

# Making Housing Elements Work: Accountability & Enforcement

**SV@Home**  
**March 25, 2022**





# Outline

- Overview of A & E
- The team
- Housing elements
- Proactive enforcement
- Complaint-based enforcement
- Collaboration
- Discussion



## Purpose

**Ensure all local jurisdictions meet their fair share of the state's housing needs and promote development of housing 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

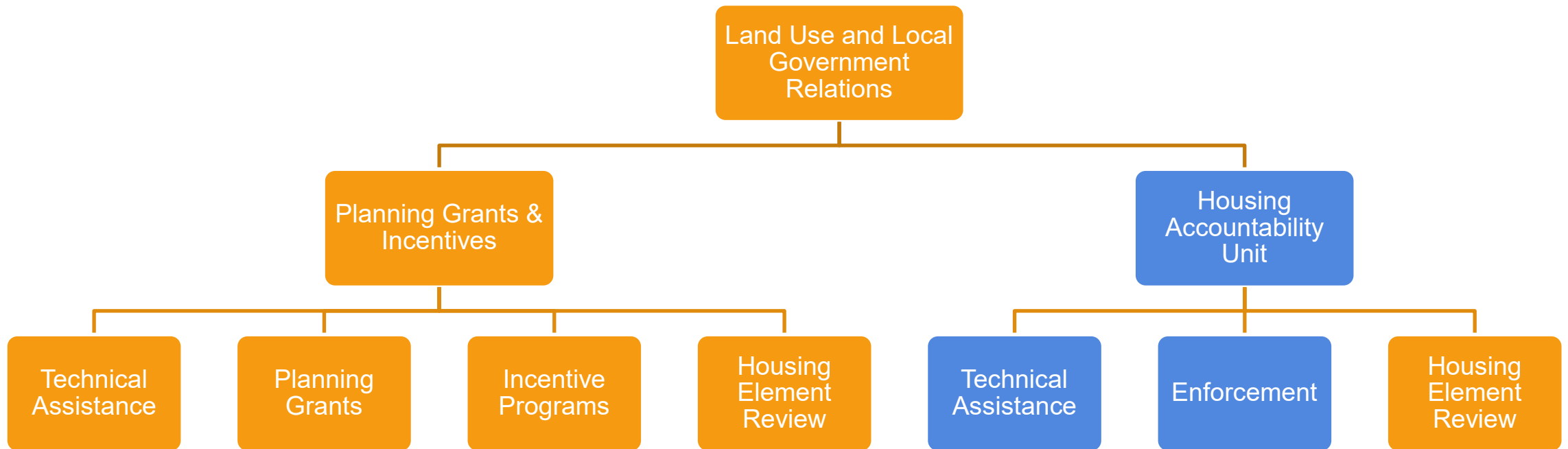


# Overview

- 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



# 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



# Housing Element Law

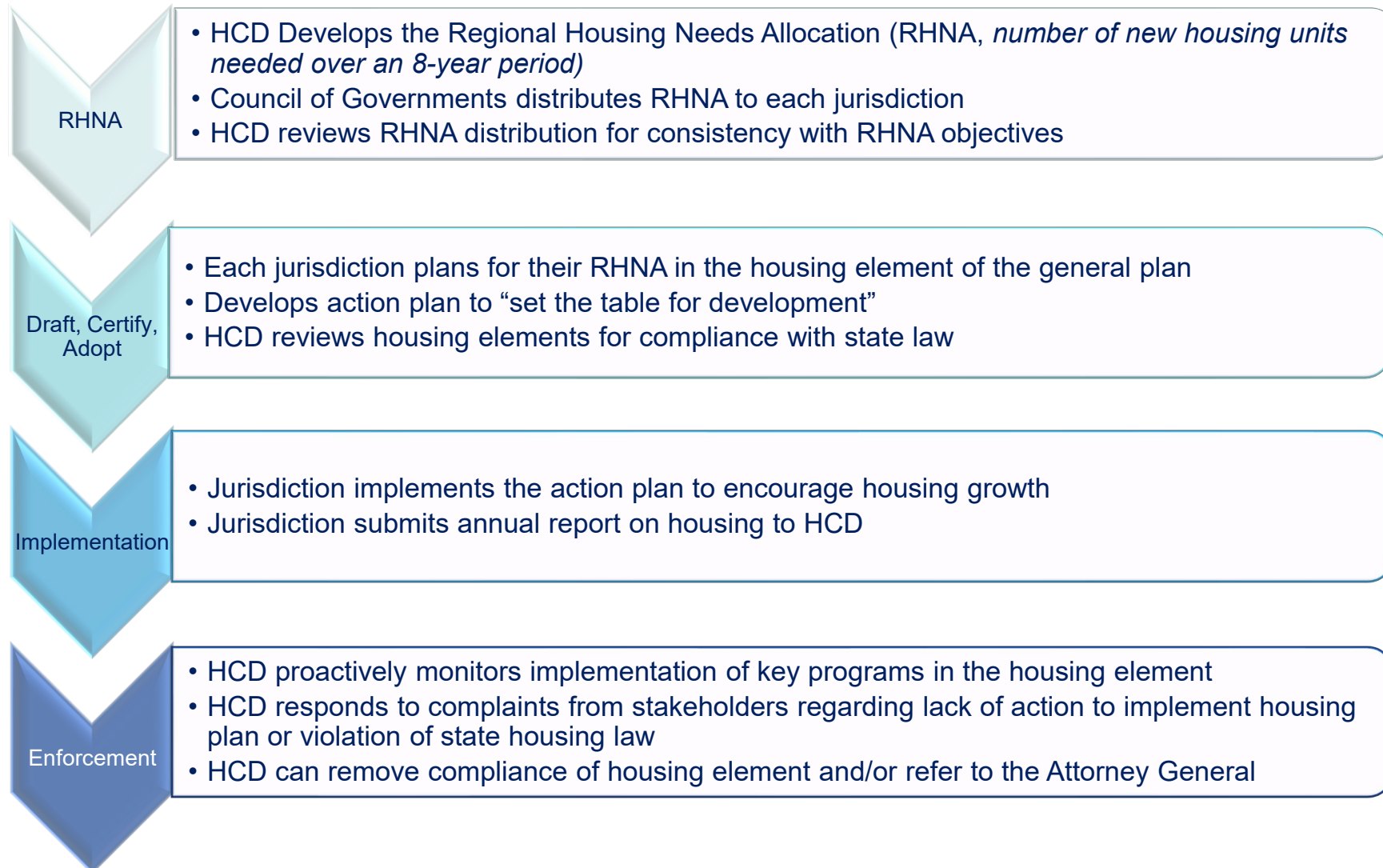
*Government Code sections 65580-65589.11*

- 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)



