

## STAFF REPORT

**SUBJECT:** 2017 Legislative Housing Package –  
Implications for Local and Regional  
Agencies

**RECOMMENDED ACTION:** Information

### SUMMARY:

In response to a continuing statewide housing shortage in California, in September 2017, the California Legislature passed a package of bills with the stated goal of increasing housing production in general and the percentage of that housing that is affordable, specifically. We are providing an update on these bills now to highlight increasing scrutiny being placed on the ability of individual cities to provide affordable housing and how this relates to requirements for regional agencies to estimate this housing need.



Our discussion on this item with the standing committees in November has been more technical in nature; in now bringing this before the Board we are previewing the practical and policy discussions we will be having over the next year as we focus on both implementation of the recently adopted 2018 Regional Transportation Plan / Sustainable Communities Strategy (RTP/SCS) and prepare for the 2022 plan, with its required updated Regional Housing Needs Allocation (RHNA) Plan. Here's what we see coming:

- Local agencies are being asked to report substantial additional detail to Housing and Community Development (HCD) on proposed, permitted, and constructed housing projects with an eye towards identifying which cities are providing more housing and which are not (and why)
- Funding programs for cities are not only being linked to an approved General Plan Housing Element, but also to meeting required reporting requirements
- No discretion in approval of certain types of affordable housing projects if regional housing numbers through the RHNA process are not being achieved

- Expectation of higher regional RHNA numbers to SJCOG from HCD, and, subsequently, a higher number of housing units to be accommodated in local agency General Plan Housing Elements after the 2022 RTP/SCS is adopted
- The RHNA process' inclusion in the RTP/SCS by SB375 provides the only direct link between housing land-use approvals and transportation investments in RTPs through required updates to housing elements – we expect state agencies to push on both regional and local agencies through this link to facilitate housing production
- Some new state funding and technical assistance is being made available to cities in compliance from existing funding sources, new housing bonds (Proposition 1/SB3), and new real estate transaction fees (SB2)

Additional information on the specific legislative actions driving these points are included in the Background section of the staff report; a list of the bills in the 2017 Legislative Housing Package and their summary is included as an attachment. SJCOG staff will be available as a resource for local agencies as guidelines for planning, regulations, and funding related to legislative actions are released.

#### **RECOMMENDED ACTION:**

The staff report is for information only; no action is requested.

#### **FISCAL IMPACT:**

From a budget standpoint, there are no direct impacts as the RHNA planning process is an approved and budgeted work effort in the 2018/19 SJCOG OWP. However, the RHNA Plan sets forth the affordable housing allocations for the local jurisdictions. As a result, there are anticipated fiscal impacts from implementation of the RHNA Plan, as well as fiscal impacts to both SJCOG and its member agencies from new requirements for RHNA and member agency Housing Element progress reporting.

#### **BACKGROUND:**

When the staff report was presented to standing committees in November, we also alerted agency staff of an now passed deadline for comments on a draft revision of the forms and instructions for the required Housing Element Annual Progress Report (APR) for all jurisdictions in California. These progress reports are used by the department of Housing and Community Development (HCD). The following sections will:

- give a brief description of the two bills driving the change in the APR
- list the new data requirements, and
- preview changes to the Regional Housing Needs Allocation (RHNA) process that will affect the amount of housing that must be accommodated in each Housing Element.

The two bills in the 2017 Legislative Housing Package that are most directly related to the changes in required reporting are AB 879 and SB 35.

While these bills do not require jurisdictions to produce additional housing, they do impose substantial additional reporting on the amount and type of housing being planned and built in each jurisdiction. They also take away discretion for approval/denial of specific types of infill projects for those jurisdictions that are either not meeting their existing reporting requirements (new reporting requirements don't go into effect until the 2018 reporting year) or are not meeting their fair share of total housing and/or affordable housing as determined by the RHNA process. As of the June 1, 2018, only 22 jurisdictions statewide have met both their current reporting requirements and their total RHNA and are not subject to any form of SB 35 streamlining as described below. None of the 22 are in San Joaquin County.

