

MEMORANDUM

Date: June 15, 2020 Project #24441

To: City of San Mateo

From: Damian Stefanakis, Fernando Sotelo, Claire Casey, Kittelson & Associates

Project: City of San Mateo VMT Implementation

Subject: Considerations for Implementing Screening Criteria

This memorandum provides guidance and recommendations to the City of San Mateo for adopting screening criteria as part of the process to implement vehicle miles travelled (VMT) metrics as required under Senate Bill (SB) 743. Screening criteria would allow the city as a lead agency to conclude that a land use project may not result in significant impacts under CEQA, and therefore would not require a detailed VMT analysis.

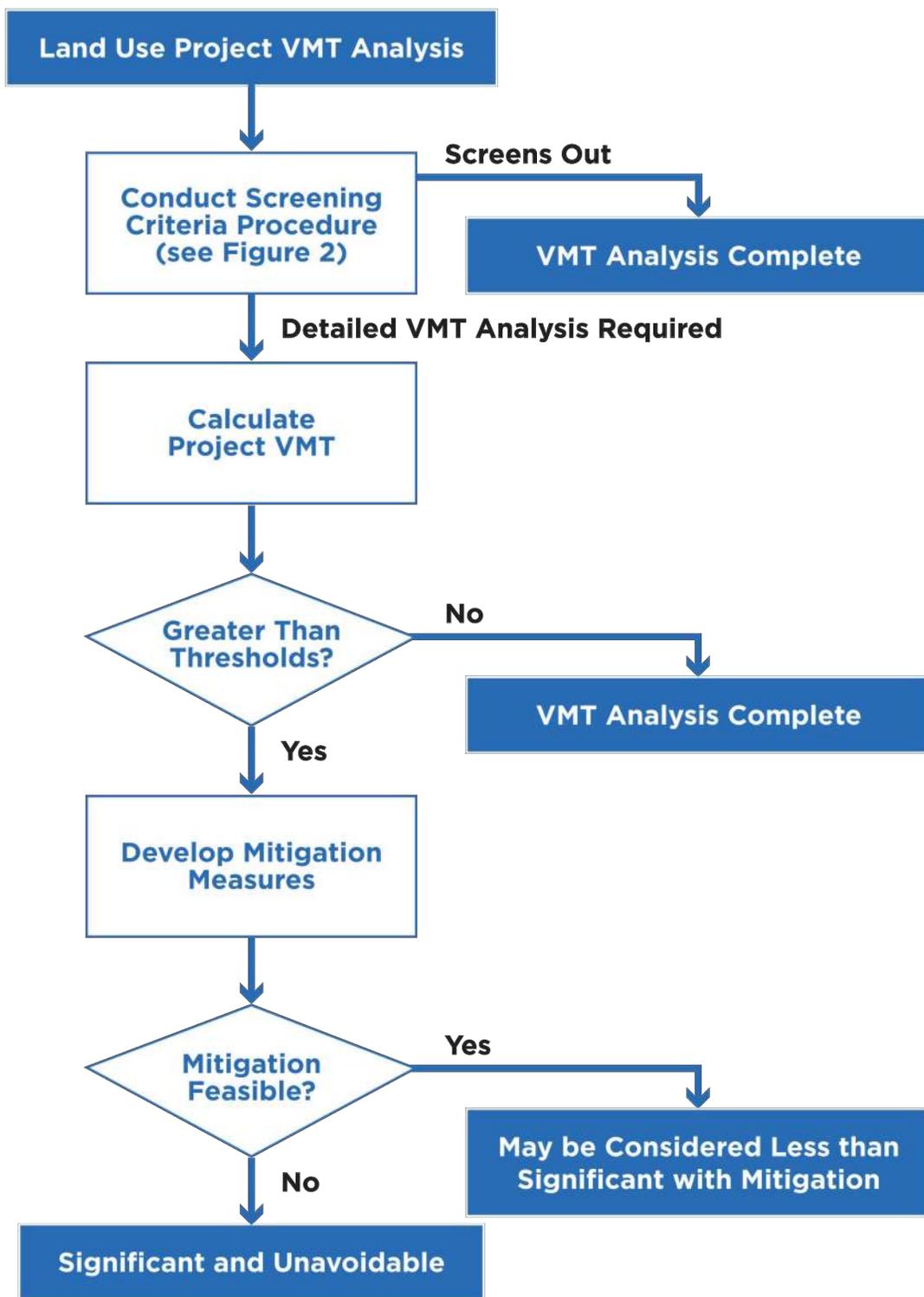
Figure 1 presents a flow chart depicting how a land use project would be analyzed under VMT-based metrics. Figure 2 presents key decision points for conducting an analysis using screening criteria. The order for screening shown in Figure 2 is arbitrary; if a project answers yes to any criteria in the figure, it screens out (regardless of whether it answers yes or no to the other criteria).

The California Office of Planning and Research (OPR) Technical Advisory on Evaluating Transportation Impacts in CEQA¹ (Technical Advisory) provides guidance and recommendations for lead agencies to screen out projects which may not warrant VMT analysis under CEQA. It should be noted that the guidance provided in OPR's technical advisory was prepared to provide advice and recommendations for agencies to use at their discretion and are not requirements under SB 743. Under CEQA, a lead agency has the authority to determine its own significance thresholds and methodologies for technical analysis, taking into account its own development patterns, policy goals and context. Lead agencies can make their own specific decisions regarding methodology and thresholds, presuming their choices are supported by substantial evidence². The assumptions used by OPR to support its screening criteria recommendations below may not be appropriate for the City of San Mateo, therefore considerations specific to the City of San Mateo are also provided in this memorandum.

¹ California Office of Planning and Research, "Technical Advisory on Evaluating Transportation Impacts in CEQA"., December 2018.

