

OFFICE OF THE
COUNTY COUNSEL

July 17, 2018

Brian E. Washington
COUNTY COUNSEL

Jack F. Govi
ASSISTANT COUNTY COUNSEL

Renee Giacomini Brewer
CHIEF DEPUTY COUNTY COUNSEL

Mari-Ann G. Rivers
Patrick M. K. Richardson
Stephen R. Raab
Steven M. Perl
Brian C. Case
Jenna J. Brady
Valorie R. Boughey
Kerry L. Gerchow
Tarisha K. Bal
Ayriel A. Bland
Deidre K. Smith
Newton F. Oldfather
Brandon W. Halter

DEPUTIES

Jeanine Michaels
ADMINISTRATIVE ASSISTANT

Marin County Civic Center
3501 Civic Center Drive Suite
275
San Rafael, CA 94903
415 473 6117 T
415 473 3796 F
415 473 2226 TTY
www.marincounty.org/cl

Marin County Board of Supervisors
3501 Civic Center Drive
San Rafael, CA 94903

SUBJECT: Proposed Ordinance Establishing a West Marin Transient Occupancy Tax (TOT) Rate Area and Authorizing an Election November 6, 2018 to Increase the TOT in the West Marin TOT Rate Area

Dear Supervisors:

RECOMMENDATION: Conduct a First Reading on Tuesday, July 17, 2018, on the proposed Ordinance for the County of Marin to increase the transient occupancy tax rate to 14% for West Marin from the current rate of 10% for the privilege of occupancy in any hotel or short-term rental. Following the First Reading, set the matter for public hearing on the proposed Ordinance for Tuesday, July 31, 2018, at 10:30 a.m.

SUMMARY: On June 19, 2018, this Board provided direction for staff to prepare a proposed ordinance to create a West Marin Transient Occupancy Tax Area and to submit a ballot measure for the November 6, 2018 ballot. Please refer to Exhibit A which outlines the proposed tax area rate boundaries.

The proposed ballot measure would increase the transient occupancy tax (TOT) rate to 14% for West Marin from the current rate of 10% for the privilege of occupancy in any hotel or short-term rental. A West Marin TOT rate of 14% also aligns with the 14% rate of neighboring San Francisco. The ballot measure would also extend the TOT in West Marin to private campgrounds at a rate of 4%.

The additional funds raised would support services in the new West Marin Transient Occupancy Tax Area. Because these new funds would be dedicated for a specific purpose, the ballot measure would require approval by at least 2/3 of the tax area voters. If approved, the additional annual funding will be spent to better address the impacts of visitors to the community, with half of the funds dedicated for enhanced fire and rescue services and half of the fund to support long-term community housing.

An annual audit would be required, and an oversight committee would be established to ensure that the additional funds are used only in West Marin and are distributed as stipulated by the ballot measure. In addition, ad-hoc working groups would be

created to help inform recommendations to the Board of Supervisors in developing expenditure plans for the funds.

FISCAL/STAFFING IMPACT: Based on enhanced enforcement efforts and year-end receipts, the County is estimating that a West Marin TOT rate of 14% would generate approximately \$1.3 million in additional funds annually, which is consistent with previous estimated revenue at a 15% rate. If voters approve a new West Marin Transient Occupancy Tax Area and increase the TOT for this Area to 14% from 10%, the approximately \$1.3 million in additional annual funds would be dedicated 50% to fire/emergency services needs and 50% for community housing needs in the newly established West Marin TOT Area.

One-time election costs of approximately \$14,000 to \$21,000 (assuming an estimated 7,050 registered voters) would be paid from the new tax proceeds, if approved by voters. If a ballot measure proceeds and is unsuccessful, the County's General Fund would pay for these one-time election costs.

Ongoing costs associated with administering these funds would be limited to no more than 5% of the annual proceeds. Any cost to conduct an annual audit would be paid from the proceeds as part of the 5% cap on administrative costs.

REVIEWED BY:

<input checked="" type="checkbox"/>	Auditor-Controller	<input type="checkbox"/>	N/A
<input checked="" type="checkbox"/>	County Counsel	<input type="checkbox"/>	N/A
<input type="checkbox"/>	Human Resources	<input checked="" type="checkbox"/>	N/A

Respectfully submitted,



BRIAN E. WASHINGTON
County Counsel

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. _____

**AN ORDINANCE ESTABLISHING THE WEST MARIN TRANSIENT OCCUPANCY
TAX AREA BY AMENDING CHAPTER 3.05 UNIFORM TRANSIENT OCCUPANCY
TAX OF THE MARIN COUNTY CODE**

The Board of Supervisors of the County of Marin ordains as follows:

Section 1. Findings.

