

# A Local Agency's Guide to HCD's Housing Accountability Unit

**Presentation to League of California Cities 2023 Annual Conference and Expo  
September 21, 2023**



# Scenario





## A Tale of Two Six-plexes

**Scenario:** You decide that you'd like to diversify your portfolio by constructing and operating a 6-unit apartment building. You call your favorite realtor and say you're looking for a buildable site (i.e., generally flat, out of the floodplain, etc.) that is well served by existing utilities (i.e., you don't have to have to construct a street or extend a sewer main).





# A Tale of Two 6-plexes







## A Tale of Two 6-plexes

**The Site:** You purchase 6,000 s.f. vacant parcel in the R3 Multi-Family Residential zone, which allows 1 unit for every 1,000 s.f. of lot area (i.e., up to six units). The underlying General Plan Land Use Designation is Medium Density Residential. The site is surrounded on two sides by single family residences and by a duplex on one side. It's been a vacant, grass lot for decades. Neighborhood kids build dirt jumps there and one neighbor sneakily parks his waterski boat there every summer.



## A Tale of Two 6-plexes

- **The Process:** You acquire the site and hire a designer to draw up plans for what you think is a reasonably attractive 6-plex. In addition to designing a building that meets building code requirements, your designer meticulously follows all of the development standards in the Zoning Code. The setbacks, open space, landscaping, roof design and materials – everything meets the standards. Feeling pleased with progress so far, you stop by City Hall to drop your plans off for review... (How do things go from here?)



# A Tale of Two 6-plexes

|                                | Path #1  | Path #2   |
|--------------------------------|--|---|
| <b>Time</b>                    | <b>2 Months<br/>(excluding post-entitlement process)</b> | <b>10 Months<br/>(excluding post-entitlement process)</b>                 |
| <b>Cost</b>                    | <b>Flat Plan Check Fee</b>                               | <b>Multiple and higher fees<br/>(reflecting increased staff time)</b>     |
| <b>Hours Spent in Meetings</b> | <b>1 Hour</b>  | <b>Approximately 15 Hours</b>   |
| <b>Outcome</b>                 | <b>A Conventional 6-Plex on an Infill Lot</b>            | <b>A Conventional 6-Plex on an Infill Lot<br/>(Perhaps tweaked a bit)</b> |

*Which path is more effective?*

# Historical Context







# Background

- In the beginning, there were no land use regulations.
- Zoning was created for public health reasons
  - Air & Light (Tenements in NYC)
  - Industrial Nuisance (Everywhere)
- Zoning Regulates
  - Land Use (Geographically)
  - Physical Form of Development (Development Standards)
  - Permitting Procedures



