks and Five Wounds Trails. The future trail alignment would be located on the property south of the project site and not on the project site. For these reasons, the project does not conflict with any plans or policies related to bicycle and pedestrian facilities and would not result in any additional significant environmental impacts than described in the IS/MND. Therefore, no additional review or response is required.

C. RESPONSE TO A LETTER FROM SANTA CLARA COUNTY DEPARTMENT OF ENVIRONMENTAL HEALTH (SCCDEH), CONSUMER PROTECTION DIVISION

COMMENT C1: The County of Santa Clara Department of Environmental Health has multiple programs that may provide comments in response to the Draft Mitigated Negative Declaration for the Solar4America Ice Facility Expansion Project (CP19-024). The following comments are provided by the Department's Consumer Protection Division, Lead Poisoning Prevention Program.

Our department has received information that lead related construction work (demolition) is proposed for 1580 South 10th Street, San Jose. "Lead-related construction work" means any construction, alteration, painting, demolition, salvage, renovation, repair, or maintenance of any residential or public building, including preparation and cleanup, that, by using or disturbing lead-containing material or soil, may result in significant exposure of adults or children to lead (17 CCR 35040). Our records show this building was built in 1962. Older buildings built before 1978 are very likely to have lead-based paint.

Due to the age of the building and the results of the testing done by Millennium Consulting Associates, on March 27th, 2019, the surface coating at the rubber bullet wall panel, the red, blue and grey concrete floor paint and the floor dust wipe samples taken at the entry, restrooms and rubber wall all exceed regulatory levels (17 CCR 35033; 35035) and are lead hazards (17 CCR 35037). Lead is a poisonous metal that can be ingested or inhaled. Small children become exposed by eating paint chips, gnawing on lead painted surfaces such as windowsills or by picking up lead contaminated dust or soil on fingers, toys or other objects. It is especially harmful to children in their early years of development.

RESPONSE C1: The comment is correct and reflects the testing that has been completed thus far at the Municipal Firing Range building and the conclusions of the IS/MND (Section 4.9, Hazards and Hazardous Materials). The Phase I completed by Cornerstone, and included in Appendix D, found that lead was detected in soil adjacent to the site of up to 940 mg/kg and the firing range on the project site was identified as a potential source for the elevated lead concentrations. Cornerstone recommended further evaluation of potential impacts from the firing range by completing an on-Site soil quality evaluation. To address potential lead-based paint and asbestos containing materials issues related with the building, the City of San Jose has included Standard Permit Conditions that include regulations in accordance with Cal/OSHA Lead in Title 8 and BAAQMD requirements and notification for Asbestos Containing Material. Furthermore, specifications mitigation measure HAZ-1.1 require testing of site soil to address potential lead contamination, organochlorine pesticides, and pesticide-based metals and that the results be shared with the SCCDEH, who will then decide upon appropriate further action. It should be noted that the nearest sensitive receptors are the residences located 0.25 miles north of the site and the project site is not located in proximity to any schools. The comment does not include any new information related to hazardous materials impacts of the proposed project as described and analyzed in the IS/MND. Therefore, no additional review or response is required.

COMMENT C2: The lead related construction work (demolition) requires the completion of the following steps:

Step 1) As demolition is designed to reduce lead hazards for a minimum of twenty years, state regulations require that a CDPH certified Supervisor or Worker conduct this work (Title 17 of the California Code of Regulations Section 36100 (a)(1); 17 CCR 36100 (a)(1)). After the work is completed, a clearance inspection shall be conducted by a CDPH certified Inspector/Assessor or Project Monitor. The clearance inspector will complete the CDPH "Lead Hazard Evaluation Report" form 8552 (17 CCR 36000 (a) (4)) and send it to the following locations:

California Department of Public Health
Childhood Lead Prevention Branch,
850 Marina Bay Parkway Building P, 3rd Floor,
Richmond, CA 94804-6403
Fax: (510) 620-5656
And
Katherine Avila,
County of Santa Clara Department of Environmental Health, 1555 Berger Dr, Ste 300,
San Jose, CA., 95112
Email: Katherine.Avila@cep.sccgov.org

A list of certified individuals is available from the CDPH Childhood Lead Poisoning Prevention Branch website: (<https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/CLPPB>)

Lead-safe work practices shall be observed as required in 17 CCR 36100. Disposal of the waste shall adhere to all applicable state hazardous waste regulations. For more information on proper hazardous waste management, contact the Department of Environmental Health Hazardous Materials Program at (408) 918-3400.

