PUBLIC REVIEW DRAFT | SEPTEMBER 2022

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT

INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Prepared by:

Michael Baker INTERNATIONAL

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PUBLIC REVIEW DRAFT

INITIAL STUDY

Chick-fil-A Silver Creek & Capitol Project

LEAD AGENCY:

City of San José

Department of Planning, Building, and Code Enforcement

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September 2022

JN 185544

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INITIAL STUDY AND TECHNICAL APPENDICES

The Notice of Intent (NOI), Draft Initial Study, and Appendices are also available for download at the City's official website.

https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents

In addition to the City's official website, these documents are also available for review at the Office of Planning and Research's (OPR) CEQAnet online database.

https://ceqanet.opr.ca.gov/

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1.0 INTRODUCTION

The proposed Chick-fil-A Silver Creek & Capitol Project (project) site is located at the 3000-3100 block (odd) of Silver Creek Road (Tentative Assessor's Parcel Numbers [APN] T20-030), an out parcel of 3155 Silver Creek Valley, San José, California (APNs 670-15-018 and -023). The project would demolish an existing former O'Reilly Auto Parts retail building and construct a new Chick-fil-A restaurant with a dual drive-thru lane and associated surface parking. The proposed Chick-fil-A restaurant would be situated on an approximate 0.74-gross acre site. The proposed added parking area at the former O-Reilly Auto Parts store is situated on an approximate 0.61-acre site. The Chick-fil-A restaurant would be a 3,565-square-foot, one-story building with 38 interior dining seats and 28 outdoor dining seats. The dual lane drive-thru would have a 21-vehicle stacking que capacity. Landscaping would be planted, in-kind with the existing surrounding development.

Following a preliminary review of the project, the City of San José determined the project is subject to the guidelines and regulations of the California Environmental Quality Act (CEQA). This Initial Study analyzes the potential direct, indirect, and cumulative environmental effects of the project.

1.1 CEQA STATUTORY AUTHORITY AND REQUIREMENTS

In accordance with Sections 15051 and 15367 of the California Code of Regulations (CCR), the City is identified as the Lead Agency for the project. Under CEQA (Public Resources Code Section 21000-21177) and pursuant to Section 15063 of the CCR, the City is required to undertake the preparation of an Initial Study to determine if the project would have a significant environmental impact. If, as a result of the Initial Study, the Lead Agency finds that there is evidence that any aspect of the project may cause a significant environmental effect, the Lead Agency shall further find that an Environmental Impact Report (EIR) is warranted to analyze project-related and cumulative environmental impacts. Alternatively, if the Lead Agency finds that there is no evidence that the project, either as proposed or as modified to include the mitigation measures identified in the Initial Study, may cause a significant effect on the environment, the Lead Agency shall find that the project would not have a significant effect on the environment and shall prepare a Negative Declaration (or Mitigated Negative Declaration). Such determination can be made only if "there is no substantial evidence in light of the whole record before the Lead Agency" that such impacts may occur (Section 21080[c], Public Resources Code).

The environmental documentation, which is ultimately selected by the City in accordance with CEQA, is intended as an informational document undertaken to provide an environmental basis for considering discretionary actions necessary to approve or undertake the project. The resulting documentation is not, however, a policy document and its approval and/or certification neither presupposes nor mandates any actions on the part of those agencies from whom permits, and other discretionary approvals would be required.

1.2 PURPOSE

CEQA Guidelines Section 15063 identifies the following specific contents for inclusion in an Initial Study:

- A description of the project, including the location of the project;

- An identification of the environmental setting;
- An identification of environmental effects by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries;
- A discussion of ways to mitigate significant effects identified, if any;
- An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and
- The name(s) of the person(s) who prepared or participated in the preparation of the Initial Study.

1.3 CONSULTATION

Pursuant to CEQA Guidelines Section 15063(g), as soon as the Lead Agency (in this case, the City) has determined that an Initial Study would be required for the project, the Lead Agency is directed to consult informally with all Responsible Agencies and Trustee Agencies that are responsible for resources affected by the project, in order to obtain the recommendations of those agencies as to whether an EIR or Negative Declaration should be prepared for the project. Following receipt of any written comments from those agencies, the Lead Agency considers any recommendations of those agencies in the formulation of the preliminary findings. Following completion of this Initial Study, the Lead Agency initiates formal consultation with these and other governmental agencies as required under CEQA and its implementing guidelines.

1.4 INCORPORATION BY REFERENCE

The following documents were utilized during preparation of this Initial Study and are incorporated into this document by reference. These documents are available for review at the City of San José Planning Department, 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113.

- *Envision San José 2040 General Plan* (May 2021). The *Envision San José 2040 General Plan* (General Plan), updated May 2021, is a long-range planning document that guides decisions related to the City's land uses and delivery of municipal services. The General Plan includes the following seven elements: Land Use, Circulation, Housing, Conservation, Open Space, Noise, and Safety. Each element includes Goals, Policies and Implementation Actions, which are intended to provide high-level policy guidance to the City on a wide range of topics related to land use.
- *Program Environmental Impact Report for the Envision San José 2040 General Plan* (adopted June 2011). The *Program Environmental Impact Report for the Envision San José 2040 General Plan* (State Clearinghouse Number [SCH No.] 2009072096) (PEIR) analyzes the General Plan, including the goals, policies, implementation actions, and buildout of the General Plan Land Use/Transportation Diagram. The PEIR identifies the following topical areas with significant and unavoidable impacts: Land Use, Transportation, Noise and Vibration, Air Quality, Biological Resources, Aesthetics, Population and Housing, and Greenhouse Gas Emissions.

- *San José Municipal Code*. The *San José Municipal Code* (Municipal Code), Codified through Ordinance No. 30632, adopted June 29, 2021, consists of codes and ordinances adopted by the City. These include standards intended to regulate land use, housing, health and safety, water quality, public facilities, and public safety. Title 20, Zoning (San José Zoning Code), includes an official land use plan for the City and is adopted and established to serve the public health, safety, and general welfare and in furtherance of the following:

    1. To guide, control, and regulate future growth and development in the City in a sound and orderly manner, and to promote achievement of the goals and purposes of the General Plan;

    2. To protect the character and economic and social stability of agricultural, residential, commercial, industrial, and other areas in the City;

    3. To provide light, air, and privacy to property;

    4. To preserve and provide open space and prevent overcrowding of the land;

    5. To appropriately regulate the concentration of population;

    6. To provide access to property and prevent undue interference with and hazards to traffic on public rights-of-way; and

    7. To prevent unwarranted deterioration of the environment and to promote a balanced ecology.

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2.0 PROJECT DESCRIPTION

2.1 PROJECT LOCATION AND SETTING

PROJECT LOCATION

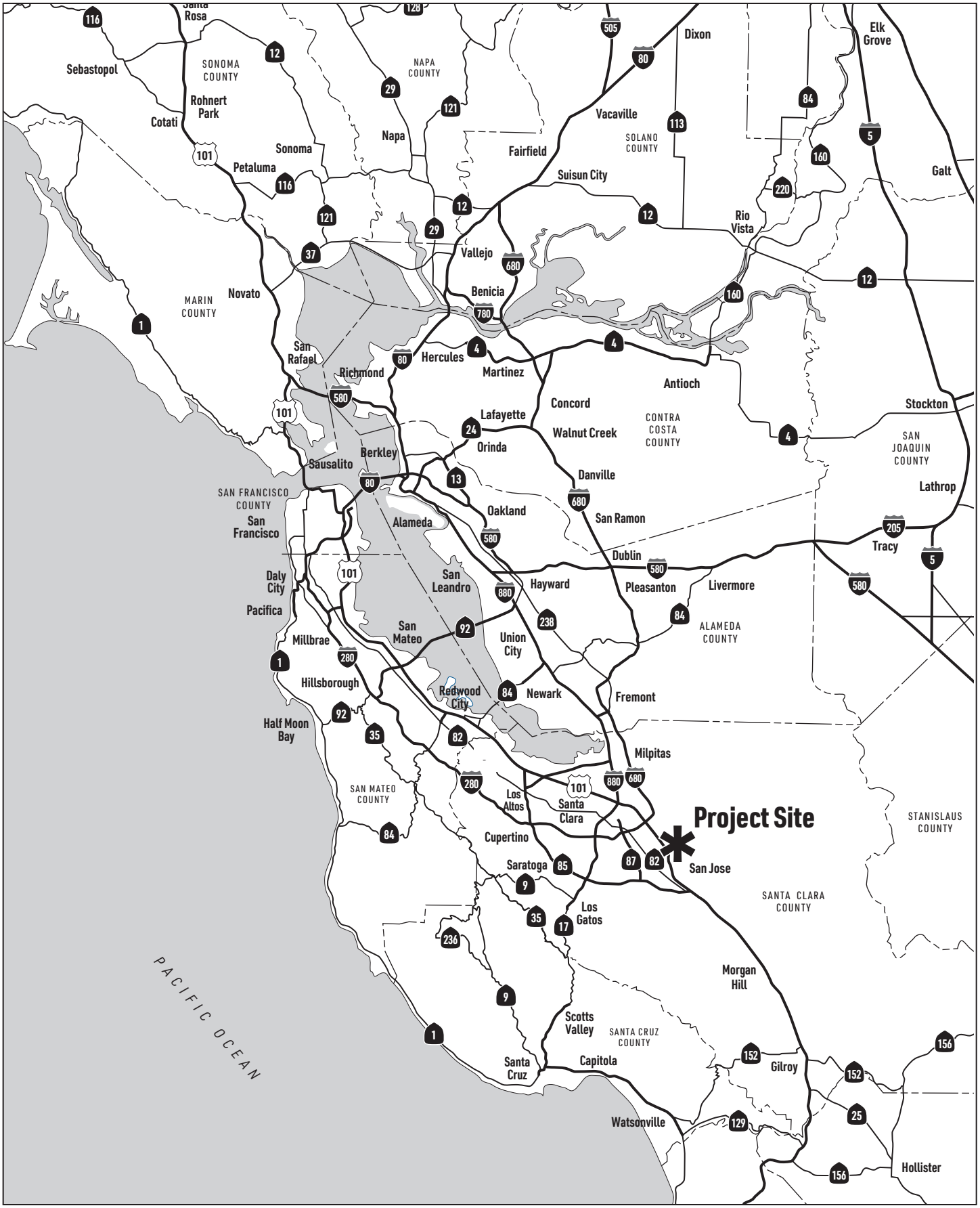
The Chick-fil-A Silver Creek & Capitol Project (project) site is located at the 3000-3100 block (odd) of Silver Creek Road (Tentative Assessor's Parcel Number [APN] T20-030), an out parcel of 3155 Silver Creek Valley, San José, California (APNs 670-15-018 and -023); refer to Exhibit 2-1, *Regional Vicinity*. Regionally, the site is located adjacent to U.S. Route 101 (US 101) and approximately 4.0-miles southeast of Interstate 680 (I-680). Locally, the site is located to the northwest of Silver Creek Road and East Capitol Expressway, in a regional shopping center anchored by Target; refer to Exhibit 2-2, *Site Vicinity*. It is acknowledged that the project site is located on a separate, recently created parcel from Target.

EXISTING CONDITIONS

The project site is situated in a commercial surface parking lot and includes a former O'Reilly Auto Parts retail store; refer to Exhibit 2-2. The proposed Chick-fil-A restaurant is situated on an approximate 0.74-gross acre site. The proposed added parking area at the former O-Reilly Auto Parts store is situated on an approximate 0.61-acre site. The existing on-site building is approximately 5,485-square feet. The existing surface parking lot includes 631 surface parking spaces that serve the surrounding 6.1-acre regional shopping center as a whole. Existing on-site landscaping consists of ornamental trees located along the project site boundary and throughout the surface parking lot. The project site is currently accessed via two on-site driveways along Silver Creek Road and one driveway along Lexann Avenue. A fourth off-site driveway also serves the shopping center along Capitol Expressway. Surrounding uses primarily consist of commercial uses in the shopping center (anchored by Target), as well as commercial/retail uses to the west, north (Silver Creek Plaza), and east. Table 2-1, *Surrounding Land Uses*, further describes the surrounding development.

Table 2-1
Surrounding Land Uses

Direction	General Plan Designation	Zoning	Existing Uses
North	Neighborhood/Community Commercial and Open Space, Parklands and Habitat	CN and OSPH	Lexann Avenue with West Evergreen Park and commercial uses (e.g., Thai Elephant Express, Thien Long, Verizon Wireless).
East	Neighborhood/Community Commercial	CN	Silver Creek Road with commercial uses (e.g., Starbucks, Walgreens, Subway, Wendy's) further east within Namaste and Silver Creek Plaza.
South	Neighborhood/Community Commercial and Mixed Use Neighborhood	CN and MUN	East Capitol Expressway with a mix of commercial (e.g., Chevron, Pho Y #1, Icey Poki, Action Urgent Care) and residential uses further south.
West	Residential Neighborhood	RN	Commercial use (the existing Target retail store) is present west of the project site. Residential uses are located further west.
Notes: CN = Commercial Neighborhood; OSPH= Open Space, Parklands and Habitat; MUN= Mixed Use Neighborhood; RN= Residential Neighborhood			



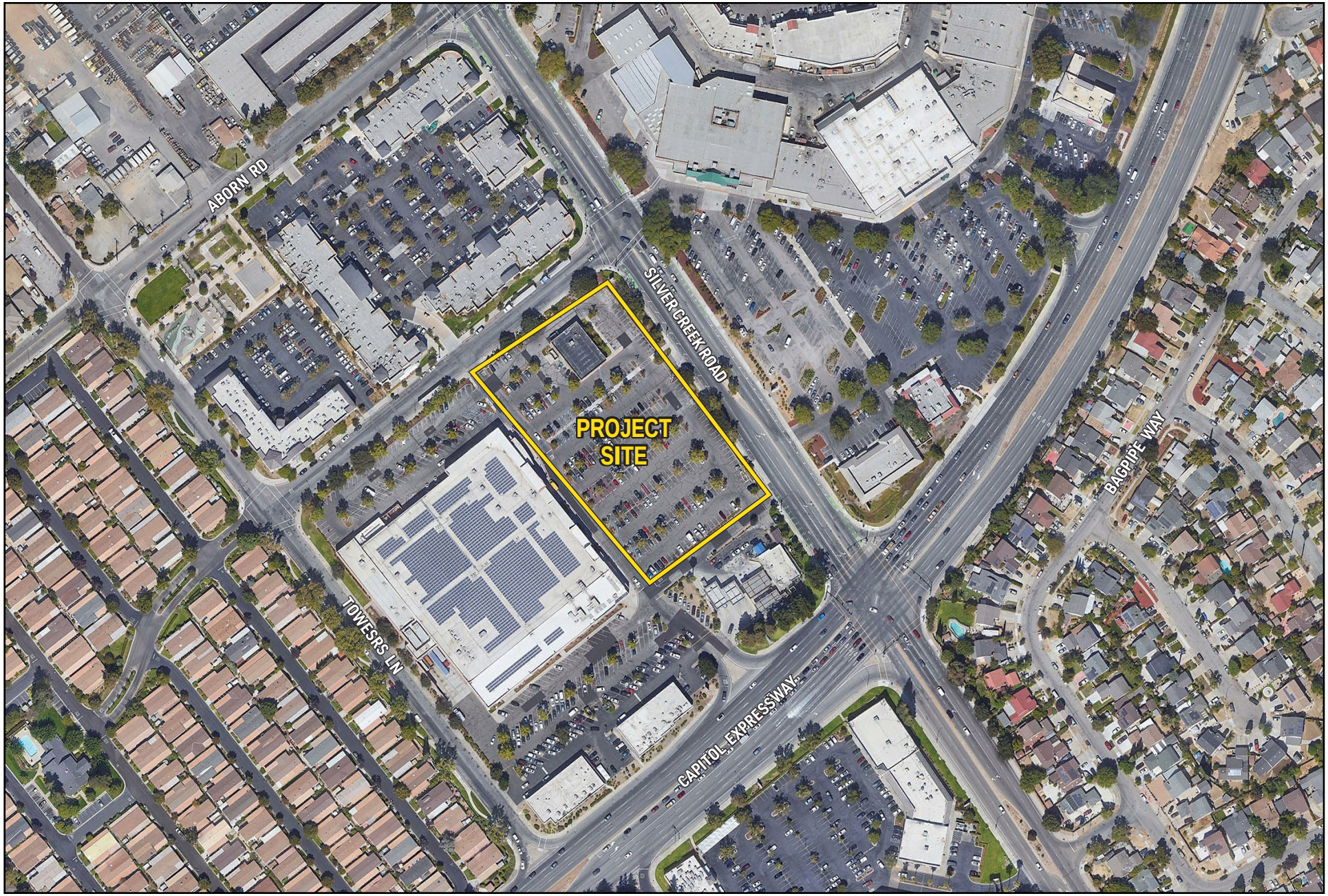
CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Regional Vicinity

NOT TO SCALE

09/2021 JN 185544

Exhibit 2-1



Source: Google Earth Pro, September 2021

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NOT TO SCALE

09/2021 JN 185544

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Site Vicinity

Exhibit 2-2

EXISTING GENERAL PLAN AND ZONING

Per the *General Plan Land Use/Transportation Diagram*, the project site is designated Neighborhood/Community Commercial and zoned CN (Commercial Neighborhood). Properties designated Neighborhood/Community Commercial allow for development of commercial uses, which serve the communities in neighboring areas. The project site is also situated in a designated "Urban Village Area Boundary"; specifically, the project site is located within the "E. Capitol Expressway/Silver Creek Road Urban Village." Additionally, the project site is located in the Evergreen East Hills Development Policy Boundary. However, it is acknowledged that the Evergreen East Hills Development Policy is outdated and is not being used by City staff for the purposes of this document.

2.2 PROJECT CHARACTERISTICS

The project proposes demolishing the existing former O'Reilly Auto Parts retail store, constructing a new Chick-fil-A restaurant building and associated dual drive-thru lane, and providing additional paved surface parking; refer to Exhibit 2-3, *Overall Concept Plan*. The existing 642-space surface parking lot would be reconstructed into a 596-space surface parking lot with 28 spaces serving the Chick-fil-A restaurant. The additional 568 spaces would serve the existing Target retail building. It is acknowledged that Chick-fil-A and Target would have a mutual agreement to allow cross parking and access between the surface parking lots. The new Chick-fil-A restaurant building and dual drive-thru lane would be sited in the northeastern portion of the parking lot. The Chick-fil-A restaurant would be a 3,565-square-foot (gross area), one-story building with drive-thru service, a small outdoor dining space, and a dedicated trash enclosure; refer to Exhibit 2-4, *Chick-fil-A Site Plan*.

CHICK-FIL-A RESTAURANT

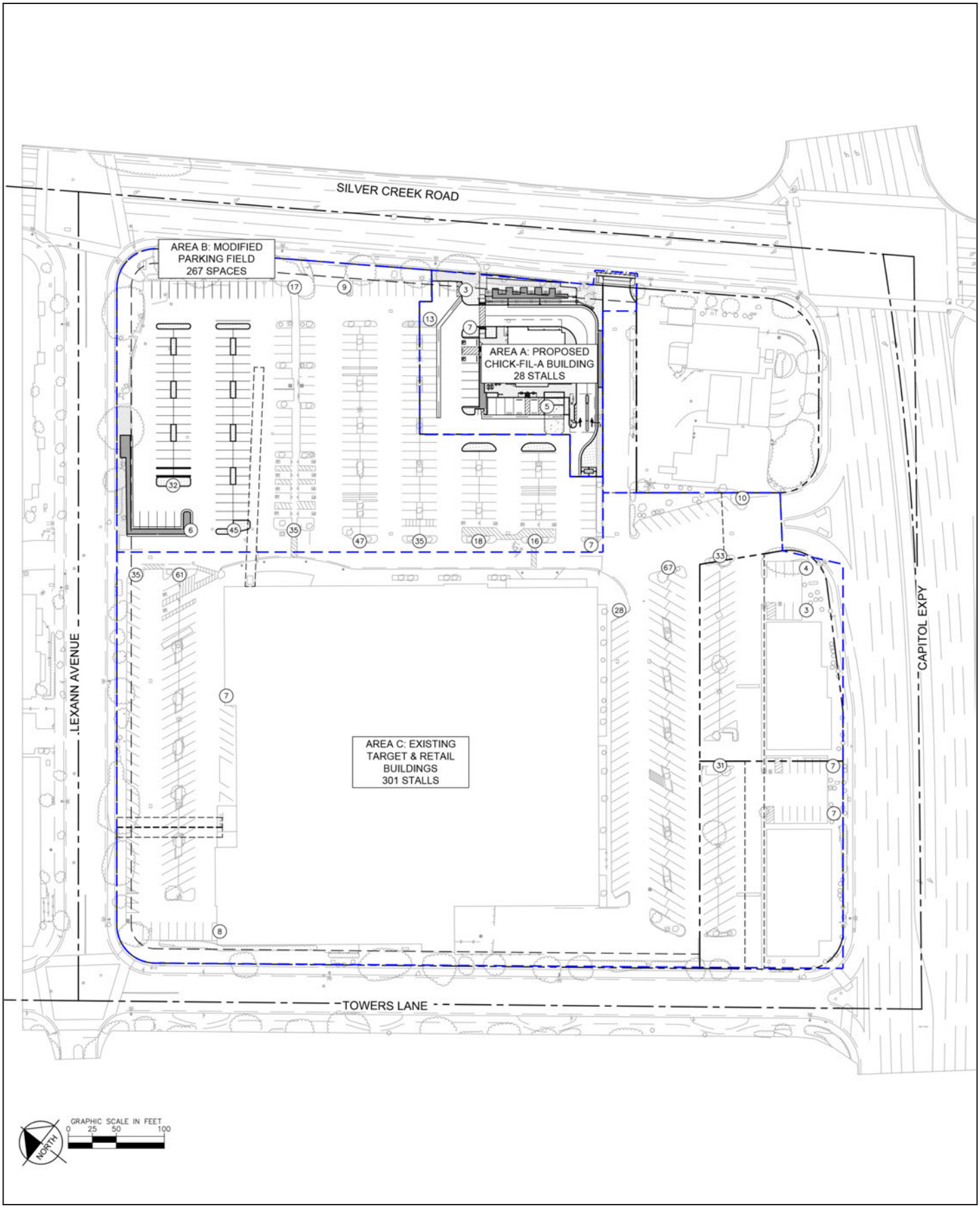
The Chick-fil-A restaurant would have indoor and outdoor dining areas (38 indoor seats and 28 outdoor seats), kitchen area, and service area. The kitchen area would include a freezer, cooler, stacked convention ovens, and preparation and finishing tables. The restaurant would also include office space for managerial purposes and men's and women's restrooms.

Architectural Design

The new restaurant would be a stand-alone, one-story building with a maximum height of 21 feet and would be designed with various architectural elements, including awnings and illuminated restaurant identification signage; refer to Exhibit 2-5, *Chick-fil-A Building Elevations*. The building would be constructed of stucco materials, aluminum awnings, metal coping, steel trellis, and flagstone wall caps. A ten-foot steel trellis would be located to the north of the restaurant. Additionally, a trash enclosure with a roof is proposed to the south of the restaurant. Both structures would be constructed with material complementary to the new Chick-fil-A restaurant. The proposed project would have a setback of approximately ten feet along Silver Creek Road.

Operations

The Chick-fil-A restaurant would operate between 6:00 a.m. to 11:00 p.m., Monday through Saturday, and closed on Sundays. Services would include indoor ordering with sit-down dining



Source: Ware Malcomb, April 2021

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Overall Concept Plan

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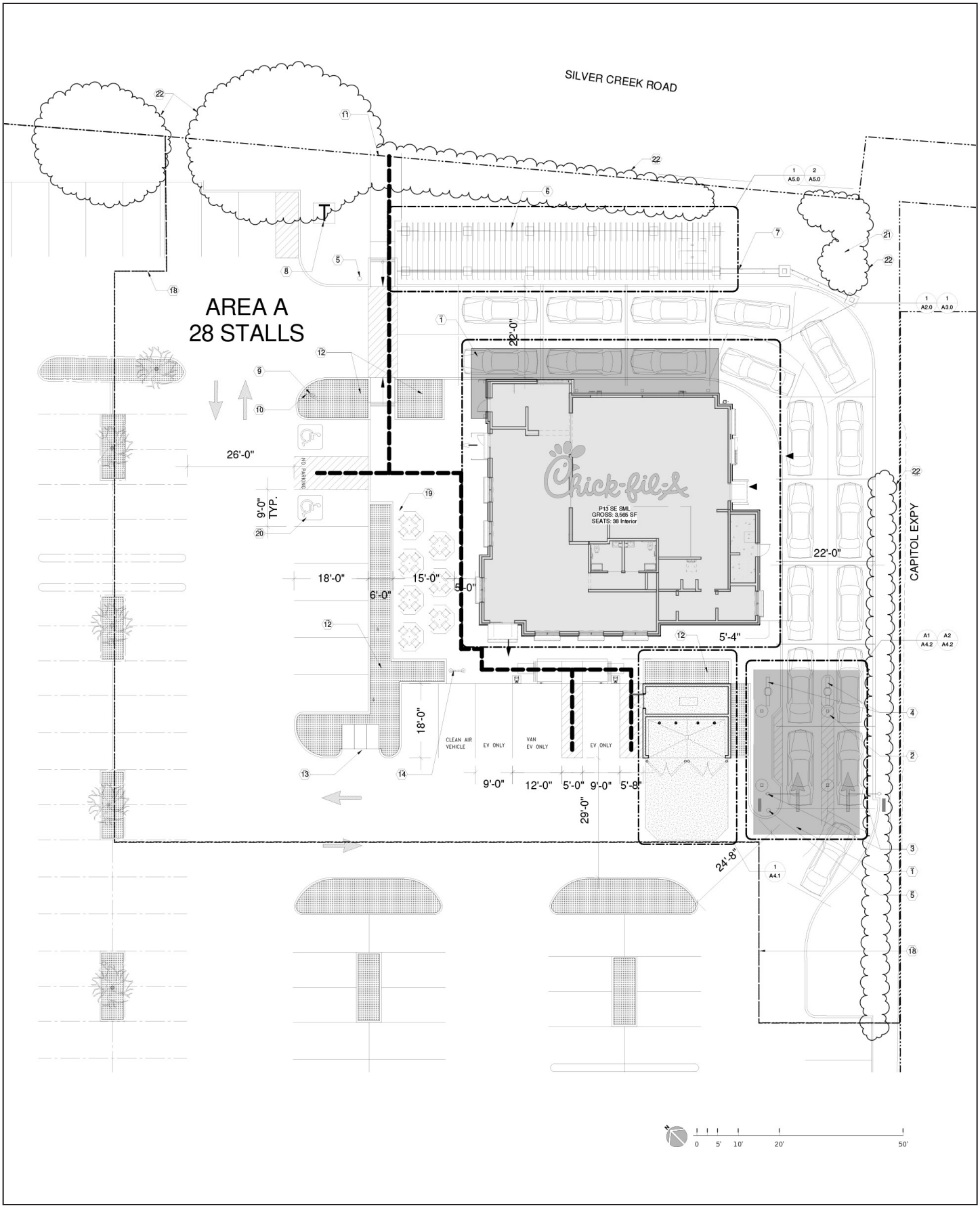
Exhibit 2-3



Source: Ware Malcomb, April 2021

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Chick-fil-A Site Plan

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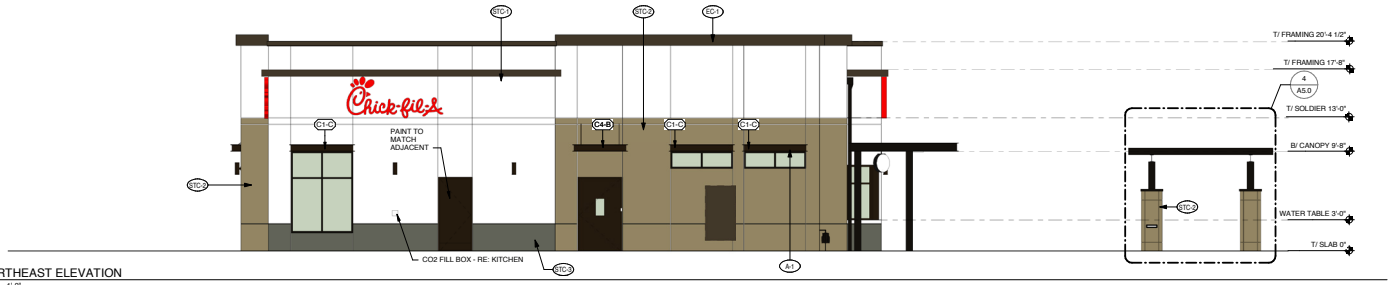
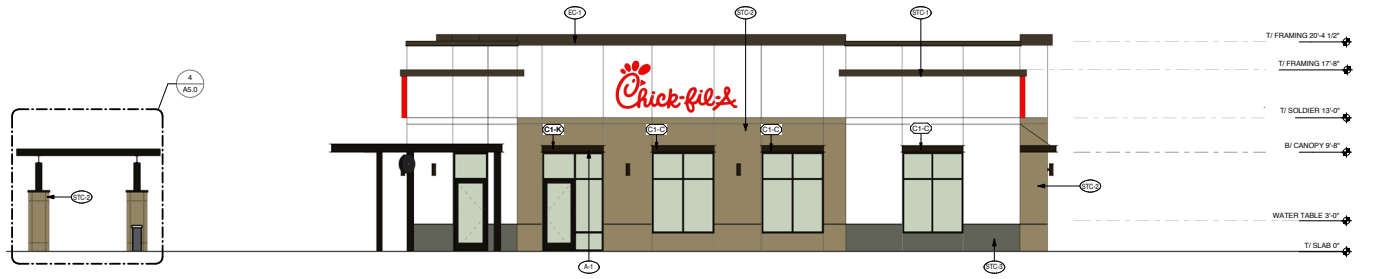
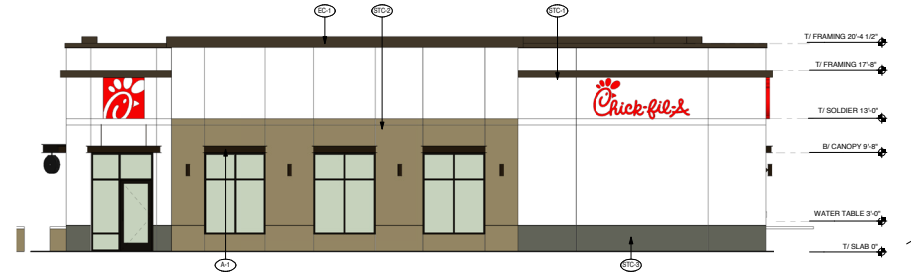
Exhibit 2-4



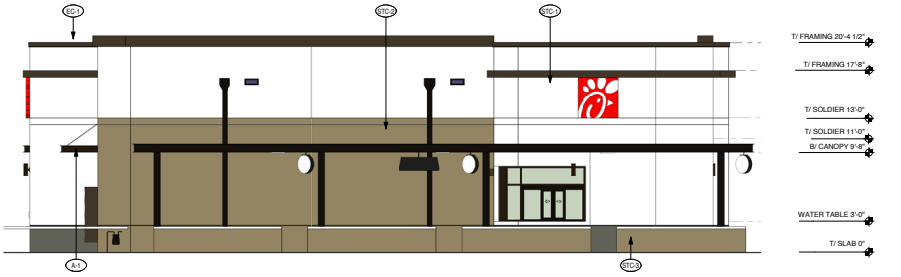
1 NORTHEAST ELEVATION
3/16" = 1'-0"



2 NORTHWEST ELEVATION
3/16" = 1'-0"



3 SOUTHWEST ELEVATION
3/16" = 1'-0"



4 SOUTHEAST ELEVATION
3/16" = 1'-0"

Source: Ware Malcomb, April 2021

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Chick-Fil-A Building Elevations

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Exhibit 2-5

and/or take-out, drive-thru service, catering, and mobile ordering (pick-up and drop-off), either inside or outside in designated parking stalls. Proposed on-site deliveries would occur during off-peak hours. The Chick-fil-A restaurant would result in approximately 80 full and/or part time employees, with anywhere from seven to 15 employees on shift at any one time.

Food and dry-goods deliveries would occur two to three times per week during off-peak hours to have the least impact to on-site circulation. In some cases, "Key-drop" deliveries can be used during hours when the restaurant is closed and the delivery personnel have keyed access to the building and they deliver and stock the shelves. All deliveries would occur on-site and would take approximately 15 to 45 minutes. Delivery vehicles would not stop in public rights-of-way or common drive-aisles. Delivery vehicles would park in an empty parking space adjacent to the building, or parallel within the adjacent drive aisle. In such cases where the delivery vehicle is not entirely located in a parking space and completely out of the drive aisle, the delivery vehicle driver would remain with the delivery truck to ensure that it can be moved, as needed, to accommodate first responder vehicles or to ensure the vehicle does not block customers from accessing or vacating parking spaces.

CIRCULATION AND PARKING

The new dual drive-thru would include a queuing storage length of 20 vehicles. Each lane would be 11 feet wide. Vehicles would enter at the southeast corner of the new building, then wrap around the east and north sides, exiting in a westerly direction, on the north side of the building. An Order Point Canopy with speaker boxes and menu boards would be placed at the eighth stacked car (for the inside drive isle) and the nineth stacked car (for the outside drive isle) from the pay window.

Ingress and egress from the project site would be accommodated via the existing vehicular driveways serving the retail center; two driveways on Silver Creek Road, one driveway on Lexann Avenue, and one driveway on Capitol Expressway; refer to Exhibit 2-3.

The project would reconstruct the existing on-site surface parking lot (642 parking spaces) in order to accommodate both the existing Target and proposed Chick-fil-A restaurant. The reconfigured parking lot would provide a total of 596 surface parking spaces, 568 spaces for the Target building and 28 parking spaces for the new Chick-fil-A restaurant; refer to Exhibit 2-3. Chick-fil-A's 28 parking spaces would include 21 standard spaces, four clean air/vanpool/electric vehicle spaces, and two handicap spaces. Additionally, three dedicated motorcycle parking spaces (which equates to one parking space) would be afforded. Bicycle storage for up to two bicycles would be provided, in addition to long-term employee bicycle storage, as well.

Lastly, the project proposes to improve the frontages along Silver Creek Road and Lexann Avenue. The project proposes to widen existing sidewalks from 8 feet on Silver Creek Road to 12 feet with tree wells and a 2-foot street easement, as well as from 8 feet on Lexann Avenue to 10 feet with tree wells.

LANDSCAPING

There are 57 existing trees on the project site, 47 of which would be removed as part of the project and 10 existing trees would remain. Six of the existing on-site trees are ordinance-sized trees and

two trees are street trees. None of the existing on-site trees are heritage trees. Approximately 42 new trees would be planted throughout the project site along with shrubs and groundcover; refer to Exhibit 2-6a, *Landscape Concept Plan – Overall*, and Exhibit 2-6b, *Landscape Concept Plan – Chick-fil-A*. A main landscaped entry driveway would be included on-site along Silver Creek Road. This main entry driveway would be primarily landscaped on the west with holly oak, Carolina laurel cherry, American sweet gum, pink muhly, fountain grass, wild rye, variegated myrtle, agave, and New Zealand flax. In addition to the 42 new trees planted on-site, street frontages along Silver Creek Road would be landscaped with agave, American sweet gum, wild rye, New Zealand flax, holly oak, fountain grass, western redbud, and Japanese pagoda tree. Street frontages along Lexann Avenue would also be improved with Japanese pagoda tree, American sweet gum, pink muhly, and Carolina laurel cherry. Other planted areas would include parking islands with western redbud, London plane tree and fortnight lily, as well as perimeter ornamental landscaping around the proposed building. In total, 6,771 square feet of the project site would be landscaped.

UTILITIES

Water service connections (including a 2-inch water line for domestic, 1.5-inch for irrigation, and 6-inch fire service water line) would be installed, connecting the Chick-fil-A restaurant building to an existing water line within Silver Creek Road right-of-way.

Sewer service connections would be made with a new 6-inch lateral sewer line from the proposed Chick-fil-A restaurant building to an existing sewer line within Silver Creek Road right-of-way. A new 4-inch grease waste line and 6-inch sanitary line would be constructed, then manifold together to create the new 6-inch line that would connect to the existing sewer line in Silver Creek Road. A grease interceptor would be installed for the building, which would treat up to 1,250 gallons of waste prior to connecting to the existing sewer line.

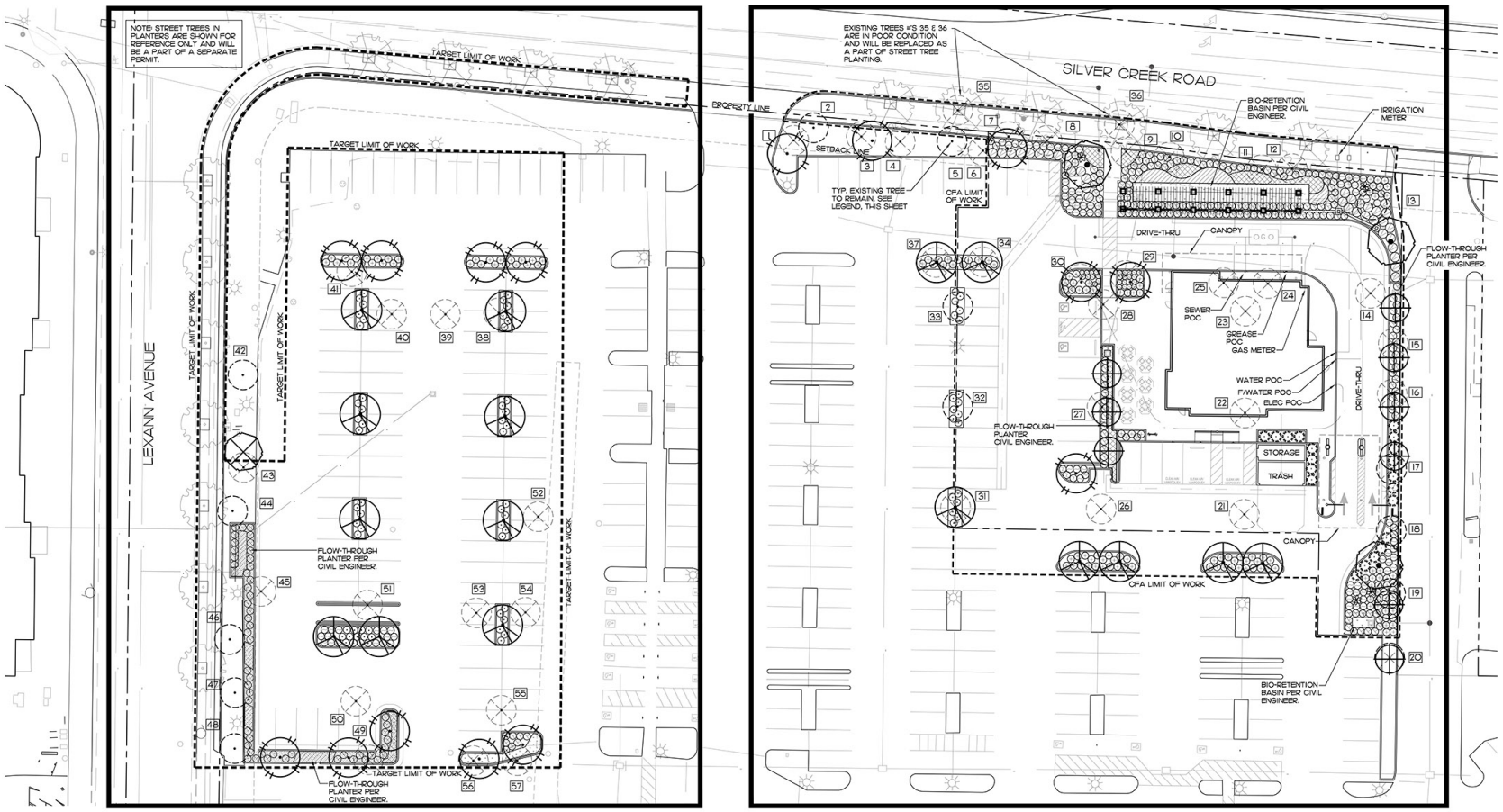
On-site stormwater would flow into proposed catch basins located on-site and be conveyed to flow-through planters and/or an on-site bio-retention structure. After treated, the stormwater would then flow to an existing 12-inch storm drain on-site.

Electrical connections would connect the proposed Chick-fil-A restaurant building via an electrical line from a main distribution panel to an electrical transformer and finally an existing overheard electrical line located on the Silver Creek Road right-of-way.

PROJECT PHASING AND CONSTRUCTION

Construction of the project is anticipated to include two phases and commence in January 2023 and be completed by December 2023. Phase 1 would include demolition of the existing building, clearing, and paving/striping of an existing asphalt surface parking lot, landscaping, and storm drain improvements at the western portion of the project site. Phase 1 is anticipated to start in January 2023 and end in March 2023.

Phase 2 would commence in July 2023 and end in December 2023 and would include clearing/site grading at the eastern portion of the project site and construction of the new Chick-fil-A building and associated surface parking, landscaping, and utilities. It is acknowledged that the project proposes installation of a vapor barrier prior to and during installation of the Chick-fil-A building foundation.



PHASE 1

PHASE 2

PLANTING LEGEND - PHASE 1

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	REMARKS	WUCOLS IV REGION I
TREES						
	CERCIS OCCIDENTALIS	WESTERN REDBUD	24" BOX	6	STANDARD	VL
	PLATANUS X HISPANICA	LONDON PLANE TREE	24" BOX	9	STANDARD	M
	PRUNUS SERRULATA	JAPANESE FLOWERING CHERRY	24" BOX	1	STANDARD	L
	TYP. EXISTING TREE TO REMAIN (5 TOTAL)					
	TYP. EXISTING TREE TO BE REMOVED (5 TOTAL)					
	REFER TO SEPARATE LISTING, THIS SHEET, FOR ADDITIONAL INFORMATION ON EXISTING TREES & ARBORIST REPORT PREPARED BY: ARBOR RESOURCES, 650-654-3351 & DATED AUGUST 16, 2021, SHEET L12					
	SILVER CREEK PARKWAY NEW STREET TREES IN PLANTERS SHOWN FOR REFERENCE ONLY TO BE: (4) STYPHNOLOBIUM JAPONICUM, JAPANESE PAGODA TREE - PER SEPARATE IMPROVEMENT PLANS					
	LEXANN AVENUE NEW STREET TREES IN PLANTERS SHOWN FOR REFERENCE ONLY TO BE: (7) QUERCUS SUBER, CORK OAK - PER SEPARATE IMPROVEMENT PLANS					

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	REMARKS	WUCOLS IV REGION I
SHRUBS						
	DIETES BICOLOR	FORTNIGHT LILY	5 GAL.	55	3'-0" O.C.	L
	LEYMUS CONDENSATUS 'CANYON PRINCE'	WILD RYE	5 GAL.	16	3'-0" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	8	3'-0" O.C.	L
	PENNISETUM ALOPECUROIDES 'HAMELN'	FOUNTAIN GRASS	5 GAL.	28	3'-0" O.C.	L
	BOUTELOUA GRACILIS 'BLOND AMBITION'	BLUE GRAMA	1 GAL.	68 S.F.	18" O.C.	L
FLOW-THROUGH PLANTER						
	CERCIS OCCIDENTALIS	WESTERN REDBUD	24" BOX	3	STANDARD	L
	ARISTIDA PURPUREA	PURPLE THREE-AWN	1 GAL.	228 S.F.	24" O.C.	L
	BOUTELOUA GRACILIS 'BLOND AMBITION'	BLUE GRAMA	1 GAL.	68 S.F.	18" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	52	3'-0" O.C.	L

PLANTING LEGEND - PHASE 2

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	REMARKS	WUCOLS IV REGION I
TREES						
	CERCIS OCCIDENTALIS	WESTERN REDBUD	24" BOX	6	STANDARD	VL
	PLATANUS X HISPANICA	LONDON PLANE TREE	24" BOX	7	STANDARD	M
	PRUNUS ILICIFOLIA SPP LYONII	CAROLINA LAUREL CHERRY	15 GAL	3	STANDARD	L
	QUERCUS ILEX	HOLLY OAK	36" BOX	3	STANDARD	L
	TYP. EXISTING TREE TO REMAIN (5 TOTAL)					
	TYP. EXISTING TREE TO BE REMOVED (32 TOTAL)					
	REFER TO SEPARATE LISTING, THIS SHEET, FOR ADDITIONAL INFORMATION ON EXISTING TREES & ARBORIST REPORT PREPARED BY: ARBOR RESOURCES, 650-654-3351 & DATED AUGUST 16, 2021, SHEET L12					
	NEW STREET TREES IN PLANTERS SHOWN FOR REFERENCE ONLY TO BE: (6) STYPHNOLOBIUM JAPONICUM, JAPANESE PAGODA TREE - PER SEPARATE IMPROVEMENT PLANS					

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	REMARKS	WUCOLS IV REGION I
BIORETENTION BASINS (2) - BOTTOM						
	JUNCUS PATENS	CALIFORNIA GRAY RUSH	1 GAL.	646 S.F.	24" O.C.	L
BIORETENTION BASINS (2) - SLOPED SIDES						
	ARISTIDA PURPUREA	PURPLE THREE-AWN	1 GAL.	235 S.F.	24" O.C.	L
	BOUTELOUA GRACILIS 'BLOND AMBITION'	BLUE GRAMA	1 GAL.	271 S.F.	18" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	132	3'-0" O.C.	L
FLOW-THROUGH PLANTERS (2)						
	ARISTIDA PURPUREA	PURPLE THREE-AWN	1 GAL.	127 S.F.	24" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	35	3'-0" O.C.	L
	PRUNUS ILICIFOLIA SPP LYONII	CAROLINA LAUREL CHERRY	15 GAL	6	STANDARD	L

GRAPHIC SCALE
(IN FEET)
1 inch = 20 ft

Source: Hourian Associates, Inc. October 2021

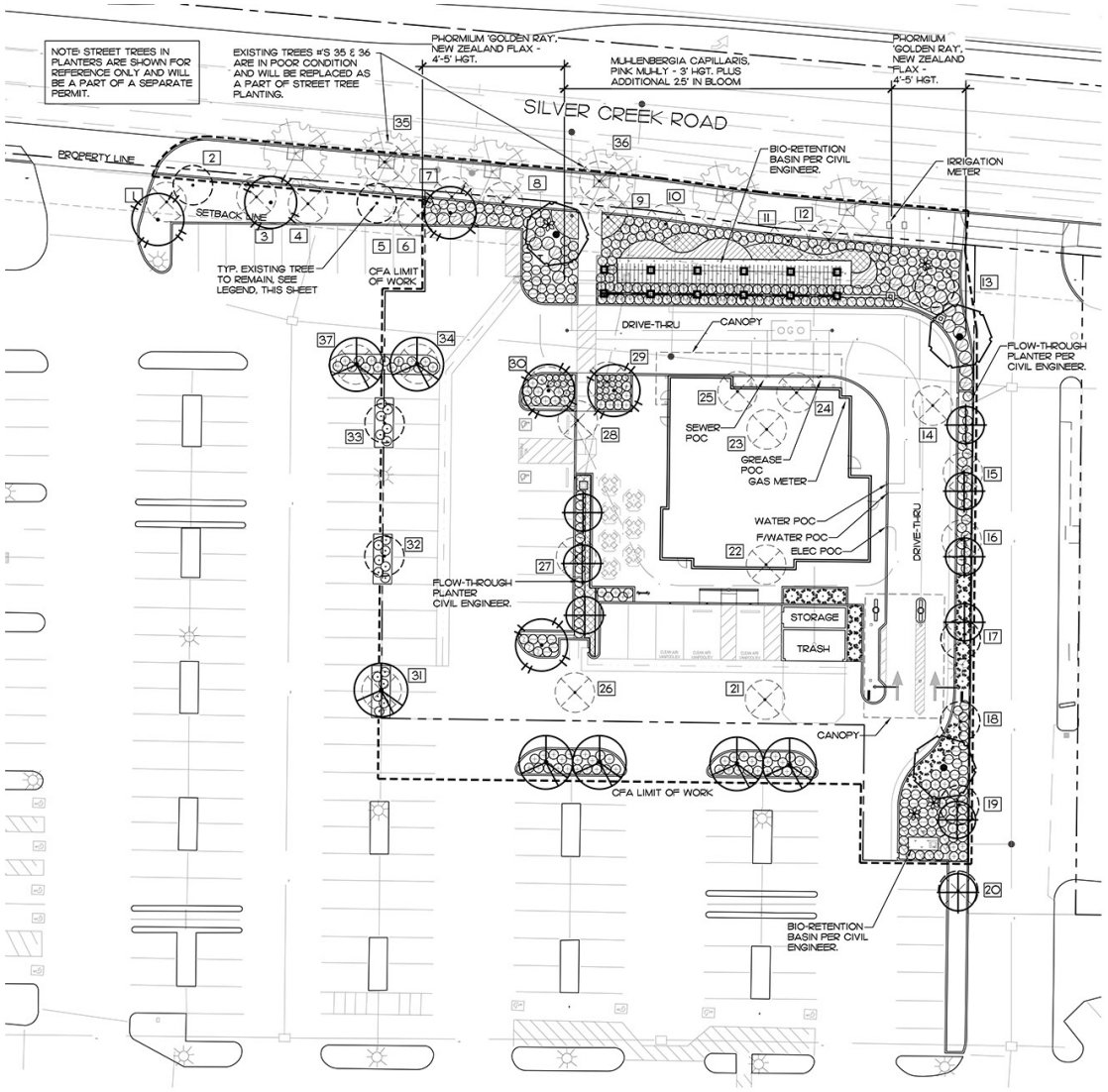
CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Landscape Concept Plan - Overall

Michael Baker INTERNATIONAL

10/2021 JN 185544

Exhibit 2-6a



1 PRELIMINARY LANDSCAPE PLAN

SCALE: 1" = 20'-0"

PLANTING LEGEND

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	REMARKS	WUCOLS IV REGION I
	TREES					
	CERCIS OCCIDENTALIS	WESTERN REDBUD	24" BOX	6	STANDARD	VL
	PLATANUS X HISPANICA	LONDON PLANE TREE	24" BOX	7	STANDARD	M
	PRUNUS ILICIFOLIA SPP LYONII	CAROLINA LAUREL CHERRY	15 GAL	3	STANDARD	L
	QUERCUS ILEX	HOLLY OAK	36" BOX	3	STANDARD	L
	TYP. EXISTING TREE TO REMAIN (5 TOTAL)					
	TYP. EXISTING TREE TO BE REMOVED (32 TOTAL)					
	REFER TO SEPARATE LISTING, THIS SHEET, FOR ADDITIONAL INFORMATION ON EXISTING TREES & ARBORIST REPORT PREPARED BY: ARBOR RESOURCES, 650-654-3351 & DATED AUGUST 16, 2021, SHEET LI.2					
	NEW STREET TREES IN PLANTERS SHOWN FOR REFERENCE ONLY TO BE: (6) STYPHNOLOBIUM JAPONICUM, JAPANESE PAGODA TREE - PER SEPARATE IMPROVEMENT PLANS					

SYMBOL	BOTANICAL NAME	COMMON NAME	SIZE	QTY.	REMARKS	WUCOLS IV REGION I
	SHRUBS					
	AGAVE DESMETTIANA	AGAVE	5 GAL.	4	AS SHOWN	L
	DIANELLA HYB. 'CLARITY BLUE'	CLARITY BLUE DIANELLA	5 GAL.	27	2'-0" O.C.	L
	DIETES BICOLOR	FORTNIGHT LILY	5 GAL.	19	3'-0" O.C.	L
	HESPERALOE PARVIFLORA	RED YUCCA	5 GAL.	3	3'-0" O.C.	L
	LEYMUS CONDENSATUS 'CANYON PRINCE'	WILD RYE	5 GAL.	61	3'-0" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	8	3'-0" O.C.	L
	MYRTUS COMMUNIS 'VARIEGATA'	VARIGATED MYRTLE	5 GAL.	20	4'-6" O.C.	L
	PENNISETUM ALOPECUROIDES 'HAMELN'	FOUNTAIN GRASS	5 GAL.	116	3'-0" O.C.	L
	PHORMIUM 'GOLDEN RAY'	NEW ZEALAND FLAX	5 GAL.	35	4'-0" O.C.	L
	BIORETENTION BASINS (2) - BOTTOM					
	JUNCUS PATENS	CALIFORNIA GRAY RUSH	1 GAL.	646 S.F.	24" O.C.	L
	BIORETENTION BASINS (2) - SLOPED SIDES					
	ARISTIDA PURPUREA	PURPLE THREE-AWN	1 GAL.	235 S.F.	24" O.C.	L
	BOUTELOUA GRACILIS 'BLOND AMBITION'	BLUE GRAMA	1 GAL.	271 S.F.	18" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	132	3'-0" O.C.	L
	FLOW-THROUGH PLANTERS (2)					
	ARISTIDA PURPUREA	PURPLE THREE-AWN	1 GAL.	127 S.F.	24" O.C.	L
	MUHLENBERGIA CAPILLARIS	PINK MUHLY	5 GAL.	35	3'-0" O.C.	L
	PRUNUS ILICIFOLIA SPP LYONII	CAROLINA LAUREL CHERRY	15 GAL	6	STANDARD	L

Source: Hourian Associates, Inc. October 2021

Michael Baker INTERNATIONAL

NOT TO SCALE

10/2021 JN 185544

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Landscape Concept Plan – Chick-Fil-A

Exhibit 2-6b

The project proposes balanced grading activities for both phases of construction, and truck hauling of demolition debris during Phase 1. Construction activities for both phases would comply with the *San José Municipal Code* (Municipal Code) Section 20.100.450, *Hours of Construction within 500 feet of a Residential Unit.*, which prohibit construction activities, on a project site located within 500 feet of a residential unit, before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.

