

HOUSING AND LAND USE LEGISLATION

OVERVIEW

April 2014

THE COUNTY HOUSING ELEMENT AND REGIONAL HOUSING NEEDS ALLOCATION

Background

Every county, city and town in California is required by State law to adopt a Housing Element that periodically evaluates the need for housing at a local level. Local jurisdictions must also demonstrate through their respective Housing Elements and related land use regulations that specific sites and policies exist to accommodate the need for housing. Housing Elements are the only part of local general plans required to be certified by the State. This mandate reflects the statutory recognition that the availability of housing is a matter of statewide importance and the State goal of “decent housing and a suitable living environment for every California family.”

The Regional Housing Needs Allocation

Each jurisdiction in Marin receives a housing allocation from the Association of Bay Area Governments (ABAG), the regional planning agency responsible for assigning housing numbers for counties, cities and towns in the Bay Area. The housing allocation is referred to as the Regional Housing Needs Allocation, or RHNA, and it’s adopted by ABAG in advance of the eight-year planning period for Housing Elements.

Local jurisdictions are then required through Housing Elements and other land use regulations to identify specific sites with zoning in place to accommodate the number of housing units from their respective RHNA. Local jurisdictions are required to *plan* for these housing units, but *not to construct* them. Local jurisdictions are not developers. The selection of housing sites is based on a predetermined number of housing units for a range of income levels, including Above Moderate, Moderate and Lower Income. The income levels are based on Median Family Income estimates determined by the U.S. Department of Housing and Urban Development (HUD). The table below shows the current income limits for a family of four.

FY 2014 Marin County Income Limits (HUD)

Household size	Extremely low	Very low	Low	Median	Moderate
4	33,200	55,350	88,600	97,100	116,500

The “30% of Median,” “Very Low Income” and “Low Income” schedules shown above were published by the U.S. Dept. of Housing and Urban Development (HUD), effective 12/18/2013. The “Median Income” schedule shown above is based on the FY2014 median family income for Marin County, CA of \$97,100 for a four-person household, issued by HUD effective 12/18/2013, with adjustments for smaller and larger household sizes. The “Moderate Income” schedule shown above represents 120% of median income. For additional information, you may consult the HUD website at www.huduser.org/datasets/il.html.

The Recently Certified Housing Element

The County has adopted five Housing Elements dating back to 1970. The most recent County Housing Element was adopted by the Board of Supervisors in October 2013, and then certified by the State Department of Housing and Community Development in December 2013. The RHNA assigned to the unincorporated County for the recently certified Housing Element was 773 housing units with 320 of those units allocated for the lower income categories. The recently certified Housing Element relied upon 16 sites throughout the unincorporated County to meet the RHNA. .

Affordable Housing Combining District

An Affordable Housing Combining District with a density of 30 units per acre was adopted for three of these sites to meet the affordable housing portion of the RHNA. The combining district was applied to the entirety of one site in the Marin City community (Marin City Community Development Corporation offices). Relatively small portions of two other sites were also rezoned with the Affordable Housing Combining District, including 2 acres of the approximately 100-acre Golden Gate Baptist Seminary property in the unincorporated Strawberry community and 3.5 acres of the approximately 1,110 acre St. Vincent's – Silveira properties in North San Rafael. The Affordable Housing Combining District is intended to satisfy a State Housing Law requiring Marin County among other local jurisdictions to establish a minimum density of 30 units per acre for affordable housing sites in their respective housing elements. The number of housing units identified for the housing sites in the recently certified County Housing Element does not exceed the potential number of units allowed by the existing Countywide Plan. The recently certified Housing Element for the unincorporated County can be found at www.marincounty.org/housingelement.

Feasibility Analysis and Use By Right

As part of the County's initial 2009 Draft Housing Element, and before the above rezonings were approved, the County prepared a feasibility analysis demonstrating that affordable housing could be developed in the unincorporated County on sites zoned at densities below 30 units per acre; however, the State rejected the feasibility analysis. Housing element legislation allows a jurisdiction to adopt a housing element with an insufficient number of affordable housing sites, as measured against the RHNA, if the local jurisdiction adopts programs to rezone sites to meet the RHNA and to establish "use by-right" policy or ordinance that precludes local agencies from applying discretionary review and environmental review (CEQA) to housing developments on these sites. The County chose not to pursue a "use by-right" ordinance to preserve its discretionary and CEQA (California Environmental Quality Act) review authority for future housing developments.

