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**Received by the
San Diego County
Planning Commission**

From: [Livia Borak Beaudin](#)
To: [LUEG, PDS.PlanningCommission; Orozco, Juliette](#)
Cc: [Kristen Northrop; Jamie Kobayashi](#)
Subject: [External] FW: Comments on Planning Commission July 22, 2022 Agenda Item 7 (Transportation Study Guide/VMT)
Date: Thursday, July 21, 2022 2:14:56 PM
Attachments: [image002.png](#)
[Letter to Planning Commission \(7-22-22 Agenda Item 7\).pdf](#)

Good afternoon,

Attached are comments submitted on behalf of the Cleveland National Forest Foundation for Item 7 on tomorrow's Planning Commission agenda. Because the Escondido Estates project (Item 6 on tomorrow's agenda) references the County's draft TSG and Board direction related thereto, these comments are also relevant to Item 6. Please include this email and the attached comments in the record for the Escondido Estates project.

Of particular note is the low density of the proposed Escondido Estates project, and the lack of infrastructure to support higher density (septic). As CERF has previously articulated to staff in the context of the TSG, it does not make sense to incentivize development projects with CEQA exemptions (or project-specific VMT analysis based on the draft TSG) where the impact of such exemptions has not been studied in an EIR. The Escondido Estates project could provide greater density and foster more high quality transit. As planned, however, it does not. This highlights the need for a coordinated, holistic approach to the TSG, CEQA thresholds for VMT analysis, and the sustainable land use framework.

As stated in our prior comments, the Escondido Estates project will result in significant, peculiar impacts to VMT and water quality not adequately studied or addressed in the CEQA documentation (including the response to comments). The Project's VMT analysis purportedly establishes a project-specific CEQA threshold. However, that threshold is tied completely to the draft TSG. As stated in the attached letter, the draft TSG is not supported by substantial evidence (as acknowledged by County staff on numerous occasions). Therefore, the Project's VMT analysis is not supported by substantial evidence. On the contrary – the OPR Technical Advisory establishes the Project will result in a significant impact because the Project is in a TAZ that does not meet the 85% regional average VMT threshold.

Thank you.

~Livia



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“Like music and art, love of nature is a common language that can transcend political or social boundaries.” – Jimmy Carter

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July 20, 2022

Via Electronic Mail

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Re: Transportation Study Guide to Implement Vehicle Miles Traveled
Analysis (July 22, 2022 Agenda Item 7)

Dear Chair Pallinger and Members of the Commission:

This firm represents the Cleveland National Forest Foundation (“CNFF”) in matters related to transportation and housing policy in the San Diego region. The following comments concern the draft Transportation Study Guide (“TSG”),¹ particularly as it pertains to analysis of vehicle miles traveled (“VMT”) under the California Environmental Quality Act (“CEQA”). Our firm has previously commented on proposed revisions to the TSG in letters to the San Diego County Board of Supervisors (“Board”) dated February 8, 2022 and June 13, 2022. Those letters are hereby incorporated by reference.

The July 22, 2022 Planning Commission Staff Report (“Staff Report”) and draft TSG suffer from numerous significant flaws. The proposed resolution attached to the Staff Report, and the draft TSG itself, do not clearly reflect the direction that the Board gave to County staff at its February 9, 2022 meeting. Moreover, the draft TSG has

¹ The Commission’s agenda and the accompanying staff report refer to the “Transportation Study Guide,” while the draft document itself is entitled “Transportation Study Guidelines.”

not been revised to address the multiple deficiencies identified in our prior letters and further described below. In particular, the proposed “screening thresholds” for “infill” areas and “small projects”—both of which function as complete exemptions from VMT analysis and mitigation under CEQA—are contrary to law and unsupported by substantial evidence. Staff’s proposed CEQA findings regarding adoption of the TSG are also legally erroneous and inadequately supported. The Planning Commission cannot lawfully recommend adoption of the draft TSG until these errors are corrected.

I. The Proposed Resolution and Draft TSG Do Not Clearly or Accurately Reflect the Board’s Direction.

The language of the proposed resolution attached to the Staff Report as Attachment A, and the text of the draft TSG attached to the Staff Report as Attachment B, both depart from the specific direction that the Board gave Staff at its February 9, 2022 meeting regarding adoption of an “infill” screening criterion. As a result, both the proposed resolution and the draft TSG itself are ambiguous, giving rise to uncertainty as to what Staff is actually proposing and whether it is consistent with the Board’s clear direction.

According to the Board’s minute order from its February 9 meeting, the Board selected “Option 1-D,” which the Board described as “New VMT Screening Criteria for Infill Areas that are within Transit Opportunity Areas (TOAs).”² Within Option 1-D, the Board further selected “Option 1-D-3,” which it described as “infill area plus the village option – minus High and Very High Fire Hazard Severity Zone.”³ Materials presented to the Board by County staff further described Option 1-D as “Establish new screening criteria to allow projects within infill areas or one of the infill area options (buffer or village) that are located within Transit Opportunity Areas (TOA) to move forward without VMT analysis.”⁴

² County of San Diego, Board of Supervisors – Land Use (Wednesday, Feb. 9, 2022), Minute Order No. 7 at p. 10, available at <https://bosagenda.sandiegocounty.gov/cob/cosd/cob/doc?id=0901127e80e30161>.

³ *Id.* at p. 10.

⁴ February 9, 2022 Board Letter, Attachment F (Update on Options to Implement Vehicle Miles Traveled Analysis During Environmental Review in the Unincorporated Region and Options on Other County Programs that Relate to Vehicle Miles Traveled; Revised Action Sheet) at p. 3, available at <https://bosagenda.sandiegocounty.gov/cob/cosd/cob/doc?id=0901127e80e23ea8>.