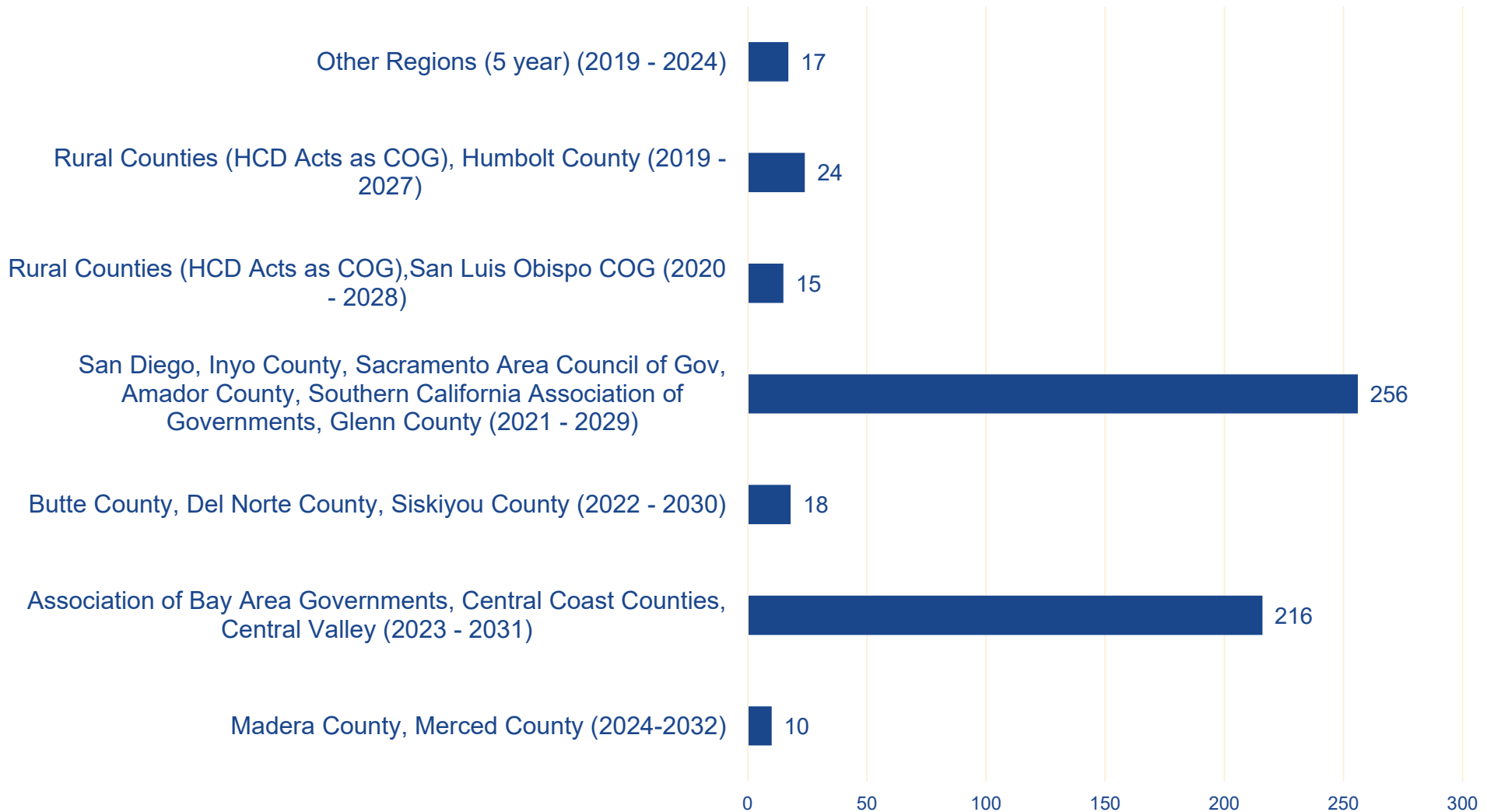


# Housing Elements are a Process that Span Across the Planning Period





# 6<sup>th</sup> Cycle





## Most Common Overarching Issues

- Housing element does not support assumptions.
- Analysis seeks to support existing conditions rather than guide solutions.
- Programs are status quo, do not support the narrative in the housing element, or do not have specific actions and timelines to demonstrate a beneficial impact in planning period. Lack of clear commitments (e.g., “uses Explore, Consider, Evaluate the feasibility, Study....”)
- Little or incomplete public participation has led to more third-party comments for HCD to consider.



# Key Areas of Non-Compliance

## Affirmatively Furthering Fair Housing

- Sites inventory is developed independently of the AFFH analysis and does not show how conditions are improve or exacerbated.
- Analysis consists of data but not analysis for patterns and trends over time.
- Contributing factors not tied to identified fair housing issues and analysis and are not reflected in program solutions.
- Programs do not work to overcome patterns and trends, are status quo, and lack metrics and milestones.
- Public Participation did not have affirmative actions to include all segments of the population or seek to consider AFFH.



# Key Areas of Non-Compliance

## Sites Inventory

- Factors and assumptions are not supported with data, development and market trends, and analysis.
- Market and Development Trends (when included) do not relate to the sites inventory.
- No discussion of actual existing uses of the site and how they would impede development or why they are good opportunities.
- Lack of clear substantial evidence that uses will likely discontinue in the planning period (think in three buckets: a) site-specific information relating to use, b) market and development trends to support, c) programs to facilitate redevelopment).



# Key Areas of Non-Compliance

## Constraints

- Describes but does not analyze as a constraint (think impact on cost, supply, timing, certainty, transparency).
- Puts off analysis to a “study.”
- Seeks to justify rather determine if there is a constraint.
- Does not analyze development standards of zones identified in the inventory.
- Does not actually describe and analyze what it takes to go through the planning approval process.



# 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

1. Housing element draft never submitted
2. Housing element remains out of compliance
3. AB 1398 (rezone) implementation
4. Long term housing element implementation
  - 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.
  - Using Annual Progress Report data to identify jurisdictions falling behind on meeting housing goals.



