

MITIGATION MONITORING AND REPORTING PROGRAM

Chick-fil-A Silver Creek & Capitol Project

File No. CP21-015

November 2022



PREFACE

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

The Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the Chick-fil-A Silver Creek & Capitol Project concluded that the implementation of the project could result in significant effects on the environment and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This MMRP addresses those measures in terms of how and when they will be implemented.

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

I, _____, the applicant, on the behalf of _____, hereby agree to implement the mitigation measures described below which have been developed in conjunction with the preparation of a IS/MND for my proposed project. I understand that these mitigation measures or substantially similar measures will be adopted as conditions of approval with my development permit request to avoid or significantly reduce potential environmental impacts to a less than significant level.

Project Applicant's Signature _____

Date _____

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
BIOLOGICAL RESOURCES					
Impact BIO-1: Demolition and construction activities associated with the proposed project could result in an impact to nesting birds.					
MM 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 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	Avoid construction during nesting season Or A qualified ornithologist shall complete bird surveys and submit a report indicating the results of the survey and any designated buffer zones	Prior to any tree removal, or approval of any grading or demolition permits; during Construction Or Prior to any tree removal, or approval of any grading or demolition permits. Surveys shall be no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (February	City of San José Director of Planning, Building, and Code Enforcement or Director’s designee	Review report indicating the results of the survey and any designated buffer zones	Prior to any tree removal, or approval of any grading or demolition permits.

<p>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.</p>		<p>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)</p>			
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HAZARDS AND HAZARDOUS MATERIALS

Impact HAZ-1: Development of the proposed project could result in exposure of construction workers to potentially hazardous soil.

<p>MM 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 I Construction). At a minimum, tThe 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 <u>Limited</u> 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.</p> <p>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</p>	<p>A qualified environmental professional shall conduct soil testing for potential contaminants documented through a Limited Phase II ESA.</p> <p>If results indicate levels of soil contamination above the appropriate regulatory environmental screening levels, obtain regulatory oversight from the Santa Clara County Department of Environmental Health under their Site Cleanup Program.</p> <p>Submit the findings of the Limited Phase II ESA to the Director of Planning, Building, and Code Enforcement, or the Director’s designee and the Environmental Compliance Officer of the City’s Environmental Services Department for review.</p>	<p>Prior to the issuance of any grading permits.</p>	<p>Environmental Compliance Officer in the City of San José’s Environmental Services Department</p> <p>Director of Planning, Building and Code Enforcement or the Director’s designee</p>	<p>Receive and review the report of findings.</p>	<p>Prior to the issuance of any grading permits.</p> <p>If levels are found to be above the appropriate established environmental screening regulatory threshold and background levels, implementation and completion pursuant to Site Clean-up Program</p>
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<p>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.</p>					
<p>Impact HAZ-1: Development of the proposed project could result in exposure of construction workers to potentially hazardous soil.</p>					
<p>MM 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 <u>contaminated</u> 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 <u>disposal</u> facility and the associated site own written disposal approval <u>approval from the licensed disposal site owner</u> shall be provided <u>to the</u> 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 <u>Building Permit</u> <u>Certificate of Occupancy</u>.</p>	<p>Disposal of contaminated materials to an appropriate licensed disposal facility, if applicable.</p> <p>Written approval of contaminated material disposal from the licensed disposal facility owner.</p>	<p>During grading activities prior to issuance of Building Permits</p>	<p>Environmental Compliance Officer in the City of San José’s Environmental Services Department</p> <p>Director of Planning, Building and Code Enforcement or the Director’s designee</p>	<p>Confirm any contaminated materials are disposed of to an appropriate licensed disposal facility and documented, if applicable.</p>	<p>During grading activities prior to issuance of Certificate of Occupancy</p>

Source: City of San José. Final Initial Study/MND. Chick-fil-A Silver Creek & Capitol Project. November 2022.