2.3 PROJECT APPROVALS/PERMITTING AGENCIES

The IS/MND is intended to provide environmental review for full implementation of the project, including all discretionary actions and ministerial permits associated with it. The list of permits and approvals herein does not limit the applicability of the IS/MND to other permits or approvals that may be required, since the IS/MND has analyzed the full scope of potential environmental impacts that could be associated with the project. The City is the Lead Agency with approval authority over the project. Other potential agency approvals and permits are listed here for informational purposes.

CITY APPROVALS AND PERMITS

- Adoption of a Final Initial Study/Mitigated Negative Declaration;
- Approval of Conditional Use Permit;
- Subsequent submittals:
    - Fire Suppression Systems and alarms;
    - Hazardous Materials CO2 system;
- Tree removal permit;
- Grading permits;
- Public Improvement Permit;
- Parcel Map;
- Building permit (e.g., Structural, Fire, Mechanical, Electrical, Plumbing permits); and
- Limited Exemption (use of natural gas).

POTENTIAL PERMITS/APPROVALS FROM AGENCIES AND OTHERS

- Access Agreement;

- County of Santa Clara:
    - Environmental Health Department monitoring well relocation/closure;
    - Environmental Health Food Facility Construction Permit;

- Regional Water Quality Control Board:
    - Monitoring well relocation/closure; and

- Valley Transportation Authority.

3.0 ENVIRONMENTAL CHECKLIST

3.1 BACKGROUND

1.	**Project Title:** Chick-fil-A Silver Creek & Capitol Project **File Nos:** CP21-015, ER21-114
2.	**Lead Agency Name and Address:** City of San José Department of Planning, Building, and Code Enforcement 200 East Santa Clara Street, 3rd Floor Tower San José, CA 95113
3.	**Contact Person and Telephone Number:** Kara Hawkins, Planner (408) 535-7852
4.	**Project Location:** The Chick-fil-A Silver Creek and Capitol Project (project) site is located at the 3000-3100 block (odd) of Silver Creek Road (Tentative Assessor's Parcel Number [APN] T20-030), an out parcel of 3155 Silver Creek Valley, San José, California (APNs 670-15-018 and -023); refer to Exhibit 2-1, *Regional Vicinity*. Regionally, the site is located adjacent to U.S. Route 101 (US 101) and approximately 4.0-miles southeast of Interstate 680 (I-680). Locally, the site is located to the northwest of Silver Creek Road and East Capitol Expressway, in a regional shopping center anchored by Target; refer to Exhibit 2-2, *Site Vicinity*.
5.	**Project Sponsor's Name and Address:** Mr. Keith Gilbert Chick-fil-A, Inc. 5200 Buffington Road Atlanta, Georgia 30349-2998
6.	**General Plan Designation:** Based on the General Plan Land Use Map, the project site is designated Neighborhood/Community Commercial (NCC).
7.	**Zoning:** The project site is zoned Commercial Neighborhood (CN).
8.	**Description of the Project:** The Chick-fil-A Silver Creek & Capitol Project (project) would demolish the existing former O'Reilly Auto Parts retail store, constructing a new Chick-fil-A restaurant building and associated dual drive-thru lane (on an approximate 0.74-gross acre site), and providing additional paved surface parking (on an approximate 0.61-acre site); refer to Exhibit 2-3, *Overall Concept Plan*. The existing 642-space surface parking lot would be reconstructed into a 596-space surface parking lot with 28 spaces serving the Chick-fil-A restaurant. The additional 568 spaces would serve the existing Target retail building. The new Chick-fil-A restaurant building and dual drive-thru lane would be sited in the northeastern portion of the parking lot. The Chick-fil-A restaurant would be a 3,565-square-foot (gross area), one-story building with drive-thru service, a small outdoor dining space, and a dedicated trash enclosure; refer to Section 2.0, *Project Description*.
9.	**Environmental Setting:** Refer to Section 2.1, *Project Location and Setting*
10.	**Public Agency Approvals and Recommendations:** Refer to Section 2, *Project Approvals/Permitting Agencies*.

11.	**California Native American Tribal Consultation:** In compliance with Assembly Bill 52, the City distributed letters to Native American tribes previously requesting information from the City regarding future projects in their territory to inform them of the proposed project. Refer to Section 4.18, *Tribal Cultural Resources*.

3.2 ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" or "Less Than Significant With Mitigation Incorporated," as indicated by the checklist on the following pages.

	Aesthetics (4.1)		Mineral Resources (4.12)
	Agriculture and Forestry Resources (4.2)		Noise (4.13)
	Air Quality (4.3)		Population and Housing (4.14)
X	Biological Resources (4.4)		Public Services (4.15)
	Cultural Resources (4.5)		Recreation (4.16)
	Energy (4.6)		Transportation (4.17)
	Geology and Soils (4.7)		Tribal Cultural Resources (4.18)
	Greenhouse Gas Emissions (4.8)		Utilities and Service Systems (4.19)
X	Hazards and Hazardous Materials (4.9)		Wildfire (4.20)
	Hydrology and Water Quality (4.10)	X	Mandatory Findings of Significance (4.21)
	Land Use and Planning (4.11)		

3.3 EVALUATION OF ENVIRONMENTAL IMPACTS

This section analyzes the potential environmental impacts associated with the project. The environmental factors evaluated in this Initial Study include:

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire
- Mandatory Findings of Significance

The environmental analysis in this section is patterned after the Initial Study Checklist recommended by the CEQA Guidelines and used by the City of San José in its environmental review process. For the preliminary environmental assessment undertaken as part of this Initial Study's preparation, a determination that there is a potential for significant effects indicates the need to more fully analyze the development's impacts and to identify mitigation.

For the evaluation of potential impacts, the questions in the Initial Study Checklist are stated and an answer is provided according to the analysis undertaken as part of the Initial Study. The

analysis considers the long-term, direct, indirect, and cumulative impacts of the development. To each question, there are four possible responses:

- *No Impact*. The project will not have any measurable impact on the environment.

- *Less Than Significant Impact*. The project has the potential for impacting the environment, although this impact will be below established thresholds that are considered to be significant.

- *Less Than Significant Impact With Mitigation Incorporated*. The project has the potential to generate impacts which may be considered as a significant effect on the environment, although mitigation measures or changes to the project's physical or operational characteristics can reduce these impacts to levels that are less than significant.

- *Potentially Significant Impact*. The project has impacts which are considered significant, and additional analysis is required to identify mitigation measures that could reduce these impacts to less than significant levels.

Where potential impacts are anticipated to be significant, mitigation measures are required, so that impacts may be avoided or reduced to the maximum extent feasible.

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4.0 ENVIRONMENTAL ANALYSIS

The following is a discussion of potential project impacts as identified in the Initial Study/Environmental Checklist. Explanations are provided for each item.

4.1 AESTHETICS

Except as provided in Public Resources Code Section 21099, would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?			✓	
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				✓
c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?			✓	
d. Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?			✓	

Environmental Setting

The 0.74-gross acre project site is currently developed with a shared surface parking lot and ornamental trees throughout the site and parking lot. The proposed added parking area at the former O-Reilly Auto Parts store is situated on an approximate 0.61-acre site. The project site is within a larger shopping center plaza that consists of an existing Target and shared parking lot. Surrounding uses primarily consist of commercial uses in the shopping center (anchored by Target), as well as commercial/retail uses to the west, north (Silver Creek Plaza), and east. The project site is located adjacent to a key roadway, Capitol Expressway, with views of hillside areas. As most of the City is relatively flat, prominent viewpoints (other than buildings) are limited.

Regulatory Setting

State

California Scenic Highway Program

The California Scenic Highway Program was adopted in 1963 and is intended to protect and enhance the natural scenic beauty of California's highways and adjacent corridors through special conservation treatment. State laws governing the Scenic Highway Program are found in the Streets and Highways Code, Sections 260 through 263. There are no designated or eligible State

scenic highways located near the project site or within the vicinity.[1] The nearest designated, or eligible for designation, State scenic highway is State Route 280 (SR-280) from the San Mateo County line to State Route 17 (SR-17), located approximately nine miles west of the project site.

Local

Envision San José 2040 General Plan

The General Plan defines scenic vistas and resources in the City as views of and from the Santa Clara Valley, surrounding hillsides, and urban skyline. Scenic vistas of the natural and man-made environment can be viewed from roadways and freeways and public trails throughout the City. Most of these views are intermittent, interrupted by street trees, tall buildings (especially those built close the roadways) and utility infrastructure. Development and redevelopment allowed under the General Plan, especially along segments of major roadways that are either elevated, or are immediately adjacent to hillside areas could affect views of natural scenic vistas of hillside areas.

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in San José and help tie individual projects to the vision for the surrounding area and the city as a whole. Refer to Response 4.1(b), Table 4.1-1, *General Plan Policies Governing Scenic Quality*, for policies specific to aesthetic resources that apply to the proposed project.

a. Have a substantial adverse effect on a scenic vista?

Less Than Significant Impact. As discussed above, the project site is located adjacent to a key roadway, Capitol Expressway, with views of hillside areas. The proposed project would construct a new Chick-fil-A restaurant, which would have a construction height limit of 21 feet. As the new restaurant building would be of similar height to the existing commercial retail and restaurant buildings in the area, the project would not block views to hillside areas, as seen from roadways/freeways. As such, the proposed project would result in less than significant impacts to scenic views/vistas.

Mitigation Measures: No mitigation measures are required.

b. Substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway?

No Impact. As discussed above, there are no designated or eligible State scenic highways located near the project site or within the vicinity. The nearest designated, or eligible for designation, State scenic highway is SR-280 from the San Mateo County line to SR-17, located approximately nine miles west of the project site. Thus, no impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

[1] California Department of Transportation, *California State Scenic Highway System Map*, https://caltrans.maps.arcgis.com/apps/webappviewer/index.html?id=465dfd3d807c46cc8e8057116f1aacaa, accessed September 21, 2021.

c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point.) If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?

Less Than Significant Impact. The project site is surrounded in all directions by urbanized uses. As such, the following discussion analyzes the project's potential to conflict with applicable zoning and other regulations governing scenic quality.

Consistency with General Plan Policies Governing Scenic Quality

The project site is designated Neighborhood/Community Commercial. Table 4.1-1, provides a consistency analysis of the proposed project and relevant General Plan community design policies related to scenic quality.

Table 4.1-1
General Plan Policies Governing Scenic Quality

Applicable General Plan Community Design Policies	Project Consistency Analysis
GOAL 1: Create a well-designed, unique, and vibrant public realm with appropriate uses and facilities to maximize pedestrian activity; support community interaction; and attract residents, business, and visitors to San José.	
Policy CD 1.1: Require the highest standards of architectural and site design, and apply strong design controls for all development projects, both public and private, for the enhancement and development of community character and for the proper transition between areas with different types of land uses.	Consistent. The proposed restaurant would be constructed with stucco materials, aluminum awnings, metal coping, steel trellis, and flagstone wall caps. A ten-foot steel trellis would be located to the north of the restaurant. Additionally, a trash enclosure with a roof is proposed to the south of the restaurant. Both structures would be constructed with material complementary to the new Chick-fil-A restaurant. It is acknowledged that the project is located within an Urban Village (E. Capitol Expressway/Silver Creek Road). However, as no Urban Village Plan has been approved for this Urban Village, the Citywide Design Standards and Guidelines would apply. The various design policies set forth for commercial development are used in the development review process to assure the highest quality of architecture, site design, and landscaping. Thus, general conformance with the Citywide Design Standards and Guidelines would ensure the proposed project enhances the community character of the Urban Village.
Policy CD 1.2: Install and maintain attractive, durable, and fiscally- and environmentally sustainable urban infrastructure to promote the enjoyment of space developed for public use. Include attractive landscaping, public art, lighting, civic landmarks, sidewalk cafés, gateways, water features, interpretive/way-finding signage, farmers markets, festivals, outdoor entertainment, pocket parks, street furniture, plazas, squares, or other amenities in spaces for public use. When resources are available, seek to enliven the public	Consistent. The project proposes to provide 6,771 square feet of drought-tolerant landscaping (an increase compared to the existing condition). Planting materials are proposed to include, but not be limited to, agave, American sweet gum, wild rye, New Zealand flax, holly oak, fountain grass, western redbud, and Japanese pagoda tree. Additionally, street frontages along Silver Creek Road and Lexann Avenue would be improved. Street frontages along Silver Creek Road would be improved with agave, American sweet gum, wild rye, New Zealand flax, holly oak, fountain grass, western redbud, and Japanese pagoda tree. Street frontages along Lexann Avenue

Table 4.1-1 (continued)
General Plan Policies Governing Scenic Quality

Applicable General Plan Community Design Policies	Project Consistency Analysis
right-of-way with attractive street furniture, art, landscaping and other amenities.	would also be improved with Japanese pagoda tree, American sweet gum, pink muhly, and Carolina laurel cherry. Other landscaping improvements would include parking islands featuring western redbud, London plane tree and fortnight lily, as well as perimeter ornamental landscaping around the proposed restaurant.
Policy CD 1.7: Require developers to provide pedestrian amenities, such as trees, lighting, recycling and refuse containers, seating, awnings, art, or other amenities, in pedestrian areas along project frontages. When funding is available, install pedestrian amenities in public rights-of-ways.	Consistent. Refer to Policy CD 1.2. The restaurant would be constructed with stucco materials, aluminum awnings, metal coping, steel trellis, and flagstone wall caps. Indoor and outdoor seating would consist of 38 indoor seats and 28 outdoors seats. Additionally, a ten-foot steel trellis would be located to the north of the restaurant. A trash enclosure with a roof is also proposed to the south of the restaurant. Both structures would be constructed with material complimentary to the new Chick-fil-A restaurant. The project also proposes improvements to the frontages along Silver Creek Road and Lexann Avenue. Existing sidewalks would be widened from eight feet on Silver Creek Road to 12 feet with tree wells and a two-foot street easement, as well as from eight feet on Lexann Avenue to 10 feet with tree wells.
Policy CD 1.8: Create an attractive street presence with pedestrian-scaled building and landscaping elements that provide an engaging, safe, and diverse walking environment. Encourage compact, urban design, including use of smaller building footprints, to promote pedestrian activity throughout the City.	Consistent. Refer to Policy CD 1.2.
Policy CD 1.11: To create a more pleasing pedestrian-oriented environment, for new building frontages, include design elements with a human scale, varied and articulated facades using a variety of materials, and entries oriented to public sidewalks or pedestrian pathways. Provide windows or entries along sidewalks and	Consistent. Refer to Policies CD 1.1 and CD 1.2.
Policy CD 1.12: Use building design to reflect both the unique character of a specific site and the context of surrounding development and to support pedestrian movement throughout the building site by providing convenient means of entry from public streets and transit facilities where applicable, and by designing ground level building frontages to create an attractive pedestrian environment along building frontages. Unless it is appropriate to the site and context, franchise-style architecture is strongly discouraged.	Consistent. Refer to Policy CD 1.2. As previously mentioned, the project proposed streetscape improvements along Silver Creek Road and Lexann Avenue. Ornamental landscaping would include, but is not limited to agave, American sweet gum and wild rye along Silver Creek Road, and Japanese pagoda tree, American sweet gum, pink muhly, and Carolina laurel cherry along Lexann Avenue. Ornamental landscaping would be located in such a way to ensure an unobstructed view for drivers exiting the site, while providing an attractive pedestrian environment along street frontages. Additionally, the project is located within an Urban Village with no adopted Urban Village Plan. Nonetheless the project would improve frontages along Silver Creek Road and Lexann Avenue, , work with the Valley Transportation Authority (VTA) to provide any necessary improvements to current VTA shelter and bus stop

Table 4.1-1 (continued)
General Plan Policies Governing Scenic Quality

Applicable General Plan Community Design Policies	Project Consistency Analysis
	standards (Mitigation Measure TRA-1), and not increasing the number of driveways within the site. Further, exclusive walkways are proposed which connect the proposed Chick-fil-A restaurant to the public sidewalks. Walkways would minimize the extent of pedestrian and bicycle interaction with vehicles at the site and provide a comfortable, convenient, and safe environment which in turn can encourage use of active transportation modes.
Policy CD 1.13: Use design review to encourage creative, high-quality, innovative, and distinctive architecture that helps to create unique, vibrant places that are both desirable urban places to live, work, and play and that lead to competitive advantages over other regions.	Consistent. Refer to Policy CD 1.1.
Policy CD 1.16: Strongly discourage gates and fences at the frontage of commercial properties to maintain an open and inviting commercial character and avoid the inhospitable appearance of security barriers.	Consistent. No gates or fences are proposed as part of the project. As such, the proposed project would maintain an open and inviting commercial character and avoid the inhospitable appearance of security barriers.
Policy CD 1.17: Minimize the footprint and visibility of parking areas. Where parking areas are necessary, provide aesthetically pleasing and visually interesting parking garages with clearly identified pedestrian entrances and walkways. Encourage designs that encapsulate parking facilities behind active building space or screen parked vehicles from view from the public realm. Ensure that garage lighting does not impact adjacent uses, and to the extent feasible, avoid impacts of headlights on adjacent land uses.	Consistent. Landscaped parking islands are proposed as part of the project, which would increase landscaping, compared to the existing surface parking lot. No parking garages are proposed.
Policy CD 1.19. Encourage the location of new and relocation of existing utility structures into underground vaults or within structures to minimize their visibility and reduce their potential to detract from pedestrian activity. When above-ground or outside placement is necessary, screen utilities with art or landscaping.	Consistent. Trash utilities would be located within an enclosure for screening purposes. An electrical transformer would be located to the northwest corner of the building, which is also proposed to be screened from view via landscaping. All roof-top equipment would also be screened from public view as well.
Policy CD 1.20: Determine appropriate on-site locations and facilities for signage at the development review stage to attractively and effectively integrate signage, including pedestrian-oriented signage, into the overall site and building design.	Consistent. Illuminated restaurant identification signage is proposed along all four perimeters of the building; refer to Exhibit 2-5, *Chick-fil-A Building Elevations*. Further, all proposed signage would comply with the City's Visual Sign Guide and Municipal Code Title 23, *Sign Ordinance*, which regulates signage.
Policy CD 1.22: Include adequate, drought-tolerant landscaped areas in development and require provisions for ongoing landscape maintenance.	Consistent. Refer to Policy CD 1.2.

Table 4.1-1 (continued)
General Plan Policies Governing Scenic Quality

Applicable General Plan Community Design Policies	Project Consistency Analysis
Policy CD 1.23: Further the Community Forest Goals and Policies in this Plan by requiring new development to plant and maintain trees at appropriate locations on private property and along public street frontages. Use trees to help soften the appearance of the built environment, help provide transitions between land uses, and shade pedestrian and bicycle areas.	Consistent. The City of San José's Community Forest Goals and Policies consists of trees growing on public property, such as street rights-of-way, parks, community centers, libraries and schools; and trees growing on private property, including trees in the backyards of homes, shopping center parking lots, and within the landscaped areas of high-technology office buildings. The project proposes 42 new trees to be planted throughout the project site. The proposed trees would be located along the Silver Creek Road and Lexann Avenue street frontages, and parking islands found on-site. As such, the proposed on-site trees would soften the effects of urban development, increase aesthetics, and serve as a visual buffer in accordance with the City's Community Forest Goals and Policies.
Policy CD 1.24: Within new development projects, include preservation of ordinance-sized and other significant trees, particularly natives. Avoid any adverse affect on the health and longevity of such trees through design measures, construction, and best maintenance practices. When tree preservation is not feasible, include replacements or alternative mitigation measures in the project to maintain and enhance our Community Forest.	Consistent. Refer to Policy CD 1.2. There are 57 existing trees on the project site, 47 of which would be removed as part of the project and 10 existing trees would remain. Of the 10 existing trees, six trees (one London plane tree and five holly oaks) are regulated by the City tree preservation ordinance. Further, the proposed project would comply with Municipal Code Section 13.32.030, *Removal of Live Tree*, which prohibits the removal and cause to be removed of any live tree without a development permit or tree removal permit from the City. Additionally, the project proposes to plant 42 new trees throughout the project site, including shrubs and groundcover. As such, the project would provide replacements to maintain and enhance the City's Community Forest.
Policy CD 1.27: When approving new construction, require the undergrounding of distribution utility lines serving the development. Encourage programs for undergrounding existing overhead distribution lines. Overhead lines providing electrical power to light rail transit vehicles and high tension electrical transmission lines are exempt from this policy.	Consistent. All on-site electrical utility lines would be installed underground. Further, there are no overhead distribution utility lines along project frontages.
GOAL 4: Provide aesthetically pleasing streetscapes and new development that preserves and builds on the unique characteristics of the local area and contributes to a distinctive neighborhood or community identity.	
Policy CD 4.3. Promote consistent development patterns along streets, particularly in how buildings relate to the street, to promote a sense of visual order, and to provide attractive streetscapes.	Consistent. Refer to Policy CD 1.1.
GOAL 8: Regulate the height of new development to avoid adverse land use incompatibility while providing maximum opportunity for the achievement of the Envision General Plan goals for economic development and the provision of new housing within the identified Growth Areas.	
Policy CD 8.1. Ensure new development is consistent with specific height limits established within the City's Zoning Ordinance and applied through the zoning designation for properties throughout the City. Land use designations in the Land Use/ Transportation Diagram	Consistent. The proposed building would be a one-story building with a maximum height of 21 feet. As such, the proposed building would be consistent with Policy 8.3.

Table 4.1-1 (continued)
General Plan Policies Governing Scenic Quality

Applicable General Plan Community Design Policies	Project Consistency Analysis
provide an indication of the typical number of stories expected for new development, however specific height limitations for buildings and structures in San José are not identified in the *Envision General Plan*.	
GOAL 10: Create and maintain attractive Gateways into San José and attractive major roads through San José, including freeways and Grand Boulevards, to contribute towards the positive image of the City.	
Policy CD 10.1. Require that new public and private development adjacent to Gateways and freeways (including 101, 880, 680, 280, 17, 85, 237, and 87), and Grand Boulevards consist of high-quality materials, and contribute to a positive image of San José.	Consistent. Refer to Policy CD 1.1. Per the *General Plan Planned Growth Areas Diagram*, the proposed project is located adjacent to East Capitol Expressway, a Grand Boulevard. As such, the project would consist of high-quality materials and contribute to a positive image of San José.
Source: City of San José, *Envision San José 2040 General Plan*, amended May 25, 2021.	

Consistency with Municipal Code Regulations Governing Scenic Quality

The project site is designated Neighborhood/Community Commercial and zoned Commercial Neighborhood (CN). San José Municipal Code (Municipal Code) Title 20, *Zoning*, includes site development standards that aid in governing scenic quality. Refer to Section 4.11, *Land Use and Planning*, for a discussion concerning the project's consistency with other applicable zoning requirements for commercial development in the project vicinity.

Municipal Code Section 13.32, *Tree Removal Controls*, promotes the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city. There are 57 existing trees on the project site, 47 of which would be removed as part of the project and 10 existing trees would remain. Of the 10 existing trees, six trees (one London plane tree and five holly oaks) are regulated by the City tree preservation ordinance. Additionally, the project proposes to plant 42 new trees throughout the project site, including shrubs and groundcover. The proposed project would be required to comply with Municipal Code Section 13.32.030, *Removal of Live Tree*, which requires approval of a tree removal permit.

In conclusion, the project would not conflict with applicable policies or regulations governing scenic quality. Impacts in this regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Less Than Significant Impact. A potentially significant impact would occur if a new source of substantial light or glare causes an adverse effect on day or nighttime views. Light impacts are typically associated with the use of artificial light during the evening and nighttime hours. Glare may be a daytime occurrence caused by the reflection of sunlight or artificial light from highly polished surfaces, such as window glass and reflective cladding materials, and may interfere with the safe operation of a motor vehicle on adjacent streets. Daytime glare

generation is common in urban areas and is typically associated with mid- to high-rise buildings with exterior façades largely or entirely comprising highly reflective glass or mirror-like materials. Nighttime glare is primarily associated with bright point source lighting that contrasts with existing low ambient light conditions.

Construction

The project would be required to comply with Municipal Code Section 20.100.450, *Hours of Construction within 500 feet of a Residential Unit.*, which prohibit construction activities, on a project site located within 500 feet of a residential unit, before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends. As such, construction activities would be primarily limited to daylight hours. As such, construction-related light and glare impacts would be less than significant.

Operations

Existing lighting sources within the project boundaries include those associated with the former O'Reilly Auto Parts and associated surface parking lot area. The project site is surrounded on all sides by urbanized uses (refer to Section 2-2, *Site Vicinity*), which contribute to the project area's ambient lighting. Vehicles traveling along Silver Creek Road to the east of the project site also contribute to ambient lighting at the project site. Pursuant to Municipal Code Section 20.40.530, and the City's Outdoor Lighting Policy (4-3), all lighting associated with the proposed restaurant, including interior and exterior building lighting, security lighting, surface parking lot area lighting, and landscape lighting would be directed away from all adjoining uses and shielded in a manner that would minimize spillover onto adjacent uses and roadways. Additionally, the project's lighting plan would be designed to limit glare and up light in accordance with the California Green Building Standards Code (CalGreen) Section 5.106.8. Conformance with Municipal Code Section 20.40.530 and CalGreen requirements would reduce the project's operational lighting impacts to less than significant levels.

Vehicular headlights entering and exiting the project's dual lane drive-thru would result in similar lighting to existing conditions within the project vicinity, including lighting towards and on Silver Creek Road. In addition, a low wall would be constructed along the northern portion of the drive-thru which would further screen project related vehicular headlights from the public roadway; refer to Exhibit 2-4, *Chick-fil-A Site Plan*. As a result, vehicular headlights are not anticipated to result in a significant increase in lighting conditions in the immediate project vicinity.

As previously discussed, the project site is developed with lighting features for the former O'Reilly Auto Parts and existing surface parking lot. The project site is also surrounded by developed uses that has similar light conditions. As such, the proposed lighting of the project would be similar to the existing lighting conditions on-site and the lighting condition of the surrounding (developed) community. Further, the project would comply with all applicable exterior lighting standards and would not create a new source of substantial light or glare which would adversely affect day or nighttime views in the area. Impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

4.2 AGRICULTURE AND FORESTRY RESOURCES

In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				✓
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?				✓
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				✓
d. Result in the loss of forest land or conversion of forest land to non-forest use?				✓
e. Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?				✓

Environmental Setting

The 0.74-gross acre project site is currently developed with a shared surface parking lot and ornamental trees throughout the site and parking lot. The proposed added parking area at the former O-Reilly Auto Parts store is situated on an approximate 0.61-acre site. The project site is within a larger shopping center plaza that consists of an existing Target and shared parking lot. Surrounding uses primarily consist of commercial uses in the shopping center (anchored by Target), as well as commercial/retail uses to the west, north (Silver Creek Plaza), and east. The project site is located adjacent to a key roadway, Capitol Expressway. As most of the City is urbanized and developed, agricultural uses are limited.

Regulatory Setting

State

California Important Farmland Finder

The California Important Farmland Finder provides complied data by the Farmland Mapping Monitoring Program (FMMP) pursuant to Section 65570 of the California Government Code. FMMP combines current land use information with U.S. Department of Agriculture Natural Resources Conservation Service soil survey data to calculate the area and type of Important Farmland in an area of interest. The project site is not classified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance.[1]

Local

Envision San José 2040 General Plan

The following policies are specific to agricultural and forest resources and apply to the proposed project:

> **Policy LU-12.3:** Protect and preserve the remaining farmlands within San Jose's sphere of influence that are not planned for urbanization in the timeframe of the Envision General Plan through the following means:
>
> - Limit residential uses in the agricultural areas to those which are incidental to agriculture.
> - Restrict and discourage subdivision of agricultural lands.
> - Encourage contractual protection for agricultural lands, such as Williamson Act contracts, agricultural conservation easements, and transfer of development rights.
> - Prohibit land uses within or adjacent to agricultural lands that would compromise the viability of these lands for agricultural uses.
> - Strictly maintain the Urban Growth Boundary in accordance with other goals and policies in this Plan.

a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?

No Impact. As discussed above, the project site is not classified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance.[2] Further, the project site is designated Neighborhood/Community Commercial and zoned Commercial Neighborhood (CN). The

[1] California Department of Conservation, *California Important Farmland Finder*, https://maps.conservation.ca.gov/dlrp/ciff/, accessed August 26, 2021.

[2] Ibid.

project would demolish an existing retail building and surface parking lot to construct a new Chick-fil-A restaurant. Thus, the project would not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use. No impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?

No Impact. As stated in Response 4.2(a), the project site is zoned CN. The existing project site is not zoned for any agricultural-related uses, nor is the site part of a Williamson Act contract. Additionally, the land uses surrounding the project site are not zoned for agricultural uses or in a Williamson Act contract. Therefore, project implementation would not conflict with existing zoning for agricultural use, or a Williamson Act contract. No impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?

No Impact. The project site is not occupied by, or used for, forest land or timberland purposes and is not zoned for timberland production. Further, project implementation would not result in the rezoning of forest land, timberland, or timberland zoned Timberland Production. Therefore, no impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

d. Result in the loss of forest land or conversion of forest land to non-forest use?

No Impact. The project site is not occupied by, or used for, forest land. Therefore, no impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

e. Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use?

No Impact. Refer to Responses 4.2(a) through 4.2(d). As the project site occurs within an urban and built-out area, implementation of the project would not result in the conversion of farmland or forest land to non-agricultural/non-forest land use. No impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

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4.3 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. Would the project:	Potentially Significant Impact	Less Than Significant Impact With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?			✓	
b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?			✓	
c. Expose sensitive receptors to substantial pollutant concentrations?			✓	
d. Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?			✓	

Environmental Setting

The Bay Area Air Quality Management District (BAAQMD) monitors air quality at over 30 monitoring stations distributed throughout the San Francisco Bay Area Air Basin (Basin). The closest monitoring station to the project site is the San José-Jackson Street Monitoring Station, which is located approximately five miles northwest of the site. The air pollutants measured at the San Jose-Jackson Street Monitoring Station include ozone (O_3), particulate matter 10 microns in diameter or less (PM_{10}), particulate matter 2.5 microns in diameter or less ($PM_{2.5}$), carbon monoxide (CO), and nitrogen dioxide (NO_2). The air quality data monitored at the San Jose-Jackson Street Monitoring Station from 2018 to 2020 are presented in Table 4.3-1, *Measured Air Quality Levels*. Table 4.3-1 lists the monitored maximum concentrations and number of exceedances of State/Federal air quality standards for each year.

Table 4.3-1
Measured Air Quality Levels

Pollutant	Primary Standard		Year	Maximum Concentration[1]	Number of Days State/Federal Std. Exceeded
	California	Federal			
Carbon Monoxide (CO) [2] (1-Hour)	20 ppm for 1 hour	35 ppm for 1 hour	2018 2019 2020	2.513 ppm 1.712 1.859	0/0 0/0 0/0
Ozone (O_3) [2] (1-Hour)	0.09 ppm for 1 hour	N/A	2018 2019 2020	0.078 ppm 0.095 0.106	0/0 1/0 1/0
Ozone (O_3) [2] (8-Hour)	0.070 ppm for 8 hours	0.070 ppm for 8 hours	2018 2019 2020	0.061 ppm 0.081 0.085	0/0 2/2 2/2
Nitrogen Dioxide (NO_x) [2]	0.18 ppm for 1 hour	0.100 ppm for 1 hour	2018 2019 2020	0.086 ppm 0.060 0.052	0/0 0/0 0/0

Table 4.3-1 (continued)
Measured Air Quality Levels

Pollutant	Primary Standard		Year	Maximum Concentration[1]	Number of Days State/Federal Std. Exceeded
	California	Federal			
Particulate Matter (PM_{10}) [2,3,4]	50 µg/m³ for 24 hours	150 µg/m³ for 24 hours	2018 2019 2020	121.8 µg/m³ 77.1 137.1	4/0 4/0 10/0
Fine Particulate Matter ($PM_{2.5}$) [2,3,4]	No Separate State Standard	35 µg/m³ for 24 hours	2018 2019 2020	133.9 µg/m³ 27.6 120.5	*/15 */0 */12

Notes:
ppm = parts per million
µg/m³ = micrograms per cubic meter
NM = Not Measured
PM_{10} = particulate matter 10 microns in diameter or less
$PM_{2.5}$ = particulate matter 2.5 microns in diameter or less
NA = Not Applicable
* = insufficient data available to determine the value
1. Maximum concentration is measured over the same period as the California Standard.
2. Measurements taken at the San Jose-Jackson Street Monitoring Station located at 158 E Jackson St, San Jose, CA 95112.
3. PM_{10} exceedances are based on State thresholds established prior to amendments adopted on June 20, 2002.
4. PM_{10} and $PM_{2.5}$ exceedances are derived from the number of samples exceeded, not days.

Sources:
California Air Resources Board, *ADAM Air Quality Data Statistics*, http://www.arb.ca.gov/adam/, accessed on March 17, 2022.
California Air Resources Board, *AQMIS2: Air Quality Data*, https://www.arb.ca.gov/aqmis2/aqdselect.php, accessed on March 17, 2022.

Regulatory Setting

Local

Bay Area Air Quality Management District

The BAAQMD is the regional agency with jurisdiction over the nine-county Basin. The BAAQMD is responsible for attaining and maintaining air quality in the Basin with respect to Federal and State air quality standards, as established by the Federal Clean Air Act and the California Clean Air Act, respectively. Specifically, the BAAQMD has responsibility for monitoring ambient air pollutant levels throughout the Basin and developing and implementing strategies to attain the applicable Federal and State standards. The BAAQMD is also responsible for establishing and enforcing local air quality rules and regulations to address the requirements of federal and state air quality laws and ensuring that the National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS) are met. A list of applicable BAAQMD rules is provided below.

- Regulation 6, Rule 1 (Particulate Matter): This regulation limits the quantity of particulate matter in the atmosphere through the establishment of limitations on emission rates, emission concentrations, visible emissions, and opacity.

- Regulation 6, Rule 3 (Wood-Burning Devices): This regulation prohibits installation of wood-burning devices in new building construction.

- Regulation 9, Rule 8 (Stationary Internal-Combustion Engines): This regulation limits emissions of NOX and CO from stationary internal-combustion engines of more than 50 horsepower.

The most recent air quality plan, the 2017 Clean Air Plan, was adopted by the BAAQMD on April 19, 2017. The 2017 Clean Air Plan updates the most recent Bay Area ozone plan, the 2010 Clean Air Plan, in accordance with the requirements of the state Clean Air Act to implement all feasible measures to reduce ozone; provide a control strategy to reduce particulate matter, air toxics, and GHGs in a single, integrated plan; and establish emission control measures to be adopted or implemented. The 2017 Clean Air Plan contains the following primary goals:

- Protect Air Quality and Health at the Regional and Local Scale: Attain all State and national air quality standards, and eliminate disparities among Bay Area communities in cancer health risk from toxic air contaminants; and

- Protect the Climate: Reduce Bay Area GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.

- The 2017 Clean Air Plan is the most current applicable air quality for the Basin. Consistency with the 2017 Clean Air Plan is the basis for determining whether the proposed project would conflict with or obstruct implementation of an air quality plan.

Envision San José 2040 General Plan

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in San José and help tie individual projects to the vision for the surrounding area and the city as a whole. The following policies are specific to air quality and apply to the proposed project:

Goal MS-4 – Healthful Indoor Environment: Maximize the use of green building practices in new and existing development to promote a healthful indoor environment.

Policy MS-4.2 Encourage construction and pre-occupancy practices to improve indoor air quality upon occupancy of the structure.

Policy MS-4.3 Develop and implement policies and ordinances to promote the use of building material, furniture and paint that maintain healthful indoor air quality and to discourage the use of materials that degrade indoor air quality.

Policy MS-4.4 Develop and implement policies and ordinances to promote beneficial construction and pre-occupancy practices such as sealing of the HAVC system during construction, air flush-outs prior to occupancy, and/or air quality testing and corrections prior to occupancy.

Goal MS-10 – Air Pollutant Emission Reduction: Minimize air pollutant emissions from new and existing development.

Policy MS-10.1 Assess projected air emissions from new development in conformance with the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines and

relative to state and federal standards. Identify and implement feasible air emission reduction measures.

Policy 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.

Policy MS-10.3 Promote the expansion and improvement of public transportation services and facilities, where appropriate, to both encourage energy conservation and reduce air pollution.

Policy MS-10.4 Encourage effective regulation of mobile and stationary sources of air pollution, both inside and outside of San Jose. In particular, support Federal and State Regulations to improve automobile emission controls.

Policy MS-10.5 In order to reduce vehicle miles traveled and traffic congestion, require new development within 2,000 feet of an existing or planned transit station to encourage the use of public transit and minimize the dependence on the automobile through the application of site design guidelines and transit incentives.

Policy MS-10.6 Encourage mixed land use development near transit lines and provide retail and other types of service oriented uses within walking distance to minimize automobile dependent development.

Policy MS-10.7 Encourage regional and statewide air pollutant emission reduction through energy conservation to improve air quality.

Policy MS-10.8 Minimize vegetation removal required for fire prevention. Require alternatives to discing, such as mowing, to the extent feasible. Where vegetation removal is required for property maintenance purposes, encourage alternatives that limit the exposure of bare soil.

Policy MS-10.9 Foster educational programs about air pollution problems and solutions.

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

Policy MS-11.1 Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of toxic air contaminants (TACs) to avoid significant risks to health and safety.

Policy 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.

Policy 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.

Policy MS-11.4 Encourage the installation of appropriate air filtration at existing schools, residences, and other sensitive receptor uses adversely affected by pollution sources.

Policy 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-12 – Objectionable Odors: Minimize and avoid exposure of residents to objectionable odors.

Policy MS-12.1 For new, expanded, or modified facilities that are potential sources of objectionable odors (such as landfills, green waste and resource recovery facilities, wastewater treatment facilities, asphalt batch plants, and food processors), the City requires an analysis of possible odor impacts and the provision of odor minimization and control measures as mitigation.

Policy MS-12.2 Require new residential development projects and projects categorized as sensitive receptors to be located an adequate distance from facilities that are existing and potential sources of odor. An adequate separation distance will be determined based upon the type, size and operations of the facility.

Goal MS-13 – Construction Air Emissions: Minimize air pollutant emissions during demolition and construction activities.

Policy MS-13.1 Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.

Policy MS-13.2 Construction and/or demolition projects that have the potential to disturb asbestos (from soil or building material) shall comply with all the requirements of the California Air Resources Board's air toxics control measures (ATCMs) for Construction, Grading, Quarrying, and Surface Mining Operations.

Policy MS-13.3 Require subdivision designs and site planning to minimize grading and use landform grading in hillside areas.

Policy MS-13.4 Adopt and periodically update dust, particulate, and exhaust control standard measures for demolition and grading activities to include on project plans as conditions of approval based upon construction mitigation measures in the BAAQMD CEQA Guidelines.

a. Conflict with or obstruct implementation of the applicable air quality plan?

Less Than Significant Impact. The project is located in the San Francisco Bay Area Air Basin (Basin), under the jurisdiction of Bay Area Air Quality Management District (BAAQMD). The most recently adopted air quality plan in the Basin is the *2017 Clean Air Plan: Spare the Air, Cool the Climate* (2017 Clean Air Plan), adopted by the BAAQMD on April 19, 2017. The 2017 Clean Air Plan outlines how the San Francisco Bay Area will attain air quality standards, reduce population exposure, protect public health, and reduce greenhouse gas emissions.

The 2017 Clean Air Plan assumptions for projected air emissions and pollutants in the City are based on the General Plan Land Use/Transportation Diagram Map, which designates the project site as Neighborhood/Community Commercial. Properties designated Neighborhood/Community Commercial allow for development of commercial uses which serve the communities in neighboring areas. Therefore, the project is consistent with the General Plan designation, and the project would not exceed the projections used by the BAAQMD to develop the 2017 Clean Air Plan. As such, the proposed project would not significantly affect regional vehicle miles traveled (as assumed by the BAAQMD) pursuant to the CEQA Guidelines (Section 15206), since the project is consistent with the adopted land use plan for the City. For the same reason, the proposed project would not have the potential to exceed the level of population or housing foreseen in regional planning efforts.

As described below in Response 4.3(b) and Response 4.3(c), construction and operational air quality emissions generated by the proposed project would not exceed the BAAQMD's emissions thresholds. These thresholds are established to identify projects that have the potential to generate a substantial amount of criteria air pollutants. Because the proposed project would not exceed these thresholds, the proposed project would not be considered by the BAAQMD to be a substantial emitter of criteria air pollutants and would not contribute to any non-attainment areas in the Basin. Therefore, the project would be in compliance with the 2017 Clean Air Plan and impacts would be less than significant in this regard.

***Mitigation Measures*:** No mitigation measures are required.

b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

Less Than Significant Impact. Air pollutant emissions associated with construction of the project would be generated from the exhausts of construction equipment, soil hauling trucks, delivery trucks, and worker vehicles. Particulate matter emissions would result from soil movement and wind-blown dust from disturbed surfaces as well as organic pollutant emissions from painting. Operational emissions would be released from the exhausts of on-road vehicles and from stationary sources, including both area and energy sources.

Criteria Pollutants

The following are descriptions of specific pollutants of concern used for the purpose of this analysis.

Ozone (O_3). O_3 occurs in two layers of the atmosphere. The layer surrounding the Earth's surface is the troposphere. The troposphere extends approximately 10 miles above ground

level, where it meets the second layer, the stratosphere. The stratospheric layer (the "good" O_3 layer) extends upward from about 10 to 30 miles and protects life on Earth from the sun's harmful ultraviolet rays. "Bad" O_3 is a photochemical pollutant and needs volatile organic compounds (VOCs), nitrogen oxides (NO_X), and sunlight to form; therefore, VOCs and NO_X are O_3 precursors. To reduce O_3 concentrations, it is necessary to control the emissions of these O_3 precursors. Significant O_3 formation generally requires an adequate amount of precursors in the atmosphere and a period of several hours in a stable atmosphere with strong sunlight. High O_3 concentrations can form over large regions when emissions from motor vehicles and stationary sources are carried hundreds of miles from their origins.

While O_3 in the upper atmosphere (stratosphere) protects the Earth from harmful ultraviolet radiation, high concentrations of ground-level O_3 (in the troposphere) can adversely affect the human respiratory system and other tissues. O_3 is a strong irritant that can constrict the airways, forcing the respiratory system to work hard to deliver oxygen. Individuals exercising outdoors, children, and people with pre-existing lung disease, such as asthma and chronic pulmonary lung disease, are considered to be the most susceptible to the health effects of O_3. Short-term exposure (lasting for a few hours) to O_3 at elevated levels can result in aggravated respiratory diseases (such as emphysema, bronchitis and asthma), shortness of breath, increased susceptibility to infections, inflammation of the lung tissue, increased fatigue, as well as chest pain, dry throat, headache, and nausea.

Volatile Organic Compounds (VOC). VOCs are hydrocarbon compounds (any compound containing various combinations of hydrogen and carbon atoms) that exist in the ambient air. VOCs contribute to the formation of smog through atmospheric photochemical reactions and/or may be toxic. Compounds of carbon (also known as organic compounds) have different levels of reactivity; that is, they do not react at the same speed or do not form O_3 to the same extent when exposed to photochemical processes. VOCs often have an odor, and some examples include gasoline, alcohol, and the solvents used in paints. Exceptions to the VOC designation include carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate. VOCs are a criteria pollutant since they are a precursor to O_3, which is a criteria pollutant. The terms VOC and ROG (see below) are often used interchangeably.

Reactive Organic Gases (ROG). Similar to VOCs, ROGs are also precursors in forming O_3 and consist of compounds containing methane, ethane, propane, butane, and longer chain hydrocarbons, which are typically the result of some type of combustion/decomposition process. Smog is formed when ROGs and nitrogen oxides react in the presence of sunlight. ROGs are a criteria pollutant since they are a precursor to O_3, which is a criteria pollutant.

Coarse Particulate Matter (PM_{10}). PM_{10} refers to suspended particulate matter, which is smaller than 10 microns or ten one-millionths of a meter. PM_{10} arises from sources, such as road dust, diesel soot, combustion products, construction operations, and dust storms. PM_{10} scatters light and significantly reduces visibility. In addition, these particulates penetrate into lungs and can potentially damage the respiratory tract. On June 19, 2003, California Air Resources Board (CARB) adopted amendments to the Statewide 24-hour particulate matter standards based upon requirements set forth in the Children's Environmental Health Protection Act (Senate Bill 25).

Fine Particulate Matter ($PM_{2.5}$). Due to recent increased concerns over health impacts related to fine particulate matter (particulate matter 2.5 microns in diameter or less), both State and

Federal $PM_{2.5}$ standards have been created. Particulate matter impacts primarily affect infants, children, the elderly, and those with pre-existing cardiopulmonary disease. In 1997, the U.S. Environmental Protection Agency (EPA) announced new $PM_{2.5}$ standards. Industry groups challenged the new standard in court and the implementation of the standard was blocked. However, upon appeal by the EPA, the United States Supreme Court reversed this decision and upheld the EPA's new standards. On January 5, 2005, the EPA published a Final Rule in the Federal Register that designates the Basin as a nonattainment area for Federal $PM_{2.5}$ standards. On June 20, 2002, CARB adopted amendments for Statewide annual ambient particulate matter air quality standards. These standards were revised/established due to increasing concerns by CARB that previous standards were inadequate, as almost everyone in California is exposed to levels at or above the current State standards during some parts of the year, and the Statewide potential for significant health impacts associated with particulate matter exposure was determined to be large and wide-ranging.

Carbon Monoxide (CO). CO is an odorless, colorless toxic gas that is emitted by mobile and stationary sources as a result of incomplete combustion of hydrocarbons or other carbon-based fuels. In cities, automobile exhaust can cause as much as 95 percent of all CO emissions. CO replaces oxygen in the body's red blood cells. Individuals with a deficient blood supply to the heart, patients with diseases involving heart and blood vessels, fetuses (unborn babies), and patients with chronic hypoxemia (oxygen deficiency) as seen in high altitudes are most susceptible to the adverse effects of CO exposure. People with heart disease are also more susceptible to developing chest pains when exposed to low levels of CO.