² Per CEQA Guidelines Section 15384, substantial evidence means enough relevant information and reasonable inferences that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

LAND USE PROJECTS VMT ANALYSIS FLOW CHART

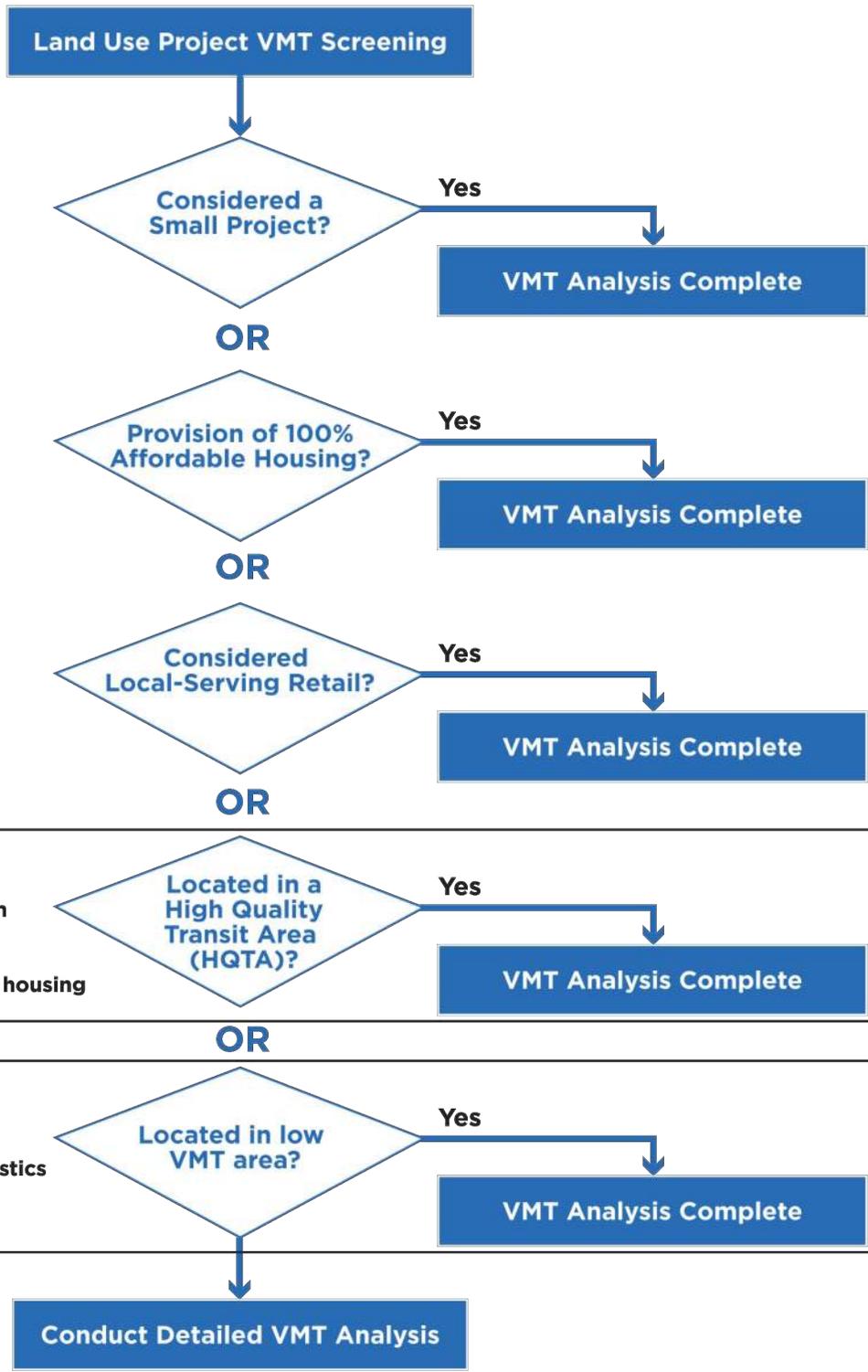


Land Use Projects VMT Analysis Flow Chart
San Mateo, CA

Figure
1

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LAND USE PROJECTS SCREENING CRITERIA



Land Use Projects Screening Criteria Flow Chart
San Mateo, CA

Figure
2

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SCREENING CRITERIA

The following summarizes OPR's recommendations for screening criteria in the Technical Advisory and considerations developed specifically for the City of San Mateo. A project should be screened out of requiring a detailed VMT analysis if it meets certain criteria in at least one of the following categories:

- Location in a High-Quality Transit Area (HQTA)
- Projects within low VMT areas
- Small projects
- Local-serving retail
- Provision of affordable housing

Location in a High-Quality Transit Area (HQTA)

OPR Recommendation

High-Quality Transit Areas (HQTAs) are areas located within 1/2 mile of an existing major transit stop³ or an existing stop along a high-quality transit corridor⁴ CEQA Guideline Section 15064.3, subdivision (b)(1), states that lead agencies should generally presume that certain projects (including residential, retail and office projects, including mixed use) proposed within a HQTA will have a less than significant impact on VMT and thus not warrant further CEQA analysis. However, OPR states in the Technical Advisory that this presumption might not be appropriate if the project:

- has a floor area ratio (FAR) of less than 0.75;
- includes more parking for use by residents, customers, or employees of the project than required by the jurisdiction (if the jurisdiction requires the project to supply parking);
- is inconsistent with the applicable Sustainable Communities Strategy (SCS), as determined by the lead agency, with input from the Metropolitan Planning Organization; or
- replaces affordable residential units with a smaller number of moderate- or high-income residential units.

California Public Resources Code Section 21155 provides guidance for projects that are not entirely within a HQTA. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have at least 75 percent of their area within one-half mile

³ Per Public Resources Code, § 21064.3 (“‘Major transit stop’ means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.”).

⁴ Per Public Resources Code, § 21155, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

from the stop or corridor and if not more than 10 percent of the residential units or 100 units (whichever is lower) in the project are farther than one-half mile from the stop or corridor.

Considerations for the City of San Mateo

The City should assume that a project located in a high-quality transit area would have a less-than-significant transportation impact since projects would be expected to generate lower rates of vehicle trips, provided it meets other criteria consistent with OPR's recommendations (FAR, parking supply, consistency with SCS, and housing affordability).

Attachment A highlights current high-quality transit areas in the city, based on transit service as of May 2020. As shown in the map, high-quality transit areas in the city currently consist of the half-mile areas around Caltrain stations. There are three stations in the City (Hillsdale, San Mateo, and Hayward Park). Additionally, the Burlingame station is north of the city boundary, but the half-mile area around the station partially extends into northern San Mateo. As of May 2020, the Hillsdale Station is temporarily closed as part of the 25th Ave Grade Separation Project. This station is still included as high-quality transit area due to its expected re-opening in Winter 2020.

