CHAPTER 2
HOUSING ISSUES

Housing Affordability

Housing affordability continues to be an important issue. Legislation consistently addresses the planning and funding of housing. In light of the current availability and cost of housing, government must expand and create programs to ensure the availability of housing.

Housing Element Reform

Cities and counties in California are required to prepare and adopt general plans. As part of these general plans, there are nine mandatory elements that serve as a guide for growth, development, preservation and conservation of open-space land, natural resources, and transportation. The only component of the general plan that recognize the need for the maintenance of existing housing and the need for a new housing supply is the housing element.

Through a series of changes in housing element law, local governments are beginning to be held accountable for the policy and actions they take. The law is just recognizing that once government has adopted its' general plan, zoning code and development standards, which have undergone hours of public debate, certain types of housing development applications that are in compliance with those standards should be approved.

Despite best efforts, the law has not worked as well as it could. Low and moderate-income housing is being denied and developments are burdened with paying for local government obligations. Many "in fill" housing applications are opposed with such fervor that applicants find the cities ramp down the zoning density below the current and adopted development standards. Those developments are either withdrawn or approved. While the applicant is empowered to sue, he/she does not pursue that course of action because it is extremely costly. Even modestly sized low and moderate-income housing developments are never built because the developer cannot absorb the costs of litigation, nor can the developer pass on the costs of successful litigation to the prospective homebuyer.

Existing law prescribes procedures for determining a city or county's share of low and moderate income housing needs, but provides no incentive for local governments to approve new housing or promote rehabilitation of the existing housing stock. To address this issue, C.A.R. sponsored AB 2348 (Mullin) in 2004, that would have allowed any city or county to reduce its share of the regional housing needs by 15% for each income group only if the city or county was able to demonstrate that more housing was being built in its community than surrounding cities and counties, and if it had made substantial progress meeting the housing needs of its residents. Early in the legislative session, the bill's author amended AB 2348 to make non-controversial changes to the housing element law. With these changes, C.A.R. decided it would not sponsor this measure. Governor Schwarzenegger signed AB 2348 in September of 2004.

In 2006, C.A.R. co-sponsored AB 2511 (Jones) that amended the Permit Streamlining Act to apply to subdivisions with 49 percent of affordable housing, rather than the previous requirement of 100 percent, and mandate local governments report to the state their housing production in an effort to make sure that they can accommodate their share of the regional housing need for the ensuing 5 years. AB 2511 provides judicial relief for those who challenge local governments that refuse to disclose their plan for meeting the regional housing need to the Department of Housing and Community Development. Additionally, the measure cleans-up the no-net-loss housing law by increasing enforcement

options, and renamed the "anti-NIMBY" law the "Housing Accountability Act," while repealing the granny flat law (which has not been used due to state law on "second" units). This bill was signed into law by the Governor..

In addition to AB 2511, C.A.R. also co-sponsored AB 2526 (Arambula) to defer local government development fees until occupancy permits were issued for housing developments with at least 49% lower-income units in cities that offered meaningful affordable housing incentives. This legislation was introduced to enable developers to build lower cost units at a rate that would have allowed them to be placed on the market with lower construction costs. This bill failed passage of the Assembly Housing and Community Development Committee.

In 2004, C.A.R. opposed AB 2980 (Salinas) that would have allowed cities and counties to certify that their housing elements were in compliance if they could produce an unspecified amount of its regional housing need for very-low and low income families. The bill would have permitted localities to establish rent control on newly constructed units as well as encouraged inclusionary zoning statewide. C.A.R. has historically opposed inclusionary zoning because it does not address the factors that contribute to the high cost of market rate housing such as high land costs, lack of available sites, developer fees and exactions, and a cumbersome permitting process, and requires resale price controls. While C.A.R. agrees with the concept of producing housing that is affordable to such homebuyers, AB 2980 would not provide financial incentives to build such housing, but rather force homebuilders and homebuyers in other income levels to absorb those subsidies. This bill died in the Assembly Appropriations Committee.