The Next Housing Element

The next Housing Element was officially initiated in March of 2014 when the Board of Supervisors accepted a work program that lays out the plan and schedule for public outreach, conducting public hearings and ultimately adopting the Housing Element by January 2015 to meet the State deadline. The RHNA for the next Housing Element has been reduced to 185 housing units, including 61 above moderate income homes, 37 moderate income homes and 87 lower income homes. The new work program relies upon the same list of housing sites that were used to meet the RHNA for the recently certified Housing Element (refer to Attachment 1).¹ However, due to the substantially lower number of housing units the County is required to plan for in the next Housing Element, there is flexibility in the selection of housing sites to meet the new RHNA. A copy of the work program for the next Housing Element can be found at www.marincounty.org/housingelement.

SENATE BILL 375, PLAN BAY AREA AND PRIORITY DEVELOPMENT AREAS

Air Pollution Control Targets

In 2008, the State adopted Senate Bill 375 (Steinberg), otherwise known as "The California Sustainable Communities and Climate Protection Act of 2008." The law requires the Bay Area and other metropolitan areas in the state to adopt a regional growth plan – called the Sustainable Communities Strategy (SCS) – aimed at reducing greenhouse gas emissions

¹ Site Number 11 (650 North San Pedro Road) is no longer under consideration due to the recent purchase of the property for open space preservation. Sites Number 7 (Tamarin Lane) and Number 8 (Indian Valley) have been identified to reflect low density single family subdivisions for above moderate income housing previously approved by the County.

from cars and light duty trucks. The Bay Area target for reducing greenhouse gas emissions is 7 percent per capita by 2020 and 15 percent per capita by 2035. (SB 375 was preceded by Assembly Bill 32 in 2006, which established a statewide greenhouse gas reduction target.) The SCS for the Bay Area is entitled “Plan Bay Area.” It was prepared by the Association of Bay Area Governments (ABAG) and Metropolitan Transportation Commission (MTC) and adopted by these regional planning agencies in July 2013. The Plan does not require the County to change its general plan or zoning ordinance to align with the regional growth strategy for Marin. The County and other local jurisdictions also retain authority to make decisions on development applications. However, the residential growth projections in Plan Bay Area are one of several factors used to develop the RHNA which local jurisdictions are required to address in their respective Housing Elements.

County Regional Housing Need Allocation Decreased

Plan Bay Area has led to a major reorganization of the State’s Regional Housing Need Allocation (RHNA) process administered by ABAG. The most recent evidence of this trend can be seen in ABAG’s redistribution of regional growth from Marin and other counties lacking significant public transit opportunities and higher density land use plans to more urban “transit rich” counties such as San Francisco, Alameda, San Mateo and Santa Clara. As a result, Plan Bay Area has lowered the County’s responsibility to plan for housing as part of the RHNA process. As mentioned above, the RHNA for the unincorporated County for the next Housing Element planning period has been decreased by roughly 76% from the last planning period. And in a more local context, most of the residential growth projected in Marin as a whole (all jurisdictions) for the next Housing Element planning cycle is allocated to cities and towns as compared to the unincorporated County.

