SB 743 Implementation: Transportation Projects
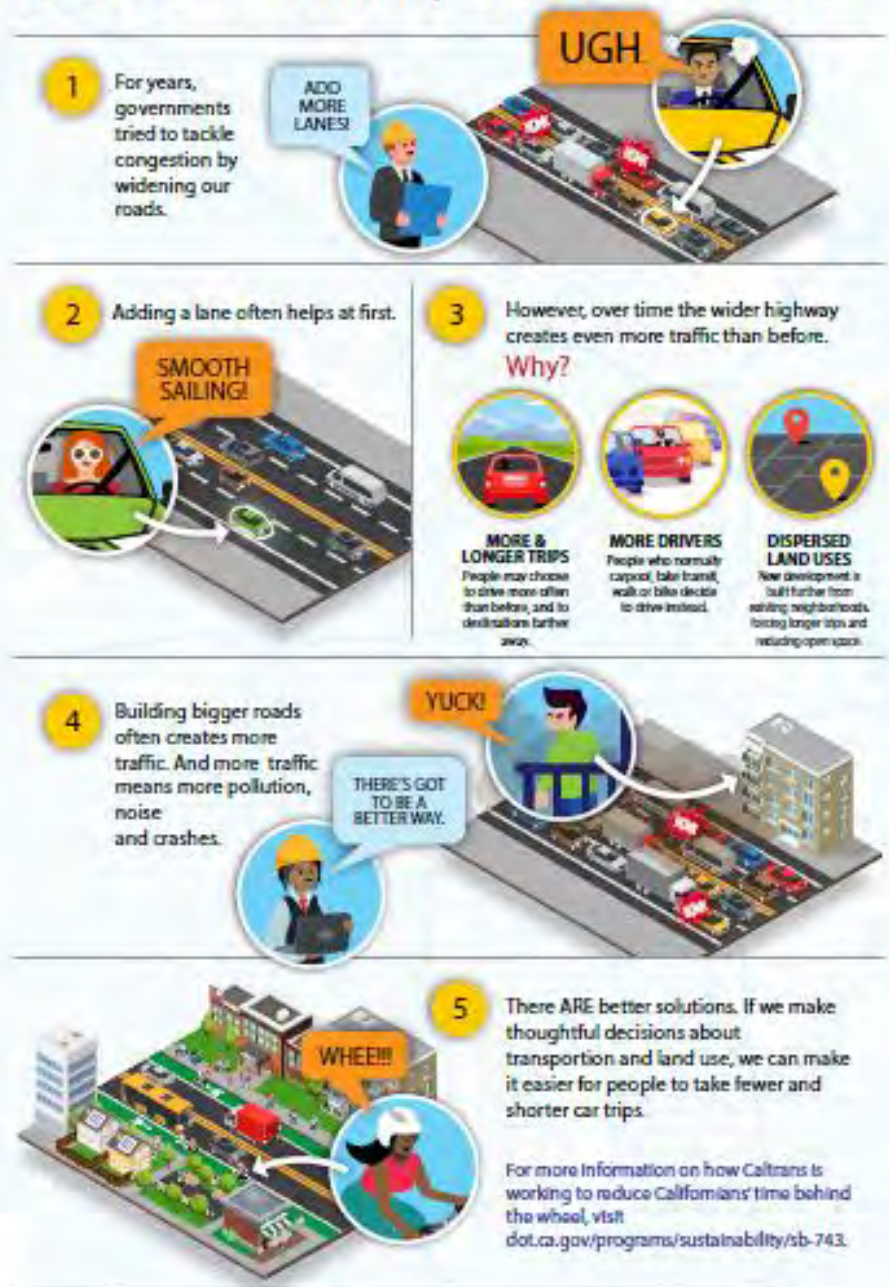
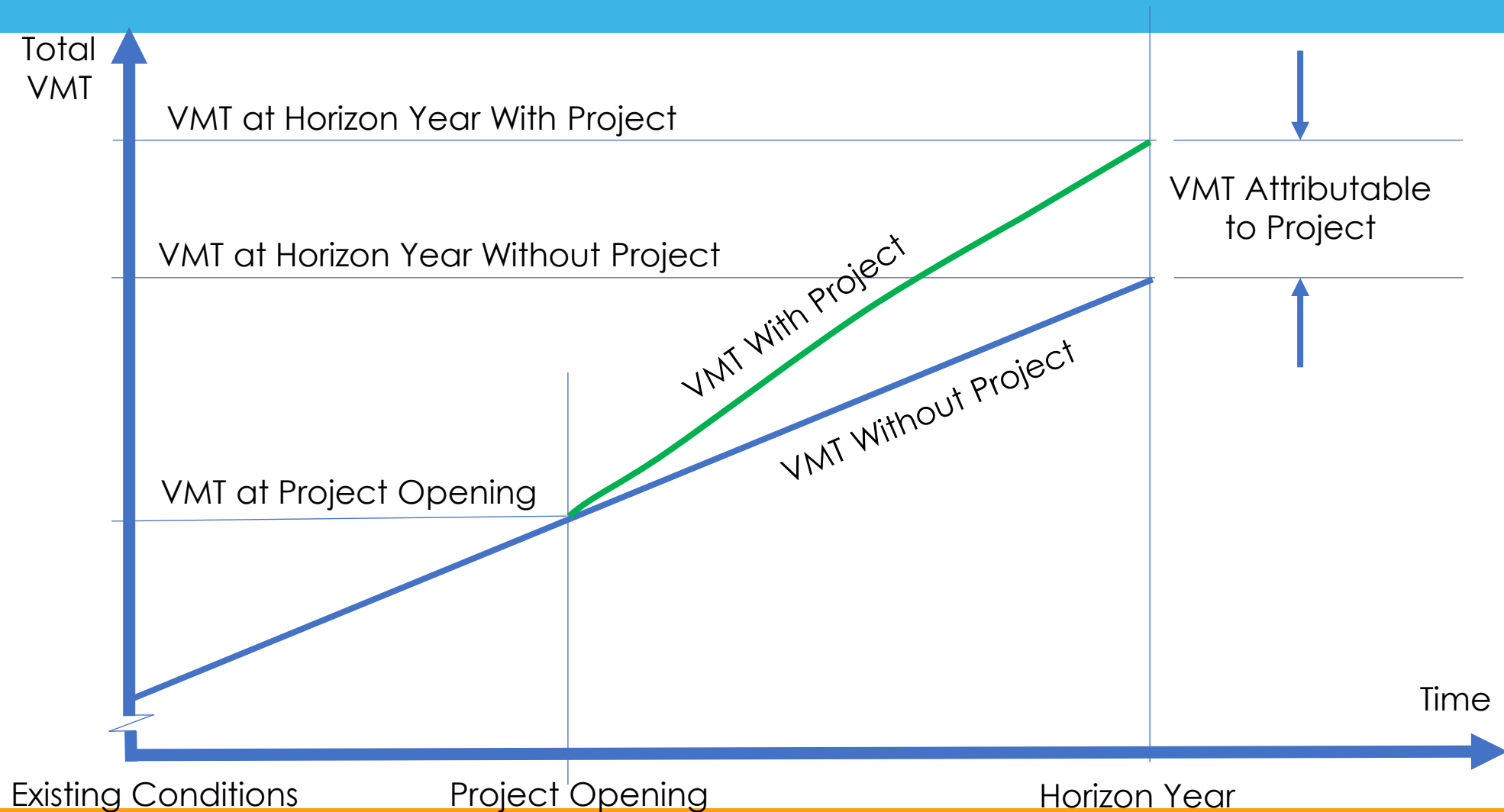**San Joaquin Valley Policy Conference | May 12, 2022**

