

# Bringing the Heat! Housing Accountability & Enforcement

**SPUR**  
**March 15, 2022**





# Outline

- Purpose
- Overview
- Process
- The team
- Authority
- Collaboration
- Discussion



## Purpose

**Ensure all local jurisdictions meet their fair share of the state's housing needs at all income levels**

- Support jurisdictions in promoting housing production through incentives and planning grants
- Provide education and technical assistance to help jurisdictions understand and implement the law
- Hold jurisdictions accountable for following the law through enforcement actions as needed

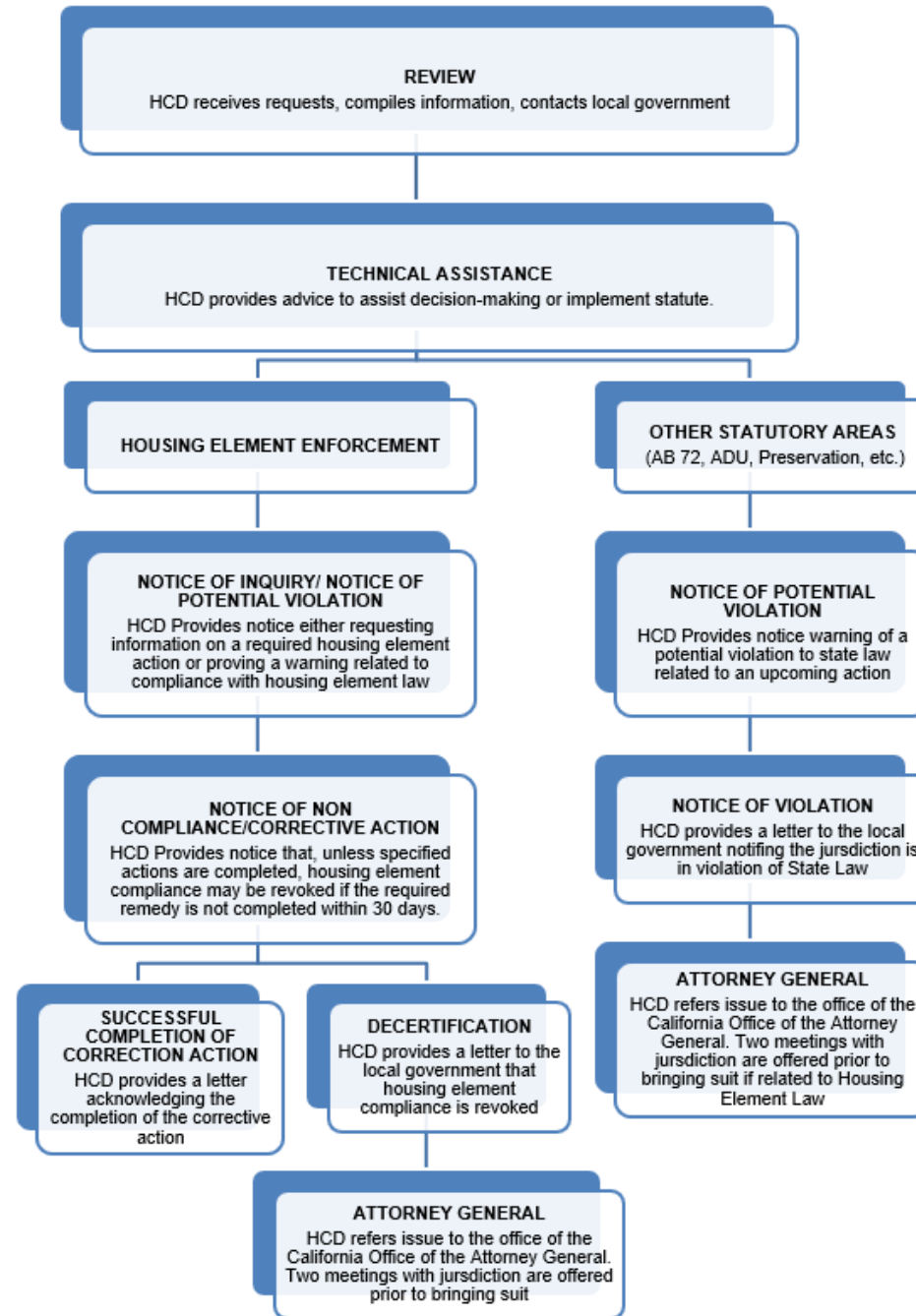


# Overview

- Complaint-based & proactive
- Prioritize:
  - Severity (e.g., pattern; AH or large project; extreme effect on supply, choice, affordability, location)
  - Impact (e.g., precedence, ripple effect, scalability, projects)
  - Alignment (e.g., equity, access to opportunity, climate change, infill, homelessness)
- Start with technical assistance
- Progressive discipline approach

