Santa Lucia Conservancy

OPENLANDS SOLAR POLICY

Revised and adopted by the Board of Directors on March 4, 2022

I. PURPOSE

The Santa Lucia Conservancy ("**Conservancy**") intends for this policy to conform to all requirements of law, the applicable terms of documents, and all other Conservancy policies. The purpose of this document is to outline the Conservancy's policy for considering and responding to landowner requests to place solar energy systems for residential use within the boundaries of the Openlands (defined below), and to guide the Conservancy's related practices and procedures. The Conservancy recognizes that such approvals should not be routine but should only occur in rare and limited circumstances. All capitalized terms have the meanings ascribed herein

II. BACKGROUND

The Conservancy is an independent nonprofit public benefit corporation organized under IRS section 501(c)(3) for the purposes of protecting the ecological and other natural values of the Santa Lucia Preserve and demonstrating and promoting sustainable models of private lands conservation. Among other purposes, the Conservancy's specific purposes include:

- Preserving land through fee title ownership and conservation easements;
- Ecological management through the development and implementation of science-based adaptative management and monitoring strategies; and
- Fostering and promotion of a sensitive balance between economic development and the protection of natural areas.

The Conservancy's service area is the Santa Lucia Preserve ("**Preserve**") in Carmel Valley, which contains approximately 20,000 acres of exceptional natural habitat and open space. Within the Preserve, approximately 300 residential lots ("**Lots**") are owned by individual landowners ("**Owners**").

Each Lot is comprised of a building envelope known as a "**Homeland**", and a protected area known as an "**Openland**", to be maintained primarily in its natural condition. The protected area is subject to a recorded perpetual conservation easement ("**Easement**") which restricts the use of the Openland to protect the "natural, scenic, ecological, cultural, open space, agricultural, scientific and aesthetic values" ("**Protected Values**"). Further, the entirety of each Lot is subject to a recorded Declaration of Protective Restrictions for the Homelands and Openlands of the Santa Lucia Preserve ("**Declaration**") which contain additional covenants, conditions and restrictions. The Conservancy is legally obligated under federal and state law to interpret, monitor and enforce the terms of the Easements and portions of the Declaration, along with other similar Preserve documents concerning use of Lots (collectively "**Preserve Documents**").

Consistent with the Preserve design, it is the Conservancy's interpretation of the Declarations and Easements that the installation and use of solar energy systems are not among the classes of uses expressly permitted or reserved in the Declarations and Easements. Solar energy systems are considered inconsistent uses and practices as a class because they constitute "development", "residential use" and "structures", may be inconsistent with the purpose of the Easement and the limitations of the Declarations, and may threaten or compromise the Protected Values as defined in the Easement. It is therefore incumbent upon the Conservancy under the Declarations and Easements to restrict the development of such solar energy systems to the Homelands, except to the extent that such restrictions may be limited by federal, state or local laws and regulations, and in that case only to the extent necessary.

It is presently uncertain how Civil Code §714, the California Solar Rights Act (see **Exhibit E** for reference), may impact or apply to the Declarations and the Easements. The Conservancy recognizes the environmental and public benefits of sustainable use of solar energy technologies under certain conditions promoting the use of these technologies to be consistent with the organization's mission and purpose, as well as the design and intent of the Preserve. The Conservancy therefore supports the use of these technologies on the Preserve, to the extent that such use is consistent with the obligations of the Conservancy to defend the Protected Values, meet the requirements of a tax-exempt, nonprofit public benefit corporation, and comply with other requirements of federal and California law.

III. POLICY

For these reasons and others, it is the policy of the Conservancy to interpret and enforce the Easements and Declarations to prohibit the placement of solar energy systems in the Openlands, with the exception that the Conservancy will approve an Owner application to place a solar energy system, as defined in **Exhibit A** ("**Solar Energy System**"), within the Openlands *under rare and limited circumstances* as may be required under the Solar Rights Act, as currently understood and until the effect of the Solar Rights Act upon the Declarations and Easements has been further clarified, and provided that all of the "**Qualifying Conditions**" set forth below are met.