The Board makes the following findings in support of this ordinance:

1. The number of visitors to West Marin generates the need for additional fire and rescue services to accommodate the visitors, while meeting the needs of the resident community.
2. Conversion of single family dwellings to short term rentals to serve visitors has reduced the availability of long term housing in West Marin.
3. As a result of West Marin's predominantly rural character, these issues affect West Marin in a different manner from the rest of the unincorporated county. Presently, approximately 75% of the Transient Occupancy Tax that the County of Marin collects arises from lodgings in West Marin. As a result, more visitor impacts arise in West Marin than in the remainder of unincorporated Marin County. For fire and rescue services, the greater distances in West Marin that fire and rescue services must travel, and the higher ratio of visitors to existing residents, results in visitors having a larger impact on emergency services in West Marin than in other unincorporated areas. In addition, the smaller housing stock in West Marin -- compared to other unincorporated areas -- magnifies the impact of short-term rentals on the availability of housing in West Marin.
4. Good governance and equity requires that visitors that are benefitting from local government services and housing help pay the burden of the services provided to them, rather than allowing the burden to fall mainly on the resident tax payers.

Section 2. Nature of Tax.

If approved by a two-thirds majority of the electorate voting on the measure, the ordinance will create a transient occupancy tax rate of four (4) percent ("the West Marin Transient Occupancy Tax") of rent charged in the West Marin Transient Occupancy Tax Area, in addition to the tax rate of ten (10) percent applicable to the entire unincorporated County of Marin. A West Marin Transient Occupancy Tax Area rate of 14 percent aligns with the 14 percent rate of neighboring San Francisco. The West Marin Transient Occupancy Tax is a tax imposed upon transients for the privilege of occupying hotels, short-term rentals, bed and breakfasts, and campgrounds located within the West Marin Transient Occupancy Tax Area. The West Marin Transient Occupancy Tax is a special tax that shall be used for the benefit of the West Marin Transient Occupancy Tax Area.

Half of the West Marin Transient Occupancy Tax collected shall be allocated for fire and emergency services in the West Marin Transient Occupancy Tax Area. Included in this allocation are the fire districts and volunteer fire departments located in West Marin, currently the Bolinas and Stinson Beach Fire Protection Districts, the Fire Department in the Inverness Public Utility District, and Nicasio, Muir Beach, and Tomales volunteer fire departments. The allocation also shall include the Marin County Fire Department stations in Tomales, Point Reyes Station, Hicks Valley, Woodacre and Throckmorton (on Mount Tamalpais). The allocation shall be subject to approval by the Marin County Board of Supervisors. The funds will be administered by the Marin County Fire Department. In the allocation for fire and emergency services, the Marin County Fire Department shall not obtain more funds in a year than the combined allocation to the other West Marin fire districts and volunteer fire departments. The County Fire Chief is expected to establish an ad-hoc working group to help inform his or her recommendation to the Board of Supervisors.

Half of the West Marin Transient Occupancy Tax collected shall be allocated for community housing in the West Marin Transient Occupancy Tax Area, including, but not limited to, housing for West Marin public safety employees, teachers and other members of the West Marin workforce, housing for families, housing for persons with disabilities and housing for seniors. The allocation shall be subject to approval by the Marin County Board of Supervisors. The funds will be administered by the Marin County Community Development Agency (CDA). The CDA Director is expected to establish an ad-hoc working group to help inform his or her recommendation to the Board of Supervisors.

West Marin Transient Occupancy Tax proceeds are intended to augment support for West Marin fire and emergency protection, as well as West Marin community housing. Therefore, disbursement of West Marin Transient Occupancy Tax proceeds shall be subject to terms and conditions established by the County including, but not limited to, requiring recipients to certify that these funds are being used to enhance services beyond their available resources.

The West Marin Transient Tax Area increase will be collected by the operators, in the same manner as the current transient occupancy tax is collected. The collection of the tax from operators shall be administered by the Marin County Tax Collector as provided by the Board of Supervisors for the County of Marin. The West Marin Transient Occupancy Tax is currently estimated to raise approximately \$1.3 million annually.

In addition to the accountability measures required by law, the County of Marin will establish an Oversight Committee comprised of residents who live in the West Marin Tax Area. The Oversight Committee shall be provided with an annual audit of the revenue and expenditures of the West Marin Transient Occupancy Tax. The Oversight Committee shall provide oversight as to the expenditure of transient occupancy tax revenue to ensure that the revenue is spent within the boundaries of the West Marin Tax Area and for the purposes approved by the voters. Should the measure pass, the direct costs of the election will be reimbursed from the initial tax collection revenue from the West Marin Transient Occupancy Tax Area on a one-time basis. Administrative expenses of the County of Marin shall not exceed 5% of the tax revenue in any year, with any costs of the annual audit for the Oversight Committee paid first, and the remainder split equally between fire/emergency services and community housing.

