



# CHICK-FIL-A SILVER CREEK & CAPITOL PROJECT

INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

Prepared by:

**Michael Baker**  
INTERNATIONAL

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FINAL  
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

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**Chick-fil-A Silver Creek & Capitol Project**

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State Clearinghouse No. 2022090576



LEAD AGENCY:

**City of San José**  
**Department of Planning, Building, and Code Enforcement**

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San José, California 95113-1905  
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## **1.0 INTRODUCTION**

The proposed Chick-fil-A Silver Creek & Capitol Project (project) 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.

The Draft Initial Study/Mitigated Negative Declaration (IS/MND) (State Clearinghouse No. 2022090576) was made available for public review and comment pursuant to CEQA Guidelines Section 15070 from September 28, 2022 through October 19, 2022.

The Draft IS/MND was available for review at the City of San José Department of Planning, Building and Code Enforcement located at City Hall, 200 East Santa Clara Street, San José, California; at the Dr. Martin Luther King, Jr. Main Library, located at 150 E. San Fernando Street; the Governor's Office of Planning and Research (OPR) CEQAnet Web Portal online at: <https://ceqanet.opr.ca.gov/>; and online at: <https://www.sanjoseca.gov/your-government/departments-offices/planning-building-code-enforcement/planning-division/environmental-review/environmental-review-documents>.



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## 2.0 RESPONSES TO COMMENTS

During the public review period, comments were received on the Draft IS/MND from interested public agencies, organizations, and individuals. The following is a list of commenters on the Draft IS/MND during the public review period.

| Comment Letter No.                          | Person, Firm, or Agency                             | Letter Dated       |
|---------------------------------------------|-----------------------------------------------------|--------------------|
| <b>ORGANIZATIONS AND INTERESTED PERSONS</b> |                                                     |                    |
| 1                                           | Amelia Meigs                                        | September 29, 2022 |
| 2                                           | Constituent Relations                               | September 28, 2022 |
| 3                                           | Martha O'Connell                                    | September 28, 2022 |
| 4                                           | Scott Bordelon                                      | September 29, 2022 |
| 5                                           | Santa Clara Valley Water District                   | October 19, 2022   |
| 6                                           | County of Santa Clara Roads and Airports Department | October 17, 2022   |

Although CEQA Guidelines Sections 15073, 15073.5, and 15074 do not require a Lead Agency to prepare written responses to comments received on a Draft IS/MND, the City of San José has elected to prepare the following written responses with the intent of conducting a comprehensive and meaningful evaluation of the proposed project. The number designations in the responses are correlated to the bracketed and identified portions of each comment letter.

# COMMENT LETTER 1

## Public comment Proposed SJ Chick-fil-A

Amelia Meigs

Thu 9/29/2022 9:42 AM

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

[External Email]

Hi Kara,

I am a San Jose resident living with my Irish immigrant wife. We are a same-sex couple and moved to San Jose in hopes of a welcoming and friendly community. We have felt safe publicly displaying affection here and have appreciated seeing the diversity in San Jose. We feel so lucky to learn from so many different people here.

Chick-fil-A has a long history of supporting anti-LGBTQ organizations. These organizations send children and youth to conversion therapy, in which these children are indoctrinated against LGBTQ people. Those who have gone through conversion therapy are twice as likely to attempt suicide as their peers.

Here we have an opportunity to make our community safer- to welcome LGBTQ individuals with open arms and to stand against hate. Please make this choice and stand against a business that is hateful against our own community members.

A Gallup poll in 2015 saw that San Jose had the lowest LGBTQ population of any major metropolitan area. We have to ask ourselves, at what point are we actively participating in homophobia? Allowing an organization such as Chick-Fil-A in our borders allows hate to grow.

Thank you for your consideration, please call with any questions.

Best,

Amelia Walsh

1-1

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## **Response No. 1**

Amelia Meigs  
September 29, 2022

- 1-1 This comment is acknowledged. The commenter does not raise new environmental information or directly challenge information provided in the Draft IS/MND. The City of San José decision makers will consider all comments on the proposed project. For the purpose of CEQA, no further response is necessary.

# COMMENT LETTER 2

kara.hawkins@sanjoseca.gov

constituent.relations

Wed 9/28/2022 5:04 PM

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

Cc:

[External Email]

To whom it may concern:

On behalf of the majority of residents in San Jose, it is highly unlikely that Chick Fil A, a partisan corporation with ties to extremism will be successful in a diverse community.

This sentiment is seem across social media, and we expect an outpour of negative feedback with this plan to enable a right wing business.