Until recently, segments along El Camino Real met the conditions to qualify them as a high-quality transit corridor due to bus lines along the road. However, due to service changes because of the Coronavirus (COVID-19) pandemic, these routes' headways are now insufficient to qualify as high-quality transit as of May 2020. This is considered temporary and all indications are that normal service will resume in the fall. There are no other areas anticipated to become high quality transit corridors in the C/CAG or Bay Area Regional Transportation Plans. The City should regularly monitor transit service changes in the city and RTPs and update the high-quality transit map annually or as needed.

Projects within Low VMT Areas

OPR Recommendation

Residential and office (or other land use) projects that are located in areas characterized by low VMT, and that incorporate similar features to existing development in the area (i.e., density, mix of uses, transit accessibility), will tend to exhibit similarly low VMT below the relevant impact threshold and thus would not warrant further CEQA analysis.

Considerations for the City of San Mateo

As an alternative to calculating VMT individually for each new development project, the City of San Mateo can develop a map-based screening approach which compares the VMT for each travel demand model transportation analysis zone (TAZ) to the citywide or regional averages that have been selected as VMT impact thresholds. Screening maps may be provided for residential and employment-related projects such as offices. In addition to residential and office projects, the City may consider expanding the list of non-residential land uses that can take advantage of this screening procedure such as hotels, light industrial, research and development, and certain institutional uses.

Consistent with OPR, San Mateo may incorporate guidance and screening maps in its traffic impact guidelines to allow land use development projects to be exempted from a detailed VMT study using VMT screening maps. Screening maps can show where a project would be expected to generate VMT that is below the relevant impact threshold and could be screened out of a detailed study. Sample VMT maps for the City of San Mateo are provided and discussed in Attachment B.

Small Projects

OPR Recommendation

OPR’s technical advisory states that small projects could be presumed to have less-than-significant impacts and can be screened out of requiring a detailed VMT analysis. According to the advisory, absent substantial evidence indicating that a project would generate a potentially significant level of VMT, or inconsistency with an SCS or general plan, projects that generate or attract fewer than 110 vehicle trips per day generally may be assumed to cause a less-than-significant transportation impact. OPR’s 110 daily trips threshold is based on a trip generation calculation that would be allowed for a project under a CEQA categorical exemption.

Considerations for the City of San Mateo

The City may allow a presumption of less-than-significant impacts for projects with daily trip generation below a daily number of trips or below a combination of land use and intensity (e.g. 15 single family homes, 20,000 square feet of office, etc.). The City may adjust this criterion to better reflect local conditions. For example, the City of Los Angeles’s adopted guidelines exempts projects that generate less than 250 daily trips, and the City of Fresno draft guidelines exempts projects that generate less than 500 daily trips from the requirement to provide a detailed VMT analysis. A criterion should be based on substantial evidence that it would not result in a substantial impact. For example, the City may allow a higher threshold in terms of dwelling units or development area if it can demonstrate a high non-vehicular mode share, or internalization due to mixed uses. Substantial evidence may be provided by determining a number of daily trips would not substantially result in GHG emissions that would exceed the applicable criteria set by the Bay Area Air Quality Management District. Due to citizen concern regarding traffic congestion in the City, Kittelson recommends maintaining the OPR thresholds for small projects, as follows in Table 1.

Table 1: Thresholds for Small Projects

Land Use Type	Number of Units/ Square Feet	Corresponding Daily Trips
Single Family Residential	10 Dwelling Units	110
Multi-Family Residential	11 Dwelling Units	104
Office	11 TSF ¹	107
Light Industrial	22 TSF ¹	109

Note: 1. TSF refers to thousand square feet.

Local-Serving Retail

OPR Recommendation

Depending on the location and amount of nearby residential and retail land uses, new retail development may redistribute and even shorten existing shopping trips rather than creating new trips. Estimating the total net change in VMT is the best way to analyze a retail project's transportation impacts. New local-serving retail development in areas that may be underserved by retail and may be predominately residential tends to shorten trips and reduce total VMT. Therefore, OPR recommends presuming that local-serving retail (as opposed to regional retail) would not result in an increase in overall VMT and therefore would not result in a VMT impact. Absent local data, OPR defines local-serving retail as 50,000 square feet or less.

Considerations for the City of San Mateo

To recognize local-serving retail's potential to reduce overall VMT, the City should allow a presumption of less-than-significant impacts for smaller retail projects (including similar commercial uses such as restaurants). Lead agencies may refer to local definitions based on substantial evidence to support the definition of local-service retail to justify that these developments that may result in an overall reduction in VMT. The City could consider relying on a market study or relevant information to provide substantial evidence⁵ that a retail project under a certain square footage would primarily serve a local population and result in an overall reduction in VMT. Lacking data from a supporting market study, it would be appropriate for the City to remain consistent with OPR in assuming local-serving retail of 50,000 square feet or less would not have an impact. The relevant square footage threshold should apply to the entirety of a retail project; for a mixed-use project, this screening criteria should be applied to the retail/commercial component separately to determine if that portion of the project screens out of a detailed VMT analysis.

Affordable Housing

OPR Recommendation

OPR's Technical Advisory indicates that adding affordable housing to infill locations generally improves the jobs-housing match, which has an effect in shortening commutes and therefore reducing VMT. Affordable housing also typically generates less VMT than market-rate housing. Given that affordable housing in infill locations generally improves an area's jobs-housing balance and generates less VMT than market-rate housing, OPR recommends assuming a less-than-significant impact for a residential development with 100 percent affordable housing in infill locations. For mixed use projects, the affordable residential portion may be screened out of needing a detailed VMT analysis. However,

⁵ Substantial evidence is defined per CEQA code 15384, see Attachment C.

jurisdictions could develop their own applicable percentage based on local data and conditions, providing substantial evidence to support that these projects would not result in a substantial increase in VMT.

Considerations for the City of San Mateo

The City of San Mateo may include a provision that residential projects with 100 percent deed restricted affordable housing should be presumed to have a less-than-significant transportation impact, since low-income housing generally generates lower VMT than market-rate housing. The City may consider requiring that such projects be located in a High-Quality Transit Area or in parts of the city that have been identified by the Metropolitan Transportation Commission (MTC), Association of Bay Area Governments (ABAG), and the City as Priority Development Areas (PDA's), which are mapped in Attachment B. The City's General Plan states that these are areas "along transportation corridors which are served by public transit that allow opportunities for transit-oriented, infill development within existing communities⁶." Given the nature of affordable housing (such as residents with lower incomes and lower vehicle ownership), locating affordable housing in these locations can ensure the necessary supportive transportation infrastructure and mix of land uses exist. Note that if a project contains less than 100 percent affordable housing, the portion that is affordable should be screened out of needing a detailed VMT analysis.

