

SECTION 6: OTHER CEQA CONSIDERATIONS

6.1 - Significant Unavoidable Impacts

CEQA Guidelines Section 15126.2(a)(b) requires an EIR to identify and focus on the significant environmental effects of the proposed project, including effects that cannot be avoided if the proposed project were implemented.

This section describes significant impacts, including those that can be mitigated but not reduced to a level of less than significant. Where there are impacts that cannot be alleviated without imposing a project alternative, their implications, and the reason why the project is being proposed, notwithstanding their effect, is described. With implementation of the proposed project, several significant impacts that cannot be avoided would occur. Each significant unavoidable impact is discussed below.

- **Background Plus Project Traffic Conditions:** Buildout of the Community Plan would result in significant impacts at four intersections, unless the City changes the minimum acceptable standard for the Community Plan area intersections to LOS E or F where one or no intersections would result in significant impacts, respectively. Conceptual improvements are identified for each location; however, such improvements may not be feasible because they may be in conflict with the City of Fremont General Plan's and Community Plan's vision for the area. As such, at a minimum, the implementation of a Transportation Demand Management (TDM) program would be required and certain physical improvements could be implemented if deemed feasible. However, due to the uncertainty surrounding the ability of TDM to reduce peak-hour trips to acceptable levels and the feasibility of certain improvements, the residual significance is significant and unavoidable.
- **2035 Cumulative Traffic Conditions:** Buildout of the Community Plan would result in significant impacts at 14 intersections, unless the City changes the minimum acceptable standard for the Community Plan area intersections to LOS E or F where nine or no intersections would result in significant impacts. Certain intersections are projected to operate at LOS F and no feasible improvements are available. For other locations, conceptual improvements are identified; however, such improvements may not be feasible because they may be in conflict with the City of Fremont General Plan's and Community Plan's vision for the area. As such, at a minimum, the implementation of a TDM program would be required and certain physical improvements could be implemented if deemed feasible. However, due to the uncertainty surrounding the ability of TDM to reduce peak-hour trips to acceptable levels and the feasibility of certain improvements, the residual significance is significant and unavoidable.
- **Congestion Management Plan:** Buildout of the Community Plan would result in significant impacts on various Congestion Management Plan-designated roadway and freeway facilities. Certain facilities are projected to operate at unacceptable levels and no feasible improvements are available. Furthermore, certain facilities are outside of the jurisdictional

control of the City of Fremont; therefore, there is uncertainty as to whether feasible improvements could be implemented, if determined to be available. The TDM program would serve to partially alleviate the severity of this impact, but would not fully reduce impacts to a level of less than significant. Therefore, the residual significance is significant and unavoidable.

6.2 - Growth-Inducing Impacts

There are two types of growth-inducing impacts that a project may have: direct and indirect. To assess the potential for growth-inducing impacts, the project's characteristics that may encourage and facilitate activities that individually or cumulatively may affect the environment must be evaluated (CEQA Guidelines Section 15126.2(d)).

Direct growth-inducing impacts occur when the development of a project imposes new burdens on a community by directly inducing population growth, or by leading to the construction of additional development in the same area. Also included in this category are projects that remove physical obstacles to population growth (such as a new road into an undeveloped area or a wastewater treatment plant with excess capacity that could allow additional development in the service area). Construction of these types of infrastructure projects cannot be considered isolated from the development they facilitate and serve. Projects that physically remove obstacles to growth or projects that indirectly induce growth may provide a catalyst for future unrelated development in an area such as a new residential community that requires additional commercial uses to support residents.

At buildout, the Warm Springs/South Fremont Community Plan boundaries would contain 11,521,526 square feet of nonresidential uses and up to 4,000 dwelling units. The residential units envisioned by the Community Plan would be expected to result in direct population growth. However, this growth would occur over the life of the Community Plan, which is expected to take several decades to build out. Moreover, the Community Plan's growth projections are accounted for in the City of Fremont General Plan growth projections, which in turn are reflected in the regional growth projections set forth in Plan Bay Area. Thus, development and land use activities that occur within the Community Plan boundaries that are consistent with the Community Plan are inherently "planned growth," and would not be considered growth-inducing.