Before implementing the above measures, submit a Work Plan addressing the above-cited requirements and the CDPH “Abatement of Lead Hazards Notification” form 8551 (enclosed) to the following locations five days before work begins (17 CCR section 36100(c)):

California Department of Public Health Childhood Lead Prevention Branch,
850 Marina Bay Parkway Building P, 3rd Floor, Richmond, CA 94804-6403
Fax: (510) 620-5656
and

Katherine Avila,
County of Santa Clara Department of Environmental Health, 1555 Berger Dr, Ste 300,
San Jose, CA., 95112
Email: Katherine.Avila@cep.sccgov.org

Sources of lead exposure constitute environmental lead contamination (Health and Safety Code Section 105280 (g)) and are a lead hazard (17 CCR 35037). Notify Katherine Avila when work begins and when work is completed.

Ensure that Cal/OSHA requirements are followed regarding Lead in Construction including the submittal of the Lead-Work Pre-Job Notification to Cal/OSHA. (enclosed)

If you have any questions, please don’t hesitate to contact Katherine B. Avila at 408-918-3457

RESPONSE C2: Please refer to Response C1. As stated on pages 83 and 84 of the IS/MND, standard permit conditions are included in the proposed project to reduce impacts related to demolition of the Municipal Firing Range Building to a less than significant level. Furthermore, specifications in mitigation measure HAZ-1.1 requires testing of site soil to address potential lead contamination, organochlorine pesticides, and pesticide-based metals and that the results be shared with the SCCDEH, who will then decide upon appropriate further action. All of the requests and requirements stated in this comment and the IS/MND, including following Cal/OSHA requirements, will be implemented by the applicant and City of San Jose. The comment does not call into question any of the IS/MND conclusions. No further response is required.

**D. RESPONSE TO RESPONSE TO A LETTER FROM SANTA CLARA COUNTY
DEPARTMENT OF ENVIRONMENTAL HEALTH (SCCDEH), HAZARDOUS
MATERIALS COMPLIANCE DIVISION**

COMMENT D1: The County of Santa Clara Department of Environmental Health has multiple programs that may provide comments in response to the Draft Mitigated Negative Declaration for the Solar4America Ice Facility Expansion Project (CP19-024). The following comments are provided by two programs in the Department’s Hazardous Materials Compliance Division.

The Site Mitigation Program (SMP) provides the following comments:

MM HAZ-1 of the Draft MND states “Prior to demolition and issuance of grading permits, the applicant shall completed a limited soil investigation to address potential lead contamination in the sand pit 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 the property from the late 1970s to early 1990s. 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.”

SMP comment 1: Firing ranges are known to generate lead-contaminated debris and lead dust, which may contaminate surrounding areas if not tightly controlled. Lead is known to have significant health impacts if ingested, adsorbed or inhaled. Soil samples collected from within the firing range and outside of the firing range have detected elevated levels of lead above environmental screening levels. Based on the information reviewed, the SMP believes that the evaluation of lead impacts at the site is incomplete. Additionally, a Federal Superfund site (Lorentz Barrel & Drum Company) is located immediately west of the project site (across S 10th St.). Based on these factors, the SMP recommends that the limited soil investigation required in MM HAZ-1 be expanded to include all areas of the Solar4America Ice Facility Expansion Project in order to evaluate potential contamination across the entire project area.

RESPONSE D1: A Phase I completed by Cornerstone April 30, 2019 included an asbestos survey of twenty-nine bulk samples from the structure’s interior and exterior and a lead-based paint survey. The Phase I also recommended the collection of soil samples to determine if areas of elevated lead were present in the on-Site soil. Future additional soil sampling locations also include the southern portion of the site where the nursery was located as well as from the exterior of the existing firing range building. The applicant plans on completing the limited soil sampling to further characterize the soil, as is required by mitigation measure HAZ-1. If results from the limited soil sampling are above the appropriate regulatory thresholds, the applicant will share those results with the SCCDEH for proper regulatory oversight.