Please reconsider the plans to expand this type of business. We The People and residents of California vote not only in elections but more so with our US dollars. Chick Fil A is dead on arrival. Expect zero business. Please choose non partisan and good corporate citizens instead.

Thank you,  
constituent.relations

2-1

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## **Response No. 2**

Constituent Relations  
September 28, 2022

- 2-1 This comment is acknowledged. The commenter does not raise new environmental information or directly challenge information provided in the Draft IS/MND. The City of San José decision makers will consider all comments on the proposed project. For the purpose of CEQA, no further response is necessary.

# COMMENT LETTER 3

## Chick-fil-A Silver Creek & Capitol Project

martha O'Connell

Wed 9/28/2022 5:01 PM

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

Cc:

[External Email]

**Project Name:** Chick-fil-A Silver Creek & Capitol Project

**File Nos.:** CP21-015, ER21-114

Hi Kara,

got your email asking for public comments on this project.

It is my understanding that Chick-fil-A has a bad record on LGBTQ issues.

[From Chick-fil-A to ENDA - National LGBTQ Task Force \(thetaskforce.org\)](https://thetaskforce.org)

[Chick-fil-a's Owner Dan Cathy Is Connected to Anti-LGBTQ Equality Act Donations \(esquire.com\)](https://esquire.com)

Quote from the above site:

Beyond that, I don't have any more words for Chick-fil-a, to be honest, because as Maya Angelou famously said, "When someone shows you who they are, believe them the first time." I don't go to Red Lobster looking for Italian food, and I don't go to Chick-fil-a looking for moral high ground. I don't care how friendly they are. I don't care how "good" the chicken is (especially when Popeyes, Zaxby's, and Raising Cane's are *right there*). The people who own Chick-fil-a have an anti-LGBTQ agenda, and that was ingrained in the company for a good long while.

end of quote

Can someone please forward this to the Office of Equity.

3-1

If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality. – Desmond Tutu

3-1  
CONT

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### **Response No. 3**

Martha O'Connell  
September 28, 2022

- 3-1 This comment is acknowledged. The commenter does not raise new environmental information or directly challenge information provided in the Draft IS/MND. The City of San José decision makers will consider all comments on the proposed project. For the purpose of CEQA, no further response is necessary.

## New Chick-fil-A

Scott Bordelon

Thu 9/29/2022 7:48 AM

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

[External Email]

- A new addition to the fast food chain, **Chick-fil-A**, is being proposed for a *South San Jose site* (3155 Silver Creek Valley) — and would be its fourth San Jose location. The *public comment period* is now **open until Wed., Oct. 19.** 🍷

4-1

I think that address is incorrect. If it's the one I'm thinking of, then it's more than a proposal. It's opening today. Personally, I'm not a fan of giving my money someplace where I know a little of that money will get funneled into a hate group.

4-2

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## **Response No. 4**

Scott Bordelon  
September 29, 2022

- 4-1 As discussed on Draft IS/MND page 2-1, 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 Number [APN] T20-030), an out parcel of 3155 Silver Creek Valley, San José, California (APNs 670-15-018 and -023). The project site is situated in a commercial surface parking lot and includes a former O'Reilly Auto Parts retail store. The Applicant is proposing a new Chick-fil-A restaurant with associated dual drive-thru lane at the northeastern portion of the parking lot. Construction of the project is anticipated to commence in January 2023 and be completed by December 2023. No existing Chick-fil-A facilities existing on the project site.
- 4-2 This comment is acknowledged. The commenter does not raise new environmental information or directly challenge information provided in the Draft IS/MND. The City of San José decision makers will consider all comments on the proposed project. For the purpose of CEQA, no further response is necessary.

# COMMENT LETTER 5

**From:** Jourdan Alvarado

**Sent:** Wednesday, October 19, 2022 4:37 PM

**To:** Hawkins, Kara <[Kara.Hawkins@sanjoseca.gov](mailto:Kara.Hawkins@sanjoseca.gov)>

**Cc:**

**Subject:** RE: Public Review Draft MND: Silver Creek and Capitol Chick-fil-A Project (CP21-015)

[External Email]

Dear Ms. Hawkins,

The Santa Clara Valley Water District (Valley Water) has reviewed the Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Chick Fil-A Silver Creek and Capitol Project in the City of San Jose, received by Valley Water on September 28, 2022.

The proposed project is not located adjacent or within any Valley Water facilities or right-of-way; therefore, in accordance with Valley Water's Water Resources Protection Ordinance, a Valley Water encroachment permit is not required for this project.