Nitrogen Dioxide (NO_2). NO_X are a family of highly reactive gases that are a primary precursor to the formation of ground-level O_3 and react in the atmosphere to form acid rain. NO_2 (often used interchangeably with NO_X) is a reddish-brown gas that can cause breathing difficulties at elevated levels. Peak readings of NO_2 occur in areas that have a high concentration of combustion sources (e.g., motor vehicle engines, power plants, refineries, and other industrial operations). NO_2 can irritate and damage the lungs and lower resistance to respiratory infections such as influenza. The health effects of short-term exposure are still unclear. However, continued or frequent exposure to NO_2 concentrations that are typically much higher than those normally found in the ambient air may increase acute respiratory illnesses in children and increase the incidence of chronic bronchitis and lung irritation. Chronic exposure to NO_2 may aggravate eyes and mucus membranes and cause pulmonary dysfunction.

Sulfur Dioxide (SO_2). SO_2 is a colorless, irritating gas with a rotten egg smell; it is formed primarily by the combustion of sulfur-containing fossil fuels. SO_2 is often used interchangeably with SO_X and lead. Exposure of a few minutes to low levels of SO_2 can result in airway constriction in some asthmatics.

Air Quality Thresholds

Under CEQA, the BAAQMD is an expert commenting agency on air quality within its jurisdiction or impacting its jurisdiction. Under the Federal Clean Air Act (FCAA), the BAAQMD has adopted Federal attainment plans for O_3 and $PM_{2.5}$. The BAAQMD reviews projects to ensure that they would not: (1) cause or contribute to any new violation of any air quality standard; (2) increase the frequency or severity of any existing violation of any air quality standard; or (3) delay timely attainment of any air quality standard or any required interim emission reductions or other milestones of any Federal attainment plan.

The BAAQMD *CEQA Air Quality Guidelines* (Guidelines) provide significance thresholds for both construction and operation of projects within the BAAQMD jurisdictional boundaries. The thresholds have been developed by the BAAQMD in order to attain State and national ambient air quality standards. Therefore, projects below these thresholds would not violate an air quality standard and would not contribute substantially to an existing or projected air quality violation. These recommendations, which are listed as follows, represent the best available science on the subject of what constitute significant air quality effects in the Basin:

- NO_X and ROG: 54 pounds/day
- PM_{10}: 82 pounds/day
- $PM_{2.5}$: 54 pounds/day
- CO: A quantitative CO impact analysis is not required (comparing project emissions to the California Ambient Air Quality Standards [CAAQS]), if the following criteria are met:
    - The project is consistent with an applicable congestion management program established by the county congestion management agency for designated roads or highways, regional transportation plan, and local congestion management agency plans.
    - The project traffic would not increase traffic volumes at affected intersections to more than 44,000 vehicles per hour.
    - The project traffic would not increase traffic volumes at affected intersections to more than 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited (e.g., tunnel, parking garage, bridge underpass, natural or urban street canyon, below-grade roadway).

Short-Term Construction Impacts

Construction of the project is anticipated to include two phases. Phase 1 would involve demolition, grading, and paving, lasting for approximately three months. Phase 2 would involve demolition, grading, building construction, paving, and architectural coating applications, lasting for approximately six months. Exhaust emission factors for typical diesel-powered heavy equipment are based on the program defaults of the most recent version of the California Emissions Estimator Model (CalEEMod), version 2020.4.0. Variables factored into estimating the total construction emissions include the level of activity, length of construction period, number of pieces and types of equipment in use, site characteristics, weather conditions, number of construction personnel, and the amount of materials to be transported on- or off-site. The analysis of daily construction emissions has been prepared using CalEEMod. Refer to Appendix A, *Air Quality/Greenhouse Gas/Energy Data*, for the CalEEMod outputs and results. Table 4.3-2, *Short-Term Construction Emissions*, presents the anticipated daily short-term construction emissions.

Table 4.3-2
Short-Term Construction Emissions

Year	Pollutant (pounds/day)			
	ROG	NO_X	PM_{10}	$PM_{2.5}$
Construction Related Emissions				
Year 1	8.90	30.46	2.49	1.48
BAAQMD Significance Thresholds	*54*	*54*	*82*	*54*
Threshold Exceeded?	***No***	***No***	***No***	***No***

Notes:
1. Emissions were calculated using CalEEMod version 2020.4.0, as recommended by the BAAQMD. Winter emissions represent worst-case.
2. The emissions presented include reductions associated with City of San José Standard Permit Conditions (i.e., replace ground cover on disturbed areas quickly, water exposed surfaces three times daily, and proper loading/unloading of mobile and other construction equipment).

Refer to Appendix A, *Air Quality/Greenhouse Gas/Energy Data*, for assumptions used in this analysis.

Fugitive Dust Emissions

Construction activities are a source of fugitive dust emissions that may have a substantial, temporary impact on local air quality. In addition, fugitive dust may be a nuisance to those living and working in the project area. Fugitive dust emissions are associated with land clearing, ground excavation, cut-and-fill, and truck travel on unpaved roadways. Fugitive dust emissions vary substantially from day to day, depending on the level of activity, specific operations, and weather conditions. Fugitive dust from demolition, grading, and construction is expected to be short-term and would cease upon project completion. It should be noted that most of this material is inert silicates, rather than the complex organic particulates released from combustion sources, which are more harmful to health.

Dust (larger than 10 microns) generated by such activities usually becomes more of a local nuisance than a serious health problem. Of particular health concern is the amount of PM_{10} generated as a part of fugitive dust emissions. PM_{10} poses a serious health hazard alone or in combination with other pollutants. $PM_{2.5}$ is mostly produced by mechanical processes. These include automobile tire wear, industrial processes (such as cutting and grinding), and re-suspension of particles from the ground or road surfaces by wind and human activities (such as construction or agriculture). $PM_{2.5}$ is mostly derived from combustion sources, such as automobiles, trucks, and other vehicle exhaust, as well as from stationary sources. These particles are either directly emitted or are formed in the atmosphere from the combustion of gases (such as NO_X and SO_X) combining with ammonia. $PM_{2.5}$ components from material in the earth's crust, such as dust, are also present, with the amount varying in different locations.

Construction activities would implement the City's Standard Permit Conditions, as listed below, which requires that excessive fugitive dust emissions be controlled by regular watering or other dust prevention measures. Adherence to the City's Standard Permit Conditions would greatly reduce PM_{10} and $PM_{2.5}$ concentrations. It should be noted that these reductions were applied in CalEEMod. As depicted in Table 4.3-2, total PM_{10} and $PM_{2.5}$ emissions would not exceed the BAAQMD thresholds during construction. Thus, construction-related air quality impacts from fugitive dust emissions would be less than significant.

Construction Equipment and Worker Vehicle Exhaust

Exhaust emissions (e.g., NO_x and CO) from construction activities include emissions associated with the transport of machinery and supplies to and from the project site, emissions produced on-site as the equipment is used, and emissions from trucks transporting materials to/from the site. As presented in Table 4.3-2, construction equipment and worker vehicle exhaust emissions would be below the established BAAQMD thresholds. Therefore, air quality impacts from equipment and vehicle exhaust emission would be less than significant.

ROG Emissions

In addition to gaseous and particulate emissions, the application of asphalt and surface coatings creates ROG emissions, which are O_3 precursors. As required, all architectural coatings for the new structure would comply with BAAQMD *Regulation 8, Rule 3 – Architectural Coatings*. Rule 3 provides specifications on painting practices as well as regulates the ROG content of paint. ROG emissions associated with the proposed project would be less than significant; refer to Table 4.3-2.

Total Daily Construction Emissions

In accordance with the BAAQMD Guidelines, CalEEMod was utilized to model construction emissions for ROG, NO_X, PM_{10}, and $PM_{2.5}$. As indicated in Table 4.3-2, criteria pollutant emissions during construction of the proposed project would not exceed the BAAQMD significance thresholds. Thus, total construction related air emissions would be less than significant.

Asbestos

Asbestos is a term used for several types of naturally occurring fibrous minerals that are a human health hazard when airborne. The most common type of asbestos is chrysotile, but other types such as tremolite and actinolite are also found in California. Asbestos is classified as a known human carcinogen by State, Federal, and international agencies and was identified as a toxic air contaminant by the CARB in 1986.

Asbestos can be released from serpentinite and ultramafic rocks when the rock is broken or crushed. At the point of release, the asbestos fibers may become airborne, causing air quality and human health hazards. These rocks have been commonly used for unpaved gravel roads, landscaping, fill projects, and other improvement projects in some localities. Asbestos may be released to the atmosphere due to vehicular traffic on unpaved roads, during grading for development projects, and at quarry operations. All of these activities may have the effect of releasing potentially harmful asbestos into the air. Natural weathering and erosion processes can act on asbestos bearing rock and make it easier for asbestos fibers to become airborne if such rock is disturbed. According to the Department of Conservation Division of Mines and Geology, *A General Location Guide for Ultramafic Rocks in California – Areas More Likely to*

Contain Naturally Occurring Asbestos Report, serpentinite and ultramafic rocks are not known to occur within the project area.[1] Thus, there would be no impact in this regard.

Long-Term Operational Emissions

Long-term air quality impacts would consist of mobile source emissions generated from project-related traffic, and emissions from stationary area and energy sources. As a conservative analysis, emissions from the existing use on-site were not modeled or deducted from the project emissions. Emissions from each source and the total emissions are shown in Table 4.3-3, *Long-Term Operational Air Emissions*, and discussed in more detail below.

Table 4.3-3
Long-Term Operational Air Emissions

Emissions Source	Pollutant (pounds/day)[1]			
	ROG	NO_X	PM_{10}	$PM_{2.5}$
Project Summer Emissions				
Area Source Emissions	0.20	<0.01	<0.01	<0.01
Energy Emissions	0.02	0.20	0.02	0.02
Mobile Emissions	2.92	2.70	5.26	1.43
Total Project Emissions[2]	*3.14*	*2.90*	*5.28*	*1.44*
BAAQMD Threshold	*54*	*54*	*82*	*54*
Is Threshold Exceeded? (Significant Impact?)	***No***	***No***	***No***	***No***
Project Winter Emissions				
Area Source Emissions	0.20	<0.01	<0.01	<0.01
Energy Emissions	0.02	0.20	0.02	0.02
Mobile Emissions	2.63	3.12	5.26	1.43
Total Project Emissions[2]	*2.85*	*3.32*	*5.28*	*1.44*
BAAQMD Threshold	*54*	*54*	*82*	*54*
Is Threshold Exceeded? (Significant Impact?)	***No***	***No***	***No***	***No***

Notes:
1. Emissions were calculated using CalEEMod version 2020.4.0, as recommended by the BAAQMD.
2. The numbers may be slightly off due to rounding.

Refer to Appendix A, *Air Quality/Greenhouse Gas/Energy Data*, for assumptions used in this analysis.

Area Source Emissions

Area source emissions would be generated from consumer products, architectural coating, and landscaping. As shown in Table 4.3-3, area source emissions from the proposed project would not exceed BAAQMD thresholds for ROG, NO_X, PM_{10}, or $PM_{2.5}$.

Energy Source Emissions

Energy source emissions would be generated as a result of electricity and natural gas (non-hearth) usage associated with the proposed project. The primary use of electricity and natural gas by the project would be for space heating and cooling, water heating, ventilation, lighting,

[1] Department of Conservation Division of Mines and Geology, *A General Location Guide for Ultramafic Rocks in California – Areas More Likely to Contain Naturally Occurring Asbestos Report*, August 2000, https://ww3.arb.ca.gov/toxics/asbestos/ofr_2000-019.pdf, accessed November 23, 2021.

appliances, and electronics. As shown in Table 4.3-3, energy source emissions from the proposed project would not exceed BAAQMD thresholds for ROG, NO_X, PM_{10}, or $PM_{2.5}$.

Mobile Source Emissions

Mobile sources are emissions from motor vehicles, including tailpipe and evaporative emissions. Depending upon the pollutant being discussed, the potential air quality impact may be of either regional or local concern. For example, ROG, NO_X, SO_X, PM_{10}, and $PM_{2.5}$ are all pollutants of regional concern (NO_X and ROG react with sunlight to form O_3 [photochemical smog], and wind currents readily transport SO_X, PM_{10}, and $PM_{2.5}$); however, CO tends to be a localized pollutant, dispersing rapidly at the source.

Project-generated vehicle emissions were estimated using CalEEMod. Based on the *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis* (LTA), prepared by Hexagon Transportation Consultants, Inc. (dated February 28, 2022), included as Appendix H, *Local Transportation Analysis,* the project would generate 1,102 average daily trips, including 34 trips during the a.m. peak hour and 136 trips during the p.m. peak hour. Table 4.3-3 presents the anticipated mobile source emissions. As shown in Table 4.3-3, emissions generated by vehicle traffic associated with the project would not exceed established BAAQMD thresholds. Impacts from mobile source air emissions would be less than significant.

Total Operational Emissions

As shown in Table 4.3-3, the total operational emissions for both summer and winter would not exceed established BAAQMD thresholds. Therefore, impacts in this regard would be less than significant.

Air Quality Health Impacts

Adverse health effects induced by criteria pollutant emissions are highly dependent on a multitude of interconnected variables (e.g., cumulative concentrations, local meteorology and atmospheric conditions, and the number and character of exposed individual [e.g., age, gender]). In particular, ozone precursors ROGs and NO_x affect air quality on a regional scale. Health effects related to ozone are therefore the product of emissions generated by numerous sources throughout a region. Existing models have limited sensitivity to small changes in criteria pollutant concentrations, and, as such, translating project-generated criteria pollutants to specific health effects or additional days of nonattainment would produce meaningless results. In other words, the project's less than significant increases in regional air pollution from criteria air pollutants would have nominal or negligible impacts on human health.

As noted in the Brief of Amicus Curiae by the South Coast Air Quality Management District (SCAQMD), the SCAQMD acknowledged that it would be extremely difficult, if not impossible to quantify health impacts of criteria pollutants for various reasons including modeling limitations as well as where in the atmosphere air pollutants interact and form.[2] Further, as noted in the Brief of Amicus Curiae by the San Joaquin Valley Air Pollution Control District

[2] South Coast Air Quality Management District, *Application of the South Coast Air Quality Management District for Leave to File Brief of Amicus Curiae in Support of Neither Party and Brief of Amicus Curiae. In the Supreme Court of California. Sierra Club, Revive the San Joaquin, and League of Women Voters of Fresno v. County of Fresno*, 2014.

(SJVAPCD), SJVAPCD has acknowledged that currently available modeling tools are not equipped to provide a meaningful analysis of the correlation between an individual development project's air emissions and specific human health impacts.[3]

The SCAQMD acknowledges that health effects quantification from ozone, as an example is correlated with the increases in ambient level of ozone in the air (concentration) that an individual person breathes. SCAQMD's Brief of Amicus Curiae states that it would take a large amount of additional emissions to cause a modeled increase in ambient ozone levels over the entire region. The SCAQMD states that based on their own modeling in the SCAQMD's *2012 Air Quality Management Plan*, a reduction of 432 tons (864,000 pounds) per day of NO_X and a reduction of 187 tons (374,000 pounds) per day of VOCs would reduce ozone levels at highest monitored site by only nine parts per billion. As such, the SCAQMD concludes that it is not currently possible to accurately quantify ozone-related health impacts caused by NO_X or VOC emissions from relatively small projects (defined as projects with regional scope) due to photochemistry and regional model limitations. As such, for the purpose of this analysis, since the project would not exceed BAAQMD thresholds for construction and operational air emissions, the project would have a less than significant impact for air quality health impacts as well.

Cumulative Short-Term Construction Impacts

With respect to the proposed project's construction-period air quality emissions and cumulative Basin-wide conditions, the BAAQMD has developed strategies to reduce criteria pollutant emissions outlined in the 2017 Clean Air Plan pursuant to FCAA mandates. As such, the proposed project would be subject to BAAQMD rules and implement all feasible BAAQMD rules to reduce construction air emissions to the extent feasible. In addition, the project would implement the City's Standard Permit Conditions, which requires that fugitive dust be controlled with the best available control measures in order to reduce dust so that it does not remain visible in the atmosphere beyond the property line of the proposed project. In addition, the proposed project would comply with adopted 2017 Clean Air Plan emissions control measures. Implementation of the City's Standard Permit Conditions and the 2017 Clean Air Plan emissions control measures would help the project reduce its emissions from construction activities. Pursuant to BAAQMD rules and mandates, as well as the CEQA requirement that significant impacts be mitigated to the extent feasible, these same requirements (i.e., implementation of all feasible mitigation measures and compliance with adopted Clean Air Plan emissions control measures) would also be imposed on construction projects throughout the Basin.

As discussed above, the project's short-term construction emissions would be below the BAAQMD thresholds and would result in less than significant air quality impacts. The nearest stationary source would be gas dispensing facility located southeastern corner of the project site. The cancer rate per million would be 66 persons and hazard index would be 0.290. Thus, it can be reasonably inferred that the project's construction emissions would not contribute to

[3] San Joaquin Valley Air Pollution Control District, *Application for Leave to File Brief of Amicus Curiae Brief of San Joaquin Valley Unified Air Pollution Control District in Support of Defendant and Respondent, County of Fresno and Real Party In Interest and Respondent, Friant Ranch, L.P. In the Supreme Court of California. Sierra Club, Revive the San Joaquin, and League of Women Voters of Fresno v. County of Fresno*, 2014.

a cumulatively considerable air quality impact for nonattainment criteria pollutants in the Basin. A less than significant impact would occur in this regard.

Cumulative Long-Term Operational Impacts

As discussed, the proposed project would not result in long-term operational air quality impacts. Additionally, adherence to BAAQMD rules and regulations would alleviate potential impacts related to cumulative conditions on a project-by-project basis. Emission reduction technology, strategies, and plans are constantly being developed. As a result, the proposed project would not contribute a cumulatively considerable net increase of any nonattainment criteria pollutant. Therefore, no cumulative operational impacts associated with implementation of the proposed project would result.

***City of San José Standard Permit Conditions*:**

The following measures shall be implemented during all phases of construction to control dust and exhaust at the project site:

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least two feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use, or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations). Provide clear signage for construction workers at all access points.
- Maintain and property tune construction equipment in accordance with manufacturer's specifications. Check all equipment by a certified mechanic and record a determination of running in proper condition prior to operation.

- Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints.

***Mitigation Measures*:** No mitigation measures are required.

c. Expose sensitive receptors to substantial pollutant concentrations?

Less Than Significant Impact. Sensitive receptors are defined as facilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. Examples of these sensitive receptors are residences, schools, hospitals, and daycare centers. CARB has identified the following groups of individuals as the most likely to be affected by air pollution: the elderly over 65, children under 14, athletes, and persons with cardiovascular and chronic respiratory diseases such as asthma, emphysema, and bronchitis. The closest sensitive receptors are residential uses located approximately 370 feet to the southeast of the project site.

Toxic Air Contaminants Health Impacts

Construction

The project construction activities are anticipated to involve the operation of diesel-powered equipment, which would emit Diesel Particulate Matter (DPM). In 1998, the CARB identified diesel exhaust as a Toxic Air Contaminant (TAC). Cancer health risks associated with exposures to diesel exhaust typically are associated with chronic exposure, in which a 30-year exposure period often is assumed. The project would be constructed in 12 months. Construction activities would be required to comply with the California Code of Regulations (CCR), Title 13, Sections 2449(d)(3) and 2485, which minimizes the idling time of construction equipment either by shutting it off when not in use or by reducing the time of idling to no more than five minutes. Implementation of these regulations would reduce the amount of DPM emissions from the construction of the project.

The closest sensitive receptors to the project site are residential uses located approximately 370 feet to the southeast of the project site. Health impacts on sensitive receptors associated with exposure to DPM from project construction are anticipated to be less than significant, since construction activities are expected to occur well below the 30-year exposure period used in health risk assessments. Additionally, emissions would be short-term and intermittent in nature, and therefore would not generate TAC emissions at high enough exposure concentrations to represent a health hazard. Therefore, construction of the proposed project is not anticipated to result in an elevated cancer risk to nearby sensitive receptors and the impact would be less than significant.

Operations

The project would construct a new Chick-fil-A restaurant and would result in very limited operational activities with potential health risks, including landscaping maintenance operations and boilers for restaurants. None of these activities would result in the generation of excessive TAC emissions, or associated health risks from the project's operation. A health risk assessment estimates the increase in health risks for people living, working or attending school near a facility that may result from exposure to a facility's emissions of toxic air pollutants. During project operation, the proposed fast-food restaurant would not involve a

significant amount of heavy-duty vehicles. Overall, it is not anticipated that significant increase in health risks for the would result from the proposed project, and health risk assessment is not necessary pursuant to BAAQMD Regulation 11-18.[4]

Therefore, operation of the proposed project is not anticipated to result in an elevated cancer risk to nearby sensitive receptors and the impact would be less than significant.

Localized Carbon Monoxide Hotspot

The Basin is designated as attainment for CO. Emissions and ambient concentrations of CO have decreased dramatically in the Basin with the introduction of the catalytic converter in 1975. No exceedances of the CAAQS or National Ambient Air Quality Standards (NAAQS) for CO have been recorded at nearby monitoring stations since 1991. As a result, the BAAQMD screening criteria notes that CO impacts may be determined to be less than significant if a project is consistent with the applicable congestion management plan (CMP) and would not increase traffic volumes at local intersections to more than 24,000 vehicles per hour for locations in heavily urban areas, where "urban canyons" formed by buildings tend to reduce air circulation. Based on the scope of the proposed project (construction of a 3,565-square foot Chick-fil-A restaurant), traffic would increase along surrounding roadways during long-term operational activities. However, according to the LTA for the proposed project, the project would generate approximately 1,102 new daily vehicle trips. Therefore, the project would not generate a significant number of vehicle trips. In addition, the proposed project's drive-thru lane is designed to accommodate approximately 21 vehicles. The volume of vehicles accessing the site would be significantly less than 24,000 vehicles per hour. As previously noted, the proposed restaurant would result in a low volume of daily and peak hour trips. With a marginal number of vehicles accessing the site, there would not be a significant amount of vehicle queuing in the drive-thru and a CO hotspot would not occur. Therefore, impacts related to CO concentrations would be less than significant.

***Mitigation Measures*:** No mitigation measures are required.

d. Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Less Than Significant Impact. According to the BAAQMD, land uses associated with odor complaints typically include agricultural uses, wastewater treatment plants, food processing plants, chemical plants, composting, refineries, landfills, dairies, and fiberglass molding. Although there is the potential for the project to generate odors associated with restaurant operations, the odors would dissipate quickly and would not adversely affect nearby sensitive receptors.

Construction activities associated with the project may generate detectable odors from heavy-duty equipment exhaust and architectural coatings. However, construction-related odors would be short-term in nature and cease upon project completion. In addition, the project would be required to comply with the California Code of Regulations, Title 13, Sections 2449(d)(3) and 2485, which minimizes the idling time of construction equipment either by

[4] Bay Area Air Quality Management District, *BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines*, https://www.baaqmd.gov/~/media/files/planning-and-research/permit-modeling/hra_guidelines_12_7_2016_clean-pdf.pdf?la=en, December 2016.

shutting it off when not in use or by reducing the time of idling to no more than five minutes. This would reduce detectable odors from heavy-duty equipment exhaust. As such, the project would not result in other emissions (such as those leading to odors) adversely affecting a substantial number of people. Impacts would be less than significant in this regard.

***Mitigation Measures*:** No mitigation measures are required.

4.4 BIOLOGICAL RESOURCES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?				✓
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Services?				✓
c. Have a substantial adverse effect on State or Federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?				✓
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery site?		✓		
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?			✓	
f. Conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				✓

The information presented in this analysis is supplemented with the *Arborist Report for the Chick-fil-A Silver Creek & Capitol, 3155 Silver Creek Road, San Jose, CA* (Arborist Report) prepared by Hourian Associates, Inc., dated August 16, 2021; refer to Appendix B, *Arborist Report*.

Environmental Setting

The project site is fully developed with a retail building, associated surface parking lot, and ornamental landscaping and is surrounded by an existing commercial shopping center. 57 ornamental trees are located on-site, 47 of which would be removed. Additionally, six of the existing on-site trees are ordinance trees and two are street trees. None of the trees found on-site are heritage trees. Riparian habitats are those occurring along the banks of rivers, streams, lakes, and other surface water bodies. Sensitive natural communities are natural communities that are considered rare in the region by regulatory agencies, known to provide habitat for sensitive animal or plant species, or known to be important wildlife corridors. There are no riparian habitats within, nor in the immediate vicinity of, the project site. No wetland features nor identified wildlife corridors or native wildlife nurseries occur within the boundaries of the project site. According to the CDFW's *California Natural Community Conservation Plan Map,* the project site

lies within the Santa Clara Valley Habitat Plan (Habitat Plan).[1] Specifically, the Habitat Plan requires projects and activities within covered species' habitats to incorporate habitat conservation plan (HCP) measures to avoid, minimize, or compensate for adverse effects on natural communities and endangered species.

Regulatory Setting

Federal

U.S. Fish and Wildlife

The Migratory Bird Treaty Act (MBTA) prohibits the take (including killing, capturing, selling, trading, and transport) of protected migratory bird species without prior authorization by the Department of Interior U.S. Fish and Wildlife Service.[2]

U.S. Army Corp of Engineers

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities). The U.S. Army Corps of Engineers is responsible for administering the Section 404 permit program.[3]

State

California Department of Fish and Wildlife

The California Endangered Species Act (CESA) is a California environmental law managed by the California Department of Fish and Wildlife (CDFW) that conserves and protects plant and animal species at risk of extinction. Originally enacted in 1970, CESA was repealed and replaced by an updated version in 1984 and amended in 1997. Plant and animal species may be designated threatened or endangered under CESA after a formal listing process by the California Fish and Game Commission.[4]

[1] California Department of Fish and Wildlife, *California Regional Conservation Plans*, April 2019, https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68626&inline, accessed August 26, 2021.

[2] U.S. Fish and Wildlife Service, *Migratory Bird Treaty Act of 1918*, https://www.fws.gov/law/migratory-bird-treaty-act-1918, accessed March 23, 2022.

[3] U.S. Army Corp of Engineers, *Permit Program under CWA Section 404*, https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404, accessed March 23, 2022.

[4] California Department of Fish and Wildlife, *Threatened and Endangered Species*, https://wildlife.ca.gov/Conservation/CESA, accessed March 23, 2022.

Local

Santa Clara Valley Habitat Agency

The Santa Clara Valley Habitat Agency leads implementation of the Santa Clara Valle Habitat Plan (Habitat Plan). The Habitat Plan is a 50-year regional plan intended to protect endangered species and natural resources while allowing for future development in Santa Clara County. The Habitat Plan was adopted in 2013 by all local participating agencies and permits were issued from the USFWS and CDFW. It is both a habitat conservation plan and natural community conservation plan.[5]

Envision San Jose 2040 General Plan

The General Plan's includes policies to preserve, avoid, and mitigate impacts to biological resources within the City. The following policies are specific to biological resources and apply to the proposed project:

> **Policy ER-5.1:** Avoid implementing activities that result in the loss of active native birds' nests, including both direct loss and indirect loss through abandonment, of native birds. Avoidance of activities that could result in impacts to nests during the breeding season or maintenance of buffers between such activities and active nests would avoid such impacts.
>
> **Policy ER-5.2:** Require that development projects incorporate measures to avoid impacts to nesting migratory birds.
>
> **Policy ER-10.2:** Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable State laws shall be enforced.
>
> **Policy MS-21.4:** Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.
>
> **Policy MS-21.5:** As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.
>
> **Policy MS-21.6:** As a condition of new development, require the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.

[5] Santa Clara Valley Habitat Agency, *The Santa Clara Valley Habitat Agency*, https://scv-habitatagency.org/, accessed March 23, 2022.

City of San Jose Municipal Code – Tree Ordinance

The City's Tree Ordinance promotes the health, safety, and welfare of trees by controlling removal of ordinance size trees located around the City. Specifically, Municipal Code Section 13.32.030, *Removal of Live Tree*, prohibits the removal and cause to be removed of any live tree without a development permit or tree removal permit from the City. Additionally, the City establishes protection requirements for street trees, heritage trees, ordinance trees (live or dead), and any tree located on multi-family, commercial, industrial, or mixed use property or in common area.[6]

a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

No Impact. Based on the project site and surrounding area's disturbed condition, project construction would not adversely impact candidate, sensitive, or special status biological resources. Further, no listed or sensitive habitat that could support such species are present on-site. Based on the site's urban condition, no endangered, rare, threatened, or special status plant species (or associated habitats) or wildlife species designated by the USFWS, CDFW, or California Native Plant Society have the potential to occur on-site. As such, no impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Services?

No Impact. There are no riparian habitats within, nor in the immediate vicinity of, the project site. As stated under Response 4.4(a), the project site has been heavily disturbed by existing development with mostly impervious surfaces and limited ornamental landscaping. No existing riparian habitat or other sensitive natural community is located on-site. No impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

c. Have a substantial adverse effect on State or Federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

No Impact. Refer to Response 4.4(b). No wetland features are located on-site.[7] The project site is not located near any marsh, vernal pool, or coastal wetlands, and no hydrology, soils, or vegetation occur on-site that could constitute or support wetlands. Thus, project implementation would not impact State or Federally protected wetlands through direct

[6] City of San José, *Tree Removal Permits*, www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/tree-removal-permits, accessed August 26, 2021.

[7] U.S. Fish and Wildlife Service, National Wetlands Inventory, https://www.fws.gov/wetlands/data/Mapper.html, accessed September 15, 2021.

removal, filling, hydrological interruption, or other means. No impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery site?

Less Than Significant Impact With Mitigation Incorporated. No identified wildlife corridors or native wildlife nurseries occur within the boundaries of the project site. The site is entirely built out and surrounded by dense urban uses on all sides. Implementation of the proposed project would result in the removal of 47 out of 57 existing non-native ornamental trees, and the planting of 42 new ornamental trees. The existing trees proposed for removal could provide nesting opportunities for birds. The MBTA governs the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests. To reduce potential impacts to nesting birds, Mitigation Measure BIO-1 requires a pre-construction nesting bird clearance survey to determine the presence/absence, location, and status of any active nests on or adjacent to the project site. If the nesting bird clearance survey indicates the presence of nesting migratory native birds, Mitigation Measure BIO-1 requires buffers to ensure that any nesting migratory native birds are protected pursuant to the MBTA. With implementation of Mitigation Measure BIO-1, the project's potential construction-related impacts to migratory birds would be reduced to a less than significant level.

Mitigation Measures:

Tree Removal Activities – Development of the proposed project could result in impacts to nesting migratory birds. With compliance with the following Mitigation Measure BIO-1, impacts in this regard would be reduced to less than significant levels.

BIO-1 The project Applicant shall schedule demolition and construction activities to avoid the nesting season. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1st through August 31st (inclusive). If demolition and construction cannot be scheduled between September 1st and January 31st (inclusive), pre-construction surveys for nesting migratory native birds shall be completed by a qualified ornithologist to ensure that no nests shall be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1st through April 30th, inclusive) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1st through August 31st, inclusive). During this survey, the ornithologist shall inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with the 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 native bird nests shall not be disturbed during project construction. Prior to any tree removal, or issuance of any grading or demolition permits (whichever occurs first), the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the

Director of the Department of Planning, Building, and Code Enforcement or Director's designee.

e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

Less Than Significant Impact. Municipal Code Section 13.32.030, *Removal of Live Tree*, prohibits the removal and cause to be removed of any live tree without a development permit or tree removal permit from the City. Specifically, the City establishes protection requirements for street trees, heritage trees, ordinance trees (live or dead), and any tree located on multi-family, commercial, industrial, or mixed use property or in common area.[8] Per the City's Municipal Code, ordinance sized trees are those that measure 38 inches or more in circumference at 4.5 feet above ground.

Two of the existing on-site trees are classified as street trees and six on-site trees are classified as ordinance sized trees; refer to Appendix B, *Arborist Report*. None of the existing on-site trees are heritage trees or native trees. As discussed under Response 4.4(d) above, 47 out of 57 existing ornamental trees would be removed on-site. This includes two street trees and one ordinance sized tree. Therefore, the project would be subject to Municipal Code Section 13.32.030, which would require a tree removal permit. Additionally, the project would be subject to the tree replacement ratios required by the City, as required by Standard Permit Conditions.

With compliance with the tree removal permit and Standard Permit Conditions, the project would not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance, and a less than significant impact would result in this regard.

***Standard Permit Conditions*:**

Tree Replacement. Trees removed for the project shall be replaced at ratios required by the City, as stated in below, as amended:

[8] City of San José, *Tree Removal Permits*, www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/tree-removal-permits, accessed August 26, 2021.

Tree Replacement Ratios

Circumference of Tree to be Removed	Replacement Ratios Based on Type of Tree to be Removed			Minimum Size of Each Replacement Tree[2]
	Native[1]	Non-Native	Orchard	
38 inches or more	5:1	4:1	3:1	15-gallon
19 up to 38 inches	3:1	2:1	None	15-gallon
Less than 19 inches	1:1	1:1	None	15-gallon

Notes:
Trees greater than or equal to 38-inch circumference measured at 54 inches above natural grade shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees. For Multi-Family residential, Commercial and Industrial properties, a permit is required for removal of trees of any size. A 38-inch tree equals 12.1 inches in diameter. Single Family and Two-dwelling properties may replace trees at a ratio of 1:1.
1. tree replacement to tree loss ratio
2. A 24-inch box replacement tree = two 15-gallon replacement trees

Source: City of San Jose Department of Planning, Building, and Code Enforcement.

- 47 trees onsite would be removed., two trees would be replaced at a 4:1 ratio, 18 trees would be replaced at a 2:1 ratio, and 27 trees would be replaced at a 1:1 ratio. There are zero native trees on-site. The total number and size of replacement trees required to be planted is 71. The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

- If there is insufficient area on the project site to accommodate the required replacement trees, one or more of the following measures shall be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage. Changes to an approved landscape plan requires the issuance of a Permit Adjustment or Permit Amendment:

    - The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees to be planted on the project site, at the development permit stage.

    - Pay Off-Site Tree Replacement Fee(s) to the City, prior to the issuance of building permit(s), in accordance with the City Council approved Fee Resolution in effect at the time of payment. The City would use the off-site tree replacement fee(s) to plant trees at alternative sites.

Mitigation Measures: No mitigation measures are required.

f. Conflict with provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

Less Than Significant Impact. According to the CDFW's *California Natural Community Conservation Plan Map,*[9] the project site lies within the Santa Clara Valley Habitat Plan (Habitat Plan). Specifically, the Habitat Plan requires projects and activities within covered species' habitats to incorporate habitat conservation plan (HCP) measures to avoid, minimize, or compensate for adverse effects on natural communities and endangered species. As stated under Response 4.4(a), the project site is heavily disturbed by existing development and is developed with mostly impervious surfaces and limited ornamental landscaping. According to Habitat Plan Figure 3-10, *Santa Clara Valley Habitat Plan Land Cover*, the project site is identified as Urban-Suburban and thus, does not have a natural communities land cover designation identified for the purposes of protection, enhancement, and restoration.[10] Additionally, the project would not be subject to a land cover fee given that it is mapped in an Urban Area on Habitat Plan Figure 9-1, *Land Cover Fee Zones*. Nevertheless, consistent with the Habitat Plan, the project would be subject to the Standard Conditions of Approval, including implementation of SCVHP conditions and fees prior to issuance of any grading permit.

As such, upon compliance with the Standard Condition of Approval, the project would not impact any of the Habitat Plan's covered species and would not conflict with provisions of the Habitat Plan. Impacts would be less than significant in this regard.

Standard Permit Conditions:

The project is subject to applicable SCVHP conditions and fees (including the nitrogen deposition fee) prior to issuance of any grading permit. The project Applicant shall be required to submit the Santa Clara Valley Habitat Plan Coverage Screening Form and payment of the nitrogen deposition fee to the Director of Planning, Building and Code Enforcement or the Director's designee for approval prior to the issuance of a grading permit The Habitat Plan and supporting materials can be viewed at www.scv-habitatplan.org.

Mitigation Measures: No mitigation measures are required.

[9] California Department of Fish and Wildlife, *California Regional Conservation Plans*, April 2019, https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68626&inline, accessed August 26, 2021.

[10] County of Santa Clara, et al., *Final Santa Clara Valley Habitat Plan*, August 2012.

4.5 CULTURAL RESOURCES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?				✓
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?			✓	
c. Disturb any human remains, including those interred outside of dedicated cemeteries?			✓	

The information presented in this analysis is based on the *Cultural Resources Technical Memo for the Chick-fil-A Silver Creek and Capitol Project, San José, Santa Clara County, California* (Cultural Memorandum) prepared by Michael Baker International (Michael Baker), dated October 7, 2021; refer to Appendix C, *Cultural Memo*. The project proposes the demolition of a commercial building located at 3095 Silver Creek Road which was constructed circa 1974, the reconfiguration of an existing surface parking lot and the construction of a one story, Chick-fil-A restaurant.

Field Survey and Record Search

The Cultural Memorandum methodology included a field survey and a records search. The field (pedestrian) survey was conducted on August 30, 2021, and included notes and photographs consisting of recorded observations for all four exposed building elevations, architectural design, materials, and alterations. The records search of the California Historical Resources Inventory System (CHRIS) was conducted at the Northwest Information Center (NWIC) to identify previous cultural resources studies and previously recorded cultural resources within a 0.25-mile radius of the project site. The CHRIS search results were provided on September 20, 2021, and included a review of the California Inventory of Historic Resources list, California Points of Historical Interest list, California Historical Landmarks list, and Archeological Determinations of Eligibility list. The records search also included a review of the available historic USGS 7.5-minute topographic quadrangle map. Additionally, the Preservation Action Council of San José and Santa Clara County Historical and Genealogical Society were notified via email on September 7, 2021 requesting information or concerns regarding historical resources within the project area. No responses were received from the Preservation Action Council of San José or the Santa Clara County Historical and Genealogical Society.

Environmental Setting

Historical Resources

The records search identified one potential historic resources that has been evaluated within a 0.25-mile radius of the project site. No resources were identified within or adjacent to the project area. The potential historic resource (P-09-000883 [prehistoric site]), consists of three burials, fire-crack rock, charcoal, fire-baked clay, and two Franciscan chert core artifacts. The boundaries for the site are unknown due to the developed nature of the area surrounding the excavated pit and the burials were noted in poor condition. The prehistoric site is situated approximately 0.25-

mile northeast of the project site and has not been evaluated for eligibility regarding the NRHP or CRHR.

The former O'Reilly Auto Parts retail store was evaluated for eligibility to the CRHR in accordance with Section 15064.5 of the CEQA Guidelines, using the criteria outlined in Section 5024.1 of the California Public Resources Code. The former O'Reilly Auto Parts, constructed in 1974, presents unremarkable characteristics and is in poor condition. The O'Reilly Auto Parts displays no direct identifiable association with important events in California history (does not meet CRHR Criterion 1). The original owner of the building and property was the Samuel Roland Estate. The original occupant of the building was Kragen Auto Supply, which was one of ten Kragen Auto Supply stores in San José and does not appear to be a significant site associated with the company or any of its owners. The building is not associated with the lives of persons who significantly contributed to the local, regional, State, or national history (does not meet CRHR Criterion 2). The stand-alone building is an example of the late twentieth century Commercial Modern style. Although the building displays some common elements of its style, these features alone do not confer significances to the property as the building is not a characteristic, important or unique example of its type, period, method of construction, nor does is the building associated with a known master architect/builder (does not meet CRHR Criterion 3). The building is not likely to yield valuable information nor possess significant data which would contribute to the understanding of human history (does not meet CRHR Criterion 4).

The former O'Reilly Auto Parts retail store was also evaluated for eligibility as a Candidate City Landmark (CCL) as outlined in Municipal Code Chapter 13.48, *Historic Preservation*. The building does not contain character, interest, or values as part of local, regional, State, or national history, heritage, or culture (does not meet CCL Criterion 1). Constructed in 1974 and first occupied in 1978 by Kragen Auto Supply, the building is not considered a site of a significant historic event (does not meet CCL Criterion 2). No person is identified who significantly contributed to local, regional, State or national culture and history is associated with the building (does not meet CCL Criterion 3). The building is not considered a significant example of cultural, economic, social, or historic heritage of the City (does not meet CCL Criterion 4). The building does not portray the environment of any know significant group of people in history characterized by a distinctive architectural style (does not meet CCL Criterion 5) nor does it embody distinguishing characteristics of its architectural type (does not meet CCL Criterion 6). Additionally, the building does not portray the work of a master architect or builder whose individual work has influenced the development of the City (does not meet CCL Criterion 7), nor does the building embody a significant architectural innovation in its architectural or engineering design, detail, materials, or craftsmanship (does not meet CCL Criterion 8).

Due to the lack of historical significance, the Cultural Memorandum recommended the former O'Reilly Auto Parts not eligible for listing in the CRHR nor as a CCL.

Archeological Resources

According to the Cultural Memorandum, no archaeological resources were identified during the background research or field survey. Due to the level of past disturbance on-site (construction of existing commercial building and paved parking lot), the potential for uncovering intact subsurface archaeological deposits during construction is considered low. Additionally, the project site is underlain by soils which have a stratified clay B horizon and possess very low potential for buried archaeological sites. While unlikely, there is a possibility that unknown resources could be uncovered during site disturbance activities.

Regulatory Setting

Federal

National Register of Historic Places

The National Register of Historic Places (NRHP) is the official list of the nation's historic places worthy of preservation. The NRHP is authorized by the National Historic Preservation Act of 1966 and is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect American historic and archaeological resources.[1]

State

California Register of Historical Resources

The California Register of Historical Resources (CRHR) is intended to encourage public recognition and protection of resources of architectural, historical, archeological and cultural significance, identifies historical resources for State and local planning purposes, determines eligibility for State historical preservation grant funding and afford certain protections under CEQA.[2] Criteria for designation under the CRHR includes the following:

- Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States (Criterion 1).
- Associated with the lives of person important to local, California, or national history (Criterion 2).
- Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values (Criterion 3).
- Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation (Criterion 4).

Local

Envision San José 2040 General Plan

The General Plan's Environmental Resources section discusses archaeological and paleontological related Community Design Goals, Policies, and Implementation Actions. Additionally, Chapter 6 include land use policies focused on historically significant buildings and areas within the City. Further, Chapter 7 provides policies and goals directly related to cultural resources. The following policies are specific to cultural and historical resources and apply to the proposed project:

[1] National Park Service, *National Register of Historic Places,* https://www.nps.gov/subjects/nationalregister/index.htm, accessed March 15, 2022.

[2] California State Parks, *California Register of Historical Resources*, https://ohp.parks.ca.gov/?page_id=21238, accessed March 15, 2022.

Policy CD-7.1: Support intensive development and uses within Urban Villages, while ensuring an appropriate interface with lower-intensity development in surrounding areas and the protection of appropriate historic resources.

Policy ER-10.1: For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the project and then require, if needed, that appropriate mitigation measures be incorporated into the project design.

Policy ER-10.2: Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable State laws shall be enforced.

Policy ER-10.3: Ensure that City, State, and Federal historic preservation laws, regulation, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and prehistoric resources.

Policy LU-13.9: Promote the preservation, conservation, rehabilitation, restoration, reuse, and/or reconstruction, as appropriate, of contextual elements (e.g., structures, landscapes, street lamps, street trees, sidewalk design, signs) related to candidate and/or landmark buildings, structures, districts, or areas.

Policy IP-12.3: Use the Environmental Clearance process to identify potential impacts and to develop and incorporate environmentally beneficial actions, particularly those dealing with the avoidance of natural and human-made hazards and the preservation of natural, historical, archaeological and cultural resources.

City of San José Municipal Code – Historic Preservation Ordinance

The City's Historic Preservation Ordinance provides designation for City Landmarks considered historic resources. Criteria for designation closely resembles listing criteria for historical resources under the CRHR.

a. Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5?

No Impact. As discussed in the Existing Setting, above, no historical resources are located on-site or in the vicinity of the project site. Thus, project implementation would not cause a substantial adverse change in the significance of a historical resource as defined in Section 15064.5 of the CEQA Guidelines. No impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

Less Than Significant Impact. As discussed in the Existing Setting, above, the potential for uncovering intact subsurface archaeological deposits during construction is considered low. Additionally, the geology of the project site possess very low potential for buried archaeological sites. While unlikely, there is a possibility that unknown resources could be uncovered during site disturbance activities. As such, in the event that previously unidentified cultural (archaeological) resources are encountered during grading activities, the project would be required to comply with Standard Permit Conditions. Should potential resources be encountered during excavation, work in the immediate area of the find must be halted until an archaeologist evaluates the find and determines appropriate subsequent procedures in accordance with Federal, State, and local guidelines, including those set forth in the California Public Resources Code Section 21083.2. With compliance with the Standard Permit Conditions, impacts in this regard would be reduced to less than significant levels.

Standard Permit Conditions:

Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative registered with the Native American Heritage Commission for the City of San José and that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

Mitigation Measures: No mitigation measures are required.

c. Disturb any human remains, including those interred outside of dedicated cemeteries?

Less Than Significant Impact. Due to the level of past disturbance on-site, it is not anticipated that human remains, including those interred outside of formal cemeteries, would be encountered during construction activities. If human remains are found, however, those remains would require proper treatment, in accordance with applicable laws. State of California Health and Safety Code Sections 7050.5 through 7055 describe the general provisions for human remains, pursuant to Standard Permit Conditions. Following compliance with the aforementioned regulations, impacts related to the disturbance of human remains are less than significant.

Standard Permit Conditions:

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

- The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.
- The MLD identified fails to make a recommendation; or
- The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

Mitigation Measures: No mitigation measures are required.

4.6 ENERGY

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?			✓	
b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?			✓	

Environmental Setting

The project site is currently developed with a former O'Reilly Auto Parts store. Since the existing facility is not operating, this analysis assumes that no energy is being used as part of the existing on-site operations.

Regulatory Setting

State

California Building Energy Efficiency Standards (Title 24)

The 2019 California Building Energy Efficiency Standards for Residential and Nonresidential Buildings (California Code of Regulations, Title 24, Part 6), commonly referred to as "Title 24," became effective on January 1, 2020. In general, Title 24 requires the design of building shells and building components to conserve energy. The standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Under 2019 Title 24 standards, nonresidential buildings would use about 30 percent less energy, mainly due to lighting upgrades, when compared to those constructed under 2016 Title 24 standards.[1] The 2019 Title 24 standards require installation of energy efficient windows, insulation, lighting, ventilation systems, and other features that reduce energy consumption in homes and businesses.

California Green Building Standards (CALGreen)

The CALGreen Code (California Code of Regulations, Title 24, Part 11), is a statewide mandatory construction code that was developed and adopted by the California Building Standards Commission and the California Department of Housing and Community Development. CALGreen standards require new residential and commercial buildings to comply with mandatory measures under five topical areas: planning and design; energy efficiency; water efficiency and conservation; material conservation and resource efficiency; and environmental quality. CALGreen also provides voluntary tiers and measures that local governments may adopt which encourage or require additional measures in the five green building topics. The most recent update to the CALGreen Code was adopted in 2019 and went into effect on January 1, 2020.

[1] California Energy Commission, *2019 Building Energy Efficiency Standards*, March 2018.

CALGreen requires new buildings to reduce water consumption by 20 percent, divert 50 percent of construction waste from landfills, and install low pollutant-emitting materials.

Senate Bill 100

Senate Bill (SB) 100 (Chapter 312, Statutes of 2018) requires that retail sellers and local publicly owned electric utilities procure a minimum quantity of electricity products from eligible renewable energy resources so that the total kilowatt-hours (kWh) of those products sold to their retail end-use customers achieve 44 percent of retail sales by December 31, 2024; 52 percent by December 31, 2027; 60 percent by December 31, 2030; and 100 percent by December 31, 2045. The bill requires the California Public Utilities Commission (CPUC), California Energy Commission (CEC), California Air Resources Board (CARB), and all other State agencies to incorporate the policy into all relevant planning. In addition, SB 100 requires the CPUC, CEC, and CARB to utilize programs authorized under existing statutes to achieve that policy and, as part of a public process, issue a joint report to the Legislature by January 1, 2021, and every four years thereafter, that includes specified information relating to the implementation of SB 100.

California's Renewables Portfolio Standard (RPS) program was established in 2002 by SB 1078 with the initial requirement that 20 percent of electricity retail sales must be served by renewable resources by 2017. The program was accelerated in 2015 with SB 350, which mandated a 50 percent RPS by 2030. SB 350 includes interim annual RPS targets with three-year compliance periods and requires 65 percent of RPS procurement to be derived from long-term contracts of 10 or more years. In 2018, SB 100 was signed into law, which again increases the RPS to 60 percent by 2030 and requires all the state's electricity to come from carbon-free resources by 2045. The CPUC implements and administers RPS compliance rules for California's retail sellers of electricity, which include large and small investor-owned utilities (IOUs), electric service providers (ESPs) and community choice aggregators (CCAs). The CEC is responsible for the certification of electrical generation facilities as eligible renewable energy resources and adopting regulations for the enforcement of RPS procurement requirements of public owned utilities (POUs).

California Public Utilities Commission Energy Efficiency Strategic Plan

The CPUC prepared the *Long-Term Energy Efficiency Strategic Plan* (Strategic Plan) in September 2008 with the goal of promoting energy efficiency and a reduction in greenhouse gases. In January 2011, a lighting chapter was adopted and added to the Strategic Plan. The Strategic Plan is California's single roadmap to achieving maximum energy savings in the State between 2009 and 2020, and beyond 2020. The Strategic Plan contains the practical strategies and actions to attain significant statewide energy savings, as a result of a year-long collaboration by energy experts, utilities, businesses, consumer groups, and governmental organizations in California, throughout the West, nationally, and internationally. The plan includes the four big bold strategies:

1. All new residential construction in California will be zero net energy by 2020.

2. All new commercial construction in California will be zero net energy by 2030.

3. Heating, ventilation, and air condition (HVAC) will be transformed to ensure that its energy performance is optimal for California's climate.

4. All eligible low-income customers will be given the opportunity to participate in the low-income energy efficiency program by 2020.

California Energy Commission Integrated Energy Policy Report

In 2002, the California State legislature adopted SB 1389, which requires the CEC to develop an Integrated Energy Policy Report (IEPR) every two years. SB 1389 requires the CEC to conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices, and use these assessments and forecasts to develop energy policies that conserve resources, protect the environment, ensure energy reliability, enhance the State's economy, and protect public health and safety.

