

# Vision Statement for CaRLA

## Problem

For decades, localities across coastal California have limited the supply of new housing construction, which has caused a housing shortage. The undersupply of homes relative to demand causes very high housing prices, displacement, restricted job growth, limited migration opportunities, and a diminished quality of life for residents who are not homeowners.

## Solutions

The long-term solution to California's housing crisis is to build massive amounts of new housing at all levels of affordability. Many localities, dominated by anti-housing development homeowners, severely limit housing construction with restrictive land-use ordinances, convoluted entitlement processes, and various forms of political opposition. Fortunately for pro-housing activists, there are several state and federal laws that restrict a locality's ability to stop housing construction. The California Renters Legal Advocacy and Education Fund (CaRLA) was formed to enforce pro-housing state law and fair housing state and federal law, thereby increasing the amount of housing built and decreasing the cost of housing.

Solving the housing crisis also requires a political movement dedicated to building more homes. Anti-housing NIMBYs could overturn successful court challenges by changing state law. Moreover, it is unlikely that successful legal challenges will compel localities to build sufficient housing, absent local movements demanding more housing. Sonja founded the San Francisco Bay Area Renters' Federation (SFBARF) to advocate for more housing construction. SFBARF's success and growth have encouraged other advocacy entrepreneurs to start their own pro-housing organizations. Sonja recently founded the YIMBY Party to coordinate activities and endorsements among YIMBY groups throughout the Bay Area. Brian and Sonja will continue to work with SFBARF and the YIMBY Party to address the housing crisis, in addition to their duties at CaRLA.

The primary solutions to solving California's housing crisis are:

- Ensuring localities comply with pro-housing state laws;
- Securing favorable state or federal court rulings to overturn exclusionary land use policies; and
- Organizing local residents to demand more housing.

## Strategy

As the legal arm of the YIMBY movement, CaRLA will spearhead the activities under the "legal" subheading. Brian, and Sonja in particular, also work with the San Francisco Bay Area Renters'

Federation and the YIMBY Party to advance YIMBY objectives via the political process, as described under the “political” subheading. As aforementioned, the YIMBY movement needs a political and a legal strategy to win. These different efforts are complementary. Enforcing existing law not only achieves the objective of building more homes, the lawsuits act as an organizing tool. Lawsuits attract media attention and give supporters an effort to rally behind. The publicity also educates the public about the housing crisis and possible solutions, and makes the public more receptive to political organizing. Increased public support for YIMBY positions makes judges more likely to side with YIMBYs, since they will be seen as enforcing the law and popular will, not legislating from the bench.

## **Legal**

CaRLA will educate the public, public officials, developers, and other housing stakeholders about the responsibility of localities to comply with pro-housing state laws. We will file litigation when appropriate. CaRLA will also monitor compliance with state housing laws, and attempt to overturn many exclusionary land use practices via fair housing law, as outlined under the following statute subheadings.

### Housing Accountability Act

The California legislature passed the Housing Accountability Act (HAA) in 1982 to compel localities to permit zoning and general-plan compliant housing development. CaRLA filed suit against the City of Lafayette for violating the HAA. The first few provisions of the HAA are worth reading to illustrate that CaRLA is performing a vital public need that the State recognizes, but has rarely enforced.

- (1) The lack of housing, including emergency shelters, is a critical problem that threatens the economic, environmental, and social quality of life in California.
  - (2) California housing has become the most expensive in the nation. The excessive cost of the state’s housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.
  - (3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.
  - (4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.
- (b) It is the policy of the state that a local government not reject or make infeasible housing developments, including emergency shelters, that contribute to meeting the need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

The HAA can be enforced by lawsuit brought by the affected developer, or by any California citizen. Developers rarely sue to enforce this law, instead opting to negotiate with localities and agree to lower the density of their proposed projects, or just abandon the project altogether. Developers typically avoid aggressive legal threats because their business requires maintaining a good relationship with elected officials. The benefits of increased housing production are dispersed and litigation costs time, money, and goodwill, so ordinary residents never had the incentive to sue. As an organization dedicated to ending the housing shortage, CaRLA has the incentive and will to enforce state law.