Valley Water has the following comments regarding the IS/MND:

- Section 4.9 on page 4.9-2** states that there are 20 monitoring wells on the project site, five of which have been abandoned. Valley Water records indicate that there are four active wells and 46 properly destroyed wells on the subject site (APN: 670-15-018). Please include a discussion on the status of all four wells, including if any wells are no longer proposed to be used. Abandoned or unused wells can provide a vertical conduit for contaminants to pollute groundwater. To avoid impacts to groundwater quality, any wells found on-site that will not be used must be properly destroyed in accordance with Ordinance 90-1, which requires issuance of a well destruction permit. Wells to remain must be registered with Valley Water and protected during construction. Property owners or their representatives should call the Wells and Water Measurement Unit at (408) 630-2660 for more information regarding well permits and registration for the destruction of wells.

5-1
- Section 4.9 on page 4.9-2** states that the "affected groundwater is not currently being used as a source of drinking water" however the project site is in the Santa Clara Plain Recharge Zone within the greater Santa Clara Subbasin, which is an aquifer used as a source of drinking water. This section should be revised accordingly.

5-2
- Section 4.9 on page 4.9-2** implies that the case for the LUST cleanup site at the project location has already been closed. However, according to the State Water Resources Control Board's GeoTracker, while the case is eligible for closure and corrective action activities have been temporarily discontinued, the site is pending further review and the case remains open.

5-3
- Section 4.10 on pages 4.10-1, 4.10-6, and 4.10-9** state that the project is located within the Santa Clara Groundwater Basin. It should also be noted that the project is in the recharge area of the Santa Clara Plain Groundwater Basin.

5-4
- Section 4.10 on pages 4.10-1 and 4.10-8** states that "the project site is located outside of the 100-year flood hazard area." The site is designated as Zone D, which is not a Special Flood Hazard Area (SFHA), but also is not necessarily outside the 100-year floodplain. FEMA defines Zone D as areas of undetermined but possible flood hazards. The text should be revised to state

5-5

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <p>that while the project site is not located within a SFHA, flood risks are undetermined, but possible in this area as defined by FEMA.</p>                                                                                                                                                                                                                                                                                                                                                          | 5-5 cont. |
| <p>6. The FEMA FIRM referenced in <b>Footnote 3 on page 4.10-1</b> and <b>Footnote 10 on page 4.10-8</b> should be corrected to include Map Number 06085C0262H, in addition to 06085C0266H.</p>                                                                                                                                                                                                                                                                                                       | 5-6       |
| <p>7. <b>Section 4.10 on page 4.10-2</b> should also note that Valley Water operates as the wholesale water supplier and flood control agency for the County, in addition to being the County’s local groundwater sustainability agency.</p>                                                                                                                                                                                                                                                          | 5-7       |
| <p>8. <b>Section 4.10 on pages 4.10-2 and 4.10-9</b> should reference the 2021 Groundwater Management Plan, which was released in November 2021 and supersedes the 2016 Groundwater Management Plan.</p>                                                                                                                                                                                                                                                                                              | 5-8       |
| <p>9. <b>Section 4.10 on page 4.10-6</b> states that “the project site is not currently used for groundwater recharge.” While the project site is not located near or within a groundwater recharge pond or facility, it is in the Santa Clara Plain Recharge Zone within the greater Santa Clara Subbasin. This section should be revised accordingly. Please refer to Figure 2-1 on page 2-1 and Section 2.1.2 Recharge Areas on page 2-2 of the Valley Water 2021 Groundwater Management Plan.</p> | 5-9       |
| <p>10. <b>Section 4.19 on pages 4.19-1 and 4.19-6</b> should be revised to clarify that the source of water provided by San Jose Municipal Water System depends on the specific area being served. Since the project site is located in the Evergreen area, water provided in this area is purchased from Valley Water and references to South Bay Aqueduct, Lake Del Valle, and San Luis Reservoir should be deleted.</p>                                                                            | 5-10      |
| <p>11. <b>Part b of Section 4.19 on page 4.19-6</b> is about water supply, but the discussion is about wastewater treatment, which is not the same as water supply. Please revise the discussion in this section to only address the topic of water supply.</p>                                                                                                                                                                                                                                       | 5-11      |

Thank you for the opportunity to review the IS/MND. If you have any questions, or need further information, you can reach me at \*\*\*\*, or by e-mail at \*\*\*\*. Please reference Valley Water File No. 30754 on future correspondence regarding this project.