The CEC adopted the *2020 Integrated Energy Policy Report Update* (2020 IEPR Update) Volume I and Volume III on March 23, 2021, and Volume II on April 15, 2021.[2] The 2020 IEPR Update provides the results of the CEC's assessments of a variety of energy issues facing California, many of which will require action if the State is to meet its climate, energy, air quality, and other environmental goals while maintaining reliability and controlling costs.[3] The year of 2020 was unprecedented as the State continues to face the impacts and repercussions of several events including the COVID-19 pandemic, electricity outages, and Statewide wildfires. In response to these challenging events, the 2020 IEPR Update covers a broad range of topics, including transportation, microgrids, and the California Energy Demand Forecast. Volume I of the 2020 IEPR Update focuses on California's transportation future and the transition to zero-emission vehicles; Volume II examines microgrids, lessons learned from a decade of State-supported research, and stakeholder feedback on the potential of microgrids to contribute to a clean and resilient energy system; and Volume III reports on California's energy demand outlook, updated to reflect the global pandemic and help plan for a growth in zero-emission plug in electric vehicles.[4] Overall, the 2020 IEPR Update identifies actions the State and others can take that would strengthen energy resiliency, reduce GHG emissions that cause climate change, improve air quality, and contribute to a more equitable future.

Local

City of San José 2030 Greenhouse Gas Reduction Strategy

The City's 2030 Greenhouse Gas Reduction Strategy (2030 GHGRS) is a comprehensive update to the City's original GHGRS and reflects the plans, policies, and codes as approved by the City Council. The strategy builds on the City's Envision San José 2040 General Plan (General Plan) and Climate Smart San José. These plans expanded the City's Green Vision to improve energy efficiency. Leveraging these existing plans and supporting policy and program frameworks, the 2030 GHGRS provides a set of strategies and additional actions for achieving the 2030 target. The 2030 GHGRS integrates plans, policies, and ordinances adopted by the City Council.

[2] California Energy Commission, *2020 Integrated Energy Policy Report Update, https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2020-integrated-energy-policy-report-update*, accessed on November 19, 2021.

[3] CEC, *2020 Integrated Energy Policy Report Update, https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2020-integrated-energy-policy-report-update*, accessed on November 19, 2021.

[4] CEC, *Final 2020 Integrated Energy Policy Report Update – Volume I: Blue Skies, Clean Transportation*, March 23, 2021; CEC, *Final 2020 Integrated Energy Policy Report Update – Volume III: California Energy Demand Forecast Update*, March 23, 2021; CEC, *Final 2020 Integrated Energy Policy Report Update – Volume II: The Role of Microgrids in California's Clean and Resilient Energy Future, Lessons Learned from the California Energy Commissions Research*, April 15, 2021.

Therefore, as long as a project is consistent with the applicable plans and policies, that project would be consistent with the 2030 GHGRS.

City of San José Envision San José 2040 General Plan

The General Plan was adopted by the City Council in November 2011. The General Plan centers on twelve Major Strategies that reflect the community's desire to see San José grow into a more prominent great City, taking on a growing environmental and economic leadership role in the region, nation, and world. The following goals and policies are applicable to the project.

Goal MS-1 Green Building Policy Leadership: Demonstrate San José commitment to local and global Environmental Leadership through progressive use of green building policies practices and technologies to achieve 100 million square feet of new or retrofitted green buildings by 2040.

Policy MS-1.1 Recognize the interconnected nature of green building systems, and, in the implementation of Green Building Policies, five priority to green building options that provide environmental benefit by reducing water and/ or energy use and solid waste.

Goal MS-2 Energy Conservation and Renewable Energy Use

Policy MS-2.3 Utilize solar orientation (i.e. building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.

Policy MS-2.4 Promote energy efficient construction industry practices.

Policy MS-2.11 Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g. design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g. orienting buildings on sites to maximize the effectiveness of passive solar design).

Policy MS-2.12 Update the Green Building Ordinance to require use of energy efficient plumbing fixtures and appliances that are WaterSense certified, Energy Star rated, or equivalent, in new construction and renovation projects.

Goal MS-14 Reduce Consumption and increase efficiency

Policy MS-14.3 Consistent with the California Public Utilities Commission's California Long Term Energy Efficiency Strategic Plan, as revised, and when technological advances make it feasible, require all new residential and commercial construction to be designed for zero net energy use.

San José Municipal Code

Chapter 17.84. *Green Building Regulations for Private Development*

This chapter fosters practices in the design, construction, and maintenance of buildings that will minimize that use and waste of energy, water, and other resources in the City of San José.

Chapter 17.85. *City of San José Energy and Water Building Performance Ordinance* (Ordinance 30197, also referred to as the Green Building Ordinance)

This chapter requires commercial and multifamily buildings 20,000 square feet and over to track the yearly complete building energy and water usage data with the EPA platform ENERGY STAR Portfolio Manager® and share this data with the City. Adopted in December 2018, the City will regularly publish a subset of summary data to support market transparency and recognize high-performing buildings across San José.

Methodology

The impact analysis focuses on the three sources of energy that are relevant to the proposed project: electricity, natural gas, and transportation fuel for vehicle trips associated with project operations as well as the fuel necessary for project construction. The analysis of electricity/natural gas usage is based on the California Emissions Estimator Model (CalEEMod) version 2020.4.0 modeling, which quantifies energy use for occupancy. The project's estimated electricity and natural gas consumption is based primarily on CalEEMod's default settings for Santa Clara County, and consumption factors provided by San José Clean Energy (SJCE) and Pacific Gas and Electric Company (PG&E), the electricity and natural gas provider for the project site, respectively. The results of the CalEEMod modeling are included in Appendix A, *Air Quality/Greenhouse Gas/Energy Data*. The amount of operational fuel use was estimated using the California Air Resources Board (CARB) Emissions Factor 2017 (EMFAC2017) computer program, which provides projections for typical daily fuel (i.e., diesel and gasoline) usage in the County, and the project's trip generation from the *Chick-Fil-A Silver Creek Road & Capitol Expressway Development Draft Local Transportation Analysis* (LTA) prepared by Hexagon on January 6, 2022 (included as Appendix H, *Local Transportation Analysis*). The estimated construction fuel consumption was based on the project's construction equipment list timing/phasing, and hours of duration for construction equipment, as well as vendor, hauling, and construction worker trips. The results of EMFAC2017 modeling and construction fuel estimates are included in Appendix A.

CEQA Guidelines Appendix G is an advisory document that assists in determining whether a project will result in the inefficient, wasteful, and unnecessary consumption of energy. The analysis provided in Response 4.6(a) relies upon Appendix G of the CEQA Guidelines, which includes the following criteria to determine whether this threshold of significance is met:

- Criterion 1: The project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials maybe discussed.

- Criterion 2: The effects of the project on local and regional energy supplies and on requirements for additional capacity.

- Criterion 3: The effects of the project on peak and base period demands for electricity and other forms of energy.

- Criterion 4: The degree to which the project complies with existing energy standards.

- Criterion 5: The effects of the project on energy resources.

- Criterion 6: The project's projected transportation energy use requirements and its overall use of efficient transportation alternatives.

Quantification of the project's energy usage is presented and addresses Criterion 1. The discussion on construction-related energy use focuses on Criteria 2, 4, and 5. The discussion on operational energy use is divided into transportation energy demand and building energy demand. The transportation energy demand analysis discusses Criteria 2, 4, and 6, and the building energy demand analysis discusses Criteria 2, 3, 4, and 5.

a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?

Less Than Significant Impact.

Project-Related Sources of Energy Consumption

The project's estimated energy consumption is summarized in Table 4.6-1, *Project and Countywide Energy Consumption*. As shown in Table 4.6-1, the project's electricity usage would constitute an approximate 0.0012 percent increase over the County's typical annual electricity consumption and an approximate 0.0018 percent increase over the County's typical annual natural gas consumption. Additionally, the project's construction and operational fuel consumption would increase the County's consumption by 0.0552 percent and 0.0455 percent, respectively (Criterion 1).

Table 4.6-1
Project and Countywide Energy Consumption

Energy Type	Project Annual Energy Consumption[1]	Santa Clara County Annual Energy Consumption[2]	Percentage Increase Countywide[2]
Electricity Consumption	200 MWh	16,435,722 MWh	0.0012 %
Natural Gas Consumption	7389 therms	418,684,416 therms	0.0018 %
Fuel Consumption			
▪ Construction Fuel Consumption[3]	30,793 gallons	55,757,975 gallons	0.0552 %
▪ Operational Automotive Fuel Consumption[3]	276,152 gallons	607,290,917 gallons	0.0455 %

Notes: N/A=Not Applicable
1. As modeled in CalEEMod version 2020.4.0 and the California Air Resources Board EMission FACtor model 2017 (EMFAC2017).
2. The project's increases in electricity and natural gas consumption are compared to the total consumption in Santa Clara County in 2020. The project's increase in automotive fuel consumption are compared with the projected Countywide fuel consumption in 2023.
   Santa Clara County electricity consumption data source: California Energy Commission, *Electricity Consumption by County*, http://www.ecdms. energy.ca.gov/elecbycounty.aspx, accessed November 18, 2021.
   Santa Clara County natural gas consumption data source: California Energy Commission, *Gas Consumption by County*, http://www.ecdms.energy. ca.gov/gasbycounty.aspx, accessed November 18, 2021.
3. Project fuel consumption calculated based on CalEEMod results. Countywide fuel consumption is from the California Air Resources Board's EMFAC2017 model. The project fuel consumption is compared with the projected Countywide fuel consumption in 2023.

Refer to Appendix A for assumptions used in this analysis.

Construction-Related Energy Consumption

During construction, the project would consume energy in two general forms: (1) the fuel energy consumed by construction vehicles and equipment; and (2) bound energy in construction materials, such as asphalt, steel, concrete, pipes, and manufactured or processed materials such as lumber and glass.

Fossil fuels for construction vehicles and other energy-consuming equipment would be used during demolition, grading, building construction, paving, and architectural coating. As indicated in Table 4.6-1, the overall fuel consumption during project construction would be 30,793 gallons, which would result in a small increase (0.0552 percent) in fuel use in the County. As such, project construction would have a minimal effect on the local and regional energy supplies and would not require additional capacity (Criterion 2).

Some incidental energy conservation would occur during construction through compliance with State requirements that equipment not in use for more than five minutes be turned off (i.e., Title 13, California Code of Regulations Section 2485). Project construction equipment would also be required to comply with the latest U.S. Environmental Protection Agency (EPA) and CARB engine emissions standards. These emissions standards require highly efficient combustion systems that maximize fuel efficiency and reduce unnecessary fuel consumption. In addition, since the cost of fuel and transportation is a significant aspect of construction budgets, contractors and owners have a strong financial incentive to avoid wasteful, inefficient, and unnecessary consumption of energy during construction (Criterion 4).

Substantial reductions in energy inputs for construction materials can be achieved by selecting building materials composed of recycled materials that require substantially less energy to produce than nonrecycled materials. It is reasonable to assume that production of building materials such as concrete, steel, etc., would employ all reasonable energy conservation practices in the interest of minimizing the cost of doing business. It is noted that construction fuel use is temporary and would cease upon completion of construction activities. There are no unusual project characteristics that would necessitate the use of construction equipment, building materials, or methods that would be less energy efficient than at comparable construction sites in the region or State. Therefore, fuel energy and construction materials consumed during construction would not represent a significant demand on energy resources (Criterion 5) and a less than significant impact would occur in this regard.

Operational Energy Consumption

Transportation Energy Demand

Pursuant to the Federal Energy Policy and Conservation Act of 1975, the National Highway Traffic and Safety Administration is responsible for establishing additional vehicle standards and for revising existing standards. Compliance with Federal fuel economy standards is not determined for each individual vehicle model. Rather, compliance is determined based on each manufacturer's average fuel economy for the portion of their vehicles produced for sale in the United States. Based on the LTA, the project would generate 1,102 trips per day, including 34 trips during the a.m. peak hour and 136 trips during the p.m. peak hour. As indicated in Table 4.6-1, project operations are estimated to consume approximately 276,152 gallons of fuel consumption per year, which would increase Countywide automotive fuel

consumption by 0.0455 percent. The project does not propose any unusual features that would result in excessive long-term operational fuel consumption (Criterion 2).

The key drivers of transportation-related fuel consumption for the proposed project are visitors and employees traveling to and from the project site. However, employee commuting and visitor traveling factors are outside of the scope of the design of the proposed restaurant. The restaurant operator has no control over the visitors entering and exiting their restaurant. Notwithstanding, the project would include electric vehicle/clean air/vanpool spaces for passenger vehicles and bicycle parking spaces, in compliance with the CALGreen Code. This requirement would encourage and support alternative modes of travel and, thus, reduce the petroleum fuel consumption (Criterion 4 and Criterion 6).

Therefore, fuel consumption associated with vehicle trips generated by the project would not be considered inefficient, wasteful, or unnecessary in comparison to other similar developments in the region. A less than significant impact would occur in this regard.

Building Energy Demand

The CEC developed 2020 to 2030 forecasts for energy consumption and peak demand in support of the 2019 IEPR for each of the major electricity and natural gas planning areas and the State based on the economic and demographic growth projections.[5] CEC forecasts that the Statewide annual average growth rates of energy demand between 2019 and 2030 would be up to 1.10 percent for electricity and 0.16 percent for natural gas.[6] As shown in Table 4.6-1, operational energy consumption of the project would represent approximately 0.0012 percent increase in electricity consumption and less than 0.0018 percent increase in natural gas consumption over the current Countywide usage, which would be significantly below CEC's forecasts and the current Countywide usage. Therefore, the project would be consistent with the CEC's energy consumption forecasts and would not require additional energy capacity or supplies (Criterion 2). Additionally, the project would consume energy during the same time periods as other commercial developments and would consume energy during the restaurant's operation hours. As a result, the project would not result in unique or more intensive peak or base period electricity demand (Criterion 3).

The proposed project would be required to comply with 2019 Title 24, which provide minimum efficiency standards related to various building features, including appliances, water and space heating and cooling equipment, building insulation and roofing, and lighting. Implementation of the 2019 Title 24 standards significantly reduces energy usage (30 percent for nonresidential uses compared to the 2016 standards). The Title 24 Building Energy Efficiency Standards are updated every three years and become more stringent at each update, as such complying with the latest 2019 Title 24 standards would make the proposed project more energy efficient than existing buildings built under the earlier versions of the Title 24 standards (Criterion 4).

The electricity provider, SJCE, is subject to California's RPS reflected in SB 100. The RPS requires investor-owned utilities, electric service providers, and community choice aggregators to increase procurement from eligible renewable energy resources to 33 percent of total procurement by the end of 2020, 44 percent by the end of 2024, 52 percent by the end

5 California Energy Commission, *California Energy Demand 2020-2030 Revised Forecast*, February 2020.
6 Ibid.

of 2027, 60 percent of total procurement by 2030, and 100 percent of total procurement by 2045. Renewable energy is generally defined as energy that comes from resources that are naturally replenished within a human timescale such as sunlight, wind, tides, waves, and geothermal heat. The increase in reliance of such energy resources further ensures that new development projects would not result in the waste of the finite energy resources (Criterion 5).

The project would not cause wasteful, inefficient, and unnecessary consumption of building energy during project operation, or preempt future energy development or future energy conservation. A less than significant impact would occur.

Mitigation Measures: No mitigation measures are required.

b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

Less Than Significant Impact. The City currently does not have a plan pertaining to renewable energy or energy efficiency. The project would be required to comply with the applicable goals and policies identified in the City's General Plan, as outlined in Table 4.6-2, *General Plan Project Consistency Analysis*.

The project would be required to comply with 2019 Title 24 and CALGreen standards pertaining to building energy efficiency. Compliance with 2019 Title 24 standards and 2019 CALGreen Code would ensure the project incorporates energy-efficient windows, insulation, lighting, and ventilation systems, as well as low flow fixtures, clean air/vanpool/electric vehicle spaces, and bicycle parking spaces, which are consistent with the City's 2030 GHGRS, the IEPR building energy efficiency recommendations, and General Plan, refer to Table 4.6-2. Additionally, the project would utilize electricity provided by SJCE. Per the RPS, SJCE is composed of 33 percent renewable energy as of 2020 and would achieve at least 60 percent renewable energy by 2030. Therefore, the project would not conflict with or obstruct a State or local plan for renewable energy or energy efficiency and impacts would be less than significant.

Table 4.6-2
General Plan Project Consistency Analysis

Goals/Policies	Project Consistency
Goal MS-1 Green Building Policy Leadership: Demonstrate San José commitment to local and global Environmental Leadership through progressive use of green building policies practices and technologies to achieve 100 million square feet of new or retrofitted green buildings by 2040.	
Policy MS-1.1 Recognize the interconnected nature of green building systems, and, in the implementation of Green Building Policies, five priority to green building options that provide environmental benefit by reducing water and/ or energy use and solid waste.	**Consistent.** The proposed project would be in compliance with CALGreen and 2019 Title 24 energy efficiency standards, which require the installation of energy efficient windows, insulation, lighting, ventilation systems, as well as low flow fixtures. As such, the project would be consistent with this policy.
Goal MS-2 Energy Conservation and Renewable Energy Use	
Policy MS-2.3 Utilize solar orientation (i.e. building placement), landscaping, design, and construction techniques for new construction to minimize energy consumption.	**Consistent.** As discussed above, the proposed project would be in compliance with Title 24 energy efficiency standards. Additionally, the proposed project would have total of 6,771 square feet of landscaping area on-site. As such, the project would be consistent with this policy.
Policy MS-2.4 Promote energy efficient construction industry practices.	**Consistent.** As discussed above, the proposed project would be compliance with Title 24 and CALGreen Code. As such, the project would be consistent with this policy.
Policy MS-2.11 Require new development to incorporate green building practices, including those required by the Green Building Ordinance. Specifically, target reduced energy use through construction techniques (e.g., design of building envelopes and systems to maximize energy performance), through architectural design (e.g., design to maximize cross ventilation and interior daylight) and through site design techniques (e.g., orienting buildings on sites to maximize the effectiveness of passive solar design).	**Consistent.** As discussed above, the project would be in compliance with CALGreen Code and Title 24. The green building ordinance requires commercial and multi-family buildings 20,000 square feet and over to track their yearly whole building energy and water usage data with the EPA platform ENERGYSTAR Portfolio Manager® and share this data with the City. The proposed project would be exempt from the ordinance, as the project proposes 3,565 square feet. As such, the project would be consistent with this policy.
Policy MS-2.12 Update the Green Building Ordinance to require use of energy efficient plumbing fixtures and appliances that are WaterSense certified, Energy Star rated, or equivalent, in new construction and renovation projects.	**Not Applicable.** As discussed above, the proposed project would be exempt from the ordinance, as the project only proposes 3,565 square feet, which is below than 20,000 square-foot threshold. As such, this policy is not applicable to the project.
Goal MS-14 Reduce Consumption and increase efficiency	
Policy MS-14.3 Consistent with the California Public Utilities Commission's California Long Term Energy Efficiency Strategic Plan, as revised, and when technological advances make it feasible, require all new residential and commercial construction to be designed for zero net energy use.	**Consistent.** As discussed above, the project would be in compliance with CALGreen Code and Title 24. As such, the project would be consistent with this policy.
Source: City of San José, *Envision San José 2040 General Plan*, November 2011.	

Mitigation Measures: No mitigation measures are required.

4.7 GEOLOGY AND SOILS

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.				✓
ii. Strong seismic ground shaking?			✓	
iii. Seismic-related ground failure, including liquefaction?			✓	
iv. Landslides?				✓
b. Result in substantial soil erosion or the loss of topsoil?			✓	
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			✓	
d. Be located on expansive soils, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?			✓	
e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal system where sewers are not available for the disposal of wastewater?				✓
f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?			✓	

The information presented in this analysis is supplemented with the following technical studies:

Geotechnical Engineering Exploration and Analysis Draft for the Proposed Chick-fil-A Restaurant #4434, Silver Creek & Capital FSU, 3095 Silver Creek Road, San Jose, California (Geotechnical Report) prepared by Giles Engineering Associates, Inc., dated December 21, 2021; refer to Appendix D, *Geotech Report*; and

Paleontological Resources Identification Memo for the Chick-fil-A Silver Creek and Capitol Project (Paleo Memorandum) prepared by Michael Baker International (Michael Baker), dated December 23, 2021; refer to Appendix E, *Paleo Memo*.

Environmental Setting

The San Francisco Bay Area, including the project area, is subject to the effects of seismic activity due to active faults that traverse the area.[1] Active faults are defined as those that have

[1] California Department of Conservation, *EQ Zapp: California Earthquake Hazards Zone Application*, https://maps.conservation.ca.gov/cgs/EQZApp/app/, accessed December 27, 2021.

experienced surface displacement within Holocene time (approximately the last 11,000 years) and/or are in a State-designated Alquist-Priolo Earthquake Fault Zone.[2]

According to the County of Santa Clara's *Alquist-Priolo Earthquake Fault Zones*,[3] the project site is not located within an Alquist-Priolo Earthquake Fault Zone. The possibility of damage due to ground rupture is considered low since no active faults are known to cross the site, or be present in the vicinity (the closest fault is located approximately 2.3 miles away)).

Notwithstanding, the San Francisco Bay Area includes numerous active seismic faults in the general area, subjecting residents to potential earthquake and seismic-related hazards. Seismic activity poses two types of potential hazards for residents and structures, categorized either as primary or secondary hazards.[4] Primary hazards include ground rupture, ground shaking, ground displacement, subsidence, and uplift from earth movement. Primary hazards can also induce secondary hazards such as ground failure (lurch cracking, lateral spreading, and slope failure), liquefaction, water waves (seiches), movement on nearby faults (sympathetic fault movement), dam failure, and fires.[5,6]

According to the California Department of Conservation's *California Earthquake Hazards Zone Application*,[7] the Evergreen and Hayward faults are the closest known active faults and are located approximately 2.3 and 3.2 miles from the site, respectively. These faults would likely generate the most severe seismic ground shaking at the site with an anticipated maximum moment magnitude (Mw) of 7.3. It is acknowledged that, based on the General Plan PEIR, the Hayward fault merges with another fault (Calaveras fault) to form a structurally complex area between Mission Peak and Mount Hamilton, east of the City. The project site, therefore, may be subject to strong ground shaking during seismic activity.

Based on the General Plan PEIR, primary seismic shaking can induce ground failure (lurch cracking, lateral spreading, and slope failure), liquefaction, seismically induced water waves (tsunamis and seiches), movement on nearby independent faults (sympathetic fault movement), and dam failure. Liquefaction is a seismic phenomenon in which loose, saturated, granular soils behave similarly to a fluid when subject to high-intensity ground shaking. Liquefaction occurs when three general conditions coexist: 1) shallow groundwater; 2) low density non-cohesive (granular) soils; and 3) high-intensity ground motion. Saturated, loose to medium dense, near surface cohesionless soils exhibit the highest liquefaction potential, while dry, dense, cohesionless soils and cohesive soils exhibit low to negligible liquefaction potential. In general,

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[2] California Department of Conservation, *Alquist-Priolo Earthquake Fault Zones*, https://www.conservation.ca.gov/cgs/alquist-priolo, accessed December 27, 2021.

[3] County of Santa Clara, *Alquist-Priolo Earthquake Fault Zones*, https://data.sccgov.org/Environment/AlquistPrioloEarthquakeFaultZone/jg2y-nftn, accessed December 6, 2021.

[4] Ibid.

[5] California Department of Conservation, *DOC Maps: Geologic Hazards*, https://maps.conservation.ca.gov/geologichazards/#:~:text=The%20California%20Geological%20Survey%2C%20a%20division%20within%20the,mineral%20hazards%20such%20as%20radon%2C%20mercury%2C%20and%20asbestos., accessed December 27, 2021.

[6] U.S. Geological Survey, *Increasing the Resilience to Natural Hazards in Southern California*, https://pubs.usgs.gov/fs/2007/3037/, accessed December 27, 2021.

[7] California Department of Conservation, *California Earthquake Hazards Zone Application*, https://www.conservation.ca.gov/cgs/geohazards/eq-zapp, accessed December 3, 2021.

cohesive soils are not considered susceptible to liquefaction. Effects of liquefaction on level ground include settlement, sand boils, and bearing capacity failures below structures. Dynamic settlement of dry loose sands can occur as the sand particles tend to settle and densify as a result of a seismic event.

According to the California Department of Conservation's *California Earthquake Hazards Zone Application* and the General Plan PEIR, the project site lies within the San José East quadrangle, a designated State Seismic Hazard Zone for Liquefaction.

According to the California Department of Conservation's *California Earthquake Hazards Zone Application* and the General Plan PEIR, the project site does not lie within a designated State Seismic Hazard Zone for Landslides. The nearest State Seismic Hazard Zone for Landslides is located approximately 0.8 miles from the project site.

Regulatory Setting

State

Alquist-Priolo Act

The Alquist-Priolo Act was enacted in 1972 and is intended to reduce losses from surface fault rupture following the destructive 1971 San Fernando earthquake. Earthquake fault zones were conceived in the Alquist-Priolo Act as fault zones, specifically extensive surface fault ruptures, were responsible for numerous damaged structures during the San Fernando earthquake. The Alquist-Priolo Act considers faults to be "active" if the fault has ruptured in the last 11,000 years.[8]

Seismic Hazards Mapping Act

The Seismic Hazards Mapping Act (SHMA) of 1990 identifies and maps areas prone to earthquake hazards of liquefaction, earthquake-induced landslides and amplified ground shaking. The SHMA is intended to reduce the threat to public safety and to minimize the loss of life and property by identifying and mitigating these seismic hazards. The SHMA was passed in 1989 following the Loma Prieta earthquake.

The SHMA requires the State Geologist to establish regulatory zones and to issue appropriate Seismic Hazard Zone maps. The Seismic Hazard Zone maps are distributed to cities, counties, and State agencies for their use in planning and controlling construction and development.[9]

[8] California Department of Conservation, *Alquist-Priolo Earthquake Fault Zones*, https://www.conservation.ca.gov/cgs/alquist-priolo#:~:text=The%20Alquist%2DPriolo%20Act%20requires,and%20to%20issue%20appropriate%20maps.&text=It's%20an%20interactive%20map%20that,to%20any%20parcel%20in%20California., accessed March 15, 2022.

[9] California Department of Conservation, *Seismic Hazards Mapping Act*, https://www.conservation.ca.gov/cgs/shma, accessed March 15, 2022.

California Building Code

The California Building Code (CBC) is a compilation of three types of building standards from three different origins:

- Building standards that have been adopted by State agencies without change from building standards contained in national model codes;
- Building standards that have been adopted and adapted from national model codes to address California's ever-changing conditions; and
- Building standards, authorized by the California legislature, that constitute amendments not covered by national model codes, that have been created and adopted to address particular California concerns.

The 2019 CBC was published on July 1, 2019, with an effective date of January 1, 2020, and is updated every three years.[10]

Local

Envision San José 2040 General Plan

The following policies are specific to geological/soil resources and apply to the proposed project:

> **Policy EC-3.1:** All new or remodeled habitable structures shall be designed in accordance with the most recent California Building Code and California Fire Code as amended locally and adopted by the City of San José, including provisions regarding lateral forces.
>
> **Policy EC-4.1:** All new or remodeled habitable structures shall be designed and built in accordance with he most recent California Building Code and municipal code requirements as amended and adopted by the City of San José, including provisions for expansive soil, and grading and storm water controls.
>
> **Policy EC-4.2:** Development in areas subject to soils and geologic hazards, including un-engineered fill and weak soils and landslide-prone areas, only when the severity of hazards have been evaluated and if shown to be required, appropriate mitigation measures are provided. New development proposed within areas of geologic hazards shall not be endangered by, nor contribute to, the hazardous conditions on the site or on adjoining properties. The City of San José Geologist will review and approve geotechnical and geological investigation reports for projects within these areas as part of the project approval process.

[10] California Department of General Services, *Overview Title 24 Building Standards Code as Adopted by the Division of the State Architect*, https://www.dgs.ca.gov/DSA/Resources/Page-Content/Resources-List-Folder/Overview-Title-24-Building-Standards-Code#:~:text=Learn%20about%20Title%2024%20of,essential%20services%20buildings%3B%20sustainability%20for, accessed March 15, 2022.

Policy EC-4.4: All new development shall conform to the City of San José's Geologic Hazard Ordinance.

Policy EC-4.5: Ensure that any development activity that requires grading does not impact adjacent properties, local creeks and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have a soil disturbance of one acre or more, are adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 15 and April 15.

Action EC-4.11: Require the preparation of geotechnical and geological investigation reports for projects within areas subject to soils and geologic hazards, and require review and implementation of mitigation measures as part of the project approval process.

Action EC-4.12: Require review and approval of grading plans and erosion control plans (if applicable) prior to issuance of grading permits by the Director of Public Works

Action ES-4.9: Permit development only in those areas where potential danger to the health, safety, and welfare of persons in that area can be mitigated to an acceptable level.

Action ER-10.3: Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and prehistoric resources.

City of San José Municipal Code – Title 24 (Technical Codes)

Title 24, *Technical Codes*, of the City's Municipal Code includes the current California Building, Plumbing, Mechanical, Electrical, Existing Building, and Historical Building Codes. Chapter 17.40, *Dangerous Buildings*, and Chapter 17.10, *Geologic Hazards Regulations*, of the City's Municipal Code address requirements for building safety and earthquake hazards reduction. According to Title 24, a Certificate of Geologic Hazard Clearance from the Director of Public Works is required prior to the issuance of a grading or building permit within the defined geologic hazard zones, including State Seismic Hazard Zones for Liquefaction.

a. Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:

i. Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

No Impact. As discussed in the Geotechnical Report, the project site is not located within an Alquist-Priolo Earthquake Fault Zone. The possibility of damage due to ground rupture is considered low since no active faults are known to cross the site, or be present in the vicinity (the closest fault is located approximately 2.3 miles away)). As such, the project is not anticipated to result in the rupture of a known earthquake fault. No impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

ii. Strong seismic ground shaking?

Less Than Significant Impact. According to the Geotechnical Report, the project site is located in a seismically active region and may be subject to strong ground shaking during seismic activity. The project would be required to demonstrate compliance with applicable seismic-related design requirements, including the General Plan, CBC, *Minimum Design Loads and Associated Criteria for Buildings and Other Structures* Standard American Society of Civil Engineers (ASCE) 7-22, and other applicable local codes (including the Municipal Code Chapter 17.40.330, *Materials of Construction* and Chapter 17.40.340, *Information Required on Plans*). Chapter 17.40.330 would require materials to meet the 1985 Uniform Building Code requirements for allowable stresses. Furthermore, Chapter 17.40.340 would require a seismic analysis of the proposed building and would provide requirements for construction details regarding the approved plan.

With implementation of the City's Standard Permit Conditions, the project would be required to conform to the recommendations of an approved geotechnical investigation. The project would also be required to be designed to withstand soil hazards identified on the site and to reduce the risk to life or property on- and off-site to the extent feasible and in compliance with the Building Code.

Adherence to these building requirements and the Standard Permit Condition would minimize risks related to seismic ground shaking. The project, therefore, would not expose people or structures to potential adverse effects of strong seismic ground shaking. Less than significant impacts would occur in this regard.

***Standard Permit Conditions*:**

To avoid or minimize potential damage from seismic shaking, the project shall be constructed using standard engineering and seismic safety design techniques. Building design and construction at the site shall be completed in conformance with the recommendations of an approved geotechnical investigation. The report shall be reviewed and approved by the City of San José Department of Public Works as part of the building permit review and issuance process. The buildings shall meet the requirements of applicable Building and Fire Codes as adopted or updated by the City. The project shall be designed to withstand soil hazards identified on the site and the project shall be designed to reduce the risk to life or property on site and off site to the extent feasible and in compliance with the Building Code.

Mitigation Measures: No mitigation measures are required.

iii. Seismic-related ground failure, including liquefaction?

Less Than Significant Impact. As discussed above, the project may be susceptible to liquefaction. As such, the project would be required to comply with the General Plan, CBC, and Municipal Code requirements. Required design measures are intended to maximize structural stability in the event of liquefaction hazards. As previously mentioned, Municipal Code Chapter 17.40.330 would require materials to meet the 1985 Uniform Building Code

requirements for allowable stresses. Further, Municipal Code Chapter 17.40.340 would require a seismic analysis of the proposed building and would provide requirements for construction details regarding the approved plan. Adherence to these building requirements would minimize risks related to seismic ground shaking; therefore, decreasing the risk of liquefaction.

According to the Geotechnical Report, the project site is located within a zone which requires investigation due to the potential of earthquake induced liquefaction. A liquefaction analysis was performed based on the 2019 CBC requirements to identify impacts regarding liquefaction. Based on the liquefaction analysis, no liquefaction mitigation measures are required as part of the proposed project. Thus, adherence to existing State and local buildings standards and Municipal Code requirements would minimize risk related to liquefaction to less than significant.

Mitigation Measures: No mitigation measures are required.

iv. Landslides?

No Impact. As discussed above, the project site does not lie within a designated State Seismic Hazard Zone for Landslides. The project site is relatively flat and would not create substantial slopes or features that increase the landslide potential beyond existing conditions. Further, the Geotechnical Report concluded that the grading and proposed structures would be safe against hazard from landslide. As such, it is concluded that the proposed construction and grading for the new building would not result in geotechnical hazards such as landslides, settlement, or slippage. As such, no impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

b. Result in substantial soil erosion or the loss of topsoil?

Less Than Significant Impact. The primary concern in regard to soil erosion or loss of topsoil would be from construction activities associated with the project (e.g., earthwork and grading). Construction activities associated with the project would expose on-site soils to short-term erosion by wind and water. Construction of the proposed project is anticipated to occur in two phases. Phase 1 would include demolition of the existing building, clearing, and paving/striping of an existing asphalt surface parking lot. Phase 2 would include clearing/site grading at the eastern portion of the project site and construction of the new Chick-fil-A building and associated surface parking. Each individual phase would disturb less than one acre of soil. As such, the project is not anticipated to result in a substantial amount of soil erosion of loss of topsoil during construction; refer to Section 4.10, *Hydrology and Water Quality*. During project operation, the project would be mostly paved with any unpaved areas improved with approximately 6,771 square feet of ornamental landscaping. Additionally, grading activities would comply with Municipal Code Chapter 15.11.1020, *Grading Design Plan*, which would ensure grading of the proposed project's landscaping would be designed to minimize soil erosion, runoff, and wastewater while efficiently using water. Thus, soil erosion or loss of topsoil are unlikely to occur during project operation.

Nonetheless, the project would be required to comply with the City's Standard Permit Conditions. All excavation and grading work must be scheduled in dry weather months or construction sites be weatherized. Stockpiles and excavated soils are required to be covered with secured tarps or plastic sheeting. Ditches, if necessary, are required to be installed to divert runoff around excavations and graded areas.

Following compliance with the applicable regulations, including implementation of Municipal Code requirements and Standard Permit Conditions, the project would result in less than significant impacts involving soil erosion and loss of topsoil.

***Standard Permit Conditions*:**

- All excavation and grading work shall be scheduled in dry weather months or construction sites shall be weatherized.
- Stockpiles and excavated soils shall be covered with secured tarps or plastic sheeting.
- Ditches shall be installed to divert runoff around excavations and graded areas if necessary.

Mitigation Measures: No mitigation measures are required.

c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

Less Than Significant Impact. Refer to Responses 4.7(a)(*iii*), 4.7(a)(*iv*), and 4.7(d) for a discussion concerning liquefaction, landslides, and expansive soils, respectively.

Lateral Spreading

Lateral spreading is a phenomenon in which large blocks of intact, non-liquefied soil move down slope on a liquefied soil layer. Lateral spreading is often a regional event. For lateral spreading to occur, the liquefiable soil zone must be laterally continuous, unconstrained laterally, and free to move along sloping ground. The project site has the potential for lateral spreading based on its liquefaction potential; refer to Response 4.7(a)(*iii*). However, the project would be required to comply with the General Plan, CBC, and Municipal Code requirements pertaining to construction materials for allowable stresses and a seismic analysis regarding construction details. Thus, adherence to existing State and local buildings standards would minimize risk related to lateral spreading to less than significant. Less than significant impacts would occur in this regard.

Soil Shrinkage and Subsidence

According to the General Plan PEIR, general types of ground failures that might occur as a consequence of severe ground shaking typically include landsliding, ground subsidence, ground lurching, and shallow ground rupture, all of which are considered unlikely at the project site. Nonetheless, the project would be required to demonstrate compliance with the General Plan, applicable CBC, and Municipal Code requirements to reduce impacts related to unstable

soil conditions. Compliance with applicable State and local requirements would reduce impacts. Less than significant impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

d. Be located on expansive soils, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?

Less Than Significant Impact. Expansive soils are those that undergo volume changes as moisture content fluctuates, swelling substantially when wet or shrinking when dry. Soil expansion can damage structures by cracking foundations, causing settlement, and distorting structural elements. According to the General Plan PEIR, much of the soil in the City is moderately to highly expansive, including the valley floor and in the hillside areas. According to the Geotechnical Investigation, the existing surficial soils on-site are not suitable for structure support and would require remedial grading. Specifically, the Geotechnical Investigation states that due to the difference in expansion characteristics of foundation materials beneath a structure, the construction areas should be cut to grade and observed for potential needs of removal of loose soils and replacement with compacted fill. As such, compliance with remedial grading and General Plan, applicable CBC, and Municipal Code requirements would reduce impacts related to unstable soil conditions. Compliance with applicable State and local requirements would reduce impacts. Less than significant impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal system where sewers are not available for the disposal of wastewater?

No Impact. The project would not involve the use of septic tanks or alternative wastewater disposal systems. Therefore, no impacts would result in this regard.

Mitigation Measures: No mitigation measures are required.

f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

Less Than Significant Impact. According to the Geotechnical Report, the project area is underlain by alluvial soils to the maximum explored depth of 34 feet. Additionally, according to the Paleo Memorandum, no paleontological resources were identified within the project site. The project site was previously disturbed and graded during development of the existing commercial building and associated surface parking lot. As a result, paleontological resources are not anticipated to be encountered during project grading activities. It is acknowledged that clay deposits within proximity to the project site are known to be highly sensitive for paleontological resources and have contained fossil localities. As such, in the event that paleontological resources are discovered during project earthwork or excavation, implementation of the City's Standard Permit Conditions would require all earth disturbing activities to cease until a qualified paleontologist can evaluate the find and determine an appropriate treatment in accordance with established paleontological guidelines. Thus,

following implementation of Standard Permit Conditions, less than significant impacts would occur in this regard.

***Standard Permit Conditions*:**

If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of PBCE or the Director's designee.

Mitigation Measures: No mitigation measures are required.

4.8 GREENHOUSE GAS EMISSIONS

Would the Project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?			✓	
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?			✓	

Environmental Setting

Global Climate Change

Global climate change refers to changes in average climatic conditions on Earth as a whole, including temperature, wind patterns, precipitation, and storms. Global temperatures are moderated by naturally occurring atmospheric gases, including water vapor, carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), ozone, and certain hydro-fluorocarbons. These gases, known as greenhouse gases (GHGs), allow solar radiation (sunlight) into the Earth's atmosphere, but prevent radiative heat from escaping, thus warming the Earth's atmosphere. GHGs are emitted by both natural processes and human activities. The accumulation of GHGs in the atmosphere regulates the Earth's temperature. Emissions of GHGs in excess of natural ambient concentrations are thought to be responsible for the enhancement of the greenhouse effect and contribute to what is termed "global warming," the trend of the warming of the Earth's climate from anthropogenic activities.

California is a substantial contributor of global GHGs, emitting over 418 million tons of CO_2 per year.[1] Climate studies indicate that California is likely to see an increase of three to four degrees Fahrenheit over the next century. CH_4 is also an important GHG that potentially contributes to global climate change. GHGs are global in their effect, which is to increase the Earth's ability to absorb heat in the atmosphere. As primary GHGs have a long lifetime in the atmosphere, accumulate over time, and are generally well-mixed, their impact on the atmosphere is mostly independent on the point of emission. Every nation emits GHGs and as a result makes an incremental cumulative contribution to global climate change; therefore, global cooperation is required to reduce the rate of GHG emissions enough to slow or stop the human-caused increase in average global temperatures and associated changes in climatic conditions.

The impact of human activities on global climate change is apparent in the observational record. Air trapped by ice has been extracted from core samples taken from polar ice sheets to determine the global atmospheric variation of CO_2, CH_4, and N_2O from before the start of industrialization (approximately 1750), to over 650,000 years ago. For that period, it was found that CO_2 concentrations ranged from 180 to 300 parts per million (ppm). For the period from approximately 1750 to the present, global CO_2 concentrations increased from a pre-industrialization period concentration of 280 to 379 ppm in 2005, with the 2005 value far exceeding the upper end of the

[1] California Air Resources Board, *California Greenhouse Gas Emission Inventory for 2000 to 2019*, https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2019/ghg_inventory_trends_00-19.pdf.

pre-industrial period range. As of November 2021, the highest monthly average concentration of CO_2 in the atmosphere was recorded at 419 ppm.[2]

The Intergovernmental Panel on Climate Change (IPCC) developed several emission trajectories of GHGs needed to stabilize global temperatures and climate change impacts. It concluded that a stabilization of GHGs at 400 to 450 parts per million (ppm) CO_2 equivalent[3] (CO_2e) concentration is required to keep global mean warming below two degrees Celsius, which in turn is assumed to be necessary to avoid significant levels of climate change.

Regulatory Setting

State

Various Statewide and local initiatives to reduce the State's contribution to GHG emissions have raised awareness that, even though the various contributors to and consequences of global climate change are not yet fully understood, global climate change is under way, and there is a real potential for severe adverse environmental, social, and economic effects in the long term. Every nation emits GHGs and as a result makes an incremental cumulative contribution to global climate change; therefore, global cooperation is necessary to reduce the rate of GHG emissions enough to slow or stop the human-caused increase in average global temperatures and associated changes in climatic conditions.

Executive Order S-3-05

Executive Order S-3-05 set forth a series of target dates by which Statewide emissions of GHGs would be progressively reduced, as follows:

- 2010: Reduce GHG emissions to 2000 levels;
- 2020: Reduce GHG emissions to 1990 levels; and
- 2050: Reduce GHG emissions to 80 percent below 1990 levels.

Assembly Bill 32 (California Global Warming Solutions Act of 2006)

California passed the California Global Warming Solutions Act of 2006 (Assembly Bill [AB] 32; California Health and Safety Code Division 25.5, Sections 38500 - 38599). AB 32 establishes regulatory, reporting, and market mechanisms to achieve quantifiable reductions in GHG emissions and establishes a cap on Statewide GHG emissions. AB 32 requires that Statewide GHG emissions be reduced to 1990 levels by 2020. AB 32 specifies that regulations adopted in response to AB 1493 should be used to address GHG emissions from vehicles. However, AB 32 also includes language stating that if the AB 1493 regulations cannot be implemented, then CARB should develop new regulations to control vehicle GHG emissions under the authorization of AB 32.

[2] Scripps Institution of Oceanography, *The Keeling Curve*, https://keelingcurve.ucsd.edu/, accessed November 12, 2021.

[3] Carbon Dioxide Equivalent (CO_2e) – A metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

California Building Energy Efficiency Standards (Title 24)

The *2019 Building Energy Efficiency Standards for Residential and Nonresidential Buildings* (California Code of Regulations, Title 24, Part 6), commonly referred to as "Title 24," became effective on January 1, 2020. In general, Title 24 requires the design of building shells and building components to conserve energy. The standards are updated periodically to allow consideration and possible incorporation of new energy efficiency technologies and methods. Under 2019 Title 24 standards, nonresidential buildings would use about 30 percent less energy (mainly due to lighting upgrades) when compared to 2016 Title 24 standards.[4] The standards require installation of energy efficient windows, insulation, lighting, ventilation systems, and other features that reduce energy consumption in homes and businesses.

California Green Building Standards (CALGreen)

The CALGreen Code (California Code of Regulations, Title 24, Part 11), is a statewide mandatory construction code that was developed and adopted by the California Building Standards Commission and the California Department of Housing and Community Development. CALGreen standards require new residential and commercial buildings to comply with mandatory measures under five topical areas: planning and design; energy efficiency; water efficiency and conservation; material conservation and resource efficiency; and environmental quality. CALGreen also provides voluntary tiers and measures that local governments may adopt which encourage or require additional measures in the five green building topics. The most recent update to the CALGreen Code was adopted in 2019 and went into effect on January 1, 2020. CALGreen requires new buildings to reduce water consumption by 20 percent, divert 50 percent of construction waste from landfills, and install low pollutant-emitting materials.

CARB Scoping Plan

On December 11, 2008, CARB adopted the *Climate Change Scoping Plan* (Scoping Plan), which functions as a roadmap to achieve GHG reductions in California required by AB 32 through subsequently enacted regulations. The Scoping Plan contains the main strategies California implement; to reduce CO_2e emissions by 174 million metric tons (MT), or approximately 30 percent, from the State's projected 2020 emissions level of 596 million $MTCO_2e$ under a business as usual (BAU) scenario.[5] This is a reduction of 42 million $MTCO_2e$, or almost ten percent, from 2002 to 2004 average emissions, but requires the reductions in the face of population and economic growth through 2020.

The Scoping Plan calculates 2020 BAU emissions as the emissions that would be expected to occur in the absence of any GHG reduction measures. The 2020 BAU emissions estimate was derived by projecting emissions from a past baseline year using growth factors specific to each of the different economic sectors (e.g., transportation, electrical power, commercial and residential, industrial, etc.). CARB used three-year average emissions, by sector, for 2002 to 2004

[4] California Energy Commission, 2019 Building Energy Efficiency Standards, March 2018.

[5] "Business as Usual" refers to emissions that would be expected to occur in the absence of GHG reductions; refer to http://www.arb.ca.gov/cc/inventory/data/bau.htm. Note that there is significant controversy as to what BAU means. In determining the GHG 2021 limit, CARB used the above as the "definition." It is broad enough to allow for design features to be counted as reductions.

to forecast emissions to 2020. The measures described in the Scoping Plan are intended to reduce the projected 2020 BAU to 1990 levels, as required by AB 32.

AB 32 requires CARB to update the Scoping Plan at least once every five years. CARB adopted the first major update to the Scoping Plan on May 22, 2014. The updated Scoping Plan identifies the actions California has already taken to reduce GHG emissions and focuses on areas where further reductions could be achieved to help meet the 2020 target established by AB 32. The Scoping Plan update also looks beyond 2020 toward the 2050 goal, established in Executive Order S-3-05, and observes that "a mid-term statewide emission limit will ensure that the State stays on course to meet our long-term goal."

In December 2017, CARB approved the *California's 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target* (2017 Scoping Plan). This update focuses on implementation of a 40 percent reduction in GHGs by 2030 compared to 1990 levels. To achieve this, the updated 2017 Scoping Plan draws on a decade of successful programs that addresses the major sources of climate changing gases in every sector of the economy.

Executive Order B-30-15

Executive Order B-30-15, issued in April 2015, requires Statewide GHG emissions to be reduced 40 percent below 1990 levels by 2030. Senate Bill 32 (SB 32), signed into law in September 2016, codifies the 2030 GHG reduction target in Executive Order B-30-15. The bill authorizes CARB to adopt an interim GHG emissions level target to be achieved by 2030. CARB must also adopt rules and regulations in an open public process to achieve the maximum, technologically feasible, and cost-effective GHG reductions.

Due to the nature of global climate change, it is not anticipated that any single development project would have a substantial effect on global climate change. In actuality, GHG emissions from the project would combine with emissions emitted across California, the United States, and the world to cumulatively contribute to global climate change.

Local

Bay Area Air Quality Management District

Bay Area Air Quality Management District (BAAQMD) adopted GHG emissions thresholds of significance to assist in the review of projects under CEQA. These thresholds were designed to establish the level at which BAAQMD has determined that GHG emissions would cause significant environmental impacts. The GHG emissions thresholds identified by BAAQMD are 1,100 $MTCO_2e$ per year or 4.6 $MTCO_2e$ per service population per year. The numeric thresholds set by BAAQMD and included within the City's Greenhouse Gas Reduction Strategy were calculated to achieve the State's 2020 target for GHG emission levels (and not the SB 32 specified target of 40 percent below the 1990 GHG emissions level).

San José Green Vision

The Green Vision was a 15-year sustainability plan to steer economic growth and reduce greenhouse gas emissions. Through the Green Vision, adopted in 2007, the City made strides as a national leader in the sustainability movement. In 2017, the City began drafting the Green Vision's replacement, the Climate Smart San José Plan.

Climate Smart San José Plan

The Climate Smart San José Plan was adopted in February 2018. The Climate Smart San José built upon and replaced the Green Vision with a people-focused approach, encouraging the entire San José community to join an ambitious campaign to reduce GHG emissions, save water, and improve quality of life. The goal of the Climate Smart Plan is to transform San José into a climate smart city that is substantially decarbonized and meeting requirements of Californian climate change laws. The Climate Smart Plan also focuses on an aggressive set of short-, medium- and long-term goals to meet the Paris Agreement-aligned targets. Among the plan's most notable goals:

- By 2021, San José will make 100 percent emission-free electricity available to all San José Clean Energy users.
- By 2030, San José will reduce carbon emissions from vehicular trips by 1 million tons/year by facilitating the expansion of ridesharing, electric vehicles, and public transit in the city.
- By 2040, San José will become the first city in the world to produce 1 gigawatt of solar power (which is enough to power the equivalent of 250,000 homes).