# Zoning Trends

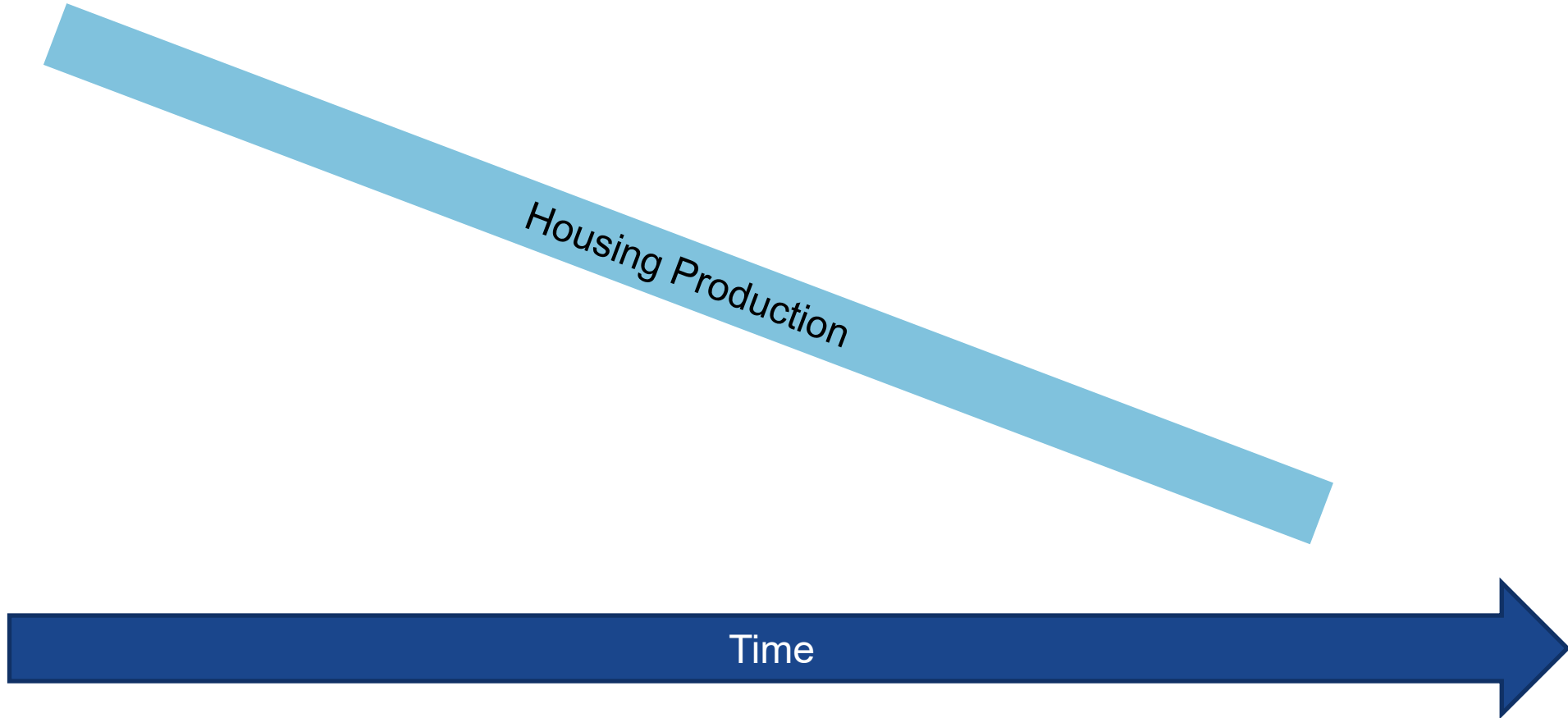


1950

Current



# Zoning Trends



1950

Current



## How have things changed?

- Midcentury Zoning Codes/Procedures were basic
  - Minimal Number of Development Standards
  - Few recommending bodies
  - Many Uses were Principally Permitted
- Current Zoning Codes/Procedures are complex
  - Many pages and many plans (100's of pages each)
  - Multiple recommending bodies (Design Review, Historic, etc.)
  - Most residential uses are Conditionally Permitted

# Current Framework







## What is a good project?

A good project has the following characteristics:

- **Consistent with General Plan**
  - Land Use Element
  - Housing Element
- **Meets all Objective Standards** (Excluding those modified via State housing laws)



# California Land Use Framework

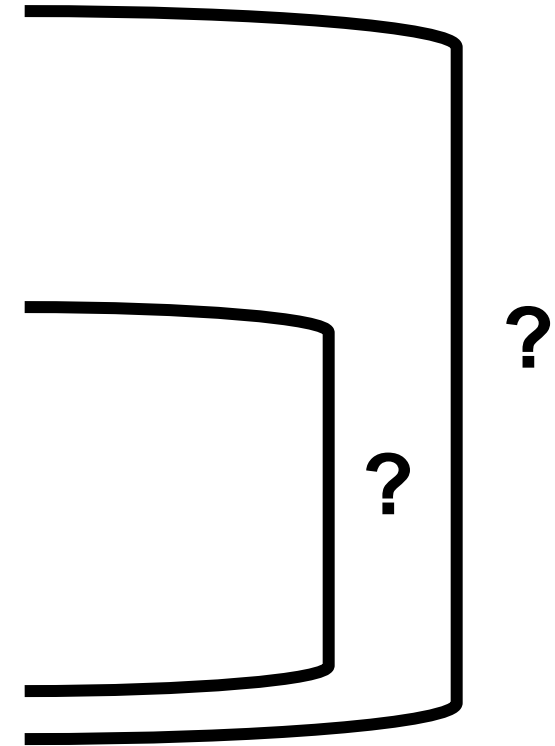
**General Plan**  
(The Constitution of the City)