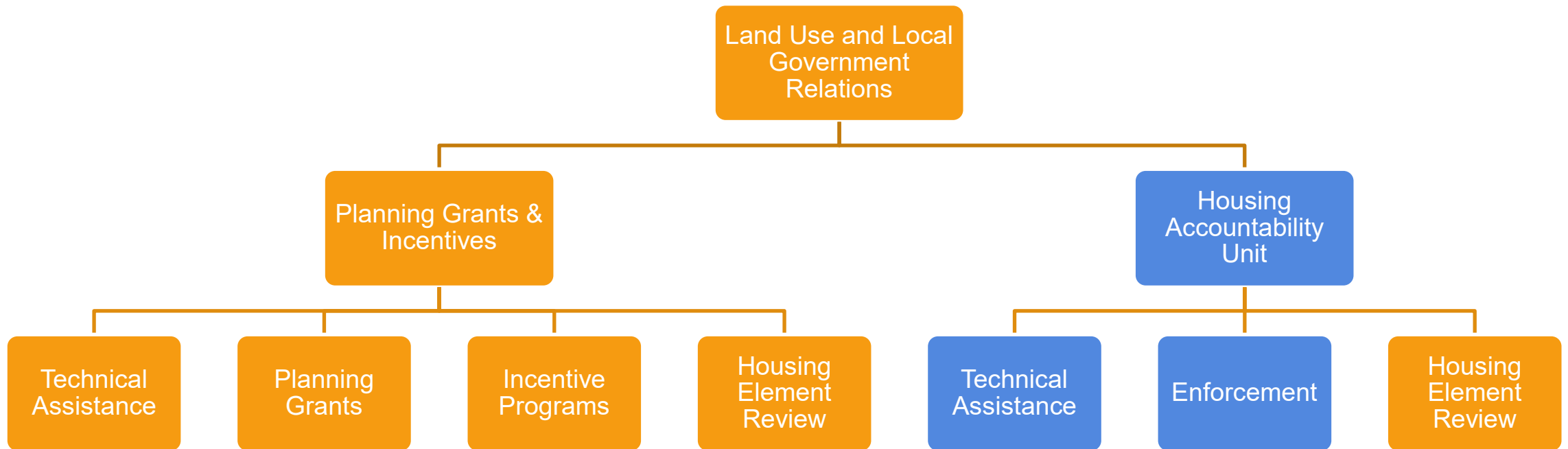


## The Progressive Discipline Approach





# The Team





## The Team (cont.)

- Intersection between law and policy
- Collaborative effort between:
  - HCD's Housing Accountability Unit (HAU)
  - HCD's Legal Affairs Division (LAD)
  - Attorney General's Housing Strike Force



# Results

- Produced over 250 pieces of technical assistance
- Helped multiple projects get through the planning process to production
- Setting up housing elements to have better outcomes
- Provide much needed education and help to local governments
- Building relationships and connections with the AG's office – cross collaboration
- Won our first case in Huntington Beach





# Authority

## Housing Element Law

**Compliance**  
Proactive Enforcement

## AB 72 authority

**Housing Accountability Act**  
**Density Bonus Law**  
No Net Loss Law  
Land Use Discrimination Law

## AB 215 authority (as of Jan. 1)

**Housing Crisis Act of 2019 (SB 330)**  
Permit Streamlining Act  
Affirmatively Furthering Fair Housing Law  
Streamlined Ministerial Permit Processes (SB 35)  
By Right Supportive Housing (AB 2162)  
By Right Low Barrier Navigation Centers (AB 101)  
Limitations on Development Standards (SB 478)