As stated in Section 4.9 Hazards and Hazardous Materials of the IS/MND and Appendix D of the IS/MND, the sand within the sand pit could not be accessed during the initial sampling event due to the bullet catchment structures. These structures require disassembling to access the sand pit, which could not be performed since the shooting range was in use at the time of sampling. The sand pit material will be addressed and removed during the pre-demolition lead-based paint abatement work according to all mitigation measures and OSHA requirements as stated in Response C1 and C2, above.

The proposed soil sampling to be completed at the Firing Range includes step-out samples at locations where elevated lead concentrations were previously detected in soil samples collected adjacent to the shooting range. The lead detected adjacent to the building foundations likely was from the weathering of lead paint but could have also been from lead dust from the shooting range. In both cases, the lead impacts will be restricted to the near surface soil adjacent to the structure.

According to regulatory database review of the United States EPA website, accessed on July 17, 2019, the off-site Lorentz Barrel and Drum Company has been performing remedial activities since the late 1980s, as stated on page 76 of the IS/MND. Surface soil contamination is restricted to that property, where the releases occurred. Groundwater impacts migrated in the direction of groundwater flow (north-northwest). A groundwater monitoring well was installed along 10th Street and along the western border of the Solar4America site. No contamination has been

detected in this well. Historical data from Annual Groundwater Reports for Lorentz Barrel and Drum from 12/1988 to 12/1992 indicate that Volatile Organic Compounds have been non-Detect in the area of the proposed project. As such, impacts from this Superfund facility have not been documented on the Solar4America site and no further studies are warranted on the project site. Therefore, the IS/MND accurately describes and analyzes the project's impacts associated with hazardous materials and no further analysis is required.

COMMENT D2: SMP comment 2: The SMP recommends that the project applicant obtain regulatory oversight from either the Regional Water Quality Control Board, the Department of Toxic Substances Control, or the County of Santa Clara Site Mitigation Program to fully assess the site for contamination. If the City requires regulatory oversight, the SMP recommends that the oversight process be initiated as early as possible in order to avoid potential project delays.

RESPONSE D2: As stated in the IS/MND, Mitigation Measure HAZ-1 has been included to address potentially hazardous soil on site. Mitigation Measure HAZ-1 states that "Prior to demolition and issuance of grading 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 not limited to more testing, and/or the development of a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent document. 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." The results from the planned sampling will be evaluated to determine if there are concentrations detected that exceed the regulatory commercial/construction, as stated in MM HAZ-1.1 of the IS/MND and if required, appropriate regulatory oversight as early in the process as possible, will be implemented. If upon received the sampling results, SCCDEH acting as the regulatory oversight agency, would have the ability to decide appropriate further action whether that is requiring additional testing, developing a plan, or referring to additional agencies for oversight. Therefore, no new or more significant impacts other than those correctly identified in the IS/MND would occur.

COMMENT D3: The Hazardous Materials Program provides the following comments:

Section 4.9 discusses the potential of this project to create a hazard due to hazardous materials. The report provides mitigating factors to address lead within the to-be-demolished Municipal Shooting Range structure and the surrounding soil. The County of Santa Clara, Department of Environmental Health does not believe that the mitigation measures provided for in the negative declaration (MND) provide sufficient detail regarding the risks of this project.

Within the discussion of potential impacts of hazardous materials (section 4.9, primarily pages 78 and 79) the MND does not address or recognize the requirements of the facility to meet facility closure requirements of both the City of San Jose, Bureau of Fire Protection as required by Municipal Ordinance, section 17.68.670 and those of California Code of Regulations, Title 22, sections 66265.111 and 66265.114, as referenced by 66262.34(a)(1)(A).