Background

- Caltrans processes put in place in 2020

    - Transportation Analysis Framework (TAF)
    - Transportation Analysis under CEQA (TAC)
- Explains induced travel
- Provides important guidance on assessing VMT impacts
- Provides general guidance on mitigation

Background

Background

- **Driver Behavior Change**
  - Route changes (increase or decrease VMT)
  - Mode shift (increases VMT)
  - Longer trips (increases VMT)
  - More trips (increases VMT)
- **Land use change**
  - More dispersed development (increases VMT)

Process

Analyze Project for Likely Induced Travel

Determine Significance of VMT Impacts

Develop VMT Mitigation Measures

Consider Statement of Overriding Considerations *(if not fully mitigated)*

Significance

Results

9 million additional VMT/year
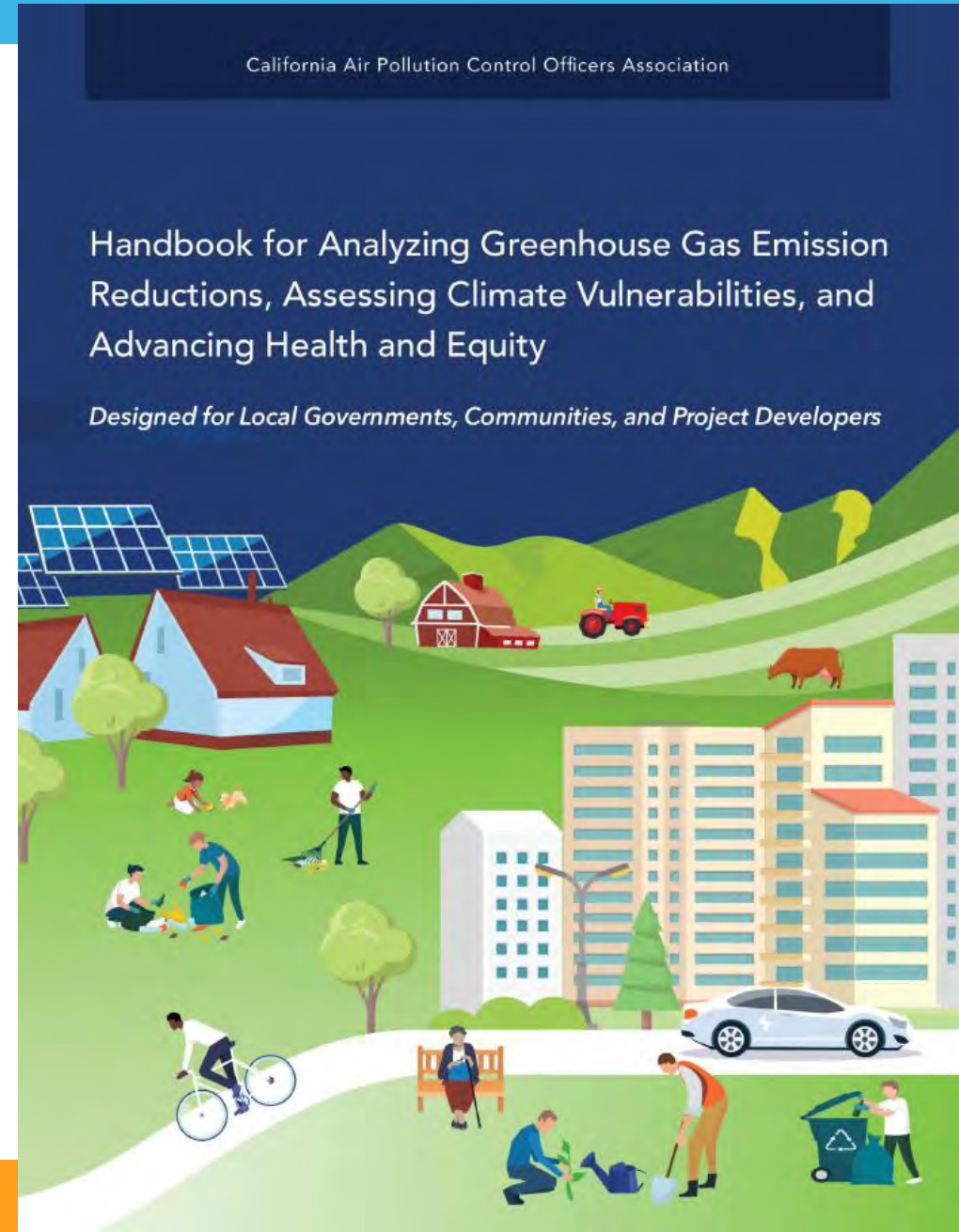(Vehicle Miles Travelled)

In **2019**, **Fresno County** had **1220 lane miles** of Caltrans-managed class 2 and 3 facilities on which **3.7 billion million** vehicle miles are travelled per year.

A project adding **4 lane miles** would induce an additional **9 million** vehicle miles travelled per year.

This calculation is using an elasticity of **0.75**.

Read more about this calculator

Mitigation

California Air Pollution Control Officers Association

Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity

Designed for Local Governments, Communities, and Project Developers

Mitigation

GHG Reduction Formula

$$A = \frac{B - C}{C} \times D$$

GHG Calculation Variables

ID	Variable	Value	Unit	Source
Output				
A	Percent reduction in GHG emissions from project VMT in study area	0–30.0	%	calculated
User Inputs				
B	Residential density of project development	[ ]	du/acre	user input
Constants, Assumptions, and Available Defaults				
C	Residential density of typical development	9.1	du/acre	Ewing et al. 2007
D	Elasticity of VMT with respect to residential density	-0.22	unitless	Stevens 2016

Further explanation of key variables:

- (C) – The residential density of typical development is based on the blended average density of residential development in the U.S. forecasted for 2025. This estimate includes apartments, condominiums, and townhouses, as well as detached single-family housing on both small and large lots. An acre in this context is defined as an acre of developed land, not including streets, school sites, parks, and other undevelopable land. If reductions are being calculated from a specific baseline derived from a travel demand forecasting model, the residential density of the relevant transportation analysis zone should be used instead of the value for a typical development.
- (D) – A meta-regression analysis of five studies that controlled for self-selection found that a 0.22 percent decrease in VMT occurs for every 1 percent increase in residential density (Stevens 2016).

Mitigation

Elasticity	Typical density	Typical HH VMT
-0.22	9.1	17816

California Air Pollution Control Officers Association

T-1. Increase Residential Density   TRANSPORTATION | 71

GHG Reduction Formula

$$A = \frac{B - C}{C} \times D$$

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Mitigation

Elasticity	Typical density	Typical HH VMT
-0.22	9.1	17816

Density	Delta VMT
9.1	0
9.2	-42
9.3	-83
9.4	-125
9.5	-166
9.6	-208
9.7	-249
9.8	-291
9.9	-332
10	-374
10.1	-415
10.2	-457
10.3	-499
10.4	-540
10.5	-582
10.6	-623
10.7	-665
10.8	-706
10.9	-748
11	-789

California Air Pollution Control Officers Association

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Mitigation

- Additionality

- Bundling/tiering

- Banks and exchanges

- Equity impacts

- Unmitigated VMT

Eric Sundquist

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SB 743 Implementation
"The Road Ahead"

San Joaquin Valley Policy Conference 2022

How does SB 743 and VMT affect the CEQA process?