### ***AB 879-Required Reporting***

This bill updated the housing element and annual reporting requirements; the new reporting takes effect with Annual Progress Reports (APRs) for the 2018 reporting period, due in April 2019:

- Added reporting requirements for Charter cities (they were previously exempt)
- Added to the list of information required in the APR:
  - number of project applications and approved applications
  - number of housing units proposed in each application versus unit count approved and unit count for denied applications
  - processing time from submittal of an application to its approval
  - location of approved applications by assessor's parcel number, income level of potential residents, and tenure of residents (renters versus owners)
  - building permits issued by assessor's parcel number (current reporting is only by income level and owner/renter status)
  - final inspections (or certificates of occupancy) by assessor's parcel number, income level, and owner/renter status
  - changes to residential zoning by assessor's parcel number, acreage, previous general plan and zoning designation, new general plan and zoning designation, number of units that would likely be constructed, existing uses on the parcel
  - tracking of applications, approved developments, building permits, and units constructed under SB 35 streamlining

Besides these additional data points for the APR, this bill has two other requirements:

- the "constraints" analysis is expanded to include locally adopted ordinances and other issues (e.g. requests to develop housing below planned densities) preventing a jurisdiction from meeting its share of regional housing needs for all income levels and steps the jurisdiction is taking to remedy the issue
- a requirement that HCD (by June 30, 2019) complete a study to evaluate how the fees cities charge housing developers affects how much housing is constructed. The study is to include recommendations for changes in the Mitigation Fee Act that would reduce the cost of residential development.

The deadline for comments on the reporting forms and instructions was November 19. Although no longer available for comment, the draft forms can be viewed here: [Draft Revised Annual Progress Report \(APR\) forms](#) (XLS); the draft instructions are here: [Draft Revised Annual Progress Report APR\) instructions](#) (PDF). The State Housing and Community Development Department (HCD) requested comments on the layout of the forms, clarity of instructions, any needed definitions of terms, suggestions to make the reporting easier, and types of assistance that would be most valuable to your staff.

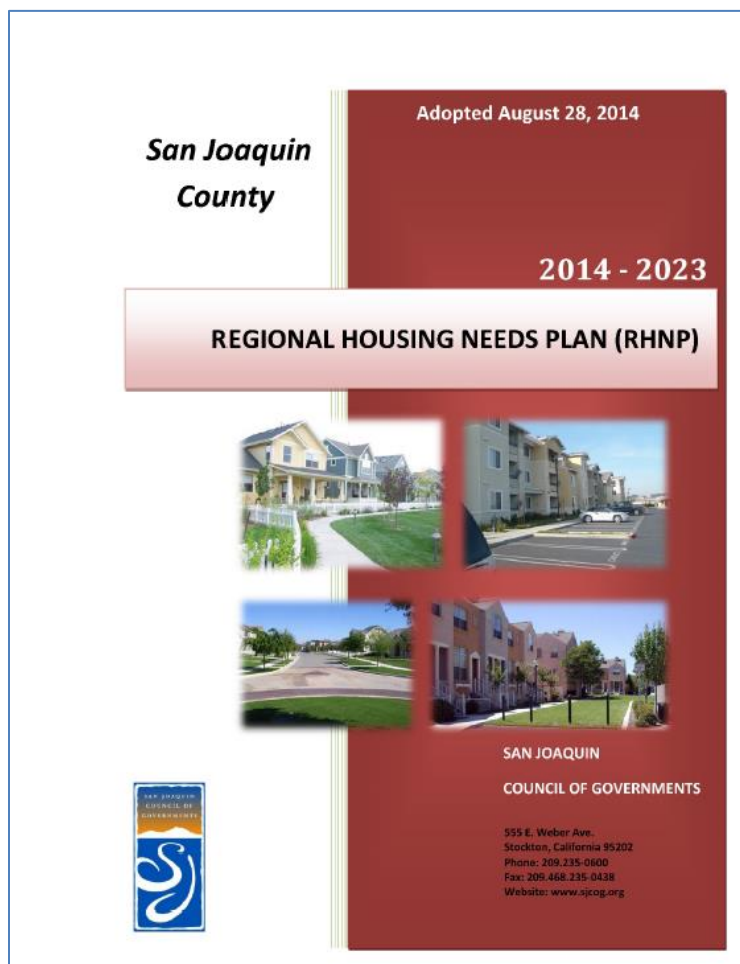
### ***SB 35-Streamlined Approval Process:***

For jurisdictions that do not meet their Regional Housing Needs Allocation (RHNA), this bill streamlined the approval process for eligible infill projects. If a developer meets requirements of the bill, including 10% affordable units and paying construction workers prevailing wage, the project must be approved ministerially<sup>1</sup> within 90 to 180 days of submission. Streamlining is triggered if a jurisdiction does not:

- permit enough housing units to meet its assigned share of the RHNA;
- submit required Annual Progress Reports (APRs).