## Other housing laws

**ADU laws**  
**Surplus Land Act**  
Affordable Housing Preservation Noticing Law



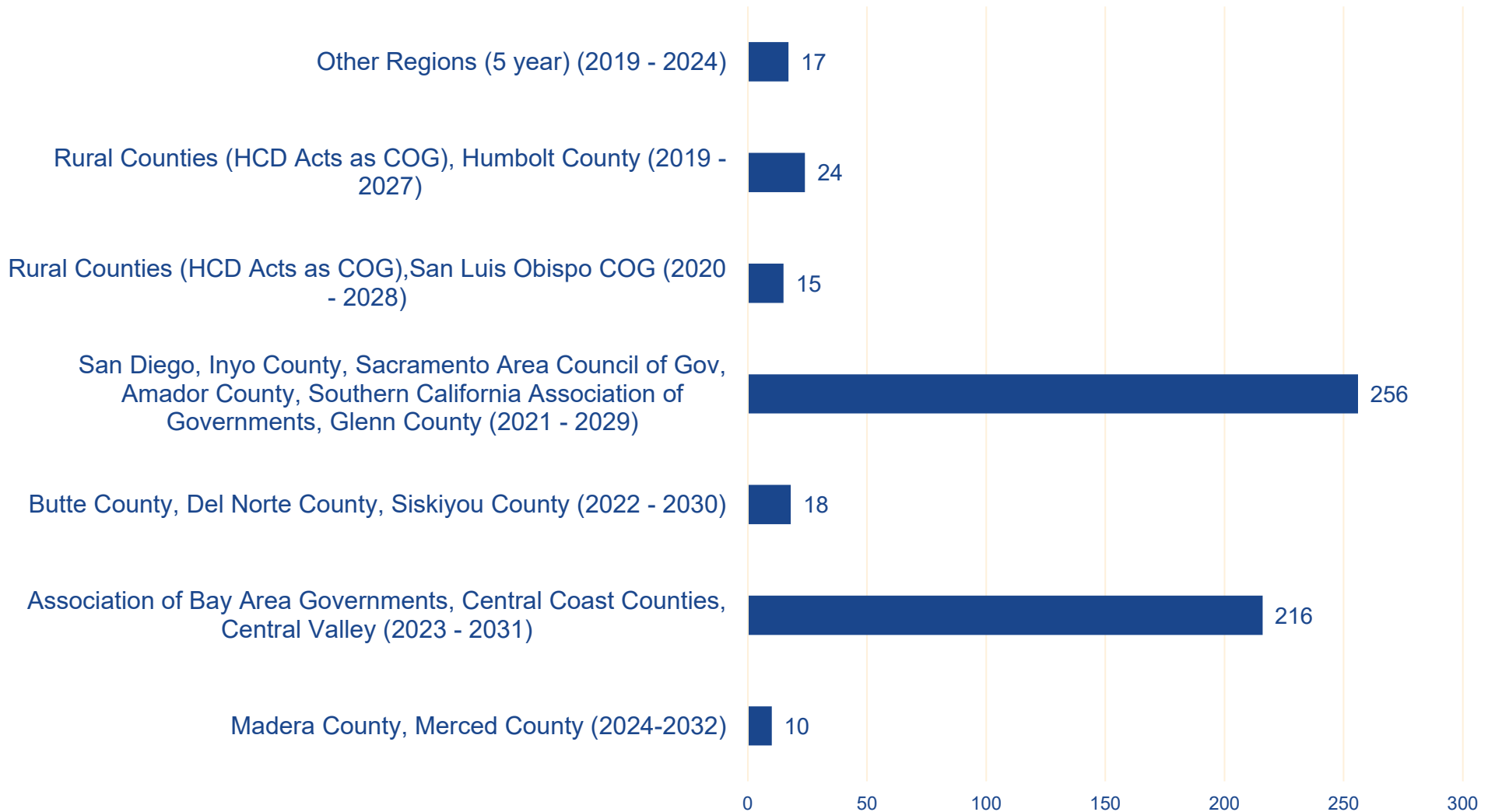
# Housing Element Law

*Government Code sections 65580-65589.11*

- Enables the State to influence housing supply and affordability through:
  - Implementation of state housing law
  - Review of every locality's housing element
  - Accountability measures to ensure localities meet their commitments and follow state housing law
- Lays the foundation for other HCD housing activities, including planning grants, pro-housing designation, accountability & enforcement, preservation, ADUs – and getting housing built
- Must be updated:
  - Every 8 years for 521 jurisdictions
  - Every 5 years for 18 jurisdictions (mostly in small, rural counties)