City's 2030 Greenhouse Gas Reduction Strategy

The City's 2030 Greenhouse Gas Reduction Strategy (2030 GHGRS) is a comprehensive update to the City's original Greenhouse Gas Reduction Strategy and reflects the plans, policies, and codes as approved by the City Council. The strategy builds on the City's Envision San José 2040 General Plan (General Plan) and Climate Smart San José. These plans expanded the City's Green Vision to advance urban sustainability and reduce GHG emissions. Leveraging these existing plans and supporting policy and program frameworks, the 2030 GHGRS provides a set of strategies and additional actions for achieving the 2030 target. The City has prepared a Greenhouse Gas Reduction Strategy Compliance Checklist that, when completed, documents a project's consistency with the GHGRS. The purpose of the checklist is to:

- Implement GHG reduction strategies from the 2030 GHGRS to new development projects; and
- Provide a streamlined review process for proposed new development projects that are subject to discretionary review and trigger environmental review pursuant to the California Environmental Quality Act (CEQA).

a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

Less Than Significant Impact. The City's 2030 GHGRS serves as a Qualified Climate Action Plan for purposes of tiering and streamlining under CEQA. The City included a Development Compliance Checklist in the 2030 GHG Reduction Strategy that serves to apply the relevant General Plan and 2030 GHG Reduction Strategy policies through a streamlined review process for proposed new development projects that are subject to discretionary review and that trigger environmental review under CEQA. General compliance with the Development Compliance Checklist indicates that a proposed project is consistent with helping the City to meet the 2030 GHG reduction targets established SB 32. The Development Compliance Checklist completed for the proposed project is included in Appendix A, *Air Quality/Greenhouse Gas/Energy Data*. As such the proposed project would be consistent with the applicable and relevant General Plan and 2030 GHG Reduction Strategy policies.

Project-related GHG emissions would include emissions from direct and indirect sources. The proposed project would result in direct and indirect emissions of CO_2, N_2O, and CH_4, and would not result in other GHGs that would facilitate a meaningful analysis. Therefore, this analysis focuses on these three forms of GHG emissions. Direct project-related GHG emissions include emissions from construction activities, area sources, and mobile sources, while indirect sources include emissions from electricity consumption, water demand, and solid waste generation.

The most recent version of the California Emissions Estimator Model (CalEEMod), version 2020.4.0, was used to calculate direct and indirect project-related GHG emissions. CalEEMod relies upon trip data from the *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis* (LTA) prepared by Hexagon on February 28, 2022 (includes as Appendix H, *Local Transportation Analysis*), and project-specific land use data to calculate emissions. Table 4.8-1, *Project-Generated Greenhouse Gas Emissions*, presents the estimated CO_2, N_2O, and CH_4 emissions from the proposed project. CalEEMod outputs are contained within Appendix A.

Table 4.8-1
Project-Generated Greenhouse Gas Emissions

Source	CO_2	CH_4		N_2O		Total Metric Tons CO_2e/year[3]
	Metric tons/year	Metric tons/year	Metric Tons CO_2e/year[3]	Metric tons/year	Metric Tons CO_2e/year[3]	
Direct Emissions						
Construction (amortized over 30 years)	9.63	<0.01	0.05	<0.01	0.08	9.76
Area Emissions	0.01	<0.01	<0.01	0.00	0.00	0.01
Mobile Source[4]	821.22	0.06	1.40	0.06	12.10	834.75
Total Direct Emissions	***830.86***	***0.06***	***1.90***	***0.06***	***12.18***	***844.52***
Indirect Emissions						
Energy Emissions	112.71	<0.01	0.09	<0.01	0.32	113.13
Solid Waste	4.16	0.25	6.20	0.00	0.00	10.31
Water Usage	2.32	0.03	0.71	<0.01	0.20	3.23
Total Indirect Emissions	***119.20***	***0.28***	***7.00***	***<0.01***	***0.52***	***126.67***
Combined Construction and Operation, Emissions[3]	**971.19 $MTCO_2e$/yr**					
Project other than Stationary Sources Threshold	**1,100 $MTCO_2e$**					
Exceed Threshold?	*No*					

Notes:
1. Refer to Appendix A, *Air Quality/Greenhouse Gas/Energy Data*, for all assumptions and calculations.
2. CO_2 Equivalent values calculated using the U.S. Environmental Protection Agency Website, Greenhouse Gas Equivalencies Calculator, https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator, accessed November 16, 2021.
3. Totals may be slightly off due to rounding.
4. Mobile emissions during operation are calculated using CalEEMod 2020.4.0.

Reduced Greenhouse Gas Emissions

The proposed project includes design features that would reduce project-related GHG emissions. The project would install low flow water fixtures in compliance with CALGreen Code. The proposed project would include recycling and composting service in compliance with AB 341, which requires at least 50 percent solid waste diversion rate.

Project Greenhouse Gas Emissions

Direct Project-Related Sources of Greenhouse Gases

- *Construction Emissions*. Construction emissions are typically summed and amortized over the lifetime of a project (assumed to be 30 years), then added to the operational emissions.[6] As shown in Table 4.8-1, the project would result in 9.76 $MTCO_2e$ per year

[6] As recommended by most air districts and agencies in California, projected GHGs from construction have been quantified and amortized over 30 years, which is the number of years considered to represent the life of the project. The amortized construction emissions are added to the annual average operational emissions.

(amortized over 30 years), which represents a total of 292.77 $MTCO_2e$ from construction activities.

- *Area Source*. Area source emissions occur from architectural coatings, landscaping equipment, and consumer products. CalEEMod assumes that area source emissions associated with the project would include minor emissions from landscaping equipment and maintenance of the building. As noted in Table 4.8-1, the project would result in 0.01 $MTCO_2e$ per year of area source GHG emissions.

- *Mobile Source*. Mobile source emissions include emissions from motor vehicles, including tailpipe and evaporative emissions. The LTA presents trip generation rates based on the peak-hour trips counted at an existing Chick-fil-A restaurant in San José, including adjustments for pass-by trips. According to the LTA, the project would generate 1,102 daily trips. As shown in Table 4.8-1, the project would result in approximately 834.75 $MTCO_2e$ per year of mobile source generated GHG emissions.

Indirect Project-Related Sources of Greenhouse Gases

- *Energy Consumption*. The propose project would be in compliance with CALGreen Code and Title 24. As shown in Table 4.8-1, the project would indirectly result in 113.13 $MTCO_2e$ per year GHG emissions due to energy consumption.

- *Solid Waste*. Table 4.8-1 shows the project's operational solid waste emissions, which would result in 10.31 $MTCO_2e$ per year.

- *Water Demand*. The project operations would result in a demand of approximately 1.12 million gallons of water per year. As shown in Table 4.8-1, the project would result in approximately 3.23 $MTCO_2e$ per year.

Total Project-Related Sources of Greenhouse Gases

As shown in Table 4.8-1, the total amount of project related GHG emissions from direct and indirect sources combined would be approximately 971.19 $MTCO_2e$ per year. Therefore, project GHG emissions would not exceed the BAAQMD threshold of 1,100 $MTCO_2e$ per year. Accordingly, impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

Less than Significant. The project would contribute to cumulative increases in GHG emissions over time in the absence of policy intervention. The GHG plan consistency for the project is based on the project's consistency with the 2017 Scoping Plan Update, City of San José 2030 GHGRS, and Climate Smart San José Plan. The 2017 Scoping Plan Update describes the approach California will take to reduce GHG emissions by 40 percent below 1990 levels by the year 2030. The Climate Smart Plan also focuses on an aggressive set of short-, medium- and long-term goals to meet the Paris Agreement-aligned targets.

2017 Scoping Plan

The goal to reduce GHG emissions to 1990 levels by 2020 (Executive Order S-3-05) was codified by the Legislature as the 2006 Global Warming Solutions Act (AB 32). In 2008, CARB approved a Scoping Plan as required by AB 32.[7] The Scoping Plan has a range of GHG reduction actions which include direct regulations, alternative compliance mechanisms, monetary and non-monetary incentives, voluntary actions, market-based mechanisms such as a cap-and-trade system, and an AB 32 implementation fee to fund the program. The 2017 Scoping Plan Update (the most recent update) identifies additional GHG reduction measures necessary to achieve the 2030 target. These measures build upon those identified in the first update to the Scoping Plan (2013). Although a number of these measures are currently established as policies and measures, some measures have not yet been formally proposed or adopted. It is expected that these measures or similar actions to reduce GHG emissions will be adopted as required to achieve Statewide GHG emissions targets.

Table 4.8-2, *Project Consistency with the 2017 Scoping Plan*, summarizes the project's consistency with the 2017 Scoping Plan. As summarized, the project would not conflict with any of the provisions of the 2017 Scoping Plan.

[7] Climate Change Proposed Scoping Plan was approved by the California Air Resources Board on 12/11/2008.

Table 4.8-2
Project Consistency with 2017 Scoping Plan

Actions and Strategies	Project Consistency Analysis
SB 350	
Achieve a 50 percent Renewables Portfolio Standard (RPS) by 2030, with a doubling of energy efficiency savings by 2030.	**Consistent.** The proposed project would not be an electricity provider. The project would utilize energy from San José Clean Energy (SJCE), which is required to meet the 2030, 2045, and 2050 performance standards. The SJCE provides various options to customers including 100 percent renewables, 55 percent renewables, and 36 percent renewables. The project would also meet the applicable requirements of the Title 24 Standards and the CALGreen Code. As such, the project would be in compliance with SB 350.
Low Carbon Fuel Standard (LCFS)	
Increase stringency of carbon fuel standards; reduce the carbon intensity of fuels by 18 percent by 2030, which is up from 10 percent in 2020.	**Consistent.** There would be vehicle trips during project operation. All vehicles traveling to project site would be required to use LCFS complaint fuels; thus, the project would be in compliance with this goal.
Mobile Source Strategy (Cleaner Technology and Fuels Scenario)	
Maintain existing GHG standards of light and heavy-duty vehicles while adding an addition 4.2 million zero-emission vehicles (ZEVs) on the road. Increase the number of ZEV buses, delivery trucks, or other trucks.	**Consistent.** The proposed project may include occasional light- and heavy-duty truck uses during operation. Trucks uses associated with the project site would be required to comply with all CARB regulations, including the LCFS and newer engine standards. The proposed project would not conflict with the CARB's goal of adding 4.2 million zero-emission (ZEVs) on the road. As such, the project would not conflict with the goals of the Mobile Source Strategy.
Sustainable Freight Action Plan	
Improve the freight system efficiency and maximize the use of near zero emission vehicles and equipment powered by renewable energy. Deploy over 100,000 zero-emission trucks and equipment by 2030.	**Consistent.** As described above, occasional truck uses associated with the project site would be required to comply with all CARB regulations, including the LCFS and newer engine standards. Additionally, the project would comply with all future applicable regulatory standard adopted by CARB and would not conflict with CARB's goal to deploy over 100,000 zero-emission trucks and equipment by 2030.
Short-Lived Climate Pollutant (SLCP) Reduction Strategy	
Reduce the GHG emissions of methane and hydrofluorocarbons by 40 percent below the 2013 levels by 2030. Furthermore, reduce the emissions of black carbon by 50 percent below the 2013 levels by the year 2030.	**Not Applicable.** The project would not emit a large amount of CH_4 (methane) emissions; refer to Table 4.8-1. Furthermore, the project would comply with all CARB and BAAQMD hydrofluorocarbon regulations. As such, the proposed project would not conflict with the SLCP reduction strategy.
Post-2020 Cap and Trade Programs	
The Cap-and-Trade Program will reduce greenhouse gas (GHG) emissions from major sources (covered entities) by setting a firm cap on statewide GHG emissions while employing market mechanisms to cost-effectively achieve the emission-reduction goals.	**Not Applicable.** As seen in Table 4.8-1, the project would generate approximately 971.19 $MTCO_2e$ per year, which is below the 25,000 $MTCO_2e$/yr Cap-and-Trade screening level. Therefore, the program is not appliable to the project.
Source: California Air Resources Board, *California's 2017 Climate Change Scoping Plan*, November 2017.	

City of San José 2030 Greenhouse Gas Reduction Strategy

The City of San José adopted a Greenhouse Gas Reduction Strategy on August 2020, to be consistent with the implementation requirements of AB 32. The Greenhouse Gas Reduction Strategy seeks to reduce GHG emissions within the City through a number of sustainable actions, including minimizing car travel, building site locations that optimize solar installation potential either for heating water or for electricity generation, planting trees to help mitigate heat island effects, and providing access to safe, pedestrian friendly sidewalks, trails and bike paths, as well as mass transit. This Greenhouse Gas Reduction Strategy was prepared in accordance with the BAAQMD CEQA Guidelines, and in conformance with *CEQA Guidelines* Section 15183.5, which specifically addresses GHG Reduction Plans. As noted above, the project would not exceed the BAAQMD significance threshold for GHG emissions during construction or operation. The 2030 GHGRS integrates plans, policies, and ordinances adopted by the City council. Therefore, as long as the project is consistent with the applicable plans and policies, the project is consistent with the 2030 GHGRS. In addition, the project would comply with 2019 Title 24 energy efficiency standards and CALGreen and would not develop a land use not already anticipated for in the City's General Plan that would introduce new significant sources of GHG emissions. Therefore, the project would be consistent with the City's 2030 GHGRS.

Climate Smart San José Plan

Table 4.8-3, *Project Consistency with the Climate Smart Plan*, provides an evaluation of the project's consistency with applicable Climate Smart Plan strategies. As shown in Table 4.8-3, the project would be consistent with the applicable strategies of Climate Smart Plan.

Table 4.8-3
Project Consistency with the Climate Smart Plan

Strategies	Project Consistency Analysis
Pillar 1: A Sustainable & Climate Smart City	
1.1: Transitioning to a renewable energy future provides clean electricity that supplies the entire city.	**Consistent.** The project would utilize energy from SJCE. SJCE would be required to meet the California Renewables Portfolio Standard, SB 350, and SB 100. The California Renewables Portfolio increases the proportion of electricity from renewable sources to 33 percent renewable power by 2020. SB 350 requires 50 percent by 2030. SB 100 requires 44 percent by 2024, 52 percent by 2027, and 60 percent by 2030. The SJCE provides various options to customers including 100 percent renewables, 55 percent renewables, and 36 percent renewables.
1.2: Embracing our Californian climate means creating an urban landscape, in our homes and public places, that is not just low water use, but attractive and enjoyable.	**Consistent.** The proposed project would comply with CALGreen and 2019 Title 24 energy efficiency standards, which include low flow water features.
Pillar 2: A Vibrant City of Connected & Focused Growth	
2.1: Densifying our city in focused growth areas increases walkability and cycling and also makes our neighborhoods more vibrant, distinctive, and enjoyable.	**Consistent.** One of the focal points of Strategy 2.1 is Transit-Oriented Development. The project would support Strategy 2.1 by being located within walking distance (i.e., 50-foot) of multiple bus stops.
2.3: New technology can enable clean, electric, and personalized mobility choices that make it convenient to move between any two points in the city.	**Consistent.** The project would provide electric vehicle/vanpool parking spaces and bicycle parking spaces in compliance with 2019 Title 24 energy efficiency standards and CALGreen.
2.4: Developing integrated, accessible public and active transport infrastructure reduces the dependency on the car to move within the city.	**Consistent.** Refer to Strategy 2.1 discussion above.
Pillar 3: An Economically Inclusive City of Opportunity	
3.1: Creating local jobs in our city makes it possible for our residents to work close to where they live, saving time, money, and gas spent commuting.	**Consistent.** The project would provide employment opportunities in close proximity to residential uses.
3.2: Making our commercial buildings high-performance and siting them close to transit lowers water and energy use.	**Consistent.** Refer to Strategy 2.1 and Strategy 1.2 discussions above.
Source: City of San José, *Climate Smart San José*, adopted February 27, 2018.	

Conclusion

In summary, the plan consistency analysis demonstrates that the project complies with or exceeds the plans, policies, regulations and GHG reduction actions/strategies outlined in the 2017 Scoping Plan and Climate Smart Plan. Therefore, the project would not conflict with any applicable plan, policy, or regulation of an agency adopted for the purpose of reducing emissions of GHGs. Furthermore, because the project is consistent and does not conflict with these plans, policies, and regulations, the project's incremental increase in GHG emissions would not result in a significant impact on the environment. Additionally, project would be consistent with 2030 GHGRS, including applicable plans and policies. Therefore, project-specific impacts with regard to climate change would be less than significant.

Mitigation Measures: No mitigation measures are required.

4.9 HAZARDS AND HAZARDOUS MATERIALS

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			✓	
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?		✓		
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				✓
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?		✓		
e. For a project located within an airport land use plan or, where such plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?			✓	
f. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?			✓	
g. Expose people or structures, either directly or indirectly, to a significant risk or loss, injury or death involving wildland fires?				✓

The information presented in this analysis is based on the following reports; refer to Appendix F, *Hazardous Material Documentation*):

- *Phase I Environmental Site Assessment, Proposed Chick-fil-A Restaurant No. 04434, Silver Creek & Capital FSU, 3095 Silver Creek Road, San José, California* (Chick-fil-A Phase I ESA), prepared by Giles Engineering Associates, Inc., dated September 14, 2021;

- *Limited Phase II Environmental Site Assessment, Proposed Chick-fil-A Restaurant No. 04434, Silver Creek & Capital FSU, 3095 Silver Creek Road, San José, California* (Chick-fil-A Phase II ESA), prepared by Giles Engineering Associates, Inc., dated April 6, 2022; and

- *Phase I Environmental Site Assessment of Target Store T-0325 3155 Silver Creek Road San José, California 95121* (Proposed Parking Lot Phase I ESA), prepared by ATC Associates Inc., dated July 21, 2005.

Environmental Setting

The project site is currently occupied by a commercial surface parking lot and a former O'Reilly Auto Parts retail store located at 3093 Silver Creek Road. The project site is surrounded by existing commercial development, including a Chevron gasoline service station to the south and a Target retail store to the west.

Existing Soil, Soil Gas, and/or Groundwater Concerns for the Project Site

Former Tony's Unocal Self Service/Former O'Reilly's Auto Parts Store

The project proposes demolition of the former O'Reilly Auto Parts retail store, located at 3093 Silver Creek Road. Based on the Chick-fil-A Phase I ESA and the State Water Resources Control Board's (SWRCB's) GeoTracker online database, this former O'Reilly Auto Parts retail store on-site was previously development with a gasoline service station (Tony's Unocal Self Service).[1] This site is also known as Unocal #7002, Kragen Auto Parts facility, and Tire, Battery, and Automotive Center/gasoline station associated with a former Gemco store in the Proposed Parking Lot Phase I ESA. In May 1988, an unauthorized release was reported from a leaking gasoline dispenser. A second unauthorized release was reported in April 1990 following removal of three underground storage tanks (USTs) and associated dispensers/piping. In 1990, an unknown volume of soil was removed from the area of the former USTs and dispensers. Approximately 550 cubic yards of soil were excavated to a depth of 14 feet from the UST pit and dispensers during demolition of the former gasoline service station in 2000. Groundwater extraction and treatment was conducted from March 1996 to May 2004 and removed approximately 5,937,000 gallons of contaminated groundwater and an estimated 1,164 pounds of petroleum hydrocarbons. Ozone sparging was operated at the site from 2002 to 2011. Since 1991, 20 groundwater monitoring wells have been installed and irregularly monitored, five monitoring wells have been abandoned, and five monitoring wells have been replaced. According to groundwater data, water quality objectives (WQOs) have been achieved or nearly achieved.

The petroleum release was determined to be limited to the soil and shallow groundwater. The affected groundwater is not currently being used as a source of drinking water, and it is highly unlikely that the contaminated groundwater would be used as a source of drinking water in the foreseeable future. Based on a letter provided by the County of Santa Clara Department of Environmental Health (DEH), dated April 30, 2021, the DEH has reviewed the case file and determined that the site conditions appear to satisfy the low-threat case closure policy's general and media-specific criteria and no further action was required at that time.[2]

In conclusion, the former gasoline service station has resulted in limited soil/shallow groundwater contamination at the proposed surface parking lot area on the project site; refer to Exhibit 2-3, *Overall Concept Plan*. Remedial activities have occurred and the DEH has issued a no further action letter at the time of closure. Nonetheless, based on the Geotechnical Report for the proposed project, residual contaminants could remain on-site in the proposed surface parking lot area; refer to Appendix D, *Geotech Report*.

[1] State Water Resources Control Board, GeoTracker, https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0608501517, accessed January 5, 2022.

[2] Ibid.

Off-Site Chevron Gasoline Service Station

An off-site Chevron gasoline service station is located at 3197 Silver Creek Road, immediately south of the proposed Chick-fil-A restaurant. Based on the Chick-fil-A Phase I ESA, the existing Chevron facility (formerly known as Silver Creek Car Wash or Auto Pride Car Wash) reported a release of gasoline to the soil in February 1988. A subsurface investigation was conducted, and results indicated low level soil contamination from gasoline. As such, a no further action letter for this release in 1988 was granted by the Santa Clara Valley Water District (Valley Water) in 1991. A second release of hydrocarbons to soil was reported in 1992. Soil samplings results indicated non-detectable concentrations of purgeable hydrocarbons and very low concentrations of extractable hydrocarbons. A no further action letter for this release in 1992 was granted by Valley Water in 1996. Groundwater was not sampled in both subsurface investigations. In 2002, this off-site property was identified to be one of the sites with a history of previously closed cases prior to 1998. It is acknowledged that cases closed prior to 1998 had no methyl tert butyl ether (MTBE) and fuel oxygenate analysis. Subsequently, soil and groundwater samples were collected at the off-site Chevron gasoline service station as part of a new subsurface investigation in 2002. Results of soil sampling indicated MTBE and fuel oxygenates were below or near detection limits in soil. Results of groundwater sampling indicated detectable concentration of MTBE in one sample and low levels of diesel petroleum hydrocarbons in two samples. A no further action letter for this case was granted by Valley Water in 2003.

According to the Chick-fil-A Phase I ESA, despite the case closure status of this off-site facility, the historical releases, the property's continued operation of a gasoline service station, and the property's proximately to the project site present a concern to soil gas and/or groundwater at the project site. As such, a Phase II ESA was prepared and is discussed below.

Existing Soil, Soil Gas, and/or Groundwater Concerns for the Proposed Chick-fil-A Restaurant

The Chick-fil-A Phase II ESA was prepared to investigate potential contaminations to soil, soil gas, and groundwater in the proposed Chick-fil-A restaurant site.

Subsurface investigations conducted as part of the Chick-fil-A Phase II ESA include analysis on total petroleum hydrocarbons (TPH), volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and Title 22 Metals in soil, soil gas, and groundwater. Based on the Chick-fil-A Phase II ESA, VOCs were not detected in soil at the proposed Chick-fil-A building location with the exceptions of 2-butanone and acetone, both of which were detected below regulatory screening levels for commercial uses. As such, the Chick-fil-A Phase II ESA determined that no further investigations for VOCs in soil in this area is warranted. Additionally, SVOCs were not identified in soil at the proposed Chick-fil-A building location. Based on the Chick-fil-A Phase II ESA, concentrations of all other title 22 metals in soil were below applicable regulatory screening levels with the exceptions of arsenic, barium, cadium, cobalt, copper, and mercury, all of which were detected at concentrations to be consistent with background concentrations in exceeding the applicable regulatory screening levels. As the elevated concentrations for these Title 24 metals are consistent with background concentrations, impacts regarding Title 24 metals in soil would be less than significant. Subsequently, the Chick-fil-A Phase II ESA also concluded that the soil analysis results does not indicate elevated concentrations of chemical of concerns in soil that are known to be hazardous to construction workers, restaurant employees, or patrons.

Based on the Chick-fil-A Phase II ESA, VOCs in soil gas were not detected at the proposed Chick-fil-A building location with the exceptions of benzene, bromodichloromethane, and chloroform, all

of which were detected below regulatory screening levels for commercial uses. As such, the Chick-fil-A Phase II ESA determined that vapor intrusion for the proposed Chick-fil-A building is low, and a vapor mitigation system is not necessary.

Furthermore, based on the Chick-fil-A Phase II ESA, results of groundwater analysis indicated non-detect for VOCs and SVOCs in groundwater with the exception of dichlorodifluoromethane (a VOC) and caprolactam (a SVOC), both of which were detected at concentrations below regulatory screening levels for tap water. As such, the Chick-fil-A Phase II ESA determined that no further investigations for VOCs and SVOCs in groundwater in this area is warranted. Additionally, concentrations of all other title 22 metals were below applicable regulatory screening levels in groundwater. Although the concentrations for vanadium and antimony in groundwater were detected above regulatory screening levels for tap water, the Chick-fil-A Phase II ESA determined that impacts would be less than significant in this regard as no groundwater would be used for drinking or be pumped to surface and re-analysis of groundwater samples did not identify antimony concentrations above regulatory screening levels.

In conclusions, potential impacts to soil, soil gas, and groundwater at the proposed Chick-fil-A restaurant location would be less than significant.

Regulatory Setting

Federal

Occupational Safety Health Administration

The Occupational Safety Health Administration (OSHA) was created following the Occupational Safety and Health Act of 1970 and is intended to ensure safe and healthful working conditions for workers by setting and enforcing standards and by providing training, outreach, education, and assistance. Specifically, the standards are listed in Chapter 29, Sections 1910 (General Industry) and 1926 (Construction). These standards outline Health and Safety Plans intended to determine possible hazards connect to a proposed land use and may offer applicable implementation of mitigation measures.[3]

United States Environmental Protection Agency

The United States Environmental Protection Agency (U.S. EPA) is intended to protect human health and the environment through developing and enforcing environmental regulations, issuing grants, studying environmental issues, and sponsoring partnerships.[4] Specifically, the Resource Conservation and Recovery Act (RCRA) grants the U.S. EPA authority to control hazardous waste from "cradle to grave." These actions include the generation, transportation, treatment, storage, and disposal of hazardous waste. Additionally, RCRA provides a framework for the management of non-hazardous solid wastes. The Federal Hazardous and Solid Waste Amendments focus on waste minimization and phasing out land disposal of hazardous waste as well as corrective action

[3] U.S. Department of Labor, *Occupational Safety and Health Administration*, https://www.osha.gov/aboutosha, accessed March 15, 2022.

[4] U.S. Environmental Protection Agency, *Our Mission and What We Do*, https://www.epa.gov/aboutepa/our-mission-and-what-we-do, accessed March 15, 2022.

for releases. The RCRA is also responsible for addressing environmental problems that could result from underground tanks storing petroleum and other hazardous substances.[5]

State

California Environmental Protection Agency

The California Environmental Protection Agency's (CalEPA) mission is to restore, protect and enhance the environment, to ensure public health, environmental quality, and economic viability. CalEPA oversee the development, implementation and enforcement of environmental laws that regulate air, water and soil quality, pesticide use and waste recycling and reduction. CalEPA consists of several departments which carry out the agency's mission and include the California Air Resources Board (CARB), the Department of Pesticide Regulation (DPR), the Department of Resources Recycling and Recovery (CalRecycle), the Department of Toxic Substances Control (DTSC), the Office of Environmental Health Hazard Assessment (OEHHA), and the State Water Resources Control Board (SWRCB).[6] Specifically, DTSC carries out CalEPA's mission by compiling and updating the Cortese List which includes a list of several types of hazardous material gathered by various agencies.

California Occupational Safety and Health Administration

The California Occupational Safety and Health Administration (Cal/OSHA) is responsible for protecting and improving the health and safety of workers by setting/enforcing standards, providing outreach, education, and assistance, along with issuing permits, licenses, certifications, registrations, and approvals. Specifically, Cal/OSHA is responsible for the handling and use of hazardous pollutants in the work place.[7]

Local

Envision San José 2040 General Plan

The following policies are specific to mitigating potential impacts from hazards and hazardous materials within the City and specifically those that may apply to the proposed project:

> **Policy EC-6.6:** Environmental review for all proposals for new residential, park and recreation, school, day care, hospital, church or other uses that would place a sensitive population in close proximity to sites on which hazardous materials are or are likely to be located must address the likelihood of an accidental release, the risks posed to human health and for sensitive populations, and mitigation measures, if needed, to protect human health.
>
> **Policy EC-7.1:** For development and redevelopment projects, require evaluation of the proposed site's historical and present uses to determine if any potential environmental conditions exist that could adversely impact the community or environment.

[5] U.S. Environmental Protection Agency, *Summary of the Resource Conservation and Recovery Act*, https://www.epa.gov/laws-regulations/summary-resource-conservation-and-recovery-act, accessed March 16, 2022.
[6] California Environmental Protection Agency, *About Us*, https://calepa.ca.gov/about/, accessed March 16, 2022.
[7] California Department of Industrial Relations, Cal/OSHA, https://www.dir.ca.gov/dosh/, accessed March 16, 2022.

Policy EC-7.2: Identification of existing soil, soil vapor, groundwater and indoor air contamination and mitigation for identified human health and environmental hazards to future users shall be provided as part of the environmental review process for all development and redevelopment projects. Mitigation measures for soil, soil vapor and groundwater contamination shall be designed to avoid adverse human health or environmental risk, in conformance with regional, state and federal laws, regulations, guidelines, and standards.

Policy EC-7.4: On redevelopment sites, the presence of hazardous building materials shall be determined during the environmental review process or prior to project approval. Mitigation and remediation of hazardous building materials, such as lead paint and asbestos-containing materials, shall be implemented in accordance with state and federal laws and regulations.

Policy EC-7.5: On development and redevelopment sites, all sources of imported fill shall have adequate documentation that it is clean and free of contamination and/or acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and state requirements.

Policy EC-7.11: Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided.

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

Less Than Significant Impact. Substantial risks associated with hazardous materials are not typically associated with restaurant uses. Minor cleaning products along with the occasional use of pesticides and herbicides for landscape maintenance of the project site are generally the extent of hazardous materials that would be routinely utilized on-site. Thus, as the presence and on-site storage of these materials are common for restaurant uses and would not be stored in substantial quantities (quantities required to be reported to a regulatory agency), impacts in this regard are less than significant.

Limited amounts of some hazardous materials could be used in the short-term construction of the project, including standard construction materials (e.g., paints and solvents), vehicle fuel, and other hazardous materials. The routine transportation, use, and disposal of these materials would be required to adhere to State and local standards and regulations for handling, storage, and disposal of hazardous substances. With compliance with the existing State and local procedures that are intended to minimize potential health risks associated with their use, impacts associated with the handling, storage, and transport of these hazardous materials during construction would be less than significant.

Mitigation Measures: No mitigation measures are required.

b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

Less Than Significant With Mitigation Incorporated.

Construction Activities

Potential Accidental Conditions From Construction Equipment

During project construction, there is a possibility of accidental release of hazardous substances such as petroleum-based fuels or hydraulic fluid used for construction equipment. The level of risk associated with the accidental release of hazardous substances from construction equipment is not considered significant due to the small volume of hazardous materials utilized during construction. The construction contractor would be required to use standard construction controls and safety procedures that would avoid or minimize the potential for accidental release of such substances into the environment. Standard construction practices would be observed such that any materials released during project construction are appropriately contained and remediated as required by local, State, and Federal law.

Potential Accidental Conditions During Site Disturbance Activities

Construction excavation and grading activities would involve handling of on-site soils. As discussed above, current and past uses of the project site and its vicinity may have resulted in identified existing on-site soil impacts at the proposed parking lot area.

As detailed in Section 2.2, *Project Characteristics*, construction of the project is anticipated to include two phases. Phase 1 would include demolition of the existing building (i.e., former O'Reilly Auto Parts retail store), earthwork, and installation of asphalt and striping at the western portion of the project site, and Phase 2 would include site grading at the eastern portion of the project site and construction of the new Chick-fil-A building and associated parking, landscaping, and utilities. It is acknowledged that the project Applicant would obtain two different contractors for each phase of construction.

Construction Phase I

Construction Phase 1 would involve demolition of the existing building (i.e., former O'Reilly Auto Parts retail store), clearing/earthwork, and installation of asphalt and striping at the western portion of the project site. The existing building was constructed prior to 1978. As such, there is the potential for asbestos-containing materials (ACMs) and lead-based paint (LBP), as well as other potential hazardous materials to be present in association with the building materials. Demolition of the structures could expose construction personnel and the public to ACMs or LBPs. All renovation and demolition of structures that could result in the release of ACMs or LBPs must be conducted according to Federal and State regulations and standards. The National Emission Standards for Hazardous Air Pollutants mandates that building owners conduct an asbestos survey to determine the presence of ACMs prior to the commencement of any remedial work, including demolition (Standard Permit Condition). If ACM material is found, abatement of asbestos would be required prior to any demolition activities. If paint is separated from building materials (chemically or physically) during

demolition of the structures, the paint waste would be required to be evaluated independently from the building material by a qualified Environmental Professional (Standard Permit Condition). If lead-based paint is found, abatement shall be completed by a qualified Lead Specialist prior to any activities that would create lead dust or fume hazard. Compliance with Standard Permit Conditions, as well as compliance to Bay Area Air Quality Management District (BAAQMD) Regulation 11 Rule 2, *Asbestos Demolition, Renovation and Manufacturing*, would reduce potential impacts in this regard to less than significant levels.

In addition to demolished building materials, construction workers could be exposed to contaminated soil in the proposed surface parking lot area during grading activities for Phase 1 of construction. In order to minimize the potential for accidental conditions during site disturbance activities, the project would be required to implement Mitigation Measure HAZ-1. The project Applicant and/or their designee would be required to retain a qualified environmental professional to conduct a Limited Phase II Environmental Site Assessment (Limited Phase II ESA) for the proposed surface parking lot area. At a minimum, the Limited Phase II ESA would be required to include the collection of shallow soil samples in the proposed surface parking lot area for analysis of potential contaminants from previous agricultural operations or the former gas service station (located at 3093 Silver Creek Road). Results of the Limited Phase II ESA would be provided to the City of San José Planning, Building, and Code Enforcement Supervising Planner, and the Environmental Services Department Municipal Compliance Officer. Furthermore, if results from the Limited Phase II ESA indicate soil contamination above regulatory screening levels, the project Applicant would be required to properly dispose of such soils off-site at an approved facility.

Construction Phase 2

As discussed in the existing setting above, the Chick-fil-A Phase II ESA concluded that potential impacts from soil, soil gas, and groundwater at the proposed Chick-fil-A restaurant location would be less than significant.

Disposal of Soil Materials

All soil cuttings that require disposal during Phase 1 and/or Phase 2 of construction must be disposed with care upon the receipt of a written approval from the licensed disposal facility site owner (Mitigation Measure HAZ-2). Documentation for the identified facility must be provided to the supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

Groundwater Monitoring Wells and Remedial Equipment

There are existing on-site monitoring wells and remedial equipment that are currently in use. These monitoring wells and remedial equipment would be abandoned in accordance with applicable federal and State regulations, including those from the DEH and the RWQCB. Impacts in this regard would be less than significant.

Conclusion

With compliance with Mitigation Measures HAZ-1 and HAZ-2, potential impacts during construction of Phase 1 and Phase 2 would be reduced to less than significant levels.

Operational Activities

Vapor Intrusion

As discussed in the existing setting section above, the Chick-fil-A Phase II ESA concluded that the vapor intrusion concern is low regarding the proposed Chick-fil-A restaurant. Therefore, impacts in this regard are less than significant.

Nonetheless, to further reduce vapor intrusion risks for future users of the site, the project would install a vapor barrier under the proposed Chick-fil-A restaurant; refer to Section 2.2. The vapor barrier would be installed prior to occupancy. Installation of said vapor barrier would be conducted in accordance with existing regulations related to hazardous materials, including those by DEH (i.e., the Certified Unified Program Agency for the City).

Accidental Conditions from Future Uses

Refer to Response 4.9(a), above, for a description of impacts related to proposed operations at the project site and regulatory framework related to chemical safety. Operational activities would include typical restaurant practices. Minor cleaning products along with the occasional use of pesticides and herbicides for landscape maintenance of the project site are generally the extent of hazardous materials that would be routinely utilized on-site. Upon adherence to existing regulations related to chemical safety, impacts pertaining to the potential for accidental conditions during project operations of the proposed project would be less than significant.

***Standard Permit Conditions*:**

Asbestos and Lead-Based Paint.

- In conformance with State and local laws, a visual inspection/pre-demolition survey, and possible sampling, shall be conducted prior to the demolition of on-site building(s) to determine the presence of asbestos-containing materials (ACMs) and/or lead-based paint (LBP).

- During demolition activities, all building materials containing lead-based paint shall be removed in accordance with Cal/OSHA Lead in Title 8, California Code of Regulations (CCR), Section 1532.1, including employee training, employee air monitoring, and dust control. Any debris or soil containing lead-based paint or coatings shall be disposed of at landfills that meet acceptance criteria for the type of lead being disposed.

- All potentially friable asbestos containing materials (ACMs) shall be removed in accordance with National Emission Standards for Air Pollution (NESHAP) guidelines prior to demolition or renovation activities that may disturb ACMs. All demolition activities shall be undertaken in accordance with Cal/OSHA standards contained in Title 8, CCR, Section 1529, to protect workers from asbestos exposure.

- A registered asbestos abatement contractor shall be retained to remove and dispose of ACMs identified in the asbestos survey performed for the site in accordance with the standards stated above.

- Materials containing more than one-percent asbestos are also subject to Bay Area Air Quality Management District (BAAQMD) regulations. Removal of materials containing more than one-percent asbestos shall be completed in accordance with BAAQMD requirements and notifications.

Mitigation Measures:

Site Disturbance Activities – Development of the proposed project could result in exposure of construction workers to potentially hazardous soil. With compliance with the following Mitigation Measures HAZ-1 and HAZ-2, impacts in this regard would be reduced to less than significant levels.

HAZ-1 Prior to the issuance of a site grading permit the Applicant and/or their designee shall retain a qualified environmental professional to conduct a Limited Phase II Environmental Site Assessment for the proposed surface parking lot area (Phase 1 Construction). At a minimum, the Limited Phase II ESA shall include the collection of shallow soil samples for analysis of potential contaminants from previous agricultural operations or the former gas service station (3093 Silver Creek Road). The Phase II ESA shall include testing for Organochlorine Pesticides and pesticide-based metal, arsenic, and lead to determine if the agricultural history of the site has resulted in any shallow soil impacts from these contaminants of concern. Results of the Limited Phase II ESA shall be provided to the City of San José Planning, Building, and Code Enforcement Supervising Planner, and the Environmental Services Department Municipal Compliance Officer.

If results from the Limited Phase II ESA indicate soil contamination above regulatory screening levels, the project Applicant shall obtain regulatory oversight from the County Department of Environmental Health (SCDEH), the State Department of Toxic Substances Control (DTSC), or the Regional Water Quality Control Board (RWQCB), as applicable. Proof of regulatory oversight, if applicable, shall be provided to the supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

HAZ-2 Should any soil cuttings require off-site disposal (for either Phase 1 or Phase 2 of Construction), such soils shall be sampled and characterized prior to disposal. The Applicant shall dispose of such contaminated materials to an appropriate licensed disposal facility. All soil shall be disposed with care upon the receipt of a written approval from the licensed disposal facility site owner. All soil cuttings shall be disposed with care upon the receipt of a written approval from the licensed disposal facility site owner. The documentation for the identified facility and the associated site own written disposal approval shall be provided to the supervising Environmental Planner of the City of San José Planning, Building, and Code Enforcement, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

No Impact. The nearest school to the project site is the LeyVa Middle School, located approximately 0.39-mile northwest of the project site at 1865 Monrovia Drive, San José. No existing or proposed school is situated within 0.25-mile of the project site. As such, no impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

Less Than Significant With Mitigation Incorporated. Government Code Section 65962.5 requires the DTSC and State Water Resources Control Board (SWRCB) to compile and update a regulatory site listing (per the criteria of the Section). The California Department of Health Services is also required to compile and update, as appropriate, a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Section 116395 of the Health and Safety Code. Section 65962.5 requires the local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations (CCR), to compile, as appropriate, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste.

According to the California Environmental Protection Agency (CalEPA) and State Water Resources Control Board's online database GeoTracker, portion of the project site (3093 Silver Creek Road) is currently listed pursuant to Government Code Section 65962.5.[8,9] However, it is acknowledged that the property was historically listed pursuant to Government Code Section 65962.5 and is eligible for closure as of this time of writing.[10] As discussed under Response 4.9(b), impacts in regard to the former on-site gasoline service station as well as the off-site Chevron facility would be minimized with implementation of Mitigation Measures HAZ-1 and HAZ-2. Upon adherence to existing regulations, standards, and guidelines established by the Federal, State, and local agencies related to the handling of hazardous materials during demolition, building construction, and operational activities, as well as implementation of Mitigation Measures HAZ-1 and HAZ-2, impacts in this regard would be reduced to less than significant levels.

Mitigation Measures: Refer to Mitigation Measures HAZ-1 and HAZ-2.

Cortese Listing – The project site is listed pursuant to Government Code Section 65962.5. With compliance with the recommended Mitigation Measures HAZ-1 and HAZ-2, impacts in this regard would be reduced to less than significant levels.

[8] California Environmental Protection Agency, *Cortese List Data Resources*, https://calepa.ca.gov/sitecleanup/corteselist/, accessed December 10, 2021.

[9] State Water Resources Control Board, *GeoTracker, UNOCAL #7002 (T0608501517),* https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0608501517, accessed December 10, 2021.

[10] Ibid.

e. For a project located within an airport land use plan or, where such plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?

Less Than Significant Impact. The nearest airport to the project site is the Reid-Hillview County Airport, located approximately 1.4 miles northwest of the site at 2500 Cunningham Avenue, San José. However, based on the *Comprehensive Land Use Plan Santa Clara County, Reid-Hillview Airport*, the project is located outside of the airport influence area for Reid-Hillview County Airport.[11] As such, less than significant impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

f. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

Less Than Significant Impact. The City has adopted a *City of San José Emergency Operations Plan* (EOP), which provides an overview of the City's approach to emergency operations. It identifies emergency response policies, describes the response and recovery organization, and assigns specific roles and responsibilities to City departments, agencies, and community partners. Project construction and operations would not interfere with any operations of the EOP or the SJFD.

Development of the project would not significantly alter emergency access to persons at the project site. Existing site access at the project site would remain similar to existing conditions. Silver Creek Road and the project driveways would provide emergency vehicle access to all sides of the project building. The City of San José Fire Department requires that all portions of the buildings be within 150 feet of a fire department access road and requires a minimum of 6 feet clearance from the property line along all sides of the buildings. The proposed project would meet the 6-foot clearance and 150-foot requirements. All appropriate fire and emergency access conditions would be incorporated into the project design. Prior to final site plan approval, the Applicant would be required to submit plans to the SJFD for review of compliance with applicable regulations. With implementation of the existing City standards and regulations, site access would be sufficient for emergency vehicles. In addition, as discussed in Section 4.17, *Transportation*, typical activities related to the construction of any development could include lane narrowing and/or lane closures, sidewalk and pedestrian crosswalk closures, and bike lane closures. In the event of any type of closure, clear signage (e.g., closure and detour signs) must be provided to ensure vehicles, pedestrians and bicyclists are able to adequately reach their intended destinations safely. Per City standard practice, the project would be required to submit a construction management plan for City approval. Should temporary partial lane closure be required during the construction phase for any improvements in public right-of-way, the Applicant would be required to address the possible lane closures and/or detours (if necessary). As such, project implementation would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan. Less than significant impact would occur in this regard.

[11] Santa Clara County Airport Land Use Commission, *Comprehensive Land Use Plan Santa Clara County, Reid-Hillview Airport, Figure 8, Airport Influence Area with Zoning*, dated February 25, 2014, https://plandev.sccgov.org/commissions-other-meetings/airport-land-use-commission, accessed November 22, 2021.

Mitigation Measures: No mitigation measures are required.

g. Expose people or structures, either directly or indirectly, to a significant risk or loss, injury or death involving wildland fires?

No Impact. According to the California Department of Forestry and Fire Protection's (CAL FIRE) Fire Hazard Severity Zone Viewer, the project site is not located in or near a State responsibility area nor is the project site designated as a very high fire severity zone.[12,13] Further, the project site and surrounding land uses are developed with urban land uses and do not present a wildland fire hazard. Therefore, no impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

[12] California Department of Forestry and Fire Protection, *Fire Hazard Severity Zones in SRA, Santa Clara County*, adopted by CAL FIRE on November 7, 2007, https://osfm.fire.ca.gov/media/5935/san_jose.pdf, accessed August 27, 2021.

[13] California Department of Forestry and Fire Protection, *Very High Fire Hazard Severity Zones in LRA as Recommended by CAL FIRE, San José, October 2008,* https://osfm.fire.ca.gov/media/5935/san_jose.pdf, accessed August 27, 2021.

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4.10 HYDROLOGY AND WATER QUALITY

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?			✓	
b. Substantially decrease groundwater supplies or interfere with groundwater recharge such that the project may impede sustainable groundwater management of the basin?			✓	
c. Substantially alter the existing drainage pattern of the area, including the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:				
i. Result in substantial erosion or siltation on- or off-site;			✓	
ii. Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;			✓	
iii. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or			✓	
iv. impede or redirect flood flows?			✓	
d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?			✓	
e. Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?			✓	

Environmental Setting

The project is located within the Santa Clara Valley – Santa Clara groundwater basin (Basin) and is currently largely covered with impervious surfaces.[1] According to the California Natural Resources Agency, the Basin is designated as a High priority basin.[2] Additionally, according to the Federal Emergency Management Agency's Flood Map Service Center, the project site is located outside of the 100-year flood hazard area.[3] Due to distance from the nearest water body and Pacific Ocean, the project site is not at risk for tsunamis or a seiche event.

[1] City of San José, *Watershed Maps*, https://www.sanjoseca.gov/your-government/environment/our-creeks-rivers-bay/watershed-maps, accessed November 4, 2021.

[2] California Natural Resources Agency, *Sustainable Groundwater Management Act (SGMA) Basin Prioritization*, https://data.cnra.ca.gov/dataset/sgma-basin-prioritization, accessed December November 4, 2021.

[3] Federal Emergency Management Agency, *Flood Insurance Rate Map #06085C0266H*, *Panel 266*, May 18, 2009.

Regulatory Setting

Federal

United States Environmental Protection Agency

The Clean Water Act (CWA) is managed by the United States Environmental Protection Agency (U.S. EPA) and is intended to establish the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. Specifically, the U.S. EPA implements pollution control programs such as setting wastewater standards for industries and developing national water quality criteria recommendations for pollutants in surface waters. The CWA makes it unlawful for any person to discharge nay pollutant from a point source into navigable waters unless an National Pollutant Discharge Elimination System (NPDES) permit is obtained.[4]

The CWA established the NPDES program to establish limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure discharge does not negatively affect water quality or human health. Within the State of California, the State Water Resource Control Board (SWRCB) and the nine Regional Water Quality Control Boards (RWQCB) manage the implementation and enforcement of the NDPES program.

Federal Emergency Management Agency

The Federal Emergency Management Agency administers the National Flood Insurance Program to address flood hazards. The National Flood Insurance Program provides Flood Insurance Rate Maps (FIRM) which delineate special flood hazard area, base flood elevations, and risk premium zones.[5]

Local

Santa Clara Valley Water District

The Santa Clara Valley Water District (Valley Water) is the local groundwater sustainability agency, which is responsible for preparing the *2016 Ground Water Management Plan* (Alternate Plan), meeting the requirements of California Water Code (Water Code) Section 10733.6, allowing for an Alternative Plan to be submitted to the Department of Water Resources (DWR).[6] The Alternate Plan describes the District's comprehensive groundwater management framework, including existing and potential actions to achieve basin sustainability goals and ensure continued sustainable groundwater management. The Alternate Plan covers the Santa Clara and Llagas

[4] U.S. Environmental Protection Agency, *Summary of the Clean Water Act*, https://www.epa.gov/laws-regulations/summary-clean-water-act#:~:text=The%20Clean%20Water%20Act%20(CWA,quality%20standards%20for%20surface%20waters., accessed March 16, 2022.

[5] Federal Emergency Management Agency, *Flood Maps*, https://www.fema.gov/flood-maps, accessed March 16, 2022.

[6] Santa Clara Valley Water District, *2016 Groundwater Management Plan*, https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2016%20Groundwater%20Management%20Plan.pdf, accessed December 9, 2021.

subbasins, located entirely in Santa Clara County and identified by the DWR as Basins 2-9.02 and 3-3.01, respectively.[7]

Envision San José 2040 General Plan

The following policies are specific to hydrological resources and water quality and apply to the proposed project:

Policy EC-5.1: The City shall require evaluation of flood hazards prior to approval of development projects within a Federal Emergency Management Agency (FEMA) designated floodplain. Review new development and substantial improvements to existing structures to ensure it is designed to provide protection from flooding with a one percent annual chance of occurrence, commonly referred to as the "100-year" flood or whatever designated benchmark FEMA may adopt in the future. New development should also provide protection for less frequent flood events when required by the State.

Policy EC-5.2: Allow development only when adequate mitigation measures are incorporated into the project design to prevent or minimize siltation of streams, flood protection ponds, and reservoirs.

Policy EC-5.7: Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.

Policy EC-5.11: Where possible, reduce the amount of impervious surfaces as a part of redevelopment and roadway improvements through the selection of materials, site planning, and street design.

Policy EC-5.16: Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.

Policy EC-5.17: Implement the Hydromodification Management requirements of the City's Municipal NPDES Permit to manage runoff flow and volume from project sites.

Policy MS-3.1: Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.

Policy MS-3.2: Promote use of green building technology or techniques that can help reduce the depletion of the City's potable water supply, as building codes permit. For example, promote the use of captured rainwater, graywater, or recycled water as the preferred source for non-potable water needs such as irrigation and building cooling, consistent with Building Codes or other regulations.

[7] Ibid.

Policy MS-3.3: Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.

Policy MS-3.5: Minimize areas dedicated to surface parking to reduce rainwater that comes into contact with pollutants.

Policy MS-20.3: Protect groundwater as a water supply source through flood protection measures and the use of stormwater infiltration practices that protect groundwater quality. In the event percolation facilities are modified for infrastructure projects, replacement percolation capacity will be provided.

Policy ER-9.1: Manage stormwater runoff in compliance with the City's Post-Construction Urban Runoff (6-29) and Hydromodification Management (8-14) Policies.

San José Municipal Code

Municipal Code Chapter 20.95, *Storm Water Management*, requires compliance with "City Council Policy 6-29 Post-Construction Urban Runoff Management" (Council Policy 6-29). This policy establishes the City's specific requirements to minimize and treat stormwater runoff from new development and redevelopment projects, consistent with the San Francisco Bay Region NPDES Permit (or "MRP"). The MRP requires regulated projects to include Low Impact Development (LID) practices, such as site design measures, pollutant source control measures, and stormwater treatment facilities aimed to maintain or restore the site's national hydrologic functions. The MRP requires that stormwater treatment measures are properly installed, operated, and maintained.