The Marin County Board of Supervisors shall approve bylaws for the Oversight Committee. Meetings of the Oversight Committee shall be open to the public and shall be held in compliance with the Ralph M. Brown Act, California's open meeting law.

Section 3. Addition to Marin County Code, Section 3.05.035.

The Marin County Code is amended to add Section 3.05.35, as follows:

(a) Notwithstanding the tax imposed by Section 3.05.030 and in addition thereto, commencing on January 1, 2019, for the privilege of occupancy in any hotel or campground in the West Marin Transient Occupancy Tax Area, each transient is subject to and shall pay an additional tax in the amount of four percent of the rent charged by the operator. The tax constitutes a debt owed by the transient to the county, which is extinguished only by payment to the operator or to the county. The transient shall pay the tax to the operator of the hotel or campground at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel or campground.

(b) "West Marin Transient Occupancy Tax Area" means the area of unincorporated Marin County from Muir Beach to Dillon Beach and includes Nicasio, eastward to the top of Big Rock ranch, including San Geronimo Valley to the top of White's Hill, but excludes other unincorporated areas of Marin County, as depicted by the West Marin Transient Occupancy Map attached to this ordinance as Exhibit A, as defined in the list of tax rate areas attached to this ordinance as Exhibit B.

(c) "Campground" means any park or real property where a person may locate a tent, trailer, tent trailer, pick-up, camper, or other similar temporary structure for the purposes of lodging, dwelling, or sleeping, whether or not water, electricity, or sanitary facilities are provided. A campground shall not include any park or real property owned by the State of California or the federal government of the United States of America.

(d) For the purposes of Section 3.05.035 only, "Transient" means any person using a campground or exercising occupancy or who is entitled to occupancy of a campground, in addition to the definition of "Transient" as set forth in Section 3.05.020(d).

(e) For the purposes of Section 3.05.035 only, "Operator" means the person who is proprietor of the campground, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity, in addition to the definition of "Operator" as set forth in Section 3.05.020(f). The managing agent of a campground shall be treated in the same manner as a managing agent set forth in Section 3.05.020(f).

Section 4. Ballot Language.

The Board of Supervisors orders that the following question be placed as a County Measure within the West Marin Transient Occupancy Tax Area on the ballot of the general election to be held November 6, 2018:

West Marin Transient Occupancy Tax

To address tourism impacts on West Marin communities and paid only by guests, shall the measure be adopted to increase the transient occupancy tax in West Marin from 10% to 14% for hotels/short-term rentals, and to apply 4% tax to commercial campground visitors, to enhance fire/emergency services and long-term community housing, raising approximately \$1.3 million annually, with local oversight, annual audits, and all funds exclusively used for West Marin, effective until amended/repealed?

Section 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6. Election.

An election shall be held on November 6, 2018, on the issue of increasing the transient occupancy tax rate by four percent in the West Marin Transient Occupancy Tax Area, and making private campgrounds subject to a new four percent tax. Notwithstanding Elections Code Section 9125, without a vote of the People, the County of Marin Board of Supervisors may further amend this Ordinance in a manner that does not impose, extend, or increase the rate of the West Marin Transient Occupancy Tax.

Section 7. Effective and Operative Dates.

This ordinance shall take effect immediately upon its adoption by a two-thirds majority of the electorate voting on the ordinance at the November 6, 2018, general election. The operative date of Section 3 shall be January 1, 2019.

Section 8. Appropriations Limit.

If necessary, pursuant to Article XIII B of the California Constitution, the appropriations limit for the County of Marin is increased to the maximum extent over the maximum period of time allowed under the law consistent with the revenues generated by the tax provisions of this Ordinance.

Section 8. Compliance with the California Environmental Quality Act (CEQA).

Pursuant to CEQA Guidelines Section 15378(b)(4), adoption of this ordinance as a government funding mechanism is not a project subject to the requirements of CEQA.

Section 9. Vote.

