

CHAPTER 2

Introduction and Background

A. Environmental Review

The City of Fremont, as lead agency, determined that preparation of an Environmental Impact Report (EIR) was necessary for the proposed Niles Gateway Mixed-Use Project (proposed project) because there was “substantial evidence that the proposed project may have a significant effect on the environment” for a specific topic area. An Initial Study Checklist was prepared and circulated from January 23, 2018, to February 22, 2018 (see **Appendix A**). The Initial Study Checklist identified that the proposed project could result in potentially significant impacts to aesthetics (visual character) and transportation and traffic and would require further analysis in the EIR. With respect to the other environmental topic areas, the Initial Study concluded that the project would result in no impact, a less than significant impact, or a less than significant impact with mitigation incorporated. The Initial Study is a component of the EIR and all mitigation measures identified would be implemented should the project be approved. The California Environmental Quality Act (CEQA) requires that, before a project with potentially significant environmental effects may be approved, an EIR must be prepared that fully describes the environmental effects of the project, identifies mitigation measures to lessen or eliminate adverse impacts, and examines feasible alternatives to the project. The information contained in the EIR is to be reviewed and considered by the lead agency prior to the ultimate decision to approve, disapprove, or modify the proposed project.

This Draft EIR is available for public review for the period indicated on the Public Notice of Availability of this document. During the public review period, written comments on the adequacy of the Draft EIR may be submitted to:

David Wage
City of Fremont
Planning Division
39550 Liberty Street
Fremont, CA 94538

Written comments may also be submitted via email to dwage@fremont.gov with “Niles Gateway Mixed-Use Project Draft EIR” noted in the subject line.

Responses to all substantive comments received on the adequacy of the Draft EIR and submitted within the specified review period will be prepared and included in the Responses to Comments/Final EIR. Prior to approval of the project, the City of Fremont must certify the Final

EIR and adopt a Mitigation Monitoring and Reporting Program (MMRP) for mitigation measures identified in the EIR, in accordance with the requirements of California Public Resources Code (PRC) Section 21000 et seq.

B. EIR Guidance

This EIR has been prepared by the City of Fremont, as lead agency, in conformance with CEQA. It is intended to provide the information and environmental analyses necessary to assist the public's understanding of the project and its likely environmental consequences, and to assist public agency decision-makers in considering the approvals necessary to implement the proposed project. The proposed project is described to a sufficient level of detail in Chapter 3 of this document to identify and evaluate any associated environmental impacts.

The following provisions of the guidelines for implementing CEQA (known as the "CEQA *Guidelines*") help define the role of this EIR:

CEQA *Guidelines* Section 15121(a): Informational Document. An EIR is an informational document which will inform public agency decision-makers and the public generally of the significant environmental effect(s) of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project. The public agency shall consider the information in the EIR along with other information, which may be presented to the agency.

CEQA *Guidelines* Section 15151: Standards for Adequacy of an EIR. An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Further, CEQA states that the lead agency should not "approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects..." (PRC Section 21002). If the lead agency approves the project despite residual significant adverse impacts that cannot be mitigated to less-than-significant levels, the agency must adopt a "Statement of Overriding Considerations" stating the reasons for its action in writing.

CEQA *Guidelines* Section 15382 defines a significant effect on the environment as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project...." Therefore, in identifying the significant impacts of the project, this EIR concentrates on the project's substantial physical effects and on mitigation measures to avoid, reduce, or otherwise alleviate those effects.

Scope of EIR

Topics Addressed in this EIR

Pursuant to CEQA *Guidelines* Section 15063(c)(3), through preparation of the Initial Study, the City concluded that additional environmental review in an EIR shall be conducted for the following topics:

- Aesthetic Resources (visual character)
- Transportation and Circulation

The environmental analysis for this topic is presented in Chapter 4 of this document.

Topics Not Addressed in Further Detail in this EIR Based on Preparation of the Initial Study

The information and analysis presented in the Initial Study provides substantial evidence for the conclusion, for all the issues listed below (i.e., those *not* addressed in further detail in this Draft EIR), that: 1) CEQA standards triggering preparation of further environmental review do not exist for those issues; and 2) impacts under these topics would be less than significant with incorporation of appropriate mitigation measures. Topics not addressed in this EIR in further detail are listed below by impact determination category. These topics are, however, analyzed for full disclosure of the environmental determination, in the Initial Study, included within **Appendix A** of this EIR.

- Agricultural and Forestry Resources
- Aesthetics (scenic vistas and resources, light and glare, but not visual character [see above])
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gases
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Tribal Cultural Resources
- Utilities and Service Systems

Mitigation measures that have been recommended in the Initial Study to reduce the environmental impacts of the proposed project in relation to the above topics will be included in the MMRP that the City of Fremont will prepare (pursuant to the CEQA *Guidelines* Section 15097) if the City determines that the proposed project or one of the proposed alternatives should be adopted.