Priority Development Areas and Transportation Funding Incentives

Plan Bay Area attempts to meet the greenhouse gas reduction targets by promoting compact, mixed-use development in proximity to public transit and bike and pedestrian opportunities, jobs, schools and other amenities. The Plan offers an incentive-based approach to promote more efficient land use patterns by allocating a higher percentage of regional transportation funding to Priority Development Areas. Priority Development Areas (PDAs) are places nominated by local jurisdictions where general plans and zoning ordinances plan for more housing within one-half mile of major transit stops or frequent bus service. Two PDAs currently exist in Marin County, including an “Urbanized 101 Corridor PDA” in the unincorporated County (County PDA) and the “Downtown” PDA in the City of San Rafael. Although the County PDA is defined as a general corridor situated along Highway 101 through Marin, it has been modified since its inception in 2007 and currently consists of the Marin City Community and a site in the southwestern portion of unincorporated San Rafael referred to as California Park (situated on Woodland Avenue between the highway and Auburn Street) (refer to Attachment 2). The County PDA is designated as a *Potential PDA*, meaning the County has not adopted a local plan reflecting the general land use characteristics that Plan Bay Area assigned to PDAs as “place types.” The “Transit Neighborhood” place type assigned to the County PDA is characterized as primarily a residential area served by multiple bus lines (or rail) that connect at a single location. Transit stops, however, are usually a minor focus of activity in the area.

Streamlining Environmental Review for Transit Priority Projects and Mixed-Use and Residential Projects

Senate Bill 375 allows a streamlined environmental review process for a newly created type of development proposal called a Transit Priority Project. Transit Priority Projects offer a procedural incentive by allowing local jurisdictions to reduce the scope of environmental analysis for projects that meet certain criteria, which in large part reflect the avoidance of environmental impacts and limits on the size of a project. Proximity to public transit is also a key qualifier for Transit Priority Project status.

Senate Bill 375 also offers limited streamlining of environmental review for residential and mixed-use projects that are defined as having at least 75 percent of the total building square footage devoted to residential use or a project that is a Transit Priority Project. Similar to the streamlining for Transit Priority Projects, Environmental Impact Reports (EIRs) and other California Environmental Quality Act (CEQA) documents for residential or mixed-use residential projects are not required to analyze any growth-inducing impacts or cumulative impacts from auto emissions on global warming and the regional transportation network. The benefit from these streamlining procedures may be of limited value to applicants

when considering the extensive list of remaining environmental topics and issues that still must be addressed through the environmental review process.

The threshold qualification for both Transit Priority Projects and CEQA streamlining for residential or mixed-use projects is consistency with Plan Bay Area, including the extent to which a specific development proposal compares or contrasts with the housing and/or commercial building intensities used to define the Transit Neighborhood place type for the County PDA. Housing intensities for the Transit Neighborhood place type are a function of minimum densities between 20 and 50 units per acre, with densities at the higher end located closer to transit. Commercial and new employment indicators are based on a minimum floor area ratio of 1.0 (floor area ratio is the total floor area of a development divided by the total area of the lot it is situated on). The same evaluation is also applied to the area surrounding the project site prospectively over the 30-year planning horizon of Plan Bay Area (2010-2040) to determine whether there is a reasonable expectation it will become aligned with the characteristics of the place type.

The Plan Bay Area consistency determination described above would be difficult to reach for a Potential PDA such as the County's. The lack of more specific planning for future development in a Potential PDA inhibits if not prevents a meaningful evaluation of how land uses in the area will evolve over the long term in relation to the place type character. Furthermore, the commercial floor area ratios currently permitted in the County PDA are well below the floor area guidelines for the Transit Neighborhood place type. For these reasons, Transit Priority Projects are not expected to apply in the County PDA.

SENATE BILL 743 AND TRANSIT PRIORITY AREAS

CEQA Reform

Signed into law in September 2013, Senate Bill 743 (Steinberg) was the culmination of the Legislature's attempts to reform the California Environmental Quality Act (CEQA). The two most important changes from the statute have to do with: 1) eliminating parking and aesthetic impacts from being considered significant impacts for infill projects subject to environmental review; and 2) directing the Governor's Office of Planning and Research to create new environmental review guidelines (referred to as thresholds of significance) for traffic congestion impacts. Both changes apply only to infill sites located within Transit Priority Areas. Infill sites are properties in urban areas (population greater than 50,000) that have been previously developed or are surrounded on at least three sides by urban uses.

