



## MEMORANDUM

To: City of Fremont and Metropolitan Transportation Commission  
From: Nelson\Nygaard Team  
Date: July 17, 2019  
Subject: Task 2 Summary - Task 2.2 Legal Framework, Task 2.3 Engagement Needs, Task 2.4 Supporting Policies and Programs

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### INTRODUCTION

To effectively implement traffic impact analysis required under Senate Bill 743 (SB 743), we must understand the existing legal framework, what City policies and programs are already in place to support a new approach to traffic impact analysis (TIA), and the City's existing development review and environmental review processes. The Nelson\Nygaard team reviewed documents relevant to the City of Fremont's current TIA process and completed a group interview with City staff from the Planning Division, Transportation Engineering Division, and City Attorney's Office to inform an assessment of the existing review processes and a strategy for stakeholder involvement in this effort.

This memo summarizes findings for Tasks 2.2, 2.3 and 2.4 by:

- Documenting the legal requirements of SB 743
- Documenting existing processes and practices
- Documenting typical concerns voiced by stakeholders and the broader public to inform the application of Vehicle Miles Traveled (VMT) per capita
- Documenting transportation policies and programs relevant to CEQA mitigations and VMT

The memo concludes with next steps for the project.

### LEGAL FRAMEWORK

#### SB 743

In September 2013, Governor Brown signed SB 743 into law, in part mandating the transition from a level of service (LOS) based method of transportation impact analysis to a vehicles miles traveled (VMT) method in compliance with the California Environmental Quality Act (CEQA). Specifically, SB 743 required

the Office of Planning and Research (OPR) to amend the CEQA Guidelines to provide alternative criteria for evaluating transportation impacts to promote the reduction of greenhouse gas emissions, the development of multimodal transportation systems, and a diversity of land uses. With the recent update to the CEQA Guidelines, delay is no longer considered a significant impact under CEQA.

## **City Goals**

Fremont has multiple adopted policies that support the shift from measuring transportation impacts based on LOS to using VMT per capita, including policies contained in the Mobility Element of the General Plan, the newly adopted 2019 Mobility Action Plan (MAP), the goals set by City Council for the Climate Action Plan update (CAP 2.0) (anticipate adoption in 2020), the Bicycle Master Plan (2018), the Pedestrian Master Plan (2016), the Complete Streets Policy (2013), and Vision Zero. Reducing VMT per capita is supported by the following City goals:

- **General Plan Mobility Element – Goals<sup>1</sup>**
  - Create “Complete” Streets
  - Reduce Vehicle Miles Traveled
  - Enhance Accessibility, Efficiency and Connectivity
  - Balance Mobility and Neighborhood Quality
  - Connect to the Region
  - Manage Parking
- **50% or less drive alone commuting by 2040<sup>2</sup> (Mobility Action Plan)**
- **Increase the percentage of all trips made on foot to 15% by 2025<sup>3</sup> (Pedestrian Master Plan)**
- **Implement a near-term All Ages and Abilities Backbone Bicycle Network by 2021. Increase bicycle mode share to 3% by 2020 and 10% by 2040. Anyone in a Fremont PDA will be within a ¼ mile of the bicycle network<sup>4</sup> (Bicycle Master Plan)**
- **2030: 55% GHG emissions reduction and carbon neutral by 2045<sup>5</sup> (goals for Climate Action Plan update)**

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<sup>1</sup> Fremont General Plan, Chapter 3.

<sup>2</sup> Fremont Mobility Action Plan, March 2019.

<sup>3</sup> City of Fremont Pedestrian Master Plan, November 2016.

<sup>4</sup> City of Fremont Bicycle Master Plan, July 2018.