RESPONSE D3: The project would be required to comply and implement any City and state

requirements, including hazardous facility closure regulations outlined in Municipal Code section 17.68.670. The resolution for the Conditional Use Permit includes permit conditions that require project compliance with all applicable fire and building codes and standards, which will be verified by the Fire Department during the Building Permit Process. A text edit has been added to the IS/MND to clarify this, however, this comment does not change the analysis in the IS/MND and no further analysis is needed.

Comment D4: The Hazardous Materials Program provides the following comments:

The MND does not recognize the risks associated with the spread of lead identified within the upper ½ foot of soil by (heavy) equipment used during the demolition of the existing building and subsequent removal demolition debris.

RESPONSE D4: As previously described in Responses C1, C2, D1, and D2, above, further testing of the site is ongoing as described in MM HAZ-1.1 on page 82 of the IS/MND. The mitigation measure states that “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. Further, the mitigation measure states that additional testing and/or the development of a Site Management Plan (SMP), Removal Action Plan (RAP), or equivalent will be implemented.”

This is as much detail as the City can provide at this time because the testing results as required by mitigation measure HAZ-1 are still pending. Mitigation measure HAZ-1 requires that the lead testing and abatement work will be performed prior to the building demolition according to the requirements and direction of the SCCDEH as the regulatory oversight agency. The demolition contractor will be required to utilize dust control measures to prevent dust emissions, as is outlined in Standard Permit Conditions within the IS/MND. The future testing and necessary abatement will remove the materials identified in the hazardous building materials survey, as appropriate, and no additional impacts would result other than those identified in the IS/MND.

COMMENT D5: The MND assumes that lead contaminated soil, including the un-examined historical sand pit shooting backstop may be able to be managed as “contaminated environmental media”. This portion of the project does not appear to be eligible for the proposed mitigations as the sand does not appear to meet the “environmental media” description. The sand was used for an intended purpose and through its use became contaminated. This would define the sand as a “solid waste” under Federal rules and a “waste” under California rules. With such designations, all backstop sand and any media that immediately contacts the sand found to meet hazardous waste criteria shall be managed as hazardous waste and may not have the DTSC-SLs applied to determine risk for use/reuse.

RESPONSE D5: Please refer to Response D1. The sand pit material will be addressed during the pre-demolition lead abatement work and will be removed and disposed of at a State regulated landfill based on the lead concentrations detected in samples analyzed from this material. Therefore, no additional hazardous materials impacts would result from the proposed project other than those identified in the IS/MND.

COMMENT D6: The report discusses limiting the potential impacts to workers from lead containing paint and conducted chip sampling from vertical surfaces as a means to measure this potential risk. We believe that the results provided fail to adequately address the risk associated with the lead onsite. To truly measure the potential impacts of lead based paints, surfaces should be cleaned of all externally deposited lead particulate matter. There is no way to determine if the chip samples’ elevated lead levels

are from chemically bound lead within applied coatings/paints or from freely available inhalable lead dust deposited upon the surface.

The Hazardous Materials Compliance Division appreciates the opportunity to review and comment on the Draft MND for this project. Please feel free to contact me should you have any questions or wish to discuss further.

RESPONSE D6: Please refer to Response D3. The pre-demolition hazardous building material survey collected lead paint samples and wipe samples for laboratory analysis. The chip samples evaluated the presence of lead whereas the wipe samples evaluated the lead content on any non-bound surface material (i.e., dust). The results from both types of samples will be addressed during abatement, as described in the IS/MND and Appendix C. Therefore, no additional hazardous materials impacts would result from the proposed project other than those identified in the IS/MND.

SECTION 4 TEXT EDITS TO THE IS/MND

This section contains revisions to the text of the Solar4America Ice Facility Expansion Project Initial Study/MND dated November 2019. Revised or new language is underlined. The revisions to the Initial Study are based on changes made to the project after the IS/MND was published. The changes to the text are minor and do not change the analysis and findings in the document. Therefore, the Initial study does not require re-circulation based on these revisions.