It is intended that Conservancy staff will implement the Conservancy policy by following this written policy and procedure to make necessary findings and to approve or disapprove an Owner's application. In the event that a controversy arises that is not covered under the written policy and procedure, the staff may submit the matter to the Board, or to any committee established by the Board for such purpose.

In no case will approval be granted that could jeopardize the Conservancy's tax-exempt status, or which could cause the Easement and other Preserve Documents to fall out of compliance with applicable federal, state or local laws, regulations or ordinances.

Because every Lot is unique, no Conservancy decision concerning one Owner's request for Openlands Solar Energy System shall form a precedent with respect to any other Owner's request. Although this policy sets forth certain guidelines and procedures, nothing herein shall be deemed to impair the sole and absolute discretion of the Board of Directors as to whether any particular request by an Owner is acceptable to Conservancy. The approval of an Openlands Solar Energy System is an extraordinary procedure and not available to an Owner as a matter of right, unless the Easement itself, or Federal, state, or local law mandates that an Owner's particular request be approved.

1. Qualifying Conditions:

The Conservancy will consider approving applications for Openlands Solar Energy Systems provided all of the conditions below are met:

A. No Alternative within Homelands. Conservancy must find, based on evidence provided, that Owner of Lot has made good faith efforts to design and site *an alternative system of comparable cost, efficiency, and energy conservation benefits* within the Homelands (using qualified third-party consultation if necessary), and reasonably determined that it would be *infeasible* or *would significantly increase the cost of the system or significantly decrease its efficiency or specified performance*[1], or *would reduce the rated capacity of the system below peak day needs*. Adverse aesthetic impacts alone are not grounds for

[1] Under Civil Code section 714, for solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed within the Openlands. For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed within the Openlands, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed within the Openlands.

determining infeasible. Undeveloped lots generally will be categorically ineligible because a Solar Energy System within the Homelands can and should be considered in initial design.

B. Impact within Openlands. Conservancy must find that the placing of the Solar Energy System in the Openlands (including access, construction, maintenance and operation) is consistent with and supportive of, the preservation, protection and management in perpetuity of the Protected Values, and be undertaken in a manner that does not materially impair or interfere with said values, nor materially impair or interfere with safety, security and comfortable enjoyment of other Owners of Lots.

C. Consistent with Preserve Documents. Conservancy must find that the placing of the Solar Energy System in the Openlands (including access, construction, maintenance and operation) is consistent with any other applicable provisions of the Preserve Documents that the Conservancy is legally obligated to enforce or adhere to, including without limitation Easement, Declaration, and Wetlands-Scenic-Archaeological Easements.

D. No Private Inurement; No Nonincidental Private Benefit. Conservancy must find that no private inurement or non-incidental private benefit issues are present (See **Exhibit D**).

2. Application Procedure:

If an Owner desires to install an Openlands Solar Energy System and reasonably and in good faith believes that they qualify for a limited circumstances approval under Qualifying Conditions A through D, the Owner will submit an application to the Conservancy as described in the Application Procedure attached as **Exhibit B**. During this process Staff will meet with Owner to identify and discuss whether alternatives or modifications can be implemented to reasonably eliminate or minimize adverse impacts to the Protected Values in the Openlands and to the safety, security and comfortable enjoyment of other owners of lots ("**Modifications**"). All approved applications require execution of a license agreement, and recording of a memorandum or notice of said license on the title to Owner's Lot.