**Specific Plan/Zoning Code**  
(Implementation Tools)



**Project**  
(Land Use and Design Consistent?)





# California Land Use Framework

*"The Front End"*

***(Writing) The General Plan***

***(Writing) The Specific Plan/Zoning Code***

*"The Back End"*

***(Reviewing and Conditioning) The Project***



# California Land Use Framework

*"The Front End"*

***(Writing) The General Plan***

***(Writing) The Specific Plan/Zoning Code***

*"The Back End"*

***(Reviewing and Conditioning) The Project***

State housing law shifts the focus from the "Back End" to the "Front End"









# California Housing Laws

- **Housing Element Law**
- **Housing Accountability Act**
- **No Net Loss Law**
- **State Density Bonus Law**
- **Anti-Discrimination in Land Use Law**
- **Permit Streamlining Act**
- **Housing Crisis Act of 2019**
- **Affirmatively Furthering Fair Housing**
- **Streamlined Ministerial Approval Processes**
- **By-Right Supportive Housing Provisions**
- **By-Right Low Barrier Navigation Centers**
- **Accessory Dwelling Unit Law**
- **Affordable Housing Preservation Noticing Law**
- **Surplus Land Act**
- **Rental Inclusionary Housing**
- **Limitations on Development Standards**



# California Housing Laws

- Housing Element Law
- **Housing Accountability Act (HAA)**
- No Net Loss Law
- **State Density Bonus Law (SDBL)**
- Anti-Discrimination in Land Use Law
- Permit Streamlining Act (PSA)
- **Housing Crisis Act of 2019 (HCA)**
- Affirmatively Furthering Fair Housing
- Streamlined Ministerial Approval Processes
- By-Right Supportive Housing Provisions
- By-Right Low Barrier Navigation Centers
- Accessory Dwelling Unit Law
- Affordable Housing Preservation Noticing Law
- Surplus Land Act
- Rental Inclusionary Housing
- Limitations on Development Standards



# Selected Laws

**Housing Accountability Act**  
*(Government Code 65589.5)*

**State Density Bonus Law**  
*(Government Code 65915-65918)*

**Housing Crisis Act**  
*(Government Code 66300)*



# **Housing Accountability Act**

*(Government Code 65589.5)*



# Housing Accountability Act (in a nutshell)

*Government Code section 65589.5*

Isn't it frustrating when a City denies a project that meets all of the City's zoning requirements?

Especially since cities are in the drivers seat when it come to writing the rules anyway. They decide where residential uses are allowed – and all of the development standards like set backs and building heights.

Agreed. And the bar to deny a compliant project should set appropriately be high.

Yep! In my opinion, cities shouldn't be able to deny a project that follows the rules written right there on the page.

As long as the development standards are written objectively. A person should be able to read and understand the requirements directly from the code – not wait for the public hearing to learn if their roof pitch is “compatible” with the neighborhood.

Agreed. I think that to deny a project – or reduce the number of units in a project – the City should need to make strict findings of denial. These findings of denial should be laid out in State law.