The Community Plan area is currently served by urban infrastructure and utilities, including roads, potable water, wastewater, storm drainage facilities, electricity, and natural gas. As such, the Community Plan would not result in a removal of a physical barrier to growth (i.e., indirect growth inducement).

In summary, development of land use and infrastructure that are contemplated by the Community Plan have been planned for by the General Plan and, therefore, would not be considered as resulting in significant direct or indirect growth-inducing impacts.

6.3 - Significant Irreversible Changes

As mandated by the CEQA Guidelines, the EIR must address any significant irreversible environmental change that would result from implementation of the proposed project. Specifically, pursuant to the CEQA Guidelines (Section 15126.2(c)), such an impact would occur if:

- The project would involve a large commitment of nonrenewable resources;
- Irreversible damage can result from environmental accidents associated with the project; and
- The proposed consumption of resources is not justified (e.g., the project results in the wasteful use of energy).

The proposed project consists of the Warm Springs/South Fremont Community Plan, which would serve to guide development of transit-oriented, high-density residential and employment-generating uses in the vicinity of the Warm Springs/South Fremont BART station. The Community Plan contemplates residential, commercial (retail and restaurants), research and development, and office uses within the plan area. The Community Plan proposes a circulation network that would develop new roads and improve existing facilities to enhance mobility for vehicles, transit, bicycles, and pedestrians.

Buildout of the Community Plan would involve construction activities that would use non-renewable resources such as petroleum products, aggregate, metals, and other construction-related materials. Day-to-day activities would involve the use of non-renewable resources such as petroleum and natural gas during operations. New development projects would be required to adhere to the latest adopted edition of the California Building Standards Code, which includes a number of standards that would reduce energy demand, water consumption, wastewater generation, and solid waste generation that would collectively reduce the demand for resources. This would result in the emission and generation of less pollution and effluent and lessen the severity of corresponding environmental effects. Although development activities that would occur pursuant to the Community Plan would result in an irretrievable commitment of non-renewable resources, the commitment of these resources would not be significantly inefficient, unnecessary, or wasteful.

The Community Plan's end uses would have limited potential to cause significant environmental accidents through releases into the environment. Those facilities that handle large quantities of hazardous materials would be required to comply with federal and state statutes and regulations concerning transport, use, handling, storage, and disposal of these materials. Thus, compliance with applicable requirements would make the likelihood of hazardous materials release very low.

6.4 - Energy Conservation

Public Resources Code Section 21100(b)(3) and CEQA Guidelines Section 15126.4 require EIRs to describe, where relevant, the wasteful, inefficient, and unnecessary consumption of energy caused by a project. In 1975, largely in response to the oil crisis of the 1970s, the State Legislature adopted Assembly Bill (AB) 1575, which created the California Energy Commission (CEC). The statutory mission of the CEC is to forecast future energy needs, license thermal power plants of 50 megawatts or larger, develop energy technologies and renewable energy resources, plan for and direct state

responses to energy emergencies, and—perhaps most importantly—promote energy efficiency through the adoption and enforcement of appliance and building energy efficiency standards. AB 1575 also amended Public Resources Code Section 21100(b)(3) to require EIRs to consider the wasteful, inefficient, and unnecessary consumption of energy caused by a project. Thereafter, the State Resources Agency created Appendix F of the CEQA Guidelines. Appendix F is an advisory document that assists EIR preparers in determining whether a project would result in the inefficient, wasteful, and unnecessary consumption of energy. For the reasons set forth below, this EIR concludes that the proposed project would not result in the wasteful, inefficient, and unnecessary consumption of energy, would not cause the need for additional natural gas or electrical energy-producing facilities, and, therefore, would not create a significant impact on energy resources.