3. Staff Findings and Determination:

3.1. Findings. Upon receipt of a complete and sufficient application from Owner, Conservancy staff will review the application and make findings based on the following and other relevant information:

a. Full name of current owner(s) of record (current policy of title insurance or preliminary title report to be provided by Owner); staff should work with Conservancy counsel if necessary.

b. Owner's evidence that there is no alternative design and/or site within the Homelands.

c. Potential adverse impacts on the Protected Values.

d. Information regarding anticipated future vegetation screening and management needs.

e. Whether denial or modification will still allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

f. Whether denial or modification will result in significantly increasing the cost of the System or significantly decreasing its efficiency or specified performance. (See **Exhibit E**, Section A.2. for definition of "significantly")

g. Modifications or conditions that would reduce the adverse impacts on the Protected Values or otherwise improve consistency with the Easement and other Preserve Documents.

h. Whether Qualifying Conditions A-D are met

i. Whether Owner has otherwise met application requirements

j. Whether additional information is needed

3.2. Determination of Approval or Denial.

a. Approve the application, subject to any required modifications, if:

1. Exhibit A definition is met; and

2. Qualifying Conditions A-D have been met, subject to any required modifications; and

3. All requirements in the application have been met, including all required modifications.

b. Deny the application, if:

1. **Exhibit A** definition is not met; or

2. Qualifying Conditions A-D have not all been met; or

3. Required modifications are not all met; or

4. Approval could jeopardize the Conservancy's tax-exempt status, or could cause the Easement and other Preserve Documents to fall out of compliance with applicable federal, state or local laws, regulations or ordinances.

4. License.

All approved applications are subject to Owner's execution and performance of a license agreement substantially in the form attached as **Exhibit C** ("**License**"), subject to all modifications and conditions. Conservancy may, from time to time, modify the terms of the form of License. License will include, without limitation, the following essential terms:

a. All activity strictly limited to area defined as Solar Envelope; restoration required.

b. County permits must be consistent with Conservancy approved application.

c. Active use and good repair of system, or removal required.

d. No soil erosion and contamination; restoration required.

e. Revocation and termination for violation or abandonment.

f. Indemnification of Conservancy by Owner.

4.1. Upon approval of application, Owner will present County approved permits to Conservancy, which must be consistent with approved application. Conservancy will then sign the License, and record the Notice of License in the official records of Monterey County.

5. The Conservancy may, in its sole discretion, revoke or amend or this Policy, which revocation or amendment shall not retroactively affect active licenses granted pursuant to this Policy, provided that the Owner licensee remains in full compliance therewith.

6. Exhibits attached to this policy:

Exhibit A	Definition of Solar Energy System
Exhibit B	Application Procedure
Exhibit C	License Agreement
Exhibit D	General Description of Private Benefit and Private Inurement
Exhibit E	Reference: Discussion of Selected Code Sections

Exhibit A

Definition of Solar Energy System

For the purposes of this policy "solar energy systems" means any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

To be qualified for consideration under an Application, such solar energy systems must meet the following requirements:

1. Health and Safety Requirements – any solar energy system must meet applicable health and safety standards and other requirements imposed by state and local permitting authorities.
2. Solar Water Heating Certification – any solar energy system used to heat water to be certified by the Solar Rating Certification Corporation (hereinafter “SRCC”), a non-profit third-party organization, or other nationally recognized certification agencies. The entire solar energy system and installation process must receive certification, rather than simply certifying each of its component parts.
3. Solar Electric Standards – any energy system used to produce electricity, such as photovoltaics, must meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the California Public Utilities Commission regarding safety and reliability.
4. Applicable law -- Any additional requirements that may be imposed by federal, state, regional or local jurisdictions applicable to the Preserve for the purposes of public health and safety and environmental and ecological health.

Exhibit B

Santa Lucia Conservancy Openlands Solar Energy System Project Application

1) EARLY CONSULTATION. As it can take several weeks to months to complete SLC's Openlands Solar Energy System Project Application process, landowners are encouraged to consult with the Conservancy and Design Review Board (DRB) during the earliest stages of planning and design review. At a minimum, the Notice of License must be recorded in the official records of Monterey County at least **15 days** prior to initiating construction. The application to locate Solar Energy System in the Openlands based on no feasible alternative in the Homelands ("Application") and any associated screening plan will ordinarily be processed concurrently with Owner's design review application by the DRB to ensure the Conservancy representative on the DRB is prepared to vote on the design review application. The Owner should obtain approvals from Conservancy and DRB before obtaining governmental land use approvals, construction and/or grading permits in order to avoid potentially unnecessary costs and delays.