C. Alternatives to the Project

CEQA requires that an EIR discuss a reasonable range of alternatives to the proposed project. This EIR describes and analyzes a reasonable range of alternatives, including a “No Project” alternative as required by CEQA *Guidelines* Section 15126.6(e) as well as Alternative 1 (86-Unit Reduced Density Alternative), and Alternative 2 (75-Unit Reduced Density Alternative). A 60-Unit Reduced Density Alternative and an Off-Site Location Alternative were also considered, but ultimately rejected. Chapter 5 of this document discusses the environmental effects of each alternative, compares the environmental effects of each alternative with the environmental setting and with the effects of the project and each other alternative, and addresses the relationship of each alternative to the project objectives. The determinations of the lead agency concerning the feasibility, acceptance, or rejection of each and all alternatives considered in this EIR will be addressed and resolved in the City’s findings, when the City of Fremont considers approval of the project, as required by CEQA.

D. Organization of this EIR

This EIR is organized as follows:

- **Chapter 1, *Summary***, introduces the project and allows the reader to reference the analysis of potentially significant effects, proposed mitigation measures, residual environmental impacts after mitigation, if any, and alternatives to the project that reduce or avoid significant effects on the environment. Table 1-1, Summary of Impacts and Mitigation Measures, is provided at the end of Chapter 1.
- **Chapter 2, *Introduction and Background***, contains an overview of the document, the relevant CEQA requirements, and the intended use of the EIR.
- **Chapter 3, *Project Description***, identifies the project location and includes a description of the project, the objectives of the project, the anticipated phasing of the project, the required project approvals, and the other agencies that must consider aspects of the project.
- **Chapter 4, *Environmental Setting, Impacts and Mitigation Measures***, contains a discussion of the setting (existing conditions and regulatory framework), the environmental impacts (including cumulative impacts) that could result from the project, and the mitigation measures that would reduce or eliminate the identified adverse impacts, where applicable. The project has been assessed for potential impacts during both construction and operation, and applicable mitigation measures are identified accordingly. The criteria used to assess the significance of adverse environmental effects are identified, and the significance of the impact both before and after mitigation is reported.
- **Chapter 5, *Alternatives to the Project***, evaluates a reasonable range of alternatives to the proposed project. This chapter provides a discussion of the environmental impacts associated with each alternative, compares the relative impacts of each alternative to those of the project and the other alternatives, and discusses the relationship of the alternatives to the project objectives.

- **Chapter 6, *Other Statutory Sections***, discusses the project’s potential for inducing growth and significant irreversible change, and summarizes cumulative impacts and significant and unavoidable impacts.
- **Chapter 7, *Report Preparers***, identifies the EIR preparers, including the lead agency staff and consultants. Persons and documents consulted during preparation of the EIR are listed in the Reference section in Chapter 4.

All reference documents listed at the end of each analysis section in Chapter 4 are available for public review at City of Fremont Planning Division located at 39550 Liberty Street in Fremont, California.

The Appendices include the Notice of Preparation (NOP), comments received on the NOP, the Initial Study, supporting background documents, and technical information used in the impact analyses.

E. Intended Uses of the EIR

This EIR provides the environmental information and evaluation necessary for the planning, construction, and operation of the proposed project. This EIR also provides the CEQA compliance documentation upon which the City’s consideration of, and action on, all applicable approvals (collectively, “approvals”) may be based. These include all approvals set forth in this EIR, as well as any additional approvals that may be necessary to such activities such as planning, construction, operation, and maintenance.

F. Notice of Preparation

A Notice of Preparation (NOP) was prepared by the City of Fremont to obtain comments from agencies and the public regarding issues to be addressed in the EIR. The Notice of Preparation and Initial Study is included in **Appendix A**.

On January 23, 2018, the City sent the NOP to residents within a 1,000-foot radius of the project site, governmental agencies, organizations, and persons interested in the proposed project to solicit input and to identify any concerns or issues that should be included in the EIR. The NOP was circulated for 30 days, with the review period closing on February 22, 2018. A public scoping meeting was held on February 12, 2018, at 7:00 p.m. in the Fremont City Council Chambers. Copies of the written comments received in response to the NOP and a summary table that includes oral comments received at the scoping meeting are included in **Appendix B**. The summary table identifies the person or agency commenting, a summary of their comments, and where in the EIR or Initial Study the comment is addressed.