Additional information on **all** the bills in the housing package can be found here:

<http://www.hcd.ca.gov/policy-research/lhp.shtml>. A variety of resources are available at this link to aid member agency staff in reviewing and providing comments on the forms and instructions, including FAQs and technical webinars. Two reference summary charts are attached to this staff report: one summarizes the 14 bills in the housing package; the second lists the steps planned for implementing each bill.



### ***Regional Housing Needs Process***

RHNA is a state-mandated planning requirement for accommodating the projected housing need through each jurisdiction's General Plan Housing Element. The law requires, as the initial step in the RHNA process, that HCD project overall housing unit needs at the regional level for the planning period, then further

<sup>1</sup> Ministerial approval means that if a project meets all permit requirements, it is approved at a staff level and does not require further review or approval, such as by a planning commission or city council.

divide the housing need into four income categories (the extremely low category is sub-category of very low). This division is intended to ensure adequate housing affordable for all income levels in the region. The RHNA process between SJCOG and HCD has historically been an iterative one. After receiving the initial RHNA determination from HCD, HCD staff and SJCOG staff exchange information and refine the underlying assumptions used in the determination (e.g. housing vacancy rates, household formation rates).

The Regional Housing Need Plan (RHNP) is based on the RHNA planning process and is the official assignment of projected regional housing need totals to the jurisdictions in San Joaquin County across four family income categories of Very Low, Low, Moderate, and Above Moderate. Each jurisdiction is responsible for updating the Housing Element of their respective General Plans to demonstrate the way they will meet the allocated housing unit growth.

The 5<sup>th</sup> RHNA cycle represents a ten-year period from January 1, 2014 through December 31, 2023. As a Council of Governments, SJCOG is mandated by California government code section 65584 to establish the process to allocate the countywide RHNA between jurisdictions. With the passage of the Sustainable Communities and Climate Protection Act of 2008, also known as Senate Bill (SB) 375, the RHNA process became integral to the Regional Transportation Plan (RTP). Previously, the RHNA was an independent analysis from the RTP. SB375 requires that the two processes be coordinated and that the RHNA allocations to the jurisdictions be consistent with the general land-use development pattern in the RTP.

Pursuant to Government Code 65583, each jurisdiction is required to update their Housing Element to plan and accommodate its entire RHNA share by income category 18 months after the adoption of the RTP. For SJCOG's member agencies, the Housing Element update was due on December 31, 2015, based on the June 26, 2014 adoption date of the RTP. As part of the Housing Element update, communities use the RHNA in land-use planning, in prioritizing local resource allocation, and in deciding how to address identified existing and future housing needs resulting from population, employment and household growth. An approved Housing Element is required for certain categories of housing development funding assistance.

**Prior to the 2008 passage of SB375**, regional agencies allocated regional housing need to local agencies through a primarily technical process that was jointly agreed upon by the state, regional, and local agencies – the process, known as the Regional Housing Needs Allocation or RHNA, was completed every five years. Local agencies, through an update to their general plans, would then show how they were planning their communities to support, or at least not impede, the construction of housing for residents of all income levels – including rezoning as necessary. This update of general plan housing element was then submitted to the state department of Housing and Community Development (HCD) for approval. Many state and federal funding programs were tied to an approved housing element.

**After SB375**, the housing need allocation process was explicitly tied to SJCOG's long-range transportation planning in the Regional Transportation Plan (RTP). This more explicit connection between land-use allocation and transportation investments included a connection of the RTP's land-use assumptions to the RHNA housing estimates. While SB375 did not include land-use regulation or any requirement for general plans to be consistent with the RTP, a link

was established due to the connection between the RTP, RHNA, and the housing element of each jurisdiction's general plan.

### ***Current RHNA and APR Status:***

The RHNA process is completed by SJCOG as part of every other Regional Transportation Plan (RTP) update. Last completed in 2014, it assigns each jurisdiction a share of anticipated housing need by income group – very low, low, moderate, and above moderate. It is calculated based on the regional median income. More information on the RHNA process is provided in the *Background* section of the staff report; the current RHNA plan in its entirety can be viewed here: <http://www.sjcog.org/113/Regional-Housing-Needs-Allocation>. The table below shows the current allocation of housing units for each jurisdiction for the 10-year period from 2014 to 2023.