C.A.R. opposed AB 549 (Salinas) in 2005, which died in the Assembly Local Government Committee and would have established a pilot program as an alternative means of determining whether a local government's housing element complies with its general plan. AB 549 would have required a city, county, or city and county that adopted an alterative production-based certification of its housing element to submit a self-certification of compliance to the department within 10 days of the adoption of the final draft. Further, the bill revised one of the specified findings for which a local agency may make a written finding to disapprove or conditionally approve an affordable housing development. C.A.R. opposed the bill because it would have weakened the state's Anti-NIMBY law by permitting localities to turn down a development if they had met an unspecified percent of their need rather than 100% as under current law; it left the courts as the only avenue to challenge the legality of the self-certification of the housing element, and required the courts to presume that the certification is lawful, which would have stacked the deck in favor of no "growth cities;" the performance standards in the bill were also minimal, and would have allowed locals to no longer be held accountable to plan for and approve needed housing developments.

Also introduced by Assemblyman Salinas, AB 2468 of 2006 would have repealed the requirement for review by the Department of Housing and Community Development (HCD) of a city's or county's housing element and, instead, would have allowed local jurisdictions to self-certify this component of their general plan. C.A.R. opposed this measure because local governments would have no longer been held accountable for meeting their regional housing need, and would not have been subject to a state review or legal challenge disputing the adequacy of their housing element. Without review by HCD or anyone else, AB 2468 was an open invitation for localities to manipulate and exaggerate the number of sites they have zoned for housing, and fewer housing units would have been built. This was placed on and died on the Assembly Floor Inactive File.

In 2006, SB 1800 that was introduced by Denise Ducheny was sponsored by the California Building Industry Association, but did not reach a broad consensus on rewriting general plan and housing law to make it more reliable and sustainable. While C.A.R. is supportive of the direction of the bill, amendments would have been needed to comport with C.A.R. policy. These amendments would have included: the elimination of the self-certification of the housing element, deletion of the proposed change in law allowing parties to sue a city for violations of housing law, and striking provisions allowing cities to redistribute housing needs. SB 1800 failed passage of the Senate Transportation and Housing Committee.

Additionally, AB 3042 (Evans) which was also introduced in 2006, would have provided an additional procedure within the housing element law to allow a city or county to transfer a percentage of its share of the regional housing need to another

city or county. C.A.R. opposed AB 3042 because it would have allowed local governments to freely transfer their housing creation responsibilities to other local governments, effectively avoiding their responsibility to provide affordable housing. Further, this measure encouraged inclusionary zoning, and placed more responsibility on private property owners for the development of affordable housing since local governments would have no longer been held accountable for their housing creation responsibilities. AB 3042 died in the Senate Transportation and Housing Committee.

AB 2503 (Mullin) of 2006 failed passage of the Assembly Appropriations Committee, and would have allowed local governments to collectively create a joint powers agency (JPA) to pool redevelopment money for the acquisition, development, and construction of affordable housing for low-income families. Additionally, this bill would have authorized local governments to create a Housing Trust Fund within these newly created JPAs and mandated an annual contribution of RDA money or real property to the Trust Fund, and allowed cities or counties to transfer their Regional Housing Needs Assessment (RHNA) numbers to another municipality in lieu of other monetary or real property contributions. C.A.R. was successful in amending this measure to ban local governments from transferring their low-income housing allocations to another city, in a different county or region of the state, with no requirement that those transferred RHNA housing units be built which could have further hindered California's already critical housing supply.

AB 1233 by Assemblyman Dave Jones in 2005 was signed into law by the Governor. The bill states that with respect to the housing element of a local general plan, any unmet housing need from a prior planning period shall be included in the next planning period. The intent is to keep local government accountable for its planning actions and compel them to not ignore unmet housing needs.

In 2006, AB 2572 (Emmerson) would have allowed local governments to count "student dormitories" as permanent housing units that met the locality's share of the regional housing need. C.A.R. opposed this measure because allowing dorm rooms that are restricted to temporary student residents to be counted into every local government's housing element undermines the central purpose of the housing element law – to increase the supply of housing available to all residents. This bill would have immediately reduced the local government's obligation to zone adequate sites for housing for all residents, and could have reduced the housing planning obligation of cities by tens of thousands of units statewide. This bill was amended to satisfy C.A.R.'s concerns, and now takes into account the housing needs generated by the presence of a college campus within the local government's jurisdiction. AB 2572 was signed by the Governor on September 29, 2006.