Page Number (s)	Text Change
84	<u>Pursuant to the permit conditions included in the Conditional Use Permit resolution, the project must also comply with all applicable Fire and Building Codes, including any hazardous facility closure requirements during the Building Permit stage.</u>

SECTION 5 COPIES OF LETTERS AND EMAILS RECEIVED

COMMENT LETTER A

December 10, 2019

Ms. Kara Hawkins
San Jose Department of Planning, Building, and Code Enforcement

Subj: Comments on C19-029:
Mitigated Negative Declaration
Solar4American Ice Facility Expansion

Dear Ms. Hawkins:

In the Section 4.17 ("Transportation") of the Department's review of the Solar4American project, there is a section entitled "Existing Pedestrian and Bicycle Facilities". In that section, on pages 121-123 there is very brief mention of the Guadalupe River Trail. The report says "*The Guadalupe River trail is an 11-mile continuous Class I bikeway from Curtner Avenue in the south to Alviso in the north.*"

That happens to not be correct. Although there are plans to extend to Guadalupe River Trail to the south, the southernmost gateway is currently at W. Virginia Street, not Curtner Ave. The dotted green line shown exiting to the right on the map on page 122 is incorrectly labeled "Guadalupe River Tr"; in fact that line represents the Highway 87 Bikeway, and its northernmost end is at Willow Street, not halfway to Virginia Street as shown. (The Coyote Creek Trail It is actually somewhat closer to the facility, so that trail could equally deserve mention in this paragraph.)

But I mention that really in passing; it is not the reason for sending these comments.

What is much more significant for this project than either the Highway 87 Bikeway or the Coyote Creek Trail is the planned expansion of the **Three Creeks Trail*** which will go right along the south and the east boundary of the property, following the curve all the way from the southwest corner of the project site on S. 10th Street to the northwest corner of the site at Senter Rd. and E. Alma Avenue. (Somewhere along this path the trail will transition into the projected continuation of the **Five Wounds Trail**.)

Lack of mention of this planned trail in the Mitigated Negative Declaration is a significant omission.

In truth, a project plan should do more than simply acknowledge that a trail will be passing along the boundary of the project; the project should take advantage of the trail! It might provide a swath of land adjacent to the existing right-of-way to make the trail more spacious, and it might plan for an entrance to the facility from the trail with a welcome pavilion for people who will be coming to the expanded Ice Facility by foot, scooter, or bicycle along the new trail. Neglecting the link to this planned transportation link would be neglecting a wonderful opportunity for a friendlier and more inviting facility.

Sincerely,

Martin Delson
633 Palm Haven Ave.
San Jose, CA 95125

*Ref: <https://www.sanjoseca.gov/home/showdocument?id=20713>

COMMENT LETTER B

From: [Terry Christensen](#)
To: [Hawkins, Kara](#)
Cc: [Martin Delson](#); [Zsutty, Yves](#); [Bill Rankin](#); [Lames](#); [District7](#)
Subject: Re: Retransmittal - Comments on Solar4American project (C19-029)
Date: Wednesday, December 11, 2019 10:40:31 AM

[External Email]

Ms. Hawkins --

May I please second the comments of Martin Delson regarding the Three Creeks Trail adjacent to the Ice Facility on behalf of the Friends of Five Wounds Trail? We have been advocating for development of the Five Wounds Trail from Story Road to I-280 and on to US 101 for a decade and we've made some progress. But the ultimate success of our trail depends on its connection to the Three Creek Trail at Story Road -- and that connection won't be possible without the section of the trail adjacent to the Ice Facility.

Thank you.

Terry Christensen for Friends of Five Wounds Trail

On Wed, Dec 11, 2019 at 8:47 AM Hawkins, Kara <Kara.Hawkins@sanjoseca.gov> wrote:

Hello Mr. Delson

Thank you for your comments! We will be sure to address them in our formal Responses to Comments.

Best,

Kara Hawkins

Planner | City of San José

Planning, Building & Code Enforcement

kara.hawkins@sanjoseca.gov

408.535.7852

From: Martin Delson <martin.delson@yahoo.com>

Sent: Tuesday, December 10, 2019 7:40 PM

To: Hawkins, Kara <Kara.Hawkins@sanjoseca.gov>

Cc: Zsutty, Yves <Yves.Zsutty@sanjoseca.gov>; Bill Rankin <bill@networds.com>; Lames <lames@aol.com>; Terry Christensen <terry.christensen@sjsu.edu>; District7 <District7@sanjoseca.gov>

Subject: Retransmittal - Comments on Solar4American project (C19-029)

[External Email]

Dear Ms. Hawkins,

Let me try again, this time with the attachment!