<b>Agency</b>	<b>Extremely Low (\$16,129 &amp; Below)</b>	<b>Very Low (\$16,130 to \$26,882)</b>	<b>Low (\$26,883 to \$43,011)</b>	<b>Moderate (\$43,012 to \$64,517)</b>	<b>Above Moderate (\$64,518 &amp; Above)</b>	<b>Total RHNA</b>
Escalon	60	43	66	64	192	425
Lathrop	526	493	759	957	2,421	5,156
Lodi	244	253	331	333	770	1,931
Manteca	459	466	693	825	1,958	4,401
Ripon	154	154	215	231	726	1,480
Stockton	1,675	1,482	2,004	2,103	4,560	11,824
Tracy	513	467	705	828	2,463	4,976
SJ County	1,257	1,239	1,727	1,724	4,220	10,167
<b>Total</b>	<b>4,888</b>	<b>4,597</b>	<b>6,500</b>	<b>7,065</b>	<b>17,310</b>	<b>40,360</b>
	12.1%	11.4%	16.1%	17.5%	42.9%	100.0%

We are unable to determine from current reporting to HCD whether all of San Joaquin's cities and the unincorporated County are meeting RHNA housing goals from the most recent plan. Three jurisdictions are listed on HCD's most recent APR reporting spreadsheet ([5th Cycle Annual Progress Report Permit Summary](#)) for the current period: Lathrop, Tracy, and San Joaquin County. Staff was able to locate additional progress reporting for Lodi and Stockton, as well as updated reports for Tracy, from other sources. Lodi and Tracy are at or near permit levels to meet their total housing need in the most recent RHNA plan. An informal analysis of permit activity by SJCOG staff in June 2018 shows that Manteca has been approving building permits for housing at a rate that would meet the total RHNA allocation shown above. However, it is unlikely that any jurisdiction is meeting the estimated need in the lower income categories.

### ***Anticipated Changes to the RHNA Process for SJCOG***

Besides the two bills summarized above that have direct implications for local jurisdictions, two additional bills outside of the 2017 Legislative Housing Package, SB 828 and AB 1771, will also affect SJCOG's member agencies because they change the requirements for the RHNA process and how SJCOG assigns the regional housing need to each of the cities and the unincorporated county. Both bills were signed by the governor in the 2018 legislative session.

Briefly, it is expected that these two bills will have the combined effect of increasing the total regional RHNA calculations SJCOG receives from HCD and are also to likely have the effect of distributing more housing to jurisdictions with very low vacancy rates, excessive overcrowding, and/or large numbers of households paying more than 30% of their income in rent (these households are considered rent burdened). Provisions in the bills will also make it more difficult for jurisdictions to challenge their RHNA and more opportunity for challenge by housing advocacy groups. SJCOG will also have less discretion in the methodology for distributing the RHNA to individual jurisdictions. We will be providing additional information soon on the anticipated effect of these two bills on the RHNA plan update that will be part of the 2022 RTP. We expect to convene staff from member jurisdictions' planning departments and provide updates to SJCOG's committees and the Board in early 2019.

#### **NEXT STEPS:**

We will be convening a meeting of staff from each member agency's planning department to discuss the potential effects of the 2017 Legislative Housing Package on local and regional planning, as well as to provide more information on anticipated effects of the two bills on RHNA requirements and calculations. We will also continue to follow the status of bill implementation and update committees and the SJCOG Board as guidance for complying with new regulations and guidelines for new funding programs and technical assistance are made available.

#### **ATTACHMENTS**

1. HCD Summary Sheet of California's 2017 Housing Package Bills
2. HCD Summary Sheet of Projected 2017 Housing Package Milestones