<sup>5</sup> Fremont Climate Action Plan 2.0, goals adopted February 2019, anticipated plan adoption in 2020. Accessed from Council Minutes at: <https://fremont.gov/AgendaCenter/ViewFile/Minutes/02192019-1638>

## Alameda County Guidance

Alameda County Transportation Commission (Alameda CTC) is the Congestion Management Agency (CMA) for Fremont. As the CMA, Alameda CTC reviews TIAs for development projects that will cause a net increase of 100 or more p.m. peak-hour trips, considered a potential impact to the regional transportation system. Alameda CTC's review process is integrated with the CEQA process and TIAs are scoped to simultaneously fulfill the requirements of CEQA, CMA, and any other City requirements. The Congestion Management Program (CMP) sets the methodologies for assessing impacts to all modes and currently uses LOS for impacts to vehicles.

## Existing Development Review Processes

This section documents the review process for development and transportation projects as it exists today based on relevant documents, websites, and discussions with City staff.

The overall development review process includes the following steps:

1. **Optional Preliminary Review Procedure:** Developers can receive input on a project from City departments before submitting a formal application.
2. **Development Application:** Planning Division receives development application, 30-day completeness/comment letter with technical studies identified including CEQA
3. **Initial Study:** City staff determines the environmental review requirements. Projects that are estimated to generate fewer than 100 peak-hour vehicle trips are not typically required to conduct a full traffic study with LOS analysis, though circulation and operational analysis may still be required if deemed necessary by Planning or Transportation staff. Those projects generating 100 or more motor vehicle trips are required to hire a transportation consultant who works at the City's direction to prepare a Transportation Impact Study (TIS). The City prepares the TIS scope of work for the consultant.
4. **Transportation Impact Review:** TIS requirements are discussed in greater detail in the next section. TISs are prepared to comply with CEQA to support a Categorical Exemption, or to support analysis in an Initial Study, which could result in preparation of a Negative Declaration (ND), Mitigated Negative Declaration (MND), or Environmental Impact Report (EIR).
5. **CEQA Analysis:** Through the CEQA analysis, projects identify potential environmental impacts and associated mitigations, which includes transportation impacts, along with other potential environmental impacts such as air quality, noise, and protected species.
6. **Conditions of Approval:** The City Council and Planning Commission adopt project-specific Conditions of Approval for projects they approve,

describing developer obligations that must be met as a requirement of the permit. Mitigation measures identified in the CEQA document are also included in the adopted Conditions of Approval. Transportation-related Conditions of Approval typically include right-of-way improvements (including traffic signals, bulb outs, bus stop enhancements, bike facilities, and other adjustments) and transportation demand management (TDM) programs. Traffic Impact Fee credits for transportation, pedestrian, bicycle, and transit improvements have been given to fund projects identified in the City's Capital Improvement Program (CIP), which may include projects identified in the City's Bicycle Master Plan, Pedestrian Master Plan, and/or various Community Plans.

### Transportation Impact Review

An initial study is a preliminary analysis conducted by the lead agency to determine if a project may have a significant effect on the environment. The initial study also aids in determining what type of environmental document to prepare:

- Negative Declaration - A statement briefly describing the reasons that a proposed project will not have a significant effect on the environment.
- Mitigated Negative Declaration - A statement similar to a negative declaration that includes measures to reduce or mitigate potential impacts to a point where no significant effect on the environment will occur.
- Environmental Impact Report (EIR) - A detailed report that identifies potentially significant impacts which may include significant and unavoidable impacts from the project.

The City's current transportation impact threshold of significance is LOS D. If the peak hour intersection operations for a study intersection remains at LOS A through D with additional project vehicle trips or road capacity constraints, there is no significant impact, but if the operations worsen to LOS E or F, that would constitute a significant impact. The General Plan acknowledges the need to adopt variable LOS standards and states that LOS E or F may be acceptable in locations within the City Center, Town Centers, and the Irvington and Warm Springs/South Fremont BART Station area, and within Priority Development Area (PDA) boundaries, as the efficiency and convenience of vehicular operations in these areas must be balanced with the goal of increasing transit use, bicycling, and walking.<sup>6 7</sup> For example, LOS F is acceptable in Fremont's City Center because additional development and high vehicle volumes are consistent with the vision for the area, while widening the street to mitigate intersection operations would degrade the pedestrian experience and limit opportunities for transit oriented development (TOD) in Fremont's urban core and close to BART stations. In conversation with City staff, no land development projects have relied

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<sup>6</sup> Fremont General Plan, Chapter 3: p 37: LOS F in the City Center is consistent with the vision for the area, while widening the street is not.