The Board specifically rejected a substitute motion that would have selected Option 1-A, and within it Option 1-A-3, which the Board described as “New Screening Criteria” for all “infill area[s] plus the village option.”⁵ Those broader “infill” and “village” areas—not limited to areas within TOAs—were described and mapped in an October 29, 2019 Fehr & Peers technical memorandum attached to the February 9, 2022 Board Letter as Attachment A.⁶

The Board’s direction was therefore clear: Staff was to prepare a screening criterion for “infill” areas, plus adjacent “village” areas, that are *also* within Transit Opportunity Areas, but outside High and Very High Fire Hazard Severity Zones. The Board expressly rejected a screening criterion based on “infill” and “village” areas outside Transit Opportunity Areas.

The draft TSG now before the Commission does not clearly reflect the Board’s direction. The draft TSG includes a screening criterion for “Projects located in Infill Village Area (in TOAs and Outside of High/Very High Fire Severity Areas).”⁷ The text of the draft TSG defines TOAs as “areas in which the regional transit network has the best opportunity to be expanded within the unincorporated county and are near ore [sic] adjacent to SANDAG identified ‘Mobility Hubs.’”⁸ The TSG does not further identify or map the “infill” or “village” areas, but rather states that “[t]hese definitions, metrics and corresponding maps are further explained in Appendix D.”⁹ Appendix D, however, consists of the same October 29, 2021 Fehr & Peers memorandum that was attached to the February 9, 2022 Board Letter—the memorandum that defined and mapped “infill” areas *without* reference to TOAs.¹⁰ The broader definition of “infill” plus

⁵ February 9, 2022 Minute Order No. 7 at pp. 8, 10; see also February 9, 2022 Revised Action Sheet at pp. 1-2 (describing Option 1-A as encompassing all mapped “infill” areas, including areas outside Transit Opportunity Areas.

⁶ Fehr & Peers, Memorandum Re: Infill Areas in Unincorporated San Diego County (Oct. 29, 2021), available at

<https://bosagenda.sandiegocounty.gov/cob/cosd/cob/doc?id=0901127e80e1e783>.

⁷ Draft TSG at p. 20 (Staff Report at p. 7-56).

⁸ *Ibid.* As discussed in our June 13, 2022 comments, the draft TSG does not clearly define Transit Opportunity Areas. Neither the Staff Report nor the current draft of the TSG adequately clarifies the definition.

⁹ *Id.* at p. 21 (Staff Report at p. 7-57).

¹⁰ Draft TSG Appx. D, Staff Report at pp. 7-100 to 7-125. The Fehr & Peers memorandum does not discuss TOAs or transit.

“village” areas reflected in the Fehr & Peers memorandum¹¹ is therefore precisely the definition that the Board *rejected* on February 9, 2022.¹² The TSG’s incorporation of the analysis and maps in the Fehr & Peers memorandum attached as Appendix D thus creates uncertainty as to both the scope of the “infill” screening criterion Staff is proposing and the extent to which that criterion conflicts with the Board’s direction.

Staff’s proposed resolution (Staff Report Attachment A) is similarly ambiguous. The resolution would adopt the revised TSG attached to the Staff Report, including “[n]ew VMT screening criteria for projects within Infill Areas and any surrounding “Village” as identified in the General Plan, excluding areas outside of existing or planned transit and areas mapped as High and Very High Fire Hazard Severity Zones.”¹³ However, neither the proposed resolution nor the Staff Report explains whether “excluding areas outside of existing or planned transit” (as described in the proposed resolution) means the same thing as “Areas that are within Transit Opportunity Areas” (as described in the Board’s direction). Staff’s imprecision in drafting the proposed resolution and the revised TSG introduces additional ambiguity as to what areas would be covered by the “infill” screening criterion and whether the proposal is, in fact, consistent with the Board’s direction.

As discussed below, substantial evidence does not support adoption of a VMT screening criterion for the “infill plus village within a TOA” areas the Board identified in its direction to Staff. But at the very least, both Staff and the Planning Commission must be clear about what, exactly, they are considering and proposing to the Board. The proposed resolution and draft TSG currently before the Commission fall short of that standard.

II. Substantial Evidence Does Not Support the Draft TSG’s Screening Criteria.

The screening criteria proposed in the draft TSG are intended to identify projects that “would have a less than significant VMT impact due to project characteristics and/or location.”¹⁴ The screening criteria thus effectively function as thresholds of significance under CEQA and must be supported by substantial evidence.¹⁵ In this context, “substantial evidence” means evidence that the environmental impact

¹¹ See Draft TSG Appx. D, Fig. 14 (Staff Report at p. 7-124).

¹² February 9, 2022 Minute Order No. 7 at p. 10.

¹³ Staff Report at p. 7-22.

¹⁴ Draft TSG at p. 19 (Staff Report at p. 7-55).

¹⁵ CEQA Guidelines § 15064.7(b).

addressed by the threshold will normally be less than significant if the threshold is met.¹⁶ Such evidence is entirely lacking here.

A. The “Infill Plus Village in a TOA” Screening Criterion Lacks Support.

The draft TSG’s screening threshold exempting “infill” and adjoining “village” areas within TOAs from VMT analysis and mitigation lacks substantial evidentiary support.¹⁷ There is no substantial evidence that development within these areas will have less-than-significant VMT impacts. Indeed, the County’s own data show that most of these areas already have high VMT and that additional development in these areas likely *will* have significant VMT impacts.¹⁸

The Staff Report explains how to measure the significance of VMT impacts: “When analyzing a project’s impact on the environment from VMT, the estimated VMT from the project is compared to the average VMT in a defined area. If a project decreases VMT from existing conditions within the defined area, it may be considered to have a less than significant impact on transportation, depending on the decrease.”¹⁹ The Staff Report notes that “a project’s VMT is largely based on the location of the project, which cannot easily be changed.”²⁰ As the Staff Report acknowledges, the Office of Planning and Research (“OPR”) has recommended that counties measure projects’ VMT impacts against a threshold based on 85% of regional average VMT.²¹

¹⁶ See CEQA Guidelines §§ 15064(b)(2), 15064.7(a); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1111.