Sincerely,  
**JOURDAN ALVARADO, CFM**  
 ASSISTANT ENGINEER II – CIVIL (TEMP)  
 Community Projects Review Unit



**SANTA CLARA VALLEY WATER DISTRICT**  
 5750 Almaden Expressway, San Jose CA 95118  
[www.valleywater.org](http://www.valleywater.org)

Clean Water · Healthy Environment · Flood Protection



## **Response No. 5**

Jourdan Alvarado  
Assistant Engineer II – Civil (Temp)  
Santa Clara Valley Water District  
October 19, 2022

- 5-1 Draft IS/MND Section 4.9, *Hazards and Hazardous Materials*, Response 4.9(b) considers the presence of existing monitoring wells and recognizes that all existing 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. However, it is acknowledged that other permits for such activities may be required. As such, these minor clarifications have been made to Draft IS/MND Section 2.3, *Project Approvals/Permitting Agencies* (page 2-12) and Section 4.9, *Hazards and Hazardous Materials* (pages 4.9-2 and 4.9-8), and are reflected below and in Section 3.0, Errata, of the Final IS/MND.

### **Section 2.0, Project Description, Page 2-12**

#### **POTENTIAL PERMITS/APPROVALS FROM AGENCIES AND OTHERS**

- Access Agreement;
- County of Santa Clara:
  1. Environmental Health Department monitoring well relocation/closure;
  2. Environmental Health Food Facility Construction Permit;
- Santa Clara Valley Water District:
  1. Well Destruction Permit(s);
- Regional Water Quality Control Board:
  1. Monitoring well relocation/closure; and
- Valley Transportation Authority.

### **Section 4.9, Hazards and Hazardous Materials, Page 4.9-2, Second Paragraph, Last Sentence**

Since 1991, ~~2050~~ groundwater monitoring wells have been installed at APN 670-15-018 and irregularly monitored, ~~five—46~~ monitoring wells have been ~~abandoned~~ properly destroyed, and ~~five—four~~ monitoring wells have been replaced. According to groundwater data, water quality objectives (WQOs) have been achieved or nearly achieved.



Section 4.9, Hazards and Hazardous Materials, Page 4.9-8

*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~~ destroyed in accordance with applicable federal and State regulations, including those from the Santa Clara County Water District, DEH, and the RWQCB, as applicable. Impacts in this regard would be less than significant.

These changes provide a minor update, correction, or clarification and do not represent "significant new information" as defined in CEQA Guidelines Section 15088.5.

- 5-2 The Draft IS/MND discloses information provided by the Regional Water Quality Control Board (RWQCB) in making their decision regarding closure of a former leaking underground storage tank. Per the State Water Resources Control Board's online GeoTracker database, the affected groundwater is not 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.

As this is an existing condition, and the project would not contribute to a hazardous materials release to groundwater in the area, no impacts would result in this regard and, for the purpose of the California Environmental Quality Act, no further response is required.

- 5-3 Based on available GeoTracker files online, the County of Santa Clara Department of Environmental Health (DEH) has reviewed the case file for the former Unocal #7002 and determined that the site conditions appear to satisfy the low-threat case closure policy's general and media-specific criteria; therefore, corrective action activities (ex. groundwater monitoring and sampling, remediation, reporting, etc.) may be temporarily discontinued pending further review of the site for case closure. A case closure summary will be prepared, and the case will be evaluated according to the DEH's closure review process before it is recommended for final closure. Please note that while there is no further corrective action required at this time, there is no guarantee that the case will be closed. As such, these minor clarifications have been made to Draft IS/MND Section 4.9, *Hazards and Hazardous Materials* (page 4.9-8), and are reflected below and in Section 3.0, *Errata*, of the Final IS/MND.



**Section 4.9, Hazards and Hazardous Materials, Page 4.9-2, Last Paragraph**

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 acknowledged that no further corrective action is required at this time, although there is no guarantee that the case will be closed~~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.

These changes provide a minor update, correction, or clarification and do not represent “significant new information” as defined in CEQA Guidelines Section 15088.5.

5-4 As discussed in the Draft IS/MND Responses 4.10(b) and 4.10(e), the project is located within the Santa Clara Valley – Santa Clara groundwater basin (Basin)<sup>1</sup> and is currently largely covered with impervious surfaces. According to the California Natural Resources Agency, the Basin is designated as a High priority basin.<sup>2</sup> Although the project site is located in a groundwater recharge area, the project site is not currently used for groundwater recharge given its built out nature and location within an existing commercial plaza. Further, as shown in Draft IS/MND Table 4.10-1, *Site Imperviousness*, the proposed project would decrease impervious surface area on-site. As such, impacts in this regard are less than significant. Nonetheless, minor clarifications have been made to Draft IS/MND Section 4.10, *Hydrology and Water Quality* (page 4.10-6), and are reflected below and in Section 3.0, Errata, of the Final IS/MND.

**Section 4.10, Hydrology and Water Quality, Page 4.10-6, Response 4.10(b)**

The project is located within the Santa Clara Valley – Santa Clara groundwater basin (Basin) and is currently largely covered with impervious surfaces. According to the California Natural Resources Agency, the Basin is designated as a High priority basin. Further, it is acknowledged that the project site is located within a Basin recharge area.