Transit Priority Areas

Transit Priority Areas are defined as locations within one-half mile of an existing or planned major transit stop. Major transit stops in Marin are situated along fixed bus routes in the more urbanized areas of the County where frequent bus service is available.² The Transportation Authority of Marin (TAM) has prepared a draft map of major transit stops in Marin to show where Transit Priority Areas currently exist (refer to Attachment 3). Most of the major transit stops shown on this map are located with cities or towns in Marin; however, several exist in the unincorporated portion of Southern Marin. This is a draft map that is expected to be replaced when the Metropolitan Transportation Commission (MTC) issues a comprehensive set of maps showing transit stops and corridors for the entire Bay Area, including Marin County.

Changes to CEQA Review – Aesthetics, Parking and Traffic

What the statute means in practical terms is that parking and aesthetic impacts won't trigger the need for an Environmental Impact Report for infill residential, mixed-use or employment center projects located within a Transit Priority Area. One possible result of this change, and perhaps the underlying intent of the legislation, is the reduced likelihood of prolonged CEQA litigation for infill projects. However, it's important to keep in mind that SB 743 does not prevent the County or other local jurisdictions from evaluating aesthetic impacts and parking impacts based on adopted policies, standards and procedures outside of the CEQA process. This is often referred to as the merits review of a

² Transit Priority Areas are similar to Transit Priority Projects, discussed above under SB 375, insofar as both designations are based on proximity to public transit and offer relief from CEQA review, albeit in different ways.

development proposal that takes place after CEQA review has been completed and before projects are reviewed by the Planning Commission and Board of Supervisors. Therefore, while the scope of CEQA review may be narrowed, the County Planning Commission and Board of Supervisors will ultimately retain the authority to apply design review standards, building height limitations and coordination with local design review boards when making decisions on infill projects located within Transit Priority Areas.

The provision in SB 743 that addresses traffic congestion is similarly intended to change the way traffic impacts are analyzed under CEQA. Traffic analysis for a development proposal or plan update has traditionally been focused on the extent to which traffic congestion during peak commutes would change – this level of service standard measures the delay projected to occur at affected road intersections and road segments as a result of increased auto trips. SB 743 directs the Governor’s Office of Planning and Research to develop an alternative to the traditional level of service analysis that moves away from traffic congestion and instead focuses on reducing greenhouse gas emissions, promoting multi-modal transportation options and encouraging a diversity of land uses within Transit Priority Areas. The new guidelines *may* assess traffic impacts on factors such as the project’s contribution to vehicle miles traveled, total traffic trips, and trip generation rates. It will be difficult to know precisely how this change unfolds until the new CEQA guidelines are issued in draft form later this year. More certain is the fact that once the new guidelines are adopted, “level of service” will cease to be a basis for determining significant traffic impacts in EIRs and other CEQA documents for infill projects in Transit Priority Areas. The County is not, however, prevented from treating other transportation impacts related to air quality, noise, and safety as significant impacts in EIRs. Also, as with the changes to aesthetic and parking impacts discussed above, the County and other local jurisdictions will retain the authority to evaluate traffic impacts using adopted level of service standards through the merits review of the project if they choose to do so.