Consistency with RTP/SCS

A Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) is associated with a set of land use and infrastructure assumptions that are based on a vision for the region under long range conditions. Section 15125, subdivision (d), of the CEQA Guidelines provides that lead agencies should analyze impacts resulting from inconsistencies with regional plans, including regional transportation plans. For example, a development may be inconsistent with an RTP/SCS if the development is outside the footprint of development or within an area specified as open space as shown in the SCS. If a proposed project is inconsistent with the RTP/SCS, the lead agency should evaluate whether that inconsistency may result in a significant impact on transportation. Therefore, projects that are inconsistent with the RTP/SCS would not qualify for screening out of a detailed VMT analysis. A project of the scale that would be inconsistent with an RTP/SCS would likely require its own in-depth transportation analysis regardless.

NEXT STEPS

Following the City's review of these considerations, Kittelson will assist the City in implementing the recommended screening criteria based on OPR's Technical Advisory recommendations or modifying the

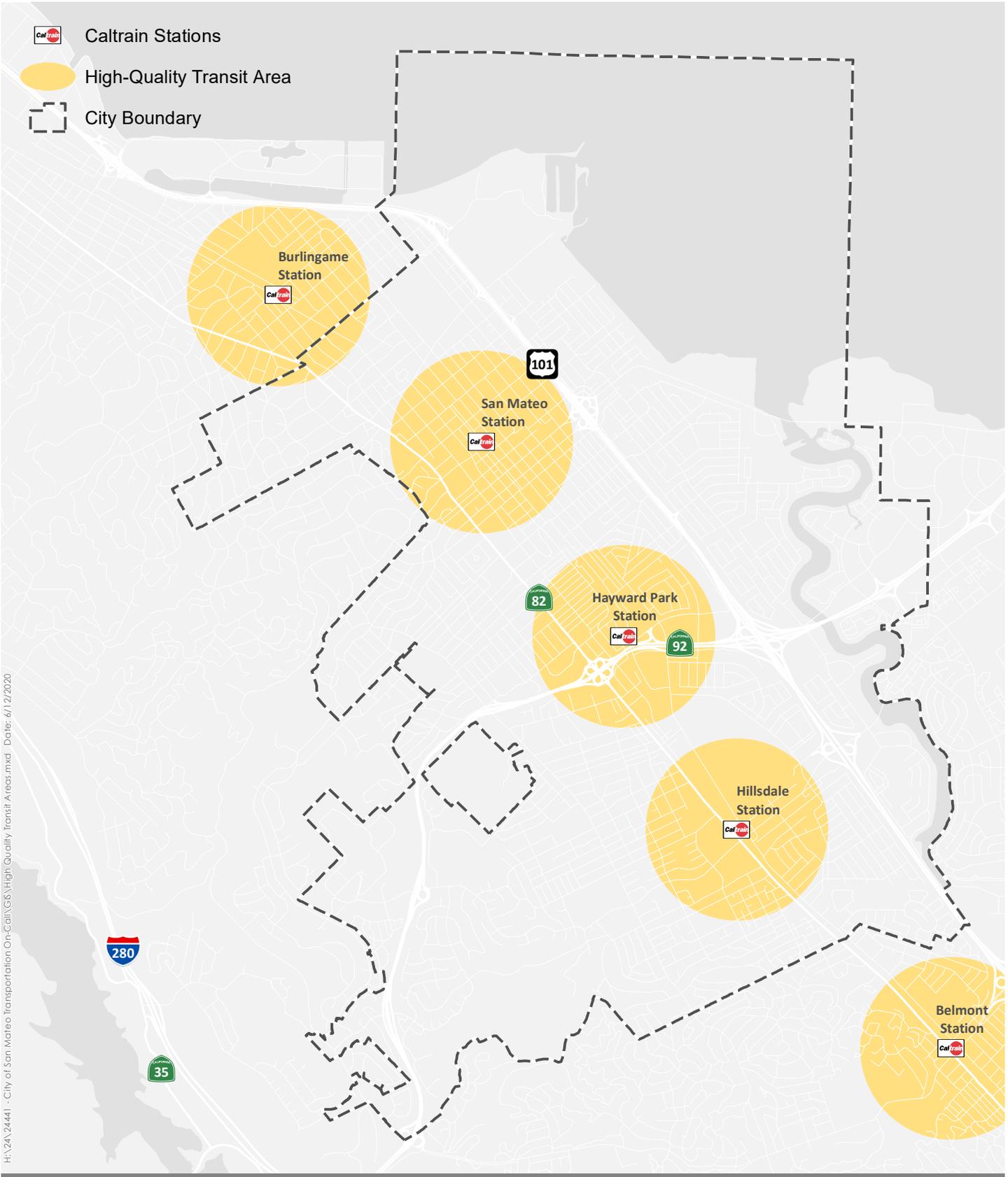
⁶ Existing Conditions Report: Land Use, Public Review Draft. October 9, 2018. URL: http://strivesanmateo.org/wp-content/uploads/2018/10/LandUse_PublicReview-1.pdf

criteria for the City based on substantial evidence. These decisions will serve as a base to develop the new transportation analysis guidelines based on VMT metrics.