This ordinance shall take effect and be in force pursuant to Section 7, above, if approved by the voters as provided in that Section. Before the expiration of 15 days after passage by the Board of Supervisors, the ordinance shall be published once with the names of members voting for or against, in the Marin Independent Journal, a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, held on the 17th day of July 2018, by the following vote:

AYES:

NOES:

ABSENT:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK

WEST MARIN TRANSIT OCCUPANCY TAX

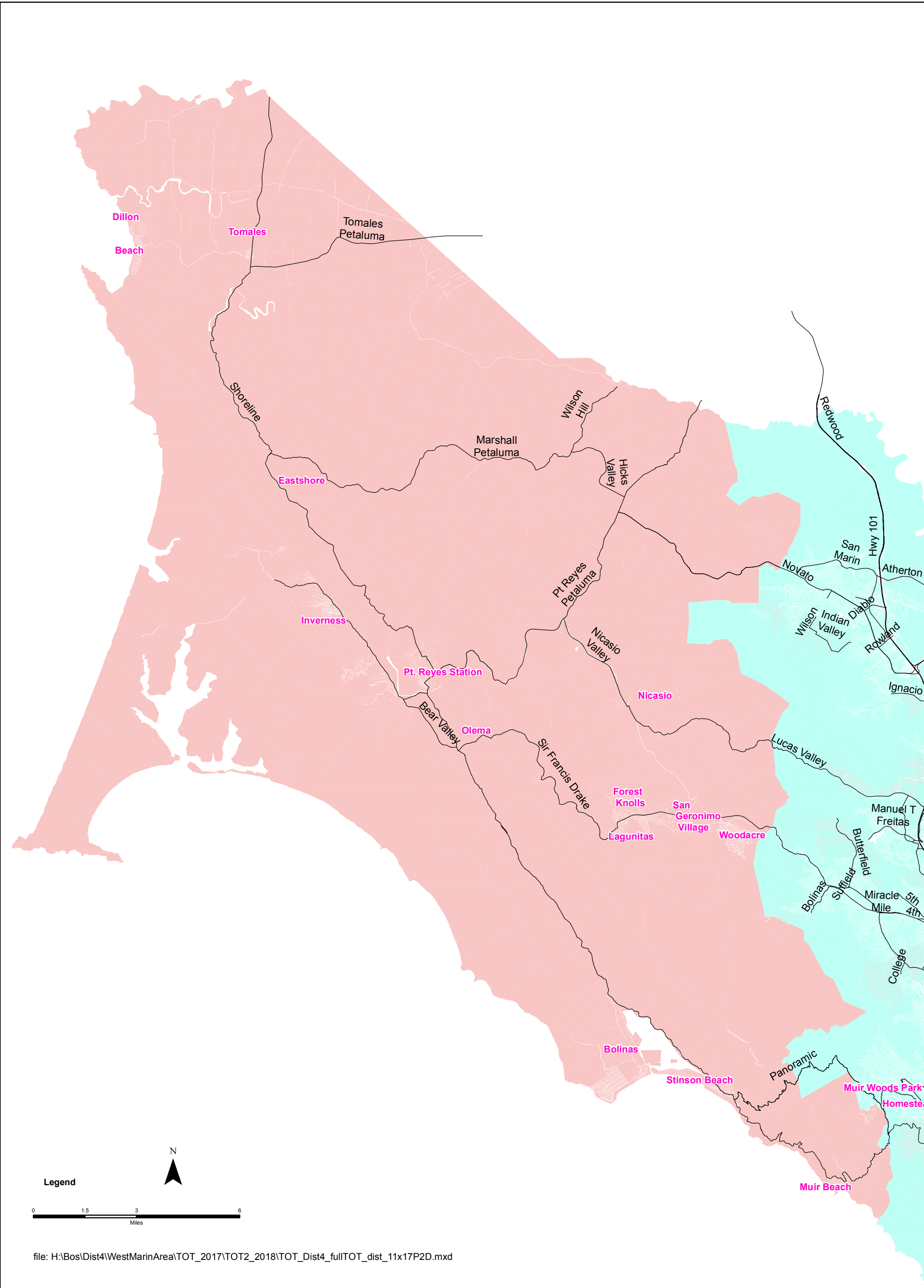


Exhibit B

TRA	ParcelCnt
056001	21
056003	226
056004	1
056005	95
056006	3
056007	841
056008	3
056009	1
056013	3
056014	70
056016	4
056017	3
056018	2
056021	1
056022	909
056024	2
056027	3
056028	14
060002	2
060025	3
068001	3
068013	2
068018	1
068019	1
069002	111
070002	1883
070003	11
070004	1
070005	20
072001	43
072002	2
072003	3
072004	26
075001	19
075007	20
075030	1
075036	1
075048	185
076003	365
094001	646
094002	191
094008	144
094010	716
094018	31
094019	396
094020	310
094021	84
094022	192
094023	13
094024	62
094035	465
094056	123
095000	40

This Exhibit B lists the Tax Rate Areas (“TRAs”) that are included in the West Marin Transient Occupancy Tax Area, as depicted on the West Marin Transient Occupancy Map (Exhibit B). Inquiries on whether parcels are included within the West Marin Transient Occupancy Tax Area should be directed to the Marin County Department of Finance at (415) 473-6168.