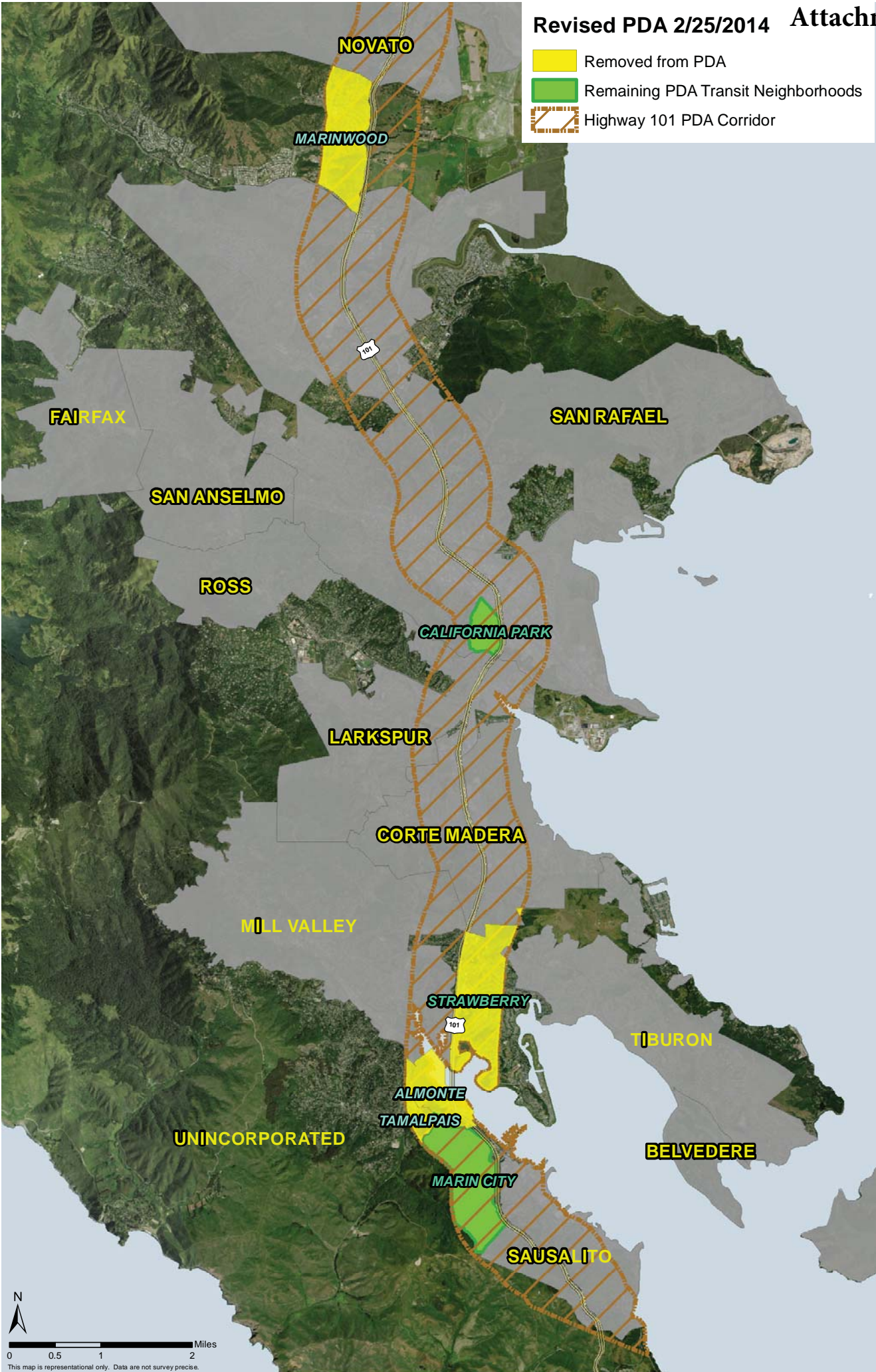
Local jurisdictions may also choose to create an “infill opportunity zone” within which the level of service standard is eliminated from CEQA review. The underlying purpose of infill opportunity zones is to allow local jurisdictions to apply the new traffic impact guidelines to development proposals located in proximity to a “high quality transit corridor” in addition to major transit stops. High quality transit corridors are areas served by intersecting fixed bus routes with service intervals no longer than 15 minutes. Infill Opportunity Zones are not required by the statute and are completely voluntary at the local decision making level. To date, the County has not expressed an interest in creating Infill Opportunity Zones.