Attachments:

- **Attachment A:** High Quality Transit Area Map
- **Attachment B:** VMT Screening Maps
- **Attachment C:** Key Definitions and CEQA Terminology

Attachment A: High Quality Transit Area Map



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High-quality transit areas are within 1/2 mile of an existing major transit stop or an existing stop along a high-quality transit corridor



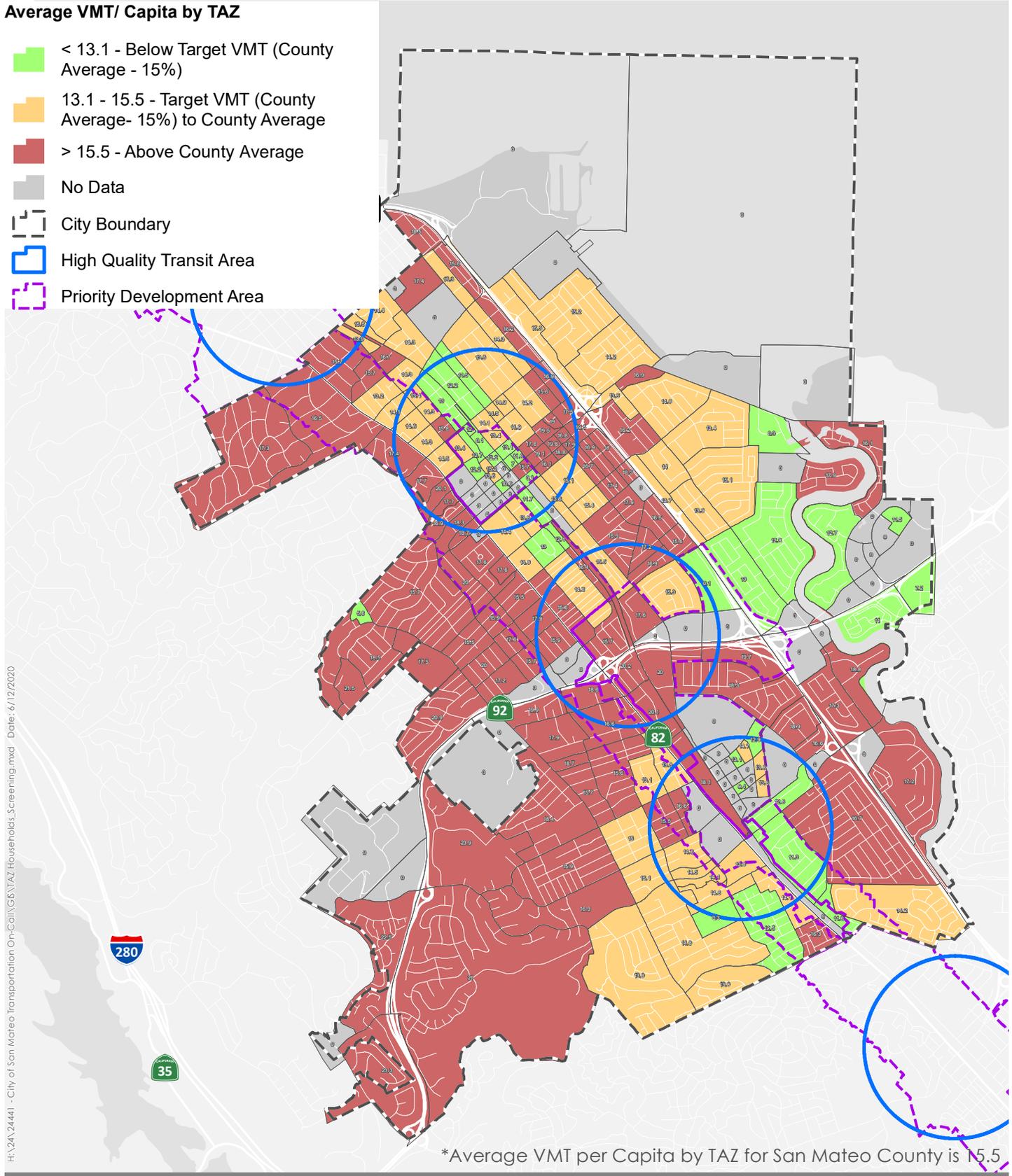
Figure 2

Attachment B: VMT Screening Maps

Average VMT/ Capita by TAZ

- < 13.1 - Below Target VMT (County Average - 15%)
- 13.1 - 15.5 - Target VMT (County Average- 15%) to County Average
- > 15.5 - Above County Average
- No Data
- City Boundary
- High Quality Transit Area
- Priority Development Area

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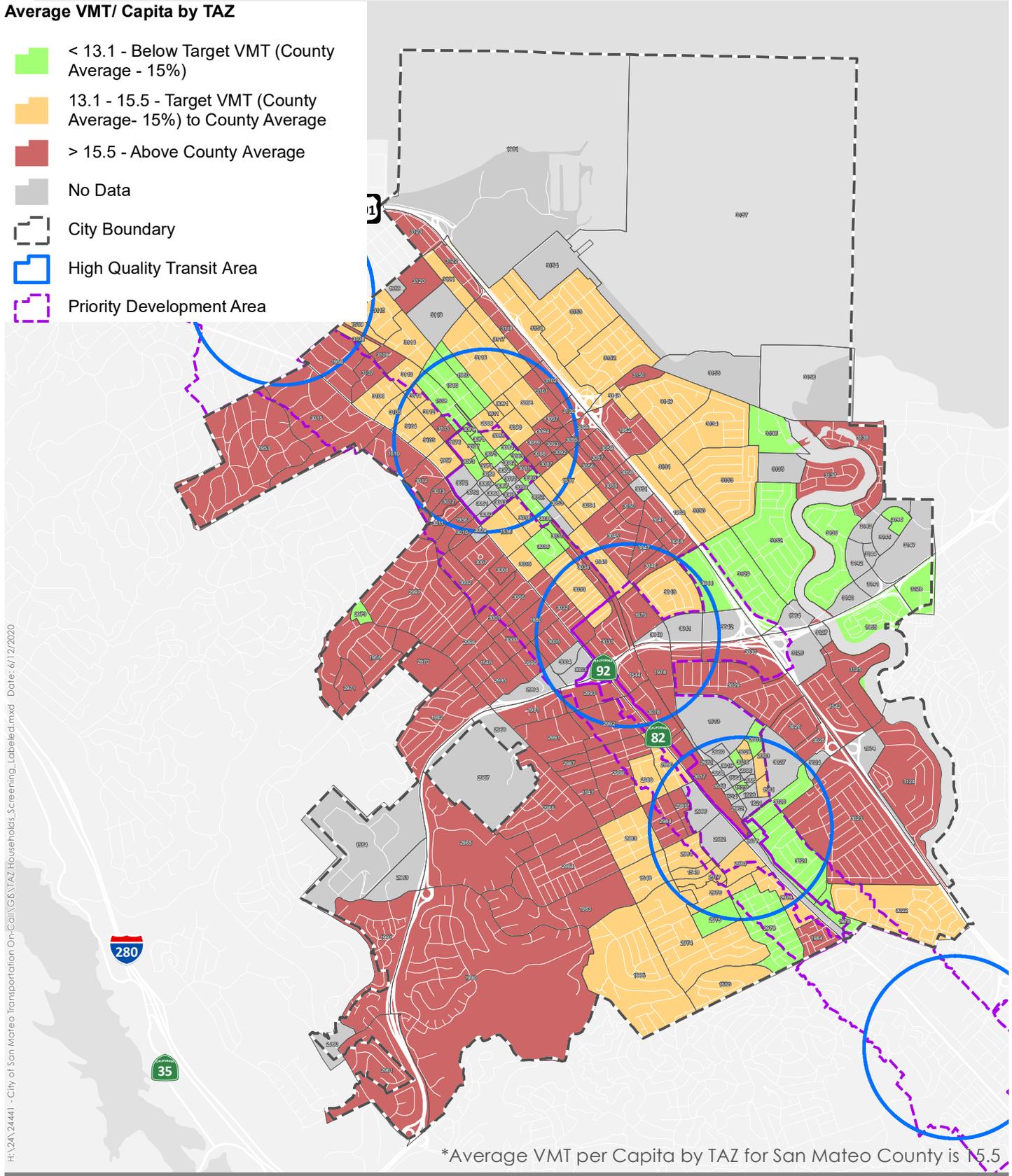
*Average VMT per Capita by TAZ for San Mateo County is 15.5