Comments received in response to the NOP during the scoping period related to potential impacts on visual character and consistency with the *Niles Design Guidelines and Regulations*; concern regarding the density, height, and visual character of the development; impacts to the Niles community character; air quality and dust impacts to sensitive receptors;

biological resources; pre-historic cultural resources; seismic impacts; liquefaction risk; hazardous materials; toxic contamination of the site due to past uses; water quality and drainage; groundwater; noise and vibration impacts from trains; population growth; school capacity; transportation, including traffic and parking; and adequacy of the Initial Study.

An assessment of potential impacts of the project relating to public services, hazardous materials, water quality and hydrology, noise, land use planning, air quality, biological resources, geology and soils, and population and housing is provided within the Initial Study (**Appendix A**). The Initial Study concluded that the project would result in some change to the physical environment for these topics, but impacts were found to be less than significant (or in the case of air quality, hazardous materials, and noise, less than significant with mitigation incorporated). These issues are, therefore, not addressed further in this Draft EIR.

Although written responses to the scoping period comments are not required by CEQA, given the extent of comments received in response to the NOP, clarification and/or information is provided below for several topics most frequently raised.

Response 1: Purpose of Initial Study, EIR, and Mitigation Measures

A number of comments requested that Initial Study impact conclusions be changed to “potentially significant” and a full EIR be prepared. These included comments requesting that resource areas determined to be less than significant, or less than significant with mitigation, be addressed in the EIR. These comments appear to misunderstand the procedures and the purpose of an Initial Study and EIR, which is explained below.

Other comments state that mitigation measure infractions were observed during previous work at the site, with one specifically citing incidents of non-compliance with the City of Fremont Storm Water Management Plan (Ordinance No. 2012) recorded by the City of Fremont in 2015 in relation to remediation (i.e., environmental cleanup) actions on the project site by the project sponsor’s contractors (City of Fremont, 2015). The remediation work consisted of soil excavation from three areas of concern on the project site. The remediation work on the project site was subsequently completed and approved in 2016 (RWQCB, 2016). Other comments generally expressed concerns regarding the enforcement of mitigation measures (e.g., dust) for the proposed project.

Initial Study and EIR. Lead agencies take a three step process in deciding which document to prepare for a project subject to CEQA (Section 15002(k) of the CEQA *Guidelines*). The first step is to determine if the project is subject to CEQA. If the project is not exempt, the Lead Agency (in this case the City) takes a second step and conducts an Initial Study in accordance with Section 15063 of the CEQA *Guidelines* to determine whether the project may have a significant effect on the environment. If the Initial Study shows that the project may have a significant effect, the Lead Agency takes the third step and prepares an EIR. It should be noted that the Initial Study, along with the NOP, are part of this EIR.

The purposes of an Initial Study are to assist in the preparation of an EIR, if one is required, by (CEQA *Guidelines* Section 15063(c)(3)):

- (A) *Focusing the EIR on the effects determined to be significant;*
- (B) *Identifying the effects determined not to be significant;*
- (C) *Explaining the reasons for determining that potentially significant effects would not be significant; and*
- (D) *Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.*

The standards of significance (or significance criteria) are presented in the checklist at the beginning of each section in the Initial Study. The standards by which the proposed project's environmental impacts were assessed were consistent with the environmental topics checklist included in Appendix G of the CEQA *Guidelines*. The Initial Study evaluated the direct and indirect impacts of the proposed project in accordance with the requirements of CEQA *Guidelines* Sections 15064(d) and 15126.2(a). The Initial Study is considered to evaluate and disclose adequately all of the potential physical environmental impacts of the proposed project.

In the opinions of the commenters, the checkboxes marked in Section 3 of the Initial Study include resource area topics other than aesthetics and transportation and traffic; therefore, those topics should be evaluated in the EIR. These checkboxes included air quality, hazards and hazardous materials, and noise because the project would have potentially significant impacts to these resources before mitigation. However, impacts were found to be less than significant with mitigation incorporated for these three resource areas. Consistent with CEQA *Guidelines* Section 15063(c)(3)(A), the Initial Study determined that impacts related to aesthetics (visual character) and transportation and traffic would be potentially significant, and warranted further analysis in an EIR.

Mitigation Measures. With regard to enforcement of mitigation measures, CEQA *Guidelines* Section 15126.4(a)(2) requires that “mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.”

Therefore, all of the mitigation measures contained in the Draft EIR and Initial Study would be fully enforceable and would require future compliance and proof to be shown as specified in the Mitigation Monitoring and Reporting Program (MMRP). If the proposed project is approved, the MMRP would be adopted as part of the Findings of Fact and conditions of approval for the project. The MMRP includes monitoring and reporting of the mitigation measures with timing and responsibilities identified. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary, after implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements. Thus, the adoption of the CEQA findings and project approval also represents a commitment by the project sponsor to

include and implement all mitigation measures identified in the EIR and Initial Study as part of the project.