# Housing Accountability Act

*Government Code section 65589.5*

- **Overview:** Limits a local government's ability to deny, reduce the density of, or make infeasible housing development projects that are consistent with objective local development standards and contribute to meeting housing need.
- **Baseline Protections:** Project meets all objective standards and is consistent with General Plan (Subdivision (j))
- **Enhanced Protections:** Project meets all objective standards and is consistent with General Plan *and* contains 20% low-income or 100% moderate/middle-income (Subdivision (j)&(d))



# Housing Accountability Act

*Government Code section 65589.5*

- **Objective Standards:** Given their full regulatory weight unless lawfully waived or modified by a SDBL concession or waiver.
- **Non-Objective Standards:** Advisory role only (cannot be used a basis to deny or reduce the density of the project)
- **“Reasonable Person” Standard:** Used to determine if a project meets a given objective development standard.
- **Statutory Findings of Denial:** Local agency must make written finding of “specific adverse impact” (as defined).



**State Density Bonus Law**  
*(Government Code 65915-65918)*



# Density Bonus Law (in a nutshell)

*Government Code sections 65915-65918*

Wouldn't it be cool if there was a way to build brand new deed-restricted affordable housing without any government subsidy?

Imagine if a developer could make a trade with the City. The developer chooses to add affordable units to their project and is "rewarded" by being allowed to build more market rate units than they would otherwise be allowed. The two sides balance out and the development stays economically feasible.

The developer would get to bend and break some of the development standards to make the project possible.

Of course! But that's impossible...

That's wild....but what about all the development standards? More units = bigger building. How would the bigger building meet development standards like building heights and setbacks?

Smart!



# Density Bonus Law

*Government Code sections 65915-65918*

- **Overview:** Requires that local jurisdictions provide density bonuses and development incentives on a sliding scale to developers that propose to build affordable housing.
- **Bend and Break Rules:** Concessions and waivers are used to modify or eliminate development standards/requirements to ensure the project can be built at the density proposed.
- **Statutory Findings of Denial:** Apply to the project itself as well as individually requested concessions and waivers (i.e., Must identify a specific adverse impact).





# Incentives/Concessions vs Waivers

## **Incentives and Concessions**

- 65915, subdivision (d)
- Could include development standards or “zoning requirements”
- “identifiable and actual cost reductions” (i.e., economic feasibility)
- 1 – 4, depending on affordability percentages

## **Development Standard Waivers**

- 65915, subdivision (e)
- “physically preclude” (i.e., physical constraints of site/structure(s))
- Unlimited in number (assuming all can be justified)
- Only applies to development standards like setbacks, parking reqs, building height, etc.



# Housing Crisis Act of 2019 (HCA)

*(Government Code 66300)*



# Housing Crisis Act (in a nutshell)

*Government Code section 66300*

Do you know what I find disagreeable?

What?

Well, there are a few different land use decisions being taken by cities that I feel just aren't helping the housing crisis.

Could you give a few examples?

I see issues with (1) Downzoning or otherwise reducing residential development capacity, (2) the imposition of development moratoria and development caps, and (3) the use of non-objective development standards.

Yeah...I see your point. It might be good to hold off on that type of stuff until we get our housing issues sorted out.



# Housing Crisis Act

*Government Code sections 66300*

- **Overview:** Prohibits or limits certain land use-related actions.
- **Three Things Not to Do:**
  - Downzoning/Reducing Residential Development Capacity
  - Development Moratoria and Caps
  - Non-Objective Standards
- **Requirements re: Demolition and Replacement of Affordable Units**
- **Expiration:** January 1, 2030



# Housing Crisis Act

*Government Code sections 66300*

## **Downzoning/Reducing Residential Development Capacity**

- **Circumstance 1: Downzoning**
  - E.g., Downzoning from R3 (40 du/ac) to R2 (30 du/ac)
- **Circumstance 2: Modifying Development Standards**
  - E.g., Reducing the maximum building height in a zone from three stories to two stories



# Housing Crisis Act

*Government Code sections 66300*

## **Development Moratoria and Caps**

- Prohibiting new development in a specified area
- Putting a cap on the maximum number of units that can be built in a specified area
- Only allowing a certain number of units to be built per year