- CEQA process still fundamentally the same
- But many legal implementation challenges:
  - How do we develop a threshold of significance?
  - How do we analyze VMT?
  - How do we mitigate for VMT?
  - How do we use "older" CEQA documents that don't analyze VMT?
  - What does all of this mean for the road ahead?

Thresholds of significance

- "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." (CEQA Guidelines, § 15064.7(a).)

- CEQA encourages agencies to adopt jurisdiction-wide thresholds, but also allows agencies to identify its thresholds on a case-by-case basis.

- Jurisdiction-wide thresholds must be adopted by ordinance, resolution, rule, or regulation and include a "public review process".

Thresholds of significance (cont).

- Threshold can be qualitative or quantitative.
  - Caveat: CEQA Guidelines 15064.3(b)(3) states that a qualitative analysis of VMT is permitted "if existing models or methods are not available to estimate the vehicle miles traveled."

- Threshold must be supported by "substantial evidence" = FACTS!

"Just the facts, ma'am."

Thresholds of significance (cont).

- If VMT threshold is too low, an EIR will be required for virtually every project.

- If VMT threshold is too high (i.e., illusory), this may bring legal challenge.

- CEQA Guidelines 15064(b)(2): "Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating the project's environmental effect may *still* be significant."

Thresholds of significance (cont).

- Agencies have broad discretion to pick thresholds.

- Significance <u>conclusions</u> receive deference under the substantial evidence test.

- But, courts are skeptical in reviewing the thresholds themselves. (*Center for Biological Diversity v. Department of Fish & Wildlife/Newhall Ranch* (2015) 62 Cal.4th 204 ("predominately a legal question of CEQA procedure".)

Analyzing VMT

- Agencies must analyze all impacts that are reasonably foreseeable. (CEQA Guidelines, § 15064.)

- Not required to analyze impacts that are speculative. (CEQA Guidelines, § 15145.)

- Show your work; use small words; and use expert consultants where needed.

Analyzing VMT

- Choice of one model over another gets deference under "substantial evidence" test. (*City of Hayward v. Trustees of California the California State University* (2015) 242 Cal.App.4th 833, 839.)

- But not beyond challenge. (See *Newhall Ranch* (2015) 62 Cal.4th 204.)

Mitigating for VMT Impacts

- Per CEQA Guidelines 15126.4, mitigation must:

  - Be "feasible". Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

  - Have a "nexus" to the Project's impacts. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825.) Must actually reduce or offset VMT (bicycles, pedestrian, train, busing, carpool).

  - Be "roughly proportional" to Project impacts. (*Dolan v. City of Tigard* (1994) 512 U.S. 374.) Large-scale mitigation comes with large-scale price tags; <u>regional</u> mitigation may be an option.

  - Be fully enforceable (i.e., it must actually DO something). Consider whether we can meet this test for MMs such as bus passes or ride-sharing…

Mitigating for Potentially Significant VMT Impacts (cont.)

- Are impacts caused by roadways, or by land uses?

- How to show that "mitigation" is <u>additive</u> (over and above what would normally happen)?

- More pressure to "bundle" projects that reduce VMT with projects that increase VMT? A new way of looking at project planning?

- <u>BOTTOM LINE</u>: More significant and unavoidable impacts, and more EIRs for development <u>and</u> transportation projects.

What about "older" CEQA documents?

- Once a CEQA document has been adopted and a Project has been approved, the CEQA statute of limitations begins to run. (Public Resources Code 21166.)
  - o CEQA encourages finality, so that important projects can proceed.
  - o EIRs, in particular, are presumed valid <u>indefinitely</u>.

- Further environmental review <u>of the Project</u> is generally precluded <u>unless</u> certain, limited issues arise (Public Resources Code 21166/CEQA Guidelines 15162) :
  - o Project is changed in a way requiring substantial revisions to CEQA document
  - o Circumstances have substantially changed.
  - o New information that was not known <u>and could not have been known with the exercise of reasonable diligence</u> at the time of the prior review becomes available.

What about "older" CEQA documents? (cont.)

- *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515:
  - "The effect of greenhouse gas emissions on climate could have been raised in 1994 when the City considered the FEIR…. [A]n agency may not require an SEIR unless new information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available."

  - Shouldn't the same apply to VMT?
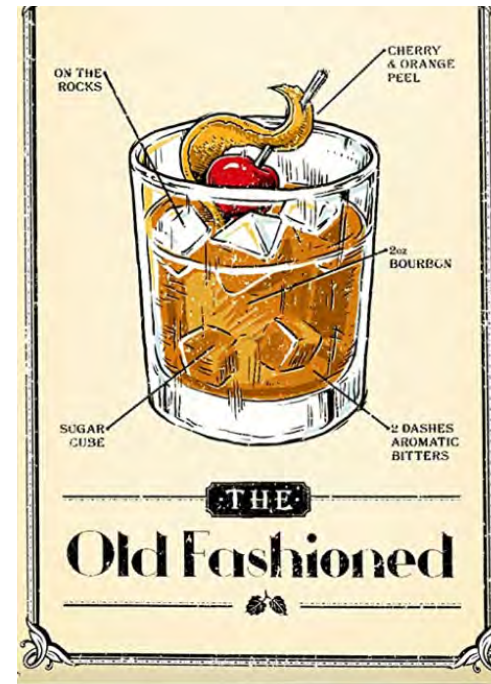
VMT Litigation Risks

- CEQA continues to be a cudgel for many groups.
- Every uncertainty is an opportunity for legal challenge.
- Litigation costs are especially tough on public projects without private sponsors –<u>including nearly all transportation projects</u>.
- Practical problem, because many potential challengers care little about VMT, and more about delay.

Thank you!!

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VMT/FRESNO: STEP BY STEP

SAN JOAQUIN VALLEY POLICY CONFERENCE

2022

OUTLINE

STEP 1

CONTEXT:

General Plan Policies

STEP 2

THRESHOLD:

How we developed ours

STEP 3

TOOLS:

VMT Screening Maps

VMT Calculation Tool

STEP 4

MITIGATION

VMT Impact Fee

Urban Design Calculator

City of
FRESNO

STEP 1: CONTEXT
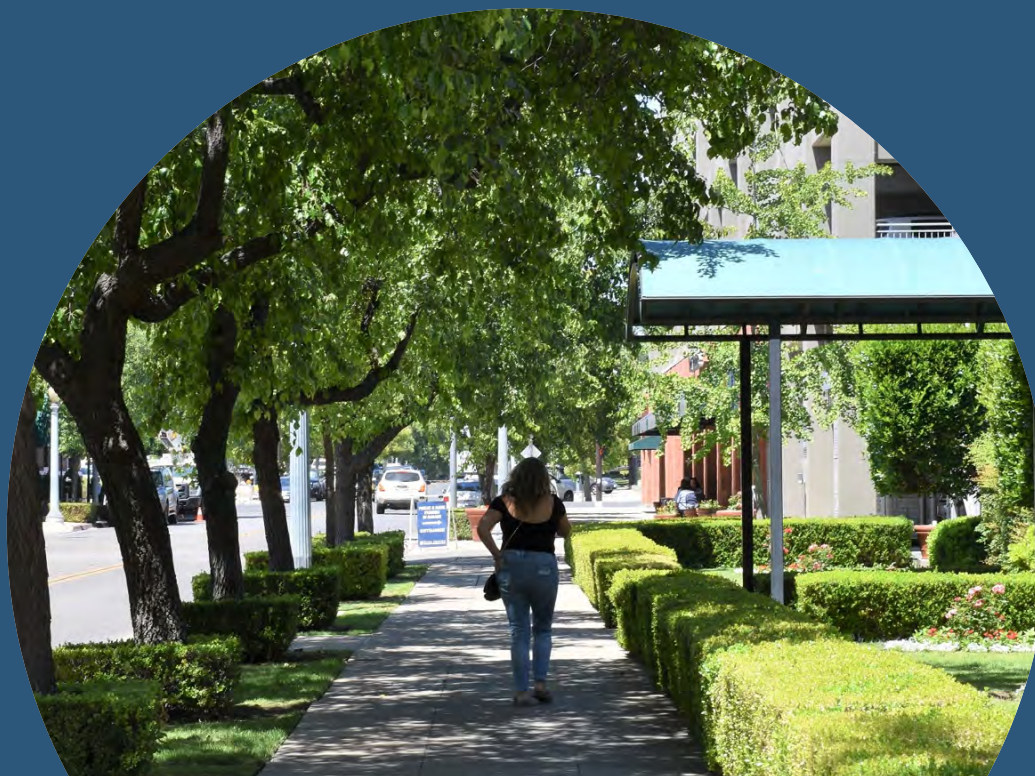
CONTEXT

General Plan Policies supported VMT reductions

- Multi-Modal Transportation
- Mixed Use Policies
- Infill Policies
- GHG Reduction Policies

STEP 2: THRESHOLDS

THRESHOLDS

STATE OF CALIFORNIA

Tech Advisory included a statewide 15% VMT reduction target
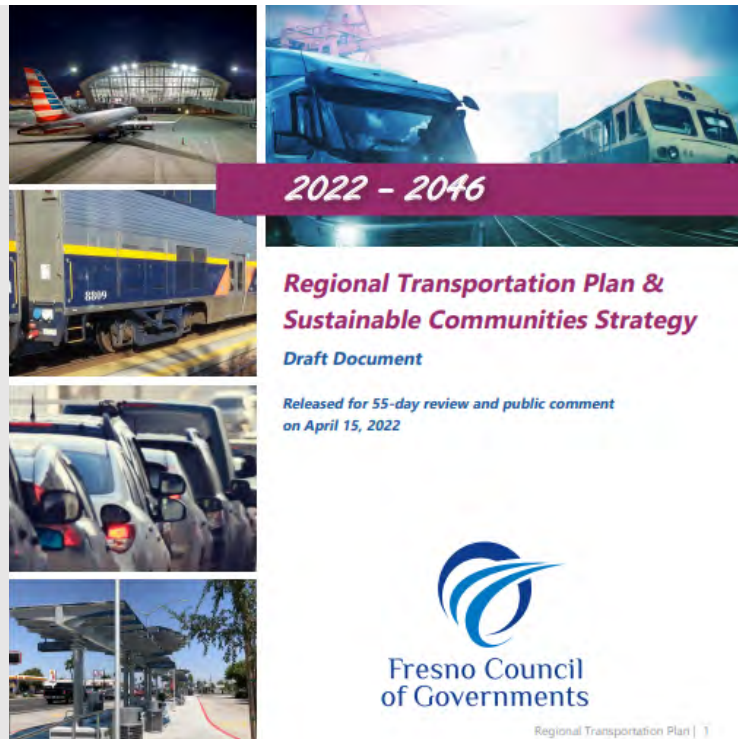
FRESNO RTP/SCS

2018 RTP/SCS included a 13% VMT reduction target

CEQA Guidelines for VMT Thresholds

- Screening Criteria
- Thresholds
  - -Development Projects
    - Residential
    - Employment
    - Retail
    - Other
  - -Transportation Projects
- Mitigation