CaRLA filed suit against Lafayette for conditioning approval of a housing development on radically lower density. Lafayette ultimately approved the construction of 44 luxury single family homes instead of 315 apartment units, which would have been affordable to moderate income households. While CaRLA's suit is still working its way through the courts, it has already changed how many think of land use. An analyst with the Legislative Analyst's Office told Brian that his office began looking into local land use ordinances upon learning of our lawsuit. If CaRLA prevails in Lafayette, we expect developers to be less timid when dealing with localities. Much of California's pro-housing laws are routinely ignored because localities do not fear litigation. It will not take many winning cases to embolden developers and increase housing production in California.

*Outcomes:* Enforcing HAA compliance will increase the number of homes built in the Bay Area, which will ultimately result in lower housing prices, reduced displacement, increased job growth, and a higher quality of life for non-homeowners. Localities cannot legally respond to HAA enforcement by downzoning land, if the land was zoned for a certain density in their Housing Element. Enforcing compliance should also earn CaRLA allies in the housing development community, who could help finance CaRLA's operations and strengthen the political coalition to build more housing.

### Density Bonus Law

In 1979, California passed the Density Bonus Law (DBL) to grant density bonuses if the housing included below-market rate housing affordable to low-income people. Any new residential development that provides on-site inclusionary housing (as little as 5 percent) is entitled to an increase in the amount of housing units allowed on the land. Localities all over California, including San Francisco, either ignored the state law, or passed non-compliant density bonus policies. No organization or individual took it upon themselves to enforce this state law.

In 2013, attorney David Grabill (friend of CaRLA and former CaRLA panelist) sued the City of Napa on behalf of Latino Unidos, for failing to build sufficient farm worker housing. Along with several causes of action, Grabill argued that the city was in violation of the DBL. The judge dismissed all of the arguments but one, and overturned Napa's density bonus law.

Land use attorneys throughout California began advertising the ruling, encouraging their clients to apply for the state density bonus:

In light of this decision, experienced land use attorneys in San Francisco are wondering whether it is time to finally review its density bonus ordinance (actually, its lack thereof) to determine whether it meets the Court's holding in the *Latinos Unidos* case.

Five developers in SF alone have applied for the state density bonus program. The SF Planning Department did review its non-compliant density bonus program. February 25th, 2016 the SF Planning Commission the newly compliant density bonus legislation crafted by the planning department was recommended by planning. Sonja, Brian, and other YIMBY activists testified before the Planning Commission. No matter what local ordinance SF passes, developers may opt to receive the state density bonus. CaRLA will work with developers to inform them of their rights, and defend them in public and in court if San Francisco denies state-mandated density bonuses.

*Outcomes:* Enforcing the state Density Bonus Law will not only have the same salutary effects as HAA compliance, it will also create permanently affordable homes and promote economic and racial integration. Advocating on behalf of the DBL will also permit CaRLA to partner with traditional fair housing advocates, like David Grabill, to achieve our shared objectives.

### Housing Element Law

Originally passed in 1969, California's Housing Element law requires localities to submit a "housing element" to the CA Office of Housing and Community Development (HCD) every 7 years. The housing element must show that the city is zoned to accommodate the residential growth assigned to it by the Regional Housing Needs Allocation (RHNA). The current 7 year period runs period from January 31, 2015, through January 31, 2023. In exchange for submitting a compliant housing element, the locality receives state transportation funds.

Developers are supposed to be able to build the housing units zoned for in the locality's housing element. In reality, some of the sites are inappropriate for building (one famous example is a town that put a cemetery in their list of sites). In addition, cities sometimes downzone after submitting their housing elements, putting them out of compliance. (For example, Walnut Creek recently downzoned their downtown.) On sites that are available, and appropriate for development, developers report that localities refuse to permit, or permit conditional on lower density, their zoning complaint applications. Here is where CaRLA comes in. Currently there is no mechanism, besides the rare brazen developer, to ensure that the zoned land is developed according to the housing element; or to reliably prevent cities from downzoning their way out of compliance with their housing elements. CaRLA will fill this hole in monitoring and enforcement.

CaRLA is currently monitoring Walnut Creek for noncompliance with their Housing Element. Walnut Creek's Housing Element was certified by the CA Department of Housing and Community Development (HCD) on September 25, 2014. The housing element claims that commercially zoned land in the Walnut Creek downtown is available for residential development, and indeed until January 12th, it was. In response to organizing by a group called "Walnut Creek for Controlled Growth," on January 12th,

Walnut Creek city council amended their planning code to remove the possibility of building residential in their downtown, putting Walnut Creek out of compliance with their housing element and vulnerable to a lawsuit.