Average VMT/ Capita by TAZ

- < 13.1 - Below Target VMT (County Average - 15%)
- 13.1 - 15.5 - Target VMT (County Average- 15%) to County Average
- > 15.5 - Above County Average
- No Data
- City Boundary
- High Quality Transit Area
- Priority Development Area

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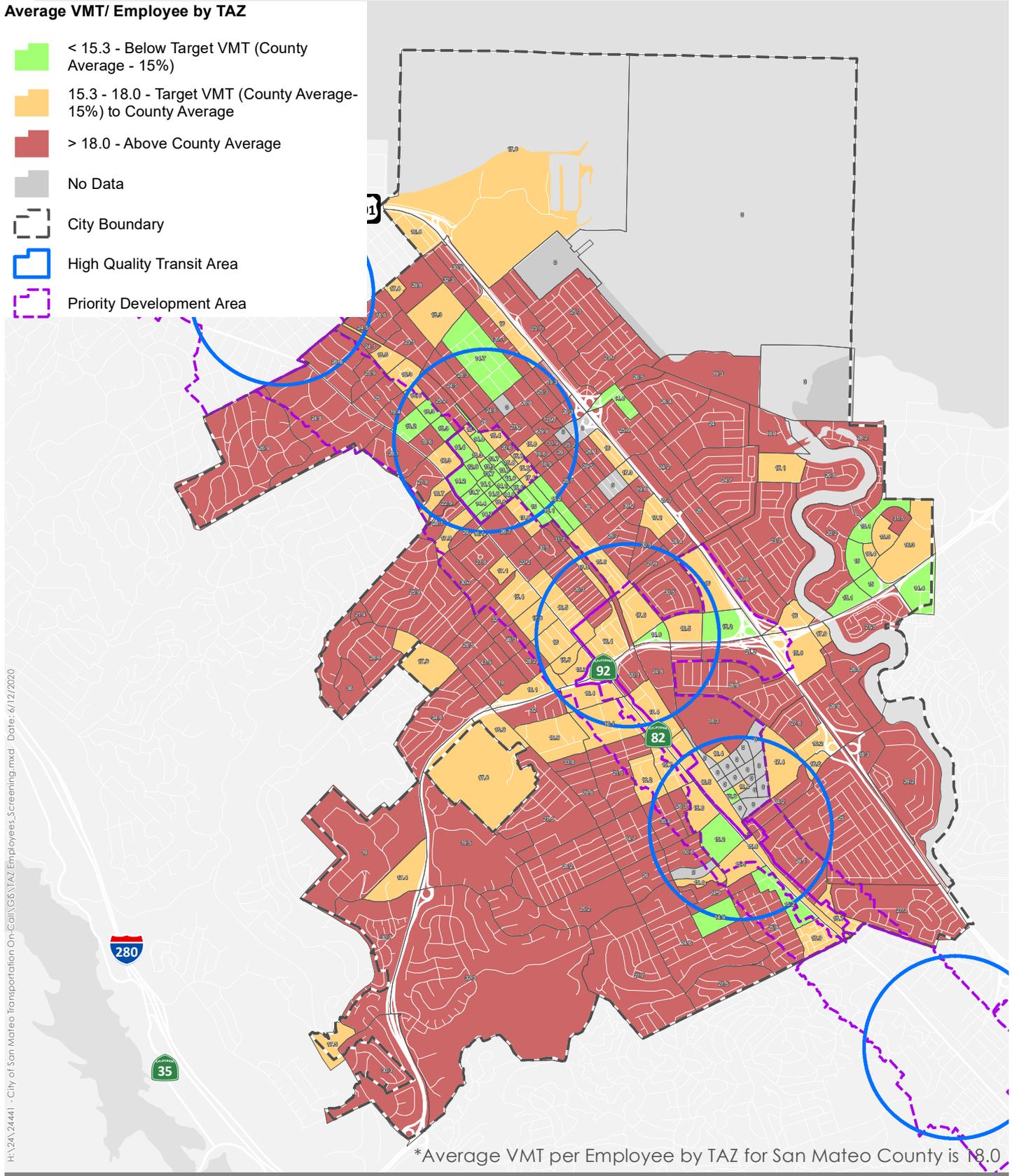
*Average VMT per Capita by TAZ for San Mateo County is 15.5



Average VMT per Capita by TAZ
TAZ Number Labeled
City of San Mateo, CA

Average VMT/ Employee by TAZ

- < 15.3 - Below Target VMT (County Average - 15%)
- 15.3 - 18.0 - Target VMT (County Average-15%) to County Average
- > 18.0 - Above County Average
- No Data
- City Boundary
- High Quality Transit Area
- Priority Development Area