<sup>7</sup> Fremont General Plan, Chapter 11: p 59: Policy 3-4.2: Variable Level of Service Standards

on this aspect of the General Plan to allow increased development in the City Center area. The City Council has adopted Statements of Overriding Considerations for significant and unavoidable traffic impacts that were accepted, where intersections were already operating below the City’s standard and the project impact would not increase the delay beyond a few seconds.

**Review of Recent TIAs**

To assess how transportation review and mitigations function in practice, the project team reviewed 15 recent transportation studies done as part of the development review process. Some of the TIAs were not associated with projects subject to CEQA. Most of the projects that were subject to TIAs generated too few peak hour trips to require further transportation analysis or a CMA analysis. Four projects, shown in Figure 1, had transportation impacts that merited recommendations or mitigations; typically installing a new traffic signal or adjusting signal phasing. What stands out about the review of TIAs is that, other than the Stratford School, the TIA findings do not simply call for CEQA mitigations, but outline recommendations that broadly support multimodal access and improve intersection operations, such as signal warrants, access and circulation improvements, and improved pedestrian access and crossing.

Figure 1 Project TIAs with Mitigations

Project Name	Project Summary	Transportation Impact	Mitigation/Recommendation
Warm Springs Technology Center	<ul style="list-style-type: none"> <li>▪ ~600,000 SF of R&amp;D</li> <li>▪ ~100,000 SF of industrial use</li> <li>▪ Developed in three phases</li> </ul>	Substantial increase in vehicle delays at intersection and traffic warrant met for unsignalized intersection under the background plus project analysis.	<u>Recommendation:</u> Required Traffic Signal Installation before occupation of Phase 1, increase onsite bicycle parking facilities, consult with AC Transit to determine if a bus stop is warranted along the project’s frontage.
Stratford School	<ul style="list-style-type: none"> <li>▪ 660 students (Pre-K to 8th)</li> </ul>	Intersection LOS is currently F and project would cause increased delays of more than 4 seconds, constituting a significant adverse impact. Recommendation is for site access and circulation.	<u>Mitigation:</u> Fair share monetary contribution toward installing a right-turn overlap traffic signal phase OR implement TDM measures to reduce projected peak trips by 70%.  <u>Recommendation:</u> signalization of project driveway to reduce delay for vehicles accessing the site

Project Name	Project Summary	Transportation Impact	Mitigation/Recommendation
SiliconSage Centerville Mixed-Use Project	<ul style="list-style-type: none"> <li>▪ ~50,000 SF existing mixed uses</li> <li>▪ 26,000 SF commercial</li> <li>▪ 96 rental apartments</li> <li>▪ 72 for-ownership townhomes</li> </ul>	No significant impacts. Recommendation is for site access and circulation.	<u>Recommendation:</u> Traffic signal installation, coordination with existing signals, and pedestrian crossing improvements
Bay Rock (Fremont Bank Mixed Use)	<ul style="list-style-type: none"> <li>▪ Replace existing 18,000 SF building</li> <li>▪ 32,800 SF office</li> <li>▪ 248 apartment units</li> <li>▪ 5,624 SF retail.</li> </ul>	Left turn vehicle queues of the background plus project conditions would not be accommodated within existing storage space during peak.	<u>Recommendation:</u> Signal timing improvements (extended green time or left turn recall phase); may require upgrade of existing traffic signal controller