¹⁷ This discussion assumes that the Staff Report and draft TSG are proposing a screening threshold consistent with the Board’s February 9, 2022 direction, despite the lack of clarity in those documents. If, on the other hand, the proposed screening threshold is not limited to “infill plus village” areas within TOAs, the threshold is even less defensible because it would exempt even more high-VMT development from analysis and mitigation.

¹⁸ Staff conceded in prior reports to the Planning Commission and the Board of Supervisors that they anticipated development in TOAs would have significant VMT impacts because transit facilities do not yet exist in these areas. See January 7, 2022 Planning Commission Staff Report at p. 11; February 9, 2022 Board Letter at p. 19.

¹⁹ Staff Report at p. 7-2.

²⁰ *Id.* at p. 7-3.

²¹ *Id.* at p. 7-3. The draft TSG appropriately identifies OPR’s recommended threshold as the significance threshold for project-level VMT analysis. See Draft TSG at pp. 23-24 (Staff Report at pp. 7-59 to 7-60).

The proposed screening threshold for “infill plus villages within TOAs” largely ignores the Staff Report’s description of how significance should be determined. As shown in the attached Figures 1–4, the County’s own GIS data show that a considerable number of the Traffic Analysis Zones (“TAZs”) mapped as “Infill Transit Village” have per-resident VMT that exceeds the regional average (or at least exceeds 85% of the regional average, which is the relevant significance threshold). Projects located in these TAZs can also be expected to have similarly high VMT—VMT that would be considered significant under the draft TSG’s own thresholds. Accordingly, there is no substantial evidence to support a conclusion that locating a project within these TAZs will reduce average VMT sufficiently to avoid significant VMT impacts. If anything, the data show the opposite. As a result, the screening threshold is unsupported by substantial evidence.

Rather than identifying any evidence linking project location to reduced VMT, the Staff Report falls back on assertions about the desired effect of the exemption on development. “The screening criteria will allow projects located in Infill Areas and any surrounding “village” to move forward without VMT analysis or mitigation. This option would allow up to 5,870 homes to move forward without VMT analysis based on the General Plan (Infill Areas combined with VMT efficient areas).”²² But this shows only Staff’s purpose in advancing the exemption; it does nothing to show that the exemption itself is proper because the screening criterion ensures that this development will not have significant VMT impacts.

The Staff Report and draft TSG also lack evidence to support a conclusion that projects in “village plus infill” areas within TOAs may have less-than-significant VMT impacts based on the potential for future transit service.²³ According to a memorandum attached to the Staff Report as Attachment I, certain developments in Transit Priority Areas—that is, areas where high-quality transit *already exists*—may still have significant VMT impacts if they are low-density or provide excess parking.²⁴ The same memorandum makes clear that the extension of transit facilities into TOAs—where

²² Staff Report at p. 7-5. Note that the 5,870 figure may be erroneous; neither the Series 13 nor the Series 14 estimates of “Planned Housing Units in General Plan” within VMT-efficient or “infill” areas add up to 5,870.

²³ See Staff Report at pp. 7-16 to 7-17 (suggesting that promoting “infill” will encourage development of “planned transit”).

²⁴ Intersecting Metrics, Memorandum Re: Potential Transit Expansion within the County of San Diego (Nov. 9, 2021) at pp. 2-3 (Staff Report Attachment I); Staff Report at pp. 7-151 to 7-152.

by definition high-quality transit options *do not yet exist*—remains largely aspirational and uncertain.²⁵ Indeed, the memorandum frankly concedes that development within these areas prior to the extension of transit service would have significant VMT impacts.²⁶ Notably, although the memorandum suggests several options for streamlining and incentivizing development in a manner that supports future transit, it does *not* recommend (or provide substantial evidence for) screening projects within TOAs from VMT analysis altogether.²⁷

The Board Letter for the Board’s February 9, 2022 meeting candidly acknowledged that substantial evidence did not yet exist, and would have to be developed, to support a screening criterion based on “infill,” “villages,” and TOAs.²⁸ The Board Letter referred to the Fehr & Peers memorandum from October 2021 as a possible source of evidence, but the Fehr & Peers memorandum itself acknowledges that an “infill” screening criterion “would require evidence to support the determination that projects in these locations would have a less than significant transportation impact and meet the intent of SB 743.”²⁹ Nothing in the draft TSG or the Staff Report before the Commission provides adequate evidence that the proposed screening criterion will avoid significant VMT impacts. The evidence that was missing in October 2021, and again in February 2022, is still missing.

Adopting the draft TSG in the absence of the necessary supporting evidence would be unlawful and would expose the County to significant legal risk. It is disheartening, to say the least, that Staff continues to press forward with these screening proposals in the absence of adequate evidence.

B. The “Small Project” (110 ADT) Criterion Lacks Support.

Prior comments (from CNFF and others) have repeatedly pointed out that the draft TSG’s “small project” screening criterion is based solely on the *number* of average daily trips (“ADT”) a project might generate, and that it does not take into

²⁵ *Id.* at pp. 7-161, 7-165.

²⁶ *Id.* at pp. 7-167 to 7-168.

²⁷ See *id.* at pp. 7-167 to 7-170 (discussing potential for specific plans, focused General Plan updates, and transit overlay zones).

