

INTERPRETATION REQUEST
Processing Permits for Solar Facilities

Code Section(s):

State Assembly Bill, AB2473 (Solar Rights Act)
 Government Code Section 65850.5
 Civil Code Section 714

Date: August 3, 2012

Requested by: Planning and Building Staff

Subject: Processing Solar Facilities

What is the Question?

How are permits for solar facilities to be processed in light of State Assembly Bill, AB2473 (Solar Rights Act)?

Answer: Although Solar Rights Act (Section 65880.5 Government Code) states that an application for solar energy systems cannot be denied for other than health or safety reasons, the Act in its entirety, taking into consideration the Reasonableness Standard of Civil Code Section 714, does not appear to prohibit review or reasonable restrictions in the interest of other resources. We interpret that the purpose is to not to over-regulate installation of solar facilities serving individual homes, but not commercial operations.

The Solar Rights Act (Section 65880.5 Government Code) is written to approve projects administratively, but also does not exempt consideration of other State laws (Coastal Act, DFG, etc). Therefore, it is the interpretation of the Planning Department that the focus is aesthetics (design, height, set backs, slopes, coverage, etc.) and is not intended to supersede protection of all other resources (cultural, historic, biological, etc.). The following explains how each Monterey County standard will be handled:

RESOURCE / STANDARD	REQUIREMENT	APPLICATION FOR SOLAR
Historic Resources	HRRB Review. County designated list We also have HR District overlay, but most of list is not designated	HRRB review if designated HR or in a HR district. No protection if not.
Archaeological & Cultural Resources	Report for High sensitivity mapped areas UP/CDP for positive sites.	No development in Arch easement UP/CDP for positive site Ministerial exemption for negative site, subject to arch report recommendations.
Biological Resources: Wetland Listed Species	Planner reviews site conditions and determines if report is needed.	No impact to listed species UP/CDP for ESHA Ministerial exemption for non-

ESHA	UP/CDP for ESHA.	protected areas.
Tree Removal	AP or UP/CDP	No Change <i>If tree/habitat is listed, see above (e.g. Monterey cypress)</i>
Visual Resources	Design Approval Administrative Permit or Use Permit for VS District Use Permit (CDP) in critical viewshed (Big Sur)	No DA required for D District. No AP or UP for VS District CDP in Big Sur critical viewshed.
Scenic Easements	Recorded Restrictions	Must comply with easement restrictions.
Slopes	AP or UP/CDP	Ministerial exception, but requires Bldg Official to approve erosion control design (e.g. drip line of panels).
Height	Variance to exceed maximum height.	Ministerial exception for solar components only, not for any other part of the structure (roof).
Set Backs	Variance to exceed minimum set back	Ministerial exception unless creates a safety hazard (e.g. traffic visibility).
Site Coverage	Variance to exceed maximum site coverage	Ministerial exception for solar components of ground mounted facilities only.

To help assure appropriate handling, the following guidelines should be followed for processing solar permit applications:

Building Mounted: The Planning Department cannot reject an applicant based on aesthetics of the solar panel. Therefore, if the solar panels are mounted on a building, planning review is not required, unless in the HR district. Building permits can be issued over the counter and no routing to Planning is needed.

Ground Mounted: Because of possible impacts to archeology, biological resources, etc, planning consideration is needed in all cases. Planning will assess if any further permit is required and/or if the facility can be designed to avoid impact to resources.

While some permits may have been issued contrary to the criteria established herein as we have developed this interpretation, this interpretation will serve as Monterey County's guidelines going forward until the matter can be addressed by ordinance at the Board level.

Discussion: This law is poorly written and leaves us with the need to interpret how it applies to County regulations. The Planning Department has developed this interpretation in consultation with staff from the State Office of Planning and Research (OPR), California Coastal Commission, Department of Fish and Game, Monterey County Building Services Department, and County Counsel. We have also gotten some feedback of how other counties within the State of California are handling these matters. We agree that the law is written to approve projects administratively and to make sure there aren't any health and safety issues without reference to

welfare, but it does not exempt consideration of other State laws (e.g. Coastal Act). Therefore, it is the interpretation of the Planning Department that the focus is aesthetics and is not intended to supersede protection of all other resources.

It appears the intent is to address urban areas and building mounted facilities, which is why the language focuses on CC&Rs and Homeowners Associations not prohibiting solar based on aesthetics. As such, building mounted facilities in unincorporated Monterey County are not subject to planning review even if in a D or VS District. The only exception to this is the critical viewshed of Big Sur where a CDP is required.

Slopes, set backs and height are more related to aesthetic and the law specifically prohibits an agency from denying solar facilities based on aesthesis findings. If an owner wishes to place a solar array where is affects some other resource (ESHA, trees, etc), our Codes require that we determine there is no feasible alternative to avoid such development. To do this, we must consider direction for exposure to the sun. If a discretionary permit is required, we cannot include costly conditions thereby making the project cost-prohibitive.

Monterey County does not require separate permits for solar facilities. However, Monterey County does have a number of regulations that are not directed at solar facilities, but rather protection of resources as set forth in the County General Plan. In these cases, technical reports may be required to justify what needs to occur to avoid impacts, but that does not necessarily exempt a project from the discretionary permitting requirement if an owner chooses not to design around these regulatory protections. Therefore, when facilities are ground mounted, they are subject to review to assure the standards that they are designed to protect other resources and this is not considered a restriction to allowing solar facilities.

Monterey County has a designated list of historic resources. We also have a HR District overlay, but most of the list does not have the HR zoning district application. Historic protections are afforded to sites on the list and/or in where the zoning district is applied.

Although Government Code 65850.5 states that an application for solar energy systems cannot be denied for other than health or safety reasons, the Act in its entirety, taking into consideration the Reasonableness Standard of Civil Code Section 714, does not appear to prohibit review or reasonable restrictions in the interest of historic preservation or preserving the integrity of historic resources during the appropriate permit reviewing process. There is some information on the State Office of Historic Preservation (SHPO) web-site related to solar installations and historical structures: http://ohp.parks.ca.gov/?page_id=25664. This site includes a case study that helps illustrate how SHPO is viewing this.

Monterey County's HRRB discussed this topic and found the key phrase is "Historic preservation commissions should negotiate their authority to participate as part of the review process of solar energy systems on historic resources". In other words, the HRRB could suggest placement of a solar system so it's not visible from the street or does not damage historic material. The question is if the home owner would be required to follow their recommendation. If the owner of a designated property wanted to sign up for Mills Act benefits, then they would have to comply with HRRB suggestions on system placement.