Image Source: Fresno Visitor Bureau

City of
FRESNO
LSA

CEQA GUIDELINES FOR VEHICLE MILES TRAVELED THRESHOLDS

for the

CITY OF FRESNO

Adopted June 25, 2020

City of
FRESNO
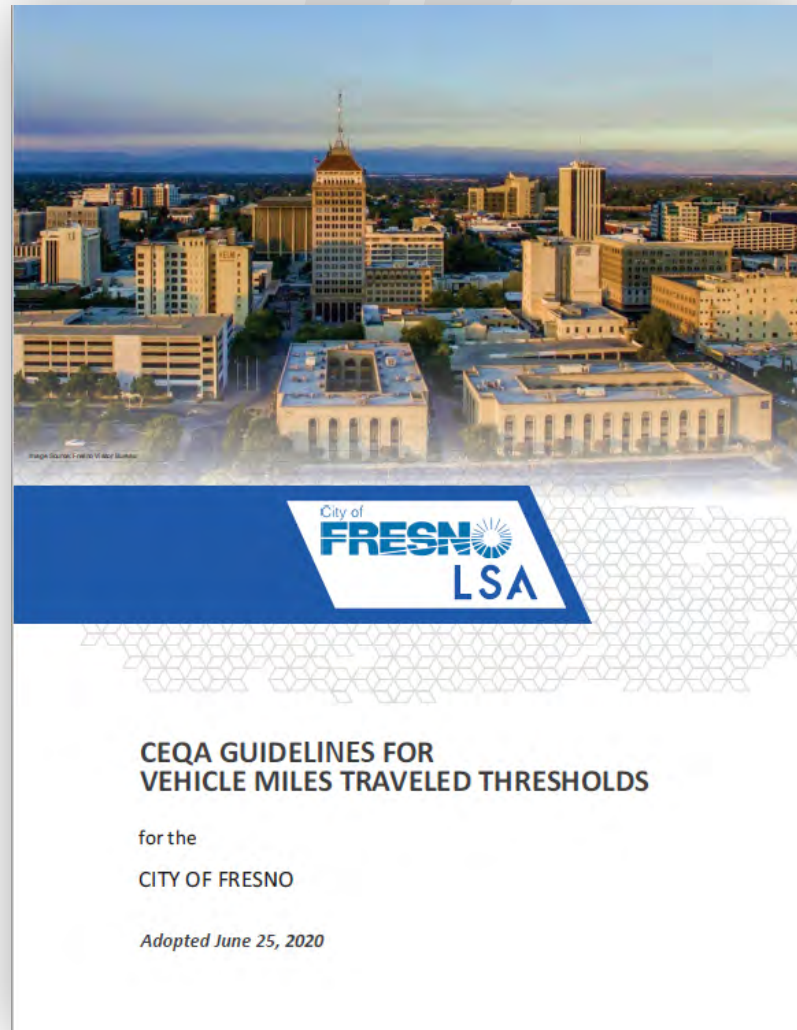
STEP 3: TOOLS
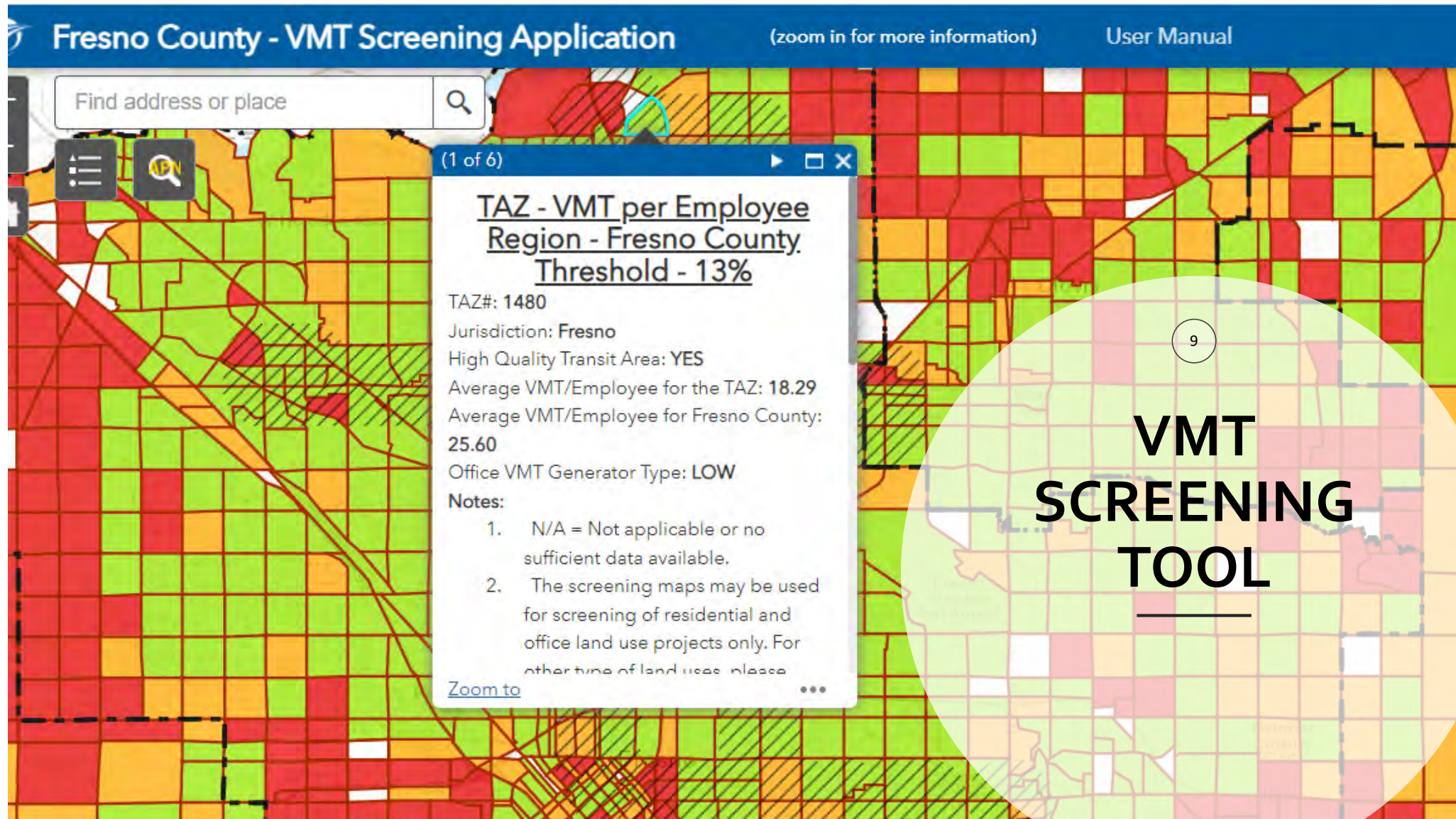
Fresno COG Vehicle Miles Traveled (VMT) Calculator V 1.38

STEP 4: MITIGATION

VMT Impact Fee & Urban Design Calculator

MITIGATION FEE
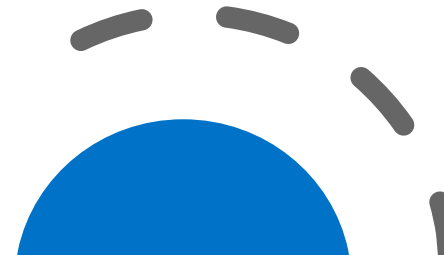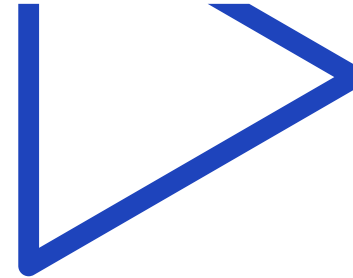