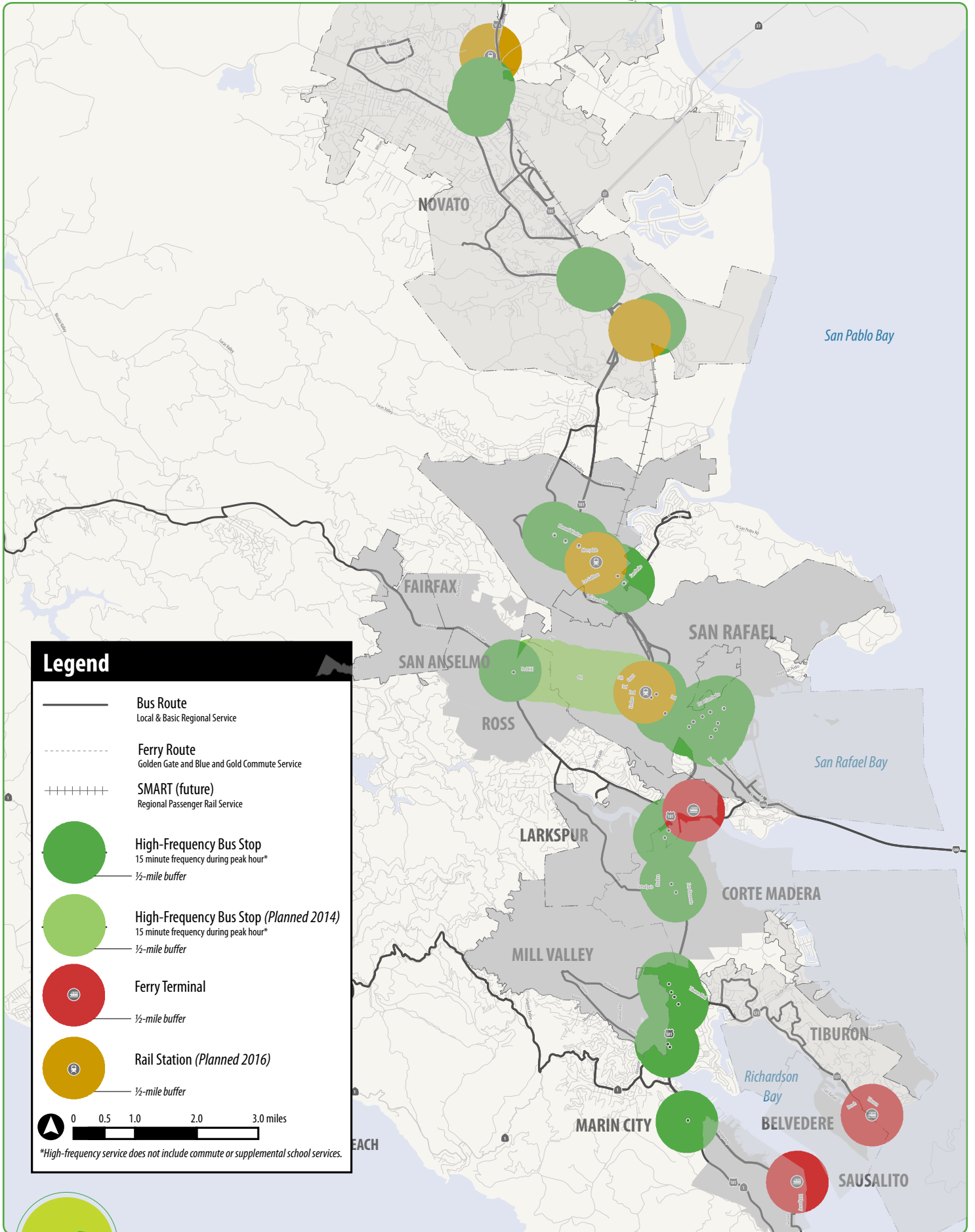
SB 743 also allows a broader exemption from CEQA for a residential, mixed-use or employment center project within a Transit Priority Area if the proposal is consistent with a specific plan for which an EIR has been certified by the local jurisdiction. Currently, there are no specific plans with certified EIRs in Transit Priority Areas within the unincorporated County.

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- Removed from PDA
- Remaining PDA Transit Neighborhoods
- Highway 101 PDA Corridor





Legend

- Bus Route
Local & Basic Regional Service
- Ferry Route
Golden Gate and Blue and Gold Commute Service
- SMART (future)
Regional Passenger Rail Service
- High-Frequency Bus Stop
15 minute frequency during peak hour*
1/2-mile buffer
- High-Frequency Bus Stop (Planned 2014)
15 minute frequency during peak hour*
1/2-mile buffer
- Ferry Terminal
1/2-mile buffer
- Rail Station (Planned 2016)
1/2-mile buffer

0 0.5 1.0 2.0 3.0 miles

*High-frequency service does not include commute or supplemental school services.