Other applicable Municipal Code requirements that would apply include Municipal Code Chapter 15.11.1020, *Grading Design Plan*, and Municipal Code Chapter 17.10.540, *Erosion Control Plan*. Chapter 15.11.1020 would require landscaping be designed to minimize soil erosion, runoff, and wastewater while efficiently using water. Chapter 17.10.540 would require measures to substantially reduce the potential for erosion and sedimentation damage within the City.

a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?

Less Than Significant Impact.

Short-Term Construction

Applicable Water Quality Standards and Waste Discharge Requirements

Construction of the proposed project is anticipated to occur in two phases. Phase 1 would include demolition of the existing building, clearing, and paving/striping of an existing asphalt surface parking lot. Phase 2 would include clearing/site grading at the eastern portion of the project site and construction of the new Chick-fil-A building and associated surface parking. Each individual phase would disturb less than one acre. As such, the project would not be subject to the SWRCB's *General Permit for Discharges of Stormwater Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ* (General Construction Permit).

The project would also be required to comply with Municipal Code Chapter 20.95, which includes compliance with Council Policy 6-29 and the MRP as part of project operations.

Short-Term Construction Impacts

Sources of short-term construction-related water pollution associated with the project include the following:

- Handling, storage, and disposal of construction materials containing pollutants;
- Maintenance and operation of construction equipment; and
- Earthmoving activities.

These sources, if not controlled, can generate soil erosion, cause on- and off-site transport via storm runoff or mechanical equipment, and produce contaminants like fuel, oil, antifreeze, or other vehicle-related fluids. Earthmoving activities (i.e., grading and excavation required for project implementation) would result in exposed soils that may be subject to wind and water erosion.

As the proposed project would occur in two phases with each not more than one acre in size, a stormwater pollution prevention plan (SWPPP) would not be required. However, the project would be required to comply with provisions in Municipal Code Chapter 15.11.1020, which would ensure grading of the proposed project's landscaping would be designed to minimize soil erosion, runoff, and wastewater while efficiently using water. Further, compliance with Municipal Code Chapter 17.10.540 would require measures to substantially reduce the potential for erosion and sedimentation damage within the City. As such, the City would require best management practices (BMPs) as part of the Standard Permit Conditions, which would include placement of drain rock filled burlap bags around storm drains, dust control/watering activities, and ceasing of earthmoving activities during high winds, among others. Upon compliance with all applicable Municipal Code requirements and Standard Permit Conditions, short-term construction activities would result in less than significant impacts to water quality.

Long-Term Operations

The project would also be required to comply with Municipal Code Chapter 20.95, which includes compliance with Council Policy 6-29 as part of project operations. The project site consists of predominately impervious surfaces which would decrease upon project completion: refer to Table 4.10-1, *Site Imperviousness*. On-site drainage conditions would increase through proposed bioretention areas and flow-through planter infiltration systems. A new on-site stormwater collection system would be used to capture excess runoff. Additionally, the project would implement stormwater BMPs to minimize impacts related to stormwater and urban runoff. Thus, upon compliance with the requirements of the Municipal Code requirements, including Council Policy 6-29, impacts related to water quality standards and waste discharge requirements during long-term operations would be less than significant.

***Standard Permit Conditions*:**

- Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- All trucks hauling soil, sand, and other loose materials shall be covered and all trucks shall maintain at least two feet of freeboard.
- All paved access roads, parking areas, staging areas and residential streets adjacent to the construction sites shall be swept daily (with water sweepers).
- Vegetation in disturbed areas shall be replanted as quickly as possible.
- All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system shall be installed if requested by the City.
- The project applicant shall comply with the City of San José Grading Ordinance, including implementing erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction.

Mitigation Measures: No mitigation measures are required.

b. Substantially deplete groundwater supplies or interfere with groundwater recharge such that the project may impede sustainable groundwater management of the basin?

Less Than Significant Impact. The project is located within the Santa Clara Valley – Santa Clara groundwater basin (Basin)[8] and is currently largely covered with impervious surfaces. According to the California Natural Resources Agency, the Basin is designated as a High priority basin.[9]

The project site is not currently used for groundwater recharge given its built out nature and location within an existing commercial plaza. As shown in Table 4.10-1, the proposed project would decrease impervious surface area on-site.

[8] City of San José, *Watershed Maps*, https://www.sanjoseca.gov/your-government/environment/our-creeks-rivers-bay/watershed-maps, accessed November 4, 2021.

[9] California Natural Resources Agency, *Sustainable Groundwater Management Act (SGMA) Basin Prioritization*, https://data.cnra.ca.gov/dataset/sgma-basin-prioritization, accessed December November 4, 2021.

Implementation of the project would decrease impervious surface area by 2,898 square feet and increase infiltration on-site through the proposed bioretention areas and flow-through planter infiltration systems and would not create a substantial demand on groundwater sources due to population increase. As such, the project would not significantly change the amount of groundwater available and pumped from local wells. Therefore, the project would not substantially deplete groundwater supplies or interfere with groundwater recharge. Impacts would be less than significant in this regard.

Table 4.10-1
Site Imperviousness

	Existing Conditions	Proposed Conditions	Percentage Change of Impervious Area	Change of Impervious Area
Phase One – Target Parcel	360,069 square feet	360,155 square feet	+0.02%	86 square feet
Phase Two – Chick-fil-A Pad	28,808 square feet	25,824 square feet	-10%	-2,984 square feet
Notes: Measurements are approximate.				
Source: City of San José, *138 Stormwater Evaluation Form*, *CP21-015 (Phase 1)*, and City of San José, *138 Stormwater Evaluation Form*, *CP21-015 (Phase 2)*,				

Mitigation Measures: No mitigation measures are required.

c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

i. Result in substantial erosion or siltation on- or off-site?

Less Than Significant Impact.

Soil disturbance would temporarily occur during project construction due to earth-moving activities such as excavation, soil compaction and moving, and grading. Disturbed soils can be susceptible to high rates of erosion from wind and rain, resulting in sediment transport via stormwater runoff if construction conditions are not properly controlled. As such, project construction could result in erosion or siltation on- or -off-site. The project would be required to comply with provisions within Municipal Code Chapter 17.10.540, which includes measures to substantially reduce the potential for erosion and sedimentation damage within the City. As such, compliance with the City's Municipal Code would reduce impacts in this regard to less than significant levels.

The project proposes BMPs which would reduce erosion or siltation during operation through bioretention areas and flow-through planter infiltration systems. Upon compliance with all applicable permit and Municipal Code requirements, impacts in this regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

ii. Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite?

Less Than Significant Impact. As detailed in Response 4.10(b), the project would decrease impervious surface area on-site by 2,898 square feet (approximately ten percent compared to existing conditions) and increase infiltration through bioretention areas and flow-through planter infiltration systems. Given the decreased impervious surface area, the project is not anticipated to result in flooding on- or off-site. Impacts in this regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

iii. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

Less Than Significant Impact. Refer to Responses 4.10(c)(i) and 4.10(c)(ii).

Mitigation Measures: No mitigation measures are required.

iv. Impede or redirect flood flows?

Less Than Significant Impact. Refer to Responses 4.10(c)(ii) and 4.10(d).

Mitigation Measures: No mitigation measures are required.

d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?

Less Than Significant Impact.

Flood Hazard

According to the Federal Emergency Management Agency's Flood Map Service Center, the project site is located outside of the 100-year flood hazard area.[10] As a result, no impacts would occur in this regard.

Tsunami

A tsunami is a great sea wave, commonly referred to as a tidal wave, produced by a significant undersea disturbance such as tectonic displacement of a sea floor associated with large, shallow earthquakes. According to the General Plan PEIR, only the northernmost extent of the City's Sphere of Influence, adjacent to the San Francisco Bay and Guadalupe and Alviso sloughs, is within a tsunami area, which excludes the project site. Further, the project site is

[10] Federal Emergency Management Agency, *Flood Insurance Rate Map #06085C0266H*, *Panel 266*, May 18, 2009.

located over 35 miles inland from the Pacific Ocean and is located at a sufficient distance so as not to be subject to inundation by tsunami. As such, no impacts would occur in this regard.

Seiche

A seiche is an oscillation of a body of water in an enclosed or semi-enclosed basin, such as a reservoir, harbor, lake, or storage tank. According to the General Plan PEIR, seiches are possible at reservoir, lake, or pond sites within the City; however, the potential for loss of life from this hazard is low. Further, the nearest body of water, Cunningham Lake, is located over 1.85 miles to the north of the project site.[11] Therefore, no impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

e. *Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?*

Less Than Significant Impact.

The *San Francisco Bay Basin (Region 2) Water Quality Control Plan* (Basin Plan) establishes water quality standards for ground and surface waters within the San Francisco Bay region, which includes the City, and is the basis for the San Francisco Bay RWQCB's regulatory program.

The 2014 Sustainable Groundwater Management Act requires local public agencies and groundwater sustainability agencies in high- and medium-priority basins to develop and implement groundwater sustainability plans (GSPs) or prepare an alternative to a groundwater sustainability plan. As previously mentioned, the project site is located within the Santa Clara Valley – Santa Clara groundwater basin (Basin), which is designated as a High priority basin.[12]

Santa Clara Valley Water District (Valley Water): the local groundwater sustainability agency, prepared the *2016 Ground Water Management Plan* (Alternate Plan), which meets the requirements of California Water Code (Water Code) Section 10733.6, allowing for an Alternative Plan to be submitted to the Department of Water Resources (DWR).[13] The Alternate Plan describes the District's comprehensive groundwater management framework, including existing and potential actions to achieve basin sustainability goals and ensure continued sustainable groundwater management. The Alternate Plan covers the Santa Clara and Llagas subbasins, located entirely in Santa Clara County and identified by the DWR as Basins 2-9.02 and 3-3.01, respectively.[14]

Project construction and operations would not conflict with or obstruct implementation of the San Francisco Bay RWQCB's Basin Plan or Alternate Plan. Further, the proposed project would support Alternate Plan Goal 5.2.2, *Groundwater Quality Protection*, which seeks to protect groundwater from contaminants, including saltwater intrusion. As previously

[11] Google Earth Pro, 2021, accessed December 28, 2021.

[12] California Department of Water Resources, *SGMA Basin Prioritization Dashboard*, https://gis.water.ca.gov/app/bp-dashboard/final/, accessed December 9, 2021.

[13] Santa Clara Valley Water District, *2016 Groundwater Management Plan*, https://s3.us-west-2.amazonaws.com/assets.valleywater.org/2016%20Groundwater%20Management%20Plan.pdf, accessed December 9, 2021.

[14] Ibid.

mentioned, the project would decrease impervious areas while also increasing on-site infiltration through bioretention areas and flow-through planter infiltration systems. As such, impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

4.11 LAND USE AND PLANNING

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Physically divide an established community?			✓	
b. Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?			✓	

Environmental Setting

Per the General Plan Land Use/Transportation Diagram, the project site is designated Neighborhood/Community Commercial. The Neighborhood/Community Commercial designation allows for development of commercial uses that serve the communities in neighboring areas with a floor area ratio (FAR) up to 3.5. The project site is zoned CN (Commercial Neighborhood).

The project site is situated in the E. Capitol Expressway/Silver Creek Road Urban Village. The General Plan established the Urban Village concept to create a policy framework to direct most of the City's new job and housing growth to occur within walkable and bicycle friendly Urban Villages that have good access to transit and other existing infrastructure and facilities. The General Plan identifies 58 Urban Villages within San José. The City is in the process of preparing Urban Village Plans for each Urban Village area to assist in implementing the General Plan vision in each area at a finer level of detail. The City has not yet adopted an Urban Village Plan for the E. Capitol Expressway/Silver Creek Road Urban Village. Thus, the underlying Neighborhood/ Community Commercial land use designation standards apply to the project site.

Regulatory Setting

Local

Envision San José 2040 General Plan

The policies specific to land use and planning and apply to the proposed project are identified in Response 4.11(b), Table 4.11-1*, Project Consistency with Applicable General Plan Land Use Element Policies*.

City of San José Municipal Code

According to Municipal Code Section 20.40.010, *Commercial zoning districts*, the CN district is intended to provide for neighborhood serving commercial uses without an emphasis on pedestrian orientation except within the context of a single development. The type of development supported by this district includes neighborhood centers, multi-tenant commercial development along city connector and main streets, and small corner commercial establishments.

According to Municipal Code Table 20-90, *Commercial Zoning Districts and Public/Quasi-Public Zoning District Use Regulations*, the proposed restaurant (public eating establishment) is a permitted use; however, the proposed drive-thru lanes associated with the restaurant is conditionally permitted.

a. Physically divide an established community?

Less Than Significant Impact. The project site encompasses a portion of an existing commercial surface parking lot and former O'Reilly Auto Parts retail store; refer to Exhibit 2-2, *Site Vicinity*. Surrounding uses primarily consist of commercial uses in the regional shopping center (anchored by Target), as well as commercial/retail uses to the north (Silver Creek Plaza), east, and west. The project proposes to demolish the existing retail building, construct a new Chick-fil-A restaurant and associated dual drive-thru lane, and reconstruct the surface parking area within the regional shopping center. Development of the project would not physically divide an established community as it would not introduce any physical divisions or barriers between the site and surrounding area. As such, less than significant impacts would result in this regard.

Mitigation Measures: No mitigation measures are required.

b. Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?

Less Than Significant Impact. The following analysis evaluates the project's consistency with applicable land use plans, policies, and regulations, including the General Plan and Zoning Code.

General Plan Consistency Analysis

Per the General Plan Land Use/Transportation Diagram, the project site is designated Neighborhood/Community Commercial. The Neighborhood/Community Commercial designation allows for development of commercial uses that serve the communities in neighboring areas with a floor area ratio (FAR) up to 3.5. The proposed commercial building is an approximately 3,565-square foot, one-story building on a 0.74-acre site. Thus, the proposed use (commercial) has a 0.1 FAR and would be permitted under the Neighborhood/Community Commercial General Plan land use designation.

It is acknowledged that the project site is also situated in the E. Capitol Expressway/Silver Creek Road Urban Village. The General Plan established the Urban Village concept to create a policy framework to direct most of the City's new job and housing growth to occur within walkable and bicycle friendly Urban Villages that have good access to transit and other existing infrastructure and facilities. The General Plan identifies 58 Urban Villages within San José. The City is in the process of preparing Urban Village Plans for each Urban Village area to assist in implementing the General Plan vision in each area at a finer level of detail. The City has not yet adopted an Urban Village Plan for the E. Capitol Expressway/Silver Creek Road Urban Village. Thus, the underlying Neighborhood/Community Commercial land use designation standards apply to the project site.

Table 4.11-1, *Project Consistency with Applicable General Plan Land Use Element Policies*, analyzes the project's consistency with applicable goals and policies in the General Plan Land Use Element. As analyzed in Table 4.11-1, the project would be consistent with all applicable General Plan Lane Use Element policies.

Table 4.11-1
Project Consistency with Applicable General Plan Land Use Element Policies

Applicable General Plan Land Use Element Policies	Project Consistency Analysis
Goal LU-1 – General Land Use. Establish a land use pattern that fosters a more fiscally and environmentally sustainable, safe, and livable city.	
LU-1.1 Foster development patterns that will achieve a complete community in San José, particularly with respect to increasing jobs and economic development and increasing the City's jobs-to-employed resident ratio while recognizing the importance of housing and a resident workforce.	Consistent. The project proposes to redevelop a site currently occupied by a surface parking lot and former O'Reilly Auto Parts retail store into a Chick-fil-A drive-thru restaurant that would generate approximately 80 full and/or part time employees. Thus, the project would increase jobs and economic development in the area compared to existing conditions.
LU-1.2 Encourage Walking. Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.	Consistent. The project site is currently accessible to pedestrians via sidewalks along Silver Creek Road, Lexann Avenue, and Capitol Expressway. Additionally, there are existing Americans with Disabilities Act (ADA)-accessible walkways from the sidewalks into the site's surface parking lot. The proposed development would construct an additional ADA-accessible walkway from the sidewalk along Silver Creek Road towards the proposed restaurant; refer to Exhibit 2-4, *Chick-fil-A Site Plan*. Additionally, the project proposes landscaping along the main entry driveway along Silver Creek Road and along the street frontages of Silver Creek Road and Lexann Avenue. New street trees are also proposed to replace existing trees in poor condition along Silver Creek Road. Thus, the project would create safe, attractive, and accessible pedestrian connections to the restaurant.
LU-1.3 Create safe, attractive, and accessible pedestrian connections between developments and to adjacent public streets to minimize vehicular miles traveled.	Consistent. It is noted that Policy LU-1.3 is identical to Policy LU-1.2 in the General Plan. Refer to response to Policy LU-1.2.
LU-1.7 Locate employee-intensive commercial and industrial uses within walking distance of transit stops. Encourage public transit providers to provide or increase services to areas with high concentrations of residents, workers, or visitors.	Consistent. The project would generate approximately 80 new full and/or part time employees on-site and the site is located across the street from an existing bus stop serviced by Valley Transportation Authority Route 70 along Silver Creek Road. Additional transit stops in the vicinity are also located along Silver Creek Road and Capitol Expressway.

Table 4.11-1 (Continued)
Project Consistency with Applicable General Plan Land Use Element Policies

Applicable General Plan Land Use Element Policies	Project Consistency Analysis
Goal LU-4 – Commercial. Establish commercial uses that maximize revenue to the City and provide employment for its residents in order to achieve fiscal sustainability and our desired jobs per employed resident ratio.	
LU-4.1 Retain existing commercial lands to provide jobs, goods, services, entertainment, and other amenities for San José's workers, residents, and visitors.	Consistent. The project site is designated and zoned for commercial use. Thus, the proposed development would be permitted under the site's existing land use designation and zoning and would provide food services to the project area's workers, residents, and visitors.
LU-4.2 In order to attract shoppers from throughout the region, encourage distinctive regional-serving commercial uses on sites near the City's borders. Give preference to locations having good access to freeways and major arterials or near multimodal transit stations.	Consistent. The proposed Chick-fil-A restaurant would attract customers in the project vicinity and is located near Interstate 101 and various transit stops.
LU-4.3 Concentrate new commercial development in identified growth areas and other sites designated for commercial uses on the Land Use/Transportation Diagram. Allow new and expansion of existing commercial development within established neighborhoods when such development is appropriately located and designed, and is primarily neighborhood serving.	Consistent. The project is located in the E. Capitol Expressway/Silver Creek Road Urban Village and proposes a new commercial use within an established regional shopping center. Thus, the proposed project would provide a new neighborhood serving commercial development in the established Urban Village.
Goal LU-5 – Neighborhood Serving Commercial. Locate viable neighborhood-serving commercial uses throughout the City in order to stimulate economic development, create complete neighborhoods, and minimize vehicle miles traveled.	
LU-5.1 In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.	Consistent. Refer to response to Policies LU-1.1 and LU-1.2.
LU-5.2 To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the City, including identified growth areas and areas where there is existing or future demand for such uses.	Consistent. Refer to response to Policies LU-1.2 and LU-4.3.
LU-5.3 Encourage new and intensification of existing commercial development, including stand-alone, vertical mixed-use, or integrated horizontal mixed-use projects, consistent with the Land Use / Transportation Diagram.	Consistent. The project site is designated and zoned for commercial use. The proposed development would redevelop a site currently occupied by a surface parking lot and former O'Reilly Auto Parts retail store into a stand-alone Chick-fil-A drive-thru restaurant. The proposed use is consistent with the site's land use designation and zoning.
LU-5.4 Require new commercial development to facilitate pedestrian and bicycle access through techniques such as minimizing building separation from public sidewalks; providing safe, accessible, convenient, and pleasant pedestrian connections; and including secure and convenient bike storage.	Consistent. Refer to response to Policy LU-1.2. Additionally, the project would provide short-term bicycle storage for up to two bicycles as well as long-term employee bicycle storage.

Table 4.11-1 (Continued)
Project Consistency with Applicable General Plan Land Use Element Policies

Applicable General Plan Land Use Element Policies	Project Consistency Analysis
LU-5.5 Encourage pedestrian and vehicular connections between adjacent commercial properties with reciprocal-access easements to encourage safe, convenient, and direct pedestrian access and "one-stop" shopping. Encourage and facilitate shared parking arrangements through parking easements and cross-access between commercial properties to minimize parking areas and curb-cuts.	Consistent. Refer to response to Policy LU-1.2. Additionally, the proposed Chick-fil-A restaurant would be located within an existing regional shopping center anchored by Target. The surface parking lot for the shopping center would be shared between the existing Target and proposed Chick-fil-A restaurant.
LU-5.6 Encourage and facilitate the upgrading, beautifying, and revitalization of existing strip commercial areas and shopping centers. Minimize the visual impact of large parking lots by locating them away from public streets.	Consistent. Refer to response to Policy LU-1.2. Further, the project would redevelop a site that is currently occupied by a former O'Reilly Auto Parts retail store with a new restaurant with indoor and outdoor dining areas and landscaping. The Chick-fil-A restaurant building would also be located along the street frontage of Silver Creek Road and thus, would minimize the existing visual impact of the existing large surface parking lot.
LU-5.7 Encourage retail, restaurant, and other active uses as ground-floor occupants in identified growth areas and other locations with high concentrations of development.	Consistent. The proposed development would be a stand-alone, single-story restaurant building within an established regional shopping center in the E. Capitol Expressway/Silver Creek Road Urban Village.
LU-5.8 Encourage outdoor cafes and other outdoor uses in appropriate commercial areas to create a vibrant public realm, maximize pedestrian activity, and capitalize on San José's temperate climate.	Consistent. The proposed restaurant would include indoor and outdoor seating. Specifically, the project would provide 38 indoor seats and 28 outdoor seats. Landscaping would be provided throughout the project site, including the outdoor dining area, which would also be accessible via the proposed accessible walkway from the existing sidewalk along Silver Creek Road.

Source: City of San José, *Envision San José 2040 General Plan*, amended September 30, 2021.

Zoning Code Consistency Analysis

The project site is zoned CN (Commercial Neighborhood). According to Municipal Code Section 20.40.010, the CN district is intended to provide for neighborhood serving commercial uses without an emphasis on pedestrian orientation except within the context of a single development. The type of development supported by this district includes neighborhood centers, multi-tenant commercial development along city connector and main streets, and small corner commercial establishments.

According to Municipal Code Table 20-90, the proposed restaurant (public eating establishment) is a permitted use; however, the proposed drive-thru lanes associated with the restaurant is conditionally permitted. As such, a Conditional Use Permit is requested as part of the project.

Table 4.11-2, *Project Consistency with Commercial Neighborhood (CN) District*, analyzes the project's consistency with development standards for commercial uses in the CN zone, and more specifically, consistency with Municipal Code Chapters 20.40, *Commercial Zoning Districts and Public/Quasi-Public Zoning District*, and 20.90, *Parking and Loading*.

Table 4.11-2
Project Consistency with Commercial Neighborhood (CN) District

Development Standard	Code Requirement	Proposed Project	Is Project Consistent With Requirement?
Minimum Lot Area	6,000 square feet	32,234 square feet (0.74 acres)	Yes
Minimum Setbacks			
Front	10 feet	10 feet	Yes
Maximum Height	50 feet	21 feet	Yes
Vehicular Parking	For restaurant building (Public eating establishments): 1 space per 2.5 seats or 1 space per 40 square feet of dining area, which ever requires the greater number of parking spaces For outdoor dining area (Outdoor dining incidental to a public eating establishment or a retail establishment): 0 spaces up to 25 seats, 1 space per 2.5 seats over 25 seats	The restaurant provides 38 indoor seats and thus, is required to provide 16 vehicular parking spaces. The project provides 28 outdoor seats and thus, is required to provide two additional vehicular space. In total, the project is required to provide 18 vehicular parking spaces. The project provides 28 vehicular spaces.	Yes
Bicycle Parking	For restaurant building (Public eating establishments): 1 space per 50 seats or 1 per 800 square feet of dining area, which ever requires the greater number of parking spaces For outdoor dining area (Outdoor dining incidental to a public eating establishment or a retail establishment): 1 space per 50 seats	The project provides 38 indoor seats in 704 square feet of indoor dining area and thus, is required to provide one bicycle space. No additional bicycles spaces are required based on the outdoor dining area standard. The project provides two bicycles spaces.	Yes
Attached Signs	No more than one attached sign shall be permitted for each separate ground-level occupancy frontage. The aggregate sign area of all attached signs on a ground-level occupancy frontage shall not exceed	Development of the proposed Chick-fil-A would install associated retail signage. The project would be required to comply with the City's sign regulations and, as such, would require a separate sign permit. As such, the project would be required to comply with all sign permit requirements upon approval of such permit.	Yes

Table 4.11-2 (Continued)
Project Consistency with Commercial Neighborhood (CN) District

Development Standard	Code Requirement	Proposed Project	Is Project Consistent With Requirement?
	one square foot for each linear foot of such occupancy frontage. Signs facing an abutting nonresidential parcel shall be at least ten feet from the property line of such nonresidential parcel, unless the abutting nonresidential parcel contains a parking lot or driveway at its nearest point to the sign, in which case, no setback is required.		

Source: City of San José, *City of San José Municipal Code*, codified through Ordinance No. 30676, adopted October 19, 2021.

Conclusion

Overall, the project would be consistent with the General Plan, Zoning Code, and relevant City policies upon approval of a Conditional Use Permit. Therefore, the project would not conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. Impacts would be less than significant.

Mitigation Measures: No mitigation measures are required.

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4.12 MINERAL RESOURCES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?				✓
b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?				✓

Environmental Setting

According to the California Department of Conservation, Division of Mine Reclamation (DMR), the City has no active mines.[1] According to the General Plan PEIR, there are regionally known mineral resources containing mineral deposits (Aggregate Materials). However, there are no proposals for new mining operations in the City, and the City has no lands zoned for mining activities, including the project site.

Regulatory Setting

State

California Department of Conservation

The California Department of Conservation's Division of Mine Reclamation (DMR) is intended to provide a measure of oversight for local governments as they administer the Surface Mining and Reclamation Act (SMARA) within their respective jurisdictions. SMARA includes an online data portal used for mineral lands classification produced by the State Geologist.[2]

Local

Envision San Jose 2040 General Plan

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in San José and help tie individual projects to the vision for the surrounding area and the city as a whole. The following policies are specific to mineral resources and apply to the proposed project:

> **Policy ER-11.4:** Carefully regulate the quarrying of commercially usable resources, including sand and gravel, to mitigate potential environmental effects such as dust, noise and erosion.

[1] California Department of Conservation, Division of Mine Reclamation, *Mines Online*, https://maps.conservation.ca.gov/cgs/informationwarehouse/index.html?map=mlc, accessed on August 26, 2021.

[2] California Department of Conservation, Division of Mine Reclamation, *Home*, https://www.conservation.ca.gov/dmr, accessed on March 16, 2022.

Policy ER-11.5: When approving quarrying operations, require the preparation and implementation of reclamation plans for the contouring and revegetation of sites after quarrying activities cease.

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?

No Impact. As discussed above, the City has no active mines. Although there are regionally known mineral resources containing mineral deposits (Aggregate Materials), there are no proposals for new mining operations in the City, and the City has no lands zoned for mining activities, including the project site. As the project site consists of developed land and has no known mineral resources on-site, project implementation would not result in the loss of availability of a known mineral resource that would be of value to the region and residents of the State. No impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

No Impact. Refer to Response 4.12(a). The project would not result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan. No impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

4.13 NOISE

Would the project result in:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?			✓	
b. Generation of excessive ground borne vibration or ground borne noise levels?			✓	
c. For a project located within the vicinity of a private airstrip or an airport land use plan or, where such plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?				✓

Environmental Setting

Sound is mechanical energy transmitted by pressure waves in a compressible medium such as air. Sound is characterized by both its amplitude and frequency (or pitch). The human ear does not hear all frequencies equally. In particular, the ear de-emphasizes low and very high frequencies. To better approximate the sensitivity of human hearing, the A-weighted decibel scale (dBA) has been developed. On this scale, the human range of hearing extends from approximately 3 dBA to around 140 dBA.

Noise is generally defined as unwanted or excessive sound, which can vary in intensity by over one million times within the range of human hearing; therefore, a logarithmic scale, known as the decibel scale (dB), is used to quantify sound intensity. Noise can be generated by a number of sources, including mobile sources such as automobiles, trucks, and airplanes, and stationary sources such as construction sites, machinery, and industrial operations. Noise generated by mobile sources typically attenuates (reduces) at a rate between 3 dBA and 4.5 dBA per doubling of distance. The rate depends on the ground surface and the number or type of objects between the noise source and the receiver. Hard and flat surfaces, such as concrete or asphalt, have an attenuation rate of 3 dBA per doubling of distance. Soft surfaces, such as uneven or vegetated terrain, have an attenuation rate of about 4.5 dBA per doubling of distance. Noise generated by stationary sources typically attenuates at an approximate rate between 6.0 dBA and 7.5 dBA per doubling of distance.

There are a number of metrics used to characterize community noise exposure, which fluctuate constantly over time. One such metric, the equivalent sound level (L_{eq}), represents a constant sound that, over the specified period, has the same sound energy as the time-varying sound. Noise exposure over a longer period of time is often evaluated based on the Day-Night Sound Level (L_{dn}). This is a measure of 24-hour noise levels that incorporates a 10-dBA penalty for sounds occurring between 10:00 p.m. and 7:00 a.m. The penalty is intended to reflect the increased human sensitivity to noises occurring during nighttime hours, particularly at times when people are sleeping and there are lower ambient noise conditions. Typical L_{dn} noise levels for light and medium density residential areas range from 55 dBA to 65 dBA.

Two of the primary factors that reduce levels of environmental sounds are increasing the distance between the sound source to the receiver and having intervening obstacles such as walls, buildings, or terrain features between the sound source and the receiver. Factors that act to increase the loudness of environmental sounds include moving the sound source closer to the receiver, sound enhancements caused by reflections, and focusing caused by various meteorological conditions.

Existing Noise Environment

Existing Stationary Noise Levels

The project area is highly urbanized, consisting of primarily commercial and residential uses. The primary sources of stationary noise in the project vicinity are urban-related activities (i.e., mechanical equipment and parking areas). The noise associated with these sources may represent a single-event noise occurrence, short-term, or long-term/continuous noise.

Existing Mobile Noise Levels

The majority of the existing noise in the project area is generated from vehicle sources along Capitol Expressway, King Road, and Silver Creek Road. As shown in Table 4.13-1, *Existing Traffic Noise Levels*, the highest mobile noise sources adjacent to the project site were modeled at 69.7 dBA at 100 feet from roadway centerline along Capitol Expressway south of Silver Creek Road.

Table 4.13-1
Existing Traffic Noise Levels

Roadway Segment	Existing Conditions				
	ADT	dBA @ 100 Feet from Roadway Centerline	Distance from Roadway Centerline to: (Feet)		
			60 CNEL Noise Contour	65 CNEL Noise Contour	70 CNEL Noise Contour
Capitol Expressway					
South of Silver Creek Road	52,430	69.7	442	205	95
Silver Creek Road and Aborn Road	50,460	69.5	431	200	93
North of Aborn Road	36,710	68.3	360	167	-
King Road					
North of Aborn Road	18,380	61.7	130	60	-
Silver Creek Road					
Aborn Road and Lexann Avenue	15,400	60.9	116	54	-
Lexann Avenue and Capitol Expressway	26,680	63.3	167	77	-
East of Capitol Expressway	34,400	64.4	197	92	-
Aborn Road					
West of Silver Creek Road	3,880	52.2	-	-	-
Silver Creek Road and Capitol Expressway	12,570	61.4	123	57	-
East of Capitol Expressway	35,880	66.2	259	120	-
Lexann Avenue					
West of Silver Creek Road	4,800	57.0	63	-	-

Notes: ADT = average daily trips; dBA = A-weighted decibels; CNEL = community noise equivalent level; "-" = noise contour within roadway right-of-way.
Source: Based on traffic data within the *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis* prepared by Hexagon Transportation Consultants, Inc. (dated January 6, 2022).

Noise Measurements

In order to quantify existing ambient noise levels in the project area, Bollard Acoustical Consultants, Inc. conducted three noise measurements in the site vicinity on November 19, 2021; refer to Appendix G, *Acoustical Analysis*. The noise measurement locations are representative of typical existing noise exposure at and immediately adjacent to the site. Ten-minute measurements were taken between 1:30 p.m. and 2:30 p.m. at each location during the day. Short-term (L_{eq}) measurements are considered representative of the noise levels throughout the day. Noise measurements were taken during "off-peak" traffic noise hours (9:00 a.m. through 3:00 p.m.) as this provides a more conservative baseline. During rush hour traffic, vehicle speeds and heavy truck volumes are often low. Free-flowing traffic conditions just before or after rush hour often yield higher noise levels.[1] The average noise levels and sources of noise measured at each location are identified in Table 4.13-2, *Noise Measurements*.

Table 4.13-2
Noise Measurements

Site No.	Location	L_{eq} (dBA)	L_{min} (dBA)	L_{max} (dBA)	Peak (dBA)	Time
1	East of Capitol Expressway and Silver Creek Road Intersection	74.3	60.7	90.4	101.1	2:00 p.m.
2	South of Towers Land and Lexann Avenue Intersection	63.5	49.7	80.4	92.4	1:20 p.m.
3	North of Aborn Road and Silver Creek Road Intersection	62.8	53.2	75.3	87.3	1:39 p.m.
Note: dBA = A-weighted decibels; L_{eq} = Equivalent Sound Level; L_{min} = Minimum Sound Level; L_{max} = Maximum Sound Level						
Source: Bollard Acoustical Consultants, Inc., November 19, 2021.						

Meteorological conditions were cloudy skies, warm temperatures, with light wind speeds (seven miles per hour), and low humidity. Noise monitoring equipment used for the ambient noise survey consisted of a Larson Davis SoundExpert LxT Class 1 Sound Level Meter equipped with a Type 377B02 pre-polarized microphone. The monitoring equipment complies with applicable requirements of the American National Standards Institute for Type I (precision) sound level meters. Measured noise levels during the daytime measurements ranged from 62.8 to 74.3 dBA L_{eq}.

Noise Sensitive Receptors

Noise-sensitive land uses are generally considered uses where noise exposure could result in health-related risks to individuals, as well as places where a quiet environment is an essential element of their intended purpose. Residential dwellings are of primary concern because of the potential for increased and prolonged exposure of individuals to both interior and exterior noise levels. Additional land uses such as parks, historic sites, cemeteries, and recreation areas are considered sensitive to increases in exterior noise levels. Schools, churches, hotels, libraries, and other places where low interior noise levels are essential are also considered noise-sensitive land uses. The closest sensitive receptors are residential uses located approximately 370 feet to the southeast of the project site.

[1] California Department of Transportation, *Technical Noise Supplement to the Traffic Noise Analysis Protocol*, September 2013.

Regulatory Setting

Federal

U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) offers guidelines for community noise exposure in the *Noise Effects Handbook – A Desk Reference to Health and Welfare Effects of Noise*. The guidelines consider occupational noise exposure as well as noise exposure in homes. The EPA recognizes an exterior noise level of 55 dBA L_{dn} as a general goal to protect the public from hearing loss, activity interference, sleep disturbance, and annoyance. The EPA and other Federal agencies have adopted suggested land use compatibility guidelines that indicate that residential noise exposures of 55 dBA L_{dn} to 65 dBA L_{dn} are acceptable. However, the EPA notes that these levels are not regulatory goals, but are levels defined by a negotiated scientific consensus, without concern for economic and technological feasibility or the needs and desires of any particular community.

State

Office of Planning and Research

The State of California Office of Planning and Research *General Plan Noise Element Guidelines* include recommended exterior and interior noise level standards for local jurisdictions to identify and prevent the creation of incompatible land uses due to noise. The *General Plan Noise Element Guidelines* contain a land use compatibility table that describes the compatibility of various land uses with a range of environmental noise levels in terms of the Community Noise Equivalent Level (CNEL).

Local

Envision San José 2040 General Plan

The Noise Element of the Envision San José 2040 General Plan (General Plan), adopted November 1, 2011, establishes noise standards for planning purposes to examine outdoor and indoor noise levels acceptable for different uses. The standards relate to existing conditions in the City so that they are realistically enforceable and consistent with other General Plan policies. The Noise Element seeks to limit the impacts of noise on residents and employees in two ways. The Noise Element contains standards to determine the suitability of new land uses depending upon the extent of noise exposure in the area. The Noise Element's policies limit the extent of new noise sources that proposed development can add to existing noise levels in the surrounding area and through implementation of the City's Noise Ordinance, which limits what is commonly described as "nuisance noise." The following lists applicable noise goals and policies that apply to the proposed project obtained from the General Plan:

Goal EC-1: Community Noise Levels and Land Use Compatibility. Minimize the impact of noise on people through noise reduction and suppression techniques, and through appropriate land use policies.

Policy EC-1.1: Locate new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable standards and guidelines for land uses in San José include:

Interior Noise Levels

- The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA Day/Night Average Sound Level (DNL). Include appropriate site and building design, building construction and noise attenuation techniques in new development to meet this standard. For sites with exterior noise levels of 60 dBA DNL or more, an acoustical analysis following protocols in the City-adopted California Building Code is required to demonstrate that development projects can meet this standard. The acoustical analysis shall base required noise attenuation techniques on expected Envision General Plan traffic volumes to ensure land use compatibility and General Plan consistency over the life of this plan.

Exterior Noise Levels

- The City's acceptable exterior noise level objective is 60 dBA DNL or less for residential and most institutional land uses. The acceptable exterior noise level objective is established for the City, except in the environs of the San José International Airport and the Downtown, as described below:

  - For new multi-family residential projects and for the residential component of mixed-use development, use a standard of 60 dBA DNL in usable outdoor activity areas, excluding balconies and residential stoops and porches facing existing roadways. Some common use areas that meet the 60 dBA DNL exterior standard will be available to all residents. Use noise attenuation techniques such as shielding by buildings and structures for outdoor common use areas. On sites subject to aircraft overflights or adjacent to elevated roadways, use noise attenuation techniques to achieve the 60 dBA DNL standard for noise from sources other than aircraft and elevated roadway segments.

  - For single family residential uses, use a standard of 60 dBA DNL for exterior noise in private usable outdoor activity areas, such as backyards.

Table 4.13-3, *Land Use Compatibility Guidelines for Community Noise in San José*, provides the range of acceptable noise levels for various land uses in the City, as established by the General Plan.

Table 4.13-3
Land Use Compatibility Guidelines for Community Noise in San José

Land Use Category	Exterior Noise Exposure (DNL in dBA)		
	Normally Acceptable	Conditionally Acceptable	Clearly Unacceptable
Residential, Hotels and Motels, Hospitals and Residential Care[1]	50 – 60	60 – 75	75 – 85
Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds	50 – 65	65 – 80	80 – 85
Schools, Libraries, Museums, Meeting Halls, Churches	50 – 60	60 – 75	75 – 85
Office Buildings, Business Commercial, and Professional Offices	50 – 70	70 – 80	80 – 85
Sports Arena, Outdoor Spectator Sports	50 – 70	70 – 80	80 – 85
Public and Quasi-Public Auditoriums, Concert Halls, Amphitheaters	NA	50 – 70	70 – 85

[1] Noise mitigation to reduce interior noise levels pursuant to Policy EC-1.1 is required.

NA: Not Applicable; Ldn/DNL: average day/night sound level.

Notes:

Normally Acceptable - Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

Conditionally Acceptable - Specific land use may be permitted only after detailed analysis of the noise reduction requirements and needed noise insulation features included in the design.

Clearly Unacceptable – New construction or development should not be undertaken.

Source: City of San José, *Envision San José 2040 General Plan*, amended November 1, 2011.

Policy EC-1.2: Minimize the noise impacts of new development on land uses sensitive to increased noise levels (Categories 1, 2, 3 and 6) by limiting noise generation and by requiring use of noise attenuation measures such as acoustical enclosures and sound barriers, where feasible. The City considers significant noise impacts to occur if a project would:

- Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable"; or

- Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" level.

Policy EC-1.3: Mitigate noise generation of new nonresidential land uses to 55 dBA DNL at the property line when located adjacent to existing or planned noise sensitive residential and public/quasi-public land uses.

Policy EC-1.4: Include appropriate noise attenuation techniques in the design of all new General Plan streets projected to adversely impact noise sensitive uses.

Policy EC-1.7: Require construction operations within San José to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:

- Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

For such large or complex projects, a construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints will be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.

Policy EC-1.9: Require noise studies for land use proposals where known or suspected loud intermittent noise sources occur which may impact adjacent existing or planned land uses. For new residential development affected by noise from heavy rail, light rail, BART or other single-event noise sources, implement mitigation so that recurring maximum instantaneous noise levels do not exceed 50 dBA L_{max} in bedrooms and 55 dBA L_{max} in other rooms.

Action EC-1.14: Require acoustical analyses for proposed sensitive land uses in areas with exterior noise levels exceeding the City's noise and land use compatibility standards to base noise attenuation techniques on expected Envision General Plan traffic volumes to ensure land use compatibility and General Plan consistency.

Policy EC-2.3: Require new development to minimize continuous vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, including ruins and ancient monuments or building that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction. Equipment or activities typical of generating continuous vibration include but are not limited to: excavation equipment; static compaction equipment; vibratory pile drivers; pile-extraction equipment; and vibratory compaction equipment. Avoid use of impact pile drivers within 125 feet of any buildings, and within 300 feet of historical buildings, or buildings in poor condition. On a project-specific basis, this distance of 300 feet may be reduced where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction. Transient vibration impacts may exceed a vibration limit of 0.08 in/sec PPV only when and where warranted by a technical study by a qualified professional that verifies that there will be virtually no risk of cosmetic damage to sensitive buildings from the new development during demolition and construction.

City of San José Municipal Code

Section 20.100.450, *Hours of Construction Within 500 Feet of a Residential Unit,* of the *San José Municipal Code* (Municipal Code), restricts construction hours within 500 feet of a residential unit to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday, unless otherwise expressly allowed in a Development Permit or other planning approval.[2]

[2] The Municipal Code does not establish quantitative noise limits for demolition or construction activities occurring in the City.

Section 20.40.600, *Performance Standards*, establishes noise levels not to be exceeded at any property line; refer to Table 4.13-4, *Noise Standards*, below.

Table 4.13-4
Noise Standards

Land Use	Maximum Noise Level in Decibels at Property Line
Commercial or Public/Quasi-Public use adjacent to a property used or zoned for residential purposes	55
Commercial or Public/Quasi-Public use adjacent to a property used or zoned for commercial or other non-residential purposes	60
Source: City of San José, *City of San José Municipal Code*, updated on July 8, 2020.	

City of San Jose Noise and Vibration Thresholds

Appendix G of the CEQA Guidelines states that a project would normally be considered to have significant noise impacts if noise levels generated by the project conflict with adopted environmental standards or plans or if ambient noise levels at sensitive receptors would be substantially increased over a permanent, temporary, or periodic basis. Consistent with Appendix G, the following applicable criteria was used to evaluate the significance of environmental noise resulting from the project:

- A significant noise impact would be identified if the project would expose persons to or generate noise levels that would exceed applicable noise standards presented in the General Plan.

- Construction: The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

- Operation: A significant impact would be identified if the project would substantially increase noise levels at sensitive receptors in the vicinity. A substantial increase would occur if: a) the noise level increase is 5 dBA DNL or greater where the noise levels would remain “Normally Acceptable” or b) the noise level increase is 3 dBA DNL or greater where noise levels would equal or exceed the “Normally Acceptable” level as indicated in Table EC-1 of the General Plan.

- Vibration: For sensitive historic structures, including ruins and ancient monuments or building that are documented to be structurally weakened, a continuous vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A continuous vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.

a. Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

Less Than Significant Impact.

Short-Term Construction Impacts

Construction of the project is anticipated to include two phases. Phase 1 would involve demolition, grading, and paving, lasting for approximately three months. Phase 2 would involve demolition, grading, building construction, paving, and architectural coating applications, lasting for approximately six months. This would result in an estimated active period of construction related activities for nine months. Groundborne noise and other types of construction-related noise impacts would typically occur during the earthwork phase. This phase of construction has the potential to create the highest levels of noise. Typical noise levels generated by construction equipment are shown in Table 4.13-5, *Maximum Noise Levels Generated by Construction Equipment*. Operating cycles for these types of construction equipment may involve one or two minutes of full power operation followed by three to four minutes at lower power settings. Other primary sources of acoustical disturbance would be due to random incidents, which would last less than one minute (such as dropping large pieces of equipment or the hydraulic movement of machinery lifts).

Table 4.13-5
Maximum Noise Levels Generated by Construction Equipment

Type of Equipment	Acoustical Use Factor[1]	Reference L_{max} at 50 Feet (dBA)	L_{max} at 370 Feet (dBA)
Concrete Saw	20	90	73
Crane	16	81	64
Concrete Mixer Truck	40	79	62
Backhoe	40	78	61
Dozer	40	82	65
Excavator	40	81	64
Forklift	40	78	61
Paver	50	77	60
Roller	20	80	63
Tractor	40	84	67
Water Truck	40	80	63
Grader	40	85	68
General Industrial Equipment	50	85	68
Note: 1 – Acoustical Use Factor (percent): Estimates the fraction of time each piece of construction equipment is operating at full power (i.e., its loudest condition) during a construction operation.			
Source: Federal Highway Administration, *Roadway Construction Noise Model (FHWA-HEP-05-054),* January 2006.			

As construction is proposed up to the project property lines, the nearest sensitive receptors would be located approximately 370 feet southeast of the proposed construction area on the southeastern portion of the project site. As shown in Table 4.13-5, these sensitive uses may be exposed to elevated noise levels during project construction. It should be noted that the noise levels identified in Table 4.13-5 are maximum sound levels (L_{max}), which are the highest

individual sound occurring at an individual time period. The City's Municipal Code does not establish quantitative construction noise standards. Instead, the Municipal Code has established allowable hours of construction (7:00 a.m. and 7:00 p.m. Monday through Friday, unless permission is granted with a development permit or other planning approval), of which the proposed project would adhere. Construction activities are prohibited on the weekends at sites within 500 feet of a residence. Thus, construction activities would be conducted during allowable daytime hours, per the City's Municipal Code.

Additionally, General Plan Policy EC-1.7 stipulates that construction related noise is considered to have a significant impact if construction would occur within 500 feet of a residential use or 200 feet of commercial/office and occur for a period longer than 12 months. The proposed timeframe for both construction phases is approximately nine months, which would not result in a significant construction noise impact under General Plan Policy EC-1.7. In order to reduce the potential noise on nearby sensitive receptors and adjacent land uses, the project would be required to comply with the following Standard Permit Conditions:

- Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

- Prohibit unnecessary idling of internal combustion engines.

- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

- Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.

  If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Long-Term Operational Impacts

Off-Site Mobile Noise

Future development generated by the proposed project would result in additional traffic on adjacent roadways, thereby increasing vehicular noise in the vicinity of existing and proposed land uses. Based on the *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis* (LTA) prepared by Hexagon Transportation Consultants, Inc. (dated January 6, 2022), the proposed project is projected to generate a total of approximately 1,102 trips per day, which includes approximately 34 a.m. peak hour trips and approximately 136 p.m. peak hour trips. The "Opening Year Without Project" and "Opening Year With Project" scenarios are compared in Table 4.13-6, *Opening Year Traffic Noise Levels*. As depicted in Table 4.13-6, under the "Opening Year Without Project" scenario, noise levels would range from approximately 52.2 dBA to 69.8 dBA at 100 feet from roadway centerline, with the highest noise levels occurring along Capitol Expressway south of Silver Creek Road. The "Opening Year With Project" scenario noise levels would range from approximately 52.2 dBA to 69.8 dBA at 100 feet from roadway centerline, with the highest noise levels also occurring along Capitol Expressway south of Silver Creek Road.

Table 4.13-6 also shows the difference between the "Opening Year Without Project" scenario and the "Opening Year With Project" scenario. The noise levels would result in a maximum increase of 0.7 dBA CNEL as a result of the proposed project. Additionally, the project-generated mobile noise levels would not exceed the three and five dBA DNL thresholds listed in General Plan Policy EC-1,2 (CNEL and DNL are used interchangeably). This increase in noise would occur along Lexann Avenue (west of Silver Creek Road). Since the proposed project would not significantly increase noise levels along the roadway segments analyzed (i.e., noise increase would be less than 3.0 dBA),[3] a less than significant impact would occur.

Cumulative Mobile Source Impacts

A project's contribution to a cumulative traffic noise increase would be considered significant when the combined effect exceeds perception level (i.e., auditory level increase) threshold. The combined effect compares the "cumulative with project" condition to "existing" conditions. This comparison accounts for the traffic noise increase generated by a project combined with the traffic noise increase generated by projects in the cumulative project list. The following criteria have been utilized to evaluate the combined effect of the cumulative noise increase.

[3] According to the California Department of Transportation's *Traffic Noise Analysis Protocol*, dated April 2020, a 3.0 dBA difference in noise level is generally the point at which the human ear will perceive a difference in noise level.

Table 4.13-6
Opening Year Traffic Noise Levels

Roadway Segment	Opening Year Without Project					Opening Year With Project					Difference in dBA @ 100 feet from Roadway
	ADT	dBA @ 100 Feet from Roadway Centerline	Distance from Roadway Centerline to: (Feet) 60 CNEL Noise Contour	65 CNEL Noise Contour	70 CNEL Noise Contour	ADT	dBA @ 100 Feet from Roadway Centerline	Distance from Roadway Centerline to: (Feet) 60 CNEL Noise Contour	65 CNEL Noise Contour	70 CNEL Noise Contour	
Capitol Expressway											
South of Silver Creek Road	54,000	69.8	451	209	97	54,150	69.8	451	210	97	0.0
Silver Creek Road and Aborn Road	52,780	69.7	444	206	96	53,100	69.7	446	207	96	0.0
North of Aborn Road	42,390	69.0	396	184	85	42,650	69.0	398	185	86	0.0
King Road											
North of Aborn Road	20,150	62.1	138	64	-	20,320	62.1	139	65	-	0.0
Silver Creek Road											
Aborn Road and Lexann Avenue	16,570	61.3	121	56	-	17,000	61.4	123	57	-	0.1
Lexann Avenue and Capitol Expressway	28,750	63.7	175	81	-	28,750	63.7	175	81	-	0.0
East of Capitol Expressway	37,300	64.8	208	97	-	37,340	64.8	209	97	-	0.0
Aborn Road											
West of Silver Creek Road	3,880	52.2	-	-	-	3,880	52.2	-	-	-	0.0
Silver Creek Road and Capitol Expressway	13,510	61.7	130	60	-	13,760	61.8	131	61	-	0.1
East of Capitol Expressway	40,280	66.7	280	130	-	40,410	66.7	280	130	-	0.0
Lexann Avenue											
West of Silver Creek Road	4,830	57.0	63	-	-	5,610	57.7	70	32	-	0.7

Notes: ADT = average daily trips; dBA = A-weighted decibels; CNEL = community noise equivalent level; "-" = noise contour within roadway right-of-way.
Source: Based on traffic data within the *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis* prepared by Hexagon Transportation Consultants, Inc. (dated January 6, 2022).