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WHERE FOUNDATIONS BEGIN

# CALIFORNIA'S 2017 HOUSING PACKAGE

## CREATE AND PRESERVE AFFORDABLE HOUSING

Bill Name	Purpose
<b>SB 2 (Atkins) Building Jobs and Homes Act</b>	Imposes a fee on recording of real estate documents, excluding sales, for the purposes of funding affordable housing. Provides that first year proceeds will be split evenly between local planning grants and HCD's programs that address homelessness. Thereafter, 70 percent of the proceeds will be allocated to local governments in either an over-the-counter or competitive process. Fifteen percent will be allocated to HCD, ten percent to assist the development of farmworker housing and five percent to administer a program to incentivize the permitting of affordable housing. Fifteen percent will be allocated to CalHFA to assist mixed-income multifamily developments.
<b>SB 3 (Beall) Veterans and Affordable Housing Bond Act</b>	Places a \$4 billion general obligation bond on the November 2018 general election ballot. Allocates \$3 billion in bond proceeds among programs that assist affordable multifamily developments, housing for farmworkers, transit-oriented development, infrastructure for infill development, and homeownership. Also funds matching grants for Local Housing Trust Funds and homeownership programs. Provides \$1 billion in bond proceeds to CalVet for home and farm purchase assistance for veterans.
<b>AB 1505 (Bloom) Inclusionary Ordinances</b>	Authorizes the legislative body of a city or county to require a certain amount of low-income housing on-site or off-site as a condition of the development of residential rental units.
<b>AB 1521 (Bloom) Preserve the Existing Affordable Housing Stock</b>	Requires the seller of a subsidized housing development to accept a bonafide offer to purchase from a qualified purchaser, if specified requirements are met. Gives HCD additional tracking and enforcement responsibilities to ensure compliance.
<b>AB 571 (E. Garcia) Low-Income Housing Credits for Farmworkers</b>	Makes modifications to the state's farmworker housing tax credit to increase use. Authorizes HCD to advance funds to operators of migrant housing centers at the beginning of each season to allow them to get up and running. Extends the period of time that migrant housing centers may be occupied up to 275 days.

## STREAMLINE HOUSING DEVELOPMENT

Bill Name	Purpose
<b>SB 35 (Wiener) Streamline Approval Process</b> Opt-in program for developers	<p>Creates a streamlined approval process for developments in localities that have not yet met their housing targets, provided that the development is on an infill site and complies with existing residential and mixed use zoning.</p> <p>Participating developments must provide at least 10 percent of units for lower-income families. All projects over 10 units must use prevailing wage and larger projects must provide skilled and trained labor.</p>



## STREAMLINE HOUSING DEVELOPMENT (CONT.)

Bill Name	Purpose
<b>AB 73 (Chiu) Streamline and Incentivize Housing Production</b> Opt-in program for jurisdictions and developers	Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning. Development projects must use prevailing wage and include a minimum amount of affordable housing.
<b>SB 540 (Roth) Workforce Housing Opportunity Zones</b> Opt-in program for jurisdictions	Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review. Requires at least 50 percent of total housing units within that plan to be affordable to persons or families, at or below moderate income, with at least 10 percent of total units affordable for lower income households. Development projects must use prevailing wage.

## ACCOUNTABILITY AND ENFORCEMENT

Bill Name	Purpose
<b>AB 678 (Bocanegra)/SB 167 (Skinner) Strengthen the Housing Accountability Act</b>	Strengthens the Housing Accountability Act by increasing the documentation necessary and the standard of proof required for a local agency to legally defend its denial of low and moderate-income housing development projects, and requires courts to impose a fine of \$10,000 or more per unit on local agencies that fail to legally defend their rejection of an affordable housing development project.
<b>AB 1515 (Daly) Reasonable Person Standard</b>	States that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.
<b>AB 72 (Santiago) Enforce Housing Element Law</b>	Authorizes HCD to find a jurisdiction out of compliance with state housing law at any time (instead of the current eight-year time period), and refer any violations of state housing law to the Attorney General if it determines the action is inconsistent with the locality's adopted housing element.
<b>AB 1397 (Low) Adequate Housing Element Sites</b>	Requires cities to zone more appropriately for their share of regional housing needs and in certain circumstances require by-right <sup>1</sup> development on identified sites. Requires stronger justification when non-vacant sites are used to meet housing needs, particularly for lower income housing.
<b>SB 166 (Skinner) No Net Loss</b>	Requires a city or county to identify additional low-income housing sites in their housing element when market-rate housing is developed on a site currently identified for low-income housing.
<b>AB 879 (Grayson) and Related Reporting Bills</b>	Makes various updates to housing element and annual report requirements to provide data on local implementation including number of project applications and approvals, processing times, and approval processes. Charter cities would no longer be exempt from housing reporting. Requires HCD to deliver a report to the Legislature on how local fees impact the cost of housing development.

<sup>1</sup>Current housing law defines by-right as local government review of a project that may not require a conditional use permit or other discretionary action that would constitute a "project" under the California Environmental Quality Act.



WHERE FOUNDATIONS BEGIN

# CALIFORNIA'S 2017 HOUSING PACKAGE PROJECTED MILESTONES

This document will be updated as further information becomes available.