Response 2: Impact of Project on School Capacity and Increased Traffic Trips

A number of commenters expressed concern regarding the projected population at the project site, school capacity, and school-related traffic trips.

The transportation analysis took school trips into consideration. Trip generation rates include all trip purposes, including trips to and from home and school, work, shopping, etc. In the a.m. peak hour, school drop-off trips are included in the trip estimates. By the p.m. peak hour, elementary school trips are largely completed due to earlier school bell and pick-up times. Trips to schools are often linked trips, meaning that a parent may drop off their child on their way to their place of work or another location.

Currently, the Fremont Unified School District does not guarantee that a child in a certain area will be able to attend the elementary school closest to their home. In such instances, the child is offered a spot at another school that has available space (called overloading), and that school can be close by or across town. There is no way to predict whether a child from the proposed project would be overloaded to another school; it would be dependent on the school attendance figures at the time of enrollment for each student.

It is speculative to estimate the number of overloaded students that would be living at the project in any given year and the related morning school trips that would be longer than the trip to Niles Elementary School. It may also be possible that longer school trips could be on the same route for a parent's trip to work and, therefore, would not represent a change in the morning trip pattern. The Initial Study evaluated whether the proposed project would result in the need for new or expanded facilities. Based on the student generation rates provided in the *Fremont Unified School District School Facilities Needs Analysis* complete in April 2017, the proposed project would generate approximately 47 students (Cooperative Strategies, 2017). The Initial Study concluded on page 102 that impacts would be less than significant because the project sponsor would pay the State-mandated school impact fees to the Fremont Unified School District levied at the time of development. Under California Government Code Section 65996, the California Legislature has declared that payment of the State-mandated school impact fee is deemed to be full and adequate mitigation under CEQA on the provision of school facilities.

Response 3: Air Quality Sensitive Receptors

Several comments stated the Initial Study incorrectly claimed that there are no sensitive receptors within 1,000 feet of the project site. Other comments expressed concern regarding construction-related dust, asthma risks, and impacts on human health. This response is provided to clarify the air quality analysis, methodology, and significance criteria. In general, the air quality and health risk analysis (HRA) in the Initial Study follow the guidance of the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines, and assess impacts based on the thresholds

of significance adopted by the BAAQMD in those guidelines (BAAQMD, 2017a). The health risk analysis also conforms with accepted HRA protocols and calculation methods as specified by the Office of Environmental Health Hazards Assessment (OEHHA, 2015).

Air Quality Significance Criteria Overview. The Initial Study compares the project's criteria pollutant emissions (ROG, NO_x, PM₁₀, and PM_{2.5}) to the BAAQMD's thresholds of significance to determine air quality impacts. The Initial Study determined that both the project's construction emissions and operational emissions would be below these thresholds (see Initial Study Table 4.3-1 and Table 4.3-3). According to the BAAQMD's CEQA Guidelines (2017), the thresholds for criteria pollutants (ROG, NO_x, PM₁₀, and PM_{2.5}) "represent the levels above which a project's individual emissions would result in a considerable contribution (i.e., significant) to the SFBAAB's existing non-attainment air quality conditions and thus establish a nexus to regional air quality impacts that satisfies CEQA requirements for evidence-based determinations of significant impacts" (BAAQMD, 2017b). The attainment status of the SFBAAB is based on the California Ambient Air Quality Standards (CAAQS) and National Ambient Air Quality Standards (NAAQS) for criteria pollutants. The AAQS are determined based on a review of the scientific literature on the health risks of these pollutants, conducted by OEHHA (CARB, 2017a and 2017b). Therefore, the criteria pollutant thresholds are, in effect, health risk thresholds. The BAAQMD has an air quality management plan detailing strategies to meet the AAQS for pollutants in which the basin is in nonattainment (BAAQMD, 2017c).

Sensitive Receptors and Cancer Risk Assessment. The Initial Study evaluates a number of sensitive receptors within 1,000 feet of the project site. These receptors include residential uses immediately adjacent to the west (30 feet from the project site), residential uses to the east across Niles Boulevard, Corpus Christi Religious School to the west (about 285 feet from the project site) and the Safari Kids Childcare and Preschool across Alameda Creek to the south (about 1,500 feet from the project site). These sensitive receptors are identified on page 31 of the Initial Study. The Initial Study states that there are "no other" sensitive receptors within 1,000 feet (not that there are no sensitive receptors at all within 1,000 feet).