   Prior to preparing a proposal for review, Conservancy and Department of Construction Services (DCS) will make a site visit, upon the request of the Owner, to discuss the proposed location(s) to install the system.

   a) The Owner/Solar Consultant shall be prepared to discuss the Solar Energy System output needs based on the peak day needs of the property. Discussion at the site visit will review the viability of locations inside the Homeland and in the Openlands.

   b) During the site visit, Conservancy staff will be equipped with GIS tools to create a map of the potential Solar Energy System footprint.

   c) Conservancy may propose alternate locations be considered if the proposed Openlands location would have adverse environmental impacts.

2) SUBMIT COMPLETE APPLICATION. The burden is on the Owner to submit an Application that is complete and sufficient for meaningful consideration. Incomplete applications will be delayed as Conservancy will request additional documentation. All materials must be submitted at the same time to the Conservancy. A complete application includes the following as well as further requested information:

   a) Solar Application Fee. The Owner will pay a fee of $1,000 made out to Santa Lucia Conservancy. The fee will help to offset Conservancy costs of meetings, inspections, and preparation and recording of the appropriate documents. Under circumstances where Conservancy incurs extraordinary costs and expenses, Conservancy may charge an additional amount to cover its actual costs and expenses. Total fees will not exceed $2,000.

   b) Schematic and Details: Plat Map and Legal Description or other mutually acceptable detailed schematic and narrative that includes details of all solar installation areas, in addition to the array location, including information regarding anticipated future vegetation screening and management needs. The solar installation and all related impacts and activities must be entirely confined to a defined area (the "Solar Envelope"). Owner to include:

      i) Description of the proposed solar array location; installation needs including access, staging, trenching, and grading; anticipated maintenance.

      ii) Description of equipment needed for project for site prep and installation.

iii) If screening vegetation is proposed, provide screening plan with details on proposed native species composition, number of plants, and spacing.

iv) If substantial Openlands impacts are anticipated as part of the installation or staging of the proposed system, provide mitigation and monitoring plan.

c) Evidence that Proposed System Meets Conditions of Solar Policy:

i) Owner must provide evidence that they have made a good faith effort to place the System in the Homelands, have reasonably determined that (1) it is infeasible; (2) it will significantly increase the cost of the System or significantly decrease its efficiency or specified performance in comparison to the proposed Openlands system; or (3) it will reduce the rated capacity of the system below peak day needs.

(1) Good faith effort includes qualified consultation concerning alternatives for design and siting of the system in the Homelands to avoid impact to Openlands.

(2) Adverse aesthetic impacts in the Homelands alone shall not be grounds for locating system in Openlands.

(3) Any proposed system must also be designed and sited within the Openlands to minimize impacts to Openlands.

(4) Owner to include commentary of locations considered in the Homeland for comparison, calculations to demonstrate peak day needs, costs and energy productivity and efficiency.

(5) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed within the Openlands.

(6) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and proposed within the Openlands, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed within the Openlands.

(7) Applications for Openlands Systems may be denied if Conservancy determines it is feasible to install an alternative system of comparable cost, efficiency, and energy conservation benefits within the Homelands.

d) Design and Site. The System must be designed and sited to meet all the following criteria:

i) System shall be limited to a Solar Energy System as defined in **Exhibit A**.

ii) System shall be originally specified and proposed to serve only residential and appurtenant uses of the Homelands as may be or have been approved by the Design Review Board ("Approved Homeland Development").