I would appreciate it if you would take the attached comments into account regarding the Mitigated Negative Declaration for the planned expansion of the Solar4America Ice Facility.

Sincerely,

Martin Delson

633 Palm Haven Ave,
San Jose CA 95125
ph: 408-295-7788

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

--

Terry Christensen
CommUniverCity
and
Professor Emeritus
San Jose State University

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County of Santa Clara

Department of Environmental Health

Consumer Protection Division

1555 Berger Drive, Suite 300
San Jose, CA 95112-2716
(408)918-3400 FAX (408)258-5891
www.EHinfo.org



December 16, 2019

CERTIFIED: 7012 1640 0000 6228 0481

Kara Hawkins
Planner | City of San José
Planning, Building & Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113

RE: Complaint CO0148043– Proposed Lead Related Construction Work at 1580 South 10th Street
San Jose

Dear Ms. Hawkins:

The County of Santa Clara Department of Environmental Health has multiple programs that may provide comments in response to the Draft Mitigated Negative Declaration for the Solar4Americal Ice Facility Expansion Project (CP19-024). The following comments are provided by the Department's Consumer Protection Division, Lead Poisoning Prevention Program.

Our department has received information that lead related construction work (demolition) is proposed for 1580 South 10th Street, San Jose. "Lead-related construction work" means any construction, alteration, painting, demolition, salvage, renovation, repair, or maintenance of any residential or public building, including preparation and cleanup, that, by using or disturbing lead-containing material or soil, may result in significant exposure of adults or children to lead (17 CCR 35040). Our records show this building was built in 1962. Older buildings built before 1978 are very likely to have lead-based paint.

Due of the age of the building and the results of the testing done by Millennium Consulting Associates, on March 27th, 2019, the surface coating at the rubber bullet wall panel, the red, blue and grey concrete floor paint and the floor dust wipe samples taken at the entry, restrooms and rubber wall all exceed regulatory levels (17 CCR 35033; 35035) and are lead hazards (17 CCR 35037). Lead is a poisonous metal that can be ingested or inhaled. Small children become exposed by eating paint chips, gnawing on lead painted surfaces such as windowsills or by picking up lead contaminated dust or soil on fingers, toys or other objects. It is especially harmful to children in their early years of development.

The lead related construction work (demolition) requires the completion of the following steps:

Step 1) As demolition is designed to reduce lead hazards for a minimum of twenty years, state regulations require that a CDPH certified Supervisor or Worker conduct this work (Title 17 of the California Code of Regulations Section 36100 (a)(1); 17 CCR 36100 (a)(1)). After the work is completed, a clearance inspection shall be conducted by a CDPH certified Inspector/Assessor or Project Monitor. The clearance inspector will complete the CDPH "Lead Hazard Evaluation Report" form 8552 (17 CCR 36000 (a) (4)) and send it to the following locations:

California Department of Public Health
Childhood Lead Prevention Branch,
850 Marina Bay Parkway Building P, 3rd Floor,
Richmond, CA 94804-6403

Board of Supervisors: Mike Wasserman, Cindy Chavez, Dave Cortese, Susan Ellenberg, S. Joseph Simitian
County Executive: Jeffrey V. Smith

Fax: (510) 620-5656
and
Katherine Avila,
County of Santa Clara Department of Environmental Health,
1555 Berger Dr, Ste 300,
San Jose, CA., 95112
Email: Katherine.Avila@cep.sccgov.org

A list of certified individuals is available from the CDPH Childhood Lead Poisoning Prevention Branch website: (<https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/CLPPB>)

Lead-safe work practices shall be observed as required in 17 CCR 36100. Disposal of the waste shall adhere to all applicable state hazardous waste regulations. For more information on proper hazardous waste management, contact the Department of Environmental Health Hazardous Materials Program at (408) 918-3400.