In 2006, C.A.R. opposed AB 2307 (Mullin), which died in the Assembly. This bill would have extended the deadlines for an additional 4 years, until 2009, for the Southern California Association of Government (SCAG) and Association of Bay Area Governments (ABAG) obligation to adopt and maintain current housing elements that identify sites to accommodate affordable housing. Additionally, this measure would have eliminated the authority of council of governments (COGs) to charge a fee for the cost of distributing regional housing need numbers to local governments. C.A.R. opposed AB 2307 because extending the deadlines for SCAG and ABAG to meet their regional housing need is totally contrary to meeting the state's housing needs for an ever growing population. Further, the current COG billing system of local governments is a fair, inexpensive and efficient way to fund the Regional Housing Needs Assessment (RHNA) process that determines the existing and projected housing needs in each region. Elimination of the COG's ability to charge local jurisdictions for the costs associated with these studies jeopardize the entire "fair share" planning process.

Density Bonus

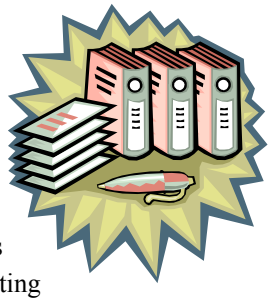
In 2004, C.A.R. co-sponsored AB 1192 (Dutra) to prohibit local governments from requiring housing developers to purchase additional property to be "up zoned" prior to downzoning the current development application. Governor Schwarzenegger signed this measure into law.

Also in 2004, C.A.R. co-sponsored SB 1818 (Hollingsworth) to increase the flexibility and usefulness of the density bonus law by reducing by half the number of units that must be built in order for housing developers to receive a density bonus. Instead of agreeing to build at least 20% of all the units for very low income households, developers will only

need to build 10% of the units. Previously, developers could only use this law to benefit condominium buyers, and under this measure, it will also benefit buyers in planned unit developments. Instead of restricting the resale price of the homes that are built as a result of a density bonus to 10 years, the bill states that the price restriction will only apply to the first owner of the property and will permit that owner to fully recover improvements made to the home and the down-payment. Lastly, the bill will compel local government to quantify its actual assistance payments to make the units affordable. Governor Schwarzenegger signed this measure into law on September 30, 2004.

As a follow-up to SB1818, C.A.R. introduced SB 435 (Hollingsworth) in 2005 to make the density bonus more easily understood, implemented and functional by applying the law to all forms of common interest developments, assure that units built as a result of a density bonus may also extend to moderate income ownership housing and state that localities can recover any initial subsidy for moderate income units upon sale. This bill was signed by the Governor on October 4, 2005.

Building on the success of SB 435 and SB 1818, C.A.R. sponsored SB 1177 (Hollingsworth) in 2006 to prohibit local governments from examining the financial records of housing developers seeking a density bonus when they apply for a waiver of, or reduction in, development standards. C.A.R. argued that requiring developers to open their records to local government to prove that a waiver or modification of development standards is necessary gives local governments the opportunity to dictate, for example, the developer's profit, the type of appliances, marketing strategies and design styles that they believe should be included in the development. Since local governments are NOT financially contributing to the subdivision, they should not have the right to inspect these financial records. This bill failed passage of the Assembly Housing and Community Development Committee.



While existing law defines the minimum densities used for determining if localities have identified sufficient sites to meet their fair share of the regional housing need, AB 2484 (Hancock) of 2006 would have made the density bonus law inapplicable to any site that exceeded the minimum density standard in the housing element law. C.A.R. opposed this bill because it would have effectively eliminated the density bonus law. This measure died in the Assembly Housing and Community Development Committee.

C.A.R. opposed AB 1450 (Evans) in 2005 that would have authorized local governments to require that the resale or transfer of a unit built under the density bonus law be subject to its prior approval and subject to reasonable restrictions and conditions. This measure would have given local government the ability to refuse to approve a resale or transfer of the unit at less than 95% of its fair market value, and allowed local government to require additional and unlimited restrictions and conditions on the resale to ensure the continued affordability and occupancy by households of moderate income for at least 30 years. C.A.R. opposed AB 1450 because it unraveled the work of the Legislature with extremely long term price restrictions on homeownership which were totally unrealistic and would have hurt first time homebuyers. During the Assembly Local Government Committee hearing, held in January of 2006, C.A.R. proposed amendments to the bill, and was successful in removing all controversial aspects of the measure. The amendments accepted effectively made no change to current law, and the author decided not to pursue the bill.