FEE PROJECTS

ACTIVE TRANSPORTATION PLAN
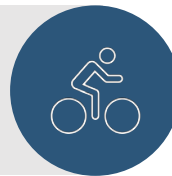
TRANSIT PLANS

City of FRESNO

PROJECT RANKING CRITERIA

VMT Reduction 50%

Connectivity 10%

Access and Equity 10%

Safety 10%
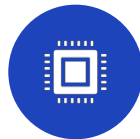
Funding 10%

Project Feasibility 10%

City of
FRESNO

URBAN DESIGN CALCULATOR

URBAN DESIGN CALCULATOR

City of Fresno
URBAN FORM VMT CALCULATOR

Basic Information
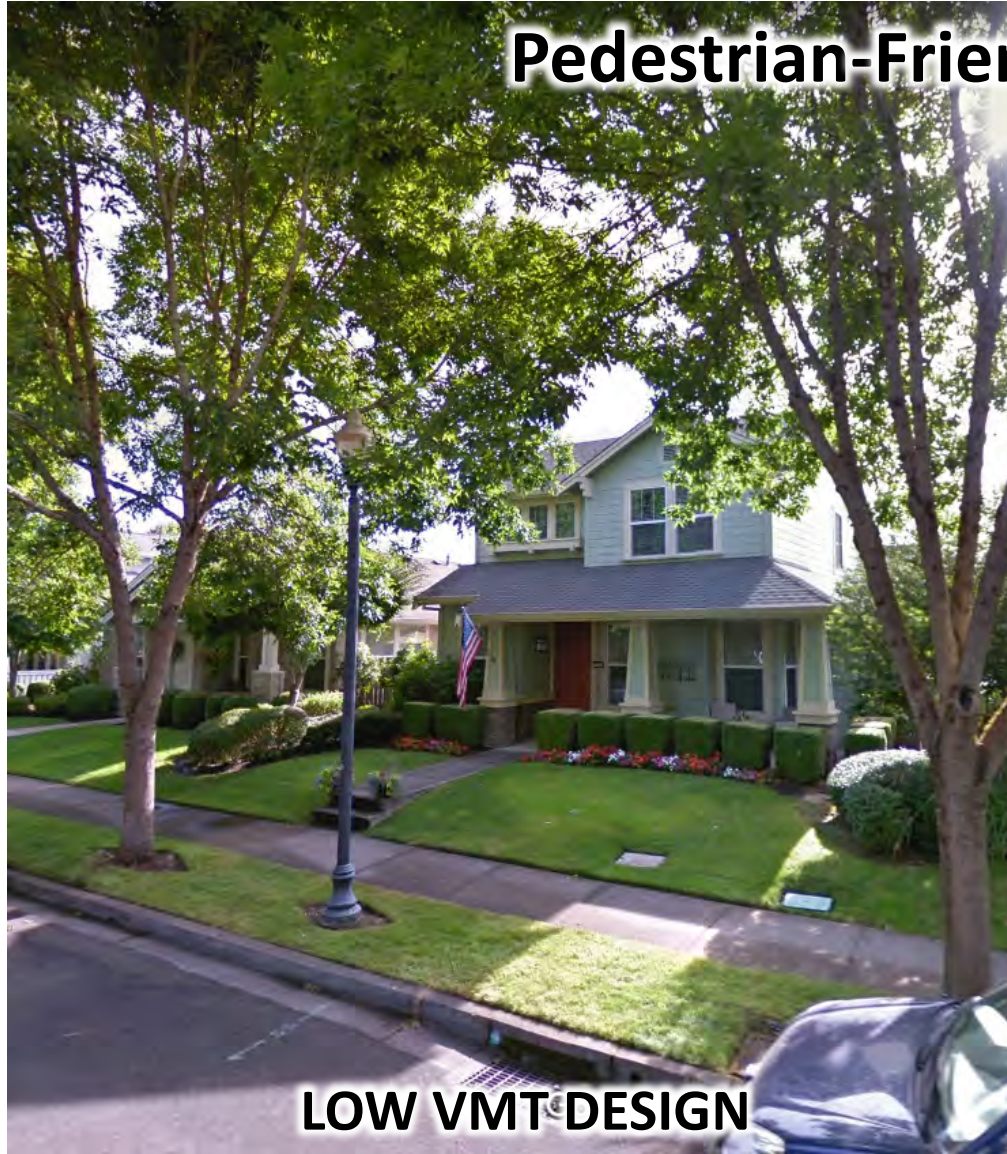
Project Name:

Applicant/Developer:

Major Cross Streets:

Project Address:

Interconnected Street Network

LOW VMT DESIGN
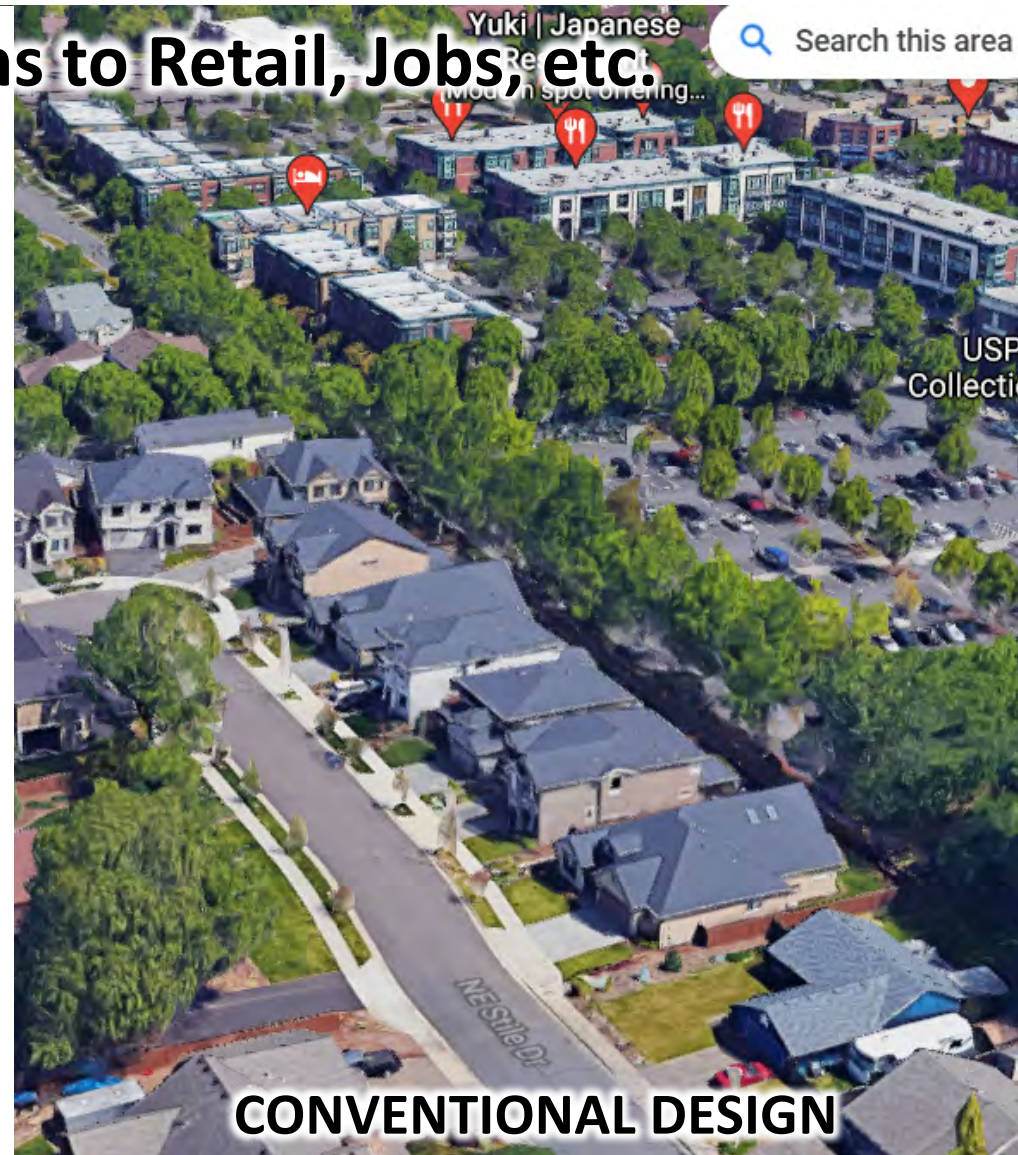
CONVENTIONAL DESIGN
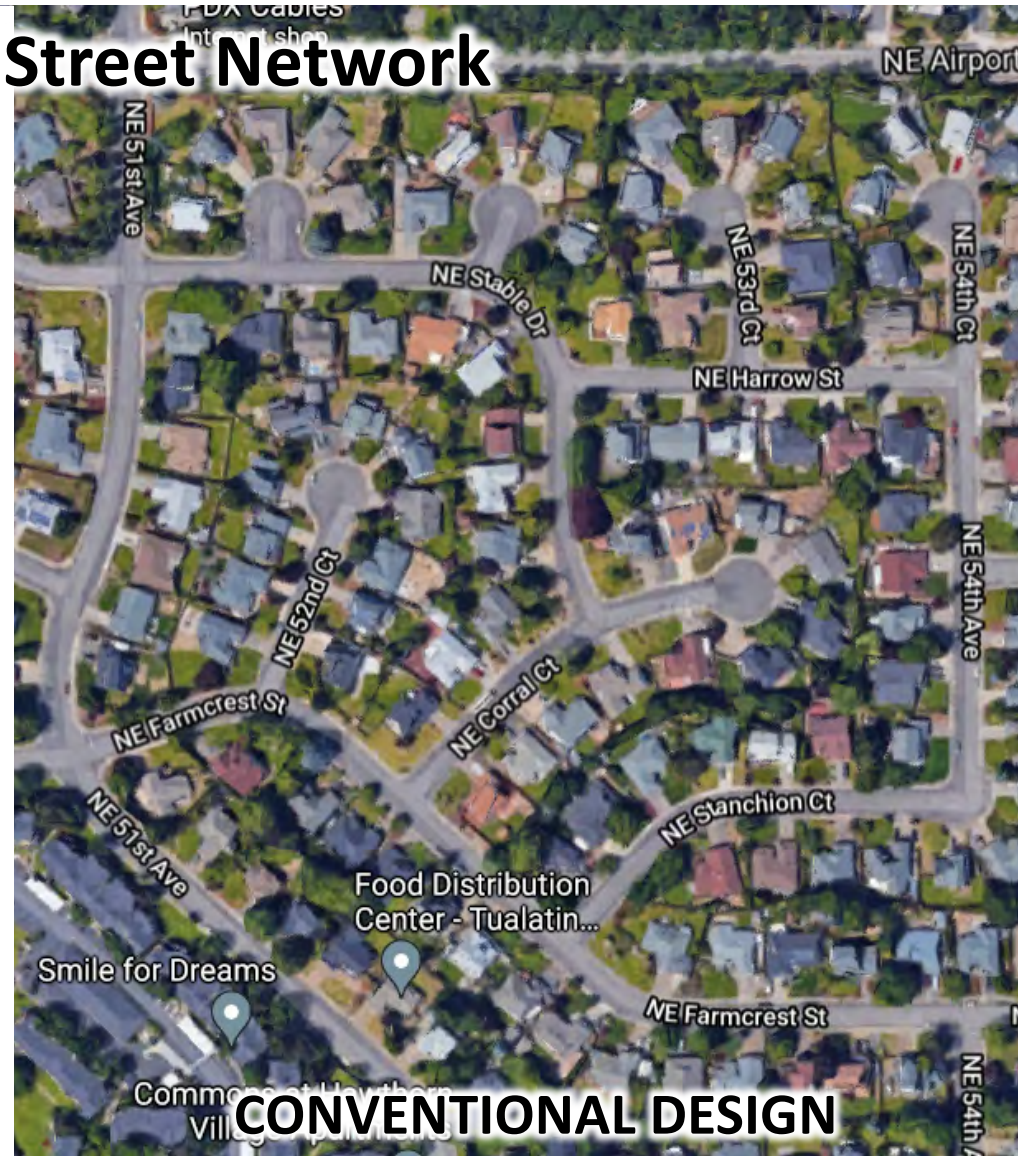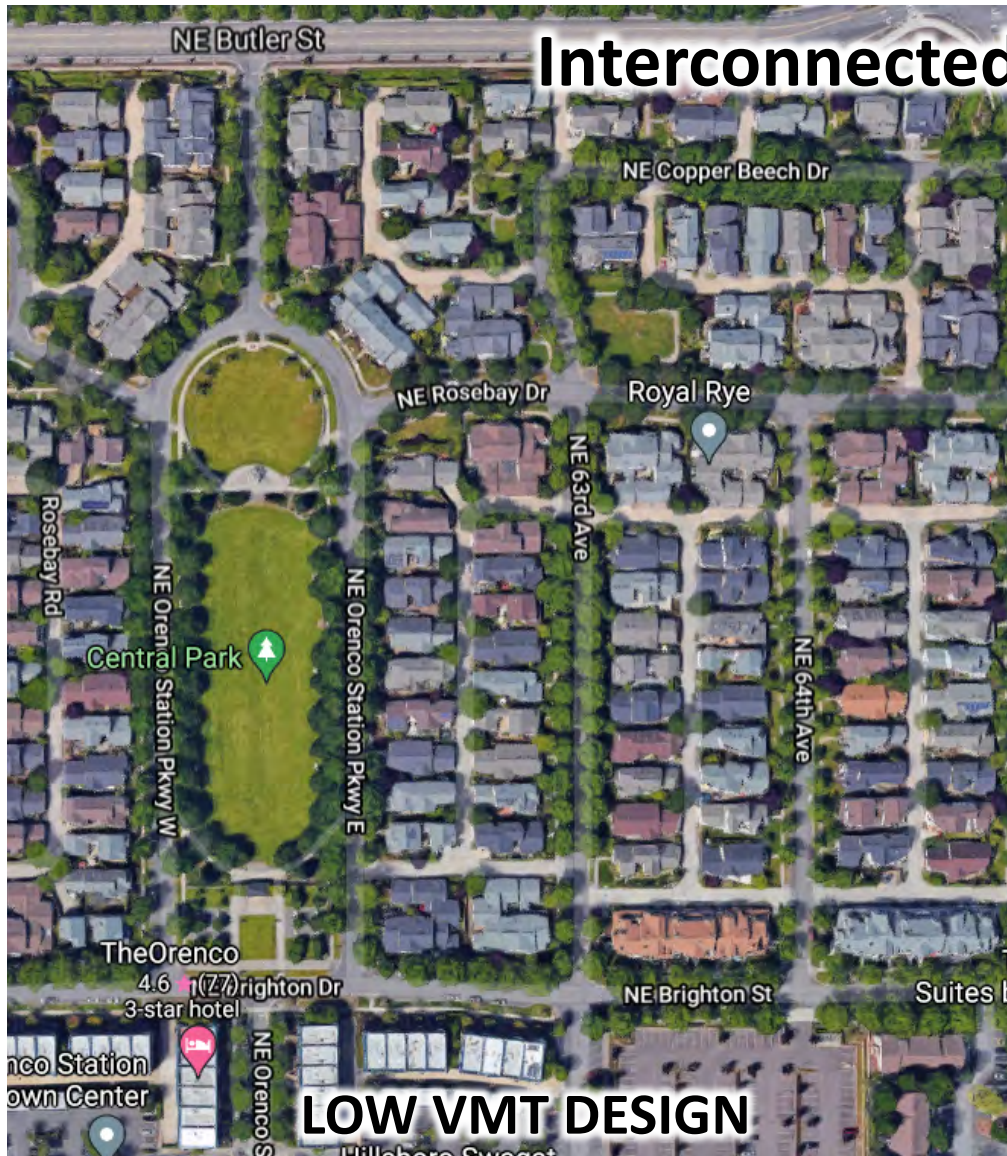
Pedestrian-Friendly Streetscapes

LOW VMT DESIGN

CONVENTIONAL DESIGN

Walkable Connections to Retail, Jobs, etc.