6.4.1 - Regulatory Setting

Federal and state agencies regulate energy use and consumption through various means and programs. At the federal level, the U.S. Department of Transportation, the U.S. Department of Energy, and the U.S. Environmental Protection Agency are three federal agencies with substantial influence over energy policies and programs. Generally, federal agencies influence and regulate transportation energy consumption through establishment and enforcement of fuel economy standards for automobiles and light trucks, through funding of energy-related research and development projects, and through funding for transportation infrastructure improvements. At the state level, the California Public Utilities Commission (CPUC) and the CEC are two agencies with authority over different aspects of energy. The CPUC regulates privately owned utilities in the energy, rail, telecommunications, and water fields. The CEC collects and analyzes energy-related data, prepares statewide energy policy recommendations and plans, promotes and funds energy efficiency programs, and adopts and enforces appliance and building energy efficiency standards. California is exempt under federal law from setting state fuel economy standards for new on-road motor vehicles. Some of the more relevant federal and state energy-related laws and plans are discussed below.

Federal Energy Policy and Conservation Act

The Federal Energy Policy and Conservation Act of 1975 sought to ensure that all vehicles sold in the U.S. would meet certain fuel economy goals. Through this Act, Congress established the first fuel economy standards for on-road motor vehicles in the U.S. Pursuant to the Act, the National Highway Traffic and Safety Administration, which is part of the U.S. Department of Transportation, is responsible for establishing additional vehicle standards and for revising existing standards. Since 1990, the fuel economy standard for new passenger cars has been 27.5 miles per gallon. Since 1996, the fuel economy standard for new light trucks (gross vehicle weight of 8,500 pounds or less) has been 20.7 miles per gallon. Heavy-duty vehicles (i.e., vehicles and trucks over 8,500 pounds gross vehicle weight) are not currently subject to fuel economy standards. Compliance with federal fuel economy standards is not determined for each individual vehicle model; rather, compliance is determined on the basis of each manufacturer's average fuel economy for the portion of their vehicles produced for sale in the U.S. The Corporate Average Fuel Economy (CAFE) program, which is administered by U.S. Environmental Protection Agency, was created to determine vehicle manufacturers' compliance with the fuel economy standards. The U.S. Environmental Protection

Agency calculates a CAFE value for each manufacturer, based on city and highway fuel economy test results and vehicle sales. On the basis of the information generated under the CAFE program, the U.S. Department of Transportation is authorized to assess penalties for noncompliance. In the course of its over 30-year history, this regulatory program has resulted in vastly improved fuel economy throughout the nation's vehicle fleet.

Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA)

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) promoted the development of inter-modal transportation systems to maximize mobility as well as address national and local interests in air quality and energy. ISTEA contained factors that Metropolitan Planning Organizations (MPOs) such as ABAG were required to address in developing transportation plans and programs, including some energy-related factors. To meet the new ISTEA requirements, MPOs adopted explicit policies defining the social, economic, energy, and environmental values that were to guide transportation decisions in that metropolitan area. The planning process for specific projects would then address these policies. Another requirement was to consider the consistency of transportation planning with federal, State, and local energy goals. Through this requirement, energy consumption was expected to become a decision criterion, along with cost and other values that determine the best transportation solution.

The Transportation Equity Act for the 21st Century (TEA-21)

The Transportation Equity Act for the 21st Century (TEA-21) was signed into law in 1998 and builds upon the initiatives established in the ISTEA legislation discussed above. TEA-21 authorizes highway, highway safety, transit, and other efficient surface transportation programs. TEA-21 continues the program structure established for highways and transit under ISTEA, such as flexibility in the use of funds, emphasis on measures to improve the environment, and focus on a strong planning process as the foundation of good transportation decisions. TEA-21 also provides for investment in research and its application to maximize the performance of the transportation system through, for example, deployment of Intelligent Transportation Systems, to help improve operations and management of transportation systems and vehicle safety.

State of California Energy Plan

The CEC is responsible for preparing the State Energy Plan, which identifies emerging trends related to energy supply, demand, conservation, public health and safety, and the maintenance of a healthy economy. The plan calls for the State to assist in the transformation of the transportation system to improve air quality, reduce congestion, and increase the efficient use of fuel supplies with the least environmental and energy costs. To further this policy, the plan identifies a number of strategies, including providing assistance to public agencies and fleet operators, encouraging urban designs that reduce vehicle miles traveled, and accommodating pedestrian and bicycle access.