iii) System shall be limited to a consumer system designed for distributed generation, i.e., any onsite generation, interconnected and operating in parallel with the electrical grid, which is used solely to meet onsite electrical load. Such systems shall be specified and proposed solely for the level of performance necessary to meet the energy needs established for the Approved Homeland

Development, and not to produce excess energy. While the sale back to the public utility grid of excess electricity that may incidentally be produced by a Solar Energy System on occasion is not prohibited, the rated capacity of the System shall not materially exceed the projected peak day needs of the Approved Homeland Development.

iv) System installation and use will be implemented in a manner that does not materially impair or interfere with the Protected Values (CE Sec. 1, 3.2), nor materially impair or interfere with the safety, security and comfortable enjoyment of other owners of lots (CE Sec. 3.2).

e) DRB Materials. Provide copies of all materials submitted to DRB for Solar Energy System consideration, including DRB Solar Application Form, and Specs and Materials

f) Owner of Record. Owner shall provide documentation of current owner of record (e.g., current policy of title insurance or preliminary title report) to ensure that current owner of record will be legally bound by the License Agreement.

3) REVIEW, MODIFICATIONS AND MAPPING. Conservancy will review the complete application. Additional information or clarification may be requested. Approval of the Openlands Solar Energy System will be provided in writing and may include conditions for resolving impacts during installation or to reasonably eliminate or minimize adverse impacts to the Protected Values and the safety, security and comfortable enjoyment of other owners of lots ("Modifications"). Conservancy will produce maps based on proposal GPS points and/or Owner will stake site.

4) APPROVAL OR DENIAL. Conservancy will provide a written response of approval or denial within 30 days of receipt of complete application.

5) PERMITS; RECORDING OF NOTICE OF LICENSE. If approved, Owner will proceed to obtain required permits from County. Owner will present County permits to Conservancy. Provided that the permits are consistent with Conservancy's Solar Energy System approval, Conservancy will execute License Agreement and record the Notice of License in the Official Records.

Exhibit C

License Agreement

(with Notice of License)

See next page.

Exhibit D

General Description of Private Benefit and Private Inurement

I. The IRS places limits on “private inurement” and “private benefit” permitted by actions taken by a charitable organization. The organization has a duty to protect its non-profit, charitable tax status by limiting risks associated either of these outcomes.

   a. Private Inurement: The private inurement doctrine forbids the flow of assets or income from a non-profit organization to an insider, such as a governor, staff member, trusted advisor or other ‘insider’. The law defines an insider (referred to as a "disqualified person") as any person who was "in a position to exercise substantial influence over the affairs of the organization" during the past five years. Insiders include key executives and voting members of the board. In addition, certain related parties may be considered insiders, including family members and businesses in which an insider (or group of insiders) has more than a 35 percent interest. A company may be an insider even if it is not controlled by an insider. For example, a management company may be an insider with respect to a client organization if it has ultimate responsibility for supervising the management of the organization and its day-to-day operations.

      No private inurement is permissible by law, even incidentally, and may result in loss of the organization’s tax exempt status.

   b. Private Benefit: In contrast, a private benefit occurs when benefits accrue to disinterested persons, i.e., those unrelated to the organization’s insider operations. Minor incidental private benefit may occur without jeopardizing Conservancy’s tax exempt status, particularly in the event that an offsetting increased public benefit results from the activity. However, significant private benefit may result in either an excise tax or, in severe cases, a potential loss of tax exempt status.

      For example, if Conservancy approves a structure on the Openlands of a governor-owned lot, that action could constitute private inurement. If Conservancy licenses a private company to erect a private structure on the Wildlands, and that company is unrelated to any insider (and not otherwise a disqualified person under the applicable Treasury Regulations) but would profit from the use of the building, that raises private benefit concerns.

II. Whenever a conflict of interest arises, in addition to documenting the nature of the disclosure of the conflict and the board’s proceedings to evaluate the conflict, related party transactions may need to be disclosed in the notes of the corporation’s audited financial statements, and its annual tax filing to the IRS.