## Changing Environmental Significance Criteria

The CEQA thresholds of significance are identified in the Mobility Element of Fremont’s General Plan. Implementation of SB 743 may require an amendment to the General Plan to:

- Replace LOS as the CEQA significance threshold (Chapter 3)
- Delete text for specific or neighborhood area plans that may have their own LOS standard (Chapter 11)

Amending the General Plan has an established process in the Fremont Municipal Code, Chapter 18.255. Along with SB 743 and direction from OPR, existing General Plan policies support using VMT to evaluate transportation impacts under CEQA. The City may choose to continue to analyze a project’s effect on LOS, though LOS analysis will no longer be required under CEQA.

## ENGAGEMENT NEEDS

### Requirements and Process

As discussed in the previous section, changing how Fremont evaluates transportation impacts pursuant to CEQA may require a General Plan Amendment. Amending the General Plan has an established process in the Fremont Municipal Code, Chapter 18.255, including required public notification

and hearing<sup>8</sup>. The City is required to consult with California Native American tribes, provide notice to the public, and hold public hearings with the Planning Commission and City Council.

Additional efforts to ensure the change to CEQA transportation analysis and its intended effects are well understood are also recommended.

## **Typical Public Concerns**

Fremont was incorporated from five historic towns and has multiple major freeways and state routes. As such, transportation impacts from local and regional growth and shifting regional job centers are not concentrated in a traditional downtown core, but spread throughout the City. Regional cut-through traffic is a major contributor to traffic congestion in Fremont, due to the severe jobs and housing imbalance in Silicon Valley and the Peninsula and Fremont's location at the crossroads between the jobs and the more affordable housing on the east side of the Sunol Grade. Therefore, traffic impacts of development have become a common public concern regardless of project location. At public meetings today, the public voices the most concern about pedestrian safety, overall vehicle volumes, travel times, parking, and neighborhood traffic intrusion.

## **Engagement**

The public, City staff, and elected officials will need to understand why VMT per capita is replacing LOS as the required transportation analysis metric for environmental impact review. A key piece of the engagement for the project is to develop educational materials for the public that explain the reasoning behind VMT and the benefits of the change. Educational materials and other outreach efforts should clearly communicate how VMT-reducing mitigations will support overall traffic mitigation and address concerns about impacts from new development, to ensure support for the implementation of new VMT-centric policies and measures.

In addition to the required process discussed above, work sessions with the Planning Commission and City Council that are open to the public should be part of the engagement for SB 743 implementation. Former members of the Mobility Taskforce may also be engaged for this project; while the previously established Mobility Taskforce was disbanded after the Mobility Action Plan was approved in March, the City may form a Mobility Commission. The former members of the Mobility Taskforce are well versed in current City transportation plans and the public's transportation priorities that were voiced during the Mobility Action Plan's public engagement.

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<sup>8</sup> From Chapter 18.225 of Fremont City Ordinances:  
<https://www.codepublishing.com/CA/Fremont/html/Fremont18/Fremont18225.html>

## SUPPORTING POLICIES AND PROGRAMS

### Introduction

Fremont is well positioned to use VMT per capita as the primary metric for measuring significance of transportation impacts. The following existing programs support the City's current and future transportation goals that include reducing VMT and greenhouse gas emissions:

- Transportation Impact Fee (TIF)
- TDM requirement
- Parking flexibility in the General Plan and City ordinances

This section summarizes how each of the three programs operate today and how they relate to VMT and environmental review. Additional updates to City ordinances may also be necessary to support the implementation of VMT per capita as the CEQA criteria for analysis of traffic impacts, and to address other transportation analysis and operations needs outside of CEQA review that have been part of the LOS-based process up to now.