The Initial Study calculates health risks from construction activities for these sensitive receptors in Table 4.3-2 on pages 36-37. The health risk is based on constant exposure to diesel particulate matter (DPM) generated during construction. DPM is the most toxic substance anticipated to result from construction activities. The analysis assumes that the youngest possible child (infant)—which is the most sensitive of receptors due to breathing intake relative to body size—is located as close as possible to construction activities (30 feet) and is constantly exposed to the entire 2.5 years of construction. The Initial Study assumes a child's exposure begins in-utero during the 3rd trimester and continues through age 2.2 when construction concludes. In other words, the analysis assumes that a pregnant mother is exposed to construction emissions 30 feet from the project boundary, and the infant child (once born) continues his/her exposure to

construction emissions 30 feet from the project boundary for the remaining duration of construction (over two years). The younger a child is, the more susceptible he/she is to DPM emissions from construction equipment. Therefore, the analysis presents a worst-case scenario of the youngest possible sensitive receptor, located as close as possible to the project site, exposed as long as possible to construction emissions.

The Initial Study analysis found that unmitigated cancer risk to this infant sensitive receptor is 141 instances of cancer per million individuals, which exceeds the BAAQMD's threshold of 10 instances of cancer per million individuals. Therefore, mitigation would be required to reduce this cancer risk. Implementation of Mitigation Measure AIR-1 requires all off-road diesel-powered construction equipment greater than 50 horsepower to meet Environmental Protection Agency (EPA) Tier 4 Final emissions standards, which is the EPA's most stringent off-road engine standard (see page 37 of the Initial Study included in **Appendix A**). With implementation of Mitigation Measure AIR-1, the cancer risk would be reduced to 5.4 instances of cancer per million individuals, which is below the BAAQMD's threshold. Therefore, the impact would be less than significant with mitigation.

Health Risks of Exposure to Dust and PM_{2.5}. Regarding the potential health risks from fugitive dust (PM₁₀ and PM_{2.5}), emissions of dust are addressed through BAAQMD's Basic Construction Measures for dust and codified in Fremont Municipal Code Chapter 18.218 as a standard development requirement (see page 35 of the Initial Study in **Appendix A**). With implementation of these construction measures to reduce construction-related fugitive dust, the proposed project's dust impacts would be less than significant.

Health issues such as asthma can be caused by exposure to DPM and inhaling PM_{2.5}, and were analyzed in the Initial Study. The Initial Study calculates non-cancer chronic hazard index for the proposed project, which accounts for a suite of non-cancer health risks from DPM. This includes asthma and other chronic, non-cancer diseases, caused by exposure to DPM. The analysis found that the proposed project's Chronic Hazard Index is less than the BAAQMD's threshold of 1.0 (see Initial Study page 36-37, Table 4.3-2 in **Appendix A**), therefore impacts would be less than significant.

Regarding the health impacts of PM_{2.5}, inhaling PM_{2.5} can lead to a number of health issues, such as cancer, eye irritation, and respiratory problems such as asthma. To address the health impacts of PM_{2.5}, the Initial Study calculates annual average PM_{2.5} concentrations resulting from construction activities and compares them to the BAAQMD's PM_{2.5} threshold (see Initial Study page 36-37, Table 4.3-2 in **Appendix A**). The Initial Study analysis found that the proposed project's annual average PM_{2.5} concentration would be less than the BAAQMD's threshold of 0.3 micrograms per cubic meter, therefore impacts would be less than significant.

Health Risks of Exposure to Criteria Pollutants. Regarding the health effects of Reactive Organic Gases (ROG) and Nitrogen Oxides (NO_x), these pollutants are ozone

precursors, and the main health concern of exposure to ground-level ozone is effects on the respiratory system, especially on lung function. Several factors influence these health impacts, including the concentrations of ground-level ozone in the atmosphere, the duration of exposure, average volume of air breathed per minute, the length of intervals between short-term exposures, and the sensitivity of the person to the exposure (The World Bank Group, 1999 and U.S. EPA, 2008). The concentration of ground-level ozone in the atmosphere is influenced by the volume of air available for dilution, the temperature, and the intensity of ultraviolet light. In the Bay Area, the worst case conditions for ozone formation occur in the summer and early fall on warm, windless, sunny days (BAAQMD, 2016a).