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.

These changes provide a minor update, correction, or clarification and do not represent “significant new information” as defined in CEQA Guidelines Section 15088.5.

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

<sup>2</sup> 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.



- 5-5 Although the project site is situated outside of a mapped 100-year flood plain, the project is located in an area of undetermined flood risk. However, it is acknowledged that the FEMA mapping identifies the 100-year flood zone as contained in a structure. Nonetheless, as discussed in Draft IS/MND Response 4.10(c)(ii), 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. Nonetheless, minor clarifications have been made to Draft IS/MND Section 4.10, *Hydrology and Water Quality* (page 4.10-8), and are reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

**Section 4.10, Hydrology and Water Quality, Page 4.10-8, Response 4.10(d)**

***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.<sup>1</sup> While the project site is not located within a SFHA, flood risks are undetermined, but possible in the general area. The FEMA mapping states that the 100-year change flood discharge is contained in a structure at this general area. Currently, there are no known flood hazards currently identified at the project site. Further, implementation of the project would result in increased pervious surface and adequate storm drain infrastructure to support the project. As a result, no impacts would occur in this regard.

These changes provide a minor update, correction, or clarification and do not represent "significant new information" as defined in CEQA Guidelines Section 15088.5.

- 5-6 The Federal Emergency Management Agency (FEMA) map number reference has been updated accordingly. This minor clarification has been made to Draft IS/MND Section 4.10, *Hydrology and Water Quality* (page 4.10-8), footnote 10, and is reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

**Section 4.10, Hydrology and Water Quality, Page 4.10-8, Footnote 10**

Federal Emergency Management Agency, *Flood Insurance Rate Map #06085C0266H and #06085C0262H, Panel 266*, May 18, 2009.

These changes provide a minor update, correction, or clarification and do not represent "significant new information" as defined in CEQA Guidelines Section 15088.5.

- 5-7 It is acknowledged that the Santa Clara Valley Water District is the wholesale water supplier and flood control agency for the County, in addition to being the groundwater sustainability agency.



This minor clarification has been made to Draft IS/MND Section 4.10, *Hydrology and Water Quality* (page 4.10-2), and is reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

**Section 4.10, Hydrology and Water Quality, Page 4.10-2**

Santa Clara Valley Water District

In addition to operating as the wholesale water supplier and flood control agency for the County, 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).<sup>6</sup> 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.<sup>7</sup>

These changes provide a minor update, correction, or clarification and do not represent "significant new information" as defined in CEQA Guidelines Section 15088.5.

- 5-8 It is acknowledged that the Santa Clara Valley Water District has recently updated their Ground Water Management Plan per the requirements of California Water Code (Water Code) Section 10733.6. This minor clarification has been made to Draft IS/MND Section 4.10, *Hydrology and Water Quality* (page 4.10-2), and is reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

**Section 4.10, Hydrology and Water Quality, Page 4.10-2**

Santa Clara Valley Water District

In addition to operating as the wholesale water supplier and flood control agency for the County, The Santa Clara Valley Water District (Valley Water) is the local groundwater sustainability agency, which is responsible for preparing the ~~2016~~ *2021 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).<sup>6</sup> 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.<sup>7</sup>



These changes provide a minor update, correction, or clarification and do not represent “significant new information” as defined in CEQA Guidelines Section 15088.5.

5-9 Refer to Response to Comment 5-5. Further, it is acknowledged that the project proposes bioretention areas and flow-through planter infiltration system, which will increase perviousness of the project site, compared to the existing condition. As such, the proposed project would have a beneficial impact to infiltration into the ground and impacts in this regard would be less than significant.

5-10 It is acknowledged that the proposed project would purchase water from the Santa Clara Valley Water District (Valley Water). The following minor clarification has been made to Draft IS/MND Section 4.19, *Utilities and Service Systems* (page 4.19-1), and is reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

**Section 4.19, Utilities and Service Systems, Page 4.19-1, Second to Last Paragraph**

**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).<sup>1</sup> 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.~~<sup>2</sup>

**Section 4.19, Utilities and Service Systems, Page 4.19-1, Second to Last Paragraph**

***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

These changes provide a minor update, correction, or clarification and do not represent “significant new information” as defined in CEQA Guidelines Section 15088.5.