Before implementing the above measures, submit a Work Plan addressing the above-cited requirements and the CDPH "Abatement of Lead Hazards Notification" form 8551 (enclosed) to the following locations five days before work begins (17 CCR section 36100(c)):

California Department of Public Health
Childhood Lead Prevention Branch,
850 Marina Bay Parkway Building P, 3rd Floor,
Richmond, CA 94804-6403
Fax: (510) 620-5656
and
Katherine Avila,
County of Santa Clara Department of Environmental Health,
1555 Berger Dr, Ste 300,
San Jose, CA., 95112
Email: Katherine.Avila@cep.sccgov.org

Sources of lead exposure constitute environmental lead contamination (Health and Safety Code Section 105280 (g)) and are a lead hazard (17 CCR 35037). Notify Katherine Avila when work begins and when work is completed.

Ensure that Cal/OSHA requirements are followed regarding Lead in Construction including the submittal of the Lead-Work Pre-Job Notification to Cal/OSHA. (enclosed)

If you have any questions, please don't hesitate to contact Katherine B. Avila at 408-918-3457.

Sincerely,



Katherine B. Avila, REHS
Senior Environmental Health Specialist
County of Santa Clara

Enclosures

COMMENT LETTER D

From: [Kaahaaina, Jennifer](#)
To: [Hawkins, Kara](#)
Cc: [Avila, Katherine](#); [Gaddi, Rochelle](#)
Subject: Comments in Response to Public Notice of Intent for MND (CP19-024)
Date: Thursday, December 19, 2019 4:47:36 PM

[External Email]

Kara,

The County of Santa Clara Department of Environmental Health has multiple programs that may provide comments in response to the Draft Mitigated Negative Declaration for the Solar4America Ice Facility Expansion Project (CP19-024). The following comments are provided by two programs in the Department's Hazardous Materials Compliance Division.

The Site Mitigation Program (SMP) provides the following comments:

MM HAZ-1 of the Draft MND states "Prior to demolition and issuance of grading permits, the applicant shall completed a limited soil investigation to address potential lead contamination in the sand pit 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 the property from the late 1970s to early 1990s. 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."

SMP comment 1: Firing ranges are known to generate lead-contaminated debris and lead dust, which may contaminate surrounding areas if not tightly controlled. Lead is known to have significant health impacts if ingested, adsorbed or inhaled. Soil samples collected from within the firing range and outside of the firing range have detected elevated levels of lead above environmental screening levels. Based on the information reviewed, the SMP believes that the evaluation of lead impacts at the site is incomplete. Additionally, a Federal Superfund site (Lorentz Barrel & Drum Company) is located immediately west of the project site (across S 10th St.). Based on these factors, the SMP recommends that the limited soil investigation required in MM HAZ-1 be expanded to include all areas of the Solar4America Ice Facility Expansion Project in order to evaluate potential contamination across the entire project area.

SMP comment 2: The SMP recommends that the project applicant obtain regulatory oversight from either the Regional Water Quality Control Board, the Department of Toxic Substances Control, or the County of Santa Clara Site Mitigation Program to fully assess the site for contamination. If the City requires regulatory oversight, the SMP recommends that the oversight process be initiated as early as possible in order to avoid potential project delays.

The Hazardous Materials Program provides the following comments:

Section 4.9 discusses the potential of this project to create a hazard due to hazardous materials. The report provides mitigating factors to address lead within the to-be-demolished Municipal Shooting Range structure and the surrounding soil. The County of Santa Clara, Department of Environmental Health does not believe that the mitigation measures provided for in the negative declaration (MND) provide sufficient detail regarding the risks of this project.

Within the discussion of potential impacts of hazardous materials (section 4.9, primarily pages 78 and 79) the MND does not address or recognize the requirements of the facility to meet facility closure requirements of both the City of San Jose, Bureau of Fire Protection as required by Municipal Ordinance, section 17.68.670 and those of California Code of Regulations, Title 22, sections 66265.111 and 66265.114, as referenced by 66262.34(a)(1) (A).