²⁸ February 9, 2022 Board Letter at p. 12 (promising that “[t]he substantial evidence to support the infill areas and any buffers would be prepared as part of a new transportation study guide (TSG) . . . or a separate VMT screening threshold based on the information provided in” the October 2021 Fehr & Peers memorandum).

²⁹ Fehr & Peers Memorandum at 10 (Staff Report at p. 7-109).

account the *length* of those trips. The number of daily trips alone cannot provide an evidentiary basis for a screening threshold designed to exempt projects with less-than-significant impacts from VMT analysis and mitigation. Even if a project in the unincorporated County generates a relatively small number of trips, it may still generate a large amount of VMT, and have a significant impact, if those trips are many miles long.

The Staff Report fails to respond to these points. Instead, the Staff Report makes two assertions: (1) that the 110-ADT threshold was recommended by OPR, and (2) that only a few thousand units would be “screened out from VMT analysis.”³⁰ Neither assertion provides the evidentiary justification that CEQA requires.

OPR’s VMT guidance, like Staff’s proposed screening criterion, did not consider trip length in connection with “small project” trip generation, and thus cannot supply the evidence that is also missing from Staff’s proposal.³¹ Indeed, OPR recommended the 110-ADT screening threshold only “[a]bsent substantial evidence that a project would generate a potentially significant level of VMT.”³² As shown in the attached Figure 5, existing VMT levels exceed either the regional average, OPR’s suggested significance threshold of 85% below the regional average, or both, in nearly all of unincorporated San Diego County.³³ Given the overwhelming evidence that even small projects in high-VMT areas of the unincorporated County may have significant VMT impacts, Staff cannot rely on OPR’s recommendation to support the 110-ADT screening threshold.

Nor can the County justify exempting “small projects” from VMT analysis based on assertions that only a few thousand exempt units might be built.³⁴ Staff has not even attempted to assess the VMT impact of exempting this (or any other) number of units from analysis and mitigation. The number of units affected by the proposed exemption alone is not evidence to support a conclusion that each unit will have a less-than-significant impact.

³⁰ Staff Report at p. 7-17.

³¹ See Office of Planning and Research, Technical Advisory on Evaluating Transportation Impacts in CEQA at p. 12 (Dec. 2018) (Staff Report Attachment C; Staff Report at p. 7-234.)

³² *Ibid.*

³³ See County of San Diego SB 743 Location Based Screening Maps, at <https://gis-portal.sandiegocounty.gov/arcgis/apps/webappviewer/index.html?id=c8baf13775b844cd8e3e1fd820d9a881> (accessed July 19, 2022).

³⁴ See Staff Report at p. 7-17.

III. Staff's Proposed CEQA Findings Are Erroneous and/or Unsupported.

The Staff Report and proposed resolution continue to advance several legally erroneous and unsupported rationales for concluding that adoption of the TSG is either not a “project” under CEQA or is otherwise exempt from CEQA. We have addressed the deficiencies in these rationales numerous times, most recently in our February 8 and June 13, 2022 letters, and we incorporate those discussions by reference here.

Moreover, the Staff Report’s acknowledgment that the County is preparing a programmatic EIR on a future screening criterion for projects in TOAs³⁵ undercuts all of Staff’s rationales for forgoing CEQA review of the screening criteria in the draft TSG. Staff conceded in prior reports to both this Commission and the Board that a screening criterion for TOAs would “incentivize development within TOAs.” Staff further acknowledged that “because these areas do not currently have transit service . . . *it is anticipated that projects in these areas could have significant VMT impacts.*” Staff recommended preparation of a programmatic EIR to address these impacts.³⁶

The same analysis applies to the proposed screening criteria for “infill plus villages in TOAs” and “small projects” in the draft TSG. These screening criteria are intended to, and will, incentivize development in certain locations. By definition, transit service does not currently exist in any of the “infill plus villages in TOAs” areas because all of these areas are within TOAs, and transit service does not yet exist in TOAs. The same is likely true for the location of many “small projects,” which could occur anywhere in the unincorporated County. Staff’s admissions that projects in areas not yet served by transit “could have significant VMT impacts” forecloses any argument that the draft TSG is not a “project” under CEQA. These admissions also defeat applicability of all other exemptions on which the Staff Report and proposed resolution rely, including the categorical exemption in CEQA Guidelines section 15308 and the “common sense” exemption. Staff has correctly determined that a program EIR is necessary to evaluate the impacts of a future screening criterion for TOAs. An EIR is no less necessary for the screening criteria currently proposed in the draft TSG.

³⁵ Staff Report at p. 7-13 (describing work already underway on “a Programmatic EIR to evaluate the impacts from screening out projects from VMT analysis if they are located within Transit Opportunity Areas (TOAs)”).

³⁶ January 7, 2022 Planning Commission Staff Report at p. 11; February 9, 2022 Board Letter at p. 19 (emphasis added).

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In sum, adoption of the TSG is a “project” and is not subject to any of the exceptions or exemptions identified in the Staff Report or the proposed resolution. The County must comply with CEQA before approving the TSG.

For all of the foregoing reasons and for the reasons stated in our prior comment letters, the County cannot lawfully adopt the draft TSG as presented in the Staff Report. The Planning Commission should direct Staff to correct the deficiencies in the draft TSG and to comply with CEQA before taking any further action.