Title 24, Energy Efficiency Standards

Title 24, which was promulgated by the CEC in 1978 in response to a legislative mandate to create uniform building codes to reduce California's energy consumption, provides energy efficiency standards for residential and nonresidential buildings. According to the CEC, since the energy

efficiency standards went into effect in 1978, it is estimated that California residential and nonresidential consumers have reduced their utility bills by at least \$15.8 billion. The CEC further estimates that by 2011, residential and nonresidential consumers will save an additional \$43 billion in energy costs.

In 2008, the CEC adopted new energy efficiency standards. Effective January 1, 2010, all projects that apply for a building permit must adhere to the new 2008 standards. The 2008 standards reflect the greenhouse gas reduction requirements of the California Global Warming Solutions Act of 2006 (Assembly Bill 32).

Because the adoption of Title 24 post-dates the adoption of AB 1575, it has generally been the presumption throughout the State that compliance with Title 24 (as well as compliance with the federal and state regulations discussed above) ensures that projects will not result in the inefficient, wasteful, and unnecessary consumption of energy. As is the case with other uniform building codes, Title 24 is designed to provide certainty and uniformity throughout the State while ensuring that the efficient and non-wasteful consumption of energy is carried out through design features. For the vast majority of residential and nonresidential projects, adherence to Title 24 is deemed necessary to ensure that no significant impacts occur from the inefficient, wasteful, and unnecessary consumption of energy. As a further example, the adoption of federal vehicle fuel standards, which have been continually improved since their original adoption in 1975, have also protected against the inefficient, wasteful, and unnecessary use of energy.

Pursuant to the California Building Standards Code and the Title 24 Energy Efficiency Standards, the City will review the design and construction components of the project's Title 24 compliance when specific building plans are submitted.

6.4.2 - Energy Requirements of the Proposed Project

Short-term construction and long-term operational energy consumption are discussed below.

Short-Term Construction

Development and land use activities contemplated by the Community Plan would include short-term construction activities that would consume energy, primarily in the form of diesel fuel (e.g., mobile construction equipment) and electricity (e.g., power tools). It is not possible to reasonably estimate the amount of energy consumed by construction activities, as a number of hard-to-protect variables influence energy consumption (length of activities, size of buildings, equipment fleet, management practices, etc.).

Construction taking place within the Community Plan area would be required to monitor air quality emissions using applicable regulatory guidance such as the BAAQMD CEQA Guidelines. The policy indirectly relates to construction energy consumption because construction air pollutant emissions are reduced through functions of energy consumption. As such, evaluation of air quality emissions on a project-by-project basis would likely utilize energy-reducing activities such as anti-idling measures, limits on duration of activities, and the use of alternative fuels, thereby reducing energy consumption.

Finally, there are no aspects of the Community Plan that would foreseeably result in the inefficient, wasteful, or unnecessary consumption of energy during construction activities. For example, there are no policies that would directly or indirectly cause construction activities to be any less efficient than would otherwise occur elsewhere (restrictions on equipment, labor, types of activities, etc.).

In summary, the Community Plan would not result in the inefficient, wasteful, or unnecessary consumption of energy during construction activities.

Long-Term Operations

Transportation Energy Demand

Development and land use activities contemplated by the Community Plan would include long-term operational activities that would consume energy, both in the form of transportation fuel and building/equipment energy (e.g., electricity and natural gas). It is not possible to reasonably estimate the amount of energy consumed by operational activities, as a number of hard-to-predict variables influence energy consumption.

A key aspect of the Community Plan is to reduce vehicle miles traveled (which reduce transportation fuel consumption) through the development of pedestrian- and transit-oriented residential and employment-generating uses around the Warm Springs/South Fremont BART station. Such uses would be well-positioned to allow residents, employees, and customers to use transit, ride bicycles, and walk rather than travel by single-occupant vehicle.

In summary, the Community Plan would not result in the inefficient, wasteful, or unnecessary consumption of transportation energy during operational activities.

Building Energy Demand

As discussed in Section 3.12, Utility Systems, the Community Plan uses would demand 205 million kWh of electricity and 852 million cubic feet of natural gas at buildout. All new residential and non-residential development within the Community Plan boundaries would be subject to the latest adopted edition of the Title 24 energy efficiency standards, which are among the most stringent in the U.S. As such, implementation of the Community Plan would not result in the unnecessary, wasteful, or inefficient use of energy.