# 6<sup>th</sup> Cycle





# Consequences of HE Noncompliance

## Ineligibility or delay in receiving state funds

Permanent Local Housing Allocation  
Local Housing Trust Fund  
Infill Infrastructure Grant Program  
SB 1 Caltrans Sustainable Communities Grants  
Affordable Housing and Sustainable Communities

**Cannot use inconsistency with zoning  
and general plan standards to deny an  
affordable housing project**

(Housing Accountability Act)

## Legal ramifications

HCD may notify the AG, legal remedies include  
\$10,000-\$100,000 per month in fines x 6 for continuing  
noncompliance

Broad discretion for court to impose other remedies

Private parties can sue for HE compliance as well



# An Eight-Year Contract

*A housing element is no longer a paper exercise – it's a contract with the state of housing commitments for eight years and the Housing Accountability Unit will hold jurisdictions to those commitments.*



# Proactive Enforcement

- Jurisdictions must commit to monitor certain site inventory strategies and make adjustments throughout the planning period
- Tracking, monitoring, and enforcing key program commitments and timeframes
- Investing in technology to better facilitate tracking
- Using Annual Progress Report data to identify jurisdictions falling behind on meeting housing goals



# Housing Accountability Act

*Government Code section 65589.5*

- Limits a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards and contribute to meeting housing need.



# Housing Crisis Act

*Government Code section 66300*

- Limits the ability of cities and counties to:
  - Reduce the intensity of land use within an existing land use designation.
  - Impose a moratorium or similar restriction on housing development.
  - Cap the number of housing units that can be approved or built.





# Density Bonus Law

*Government Code sections 65915-65918*

- Requires that local jurisdictions provide density bonuses and development incentives on a sliding scale to developers that propose to build affordable housing.



# Accessory Dwelling Unit (ADU) Law

*Government Code section 65852.2*

- Addresses barriers, streamlines approval, and expands potential capacity for ADUs.
- When local jurisdictions choose to adopt an ADU ordinance, HCD must review for compliance with state law.



# Streamlined Ministerial Approval (SB 35)

*Government Code section 65913.4*

- Requires a streamlined ministerial approval process for development in local jurisdictions that have not made sufficient progress towards their allocation of the regional housing need.
- Eligible developments must include a specified level of affordability, be on an infill site, comply with local residential and mixed-use provisions, and comply with other requirements such as demolition restrictions.



# Affirmatively Furthering Fair Housing

*Government Code section 8899.50*

- Local jurisdictions must take meaningful actions that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.
- Specifically, actions must:
  - Address significant disparities in housing needs and in access to opportunity.
  - Replace segregated living patterns with truly integrated and balanced living patterns.
  - Transform racially and ethnically concentrated areas of poverty into areas of opportunity, and
  - Foster and maintain compliance with civil rights and fair housing laws.
- AFFH duties extend to all of a public agency's activities and programs relating to housing and community development.



# Surplus Land Act

*Government Code sections 54220-54234*

- Purpose: Connect local agencies with developers that are interested in building affordable homes on surplus local public land.
- Requirements:
  - Noticing
  - Good faith negotiations
  - Priority for greater affordability
  - Minimum affordability
- Exemptions, including for affordable housing



## Collaboration with Stakeholders

- Engage in the housing element process at both the local and state level
- Share complaints about potential violations of housing laws
  - [HousingElements@hcd.ca.gov](mailto:HousingElements@hcd.ca.gov)
  - [ComplianceReview@hcd.ca.gov](mailto:ComplianceReview@hcd.ca.gov)
- Invite HCD to speak to members (e.g., conferences)



## Discussion

- What questions do you have about the HAU's process?
- What trends and patterns regarding housing approvals are you observing?
- What are your hopes for the Housing Accountability Unit?

Thank you!