5-11

This discussion has been updated accordingly to acknowledge water supply demands. The proposed project would nominally increase water demands at the project site. However, as discussed in Response 4.19(a), the project operations would result in a demand of approximately 3,069 gallons of water per day. This increase is consistent with the water demand projections considered for buildout of the General Plan, as the project is consistent with the zoning for the site. Further, the project would be required to pay standard water connection fees. As such, impacts in this regard would be less than significant. The following minor clarifications have been made to Draft IS/MND Section 4.19, *Utilities and Service Systems* (page 4.19-1), and are reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

**Section 4.19, Utilities and Service Systems, Page 4.19-1, Second to Last Paragraph**

***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 increased demand for water~~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,~~ However, as the project is consistent with the site's land use designation and zoning, payment of standard water~~sewer~~ connection fees and ongoing user fees would ensure that sufficient capacity is available. As such, the project's potential impacts on increased water~~wastewater treatment provider in this regard~~ would be less than significant.

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

These changes provide a minor update, correction, or clarification and do not represent "significant new information" as defined in CEQA Guidelines Section 15088.5.



October 17, 2022

# COMMENT LETTER 6

**Kara Hawkins**

City of San José  
200 E. Santa Clara St., T-3  
San José, CA 95113

[Kara.Hawkins@sanjoseca.gov](mailto:Kara.Hawkins@sanjoseca.gov)

**SUBJECT: Public Review Draft MND: Silver Creek and Capitol Chick-fil-A Project (CP21-015)**

The County of Santa Clara Roads and Airports Department (The County) appreciates the opportunity to review the Public Review Draft MND: Silver Creek and Capitol Chick-fil-A Project (CP21-015). We submit the following comments:

We understand that the City intends to release an MND for this project, and the County highly suggests the relocation of the proposed structure closer to the corner of Lexann and Silver Creek and submitting traffic circulation at this location despite traffic report findings that the proposed drive-thru queue storage for the Chick-fil-A restaurant provides adequate storage capacity for the estimated maximum vehicle queue. Unlike other fast-food facilities, Chic-fil-A attracts an enormous number of drive-thru customers here in the Bay Area. It is apparent that all of its franchise locations have drive-thru queues spilling to adjacent roadways. We think driveway access from Capitol Expressway to Chic-fil-A will have a significant impact on it in addition to the impact created by the existing carwash station at this corner.

6-1

Furthermore, please consider the following comments on the current Local Transportation Analysis:

- **Page 22:** *“Due to the congestion of Capitol Expressway and Silver Creek Road, the northbound left turn capacity was also analyzed to determine any queuing deficiencies that currently exist. Table 5 shows that the intersection currently has adequate storage for the existing queue, and the storage lanes are expected to remain adequate for the background and background plus project conditions. The project is not expected to add more than 10 trips per lane to the northbound left turn queue. Based on field observations, the queue occasionally extended past the storage lane and took two cycles to clear.”*
  - Need clarification on the 10 trips per lane to NBL. Figure 5 (Project Trip Distribution and Assignment) shows 14 U-turn movements at this intersection during the PM peak. U-turn movements can only be made in the #1 NBL turn lane.
- **Page 26:** *“Similarly, the Capitol Expressway/Silver Creek Road intersection operates at LOS D during the AM and PM peak hours under existing conditions.”*
  - Capitol Expressway/Silver Creek Road intersection operates at LOS F during the AM.
- **City of San Jose Council Policy 6-10:** *“Proposed drive through uses at or near signalized intersections may compound existing traffic congestion and make it intolerable even if the*

6-2

6-3

6-4



*intersection meets the Transportation LOS Policy. In these situations, proposed drive through uses should be discouraged.”*

- Capitol Expressway/Silver Creek Road intersection operates at LOS D during the PM. However, heavy pedestrian activity and high demand for conflicting movements may cause congestion to greatly intensify and impact the intersection compared to normal circumstances.
- **Table ES 2, Page 35:** LOS analysis for Capitol Expressway/Aborn Rd intersection was done using 2012 counts in the PM.
  - **Please** use 2018 counts since Capitol Expressway/Aborn Rd intersection is a CMP intersection.
- **Figure 9, Page 25:** Overflow queue should be considered a single file line and follow the path from Silver Creek driveway. Vehicles are not allowed to enter the overflow queue from the main drive aisle along the Target storefront.
- Recommend reconfiguring the parking lot with one-way drive aisles. Consider designating a zone for curbside pickup/delivery.

6-4  
cont.