# Housing Crisis Act

*Government Code sections 66300*

## **Non-Objective Development Standards**

- Adopting new Non-Objective Design and Development Standards
- Continuing to implement Non-Objective Design and Development Standards
- Example: “Roof design of new multi-family residential development shall be complementary in design to neighboring properties” vs “Allowable Roof Pitch: 4:12-8:12”



## Top 10 Things to remember

- 1. A good project is one that meets standards** (And good projects should be approved without delay)
- 2. The future is objective** (Subjective standards are a liability – Champion objectivity)
- 3. Denying a compliant project is problematic** (Statutory findings of denial are required – and the bar is high)
- 4. Reducing the number of units in a project is problematic** (Statutory findings of denial are required – and the bar is high)





## Top 10 Things to remember

- 5. If you have inclusionary zoning, almost all projects will automatically be “density bonus” projects (Some requirement is going to be modified – and that’s okay)**
- 6. Concessions and Waivers are a key part of the State Density Bonus Law (Approve them expeditiously – and read the case law)**
- 7. If you’re rezoning or tinkering with development standards – analyze consistency with the Housing Crisis Act**



## Top 10 Things to remember

- 8. If you hear the words “moratorium” or “development cap” – analyze consistency with the Housing Crisis Act**
- 9. Focus most of your energy on writing really great regulations and less of your energy on reviewing individual projects**
- 10. Almost anything in the General Plan, Zoning Code, or Specific Plan can be changed (If a requirement is no longer appropriate – Change it!)**

# Housing Accountability Unit





# Housing Accountability Unit

- **Formed in September 2021**
- **Contained in HCD's Housing Policy Development Division**
- **Receives and processes requests for technical assistance and complaints from**
  - Local Agencies
  - Developers
  - Advocates