Thank you for your consideration of these comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Kevin P. Bundy

Attachment: Figures 1-5

1536681.2

Figure 1: Spring Valley/Valle de Oro “Infill Transit Village” Areas and VMT

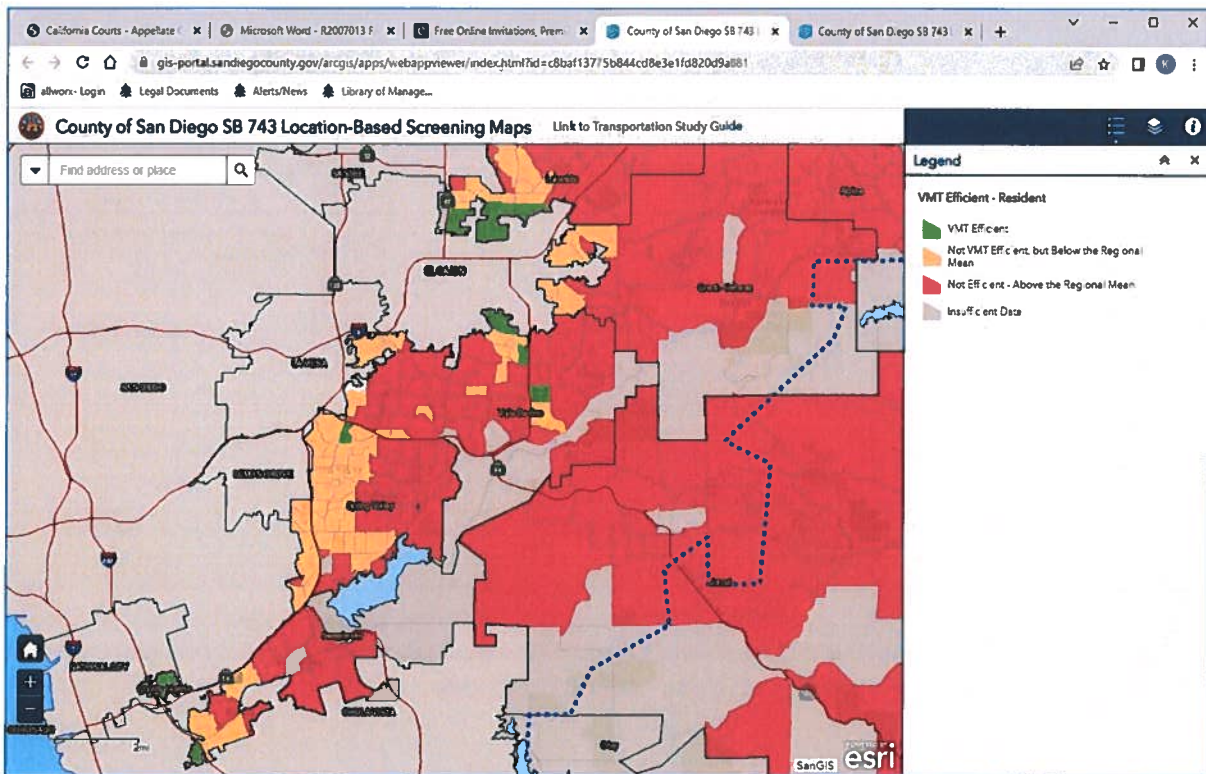
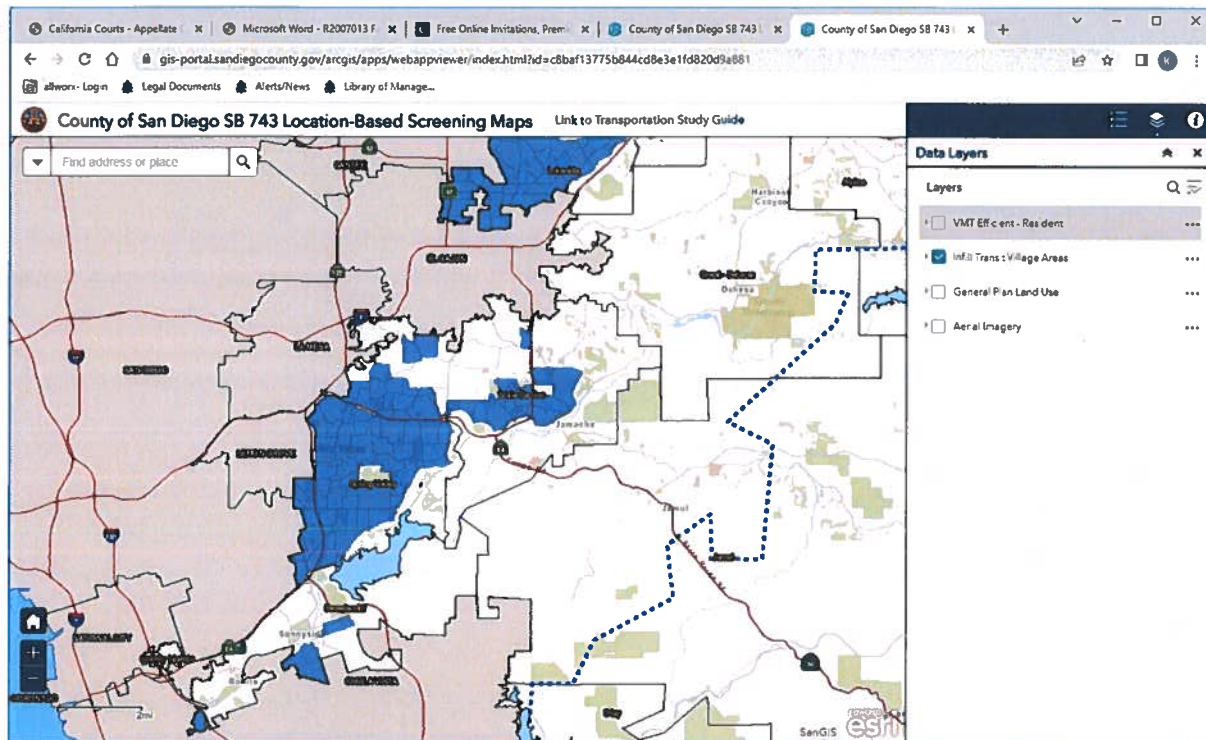