6-5

6-6

6-7

Thank you again for your continued outreach and coordination with the County. If you have any questions or concerns about these comments, please feel free to contact me at \*\*\*\*\*

Thank you,



## **Response No. 6**

Ben Aghegnehu  
Associate Transportation Planner  
County of Santa Clara Roads and Airports Department  
October 17, 2022

- 6-1 The commenter is concerned about the proposed drive thru-queue storage from the proposed project. 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 Draft IS/MND Appendix H, *Local Transportation Analysis*) included existing queue counts at the existing Chick-fil-A at 1162 Blossom Hill Road in San José, California. Per these counts, 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's expected que (based on these existing Chick-fil-A counts) is a maximum queue of 21 vehicles, which would be contained within the project's drive-thru stacking lanes.
- 6-2 The statement that the project is not expected to add more than 10 trips per lane to the northbound left turn lane volume is a typo as it should have been described that all 14 trips would be making a U-turn in the first left turn lane. However, this does not affect the conclusion as Hexagon has analyzed this movement regardless. The following minor clarification has been made to Draft IS/MND Appendix H, *Local Transportation Analysis*, and is reflected below and in Section 3.0, *Errata*, of the Final IS/MND.

### **Appendix H, Local Transportation Analysis, Page 22**

Due to the congestion of Capitol Expressway and Silver Creek Road, the northbound left turn capacity was also analyzed to determine any queuing deficiencies that currently exist. Table 5 shows that the intersection currently has adequate storage for the existing queue, and the storage lanes are expected to remain adequate for the background and background plus project conditions. The project is not expected to add more than ~~14~~10 trips per lane to the northbound left turn queue. Based on field observations, the queue occasionally extended past the storage lane and took two cycles to clear.

- 6-3 This statement is a typo. Notwithstanding, this change does not affect the outcome of the analysis provided. The following minor clarification has been made to Draft IS/MND Appendix H, *Local Transportation Analysis*, and is reflected below and in Section 3.0, *Errata*, of the Final IS/MND.



**Appendix H, Local Transportation Analysis, Page 26**

Similarly, the Capitol Expressway/Silver Creek Road intersection operates at LOS D during the AM and PM and LOS F during the AM peak hours under existing conditions.

- 6-4 Based on field observations conducted in November 2021 as part of the LTA, existing pedestrian activity was light.
- 6-5 The 2018 counts at this intersection are lower by 30 percent compared to the counts used in the traffic study (2012). Thus, the 2012 volumes provide a more conservative result.
- 6-6 The overflow operations plan was developed by Chick-fil-A based on operations at existing restaurants, as discussed in further detail in Response to Comment 6-1.
- 6-6 This comment is acknowledged. The City of San Jose has reviewed the LTA as well as the proposed Site Plan and approved the proposed overflow operations plan as presented given the evidence reviewed as part of the LTA.



### 3.0 ERRATA

Changes to the Draft Initial Study/Mitigated Negative Declaration (IS/MND) are noted below. A double-underline indicates additions to the text; ~~strikethrough~~ indicates deletions to the text. These clarifications and modifications are not considered to result in any new or substantially greater significant impacts as compared to those identified in the Draft IS/MND. The changes to the Draft IS/MND do not affect the overall conclusions of the environmental document. Changes are listed by page and, where appropriate, by paragraph.

#### Section 2.0, Project Description, Page 2-12

#### POTENTIAL PERMITS/APPROVALS FROM AGENCIES AND OTHERS

- Access Agreement;
- County of Santa Clara:
  1. Environmental Health Department monitoring well relocation/closure;
  2. Environmental Health Food Facility Construction Permit;
- Santa Clara Valley Water District:
  1. Well Destruction Permit(s);
- Regional Water Quality Control Board:
  1. Monitoring well relocation/closure; and
- Valley Transportation Authority.

#### Section 4.9, Hazards and Hazardous Materials, Page 4.9-2, Second Paragraph, Last Sentence

Since 1991, ~~2050~~ groundwater monitoring wells have been installed at APN 670-15-018 and irregularly monitored, ~~five~~ 46 monitoring wells have been ~~abandoned~~ properly destroyed, and ~~five~~ four monitoring wells have been replaced. According to groundwater data, water quality objectives (WQOs) have been achieved or nearly achieved.

#### Section 4.9, Hazards and Hazardous Materials, Page 4.9-2, Last Paragraph

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 acknowledged that no further corrective action is required at this time, although there is no guarantee that the case will be closed ~~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.



**Section 4.9, Hazards and Hazardous Materials, Page 4.9-8, 2nd Paragraph**

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~~ 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). Results of the Limited Phase II ESA would be provided to the City of San José Planning, Building, and Code Enforcement Supervising Planner (Supervisor), and the Environmental Services Department Municipal Compliance Officer (Compliance Officer). Furthermore, if results from the Limited Phase II ESA indicate soil contamination above regulatory screening levels and above background levels and the soils would not be excavated and disposed offsite as part of the proposed Project, the project Applicant would be required to submit the results to the County Department of Environmental Health (SCDEH), the State Department of Toxic Substances Control (DTSC), or the Regional Water Quality Control Board (RWQCB) ~~obtain regulatory oversight from the,~~ the project Applicant would be required to properly dispose of such soils off-site at an approved facility.