*Outcomes:* By monitoring and enforcing Housing Element compliance, CaRLA could make a heretofore ineffective law a strong tool for encouraging the production of market-rate and BMR housing, as the State intended. Given CaRLA's lawsuit against neighboring Lafayette, Walnut Creek should take our threat of litigation seriously, and consider rescinding their downzoning.

#### Federal Fair Housing Act and the CA Fair Employment and Housing Act

CaRLA will advance strong interpretations of the federal Fair Housing Act and the state Fair Employment and Housing Act to remedy racial segregation, which would have the effect of increasing housing production. We intend to enter into a long-term partnership with the Haas Institute for a Fair and Inclusive Society, to overturn exclusionary land use practices. The first step is co-sponsoring a panel discussion on 4 April 2016, "Fighting Exclusion: Innovative Approaches to Fair Housing Law." Brian will moderate a panel discussion featuring Stephen Menendian (Assistant Director and Director of Research for Haas), Kim Savage (a land use and fair housing attorney), and Paul E. Smith (an attorney with HUD's Office of Fair Housing and Equal Opportunity).

*Outcomes:* The panel discussion will result in better informed and connected housing advocates, housing attorneys, and interested law students. Stephen and Brian hope to change how the legal community thinks of fair housing law by making explicit how exclusionary land use ordinances make housing more costly, which burdens renters and leads to racial and economic segregation. Much like how the early Federalist Society connected and informed conservative law students and attorneys, CaRLA hopes to conduct panel discussions and publish law review articles to create a community of pro-housing attorneys that alter fair housing jurisprudence.

Brian and Stephen hope to build and litigate a case that will overturn exclusionary land use practices, including density restrictions and convoluted entitlement processes, within three to five years. Last year, the Supreme Court upheld disparate impact claims under the Fair Housing Act. HUD recently released their long-awaited Affirmatively Furthering Fair Housing rule. We think the time is right to challenge the very laws and practices that caused the housing shortage. While targeting exclusionary cities like Cupertino or Palo Alto may be more satisfying, we believe that we should target a city that supports our goals, like Richmond, CA. Our relationships with on-the-ground activists in Richmond and City Council members would make implementing a winning suit more successful, thereby serving as a guide to other localities. Given that the Ninth Circuit is the most liberal federal court of appeals and Scalia's passing alters the composition of the Supreme Court, we think an innovative challenge under the Fair Housing Act would prevail.

*Outcomes:* Partially overturning some exclusionary land use practices could alter patterns of segregation and auto-centric land use, as well as lower the price of housing via increased housing construction.

## All State Housing Laws: Monitoring and Deterrence

Much of CaRLA's work will focus on monitoring compliance with state housing laws, not litigating. Cheaper and less antagonistic than litigating, CaRLA intends to develop in-house monitoring capacity for compliance with state housing laws. For now, we rely on local journalism and increasingly, Sonja's connections with housing advocates and developers throughout the Bay Area. CaRLA's involvement with a Clayton, CA housing controversy illustrates the capacity of CaRLA to influence housing decisions without resorting to litigation.

Clayton is a small town between Walnut Creek and Pittsburg. As required by state law, they rezoned to accommodate their regional housing needs allocation. In December, the owner of three of the upzoned parcels held a community meeting to introduce his plan for 60 condominium townhouses, 100% zoning and general plan compliant. The initial community response was overwhelmingly negative. This landowner was immediately cowed into coming back with an informal proposal for a smaller project. No proposal has been submitted to the city yet.

Sonja learned of this situation through her network of housing advocates and professionals. A Clayton city council member who favors the project mentioned the already deteriorating situation to her contact at the Building Industry Association. Sonja's contact said, "I have just the organization for this situation," and forwarded her the case.

Sonja is in contact with the landowner/developer in Clayton. He has been convinced to proceed with the original proposal. He confirmed that the community's ire was initially directed at him, but he successfully deflected it to city council (the authors of the zoning). He agreed it will be helpful for city council to be able to deflect their ire to the state law, as personified by a representative of CaRLA. He will let Sonja know when the next community meeting is scheduled.