The MND does not recognize the risks associated with the spread of lead identified within the upper ½ foot of soil by (heavy) equipment used during the demolition of the existing building and subsequent removal demolition debris.

The MND assumes that lead contaminated soil, including the un-examined historical sand pit shooting backstop may be able to be managed as “contaminated environmental media”.

This portion of the project does not appear to be eligible for the proposed mitigations as the sand does not appear to meet the “environmental media” description. The sand was used for an intended purpose and through its use became contaminated. This would define the sand as a “solid waste” under Federal rules and a “waste” under California rules. With such designations, all backstop sand and any media that immediately contacts the sand found to meet hazardous waste criteria shall be managed as hazardous waste and may not have the DTSC-SLs applied to determine risk for use/reuse.

The report discusses limiting the potential impacts to workers from lead containing paint and conducted chip sampling from vertical surfaces as a means to measure this potential risk. We believe that the results provided fail to adequately address the risk associated with the lead onsite. To truly measure the potential impacts of lead based paints, surfaces should be cleaned of all externally deposited lead particulate matter. There is no way to determine if the chip samples’ elevated lead levels are from chemically bound lead within applied coatings/paints or from freely available inhalable lead dust deposited upon the surface.

The Hazardous Materials Compliance Division appreciates the opportunity to review and comment on the Draft MND for this project. Please feel free to contact me should you have any questions or wish to discuss further.

Thank you,

Jennifer Kaahaaina
Hazardous Materials & Site Mitigation Program Manager
County of Santa Clara
Department of Environmental Health
Hazardous Materials Compliance Division
1555 Berger Drive, Suite 300
San Jose, CA 95112
(408) 918-4795

From: Hawkins, Kara <Kara.Hawkins@sanjoseca.gov>

Sent: Wednesday, November 20, 2019 3:54 PM

Subject: [EXTERNAL] Public Notice of Intent for MND (CP19-024)

PUBLIC NOTICE

INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION

CITY OF SAN JOSE, CALIFORNIA

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

Description: The project site is currently developed with the existing Solar 4Americia Ice Facility, associated parking, the Excite Ballpark, and the Municipal Firing Range. The project includes a Conforming Rezoning and a Conditional Use Permit to allow the demolition of the existing municipal firing range, demolition of a portion of the existing parking lot area, and the removal of approximately 35 ordinance-size trees to allow the for the expansion of approximately 204,193 square feet to an existing ice rink facility and late night use on an approximately 21.23-gross acre site. Approximately 20,000 square feet of expansion would include medical office uses, and the expansion would also add two ice rinks to the existing three-rink facility.

Location: Southeast Corner of East Alma Avenue and South 10th Street

Assessor's Parcel No.: 477-38-003

Council District: 7

Applicant Contact Information: Sharks Ice (Attn: Jon Gustafson), 1500 South 10th Street, San Jose, CA 95112, (408)999-6751

The City has performed an environmental review of the project. The environmental review examines the nature and extent of any adverse effects on the environment that could occur if the project is approved and implemented. Based on the review, the City has prepared a Draft Mitigated Negative Declaration (MND) for this project. An MND is a statement by the City that the project will not have a significant effect on the environment because the project will include mitigation measures that will reduce identified project impacts to a less than significant level. The project site is not included on a list of hazardous materials sites compiled pursuant to Section 65962.5 of the California Government Code.

The public is welcome to review and comment on the Draft MND. The public comment period for this Draft MND begins on **November 20, 2019 and ends on December 12, 2019.**

The Draft MND, Initial Study, and reference documents are available online at:

www.sanjoseca.gov/negativedeclarations. The documents are also available for review from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San José Department of Planning, Building and Code Enforcement, located at City Hall, 200 East Santa Clara Street; the Dr. Martin Luther King, Jr. Main Library, located at 150 E. San Fernando Street, and the Biblioteca Latinoamericana Branch Library, located at 921 South 1st Street.

For additional information, please contact Kara Hawkins at (408) 535-7852, or by e-mail at kara.hawkins@sanjoseca.gov.

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