Given these various factors, it is difficult to predict the magnitude of health effects from the project's emissions of ROG and NO_x. The increase in construction-generated emissions associated with the proposed project represents a small fraction of total San Francisco Bay Area Air Basin (SFBAAB) regional ROG emissions (up to 2.9 pounds per day compared to 265 tons per day in the SFBAAB region in 2012) (CARB, 2014) and NO_x emissions (up to 20.3 pounds per day compared to 318 tons per day in the SFBAAB region in 2012). Although the most stringent applicable ozone standards were only exceeded for 10 days at the Hayward-La Mesa monitoring station (the closest ozone monitoring station to the project site) between 2012 and 2016 (CARB, 2018), the SFBAAB region as a whole experienced an average of 9.6 days of exceedance per year between 2012 and 2016 (BAAQMD, 2016b). The BAAQMD also reports the U.S. EPA's Air Quality Index (AQI) values for pollutants including ozone. For ozone, the AQI is based on 8-hour concentrations at each monitoring location. The SFBAAB as a whole has averaged between 11 and 19 days per year that are considered unhealthy for sensitive groups and had 5 unhealthy (red) days in the last 5 years for which data are available. At the Hayward monitoring station, there were two unhealthy days in 2017, none in 2016, 2015, 2014, or 2013, although 2015 and 2014 each had two days considered unhealthy for sensitive groups and 2013 had one such day. On unhealthy days, persons are recommended to avoid both prolonged and heavy-exertion outdoor activities (U.S. EPA, 2014).

However, ozone cannot be modeled using standard dispersion models used for localized pollutants such as DPM, because ozone is formed with complex chemical reactions that may occur many miles from the source of the emissions. The available models do not simulate dispersion, deposition, atmospheric chemistry, and meteorology in a three dimensional scale, and do not include all precursor emission sources spatially and temporally. In addition, there are no adequate tools available for determining the specific health risk impact of criteria pollutants at the project level. Although there are a number of simplified models to model the impact of smaller-scale emissions sources, the U.S. EPA does not consider them reliable predictor of ozone concentrations. Therefore, ozone must be modeled using a regional atmospheric model. This modeling is conducted at the air basin level by the BAAQMD as part of the district's ozone air quality attainment plan. The BAAQMD's project level air quality thresholds for ROG and NO_x are based

on this regional modeling and attainment status, and therefore the project's emissions are analyzed in the context of regional ozone concentrations and associated health impacts.

Response 4: Concerns Regarding Future Throughway to Chase Court

Several comments expressed concern that the lack of a structure at the southwest corner, where one of the project's bioretention areas is proposed, would allow for the possibility of a throughway being constructed in the future to connect the project site to Chase Court.

The comments refer to the bioretention area identified as Drainage Management Area (DMA) 25/BR #8 on Figure 10 in the Initial Study and **Figure 3-10** of this EIR. Development of a throughway would be restricted for two reasons. First, the bioretention treatment areas are sized according to the Alameda County Clean Water Program C.3 Stormwater Technical Guidance Manual. The Clean Water Program recommends using the "4 percent method" to design bioretention areas (CWP, 2017). The 4 percent method requires the surface area of the treatment measure to be 4 percent of the impervious area that drains to it. Based on these requirements and as shown on **Figure 3-10**, the proposed project would be required to provide 9,305 square feet of bioretention area. The project would provide approximately 9,629 square feet (of which BR #8 is 5,162 square feet). BR #8 would be the largest bioretention treatment area for the project, and would be required in order to meet the Alameda County requirements. Replacing the BR #8 area with a street would result in the project site not meeting the Alameda County C.3 requirements and would violate the project's stormwater permit. Thus, the site plan as proposed, including compliance with stormwater requirements, would preclude future development of a roadway connecting to Chase Court. Furthermore, even if such a change were proposed, it would be considered a "substantive change" and the project sponsor would be required to go through the Planned District Amendment process pursuant to Fremont Municipal Code Section 18.110.110. Such a change, if proposed, would be processed as a rezoning and require consideration by the Planning Commission and City Council and would be subject to additional environmental review.

Moreover, should the project be approved, the City would either preclude the possibility of a throughway being constructed to connect the project site to Chase Court as a condition of approval or record a non-access easement at this location.

Response 5: Proximity to Faults and Associated Seismic Review of Project

Comments stated that the project site is within the impact area of the Mission Fault, and several articles were provided for reference. The comments also stated that the project would be built on landfill, which would be subject to amplification of shaking during earthquakes. The comments requested that the impact of earthquakes on the project be addressed, and that the buildings, roadways, and infrastructure be built to maximum earthquake standards.

Although potential effects of the environment on the project (as opposed to impacts of the project on the environment), typically are not required to be analyzed or mitigated

under CEQA (see *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369), potential hazards related to seismic activity and unstable soils were analyzed and fully addressed in the Initial Study prepared for the project (included in **Appendix A**).