Apart from Clayton, CaRLA is also monitoring situations in Palo Alto, Danville, and Pleasant Hill. There is a small (zoned for 44 units) project in Palo Alto that is in the process of being reduced to 16 units. There is a project in Danville that initially announced it wants to take advantage of the state density bonus law, but it's facing hostility. There are potentially 96 units in a Pleasant Hill parcel that are at risk. Sonja will visit all of these city managers, developers and heads of local homeowner groups and let them know that CaRLA exists, we know the law, and we have the will and capacity to enforce the law.

*Outcomes:* As the Clayton intervention illustrates, monitoring, education, and threats of litigation can stiffen the resolve of developers to build more housing. In the past, localities were free to ignore state law because few people attempted to enforce it. Localities will be less likely to downzone or deny state-mandated density bonuses if they know an aggressive legal nonprofit is watching them.

## Staff

Sonja and Brian will serve as co-Executive Directors. Brian will focus on compliance, record keeping, raising money through grants, and federal fair housing initiatives. Sonja will focus on organizing, raising money from individuals, and seeking out new California housing law cases. Brian and Sonja will both do outreach, set strategy and organize educational events and write educational materials. Similar positions in San Francisco pay between \$70,000 - \$90,000 per year, which means two full time employees will cost about \$200,000 per year.

Tasks to be split between Sonja and Brian:

- Maintain and update CaRLA website: [www.carlaef.org](http://www.carlaef.org)
- Case Research
  - Interview participants in potential housing development projects
  - Determine what intervention, if any, on our part would be the most effective
- Case Fundraising
  - If the intervention costs money (for example, Walnut Creek housing element enforcement), organize a funding strategy for that intervention in particular
- Case Execution
  - Setting up and attending meetings with bureaucrats (in the case of the Walnut Creek housing element enforcement, this would mean going to HCD to talk to my contact there)
  - Writing the complaint, if necessary
  - Publicising the project
- General Fundraising and Networking
- General PR
- Organizing educational and social events
- Organizing support for specific housing development projects at their planning hearings
- Recruiting and managing intern(s)
- Monitoring housing production and reporting on our impact

Brian will coordinate with Stephen Menendian of the Haas Institute and other partners to pursue a three - five year fair housing litigation strategy, as outlined above.

Instead of hiring an in house attorney, we hired an outside attorney, Ryan Patterson. Ryan Patterson works for a small San Francisco law firm that represents landlords, NIMBY neighbors, and occasionally small developers. They have experience suing cities. The primary NIMBY legal tactic is to sue the city, alleging abuse of discretion, or California Environmental Quality Act violations, in the city's approval of building permits. Ryan is relatively cheap (\$350/ hr, compared quotes of \$400 and \$455t), and, just as important, isn't conflicted out.

It is rare for an organization of CaRLA's size to have a staff attorney. Attorneys like to work in groups, or work for themselves, with their own staff. This is especially true of litigators. Litigation is labor intensive and requires specialized staff support. Another reason is that CaRLA cannot recover attorneys fees if we have an inhouse attorney.

### **Sources of Funding, Long term Fiscal Plan**

Like most nonprofit advocacy organizations, CaRLA will raise most of its money from several large donors. In addition to Jeremy Stoppleman's \$100,000 donation, we intend to raise funds from other tech leaders that have an interest in providing housing for their growing workforce. We also have connections with the Bay Area Council and hope to raise funds from their member businesses.

CaRLA intends to raise money from developers as well. Surprisingly, San Francisco-based developers are not very organized to advocate on behalf of their shared interests. As CaRLA demonstrates value to the housing community, we believe that we can substantially improve upon SFBARF's fundraising from developers.

Sonja raised \$20,000 last year from small donors online for SFBARF. We hope to build upon her earlier success and raise at least that amount each year going forward for CaRLA. In addition to soliciting small donations, we will explore the feasibility and legality of recruiting "investors" for CaRLA's lawsuits. Investor is in quotes because of course our lawsuits are a terrible investment. If we lose the lawsuit the investor gets nothing, and if we win, the investor gets some share of the attorney's fees. Sometimes the attorneys fee award equals the costs of the lawsuit, but the award can also be less or more than costs. Promising some donors their money back if we win litigation will help CaRLA maintain a good (and unique) kind of relationship with our supporters.

Since CaRLA relies on outside counsel to litigate cases, we are able to recover attorney's fees under California state law. Judges have wide discretion when awarding attorney's fees. Upon winning a case, they may provide CaRLA with nothing, a fraction of our costs, our costs, or some multiple of our legal costs.