Exhibit E

Reference: Discussion of Selected Code Sections

(as of March 2021)

It has long been recognized in California that public policy may require eliminating or amending private land use restrictions and that legislative enactments occurring after formation of a corporation may amend or modify the rules of corporate governance as reflected in bylaws drafted in accordance with prior law. To advance state's policy to promote and encourage the use of solar energy systems the legislature enacted laws invalidating existing covenants that prohibit solar panels (Civil Code §714). When enacted, these laws applied not only prospectively but also to covenants in the governing documents of existing common interest developments as of the date of enactment.[2]

California passed a variety of laws aimed at streamlining the approval of renewable energy and energy efficiency projects. The Solar Rights Act of 1978 (CC §§714–714.1), the Solar Shade Control Act (SSCA) (Pub Res C §§25980–25986), and recent amendments to the California Environmental Quality Act (CEQA) (Pub Res C §§21000–21189.3) have significantly reduced the regulatory hurdles for the approval of smaller-scale solar energy projects.

A. The California State Solar Rights Act (California Civil Code § 714 et seq.)

1. The Solar Rights Act limits the ability of covenants, conditions, and restrictions (CC&Rs), typically enforced by homeowner association entities (hereinafter "Associations") and local governments to restrict solar energy installations. An "Association" as "a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development (§ 4080)." The definition of "Common interest development" includes a planned development (§ 4100)[3]. Conservancy is a nonprofit corporation and, together with other Preserve entities (e.g. DRB, CSD, etc.), participates in the management of the Preserve.

2. Civil Code (CC) § 714 states in subparagraph (b) that "…it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto…" Section 714(a) indicates that restrictions on the installation of solar energy systems that "effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable." But it goes on to say this "does not apply to provisions that impose reasonable restrictions…". So only "reasonable restrictions" will stand.

Based on the code and limited current caselaw "reasonable restrictions" on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits. Section 714 (d) states that:

> (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 10 percent of the cost of the system, but in no case more than one thousand dollars ($1,000), or decreasing the efficiency of the solar energy system by an amount exceeding 10 percent, as originally specified and proposed.
>
> (B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed one thousand dollars ($1,000) over the system cost as originally specified and

[2] When the legislature enacts statutes that affect existing governing documents, it raises the constitutional issues of interference with contract and denial of due process. A discussion of whether a statute or ordinance violates the contract clause of the California and United States Constitutions is beyond the scope of this information page.

[3] Declarations, Section 2, page 30-31 states an intention that the Preserve Project not be constituted or defined as a "planned development" within meaning of B&P 11003 or a "common interest development" within meaning of Civil Code Sec. 1351. While it may not have been intended as such it is not a certainty that this distinction would hold up in court as a reason not to apply the Solar Rights Act.

proposed, or a decrease in system efficiency of an amount exceeding 10 percent as originally specified and proposed.

Even if the costs and efficiency exceed the above numbers, restrictions may still be reasonable if they allow for an "alternative system of comparable cost, efficiency, and energy conservation benefits". So, in the case of and Owner desiring to install a solar energy system in the Openlands, if such an "alternative" exists in the Homelands or in a less harmful location in the Openlands restrictions limiting owner to such alternatives would still be "reasonable restrictions".

The limited caselaw indicates that Conservancy does not have to actually identify the "alternative system of comparable cost, efficiency, and energy conservation benefits" when limiting or denying a proposal, but to prevail in a legal challenge such an alternative would need to be successfully demonstrated by expert testimony.

3. Additional applicable terms of note in CC §714:

a. Application must be processed in the "same manner as an application for approval of an architectural modification

b. Application shall not be willfully avoided or delayed

c. Approving entity must give approval or denial in writing

d. If not denied in writing within 45 days it is deemed approved, unless the delay is the result of a reasonable request for additional information.

e. Willful violation of CC §714 may result in being liable for actual damages, civil penalty up to $1,000, and reasonable attorney's fees, if the applicant prevails in a legal action.