In 2006 Assemblywomen Evans re-introduced the concepts from AB 1450 into AB 2378. This measure would have also authorized local governments to require that the resale or transfer of the unit built using a density bonus be subject to its prior approval and, with other unlimited restrictions and conditions, to ensure the continued affordability and occupancy by households of moderate income. AB 2378 would have initially imposed a 15-year price restriction on those homes built using the density bonus, but was later amended to reduce this price restriction to the first 5 to 10 years. When the measure was considered by the Senate Transportation and Housing Committee in July the chair of the committee proposed an amendment which was accepted by the author that would have required a 30-year price restriction for first-time homebuyers. C.A.R. maintained its opposition to this measure because it would have made homeownership unattractive and compelled owners to sell at a substantially reduced price resulting in these homeowners never accumulating enough equity to purchase another home.

Further, this measure would have discouraged property improvements or maintenance because of the inability to accumulate equity, thus, it would have negatively affected neighboring property values.

Second Unit

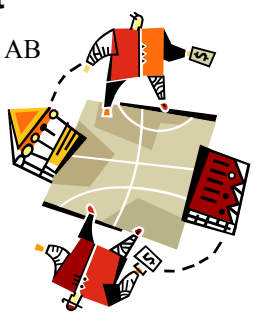
While second units can be a valuable addition to a locality's housing stock without using additional land or infrastructure, the second-unit law enacted two decades ago has not lived up to its potential due, in part, to unreasonable obstacles imposed by local governments.

C.A.R. successfully co-sponsored AB 1866 (Wright) in 2002. This measure strengthened two important state affordable housing laws, second unit and density bonus law. AB 1866 provides that applications for second units must be considered without time-consuming and costly public hearings if the second unit complies with the local government development standards, and declares that local governments may not apply development standards that make it impossible to develop senior and affordable housing with density bonuses. AB 1866 also requires that local governments modify unreasonable parking, setback, height, lot size or similar standards to the extent needed to build affordable housing at the density established in local government zoning ordinances, while also preserving the right of local governments to apply standards needed to protect public health and safety, the environment and historic structures. AB 1866 was signed by the Governor on September 29, 2002.

Building on the successes in AB 1866 of 2002, C.A.R. sponsored AB 1160 (Steinberg) in 2003, which would have specified that local governments cannot adopt ordinances (such as requiring up to five parking spaces for every second unit) that have the practical effect of barring second units from a community. This measure died in the Assembly Housing and Community Development Committee.

C.A.R. sponsored AB 2702 (Steinberg) in 2004 to encourage the development of second units. Like AB 1160, this measure aimed at preventing arbitrary restrictions that are meant to make it exceedingly difficult, if not impossible, to put such units on a property. This legislation would have continued to allow communities the flexibility to design guidelines and zoning code requirements that are appropriate for their neighborhoods, while at the same time, and perhaps most importantly, allowed property owners the ability to build units. This measure was vetoed by Governor Schwarzenegger on September 30, 2004.

Challenges of Local Government



In 2001, C.A.R. successfully co-sponsored AB 369 (Dutra), which allows the prevailing plaintiff (builder or developer) in an Anti-Nimby lawsuit to receive reasonable attorney fees if the local government had turned down or "effectively" turned down a low or moderate-income housing development when the builder/developer has complied with the local government development requirements such as general plan and zoning code requirements. This measure prompts city attorneys to advise city councils and county counsels of their boards of supervisors that they must approve developments that are in compliance with the general plan and zoning codes. Ultimately, failure to meet these demands will subject the city or county to a financial responsibility of paying the developer's attorney fees. This bill was signed by the Governor, and it became effective on January 1, 2002.

Building upon AB 369 (Dutra), C.A.R. successfully co-sponsored AB 2292 (Dutra) in 2002, which prohibits a city or county from arbitrarily reducing the density of a housing development, unless the city or county can produce substantial evidence that the reduction is consistent with its adopted general plan— including its housing element. AB 2292 also requires a court to award attorney fees and costs of a suit to the plaintiff (builder/developer) if the court finds that an action of the city or county is in violation of these provisions. The Governor signed this measure into law, and it became effective on January 1, 2003 and sunsetted December 31, 2006.