Figure 2: Lakeside “Infill Transit Village” Areas and VMT

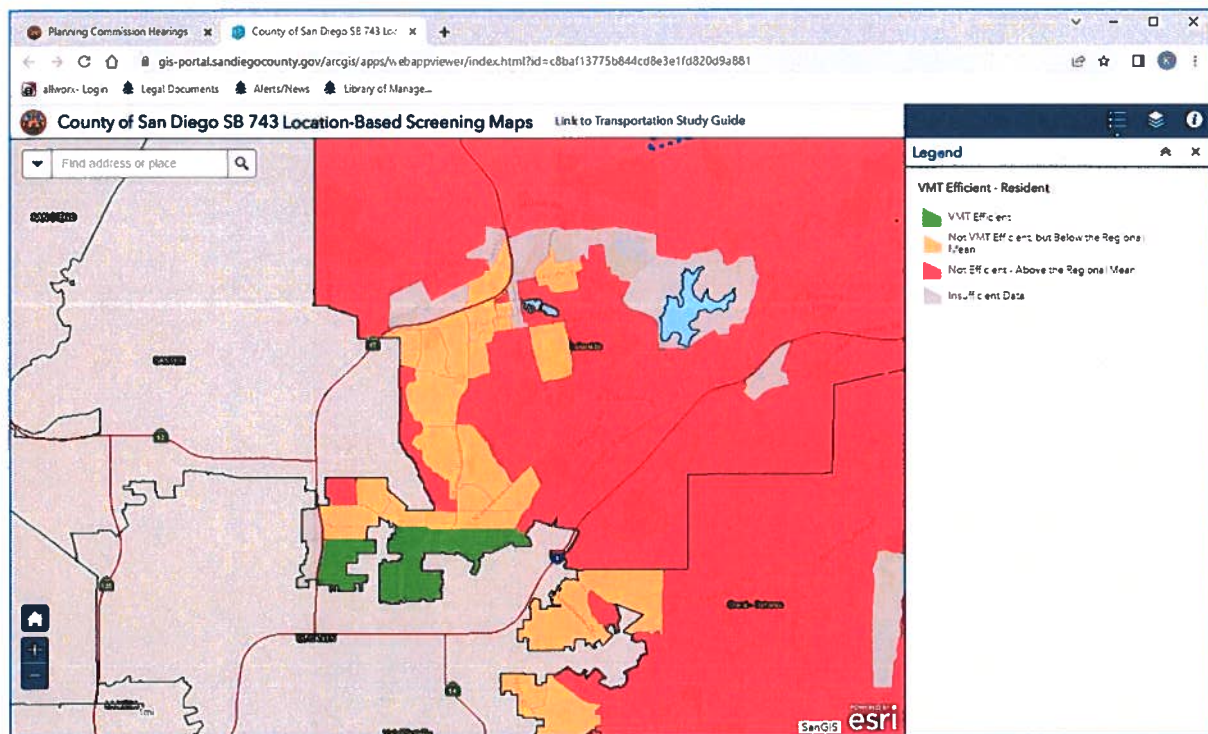