Combined Effect

The cumulative with project noise level ("Opening Year With Project") would cause a significant cumulative impact if a 3.0 dB increase over existing conditions occurs and the resulting noise level exceeds the applicable exterior standard at a sensitive use.

Although there may be a significant noise increase due to the proposed project in combination with other related projects (combined effects), it must also be demonstrated that the project has an incremental effect. In other words, a significant portion of the noise increase must be due to the proposed project. The following criteria have been utilized to evaluate the incremental effect of the cumulative noise increase.

Incremental Effects

The "Opening Year with Project" causes a 1.0 dBA increase in noise over the "Opening Year Without Project" noise level.

A significant impact would result only if both the combined and incremental effects criteria have been exceeded. Noise by definition is a localized phenomenon, and reduces as distance from the source increases. Consequently, only the proposed project and growth due to occur in the project site's general vicinity would contribute to cumulative noise impacts. Table 4.13-7, *Cumulative Mobile Noise Scenario*, lists the traffic noise effects along roadway segments in the project vicinity for "Existing," "Opening Year Without Project," and "Opening Year With Project" conditions, including incremental and net cumulative impacts.

Table 4.13-7
Cumulative Mobile Noise Scenario

Roadway Segment	Existing	Opening Year Without Project	Opening Year With Project	Combined Effects	Incremental Effects	Cumulatively Significant Impact?
	dBA @ 100 Feet from Roadway Centerline	dBA @ 100 Feet from Roadway Centerline	dBA @ 100 Feet from Roadway Centerline	Difference In dBA Between Existing and Opening Year With Project	Difference In dBA Between Opening Year Without Project and Opening Year With Project	
Capitol Expressway						
South of Silver Creek Road	69.7	69.8	69.8	0.1	0.0	**No**
Silver Creek Road and Aborn Road	69.5	69.7	69.7	0.2	0.0	**No**
North of Aborn Road	68.3	69.0	69.0	0.7	0.0	**No**
King Road						
North of Aborn Road	61.7	62.1	62.1	0.4	0.0	**No**
Silver Creek Road						
Aborn Road and Lexann Avenue	60.9	61.3	61.4	0.4	0.1	**No**
Lexann Avenue and Capitol Expressway	63.3	63.7	63.7	0.3	0.0	**No**
East of Capitol Expressway	64.4	64.8	64.8	0.4	0.0	**No**
Aborn Road						
West of Silver Creek Road	52.2	52.2	52.2	0.0	0.0	**No**
Silver Creek Road and Capitol Expressway	61.4	61.7	61.8	0.4	0.1	**No**
East of Capitol Expressway	66.2	66.7	66.7	0.5	0.0	**No**
Lexann Avenue						
West of Silver Creek Road	57.0	57.0	57.7	0.7	0.7	**No**

Notes: ADT = average daily trips; dBA = A-weighted decibels; CNEL = community noise equivalent level

Source: Based on traffic data within the Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis prepared by Hexagon Transportation Consultants, Inc. (dated January 6, 2022).

As indicated in Table 4.13-7, the Incremental Effects criterion of 1.0 dBA and Combined Effects criterion of 3.0 dBA would not be exceeded along any of the roadway segments in the

project vicinity.[4] Thus, none of the roadway segments would have a significant cumulative noise increase. Therefore, the proposed project, in combination with cumulative background traffic noise levels, would result in less than significant impacts.

Stationary Noise Impacts

The project proposes a commercial fast food restaurant facility. Noise that is typical of commercial areas includes mechanical equipment, slow-moving trucks, parking activities, outdoor patio areas, and pedestrian activity; typical of the surrounding commercial and residential area. Noise impacts to surrounding uses associated with implementation of the proposed project include mechanical equipment, slow-moving trucks, parking lot activities, and drive-thru operations.

- *Mechanical Equipment*. Typically, mechanical equipment noise is 55 dBA at 50 feet from the source.[5] The nearest sensitive receptor is a residential use located approximately 370 feet to the southeast of the project site boundary. Heating Ventilation and Air Conditioning (HVAC) units could be included on the roof of the restaurant building, at the closest possible distance of approximately 445 feet. At this distance, potential noise from HVAC units would be approximately 36 dBA. Further, HVAC noise levels would be partially masked by background noise from traffic along Silver Creek Road and Capitol Expressway. Therefore, HVAC noise levels would not exceed the City's noise standards (Table 4.13-4) and the nearest sensitive receptor (residential uses) would not be directly exposed to substantial noise from on-site mechanical equipment. Impacts in this regard would be less than significant.

- *Slow-Moving Trucks (Deliveries)*. The proposed project includes a commercial restaurant development that would necessitate occasional truck delivery operations. Typically, a medium 2-axle truck used to make deliveries can generate a maximum noise level of 75 dBA at a distance of 50 feet. These are levels generated by a truck that is operated by an experienced driver with typically applied accelerations. Higher noise levels may be generated by the excessive application of power. Lower levels may be achieved, but would not be considered representative of a nominal truck operation. Truck deliveries to the project site would generally consist of small trucks or vans and would not generate excessive noise levels over an extended period of time. Impacts resulting from truck delivery activities would be less than significant.

- *Parking Lot Activities*. Traffic associated with parking lots is typically not of sufficient volume to exceed community noise standards, which are based on a time-averaged scale such as the CNEL scale. However, the instantaneous maximum sound levels generated by a car door slamming, engine starting up, and car pass-bys may be an annoyance to adjacent noise-sensitive receptors. Estimates of the maximum noise levels associated with some parking lot activities are presented in Table 4.13-8, *Typical Maximum Noise Levels Generated by Parking Lots*. Conversations in parking areas may also be an annoyance to adjacent sensitive receptors. Sound levels of

[4] The Incremental Effects and Combined Effects criterion are derived from the Federal Transit Administration, *Transit Noise and Vibration Impact Assessment*, September 2018.

[5] Elliott H. Berger, Rick Neitzel, and Cynthia A. Kladden, *Noise Navigator Sound Level Database with Over 1700 Measurement Values*, July 6, 2010.

speech typically range from 33 dBA at 48 feet for normal speech to 50 dBA at 50 feet for very loud speech.

Table 4.13-8
Typical Maximum Noise Levels Generated by Parking Lots

Noise Source	Maximum Noise Levels at 50 Feet from Source
Car door slamming	63 dBA L_{eq}
Car starting	60 dBA L_{eq}
Car idling	61 dBA L_{eq}

It should be noted that parking lot noise are instantaneous noise levels compared to noise standards in the CNEL scale, which are averaged over time (note that CNEL and DNL are used interchangeably). As a result, actual noise levels over time resulting from parking lot activities would be far lower than what is identified in Table 4.13-8. Parking lot noise would occur within the surface parking lot on-site. Parking lot noise would be consistent with the existing noise on-site and would be partially masked by background noise from traffic along Silver Creek Road and Capitol Expressway. Noise associated with parking lot activities is not anticipated to exceed the City's noise standards (Table 4.13-4) during operation. Therefore, noise impacts from parking lots would be less than significant.

- *Drive-Thru Operations*. The project proposes a restaurant with a two-lane drive-thru. Noise levels from drive-thru operations would be primarily from the drive-thru speakerphone, located on the southeastern portion of the project site, oriented towards the southeast. According to the *Drive-Thru Sound Levels* white paper prepared by HM Electronics (May 24, 2010), the typical noise level associated with active drive-thru operations is 54 dBA L_{eq} at a distance of 32 feet.[6] As previously noted, the closest sensitive receptors to the project site are residential uses located approximately 370 feet to the southeast of the project site boundary, which would be approximately 455 feet from the proposed drive-thru speakerphone (at a distance of 455 feet, 54 dBA L_{eq} would be reduced to 31 dBA L_{eq}). Speakerphone noise would be masked by traffic noise levels that currently exist along Silver Creek Road and Capitol Expressway. As indicated in Table 4.13-3, existing noise levels along Silver Creek Road range from 59.0 dBA to 59.9 dBA and existing noise levels along Capitol Expressway range from 67.2 dBA to 69.9 dBA. Thus, traffic noise levels along Silver Creek Road and Capitol Expressway would be greater than the drive-thru reference noise level of 31 dBA at a distance of 455 feet. Further, drive-thru noise levels would not exceed the City's noise standards (Table 4.13-4). Therefore, impacts would be less than significant in this regard.

[6] HM Electronics, Inc., Memo, Re: Drive-Thru Sound Pressure Levels From the Menu Board or Speaker Post, May 24, 2010.

***Standard Permit Conditions*:**

- Limit construction to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific "construction noise mitigation plan" and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential use.

- Construct solid plywood fences around ground level construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.

- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.

- Prohibit unnecessary idling of internal combustion engines.

- Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses.

- Utilize "quiet" air compressors and other stationary noise sources where technology exists.

- Control noise from construction workers' radios to a point where they are not audible at existing residences bordering the project site.

- Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of "noisy" construction activities to the adjacent land uses and nearby residences.

- If complaints are received or excessive noise levels cannot be reduced using the measures above, erect a temporary noise control blanket barrier along surrounding building facades that face the construction sites.

- Designate a "disturbance coordinator" who shall be responsible for responding to any complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaint (e.g., bad muffler, etc.) and shall require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule.

Mitigation Measures: No mitigation measures are required.

b. Generation of excessive ground borne vibration or ground borne noise levels?

Less Than Significant Impact. Project construction can generate varying degrees of ground-borne vibration, depending on the construction procedure and the equipment used. Operation

of equipment generates vibrations that spread through the ground and diminish in amplitude with distance from the source. The effect on buildings located in the vicinity of the construction site often varies depending on soil type, ground strata, and construction characteristics of the receiver building(s). The results from vibration can range from no perceptible effects at the lowest vibration levels, to low rumbling sounds and perceptible vibration at moderate levels, to slight damage at the highest levels. Ground-borne vibrations from construction activities rarely reach levels that damage structures.

The paving stage of construction has the potential to generate the highest vibration levels of any phase of construction, as paving activities may utilize vibratory rollers. According to the Federal Transit Administration's *Transit Noise and Vibration Assessment Manual*, a vibratory roller generates a peak particle velocity (PPV) of approximately 0.210 inches per second at a distance of 25 feet. The evaluation of an impact's significance can be determined by reviewing both the likelihood of annoyance to individuals as well as the potential for damage to existing structures. According to the California Department of Transportation (Caltrans) *Transportation and Construction Vibration Guidance Manual*, the threshold for architectural damage to normal dwelling houses is 0.2 inches per second PPV and the human annoyance threshold is 0.2 inches per second PPV.[7] Similarly, the City has a vibration limit of 0.2 inches per second PPV for buildings of normal conventional construction (General Plan Policy EC-2.3). Further, it is acknowledged that there are no structures of historic significance in the project area.[8] Therefore, this evaluation uses the 0.2 inches per second PPV vibration limit as established by the City and Caltrans.

As construction is proposed up to the project property lines, the nearest structure (Chevron) and sensitive receptors (residential uses) would be located approximately 68 and 370 feet, respectively, to the southeast of proposed construction activities. From these distances, groundborne vibration generated from vibratory rollers would be approximately 0.047 inches per second PPV at the nearest structure (Chevron) and 0.004 inches per second PPV at the nearest sensitive receptors (residential uses). These levels of vibration would fall below the building damage and human annoyance groundborne vibration criteria of 0.2 inches per second PPV. Therefore, impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

c. For a project located within the vicinity of a private airstrip or an airport land use plan or, where such plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

No Impact. No private airstrips are located in the site vicinity and the nearest airport to the project site is the Reid-Hillview County Airport, located approximately 1.5 miles northwest of the project site. According to the *Reid-Hillview Airport Master Plan*, the project site is located outside of the Reid-Hillview County Airport 65 dBA noise contour.[9] Therefore, the project

[7] California Department of Transportation, *Transportation and Construction Vibration Guidance Manual*, April 2020.

[8] City of San José, *Historic Resource Inventory*, https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/historic-preservation/historic-resources-inventory, accessed April 1, 2022.

[9] County of Santa Clara, *Reid-Hillview Airport Master Plan*, *Figure D-3, Noise Contours - 2022*, https://countyairports.sccgov.org/sites/g/files/exjcpb686/files/RHV_Masterplan-complete.pdf, accessed on November 22, 2021.

would not expose people working on-site to excessive noise levels associated with aircraft. No impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

4.14 POPULATION AND HOUSING

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?			✓	
b. Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?				✓

Environmental Setting

The Association of Bay Area Governments (ABAG) estimates the City of San José's projected population is approximately 1,029,782 persons in 2021 and approximately 1,334,100 persons in 2040[1]. As such, ABAG's projected population growth is 304,318 people. The City's average household size is 3.14.[2]

Regulatory Setting

Local

Association of Bay Area Governments

ABAG is intended to strengthen cooperation and collaboration across local governments. ABAG serves as a regional planning agency and a local government service provider and provides planning services and cost effective ABAG member services to local governments.

Envision San José 2040 General Plan

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in San José and help tie individual projects to the vision for the surrounding area and the city as a whole. The following policies are specific to population and housing and apply to the proposed project:

> **Policy H-3.2:** Design high density residential and mixed residential/commercial development, particularly development located in identified Growth Areas, to:

[1] City of San José. *Historic and Project Future City of San José Population (1900-2040)*. www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/data-and-maps/demographics/population, accessed August 27, 2021.

[2] State of California, Department of Finance, *E-5 Population and Housing Estimates for Cities, Counties, and the State, January 1, 2011-2021, with 2010 Census Benchmark*, https://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/, accessed August 27, 2021.

1. Create and maintain safe and pleasant walking environments to encourage pedestrian activity, particularly to the nearest transit stop and to retail, services, and amenities.

2. Maximize transit usage.

3. Allow residents to conduct routine errands close to their residence, especially by walking, biking, or transit.

4. Integrate with surrounding uses to become a part of the neighborhood rather than being an isolated project.

5. Use architectural elements or themes from the surrounding neighborhood when appropriate.

6. Provide residents with access to adequate on- or off-site open space.

7. Create a building scale that does not overwhelm the neighborhood.

8. Be usable by people of all ages, abilities, and needs to the greatest extent possible, without the need for adaptation or specialized design.

Policy H-4.1: Implement green building principles in the design and construction of housing and related infrastructure, in conformance with the Green Building Goals and Policies in the Envision General Plan and in conformance with the City's Green Building Ordinance.

Policy H-4.2: Minimize housing's contribution to greenhouse gas emissions, and locate housing, consistent with our City's land use and transportation goals and policies, to reduce vehicle miles traveled and auto dependency.

a. Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?

Less Than Significant Impact. A project could induce population growth in an area either directly, through the development of new residences or businesses, or indirectly, through the extension of roads or other infrastructure. This project involves the demolition of an existing retail building and the construction of one drive-thru restaurant facility. Given that no residential land use is proposed, implementation of the project would not result in a direct increase in population.

The proposed Chick-fil-A restaurant would employ approximately 80 full- and/or part-time employees, with anywhere from seven to 15 employees on shift at any one time.

At project buildout, the result would be an increase of up to 80 employees at the project site. Although an uncertainty exists regarding the number of new employees who may choose to relocate to the project area, a conservative analysis of impacts associated with indirect population growth can be provided. For analysis purposes, it is assumed 100 percent of the project's employees would relocate to the project area (i.e., City of San José). Based on a

"worst-case" scenario of 80 net new employees relocating to the City and the City's average household size of 3.14, project implementation would result in a potential population increase of approximately 252 persons in the City. This potential population growth generated by the project would increase the City's 2020 population of 1,029,782 persons to 1,030,034 persons, constituting an increase of 0.02 percent.

As previously mentioned, ABAG estimates the City of San José's projected population is approximately 1,029,782 persons in 2021 and approximately 1,334,100 persons in 2040. As such, the proposed conservative population growth estimate for the project (252 persons) represents approximately 0.08 percent of ABAG's projected population growth of 304,318 people. As such, the project's anticipated population growth is within ABAG's population growth assumptions for the City.

Implementation of the project would not induce substantial unplanned population growth within the City, either directly or indirectly. Impacts in the regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

b. Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?

No Impact. The project site is currently developed with a retail building and associated surface parking lot. No housing exists on-site. Therefore, project implementation would not displace any existing people or housing. No impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

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4.15 PUBLIC SERVICES

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
i. Fire protection?			✓	
ii. Police protection?			✓	
iii. Schools?			✓	
iv. Parks?			✓	
v. Other public facilities?			✓	

Environmental Setting

Fire Protection

The San José Fire Department (SJFD) is a full-service fire department providing 24-hour fire, rescue, and emergency medical services to the City, including the project site. SJFD responds to a high-volume of service calls each year from its 33 fire stations located around the City.[1] The nearest station to the project site is Station 24, located at 2525 Aborn Road, approximately 0.9 mile east of the project site.[2]

Police Protection

The San José Police Department (SJPD) provides law enforcement services to the City, including the project site.[3] The nearest SJPD station is located approximately 8.0 miles northwest of the project site at 201 West Mission Street. The police department is staffed with approximately 1,400 employees, including both sworn and non-sworn. Additionally, the department assigns employees to one of four Bureaus comprised of 11 divisions with more than 50 specialized Units and assignments. The project site is situated within the Foothill Division, which covers approximately 42 square miles with a population exceeding 300,000. The Foothill Division includes a patrol team of approximately 169 Officers, Sergeants, and Lieutenants and Community Service Officers; three Crime Prevention Specialists; and a Community Outreach Team (i.e., Coffee with a Cop, TEAM Kids, and Read to Succeed).

[1] City of San José, *About SJFD*, https://www.sanjoseca.gov/your-government/departments/fire-department, accessed September 23, 2021.
[2] City of San José, *Stations*, https://www.sanjoseca.gov/your-government/departments-offices/fire/stations, accessed September 23, 2021.
[3] City of San José, *Department Information*, https://www.sjpd.org/about-us/inside-sjpd/department-information, accessed September 23, 2021.

Schools

The project site is served by the Evergreen School District (K-8) and East Side Union High School District (9-12).[4,5] Three existing schools are located within 1.5 miles of the project site (O.B. Whaley Elementary School located 1.1 miles north; LeyVa Middle School located 0.7 mile north; and Silver Creek High School located 0.5 mile south).

Parks

The nearest public park to the project site is West Evergreen Park, located approximately 0.20 mile north of the project site at 1500 Aborn Road.[6]

Other Public Facilities

Other public services that could potentially be impacted by the project are public libraries. The project site is served by the Evergreen Branch Library, which is located approximately 1.2 miles east from the project site.[7]

Regulatory Setting

State

California Code of Regulations Title 24 – Fire Codes

California Code of Regulations (CCR) Title 24, refers to the California Building Code (CBC), contains complete regulations and general construction building standards of state adopting agencies, including administrative, fire and life safety, and field inspection provisions. Part 2 of the CBC was updated in 2008 to reflect changes in the base document from the Uniform Building Code to the International Building Code. Part 9 of the CBC, refers to the California Fire Code, which contains other fire safety-related building standards. In particular, the CBC Chapter 7A, Materials and Construction Methods for Exterior Wildfire Exposure, addresses fire safety standards for new construction.

California Public Resources Code Sections 4290-4299 and General Code Section 51178

A variety of State codes, particularly Public Resources Code Sections 4290-4299 and General Code Section 51178, require minimum statewide fire safety standards pertaining to: roads for fire equipment access; signage identifying streets, roads and buildings; minimum private water supply reserves for emergency fire use; and fire fuel breaks and greenbelts. They also identify primary fire suppression responsibilities among the Federal, State, and local governments. In addition, any person who owns, leases, controls, operates or maintains a building or structure in or adjoining a mountainous area or forest-covered, brush-covered or grass-covered land, or any land covered with flammable material, must follow procedures to protect the property from

[4] City of San José, *About*, https://www.eesd.org/district/about, accessed September 23, 2021.
[5] City of San José, *Boundaries*, http://www.esuhsd.org/Community/Boundaries/index.html, accessed September 23, 2021.
[6] City of San José, *Search Parks & Playgrounds*, https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities/search-parks-playgrounds, accessed September 23, 2021.
[7] City of San José, *Map Search*, https://www.sjpl.org/locations-map-search, accessed September 23, 2021.

wildland fires. This regulation also helps ensure fire safety and provide adequate access to outlying properties for emergency responders and safe evacuation routes for residents.

Leroy F. Greene School Facilities Act of 1998 (Senate Bill 50)

Senate Bill 50 (SB 50) was enacted by the State Legislature in 1998 and made significant amendments to existing state law governing school fees. Specifically, SB 50 amended prior California Government Code Section 65995(a) to prohibit state or local agencies from imposing school impact mitigation fees, dedications or other requirements in excess of those provided in the statute in connection with "any legislative or adjudicative act...by any state or local agency involving...the planning, use, or development of real property...." The legislation also amended California Government Code Section 65996(b) to prohibit local agencies from using the inadequacy of school facilities as a basis for denying or conditioning approvals of any "legislative or adjudicative act [involving] the planning, use or development of real property." Further, SB 50 established the base amount of allowable developer fees: $1.93 per square foot for residential construction and $0.31 per square foot for commercial. These base amounts are commonly called "Level 1 fees" and are the same caps that were in place at the time SB 50 was enacted. Level 1 fees are subject to inflation adjustment every two years.

In certain circumstances, for residential construction, school districts can impose fees that are higher than Level 1 fees. School districts can impose Level 2 fees, which are equal to 50 percent of land and construction costs if they: (1) prepare and adopt a school needs analysis for facilities; (2) are determined by the State Allocation Board to be eligible to impose these fees; and (3) meet at least two of the following four conditions:

- At least 30 percent of the district's students are on a multi-track year-round schedule;
- The district has placed on the ballot within the previous four years a local school bond that received at least 50 percent of the votes cast;
- The district has passed bonds equal to 30 percent of its bonding capacity; or
- At least 20 percent of the district's teaching stations are relocatable classrooms.

Additionally, if the State's bond funds are exhausted, a school district that is eligible to impose Level 2 fees is authorized to impose even higher fees. Commonly referred to as "Level 3 fees," these fees are equal to 100 percent of land and construction costs of new schools required as a result of new developments.

Assembly Bill (AB) 2926

To assist in providing facilities to serve students generated by new development projects, the State passed Assembly Bill 2926 (AB 2926) in 1986. This bill allowed school districts to collect impact fees from developers of new residential and commercial/industrial building space. Development impact fees were also referenced in the 1987 Leroy Greene Lease-Purchase Act, which required school districts to contribute a matching share of project costs for construction, modernization, or reconstruction.

Quimby Act

The Quimby Act (Government Code Section 66477) states that the legislative body of a city or county may, by ordinance, require the dedication of land or impose a fee payment requirement of in lieu thereof, or a combination of both, for park or recreational purposes as a condition to the approval of a tentative map or parcel map, provided certain requirements are met. This Section further states that "the dedication of land, or the payment of fees, or both, shall not exceed the proportionate amount necessary to provide three (3.0) acres of park area per 1,000 persons residing within a subdivision subject to this section."

Proposition 40 Park Bond Act

Proposition 40 is intended to maintain a high quality of life for California's growing population by providing a continuing investment in park and recreational facilities. Specifically, it is for acquisition and development of neighborhood, community, and regional parks, and recreational land and facilities, in urban and rural areas. Projects eligible for funding include an acquisition, development, improvement, rehabilitation, restoration, enhancement and the development of interpretative facilities, or local parks and recreational land and facilities, and funds are distributed based on a city's population.

Local

Envision San José 2040 General Plan

The following policies are specific to public services in addition to parks, open space, and recreational facilities and apply to the proposed project:

> **Policy CD-5.5:** Include design elements during the development review process that address security, aesthetics and safety. Safety issues include, but are not limited to, minimum clearances around buildings, fire protection measures such as peak load water requirements, construction techniques, and minimum standards for vehicular and pedestrian facilities and other standards set forth in local, state, and federal regulations.
>
> **Policy ES-3.1:** Provide rapid and timely Level of Service response time to all emergencies:
>
> > 1. For police protection, use as a goal a response time of six minutes or less for 60 percent of all Priority 1 calls, and of eleven minutes or less for 60 percent of all Priority 2 calls.
> >
> > 2. For fire protection, use as a goal a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.
> >
> > 3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies and operating models.
> >
> > 4. Measure service delivery to identify the degree to which services are meeting the needs of San José's community.

5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.

Policy ES-3.2: Strive to ensure that equipment and facilities are provided and maintained to meet reasonable standards of safety, dependability, and compatibility with law enforcement and fire service operations.

Policy ES-3.9: Implement urban design techniques that promote public and property safety in new development through safe, durable construction and publicly-visible and accessible spaces.

Policy ES-3.10: Incorporate universal design measures in new construction, and retrofit existing development to include design measures and equipment that support public safety for people with diverse abilities and needs. Work in partnership with appropriate agencies to incorporate technology in public and private development to increase public and personal safety.

Policy ES-3.11: Ensure that adequate water supplies are available for fire-suppression throughout the City. Require development to construct and include all fire suppression infrastructure and equipment needed for their projects.

Policy ES-3.17: Promote installation of fire sprinkler systems for both commercial and residential use and in structures where sprinkler systems are not currently required by the City Municipal Code or Uniform Fire Code.

Policy ES-4.9: Permit development only in those areas where potential danger to the health, safety, and welfare of persons in that area can be mitigated to an acceptable level.

San José Municipal Code

Municipal Code Chapter 24.01.238, *Fire Code*, adopts by reference the 2019 *Edition of the California Fire Code* (Fire Code). The Fire Code includes site access requirements and fire safety precautions (e.g., fire alarms, sprinkler systems, hydrants, and fire flow requirements).

a. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

i. Fire protection?

Less Than Significant Impact. The project would result in the construction of a new Chick-fil-A restaurant within an existing shopping center anchored by a Target retail store. As discussed in Section 4.14, *Population and Housing*, no residential land use is proposed. Additionally, while implementation of the project would increase the number of daytime employees within the City, it is not anticipated to result in a substantial increase in population. Due to the limited population increase and the nature of development (a restaurant within a commercial zone), a substantial increase in the need for fire facilities, compared to the existing condition, is not anticipated. As a result, project implementation

is not anticipated to require the construction of new or physically altered fire facilities and is not anticipated to result in an increase in service calls. Nonetheless, the project would be subject to Municipal Code Chapter 24.01.238, *Fire Code*, which adopts by reference the 2019 *Edition of the California Fire Code* (Fire Code). The Fire Code includes site access requirements and fire safety precautions (e.g., fire alarms, sprinkler systems, hydrants, and fire flow requirements). As such, the project proposes the installation of a 6-inch fire flow water line, and all plans would be reviewed and approved by SJFD for the purpose of consistency with the Fire Code. Impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

ii. Police protection?

Less Than Significant Impact. Implementation of the project is not anticipated to result in a substantial increase in population, compared to existing conditions. The project would provide access to the project at Silver Creek Road, Lexann Avenue, and Capitol Expressway. As the project would result in similar uses to the existing condition (commercial uses), project implementation is not anticipated to require the construction of new or physically altered police facilities. As such, impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

iii. Schools?

Less Than Significant Impact. The project would not result in an increase in population on-site, or indirectly result in a substantial increase in the number of students within the project area. Nonetheless, the project would be subject to the requirements of AB 2926 and SB 50, which allows school districts to collect development impact fees to minimize potential impacts to school districts as a result of new development. Additionally, pursuant to Government Code Section 65996, the project's demands on school services would be fully offset through the collection of school fees imposed through the Education Code. As such, a less than significant impact would result in this regard.

Mitigation Measures: No mitigation measures are required.

iv. Parks?

Less Than Significant Impact. The project would not substantially increase the population in the project area. As such, the project is not anticipated to result indirectly in a substantial increase in demand for park land. Impacts in this regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

v. Other public facilities?

Less Than Significant Impact. Implementation of the project, as a commercial facility, is not anticipated to result in a significant increase in the use of the San José Public Library System. Thus, impacts in this regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

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4.16 RECREATION

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?			✓	
b. Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?			✓	

Environmental Setting

The nearest public park to the project site is West Evergreen Park, located approximately 0.20 mile north of the project site at 1500 Aborn Road.[1]

Regulatory Setting

Local

Envision San José 2040 General Plan

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in San José and help tie individual projects to the vision for the surrounding area and the city as a whole. The following policies are specific to parks and open space areas and apply to the proposed project:

> **Policy PR-1.2:** Provide 7.5 acres per 1,000 population of citywide /regional park and open space lands through a combination of facilities provided by the City of San José and other public land agencies.
>
> **Policy PR-2.4:** To ensure that residents of a new project and existing residents in the area benefit from new amenities, spend Park Dedication Ordinance (PDO) and Park Impact Ordinance (PIO) fees for neighborhood serving elements (such as playgrounds/ tot-lots, basketball courts, etc.) within a 3/4-mile radius of the project site that generates the funds.

a. Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

Less Than Significant Impact. Refer to Response 4.15(a)(4).

[1] City of San José, *Search Parks & Playgrounds*, https://www.sanjoseca.gov/your-government/departments/parks-recreation-neighborhood-services/outdoor-activities/search-parks-playgrounds, accessed September 23, 2021.

Mitigation Measures: No mitigation measures are required.

b. Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

Less than Significant Impact. Refer to Response 4.15(a)(4).

Mitigation Measures: No mitigation measures are required.

4.17 TRANSPORTATION

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?			✓	
b. Would the project conflict or be inconsistent with CEQA Guidelines Sections 15064.3, subdivision (b)?			✓	
c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?			✓	
d. Result in inadequate emergency access?			✓	

The information presented in this analysis is based on the *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis* (LTA), prepared by Hexagon Transportation Consultants, Inc. (Hexagon), dated February 28, 2022; refer to Appendix H, *Local Transportation Analysis*.

Existing Conditions

Vehicle Miles Traveled (VMT)

The project site is currently developed with a former O'Reilly Auto Parts store. Since the existing facility is not operating, this analysis assumes that no vehicle miles traveled (VMT) is currently associated with the project site.

Existing Roadway Network

Regional access to the project site is provided via U.S. Route 101 (US 101). Local access to the project site is provided via Silver Creek Road, King Road, Aborn Road, Capitol Expressway, and Lexann Avenue; refer to Exhibit 4.17-1, *Existing Transportation Network*. For the purposes of this analysis, US 101, Silver Creek Road, and all parallel streets are considered to run north-south, and cross streets, such as Capitol Expressway, are considered to run east-west.

- US 101: US 101 is a ten-lane freeway with four mixed-flow lanes and one high-occupancy vehicle (HOV) lane in each direction in the vicinity of the site. It extends north through San Francisco and south through Gilroy. Regional access to the project site is provided via its interchange with Capitol Expressway.

- Silver Creek Road: Silver Creek Road is a four-lane, north-south city connector that transitions from King Road, at Aborn Road in the north, to Yerba Buena Road in the south. South of Yerba Buena Road, Silver Creek Road is a two-lane local street that ends at the Silver Creek Linear Park parking lot. Silver Creek Road has a posted speed limit of 35 miles per hour (mph). It has a raised, landscaped median with left-turn pockets provided at intersections. On-street parking is permitted along the west side of the street between Lexann Avenue and Aborn Road. Parking is prohibited along the remainder of the street.

CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT
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Existing Transportation Network

Exhibit 4.17-1

Sidewalks exist along both sides of Silver Creek Road near the project site. Bike lanes exist north of Yerba Buena Road. Silver Creek Road provides direct access to the project. The driveway is limited to right-turns only for inbound and outbound traffic due to the median.

- King Road: King Road is a four-lane, north-south city connector with a center two-way left-turn lane. It transitions from Lundy Avenue, at Commodore Drive in the north, to Silver Creek Road, at Aborn Drive in the south. King Road has a posted speed limit of 35 mph. On-street parking is permitted along the west side of the street near the project vicinity for a short segment. On-street parking is generally prohibited along the rest of the street. Sidewalks and bike lanes exist along both sides of the street near the project site. King Road provides direct access to the project site through its transition into Silver Creek Road.

- Capitol Expressway: Capitol Expressway is an east-west, eight-lane expressway with a raised median. It transitions from Hillsdale Avenue, at Almaden Expressway in the west, eastward to Great America Parkway, at Montague Expressway. HOV lanes are present on Capitol Expressway north of Silver Creek Road. Capitol Expressway has a posted speed limit of 45 mph. On-street parking is not permitted. There are sidewalks along both sides on most segments and crosswalks at signalized intersections. Bike lanes exist along both sides of Capitol Expressway, north of the Silver Creek Plaza to Senter Road. Access to the project site is provided via its intersection with Silver Creek Road and an existing driveway to the existing plaza. The driveway is limited to right-turns only for inbound and outbound traffic due to the median on the expressway.

- Aborn Road: Aborn Road is a four lane, east-west city connector between Silver Creek Road and Gurdwara Avenue. West of Silver Creek Road, Aborn Road is a two-lane local street. Aborn Road has a posted speed limit of 40 mph east of Silver Creek Road. West of Silver Creek Road, it has a posted speed limit of 25 mph. West of Silver Creek Road, Aborn Road has a raised, landscaped median with left-turn pockets provided at intersections. On-street parking is prohibited along most of the street. West of Silver Creek Road, parking is not allowed between 10 p.m. and 6 a.m. The north side has a one hour parking restriction. Sidewalks exist along both sides of Aborn Road near the project site. Bike lanes exist west of Silver Creek Road. Aborn Road provides access to the project site via its intersections with Silver Creek Road and Capitol Expressway.

- Lexann Avenue: Lexann Avenue is a two-lane east-west local street that begins at the Silver Creek Plaza driveway along Silver Creek Road in the east and transitions into Oakbridge Drive at Towers Lane in the west. It has a speed limit of 25 mph. On-street parking is allowed along the north side of the street. Sidewalks exist along both sides of the street. Lexann Avenue provides direct access to the project site.

Existing Pedestrian, Bicycle, and Transit Facilities

San José desires to provide a safe, efficient, economically, and environmentally sensitive transportation system that balances the needs of bicyclists, pedestrians, and public transit riders with those of cars and trucks. The existing bicycle, pedestrian and transit facilities in the study area are described below.

Existing Pedestrian Facilities

Pedestrian facilities consist of sidewalks, crosswalks, and pedestrian signals at signalized intersections. In the vicinity of the project site, sidewalks exist along both sides of Lexann Avenue, Silver Creek Road, and Capitol Expressway. Crosswalks with pedestrian signal heads and push buttons are provided on the intersections along Silver Creek Road and Capitol Expressway within walking distance of the project site. Within a typical walking distance (0.5-mile or 10 minutes), continuous pedestrian facilities are present between the site and the surrounding land uses, including the bus stops in the area.

Existing Bicycle Facilities

The bicycle facilities that exist within the vicinity of the project site include bike paths (Class I bike path) and striped bike lanes (Class II bikeway); refer to Exhibit 4.17-2, *Existing Bicycle Facilities*. Bike paths are shared between pedestrians and bicyclists and separated from motor vehicle traffic. Bike lanes are lanes on roadways designated for use by bicycles with special lane markings, pavement legends, and signage.

In the immediate vicinity of the project site, there is a Class I bike path along Barberry Lane between Dina Lane and Corda Drive. There are Class II bike lanes on Capitol Expressway, King Road/Silver Creek Road, and Aborn Road (east of King Road/Silver Creek Road). Of these bike lanes, the bike lanes on King Road/Silver Creek Road and Aborn Drive are buffered. Buffered bike lanes separate the bike lane from the vehicle travel lane with a designated buffer space.

As part of the San José Better Bike Plan 2025, existing striped bike lanes on several streets in the project area are proposed to be reconstructed as protected bike lanes (Class IV bikeway). Protected bike lanes are protected by physical barriers such as flexible bollards, raised curb, parking, or planter boxes. The proposed streets include Capitol Expressway, King Road/Silver Creek Road, and Aborn Road (east of Silver Creek Road). The plan also proposes bicycle boulevards along Aborn Road (west of Silver Creek Road) and Stallion Way. Bicycle boulevards are streets with low vehicular traffic volumes and speed, designed to give bicycles travel priority.

Existing Transit Services

Existing transit services in the project vicinity are provided by the Valley Transportation Authority (VTA); refer to Exhibit 4.17-1 and Table 4.17-1, *Existing Transit Services*). In the project proximity, the VTA operates local bus routes 42, 70, and 71. The bus stop closest to the project site is located on Silver Creek Road (along the project frontage) and serves Routes 70 and 71.

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Existing Bicycle Facilities

Exhibit 4.17-2

Table 4.17-1
Existing Transit Services

Bus Route	Route Description	Closest Stop and Distance to Project Site	Weekday Hours of Operation[1]	Headway (minutes)[1]
Local Route 42	Evergreen Valley College – Santa Teresa Station	Silver Creek Road, south of Capitol Expressway, 820 feet	6:00 a.m. – 7:00 p.m.	60
Local Route 70	Milpitas BART – Capitol Station via Jackson	Silver Creek Road, along the project frontage, 330 feet	5:10 a.m. – 12:10 a.m. (next day)	13-16
Local Route 71	Milpitas BART – Capitol Station	Silver Creek Road, along the project frontage, 330 feet	5:25 a.m. – 10:30 p.m.	20

Notes:
1. Approximate weekday operation hours and headways during peak commute periods in the project area, as of October 2021.

Source: Hexagon Transportation Consultants, Inc., *Chick-Fil-A Silver Creek & Capitol Expressway Development Local Transportation Analysis*, dated November 5, 2021; refer to Appendix H.

Regulatory Setting

Local

Plan Bay Area 2050

Plan Bay Area 2050 connects the elements of housing, the economy, transportation, and the environment through 35 strategies that will make the Bay Area more equitable and resilient. Plan Bay Area 2050's Implementation Plan identifies more than 80 specific actions for the Metropolitan Transportation Commission (MTC) and Association of Bay Area Governments (ABAG) partnership that is intended to make headway on the 35 strategies.[1]

Envision San José 2040 General Plan

The project site is located within the E. Capitol Expressway/Silver Creek Road Urban Village per the Envision San José 2040 General Plan (General Plan), although an Urban Village Plan has not yet been developed for the area. The E. Capitol Expressway/Silver Creek Road Urban Village boundaries include Silver Creek Road (south of Capitol Expressway), Capitol Expressway, Aborn Road, and Towers Lane. Urban Villages are designated to provide a vibrant and inviting mixed-use settings to attract pedestrians, bicyclists, and transit users of all ages and to promote higher density housing growth in combination with a significant amount of job growth, thus supporting the General Plan's environmental goals. The urban village strategy fosters:

- Engagement of village area residents in the urban village planning process;
- Mixed residential and employment activities that are attractive to an innovative workforce;
- Revitalization of underutilized properties that have access to existing infrastructure;
- Densities that support transit use, bicycling, and walking; and

[1] Association of Bay Area Governments and Metropolitan Transportation Commission, *Final Plan Bay Area 2050*, https://planbayarea.org/finalplan2050, accessed March 24, 2022.

- High-quality urban design.

The General Plan also includes transportation goals and policies that provide a sustainable, safe, and efficient transportation network. The following policies related to transportation applied to the proposed project:

Council Policy 5-1: Council Policy 5-1 establishes the thresholds for transportation impacts under CEQA based on vehicle miles traveled (VMT). All new projects are required to analyze transportation impacts using the VMT metric and conform to Council Policy 5-1.

Council Policy 6-10: The City of San José created Council Policy 6-10 for developments with drive-thru facilities within the City. The intent of this policy is to provide guidelines for the development of establishments with drive-thru facilities within the City. All establishments with drive-thru facilities must meet the criteria stated in the policy in order to be approved for a conditional use permit or planned development permit.

As mentioned above, the project site is located within the E. Capitol Expressway/Silver Creek Road Urban Village Boundary. Sites within an Urban Village must incorporate additional urban design and architectural elements that will facilitate a building with pedestrian orientated design and activate the pedestrian public right-of-way. Although an Urban Village Plan has not yet been developed for the E. Capitol Expressway/Silver Creek Road area, according to the adopted Urban Village Plans, the following Urban Village design features would be applicable to the project for pedestrian and transit facilities:

- Provide a minimum sidewalk width along the project frontage on Lexann Avenue and Silver Creek Road in accordance with typical Urban Village design standards. Projects within an Urban Village are typically required to construct a 12- to 15-foot sidewalk along the project frontage for major streets that are not designated as Grand Boulevards.

- Minimize driveway cuts to minimize conflicts between pedestrians and vehicles and reduce transit delay.

- Provide enhanced shelters for transit services. A bus stop for Route 71 is located along the project frontage on Silver Creek Road, south of Lexann Avenue. The project should coordinate with VTA to provide any necessary improvements to the bus stop to meet the current VTA shelter and bus stop standards (Conditions of Approval).

The sidewalks on Lexann Avenue, Silver Creek Road, and Capitol Expressway would provide pedestrian access to the project site. Based on the Urban Village design features, the sidewalk along the project frontage on Silver Creek Road should be between 12 to 15 feet wide. The sidewalks are currently 8 feet wide. The project proposes 12-foot wide sidewalk along the project frontage on Silver Creek Road with tree wells and 2-foot street easement, as well as a 10-foot wide sidewalk with tree wells along the project frontage on Lexann Avenue. The project would improve frontages along Silver Creek Road and Lexann Avenue, furthering the desired design features along these frontages, compared to the existing condition. Such design features would be considered as part of the development review process to assure the project meets the City's intent for design of pedestrian facilities. Thus, general conformance

with the applicable Urban Village design features would ensure the proposed project is consistent with the City's policies in this regard.

As the project would improve pedestrian connectivity at the project site, compared to existing conditions, impacts in this regard would be less than significant.

Evergreen East Hills Development Policy

The Evergreen East Hills Development Policy (EEHDP) is the revision to the Evergreen Development Policy and was adopted in 2008. The policy refers to the area bounded by US 101, Story Road, and the Hellyer Avenue/US 101 interchange. The EEHDP would provide traffic allocation for the future development of the following uses:

- A pool of 500 residential dwelling units;
- 500,000 square feet of commercial retail space; and
- 75,000 square feet of office space.

Per the EEHDP, the project site has an allocated 344,000 square feet of commercial retail space. The project would be replacing an existing 5,485-square foot commercial building with a 3,565-square foot restaurant, which results in a net decrease of 1,920 square feet. As such, the proposed project would be within the allocated square footage for commercial retail space and the project would not be required to pay a Traffic Impact Fee (TIF). As such, the project would be consistent with the EEHDP.

Capitol Expressway Vision Zero Corridor

Capitol Expressway between I-680 and SR 87 is designated as a "Priority Safety Corridor" as part of *City of San José Vision Zero Action Plan* (Vision Zero San José), dated January 2020. The goal of Vision Zero San José is to create a community culture that prioritizes traffic safety and ensures that mistakes on roadways do not result in severe injury or death. Vision Zero is designed to create policies that focus on roadway safety for all modes, particularly non-automobile modes. Priority Safety Corridors are identified as major street segments that have the highest frequency of fatal and severe injury for people walking, bicycling, motorcycle riding, and driving. Streets with these "Priority Safety Corridor" designations are given priority within the City's Transportation Capital Improvement Program (CIP) to provide safer transportation systems for all users. Based on the Vision Zero San José, safety improvement plans for Capitol Expressway include coordinating with the County to evaluate safety issues and determine feasible improvements. A sidewalk gap closure project was funded for construction in 2016. The January 2020 Vision Zero has not identified safety improvement plans for the corridor.

San José Better Bike Plan 2025

There are Class II bike lanes on King Road/Silver Creek Road, Aborn Road, and Capitol Expressway. These bicycle facilities would provide access to the project sites. Short-term bicycle racks would be located in the northwest corner of the building, near the proposed outdoor dining tables. Long-term employee bike storage is also proposed on-site. Access to the bike racks would be provided by Silver Creek Road. In addition, the project would be

required to provide a voluntary in-lieu contribution towards the San Jose Better Bike Plan 2025 future Class IV protected bike lane along the Silver Creek Road frontage or construct Class IV protected bike lane improvements (Conditions of Approval). With compliance with the conditions of approval, impacts to bicycle transportation would be less than significant.

a. Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?

Less Than Significant Impact.

E. Capitol Expressway/Silver Creek Road Urban Village

The sidewalks on Lexann Avenue, Silver Creek Road, and Capitol Expressway would provide pedestrian access to the project site. Based on the Urban Village design features, the sidewalk along the project frontage on Silver Creek Road should be between 12 to 15 feet wide. The sidewalks are currently 8 feet wide. The project proposes 12-foot wide sidewalk along the project frontage on Silver Creek Road with tree wells and 2-foot street easement, as well as a 10-foot wide sidewalk with tree wells along the project frontage on Lexann Avenue. The project would improve frontages along Silver Creek Road and Lexann Avenue, furthering the desired design features along these frontages, compared to the existing condition. Such design features would be considered as part of the development review process to assure the project meets the City's intent for design of pedestrian facilities. Thus, general conformance with the applicable Urban Village design features would ensure the proposed project is consistent with the City's policies in this regard. As the project would improve pedestrian connectivity at the project site, compared to existing conditions, impacts in this regard would be less than significant.

Envision San Jose 2040 General Plan

Council Policy 5-1 aligns with the General Plan which seeks to focus new development growth within Planned Growth Areas, bringing together office, residential, and service land uses to internalize trips and reduce VMT. VMT-based policies support dense, mixed-use, infill projects as established in the General Plan's Planned Growth Areas. As discussed in Response 4.17(b), the proposed project, a fast-food restaurant with drive-thru facilities, meets the screening criteria set forth the *Transportation Analysis Handbook* for retail uses. Retail projects of 100,000 square feet or less and are considered local-serving projects and result in less-than-significant VMT impacts according to the screening criteria. The project would build 3,565 square feet of restaurant space. Thus, the project is expected to have a less-than-significant VMT impact and would be consistent with Council Policy 5-1.

The City of San José created Council Policy 6-10 for developments with drive-thru facilities within the City. The intent of this policy is to provide guidelines for the development of establishments with drive-thru facilities within the City. All establishments with drive-thru facilities must meet the criteria stated in the policy in order to be approved for a conditional use permit or planned development permit. Based on the LTA and further detailed in Response 4.17(c), the project would comply with Council Policy 6-10 with adequate primary parking lot access through Silver Creek Road, adequate drive-thru stacking lanes with a total capacity of 21 vehicles, and safe pedestrian crossings. In addition, the project would not adversely affect the nearby intersections of Silver Creek Road/Lexann Avenue and Capitol

Expressway/Silver Creek Road. These intersections are within 300 feet of driveway entrances for the project. Thus, the project would be consistent with Council Policy 6-10.

Evergreen East Hills Development Policy

Per the EEHDP, the project site has an allocated 344,000 square feet of commercial retail space. The project would be replacing an existing 5,485-square foot commercial building with a 3,565-square foot restaurant, which results in a net decrease of 1,920 square feet. As such, the proposed project would be within the allocated square footage for commercial retail space and the project would not be required to pay a Traffic Impact Fee (TIF). As such, the project would be consistent with the EEHDP.

Capitol Expressway Vision Zero Corridor

Based on the Vision Zero San José, safety improvement plans for Capitol Expressway include coordinating with the County to evaluate safety issues and determine feasible improvements. A sidewalk gap closure project was funded for construction in 2016. The January 2020 Vision Zero has not identified safety improvement plans for the corridor.

San José Better Bike Plan 2025

There are Class II bike lanes on King Road/Silver Creek Road, Aborn Road, and Capitol Expressway. These bicycle facilities would provide access to the project sites. Short-term bicycle racks would be located in the northwest corner of the building, near the proposed outdoor dining tables. Long-term employee bike storage is also proposed on-site. Access to the bike racks would be provided by Silver Creek Road. In addition, the project would be required to provide a voluntary in-lieu contribution towards the San Jose Better Bike Plan 2025 future Class IV protected bike lane along the Silver Creek Road frontage or construct Class IV protected bike lane improvements (Conditions of Approval). With compliance with the conditions of approval, impacts to bicycle transportation would be less than significant.

Transit Services

The project site is served by Routes 42 and 71 on Silver Creek Road. The bus stop closest to the project site is located on Silver Creek Road, south of Lexann Avenue. The bus stop serves southbound Route 71. The bus stops for the remaining routes are all within 900 feet from the project site (refer to Exhibit 4.17-1).

Due to the close proximity of bus service, it is possible that some employees and customers of the project would utilize the existing transit services. The increase in new riders could be accommodated by the currently available capacity of the bus services in the study area. Nonetheless, the project proposes improvements to the sidewalk along Silver Creek Road. As such, the Applicant would be required to coordinate with VTA regarding any bus stop improvements, consistent with the Urban Village requirements. With implementation of the recommended Public Works Conditions of Approval, the project would not conflict with adopted policies, plans, or programs. As such, the project's impacts would be reduced to less than significant levels in this regard.

Conditions of Approval:

The project shall construct an improved VTA bus pad and shelter along the Silver Creek Road frontage per VTA standards.

The project shall provide a voluntary in-lieu contribution towards the San Jose Better Bike Plan 2025 future Class IV protected bike lane along the Silver Creek Road frontage or construct Class IV protected bike lane improvements.

Mitigation Measures: No mitigation measures are required.

b. Conflict or be inconsistent with CEQA Guidelines Sections 15064.3, subdivision (b)?