In 2005, C.A.R. sponsored AB 712 (Canciamilla) to extend the sunset provision in AB 2292 of 2002 to December 31, 2008. This measure was vetoed by the Governor on October 7, 2005.

Additionally, in 2006 C.A.R. co-sponsored SB 1330 (Dunn) to extend the sunset date provided in AB 2292 of 2002 to

December 31, 2008, and would have permited not just homebuilders, but other interested parties (e.g., potential homeowners) to recover attorney's fees should they have prevailed in their challenge of a local government's compliance with the housing element law. This measure failed passage of the Assembly Housing and Community Development Committee.

C.A.R. supported AB 1227 (Torrico) of 2005, which was vetoed by the Governor. This bill would have required a court to award a plaintiff reasonable attorney's fees and costs of the suit if the court finds that an action of the local government to extend an interim ordinance has the affect of denying approvals needed for the development of projects with a significant multifamily housing component. C.A.R. supported AB 1227 because it would have limited local government housing moratoriums and compelled them to amend their general plans in a timely manner.

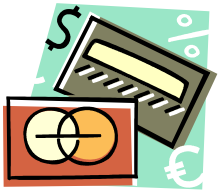
The Planning and Zoning Law requires that a local agency not disapprove a housing development project for very low-, low-, or moderate-income households or condition its approval in a manner that renders the project infeasible for development unless it makes written findings, based upon substantial evidence in the record. SB 575 (Torlakson) of 2005 revised the conditions upon which local government disapproval or a conditional approval of the housing development project is based. C.A.R. supported SB 575 because it requires local governments to be held accountable. This bill was signed into law by the Governor.

In 2003, C.A.R. co-sponsored SB 619 (Ducheny) which provides that low and moderate rental housing developments of 100 units or less can not be denied a permit if they comply with local government development standards and receive a negative declaration or a mitigated declaration under the California Environmental Quality Act. This bill was signed by the Governor on October 12, 2003.

As a follow-up, C.A.R. sponsored SB 326 (Dunn) in 2005 to expand the provisions of SB 619 to duplexes, triplexes, and fourplexes, and further expanded the state Anti-Nimby law to charter cities. C.A.R. embraces policy that allows property owners the right to develop their property with the certainty that local government cannot change the rules in the middle of the process. This measure was signed by the Governor on October 6, 2005.

Housing Finance

In 2001, SB 1227 (Burton) was introduced. Known as the Housing and Emergency Shelter Trust Fund Act of 2002, this measure provided $2.1 billion in bond funds for financing programs giving assistance to multifamily housing, emergency housing, farmworker housing, home ownership for low and very low income households, and down payment assistance for first-time homebuyers. Signed by the Governor in April 2002, this bond act appeared as Proposition 46 on the November 2002 ballot—passing with 57.6 percent of the vote. C.A.R. successfully lobbied the bill's author so that the measure included $85 million for additional capitalization for the California Housing Loan Insurance Fund (CaHLIF) to offer low cost mortgage insurance or, in the alternative, a "silent second" loan for first time homebuyers. At its June 2002 Board of Directors meeting C.A.R. adopted a "For" position on this bond measure.



In 2006, Senator Don Perata introduced SB 1689, known as the Emergency Housing, Community Planning and Farmland Preservation Bond Act of 2006, authorizing the issuance of $2.85 billion in general obligation bonds for state housing programs with approximately $ 950 million allocated for homeownership opportunities. Signed by the Governor in May of 2006, this bond appeared on the November 2006 General Election Ballot. Identified as Proposition 1C, C.A.R.'s Board of Directors, at its June 2006 meeting, adopted a "For" position on the measure because it sought to maintain the funding for the essential programs that provide resources to assist in the development and protection of affordable housing. Proposition 1C was approved with 57.8 percent of the vote.

C.A.R. supported AB 1512 (Garcia) that was introduced in response to the ever changing financial market place concerning the use of 75 million dollars that were allocated to the agency pursuant to Proposition 46 of 2002. This bill requires the agency to make certain downpayment assistance a priority use for these funds, but not downpayment assistance for a new home that is within the boundaries of an infill opportunity zone, a transit village development district, or a transit-oriented development. C.A.R. supported AB 1512 because it utilizes 75 million dollars that are currently