**Section 4.9, Hazards and Hazardous Materials, Page 4.9-8, 4th Paragraph**

*Disposal Of Soil Materials*

All soil ~~cuttings~~ that require disposal during Phase 1 and/or Phase 2 of construction must be sampled and characterized prior to disposal. All contaminated soil shall 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 disposal facility must be provided to the Director ~~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.~~

**Section 4.9, Hazards and Hazardous Materials, Page 4.9-8**

*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~~ destroyed in accordance with applicable federal and State regulations, including those from the Santa Clara County Water District, DEH, and the RWQCB, as applicable. Impacts in this regard would be less than significant.

**Section 4.9, Hazards and Hazardous Materials, Page 4.9-10, Mitigation Measure HAZ-1**

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~~ 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 Limited 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 Director of Planning, Building, and Code Enforcement, or the Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department.

#### **Section 4.9, Hazards and Hazardous Materials, Page 4.9-10, Mitigation Measure HAZ-2**

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 any~~ contaminated materials to an appropriate licensed disposal facility. All contaminated 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 disposal facility and the ~~associated site own written disposal approval~~ approval from the licensed disposal site owner shall be provided to the Director of Planning, Building and Code Enforcement or the Director's designee, and the Environmental Compliance Officer in the City of San José's Environmental Services Department prior to receiving a ~~Building Permit~~ Certificate of Occupancy.

#### **Section 4.10, Hydrology and Water Quality, Page 4.10-6, Response 4.10(b)**

The project is located within the Santa Clara Valley – Santa Clara groundwater basin (Basin) and is currently largely covered with impervious surfaces. According to the California Natural Resources Agency, the Basin is designated as a High priority basin. Further, it is acknowledged that the project site is located within a Basin recharge area.

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.

#### **Section 4.10, Hydrology and Water Quality, Page 4.10-8, Footnote 10**

Federal Emergency Management Agency, *Flood Insurance Rate Map #06085C0266H and #06085C0262H, Panel 266*, May 18, 2009.

#### **Section 4.10, Hydrology and Water Quality, Page 4.10-2 [GLOBAL CHANGE]**



Santa Clara Valley Water District

In addition to operating as the wholesale water supplier and flood control agency for the County,

~~†~~The Santa Clara Valley Water District (Valley Water) is the local groundwater sustainability agency, which is responsible for preparing the 2021-2046 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).<sup>6</sup> 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.<sup>7</sup>

**Section 4.19, Utilities and Service Systems, Page 4.19-1, Second to Last Paragraph**

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).<sup>1</sup> 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.~~<sup>2</sup>

**Section 4.19, Utilities and Service Systems, Page 4.19-1, Second to Last Paragraph**

***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 increased demand for water~~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.~~ However, as the project is consistent with the site’s land use designation and zoning, payment of standard water~~sewer~~ connection fees and ongoing user fees would ensure that sufficient capacity is available. As such, the project’s potential impacts on increased water~~wastewater treatment provider~~ in this regard would be less than significant.

**Section 4.18, Tribal Cultural Resources, Response 4.18(b), Page 4.18-3**

***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 receive 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. Notwithstanding, a Condition of Approval would require the construction site superintendent(s) and other key site supervisory personnel to conduct a Cultural Awareness Training prior to issuance of a grading permit.

**Standard Permit Conditions:**

**Cultural Sensitivity Training.** Prior to issuance of any grading permit, the project applicant shall be required to conduct a Cultural Awareness Training for the construction site superintendent(s) and other key site supervisory personnel. The training shall be facilitated by a qualified archaeologist in collaboration with a Native American representative registered with the Native American Heritage Commissions 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. Documentation verifying that Cultural Awareness Training has been conducted shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee."

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

**Appendix H, Local Transportation Analysis, Page 22**

Due to the congestion of Capitol Expressway and Silver Creek Road, the northbound left turn capacity was also analyzed to determine any queuing deficiencies that currently exist. Table 5 shows that the intersection currently has adequate storage for the existing queue, and the storage lanes are expected to remain adequate for the background and background plus project conditions. The project is not expected to add more than 1440 trips per lane to the northbound left turn queue. Based on field observations, the queue occasionally extended past the storage lane and took two cycles to clear.

**Appendix H, Local Transportation Analysis, Page 26**

Similarly, the Capitol Expressway/Silver Creek Road intersection operates at LOS D during the AM and PM and LOS F during the AM peak hours under existing conditions.



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