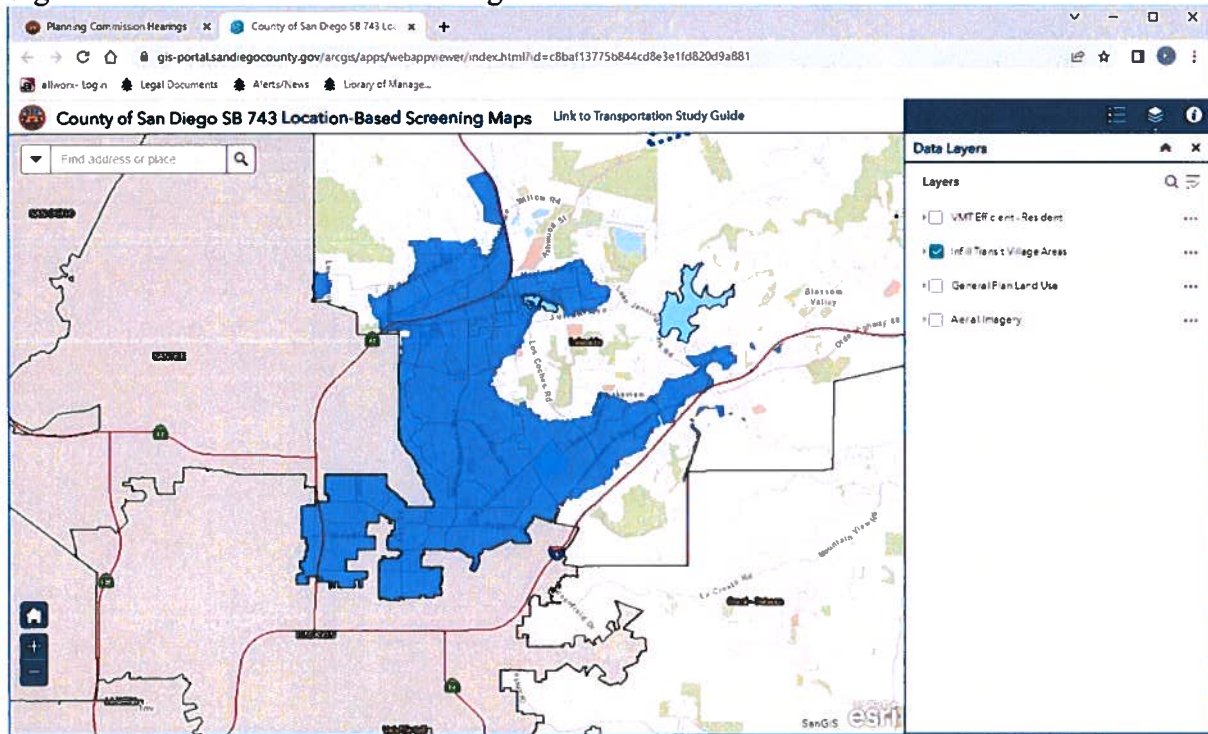
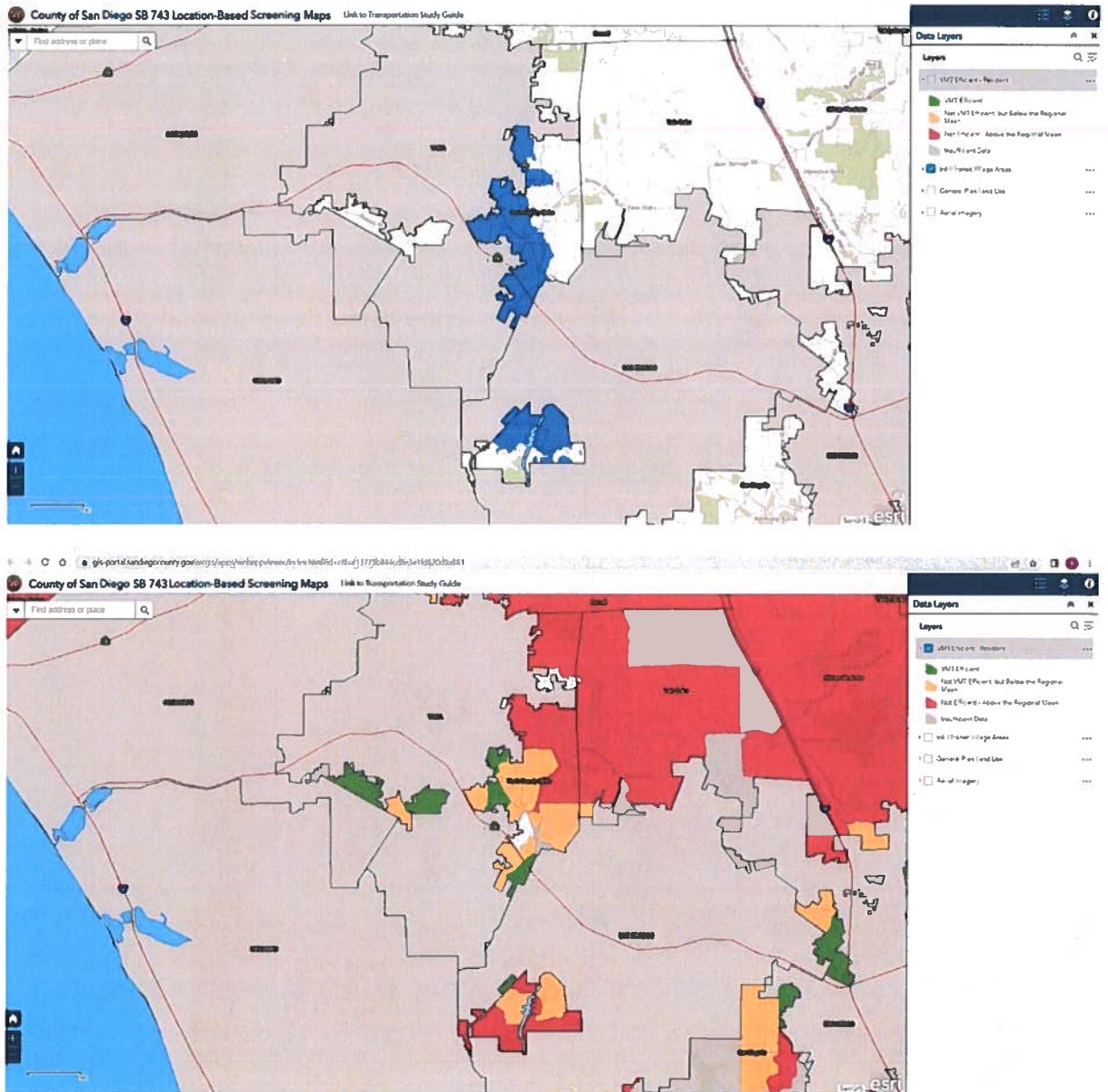