LOW VMT DESIGN

CONVENTIONAL DESIGN
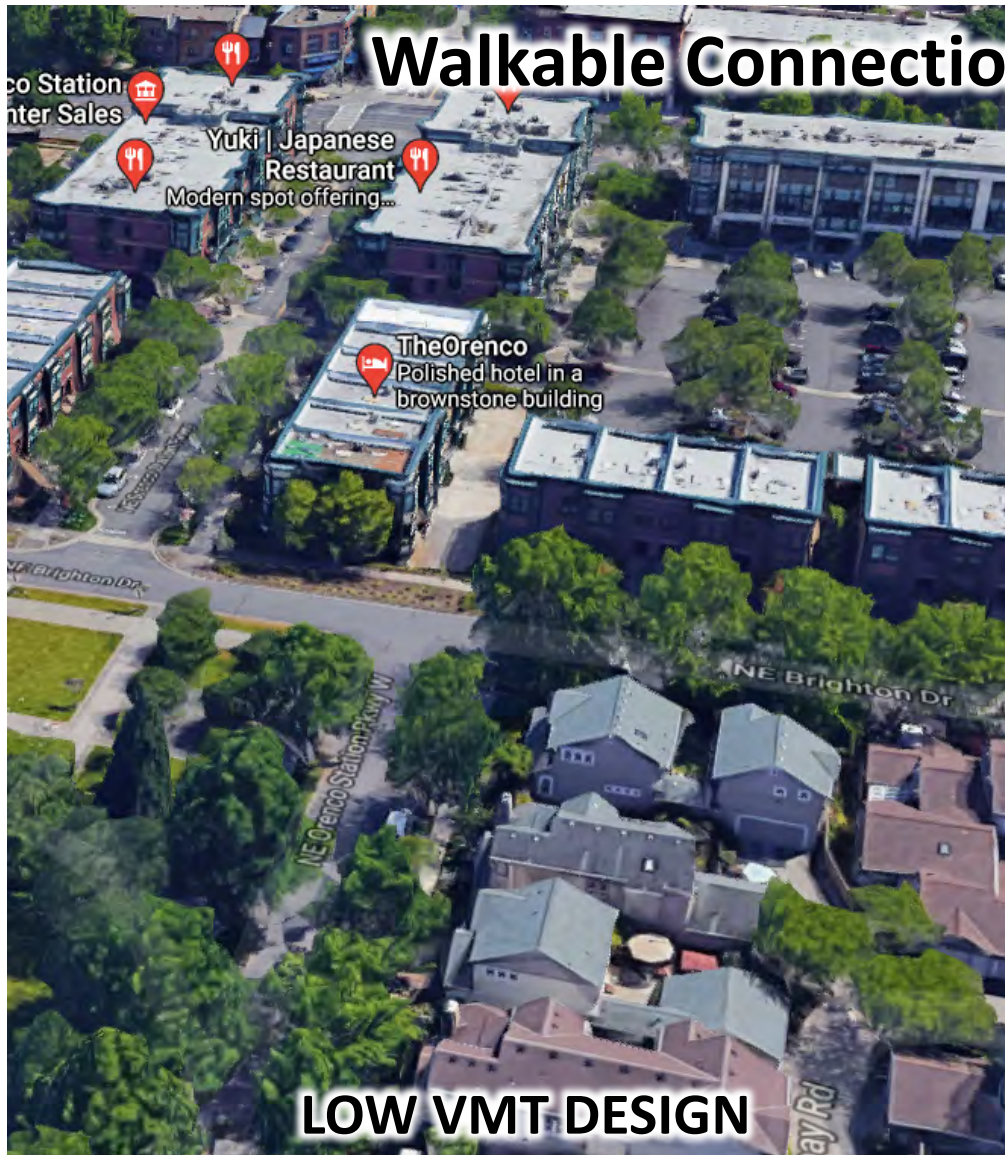
Walkable Connections to Major Streets, Transit, and Schools

LOW VMT DESIGN

CONVENTIONAL DESIGN
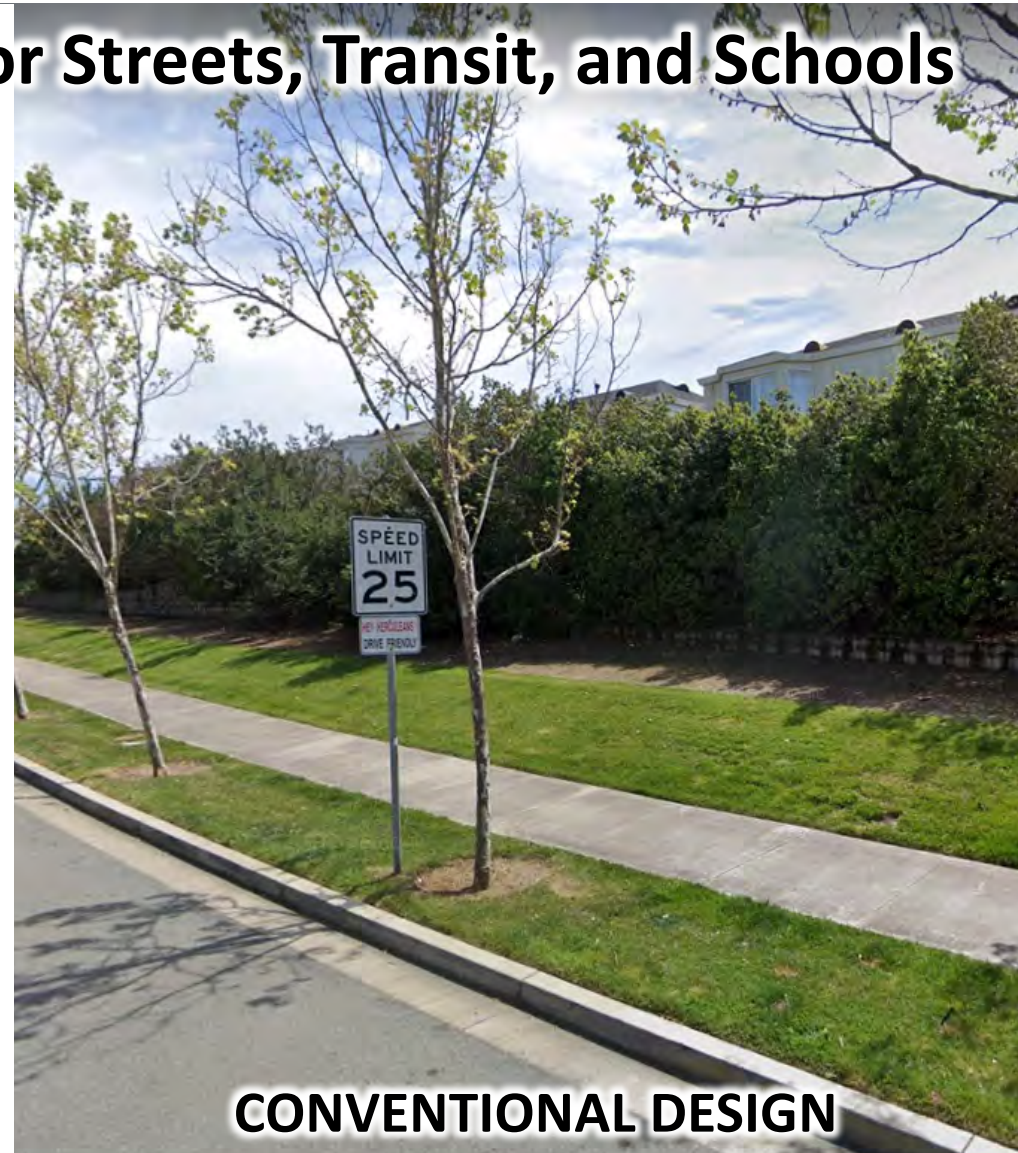
- Doe Mill, Chico, CA
- Hercules Town Center, Hercules, CA
- Kentlands, Gathersburg, MD
- Orenco Station, Hillsborough, OR
- Stapleton, Denver, CO
- Mueller Community, Austin, TX

City of
FRESNO

EXAMPLES OF SUBDIVISIONS WITH LOW VMT DESIGN

RESOURCES FOR LOW VMT DESIGN::

Organizations

- Congress of New Urbanism

- Urban Land Institute

- U.S. Green Building Council (LEED Neighborhood Development)

- American Planning Association

Firms

- Opticos

- Dover Kohl

- Duany Plater-Zyberk

- Calthorpe and Associates

- Moule-Polyzoides

- Zack Urban Solutions

- Placemakers

THANK YOU!

✉ SOPHIA.PAGOULATOS@FRESNO.GOV

WWW.FRESNO.GOV/VMT