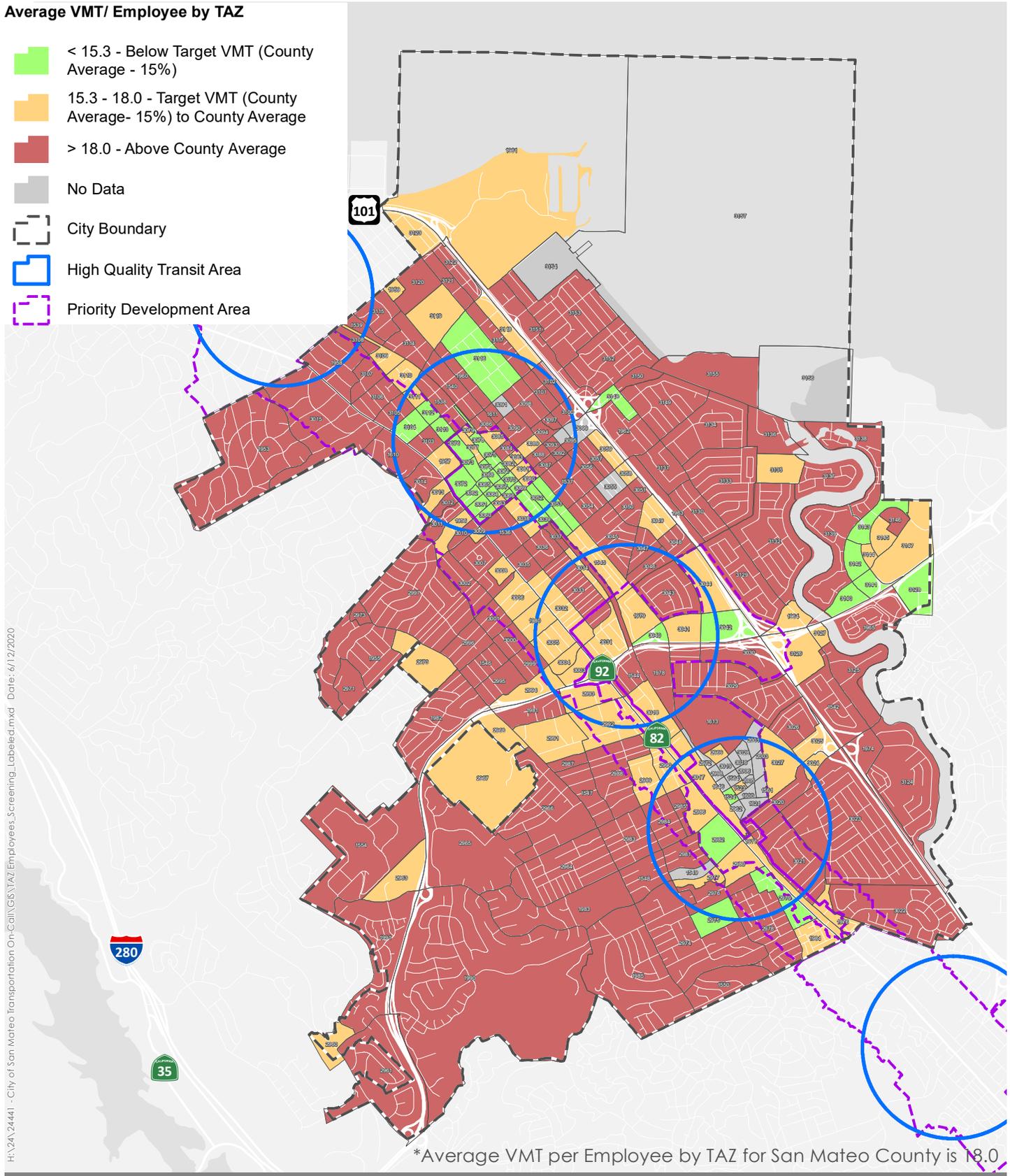
*Average VMT per Employee by TAZ for San Mateo County is 18.0

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Average VMT/ Employee by TAZ

- < 15.3 - Below Target VMT (County Average - 15%)
- 15.3 - 18.0 - Target VMT (County Average- 15%) to County Average
- > 18.0 - Above County Average
- No Data
- City Boundary
- High Quality Transit Area
- Priority Development Area

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*Average VMT per Employee by TAZ for San Mateo County is 18.0



Average VMT per Employee by TAZ
TAZ Number Labeled
City of San Mateo, CA

Attachment C: Key Definitions and CEQA Terminology

ATTACHMENT C

CEQA Guidelines Appendix G, Environmental Checklist Form Sample Questions

XVII. TRANSPORTATION

- a) Would the project conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?
- b) Would the project conflict or be inconsistent with CEQA Guidelines § 15064.3, subdivision (b)?
- c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment).
- d) Result in inadequate emergency access?

**CALIFORNIA CODE OF REGULATIONS. TITLE 14, NATURAL RESOURCES
DIVISION 6, RESOURCES AGENCY
CHAPTER 3: GUIDELINES FOR IMPLEMENTATION OF THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT**

SECTION 15064.3. DETERMINING THE SIGNIFICANCE OF TRANSPORTATION IMPACTS

(a) Purpose

This section describes specific considerations for evaluating a project's transportation impacts. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. For the purposes of this section, "vehicle miles traveled" refers to the amount and distance of automobile travel attributable to a project. Other relevant considerations may include the effects of the project on transit and non-motorized travel. Except as provided in subdivision (b)(2) below (regarding roadway capacity), a project's effect on automobile delay shall not constitute a significant environmental impact.

(b) Criteria for Analyzing Transportation Impacts.

(1) Land Use Projects. Vehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact. Generally, projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be presumed to have a less than significant transportation impact.

(2) Transportation Projects. Transportation projects that reduce, or have no impact on, vehicle miles traveled should be presumed to cause a less than significant transportation impact. For roadway capacity projects, agencies have discretion to determine the appropriate measure of transportation impact consistent with CEQA and other applicable requirements. To the extent that such impacts have already been adequately addressed at a programmatic level, such as in a regional transportation plan EIR, a lead agency may tier from that analysis as provided in Section 15152.

(3) Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate.

(4) Methodology. A lead agency has discretion to choose the most appropriate methodology to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled, and may revise those estimates to reflect professional judgment based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project. The standard of adequacy in Section 15151 shall apply to the analysis described in this section.

(c) Applicability.

The provisions of this section shall apply prospectively as described in section 15007. A lead agency may elect to be governed by the provisions of this section immediately. Beginning on July 1, 2020, the provisions of this section shall apply statewide.