Figure 3: Bonsall/North Metro “Infill Transit Village” Areas and VMT



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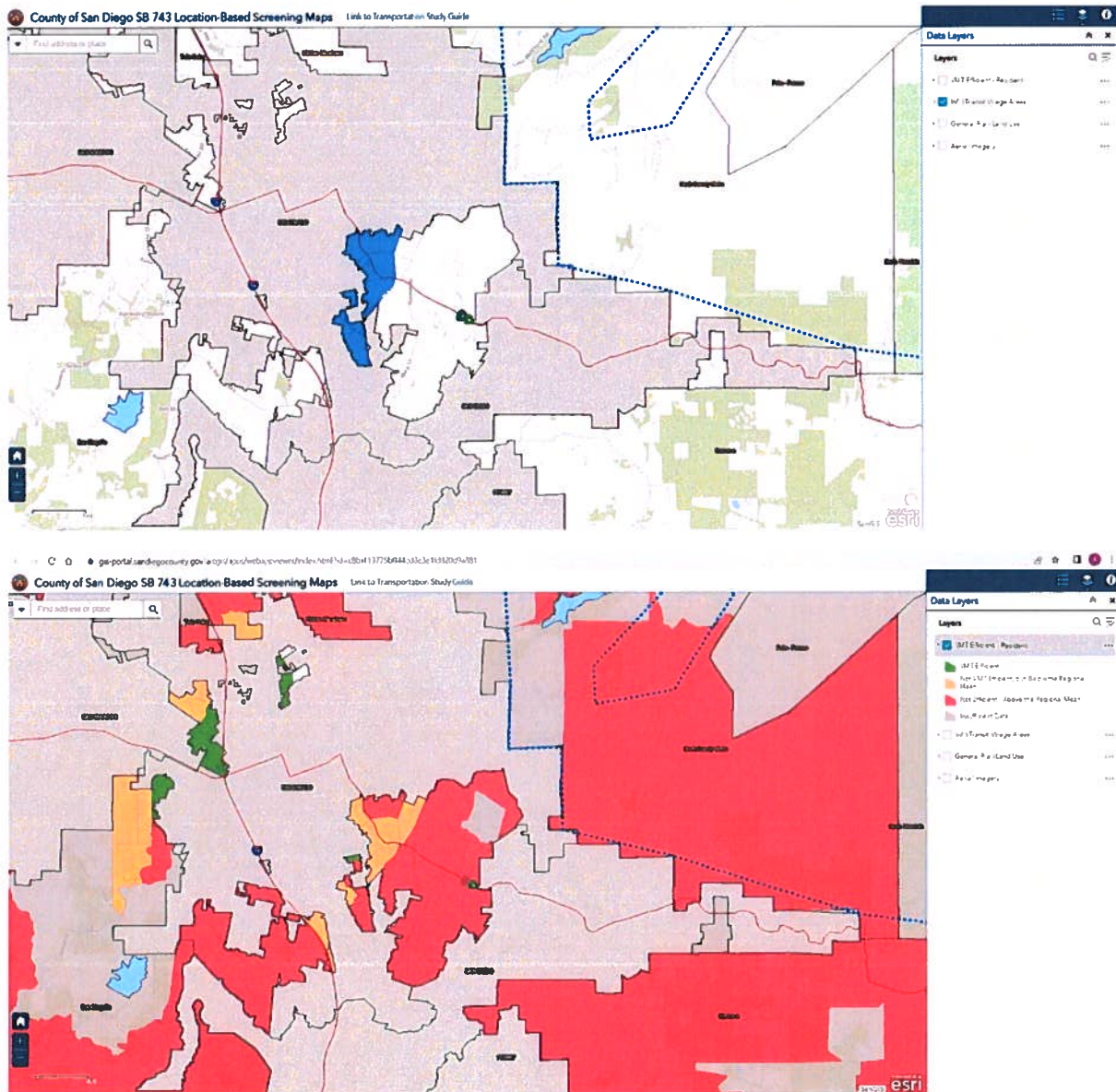
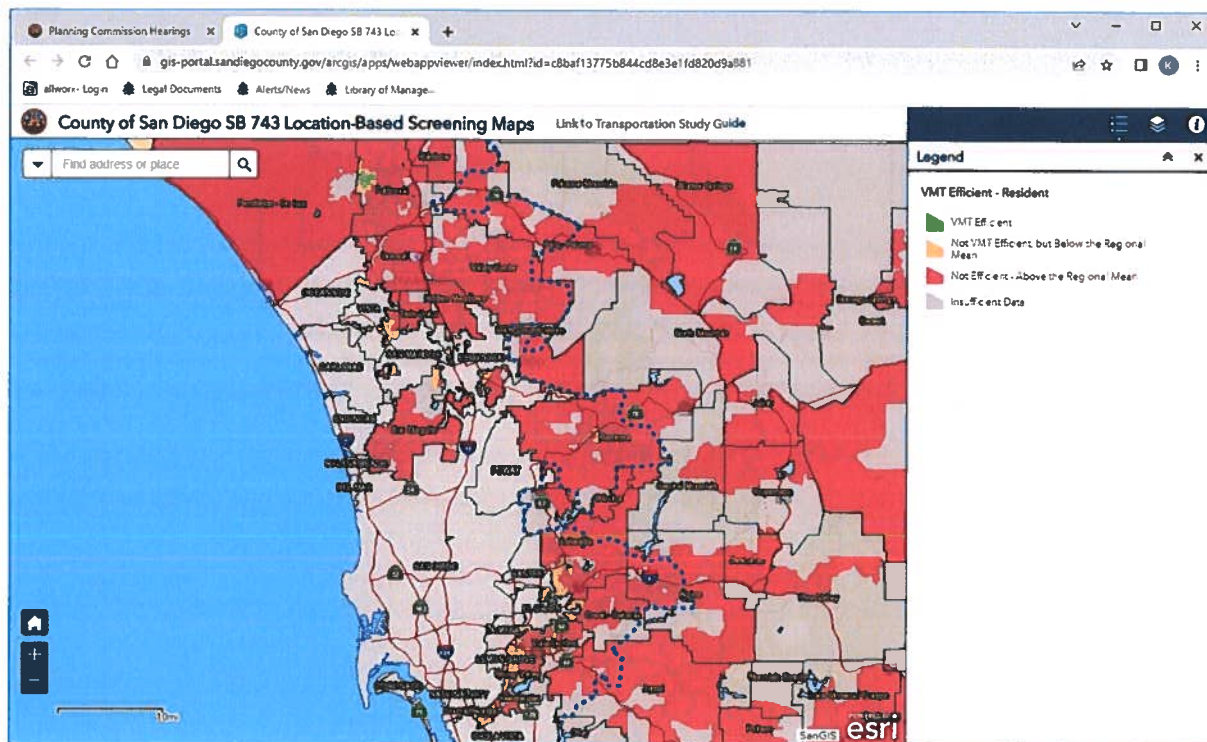


Figure 5: Unincorporated County VMT



Source for all figures:

County of San Diego SB 743 Location Based Screening Maps, at <https://gis-portal.sandiegocounty.gov/arcgis/apps/webappviewer/index.html?id=c8baf13775b844cd8e3e1fd820d9a881> (accessed July 19, 2022).