4. Cases:

Tesoro Del Valle Master Homeowners Ass'n v Griffin (2011) 200 CA4th 619 (granting injunctive relief in favor of homeowners association requiring removal of solar panels installed in violation of existing CC&Rs and design guidelines);

Palos Verdes Homes Ass'n v Rodman (1986) 182 CA3d 324, 328 (upholding homeowners association's denial of application for installation of solar panels for failing to comply with its "solar unit guidelines").

NOTE: Guidelines by homeowners associations primarily involving aesthetic considerations are reasonable as long as they meet the standards of CC §714. Palos Verdes, 182 CA3d at 327; Tesoro, 200 CA4th at 629 (upholding homeowners association's right to impose reasonable restrictions on improvements to property).

B. Food for Thought: Other Code Sections Which Are Not Applicable, but May be instructive for analysis

The following concepts are from code sections that **do not apply to Associations, but apply to Cities and Counties**. Nevertheless, they may be instructive for Conservancy in evaluating and responding to owner requests:

a. Conditions imposed should be designed to mitigate the specific adverse impact at lowest possible cost (Govt Code §65850.5(e); H&S §17959.1(c)

b. Make completion of the application online possible (Govt Code 65850.5(g))

c. Small residential rooftop solar energy system gets expedited approval at county – they are encouraged (Govt Code §65850.5(h)) [Conservancy and DRB should also encourage.]

d. County cannot condition its approval of permit on Association [Conservancy/DRB] approval (Govt Code §65850.5(i)) [County may approve permit before Conservancy/DRB is finished approval process.]

e. "*A feasible method to satisfactorily mitigate or avoid the specific, adverse impact*" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code. (Govt Code §65850.5(j)(l); H&S §17959.1(e)(1))

f. "*Specific, adverse impact*" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. Govt Code §65850.5(j)(5); H&S §17959.1(e)(3))

g. Make written findings of specific adverse impact and note feasible method to mitigate or avoid; give basis for denial and feasible alternatives for preventing adverse impact. (H&S §17959.1(b))

C. Definition of Solar Energy System, Civil Code 801.5

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) A structural design feature of a building, including either of the following:

(A) Any design feature whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(B) Any photovoltaic device or technology that is integrated into a building, including, but not limited to, photovoltaic windows, siding, and roofing shingles or tiles.

It should be noted that this definition does not include anything about size or purpose, so any reference to CC §801.5 should be further expressly limited to systems appropriate to a single-family residence and no larger, or similar limitation.

D. Solar Shade Control Act (Pub Res Code §§25980-25986)

Public Resources Code §§25980-25986 provides a process by which an owner of land who installs a solar energy system can notify a neighbor of the pending installation, and thereafter prevent the neighbor from planting any plant that then causes shade in excess of 10% of the "solar collector" as defined therein, at any one time between 10am-2pm; such a plant would be handled as a nuisance under the law. This does not apply to plants that predate the installation or that replace a plant that pre-dated the installation.

Presumably the Solar Shade Act would rarely apply to Conservancy except in the case where restoration was undertaken that did not constitute replacement of a pre-existing plant.

E. Monterey County

In accordance with State Solar Rights Act, and other statutory provisions that apply to cities and counties, Monterey County now offers streamlined permit processing for small solar photovoltaic (PV) systems (10kW AC or less) on rooftops of single family or duplex homes in compliance with the Solar Rights Act and AB 2188 (Chapter 521, Statues 2014), in order to "encourage the use of solar systems by removing unreasonable barriers, minimize

costs to property owners and the County, and expand the ability of property owners to install small residential rooftop solar energy systems, while allowing the County to protect the public health and safety."

Monterey County Ord. 18.17.030 - Definitions.

For the purposes of this Chapter, the following definitions shall apply:

F. "Solar energy system" means either: 1. Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating; or 2.Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

Note that Monterey County's definition is similar to CC §801.5.