## FUNDING FROM 2018 REVENUES COLLECTED BETWEEN JANUARY 1, 2018 AND DECEMBER 31, 2018

Bill Name	Activities & Milestones	Target Dates
SB 2 (Atkins) Building Jobs and Homes Act	<b>Planning Grants (50% of funds)</b>	
	Initiate public outreach	Spring 2018
	Provision of planning technical assistance	Summer 2018*
	Development of guidelines	Summer 2018
	Release of Notice Of Funding Availability	Spring 2019*
	<b>Homelessness Grants (50% of funds)</b>	
	Public outreach	Spring 2018
	Development of guidelines	Spring 2018
	Release of initial Notice of Funding Availability	Fall 2018*
	Release of subsequent Notice of Funding Availability	Fall 2019*

## FUNDING FROM REVENUES COLLECTED BETWEEN JANUARY 1, 2019 AND DECEMBER 31, 2019 AND EVERY CALENDAR YEAR THEREAFTER

Bill Name	Activities & Milestones	Target Dates
SB 2 (Atkins) Building Jobs and Homes Act	<b>Local Funds (70% of annual total)</b>	
	Initiate public outreach	Fall 2018
	Development of guidelines	Spring 2019
	Release of Notice of Funding Availability	Summer 2019*
	<b>Production Incentive Program (5% of annual total)</b>	
	Initiate public outreach	Fall 2018
	Development of guidelines	Spring 2019
	Release of Notice of Funding Availability	Summer 2019*
	<b>Farmworker Funds (10% of annual total)</b>	
	Initiate public outreach	Winter 2018/2019

## STREAMLINE HOUSING DEVELOPMENT (CONT.)

Bill Name	Activities & Milestones	Target Dates
<b>SB 2 (Atkins) Building Jobs and Homes Act (cont.)</b>	Development of guidelines	Summer 2019
	Release of Notice of Funding Availability	Winter 2019/2020*
	<b>Mixed Income Program – Administered by CalHFA (15% of annual total)</b>	
	Release of Notice of Funding Availability	TBD

## FUNDING PENDING APPROVAL BY VOTERS IN NOVEMBER 2018

Bill Name	Activities & Milestones	Target Dates
<b>SB 3 (Beall) Veterans and Affordable Housing Bond Act</b>	Release of initial Notice of Funding Availability	Spring 2019*
	Release of subsequent Notices of Funding Availability	TBD for later in 2019

## OTHER FUNDING RELATED LEGISLATION

Bill Name	Activities & Milestones	Target Dates
<b>AB 571 (E. Garcia) Low-Income Housing Credits for Farmworkers</b>	Guidance activities to be determined	TBD

## STREAMLINING

Bill Name	Activities & Milestones	Target Dates
<b>SB 35 (Streamlining)</b>	Preliminary Housing Element Annual Progress Report data release	Winter 2017/2018
	Publish initial jurisdiction eligibility lists	Winter 2017/2018
	Initiate public outreach	Spring 2018
	Guidelines	Summer 2018
<b>SB 540 (Workforce Housing Overlay)</b>	Initiate public outreach	Summer 2018
	Guidelines	Spring 2019
	Notice of Funding Availability	TBD
<b>AB 73 (Sustainability Districts)</b>	Initiate public outreach	Summer 2018
	Guidelines	Spring 2019
	Notice of Funding Availability	TBD

## ACCOUNTABILITY

Bill Name	Activities & Milestones	Target Dates
<b>AB 1397 (Housing Elements)</b>	Development of technical assistance memo	Spring 2018
<b>AB 879 (Annual Progress Reports)</b>	Initiate public outreach Development of new Annual Progress Report guidelines and forms for an effective date of April 1, 2019	Summer 2018 Spring 2018
<b>AB 879 (Fee Study)</b>	Initiate public outreach on scoping Commencement of study Release of final report	Spring 2018 Summer 2018 Summer 2019
<b>SB 166 (No-Net-Loss)</b>	Development of technical assistance memo	Spring 2018
<b>AB 1521 (Preservation Noticing Requirements)</b>	Initiate public outreach Creation of guidance and forms Begin collection of information Report due to the Legislature	Spring 2018 Summer 2018 Fall 2018 Spring 2019
<b>AB 678, SB 167, AB 1515 (Housing Accountability Act)</b>	Guidance activities to be determined	TBD
<b>AB 72 (Housing Element Accountability)</b>	Guidance activities to be determined	TBD
<b>AB 1505 (Inclusionary Ordinances)</b>	Guidance activities to be determined	TBD

\*All Notices of Funding Availability are tentative, subject to appropriation and public outreach process.