Less than Significant Impact. The State of California Governor's Office of Planning and Research (OPR), in implementing SB 743, issued proposed updates to the CEQA guidelines in November 2017 that amends the Appendix G question for transportation impacts to delete reference to vehicle delay and level of service (LOS) and instead refer to Section 15064.3, subdivision (b)(1) of the CEQA Guidelines asking if the project would result in a substantial increase in vehicle miles traveled (VMT). The California Natural Resources Agency certified and adopted the revisions to the CEQA Guidelines in December of 2018, and as of July 1, 2020, the provisions of the new section are in effect statewide. Concurrently, OPR developed the *Technical Advisory on Evaluating Transportation Impacts in CEQA* (Technical Advisory) (December 2018), which provides non-binding recommendations on the implementation of VMT methodology which has significantly informed how VMT analyses are conducted in the State.

As discussed in Response 4.17(a), the City of San José's Transportation Analysis Policy (Policy 5-1) establishes procedures for determining project impacts on VMT based on project description, characteristics, and/or location. VMT is the total miles of travel by personal motorized vehicles a project is expected to generate in a day. VMT measures the full distance of personal motorized vehicle-trips with one end within the project. Typically, development projects that are farther from other, complementary land uses (such as a business park far from housing) and in areas without transit or active transportation infrastructure (bike lanes, sidewalks, etc.) generate more driving than development near complementary land uses with more robust transportation options. Therefore, developments located in a central business district with high density and diversity of complementary land uses and frequent transit services are expected to internalize trips and generate shorter and fewer vehicle trips than developments located in a suburban area with low density of residential developments and no transit service in the project vicinity.

Screening Criteria for VMT Analysis

Traditionally, public agencies have set certain thresholds to determine whether a project requires detailed transportation analysis or if it could be assumed to have less than significant environmental impacts without additional study. The City has adopted three screening criteria which may be applied to screen projects out of a detailed VMT analysis. Projects are not required to satisfy all of the screening criteria in order to screen out of further VMT analysis; satisfaction of one criterion is sufficient for screening purposes. The following provides the project analysis for the applicable screening criteria.

Transit Priority Area

The City of San José's *Transportation Analysis Handbook* includes screening criteria for projects that are expected to result in less-than-significant VMT impacts based on the project description, characteristics, and/or location. Projects that meet the screening criteria do not require a CEQA transportation analysis, but may be required to provide an LTA. The type of development projects that may meet screening criteria include small infill projects, local-serving retail, or local-serving public facilities.

The proposed project, a fast-food restaurant with drive-thru facilities, meets the screening criteria set forth in the *Transportation Analysis Handbook* for retail uses. Retail projects of 100,000 square feet or less are considered local-serving projects and result in less-than-significant VMT impacts according to the screening criteria. The project would build 3,565 square feet of restaurant space. Thus, the project is expected to have a less-than-significant VMT impact.

Mitigation Measures: No mitigation measures are required.

c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

Less Than Significant Impact. The project would not introduce incompatible uses to area roadways. The proposed Chick-fil-A restaurant includes drive-thru service lanes. The following analysis considers the potential for drive-thru queuing to overflow into parking lot drive aisles on the project site.

Drive-Thru Queuing Analysis and Operations

As discussed in Response 4.17(a), the City of San José created Council Policy 6-10 for developments with drive-thru facilities within the City. The intent of this policy is to provide guidelines for the development of establishments with drive-thru facilities within the City. All establishments with drive-thru facilities must meet the following criteria to be approved for a conditional use permit or planned development permit:

- Primary ingress and egress to drive-thru type use parking lots should be from at least a four-lane major street.
- The drive-thru stacking lane should be situated so that any overflow from the stacking lane should not spill out onto public streets or major aisles of any parking lot. Overflow capacity should be 50 percent of the required stacking for overflow restricted to the parking lot and 100 percent of required stacking for overflow that is directed to the street.
- No ingress and egress points should conflict with turning movements of street intersections.
- No drive-thru use should be approved with ingress or egress driveways within 300 feet of a signalized intersection operating at a Level of Service D, E, or F, unless a traffic analysis demonstrates that project vehicles will not impair the efficiency or operation of the intersection.

- Restaurant drive-thru stacking lanes should have a capacity of 8 vehicles per lane.
- No pedestrian crossing of the drive-thru lane should be allowed.
- Proposed drive-thru uses at or near signalized intersections may compound existing traffic congestion and make it intolerable even if the intersection meets the Transportation LOS Policy. In these situations, proposed drive-thru uses should be discouraged.

Primary Parking Lot Site Access

The primary access to the Chick-fil-A parking lot would be from the driveway on Silver Creek Road. Silver Creek Road is a four-lane city connector along the project frontage, which meets the City's requirement that the primary ingress and egress should be from at least a four-lane major street.

The ingress/egress points of the project would not interfere with turning movements of the Capitol Expressway/Silver Creek Road intersection. As described further below, operational issues related to vehicle queueing/stacking and/or vehicle delay are not expected to occur at any of the project driveways.

Drive-Thru Stacking Lane

As stated in Council Policy 6-10, restaurants require a capacity of 8 vehicles per stacking lane (20 feet per car). The project proposes two stacking lanes with a total capacity of 21 vehicles, which accounts for a required overflow capacity of 50 percent of the required stacking, and the overflow would occur within the parking lot.

At the existing Chick-fil-A at 1162 Blossom Hill Road in San José, California, the maximum queue extended past the two stacking lanes by 11 vehicles. The stacking lanes provide a total capacity of 14 vehicles. Thus, a total of 25 vehicles were queued for the existing Chick-fil-A drive-thru. Given that the existing Chick-fil-A is approximately 4,758 square feet, there is approximately 5.254 vehicles per 1,000 square feet of restaurant space. Thus, the project is expected to have a maximum queue of 21 vehicles, which would be contained within the project's drive-thru stacking lanes.

Driveway Proximity to Signalized Intersections

The proposed driveway that would provide inbound traffic to the drive-thru facility would be approximately 180 feet from the signalized intersection of Capitol Expressway and Silver Creek Road. Thus, the project requires an intersection operations analysis of the Capitol Expressway and Silver Creek Road intersection, since the project driveways are less than 300 feet from a signalized intersection.

As discussed in the LTA, the results of the analysis show that the Silver Creek Road/Lexann Avenue intersection is operating at level of service (LOS) C and LOS D during the a.m. and p.m. peak hours of traffic under existing conditions, respectively. Similarly, the Capitol Expressway/Silver Creek Road intersection operates at LOS D during the a.m. and p.m. peak hours under existing conditions.

However, the project is not expected to impair the efficiency or operation of the intersections. It is not expected that the drive-thru would queue back to either intersection or affect the operations of either intersection.

Pedestrian Safety

The site plan shows a crosswalk across the end of the drive-thru stacking lane prior to the vehicle exit. This crosswalk would provide pedestrian access from the street to the building entrance. However, it is not anticipated that very many customers would come in from the street. Any customers parking in the lot would not need to cross the drive-thru lane.

Drive-Thru Operations

The project proposes two drive-thru stacking lanes. The lane farther away from the building's pick-up window would serve as a bypass lane, which would allow guests with smaller orders to be served their food and exit the lane prior to reaching the pick-up window if the vehicle at the pickup window has a large order that takes additional time to complete.

If the drive-thru queue were to extend past the stacking lane, team members would assist with face-to-face ordering via an iPad ordering system. The system would be used during the peak hours and any additional necessary time. The system would allow team members to take orders, receive payment, and assist with traffic movement within the parking lot. The queue would be monitored to ensure that the drive-thru does not block vehicle circulation within the parking lot. As such, the proposed drive-thru operation is not anticipated to result in significant impacts associated with design safety hazards.

Non-CEQA Transportation Consideration

It is acknowledged that this section does not pertain to CEQA for the purposes of determining significance regarding an environmental impact. Information pertaining from the *Non-CEQA Transportation Consideration* section should be used for informational purposes only.

Vehicular Site Access and On-Site Circulation

Site access was evaluated to determine the adequacy of the site's driveways with regard to the following: traffic volume, vehicle queues, geometric design, and stopping sight distance. On-site vehicular circulation and parking layout were reviewed in accordance with generally accepted traffic engineering standards and transportation planning principles.

Site Access

Vehicular access to the project site would be provided via existing driveways along Lexann Avenue, Capitol Expressway, and Silver Creek Road. According to the City of San José Department of Transportation (DOT) *Geometric Design Guidelines*, the typical width for a driveway that serves a commercial development is between 16 to 32 feet wide. This provides adequate width for vehicular ingress and egress and provides a reasonably short crossing distance for pedestrians. All existing driveways meet the City's standards. Based on the LTA, the maximum queues at project driveways are not expected to affect the on-site circulation.

The project driveways should be free and clear of any obstructions to provide adequate sight distance, thereby ensuring that exiting vehicles can see pedestrians on the sidewalk and vehicles and bicycles traveling on Lexann Avenue, Silver Creek Road, and Capitol Expressway. Any landscaping and signage should be located in such a way to ensure an unobstructed view for drivers exiting the site. Providing the appropriate sight distance reduces the likelihood of a collision at a driveway and provides drivers with the ability to locate sufficient gaps in traffic and exit a driveway. The Caltrans stopping sight distance is typically used as the minimum acceptable sight distance. Sight distance requirements vary depending on roadway speeds. The existing driveways to remain on Lexann Avenue, Silver Creek Road, and Capitol Expressway provide adequate sight distance. As discussed below, the new project driveway would meet the Caltrans stopping sight distance standards, and sight distance is adequate at the project driveway.

The posted speed limit on Silver Creek Road is 35 mph. The Caltrans stopping sight distance is 300 feet (based on a design speed of 40 mph). Thus, a driver must be able to see 300 feet looking left on Silver Creek Road to locate a sufficient gap to turn out of the driveways, as the driveways would only allow exiting vehicles to make a right-turn. The existing northern driveway on Silver Creek Road to remain is approximately 300 feet from the new project driveway. There are no roadway curves to obstruct the exiting vehicles at the project driveway on Silver Creek Road. Thus, sight distance would be adequate for exiting vehicles at the Silver Creek Road driveway.

On-Site Circulation

On-site vehicular circulation was reviewed for the parking lot in accordance with generally accepted traffic engineering standards. The project would provide 28 parking spaces for the Chick-fil-A restaurant, located west and south of the proposed building. Additional parking stalls would be added along the northern section of the entire site. Parking stalls would be accessed via 26- to 29-foot drive aisles. According to the Municipal Code, Section 20.90.100, the minimum width for two-way drive aisles is 26 feet wide, where 90-degree parking is provided. Thus, the project would meet the City's requirements.

The City's off-street parking design standard for 90-degree uniform parking stalls is 8.5 feet wide by 17 feet long. The proposed parking would be 90-degree parking stalls, 9 feet wide by 18 feet long. The handicap stalls would be at least 9 feet wide by 18 feet long and include access aisles of 8 feet, which meet the City's standards.

Truck Access and Circulation

The proposed circulation was reviewed for truck access using truck turning-movement templates for a SU-30 truck type (single unit trucks), which represents small emergency vehicles, garbage trucks, and small to medium delivery trucks. Based on the LTA, adequate access would be provided for trucks to access the site from Silver Creek Road and maneuver through the site via the drive aisles provided.

According to the City of San José Zoning Regulations, commercial buildings having a floor area of 10,000 square feet or more should provide at least one off-street loading space. Thus, the project would not require any loading spaces.

The project proposes trash enclosures in the southeast corner of the site. However, due to the proposed drive-thru aisle, garbage trucks would not be able to access the enclosure if more than nine vehicles were in the left drive-thru lane. As such, Chick-fil-A operations would coordinate with the solid waste provider to ensure that garbage collection times do not occur when the drive-thru queue exceeds nine vehicles.

Pedestrian Access

The existing network of sidewalks and crosswalks in the project area exhibits good connectivity and would provide pedestrians with safe routes to transit stops and other points of interest in the project area. Marked crosswalks are provided with pedestrian signal heads at most of the signalized intersections in the surrounding area. The nearby intersections have Americans with Disabilities Act (ADA) curb ramps. All corners of the King Road/Silver Creek Road and Aborn Road intersection, the Silver Creek Road and Lexann Avenue intersection, and the Capitol Expressway and Silver Creek Road intersection have ADA curb ramps with truncated domes. Truncated domes are the standard design requirement for detectable warnings which enable people with visual disabilities to determine the boundary between the sidewalk and the street.

The project would accommodate pedestrian and bicycle access via exclusive walkways, which connect the proposed Chick-fil-A restaurant to the public sidewalks. The walkways would minimize the extent of pedestrian interaction with vehicles at the site and provide a comfortable, convenient, and safe environment. Thus, implementation of the proposed project would not result in significant safety design hazard impacts associated with pedestrian access.

Parking

The project would reconstruct the existing on-site surface parking lot (642 parking spaces) in order to accommodate both the existing Target and proposed Chick-fil-A restaurant. The reconfigured parking lot would provide a total of 596 surface parking spaces, 568 spaces for the Target building and 28 parking spaces for the new Chick-fil-A restaurant.

The City of San José's off-street parking requirement as described in the City's Zoning Code (Chapter 20.90, Table 20-210) for public eating establishments is the greater of 1 parking space per 2.5 seats or 1 space per 40 square feet of dining area. The project would provide 40 seats within 704 square feet of dining area. Therefore, the project would require 18 parking spaces. The City also requires 1 space per 2.5 seats over 25 seats for outdoor dining incidental to public eating establishments. The project would provide 28 outdoor seats, which would require an additional 2 parking spaces. Thus, the project requires 20 parking spaces.

For retail developments (which would include the Target retail store), the City requires one parking space per 225 square feet of floor area, which equates to 85 percent of the gross floor area. The existing Target retail store is 153,126 square feet of gross floor area. Therefore, the Target would be required to provide 579 spaces to accommodate the existing retail space, in addition to the proposed restaurant (20 parking spaces) for a total of 599 required parking spaces.

The project proposes to provide 596 parking spaces. It is acknowledged that nine additional parking spaces would be required for the existing retail space; however, the project is located

within the E. Capitol Expressway/Silver Creek Road Urban Village and is eligible for a twenty percent reduction of required vehicle parking. As such, the project would not be required to provide additional parking spaces and would meet the City's parking space requirement.

According to the City's Zoning Code, the project is required to provide one clean air vehicle parking space, given that 28 standard parking spaces would be provided. The project would provide one clear air vehicle space and 3 electric vehicle (EV) spaces.

The City of San José's bicycle parking requirements as described in the City's Zoning Code (Chapter 20.90, Tables 20-190) for public eating establishments are 1 per 50 seats. At least 80 percent of the bicycle parking spaces should be provided in short-term bicycle racks, and a maximum of 20 percent should be provided in long-term bicycle spaces. The project is required to provide two short-term bicycle parking spaces and one long-term bicycle parking space. The site plan shows two bicycle racks in the northwest corner of the site, near the outdoor dining tables. The project would also provide one long-term bicycle parking space for employees along the western portion of the building near the trash enclosure.

The City requires one motorcycle parking space for every 20 code-required vehicle parking spaces for commercial uses (per the City's Zoning Code Chapter 20.90, Table 20-250). Thus, the project is required to provide one motorcycle parking space and would provide three motorcycle parking spaces.

Conclusion

The proposed drive-thru queue storage for the Chick-fil-A restaurant provides adequate storage capacity for the estimated maximum vehicle queue. Vehicle queuing from the drive-thru facilities is not expected to spill into the parking lot drive isles. Furthermore, the project would accommodate pedestrian and bicycle access via exclusive walkways which connect the proposed Chick-fil-A restaurant to the public sidewalks. The walkways would minimize the extent of pedestrian and bicycle interaction with vehicles at the site and provide a comfortable, convenient, and safe environment which in turn can encourage use of active transportation modes. As such, these project features would reduce design hazards for pedestrians and bicyclists at the site. Potential increased hazards due to a geometric design feature or incompatible uses would be less than significant.

Mitigation Measures: No mitigation measures are required.

d. Result in inadequate emergency access?

Less Than Significant Impact. As discussed in Response 4.9(f), project construction and operations would not interfere with any daily operations of the City of San José Fire Department (SJFD). The project would incorporate all applicable design and safety standards and regulations as set forth by the California Building Code (CBC) and SJFD to ensure that it does not interfere with the provision of local emergency services (i.e., provision of adequate access roads to accommodate emergency response vehicles, minimum turning radii, adequate numbers/locations of fire hydrants, etc.).

Further, development of the project would not significantly alter emergency access to persons at the project site. Existing site access at the project site would remain similar to existing conditions. Silver Creek Road and the project driveways would provide emergency vehicle

access to all sides of the project building. The SJFD requires that all portions of the buildings be within 150 feet of a fire department access road and requires a minimum of 6 feet clearance from the property line along all sides of the buildings. The proposed project would meet the 6-foot clearance and 150-foot requirements. All appropriate fire and emergency access conditions would be incorporated into the project design. Prior to final site plan approval, the Applicant would be required to submit plans to the SJFD for review of compliance with applicable regulations. With implementation of the existing City standards and regulations, site access would be sufficient for emergency vehicles and impacts in this regard would be less than significant.

Typical activities related to the construction of any development could include lane narrowing and/or lane closures, sidewalk and pedestrian crosswalk closures, and bike lane closures. In the event of any type of closure, clear signage (e.g., closure and detour signs) must be provided to ensure vehicles, pedestrians and bicyclists are able to adequately reach their intended destinations safely. Per Condition of Approval, the project would be required to submit a construction management plan for City approval.

Should temporary partial lane closure be required during the construction phase for any improvements in public right-of-way, the Applicant would be required to implement a Traffic Construction Management Plan (TCMP) to address the possible lane closures and/or detours (if necessary) (Conditions of Approval). Thus, impacts concerning emergency access would be reduced to less than significant levels with incorporation of the Public Works Conditions of Approval.

Conditions of Approval:

Prior to project construction initiation, the Applicant will prepare a construction management plan for approval by the City Traffic Engineer. The plan will specify that one direction of travel in each direction on adjacent roadways must always be maintained during project construction activities. If full lane closures are required and one direction of travel in each direction cannot be maintained, the plan will identify planned detours. The plan will include measures such as construction signage, limitations on timing for lane closures to avoid peak hours, temporary striping plans, and use of construction flag person(s) to direct traffic during heavy equipment use. The plan will also be incorporated into project specifications for verification prior to final plan approval.

Mitigation Measures: No mitigation measures are required.

4.18 TRIBAL CULTURAL RESOURCES

Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k),or;				✓
b. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.				✓

The information presented in this analysis is based on the *Cultural Resources Technical Memo for the Chick-fil-A Silver Creek and Capitol Project, San José, Santa Clara County, California* (Cultural Memorandum) prepared by Michael Baker International (Michael Baker), dated October 7, 2021; refer to Appendix C, *Cultural Memo*.

Field Survey and Record Search

The Cultural Memorandum methodology included a field survey and a records search. The field (pedestrian) survey was conducted on August 30, 2021, and included notes and photographs consisting of recorded observations for all four exposed building elevations, architectural design, materials, and alterations. The records search of the California Historical Resources Inventory System (CHRIS) was conducted at the Northwest Information Center (NWIC) to identify previous cultural resources studies and previously recorded cultural resources within a 0.25-mile radius of the project site. The CHRIS search results were provided on September 20, 2021, and included a review of the California Inventory of Historic Resources list, California Points of Historical Interest list, California Historical Landmarks list, and Archeological Determinations of Eligibility list. The records search also included a review of the available historic USGS 7.5-minute topographic quadrangle map. Additionally, the Preservation Action Council of San José and Santa Clara County Historical and Genealogical Society were notified via email on September 7, 2021 requesting information or concerns regarding historical resources within the project area. No responses were received from the Preservation Action Council of San José or the Santa Clara County Historical and Genealogical Society.

Environmental Setting

Historical Resources

The records search identified one potential historic resources that has been evaluated within a 0.25-mile radius of the project site. No resources were identified within or adjacent to the project area. The potential historic resource (P-09-000883 [prehistoric site]), consists of three burials, fire-crack rock, charcoal, fire-baked clay, and two Franciscan chert core artifacts. The boundaries

for the site are unknown due to the developed nature of the area surrounding the excavated pit and the burials were noted in poor condition. The prehistoric site is situated approximately 0.25-mile northeast of the project site and has not been evaluated for eligibility regarding the NRHP or CRHR.

Tribal Consultation

In compliance with AB 52, the City distributed letters notifying each tribe that requested to be on the City's list for the purposes of AB 52 of the opportunity to consult with the City regarding the project. The letters were distributed on August 4, 2022. The tribes had 30 days to respond to the City's request for consultation. The City did not received any requests for consultation within the 30-day response period. As such, consultation efforts pursuant to AB 52 concluded.

Regulatory Setting

State

Assembly Bill (AB) 52

As of July 1, 2015, California Assembly Bill 52 (AB 52) was enacted and expanded CEQA by establishing a formal consultation process for California tribes within the CEQA process. The bill specifies that any project that may affect or cause a substantial adverse change in the significance of a tribal cultural resource would require a lead agency to "begin consultation with a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the project."

Section 21074 of AB 52 also defines a new category of resources under CEQA called "tribal cultural resources." Tribal cultural resources are defined as "sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe" that are either listed on or eligible for the California Register of Historical Resources (CRHR) or a local historic register, or that the lead agency has determined to be significant based on substantial evidence.

On February 19, 2016, the California Natural Resources Agency proposed to adopt and amend regulations as part of AB 52 implementing Title 14, Division 6, Chapter 3 of the California Code of Regulations, CEQA Guidelines, to include consideration of impacts to tribal cultural resources pursuant to Government Code Section 11346.6. On September 27, 2016, the California Office of Administrative Law approved the amendments to Appendix G of the CEQA Guidelines, and these amendments are addressed within this environmental document.

a. Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)?:

No Impact. Refer to Response 4.5(a) and Appendix C, *Cultural Memo*. No known cultural resources listed or eligible for listing in a State or local register of historic resources are located within the project site. Thus, no impacts to tribal cultural resources that are listed or eligible for listing in the California Register or in a local register would occur.

Mitigation Measures: No mitigation measures are required.

ii. A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resource Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.

Less Than Significant. In compliance with AB 52, the City distributed letters notifying each tribe that requested to be on the City's list for the purposes of AB 52 of the opportunity to consult with the City regarding the project. The letters were distributed on August 4, 2022. The tribes had 30 days to respond to the City's request for consultation. The City did not received any requests for consultation within the 30-day response period. As such, consultation efforts pursuant to AB 52 concluded. No potential impacts would occur to known tribal cultural resources in this regard.

Mitigation Measures: No mitigation measures are required.

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4.19 UTILITIES AND SERVICE SYSTEMS

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Require or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunication facilities, the construction or relocation of which could cause significant environmental impacts?			✓	
b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?			✓	
c. Result in a determination by the wastewater treatment provider which services or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?			✓	
d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?			✓	
e. Comply with Federal, State and local management and reduction statutes and regulations related to solid waste?			✓	

Environmental Setting

Water

Water services for the project site are provided by San José Municipal Water System (Muni Water). Muni Water provides water utility services for approximately 12 percent of the City of San José (City).[1] Muni Water uses surface water purchased from the Santa Clara Valley Water District (Valley Water), which is imported from the South Bay Aqueduct, Lake Del Valle, and San Luis Reservoir, all of which draw water from the Sacramento-San Joaquin Delta watershed.[2]

Wastewater Treatment

Sewer services for the project site are provided by the City. The City operates and maintains approximately 2,294 miles of wastewater collection system pipeline that ranges from six to 90 inches in diameter, approximately 45,000 manholes and 16 sewage lift stations.[3] Currently, the City's wastewater is delivered to the San José/Santa Clara Water Pollution Control Plant (WPCP). WPCP is located approximately 12.7 miles northwest of the project site at 700 Los Esteros Road in the City of San José. WPCP is the largest wastewater treatment facility in the western United States and serves 1.4 million residents, along with over 17,000 businesses in eight cities and four

[1] City of San José, *Water Utilities*, https://www.sanjoseca.gov/your-government/environment/water-utilities, accessed December 7, 2021.

[2] City of San José, *Water Supply*, https://www.sanjoseca.gov/your-government/environment/water-utilities/drinking-water/water-supply, accessed December 7, 2021.

[3] City of San José, *Sewer System Management Plan*, October 2014, https://www.sanjoseca.gov/home/showpublisheddocument/32539/636732478204270000, accessed December 7, 2021.

sanitization districts. The WPCP treats an average of 110 million gallons of wastewater per day (mgd), with a capacity of up to 167 mgd.

Stormwater Drainage

The project site is regulated under the National Pollutant Discharge Environmental System (NPDES) Municipal Regional Permit (MRP) issued by the San Francisco Bay Regional Water Quality Control Board, Region 2 (RWQCB) for San José.

Dry Utilities

Dry utilities include natural gas, electricity, and telecommunications facilities. It is acknowledged that pursuant to Municipal Code Chapter 17.845.030, *Prohibited Natural Gas Infrastructure in Newly Construct Buildings*, natural gas infrastructure is prohibited in newly constructed buildings with an approved building permit on or after August 1, 2021 (with limited exceptions). The project Applicant would request an exemption for the proposed building's cooking equipment/commercial kitchen pursuant to Municipal Code Chapter 17.845.045, *Limited Exemption for Manufacturing and Industrial Facilities and Food Service Establishments*. As such, natural gas and electricity services to the project site would be provided by Southern California Gas Company (SCGC) and Pacific Gas and Electric (PGE); and telecommunications by Xfinity, AT&T, Viasat, and HughesNet.

Republic Services would provide solid waste, recycling, and garbage collection for the project site.[4]

Regulatory Setting

State

California Department of Resources Recycling and Recovery

The California Department of Resources Recycling and Recovery (CalRecycle) oversees integration of the California Integrated Waste Management Act (IWMA) of 1989. As such, CalRecycle oversees and provides assistance to local governments as they develop and implement plans to meet the mandates of the IWMA and subsequent legislation.[5]

California Green Building Standards Code

The California Green Building Standards Code (CalGreen) establishes mandatory green building standards for buildings through the State of California. In addition, CalGreen is intended to improve public health, safety, and general welfare through enhanced design and construction of buildings using concepts which reduce negative impacts and promote those principles which have

[4] City of San José, *Businesses,* https://www.sanjoseca.gov/your-government/environment/recycling-garbage/garbage-recycling-for-businesses, accessed January 4, 2022.

[5] California Department of Resources Recycling and Recovery, *Enforcement*, https://www.calrecycle.ca.gov/lgcentral/enforcement#:~:text=The%20California%20Department%20of%20Resources,the%20IWMA%20and%20subsequent%20legislation., accessed March 16, 2022.

a positive environmental impact and encourage sustainable construction practices. CalGreen was adopted to address the five divisions of building construction:[6]

- Planning and design
- Energy Efficiency
- Water efficiency and conservation
- Material conservation and resource efficiency
- Environmental quality

Local

Envision San Jose 2040 General Plan

The General Plan includes Community Design Goals, Policies, and Implementation Actions that guide the form of future development in San José and help tie individual projects to the vision for the surrounding area and the city as a whole. The following policies are specific to utilities and services system and apply to the proposed project:

> **Policy MS-3.1:** Require water-efficient landscaping, which conforms to the State's Model Water Efficient Landscape Ordinance, for all new commercial, institutional, industrial, and developer-installed residential development unless for recreation needs or other area functions.
>
> **Policy MS-3.2:** Promote use of green building technology or techniques that can help reduce the depletion of the City's potable water supply as building codes permit. For example, promote the use of captured rainwater, graywater, or recycled water as the preferred source for non-potable water needs such as irrigation and building cooling, consistent with Building Codes or other regulations.
>
> **Policy MS-3.3:** Promote the use of drought tolerant plants and landscaping materials for nonresidential and residential uses.
>
> **Policy IN-3.5:** Require development which will have the potential to reduce downstream LOS to lower than "D", or development which would be served by downstream lines already operating at a LOS lower than "D", to provide mitigation measures to improve the LOS to "D" or better, either acting independently or jointly with other developments in the same area or in coordination with the City's Sanitary Sewer Capital Improvement Program.
>
> **Policy IN-3.7:** Design new projects to minimize potential damage due to stormwaters and flooding to the site and other properties.

[6] California Department of Housing and Community Development, *CalGreen*, https://www.hcd.ca.gov/calgreen, accessed March 16, 2022.

Policy IN-3.9: Require developers to prepare drainage plans that define needed drainage improvements for proposed developments per City standards.

Policy IN-3.10: Incorporate appropriate stormwater treatment measures in development projects to achieve stormwater quality and quantity standards and objectives in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit.

Policy MS-17.2: Ensure that development within San José is planned and built in a manner consistent with sustainable use of current and future water supplies by encouraging sustainable development practices, including low-impact development, water-efficient development and green building techniques. Support the location of new development within the vicinity of the recycled water system and promote expansion of the SBWR system to areas planned for new development. Residential development outside of the Urban Service Area can be approved only at minimal levels and only allowed to use non-recycled water at urban intensities. For residential development outside of the Urban Service Area, restrict water usage to well water, rainwater collection or other similar sustainable practice. Non-residential development may use the same sources and potentially make use of recycled water, provided that its use will not result in conflicts with other General Plan policies, including geologic or habitat impacts. To maximize the efficient and environmentally beneficial use of water, outside of the Urban Service Area, limit water consumption for new development so that it does not diminish the water supply available for projected development within San José's urbanized areas.

Policy MS-19.1: Require new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the development of a sustainable local water supply.

Policy MS-19.4: Require the use of recycled water wherever feasible and cost effective to serve existing and new development.

Policy IN-3.3: Meet the water supply, sanitary sewer and storm drainage level of service objectives through an orderly process of ensuring that, before development occurs, there is adequate capacity. Coordinate with water and sewer providers to prioritize service needs for approved affordable housing projects.

Policy IP-15.1: New development is required to construct and dedicate to the City all public improvements directly attributable to the site. This includes neighborhood or community parks and recreation facilities, sewer extensions, sewer laterals, street improvements, sidewalks, street lighting, fire hydrants and the like. In the implementation of the level of service policies for transportation, sanitary sewers, and neighborhood and community parks, development is required to finance improvements to nearby intersections or downstream sewer mains in which capacity would be exceeded, and dedicate land, pay an in lieu fee or finance improvements for parks and recreation needs which would result from the development.

Policy EC-5.7: Allow new urban development only when mitigation measures are incorporated into the project design to ensure that new urban runoff does not increase flood risks elsewhere.

Policy EC-5.11: Reduce the amount of impervious surfaces as a part of redevelopment and roadway improvements through the selection of materials, site planning, and street design where possible.

Action EC-5.16: Implement the Post-Construction Urban Runoff Management requirements of the City's Municipal NPDES Permit to reduce urban runoff from project sites.

a. Require or result in the relocation or construction of new or expanded water, or wastewater treatment or storm water drainage, electric power, natural gas, or telecommunication facilities or expansion of existing facilities, the construction or relocation of which could cause significant environmental impacts?

Less Than Significant Impact.

Water

The project operations would result in a demand of approximately 3,069 gallons of water per day.[7] The project would install new water service connections including a 6-inch fire service water line, 2-inch water line for domestic, and 1.5-inch for irrigation. Water service connections would connect the proposed Chick-fil-A restaurant to an existing 12-inch water line within the Silver Creek Road right-of-way. Additionally, the proposed project would comply with San José Municipal Code (Municipal Code) Chapter 15.07.1110, *Collection of Fees*, which requires payment of connection fees prior to the issuance of a building permit. No new off-site water facilities are proposed, nor are existing facilities proposed to be expanded, other than connections to the existing system. As such, less than significant impacts would occur in this regard.

Wastewater Treatment

Implementation of the proposed project would involve installing on-site sewer infrastructure to support the new restaurant. As discussed in Section 2.2, *Project Characteristics*, any wastewater generated on-site would be discharged to a proposed 6-inch VCP sanitary sewer lateral from the proposed project which would connect to an existing 18-inch VCP sanitary sewer main, in the Silver Creek Road right-of-way. A new 4-inch grease waste line and 6-inch sanitary line would be constructed, then manifold together to create the new 6-inch line.

The project is conservatively assumed to generate approximately 1,250 gallons per day (gpd) of waste water. As such, project-generated wastewater would represent less than 0.01 percent of the treatment capabilities at the WPCP. Additionally, the proposed project would be required to comply with Municipal Code Chapter 15.16.820, *Treatment Plant Connection Fee – Changed Use, Purpose or Condition*, which requires payment of sewer connection fees to the City. As such, project implementation is not anticipated to require or result in the relocation or construction of new or expanded wastewater treatment facilities during project operation. Further, temporary construction activities associated with the project would not generate substantial wastewater and would be short-term in nature. As such, impacts in this regard would be less than significant.

[7] Refer to Appendix A, *Air Quality/Greenhouse Gas/Energy Data*, for utility assumptions used in this analysis.

Stormwater Drainage

The project would construct a new stormwater collection system on-site. On-site stormwater would flow into the proposed catch basins located on-site and be conveyed to flow-through planters and/or an on-site bio-retention structure. After treated, the stormwater would then flow to an existing 12-inch storm drain on-site. No new off-site stormwater facilities are anticipated to be required, nor are other off-site existing facilities anticipated to be expanded. Less than significant impacts would occur in this regard.

Dry Utilities

Project construction and operations would not increase dry utility use substantially above existing conditions in a manner that would require or result in the relocation or construction of new or expanded dry utilities facilities. Electrical connections would connect the proposed Chick-fil-A restaurant building via an electrical line from a main distribution panel, to an electrical transformer, and finally an existing overheard electrical line located on the Silver Creek Road right-of-way. As shown in Table 4.6-1, *Project and Countywide Energy Consumption*, the project's energy usage would constitute an approximate 0.0012 percent increase over Santa Clara County's typical annual electricity consumption and an approximate 0.00018 percent increase over Santa Clara County's typical annual natural gas consumption. As such, it is not anticipated that project implementation would require or result in the relocation or construction of new or expanded dry utilities. Impacts would be less than significant in this regard.

Mitigation Measures: No mitigation measures are required.

b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?

Less Than Significant Impact. As stated in Response 4.19(a), the City would provide potable water service to the project site. The City relies on surface water for supply, obtained from Valley Water, which is imported from the South Bay Aqueduct, Lake Del Valle, and San Luis Reservoir, all of which draw water from the Sacramento-San Joaquin Delta watershed. The proposed project would result in the generation of additional wastewater above existing conditions. However, there is capacity for wastewater treatment at WPCP's wastewater treatment plant to serve the project's anticipated demand in addition to existing commitments. Additionally, as the project is consistent with the site's land use designation and zoning, payment of standard sewer connection fees and ongoing user fees would ensure that sufficient capacity is available. As such, the project's potential impacts on wastewater treatment provider in this regard would be less than significant.

Mitigation Measures: No mitigation measures are required.

c. Result in a determination by the wastewater treatment provider which services or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?

Less Than Significant Impact. As stated in Response 4.19(a), project implementation would not require the relocation or construction of new or expanded wastewater treatment facilities. The project would demolish one existing commercial building and construct one new drive-

thru restaurant facility on-site. As such, the project is not anticipated to generate a substantial source of additional wastewater above the project site's existing conditions. As a result, the project's wastewater demand, in addition to the City's existing commitments, would not exceed capacity. A less than significant impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?

Less Than Significant Impact. Republic Services would provide solid waste, recycling, and garbage collection for the project site.[8] In 2019, a total of 613,249 tons of solid waste were disposed in 28 permitted landfills serving the City. Among the 28 sites serving the City, Newby Island Sanitary Landfill, Monterey Peninsula Landfill, and Billy Wright Disposal Site admitted the majority of the City's waste; refer to Table 4.19-1, *Landfills Serving the City*.

Construction

The project would demolish an existing commercial building and construct a new restaurant facility. Given the remaining capacity of area landfills; refer to Table 4.19-1, the anticipated 516 tons of demolition material would not exceed the capacity of local or regional landfills. Further, all construction activities would be subject to conformance with relevant Federal, State, and local requirements related to solid waste disposal. Specifically, the project would be required to demonstrate compliance with the California Integrated Waste Management Act of 1989 (AB 939), which requires all California cities to "reduce, recycle, and re-use solid waste generated in the State to the maximum extent feasible." The California Integrated Waste Management Act of 1989 requires that at least 50 percent of waste produced is recycled, reduced, or composted. The project would also be required to demonstrate compliance with the 2019 (or most recent) Green Building Code, which includes design and construction measures that act to reduce construction-related waste though material conservation measures and other construction-related efficiency measures. Compliance with these programs would ensure the project's construction-related solid waste impacts would be less than significant.

Operation

Based on the project's greenhouse gas modeling; refer to Section 4.8, *Greenhouse Gas*, project operations are expected to generate approximately 10.31 tons of solid waste per year, or approximately 0.03 tons per day (tpd). This represents less than 0.01 percent of any landfill's maximum daily permitted throughput capacity identified in Table 4.19-1. As such, the project is not anticipated to generate solid waste in excess of State or local standards, or in

[8] City of San José, *Businesses,* https://www.sanjoseca.gov/your-government/environment/recycling-garbage/garbage-recycling-for-businesses, accessed January 4, 2022.

excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals. Impacts in this regard would be less than significant.

Table 4.19-1
Landfills Serving the City

Name/Location	Amount Disposed by City in 2019 (tons per day)	Maximum Daily Throughput (cubic yards)	Remaining Capacity (cubic yards)	Anticipated Closure Date
Altamont Landfill & Resource Recovery 10840 Altamont Pass Road Livermore, CA 94551	11,150	124,400,000	65,400,000	12/01/2070
Bill Wright Disposal Site 17173 Billy Wright Road Los Banos, CA 93522	1,500	14,800,000	11,370,000	12/31/2054
Guadalupe Sanitary Landfill 15999 Guadalupe Mines Road San Jose, CA 95120	1,300	28,600,000	11,055,000	01/01/2048
John Smith Road Landfill 2650 John Smith Road Hollister, CA 95023	1,000	9,797,000	1,921,000	08/01/2025
Kirby Canyon Recycling & Disposal Facility 910 Coyote Creek Golf Drive Coyote, CA 95027	2,600	36,400,000	16,191,600	12/31/2059
Monterey Peninsula Landfill 14201 Del Monte Boulevard Marina, CA 93933	3,500	49,700,000	48,560,000	02/28/2107
Newby Island Sanitary Landfill 1601 Dixon Landing Road Milpitas, CA 95035	4,000	57,500,000	21,200,000	01/01/2041
Potrero Hills Landfill 2675 Potrero Hills Lane Suisun City, CA 94585	4,330	83,100,000	13,872,000	02/14/2048

Notes:
1. Clean Harbors Buttonwillow LLC, Corinda Los Trancos Landfill (Ox Mtn), Covanta Stanislaus, Inc., Fink Road Landfill, Foothill Sanitary Landfill, Forward Landfill, Inc., Highway 59 Landfill, Keller Canyon Landfill, L and D Landfill, McKittrick Waste Treatment Site, North County Landfill & Recycling Center, Recology Hay Road, Recology Ostrom Road LF Inc., Redwood Landfill, Sacramento County Landfill (Kiefer), Vasco Road Sanitary Landfill, Yolo County Central Landfill, Zanker Material Processing Facility and Zanker Road Resource Recovery Operation, are excluded from Table 4.19-1 as these facilities accepted less than one percent of the City's solid waste in 2019 (the last available reporting year). Additionally, Azusa Land Reclamation Co. Landfill is also excluded as it has been inactive sine December 2009.
2. cy = cubic yards

Sources: CalRecycle, *SWIS Facility/Site Search*, https://www2.calrecycle.ca.gov/SolidWaste/Activity, accessed December 8, 2021.

Mitigation Measures: No mitigation measures are required.

e. Comply with Federal, State and local management and reduction statutes and regulations related to solid waste?

Less Than Significant Impact. Refer to Response 4.19(d) above. The project would comply with all Federal, State, and local statutes and regulations related to solid waste, including the California Integrated Waste Management Act and the 2019 (or most recent) Green Building Code. Less than significant impacts would occur in this regard.

Mitigation Measures: No mitigation measures are required.

4.20 WILDFIRE

If located in or near State responsibility areas or lands classified as very high fire hazard severity zones, would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Substantially impair an adopted emergency response plan or emergency evacuation plan?				✓
b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?				✓
c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?				✓
d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?				✓

Environmental Setting

The 0.74-gross acre project site is currently developed with a shared surface parking lot and ornamental trees throughout the site and parking lot. The proposed added parking area at the former O-Reilly Auto Parts store is situated on an approximate 0.61-acre site. The project site is within a larger shopping center plaza that consists of an existing Target and shared parking lot. Surrounding uses primarily consist of commercial uses in the shopping center (anchored by Target), as well as commercial/retail uses to the west, north (Silver Creek Plaza), and east. The project site is located adjacent to a key roadway, Capitol Expressway. According to the California Department of Forestry and Fire Protection's (CAL FIRE) Fire Hazard Severity Zone Viewer, the project site is not located in or near a State responsibility area nor is the project site designated as a very high fire severity zone.[1,2]

Regulatory Setting

State

California Department of Forestry and Fire Protection

CAL FIRE is intended to manage and protect the State of California's natural resources through ongoing assessment and study of the State's natural resources and an extensive CAL FIRE Resource Management Program. CAL FIRE's Prevention Program consists of multiple activities including wildland pre-fire engineering, vegetation management, fire planning, education and law

[1] California Department of Forestry and Fire Protection, *Fire Hazard Severity Zones in SRA, Santa Clara County*, adopted by CAL FIRE on November 7, 2007, https://osfm.fire.ca.gov/media/5935/san_jose.pdf, accessed August 27, 2021.

[2] California Department of Forestry and Fire Protection, *Very High Fire Hazard Severity Zones in LRA as Recommended by CAL FIRE, San José, October 2008,* https://osfm.fire.ca.gov/media/5935/san_jose.pdf, accessed August 27, 2021.

enforcement. Typical fire prevention projects include brush clearance, prescribed fire, defensible space inspections, emergency evacuation planning, fire prevention education, fire hazard severity mapping, and fire-related law enforcement activities. Further, preventing wildfires in State Responsible Area's (SRA) is a vital part of CAL FIRE's mission.[3]

Local

Envision San José 2040 General Plan

Although the project site is not located within an SRA or an area with a high risk of fire, the following policies relating to wildfire are listed in the General Plan:

> **Policy EC-8.1:** Minimize development in very high fire hazard zone areas. Plan and construct permitted development so as to reduce exposure to fire hazards and to facilitate fire suppression efforts in the event of a wildfire.
>
> **Policy EC-8.2:** Avoid actions which increase fire risk, such as increasing public access roads in very high fire hazard areas, because of the great environmental damage and economic loss associated with a large wildfire.
>
> **Policy EC-8.4:** Require use of defensible space vegetation management best practices to protect structures at and near the urban/wildland interface.

a. Substantially impair an adopted emergency response plan or emergency evacuation plan?

No Impact. According to the California Department of Forestry and Fire Protection's (CAL FIRE) Fire Hazard Severity Zone Viewer, the project site is not located in or near a State responsibility area nor is the project site designated as a very high fire severity zone.[4,5] As indicated in Response 4.9(g), the project site and surrounding land uses are developed with urban land uses and do not present a wildland fire hazard. Therefore, no impact would occur in this regard.

Mitigation Measures: No mitigation measures are required.

b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?

No Impact. Refer to Response 4.20(a).

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[3] California Department of Forestry and Fire Protection, *About Us*, https://www.fire.ca.gov/about-us/#:~:text=CAL%20FIRE's%20mission%20emphasizes%20the,CAL%20FIRE%20Resource%20Management%20Program., accessed March 16, 2022.

[4] California Department of Forestry and Fire Protection, *Fire Hazard Severity Zones in SRA, Santa Clara County*, adopted by CAL FIRE on November 7, 2007, https://osfm.fire.ca.gov/media/5935/san_jose.pdf, accessed August 27, 2021.

[5] California Department of Forestry and Fire Protection, *Very High Fire Hazard Severity Zones in LRA as Recommended by CAL FIRE, San José, October 2008,* https://osfm.fire.ca.gov/media/5935/san_jose.pdf, accessed August 27, 2021.

Mitigation Measures: No mitigation measures are required.

c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?

No Impact. Refer to Response 4.20(a).

Mitigation Measures: No mitigation measures are required.

d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?

No Impact. Refer to Response 4.20(a).

Mitigation Measures: No mitigation measures are required.

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4.21 MANDATORY FINDINGS OF SIGNIFICANCE

Would the project:	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
a. Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?		✓		
b. Does the project have impacts that are individually limited, but cumulatively considerable? ("cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)		✓		
c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?		✓		

a. Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?

Less Than Significant Impact With Mitigation Incorporated. As detailed in Section 4.4, *Biological Resources*, no impacts would occur to any special-status plant or wildlife species known to occur in the project area. However, short-term construction activities could impact nesting birds protected by the Migratory Bird Treaty Act. Implementation of Mitigation Measure BIO-1 would minimize potential impacts to nesting birds to less than significant levels. As such, the project would not degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the number or restrict the range of a rare or endangered plant or animal.

As indicated in Section 4.5, *Cultural Resources*, Section 4.7, *Geology and Soils*, and Section 4.18, *Tribal Cultural Resources*, impacts on cultural, paleontological, or tribal cultural resources are not anticipated due to the level of past disturbance on-site. Nonetheless, due to the proposed excavation, there is a possibility that unknown cultural resources are uncovered during site disturbance activities. As such, in the unlikely event that previously unidentified cultural resources are encountered during ground-disturbing activities, Standard Permit Conditions would require all project construction efforts in the immediate area to halt until an archaeologist evaluates the find and recommends a course of action. Further, if evidence of subsurface paleontological resources is found during construction, Standard Permit Conditions would ensure that project construction activities would cease within the

immediate area of the discovery and a qualified paleontologist be contacted who could evaluate the find and recommend a course of action. Therefore, the proposed project would not eliminate important examples of the major periods of California history or prehistory. Impacts would be less than significant in this regard.

b. Does the project have impacts that are individually limited, but cumulatively considerable? ("cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)

Less Than Significant Impact With Mitigation Incorporated. A significant impact may occur if a project, in conjunction with related projects, would result in impacts that are less than significant when viewed separately, but would be significant when viewed together. As concluded in Sections 4.1 through 4.20, the project would not result in any significant impacts in any environmental categories with implementation of Standard Permit Conditions and recommended mitigation. Specifically, as discussed in Response 4.3(b), 4.8(a), 4.8(b), and 4.13(a) pertaining to cumulative air quality, greenhouse gas emissions, and noise, respectively. As discussed in these sections, the incremental effects of the project would be less than considerable when viewed in connection with the effects of past projects, current projects, or probable future projects. Impacts in this regard would be less than significant with Standard Permit Conditions and recommended mitigation.

c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

Less Than Significant Impact With Mitigation Incorporated. Previous sections of this Initial Study reviewed the project's potential impacts related to aesthetics, air quality, noise, hazards and hazardous materials, traffic, and other issues. As concluded in these previous sections, the project would not have environmental effects which would cause substantial adverse effects on human beings, either directly or indirectly, following conformance with the existing regulatory framework, Standard Permit Conditions, and Mitigation Measures HAZ-1 and HAZ-2. Impacts would be reduced to less than significant levels in this regard with compliance with Standard Permit Conditions and recommended mitigation.

4.22 REFERENCES

The following references were utilized during preparation of this Initial Study.

1. Association of Bay Area Governments and Metropolitan Transportation Commission, *Final Plan Bay Area 2050*, https://planbayarea.org/finalplan2050, accessed March 24, 2022.

2. ATC Associates Inc., *Phase I Environmental Site Assessment of Target Store T-0325 3155 Silver Creek Road San José, California 95121*, July 21, 2005.

3. Bay Area Air Quality Management District, *BAAQMD Air Toxics NSR Program Health Risk Assessment Guidelines*, https://www.baaqmd.gov/~/media/files/planning-and-research/permit-modeling/hra_guidelines_12_7_2016_clean-pdf.pdf?la=en, December 2016.

4. Bollard Acoustical Consultants, Inc., *Noise Measurements*, conducted November 19, 2021.

5. California Air Resources Board, *California's 2017 Climate Change Scoping Plan*, November 2017.

6. California Air Resources Board, *California Greenhouse Gas Emission Inventory for 2000 to 2019*, https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2019/ghg_inventory_trends_00-19.pdf. 2021.

7. California Department of Conservation, *Alquist-Priolo Earthquake Fault Zones*, https://www.conservation.ca.gov/cgs/alquist-priolo, accessed December 27, 2021.

8. California Department of Conservation, *California Earthquake Hazards Zone Application*, https://www.conservation.ca.gov/cgs/geohazards/eq-zapp, accessed December 27, 2021.

9. California Department of Conservation, *California Important Farmland Finder*, https://maps.conservation.ca.gov/dlrp/ciff/, accessed August 26, 2021.

10. California Department of Conservation, *DOC Maps: Geologic Hazards*, https://maps.conservation.ca.gov/geologichazards/#:~:text=The%20California%20Geological%20Survey%2C%20a%20division%20within%20the,mineral%20hazards%20such%20as%20radon%2C%20mercury%2C%20and%20asbestos., accessed December 27, 2021.

11. California Department of Conservation, Division of Mine Reclamation, *Home*, https://www.conservation.ca.gov/dmr, accessed on March 16, 2022.

12. California Department of Conservation, Division of Mine Reclamation, *Mines Online*, https://maps.conservation.ca.gov/cgs/informationwarehouse/index.html?map=mlc, accessed on August 26, 2021.

13. California Department of Conservation, *Seismic Hazards Mapping Act*, https://www.conservation.ca.gov/cgs/shma, accessed March 15, 2022.

14. California Department of Fish and Wildlife, *California Regional Conservation Plans*, April 2019, https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68626&inline, accessed August 26, 2021.

15. California Department of Fish and Wildlife, *Threatened and Endangered Species*, https://wildlife.ca.gov/Conservation/CESA, accessed March 23, 2022.

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5.0 CONSULTANT RECOMMENDATION

Based on the information and environmental analysis contained in the Initial Study, we recommend the City of San José prepare a mitigated negative declaration for the Chick-fil-A Silver Creek & Capitol Project. We find the project could have a significant effect on certain environmental issues but that mitigation measures have been identified that reduce such impacts to a less than significant level.

9/20/22
Date

Kristen Bogue, Project Manager
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