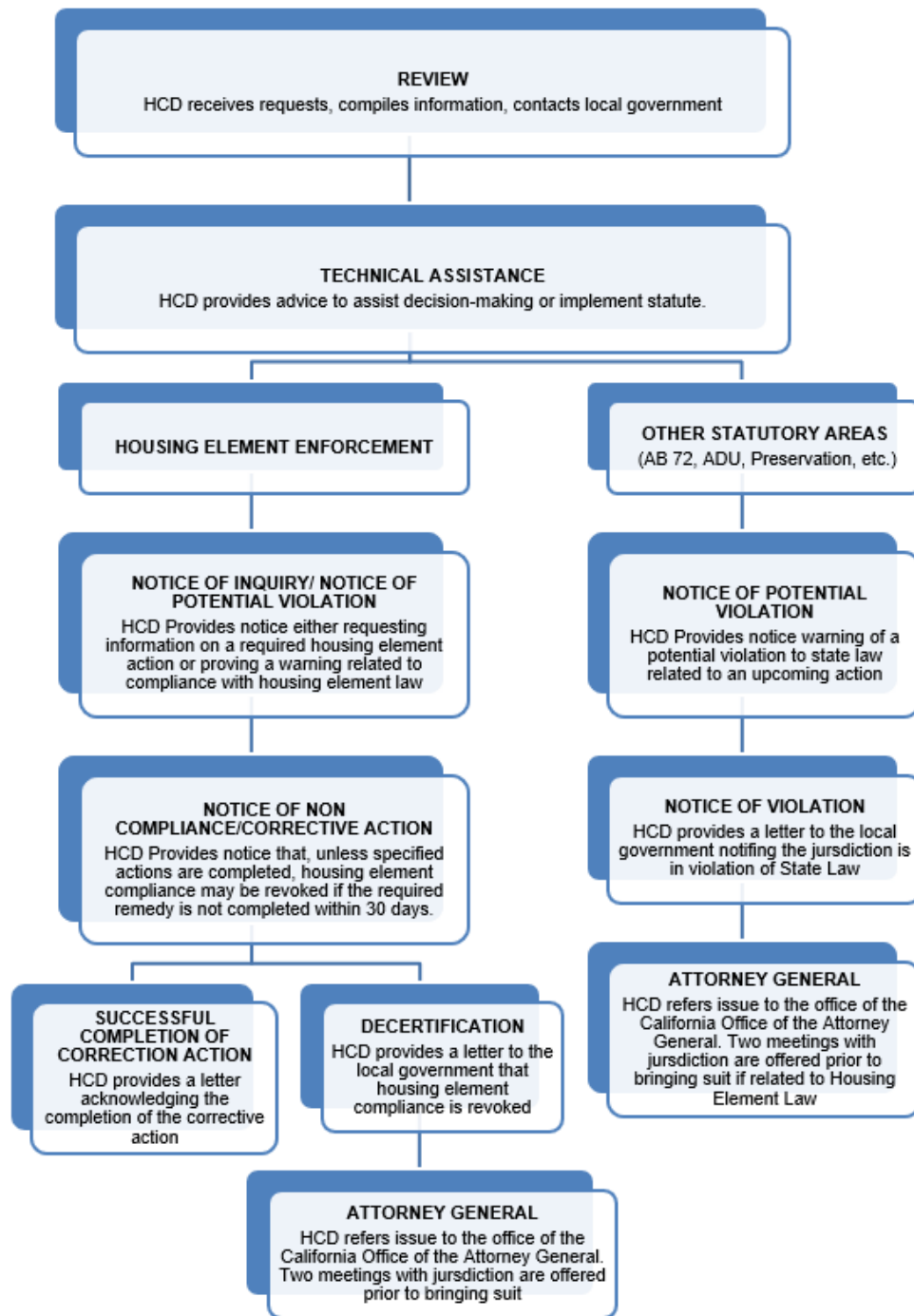
# HAU's Purpose and Strategies

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

1. Provide education and technical assistance to help jurisdictions understand and implement the law
2. Hold jurisdictions accountable for following the law through enforcement actions as needed



## Moving from Technical Assistance to Enforcement





## How to File a Request for Technical Assistance

- Go to [www.hcd.ca.gov](http://www.hcd.ca.gov)
- Hover over “Planning and Community Development” to show a drop-down menu
- Click “Accountability and Enforcement”
- Click “Submit Technical Assistance Requests and Potential Violations to HCD for Review”



# How to File a Request for Technical Assistance

- Create an Account
- Fill in a good number of blanks on an online form and attach documents

California Department of Housing and Community Development

Sign In To Access All HCD Services

Email Address

Password

[Forgot Password ?](#) [Create Account](#)

**Log in**

The screenshot shows the login interface for the California Department of Housing and Community Development. It features a dark blue header with the department's name and logo. Below the header is a light blue background image of a waterfront building. A white login box is overlaid on the image, containing the title "Sign In To Access All HCD Services", two input fields for "Email Address" and "Password" (both with red eye icons for visibility toggles), a prominent blue "Log in" button, and two links: "Forgot Password ?" and "Create Account".





# What Happens After you Submit a Request

- The system creates a case number (e.g., HAU 0932)
- Analyst is assigned
- Analyst reviews submitted materials/researches
- Analyst schedules a meeting with requester and a meeting with the local agency (separately)
- Analyst presents preliminary findings to team
- “Next Step” decision made



## Potential Next Steps

- Additional Review Needed
- HAU Declines to Take Case
- Technical Assistance is Provided
  - Verbal
  - Email
  - Formal Letter of Technical Assistance (Available Online)
- Enforcement Action follows Technical Assistance



## Concluding thoughts

- **Cities have a critical role to play** in achieve housing production goals
- **HCD recognizes how hard it is to “vote yes”** on a code-compliant project that is opposed by a portion of your constituents
- **HCD is a resource and a partner** – Don’t hesitate to reach out!

What questions do you have for us?