# HCD's 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)

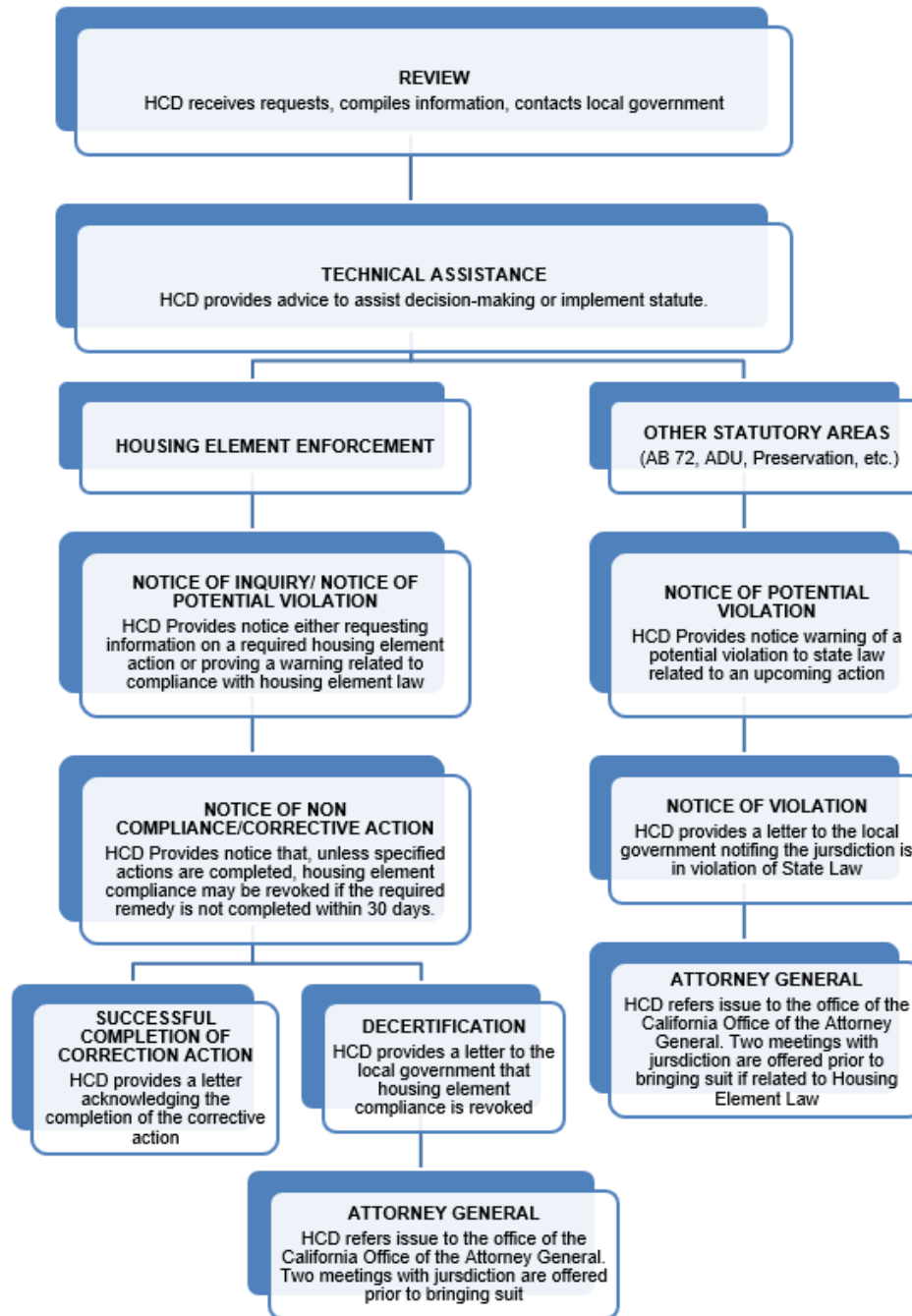
**Housing Crisis Act of 2019 (SB 330)**  
Permit Streamlining Act  
Affirmatively Furthering Fair Housing Law  
Streamlined Ministerial Permit Processes (SB 35)  
By Right Supportive Housing (AB 2162)  
By Right Low Barrier Navigation Centers (AB 101)  
Limitations on Development Standards (SB 478)

## Other housing laws

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



# The Progressive Discipline Approach





## 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)

Thank you!