### Traffic Impact Fee

Fremont today has six development impact fees. The fees fund improvements to public facilities based on the increased demand associated with new projects and are assessed by number of residential units or square feet of development. The following fee categories apply to new developments:

- Traffic
- Capital facilities
- Fire facilities
- Parkland (only applied to residential developments)
- Park Facilities (only applied to residential developments)
- Affordable Housing

TIF pays for intersection improvements, street improvements, and traffic signals. Specific projects and the cost estimates are identified in a nexus study that estimates the capital costs of projects needed to serve new development. The City is considering updating the TIF and nexus study in the near future, which will allow for an update of the types of projects that the TIF funds and the inclusion of projects from the Pedestrian and Bicycle Master Plans. The General Plan notes that over time the projects funded by the TIF will transition away from increasing road capacity and focus on multi-modal improvements and enhancing the quality and experience of Fremont's major streets<sup>9</sup>. In practice, this has already happened as new projects in PDAs and TOD overlay districts have been able

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<sup>9</sup> Fremont General Plan, Chapter 3, page 36.

receive TIF credits for building improvements to the pedestrian, bike, and transit network.

## Transportation Demand Management

Fremont has two TDM policies, one for employers in new developments and one for TOD overlay districts. The Fremont Trip Reduction and Transportation Demand Management Ordinance applies to all employers of 50 or more employees at a single worksite where the City has approved a new building or addition in excess of 10,000 square feet, grants additional floor area ratio (FAR), or adopts an environmental document containing mitigation measures to reduce trips or develop a TDM plan<sup>10</sup>. A number of major development projects have completed or are in the process of completing TDM plans. Employers are required to submit annual monitoring reports to ensure that the TDM measures are meeting specific targets and goals for reducing single occupancy trips.

TOD overlay district TDM plans are required for high intensity development<sup>11</sup>. To understand the application of this policy, the TDM Plan for 1031 Walnut was reviewed. The current policy does not provide detailed guidance on TDM plans. Monitoring of TDM plans and the effectiveness of target trip reduction measures is done by the City's Transportation Engineering staff.

Additional policies encourage or require specific TDM strategies. Residential projects in TOD overlay districts are encouraged to provide a transit pass for the first month to all new residents. Car share parking is required for residential developments with 25 or more dwelling units and non-residential developments with 50 or more parking spaces.

Fremont's existing TDM requirements for TOD overlay districts will need to be updated to directly address VMT per capita impacts. Potential changes to consider may include:

- Expand to require TDM programs for some residential projects outside of TOD overlay districts (such as all PDAs);
- Tie TDM strategies directly to VMT mitigations and quantify their impacts;
- Update the enforcement and monitoring process to ensure TDM programs are adequately reducing peak vehicle trips and meeting VMT reduction goals; or
- Tie TDM requirements to parking (see section below for more details).

## Parking Requirements

Fremont has off-street minimum parking requirements for new developments based on land use. Town Centers with Main Street corridors as identified in the

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<sup>10</sup> Fremont City Ordinance Chapter 10.20.

<sup>11</sup> Fremont City Ordinance 18.152.080 Other requirements,(e).

General Plan Community Character Element are granted some flexibility to reduce or waive parking requirements for commercial developments with primary access from a Main Street. The General Plan and City ordinances allow for shared parking, parking maximums in TOD overlay districts, and parking reductions and flexibility in TOD overlay districts, or when other factors would result in reduced parking demand.

Reduced parking requirements support VMT per capita reduction goals by making walking, biking, and transit trips more convenient than driving alone and finding parking. When less parking is available, both residents and employees will have to actively opt into driving and parking<sup>12</sup>. Higher levels of parking are associated with higher vehicle ownership rates and increased VMT per capita. Parking requirements should be tied to VMT per capita reduction goals and TDM development impact mitigations.

## **NEXT STEPS**

Upcoming tasks will focus on evaluating VMT per capita analysis options, proposing new thresholds of significance, and identifying other analysis needs to support the City's transportation systems.

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<sup>12</sup>California Air Pollution Control Officers Association (CAPCOA), Quantifying Greenhouse Gas Mitigation Measures, Parking Policy/Pricing, 2010.