Note: Authority cited: Sections 21083 and 21099, Public Resources Code. Reference: Sections 21099 and 21100, Public Resources Code; Cleveland National Forest Foundation v. San Diego Association of Governments (2017) 17 Cal.App.5th 413; Ukiah Citizens for Safety First v. City of Ukiah (2016) 248 Cal.App.4th 256; California Clean Energy Committee v. City of Woodland (2014) 225 Cal. App. 4th 173.

15382. SIGNIFICANT EFFECT ON THE ENVIRONMENT

“Significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21068, 21083, 21100, and 21151, Public Resources Code; *Hecton v. People of the State of California*, 58 Cal. App. 3d 653.

15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT

(a) Determining whether a project may have a significant effect plays a critical role in the CEQA process.

(1) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the agency shall prepare a draft EIR.

(2) When a final EIR identifies one or more significant effects, the Lead Agency and each Responsible Agency shall make a finding under Section 15091 for each significant effect and may need to make a statement of overriding considerations under Section 15093 for the project.

(b) (1) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining whether a project may cause a significant impact. When using a threshold, the lead agency should briefly explain how compliance with the threshold means that the project's impacts are less than significant. Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant.

(c) In determining whether an effect will be adverse or beneficial, the Lead Agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring the preparation of an EIR, the Lead Agency must still determine whether environmental change itself might be substantial.

(d) In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

(1) A direct physical change in the environment is a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.

(2) An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.

(3) An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

(e) Economic and social changes resulting from a project shall not be treated as significant effects

on the environment. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988). Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project may have a significant effect on the environment but the lead agency determines that revisions in the project plans or proposals made by, or agreed to by, the applicant would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment then a mitigated negative declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative declaration (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App. 3d 988).

(4) The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

(5) Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.

(6) Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment.

(7) The provisions of sections 15162, 15163, and 15164 apply when the project being analyzed is a change to, or further approval for, a project for which an EIR or negative declaration was previously certified or adopted (e.g. a tentative subdivision, conditional use permit). Under case law, the fair argument standard does not apply to determinations of significance pursuant to sections 15162, 15163, and 15164.

(g) After application of the principles set forth above in Section 15064(f)(g), and in marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

(h) (1) When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(2) A lead agency may determine in an initial study that a project's contribution to a significant cumulative impact will be rendered less than cumulatively considerable and thus is not significant. When a project might contribute to a significant cumulative impact, but the contribution will be rendered less than cumulatively considerable through mitigation measures set forth in a mitigated negative declaration, the initial study shall briefly indicate and explain how the contribution has been rendered less than cumulatively considerable.

(3) A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (including, but not limited to, water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plan, plans or regulations for the reduction of greenhouse gas emissions) that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

(4) The mere existence of significant cumulative impacts caused by other projects alone shall not constitute substantial evidence that the proposed project's incremental effects are cumulatively considerable. **Note:** Authority cited: Sections 21083, 21083.05, Public Resources Code. Reference: Sections 21003, 21065, 21068, 21080, 21082, 21082.1, 21082.2, 21083, 21083.05, and 21100, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *San Joaquin Raptor/Wildlife Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359; *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112; and *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099; and *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.

15064.7. THRESHOLDS OF SIGNIFICANCE.

(a) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

(b) Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. Thresholds of significance to be adopted for general use as part of the lead agency's environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence. Lead agencies may also use thresholds on a case-by-case basis as provided in Section 15064(b)(2).

(c) When adopting or using thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

(d) Using environmental standards as thresholds of significance promotes consistency in significance determinations and integrates environmental review with other environmental program planning and regulation. Any public agency may adopt or use an environmental standard as a threshold of significance. In adopting or using an environmental standard as a threshold of significance, a public agency shall explain how the particular requirements of that environmental standard reduce project impacts, including cumulative impacts, to a level that is less than significant, and why the environmental standard is relevant to the analysis of the project under consideration. For the purposes of this subdivision, an "environmental standard" is a rule of general application that is adopted by a public agency through a public review process and that is all of the following:

- (1) a quantitative, qualitative or performance requirement found in an ordinance, resolution, rule, regulation, order, plan or other environmental requirement;
- (2) adopted for the purpose of environmental protection;
- (3) addresses the environmental effect caused by the project; and,

(4) applies to the project under review.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21000, 21082 and 21083, Public Resources Code; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099.

15370. MITIGATION

“Mitigation” includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, 21081, and 21100(c), Public Resources Code; *Masonite Corporation v. County of Mendocino* (2013) 218 Cal.App.4th 230.

15364. FEASIBLE

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Sections 21002, 21002.1, 21004, 21061.1, 21080.5, and 21081, Public Resources Code; Section 4, Chapter 1438 of the Statutes of 1982

15355. CUMULATIVE IMPACTS

“Cumulative impacts” refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

- (a) The individual effects may be changes resulting from a single project or a number of separate projects.
- (b) The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.

Note: Authority cited: Section 21083, Public Resources Code; Reference: Section 21083(b), Public Resources Code; *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, Formerly Section 15023.5.

15384. SUBSTANTIAL EVIDENCE

(a) “Substantial evidence” as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

Note: Authority cited: Section 21083, Public Resources Code; References: Sections 21080, 21082.2, 21168, and 21168.5, Public Resources Code; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Running Fence Corp. v. Superior Court* (1975) 51 Cal.App.3d 400; *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988.

MAJOR TRANSIT STOP

Pub. Resources Code, § 21064.3 (“‘Major transit stop’ means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.”).

HIGH QUALITY TRANSIT CORRIDOR

Pub. Resources Code, § 21155 (“For purposes of this section, a high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.”).

FAIR ARGUMENT

A fair argument must be supported by substantial evidence that the project may have a significant impact on the environment. The fair argument must be based on the whole record before the lead agency. The fair argument standard entails a strong presumption in favor of requiring full EIRs. The presumption is embodied in numerous provisions, which require that *if* a project is not exempt and *may* cause a potential adverse environmental impact, the lead agency *must* prepare an EIR.¹³ It takes only one piece of substantial evidence showing that a project *may* have a significant adverse impact to require preparation of a full EIR under the fair argument standard, even if other and more voluminous contrary evidence exists.¹⁴ Given this very low threshold, there is much less risk of losing a CEQA challenge if an EIR is prepared from the outset for big or controversial projects.