Comments indicated that the Mission Fault seismically connects the Hayward and Calaveras Faults, and the project site is within the impact area. Substantial evidence indicates that the Mission Fault does not pose a seismic hazard to the project area. The California Geological Survey maintains a Fault Activity Map of California that shows where faults have been recognized and mapped. Based on the mapping, the Mission Fault is depicted with the purple color zone (undivided Quaternary). The purple zone depicts faults not considered to be active in the last 11,000 years and consequently not deemed active by the State.¹ The Mission Fault is positioned approximately 780 feet northeast of the site. Fault investigations are required when a property is within 500 feet of a mapped fault trace (CDC, 2018). Thus, even if the Mission Fault were considered active, the project site is outside of the area that would require a fault investigation. Consequently, implementation of the proposed project would not expose residents, workers, or visitors to a significant risk associated with seismic hazards related to the Mission Fault.

With regard to comments that the project would be built on landfill, which would be subject to amplification of shaking during earthquakes, as noted in the Initial Study, a Preliminary Geotechnical Investigation was prepared by the project sponsor's consultant in 2013 (Cornerstone, 2013), and peer reviewed by the City's consultant (Cotton, Shires and Associates, Inc., 2014). The peer review also called out the presence of rubble and noted that the final design-level geotechnical study should address the "consequences of leaving rubble fill in-place." As summarized in the Initial Study (page 58), the preliminary geotechnical investigation acknowledged that the site could be subject to strong ground shaking and liquefaction during a seismic event. The geotechnical investigation included five borings across the site, to depths of between 29 and 49 feet, and there was no mention of slag or other debris in any of the borings. A final design-level geotechnical investigation was recommended to address the potential for hazards related to seismic activity or unstable soils to occur onsite. The City would require such a design-level geotechnical investigation prior to the issuance of grading or building permits.

As stated in the Initial Study, the proposed project would be required to adhere to the seismic standards and regulatory requirements of the California Building Code (CBC) (California Code of Regulations, Title 24) and Title 15 of the Fremont Municipal (Buildings and Construction). These standards would require the project sponsor to prepare the aforementioned design-level geotechnical investigation that would address the potential for seismic hazards or hazards related to liquefaction and soil strength loss

¹ California Code of Regulations Title 14, Section 3601 defines an "active fault" as a fault that has had surface displacement within Holocene time (about the last 11,000 years).

to occur onsite and identify abatement measures to reduce potential significant effects of such an event to acceptable levels.

Chapter 18 of the CBC covers the requirements of geotechnical investigations (Section 1803), excavation, grading, and fill (Section 1804), load-bearing of soils (1806), as well as foundations (Section 1808), shallow foundations (Section 1809), and deep foundations (Section 1810). Chapter 18 requires analysis of slope instability, liquefaction, and surface rupture attributable to faulting or lateral spreading, plus an evaluation of lateral pressures on basement and retaining walls, liquefaction and soil strength loss, and lateral movement or reduction in foundation soil-bearing capacity. It also addresses mitigation measures to be considered in structural design, which may include ground stabilization, selecting appropriate foundation type and depths, selecting appropriate structural systems to accommodate anticipated displacements, or any combination of these measures. The potential for liquefaction and soil strength loss must be evaluated for site-specific peak ground acceleration magnitudes and source characteristics consistent with the design earthquake ground motions.

The required geotechnical investigation would be reviewed and approved by a California registered geotechnical engineer or engineering geologist and submitted to the City for review. Therefore, as concluded in the Initial Study, implementation of the geotechnical recommendations made by the final design-level geotechnical report in accordance with currently required geotechnical design criteria would appropriately reduce potential impacts associated seismic hazards and unstable geologic units or materials. The level of risk would be similar to those of any housing project in the local area.

Response 6: Bald Eagles

Several comments stated that bald eagles have been observed in the eucalyptus trees along the Alameda Creek Trail at the site, and requested the EIR address possible effects on the local bald eagle population.

The potential for the project site to support special-status plant or animal species was assessed using database results, previous biological resources studies in the regional vicinity, and observations during an October 2017 reconnaissance survey by an ESA biologist. Although the bald eagle was not identified to have potential to forage or nest within the vegetation or trees of the project site, this species is protected by the Migratory Bird Treaty Act, which prohibits killing, selling, or otherwise harming nests or eggs of eagles and most other birds. The ESA biological investigation determined that loss of the non-native grassland onsite from construction would not be significant due to similar and higher quality annual grassland habitat within the project vicinity (see page 48 of the Initial Study included in **Appendix A**). In addition, as stated on page 48 of the Initial Study, the foraging habitat along Alameda Creek adjacent to the site would not be disturbed by project construction or implementation, and existing trees there would remain. In accordance with standard development requirements (Fremont Municipal Code Chapter 18.218), the project sponsor would be required to implement measures

prior to removal of any trees/shrubs, grading, or ground disturbing activities. These measures include the following:

- (A) *Avoidance. Proposed projects shall avoid construction activities during the bird nesting season (February 1st through August 31st).*
- (B) *Preconstruction Surveys. If construction activities are scheduled during the nesting season, a qualified biologist shall conduct a preconstruction survey to identify any potential nesting activity. The biologist shall determine the number and time frame (prior to construction) of surveys to be conducted.*
- (C) *Protective Buffer Zone(s). If the survey indicates the presence of nesting birds, protective buffer zones shall be established around the nests. The size of the buffer zone shall be recommended by the biologist in consultation with the CDFW depending on the species of nesting bird and level of potential disturbance.*
- (D) *Initiation of Construction Activities. The buffer zones shall remain in place until the young have fledged and are foraging independently. A qualified biologist shall monitor the nests closely until it is determined the nests are no longer active, at which time construction activities may commence within the buffer area.”*

Through avoidance, preconstruction surveys, and establishing protective buffer zones, impacts to migratory and nesting birds was determined to be less than significant.

Response 7: Stormwater Discharge

Comments expressed concerns regarding impacts related to stormwater discharge and impacts to water quality, including concerns related to the introduction of new impervious surfaces on the project site and associated increases to stormwater flows; the potential for pollutant discharges, including onsite contaminants from prior uses on the site, to Alameda Creek and other waters; water quality impacts to the Alameda Creek watershed and fish species (e.g., steelhead); impacts to groundwater recharge due to project site’s proximity to the Niles Cone Groundwater Basin; flooding of the Niles Boulevard underpass under the Union Pacific Rail Road (UPRR) tracks adjacent to the project site; prevention of testing of stormwater outflows from the existing outfall structure which is submerged when inflatable dams on Alameda Creek are inflated; and the adequacy of existing stormwater infrastructure that would serve the project. Comments also included a request for placement of a storm drain downstream of Inflatable Dam #3.

As detailed in the *Hydrology and Water Quality* section of the Initial Study prepared for the project (see **Appendix A**), because the project would create in excess of 10,000 square feet of impervious surface area, it would be subject to the requirements of a National Pollutant Discharge Elimination System (NPDES) Municipal Regional Stormwater (MRP) Permit and the Alameda Countywide Clean Water Program. In particular, provision C.3 of the NPDES permit governs storm drain systems and regulates post-construction stormwater runoff. The provision requires the implementation of Low Impact Development (LID) measures in new development projects. These measures

include source control, site design, and treatment requirements to reduce the amount of stormwater runoff and improve the quality of the stormwater runoff.

Also as described in the *Geology, Soils, and Seismicity* section of the Initial Study (page 59), the proposed project drainage system would comply with the controls required by the MRP and Alameda County Clean Water Program concerning control and release of runoff into downstream waterways. Accordingly, the proposed project would not adversely affect existing drainage systems nor provide additional polluted runoff.

With regard to concerns pertaining to impacts to groundwater recharge due to project site's proximity to the Niles Cone Groundwater Basin, as discussed in the *Hydrology and Water Quality* section of the Initial Study prepared for the project, the proposed project's onsite storm drainage system consisting of a network of bioretention areas, inlets, and underground piping would help minimize any increased flows offsite and encourage onsite infiltration. Treated runoff would be conveyed to an existing storm drainage line within the Niles Boulevard dead end segment that discharges into Alameda Creek. Consequently, the bioretention basins would facilitate recharge and the drainage system would facilitate the return of rainwater to the creek.

The project's drainage system would also be subject to review by the Alameda County Public Works Agency for grading and drainage, which would ensure that the system, and the existing system it would connect to, is adequately constructed, sized, and managed to minimize or eliminate project effects related to water quality and stormwater discharge. Compliance with applicable regulatory requirements and agency review processes would ensure that stormwater drainage is treated to ensure that there are no significant impacts to receiving waters offsite.

With regard to the request for placement of a storm drain downstream of Inflatable Dam #3, the project applicant evaluated an alternative stormwater discharge location. Currently, an existing 10-inch-diameter outfall pipe is located on the southwest portion of the project site that has its outlet into Alameda Creek downstream of Inflatable Dam #3. The project sponsor has refined the project description to replace the existing pipe with a 24-inch-diameter pipe to discharge stormwater downstream of Inflatable Dam #3 to address comments received in response to the NOP. Additional analysis of the configuration confirmed that the stormwater runoff from the project site would satisfy the requirements of the C.3 provision and post construction flows would be below the pre-construction flow rates (CBG, 2018). Chapter 3, *Project Description* and **Figure 3-10** have been updated to reflect this change.

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