

**HIGHLAND HILLS MAINTENANCE COMMISSION
Board of Trustees**

BOARD POLICY NO: 3-10

Dated: June 29, 2009

(Notice: This Policy supersedes all previous HHMC Board actions related to this subject)

TITLE: SOLAR ENERGY PANELS AND RELATED SYSTEMS

PRIMARY RESPONSIBILITY: Architectural Control Committee

REFERENCES:

- 1) RCW 64.38.055
- 2) HHMC Protective Covenants & Restrictions (“PC&Rs”) #21
- 3) HHMC Articles of Incorporation (Article III)

I. BACKGROUND AND PURPOSE:

This HHMC policy addresses requirements to be met by a HHMC member (“Member”) who wishes to install solar power for the purposes of directly supplying home electrical requirements or indirectly off-setting home electric residential costs through a “net-metering” or related process that supplies power to the Clallam County Public Utility District (PUD) grid. This policy is intended to be consistent with a recently passed amendment (Spring, 2009) of RCW 64.38 that addresses the installation and regulation of solar powered systems. The amendment recognizes the need to achieve acceptable design appearance along with the need to meet applicable safety and operation design standards. Further, this policy provides that a Member who installs a solar energy panel must indemnify or reimburse HHMC or any other affected member for loss or damage caused by that Member’s installation, maintenance, or use of the system. (Note: the PUD specifically accepts no responsibility to indemnify for risks of “net-metering” solar systems connected to the grid.)

PC&R #21 provides that no building or structure may be built or placed upon land in Highland Hills, or thereafter altered, unless the Architectural Control Committee (ACC) has given its prior approval. This Policy sets forth the application process for ACC review and approval. One purpose of this Policy is to balance the interests of a Member who wishes to install solar energy panels with the interests of the other members and the community of HHMC.

II. APPROVAL PROCESS FOR ELIGIBLE SOLAR ENERGY PANELS

Installation of an eligible solar energy panel and related components require separate approval and permitting, whether it is part of a new home project, added to an existing residence, or modifies a previously approved system. Appendix A provides the approval form to be submitted by the property owner. (Note: This application may be made only by a Member and may be made only for a system to supply single residence use.) The ACC has 30 days after submission of a completed application to determine whether to approve the application, although it seldom takes that long. All items listed in the Appendix A attachment, along with the Environmental Protection Deposit, must be submitted to the ACC before the application is complete.

Following ACC approval and throughout the installation process, no change may be made to the approved plans and specifications unless the Member first obtains prior ACC approval of the change.

All systems must be installed to professional standards, and be permitted and inspected by applicable governing bodies (e.g. Clallam County and Clallam County PUD), and the Member must have final permits and certifications in place before notifying ACC of project completion. The ACC will then review the signed off documents and additionally assure that any ditch or road edge damage attributable to the installation process has been repaired and necessary landscaping or site screening has been accomplished.

Members are advised to check with their home builder and insurance company prior to installation of devices to determine how such installation impacts the warranty on the roof and other aspects of their structure. Neither the ACC nor HHMC is liable to the Member for roof damage or for effects on roof warranties. HHMC has no expertise or special knowledge regarding such systems and therefore HHMC's approval for installation of any such device or system is not a representation that the system chosen by the Member is safe to use or is compatible with Member's roof or other structures on the property involved, and the Member assumes and bears all risks regarding installation and use of such a system.

III. APPROVAL CRITERIA

For purposes of this Policy, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including without limitation a panel device or system or combination of panel devices or systems that collects sunlight for use in the heating or cooling of a structure or building, the heating or pumping of water, or the generation of electricity for a single residence.

The solar energy panel and related components must meet all applicable health and safety standards and requirements imposed by state and local permitting authorities.

If the system will be used to heat water, the solar energy panel must be certified by the rating certification corporation or another nationally recognized certification agency. Certification must be for both the solar energy panel and for installation and, if used to produce electricity, must meet all applicable safety and performance standards established by the National Electric Code, the Institute of Electrical and Electronics Engineers, accredited testing laboratories, such as Underwriters Laboratories, and rules of Clallam County and its Public Utility District.

In addition, any roof-mounted solar panel system or ground-mounted system must be capable of sustaining the expected high-wind loads experienced in this location. (For instance, in the period 2008-09, wind gusts of up to 85 mph were measured by weather stations located on "Bell Hill.") Roofs are typically constructed to sustain over 100 mph. The ACC will hold the installed solar systems to the same standards.

Any solar energy panel or panel system that fails to meet the foregoing standards is prohibited.

As provided in PC&R #21, in determining whether to approve or disapprove an application, the ACC exercises its discretion on a basis of minimizing interference with enjoyment of nearby land. In addition to appearance issues, the use of a system that enables power to be supplied to the PUD grid to "offset" electrical use through "net-metering" or a similar system places special burdens on the Member to assure there is no negative effect on their neighbors' use of the electricity supplied by the grid.

For systems that will be installed to feed power back into the grid to achieve an offset to home electric costs, components used need to meet the specifications of and be approved by regulating utility and government entities.

In considering whether or not to install a solar energy panel, and in choosing a particular panel from among available alternatives, the Member should be mindful of potential negative side effects of such an installation. A panel that is not harmonious with its surroundings may diminish the value of the home at which it is installed as well as the values of other homes from which it is visible (which, in a hillside community such as ours, may include homes uphill and downhill in addition to those in the immediate vicinity).

Visibility of a panel from the roadways may introduce risk of reflection to vehicles on the roadway. Care must be taken in the installation to mitigate any potential traffic hazard.

A solar energy panel must either be roof-mounted or ground-mounted.

With respect to roof-mounted systems, the ACC will favor panels that have their connectors hidden (on their back side), thus presenting a uniform surface to be viewed. (Even better are panels that give the appearance of a shake roof system.)

In addition, reflection of sunlight from panels may interfere with the enjoyment of other properties. The ACC encourages the use of panels with low reflectivity and installation of panels in reasonably sized groupings on a roof surface. (For example, a 1-kilowatt/hour system would require about 100 square feet of panels.)

Further, the mounting on the roof must conform to the slope of the roof, run parallel to the roof ridge and the vertical edge of the roof system and not extend beyond the top or edge of the roof. No part of it may be visible above the roofline. The panel system including its frame, its support bracket and any visible piping or wiring must be colored or painted to coordinate with the roofing material. Alternatively, if it is constructed of the roofing material, it (including any visible piping or wiring) must have or approximate the appearance of roofing material permitted by PC&R #18 and Section 3.3 of Board Policy 3-3.

In the case of ground-mounted panels, panels and support structures must meet set back requirements from road easements and side and rear property lines (25 feet). The ACC may also require site screening to diminish visibility from the road or from neighboring properties without interfering with accepted performance of the panels (10% maximum degradation). The plan for site screening shall be submitted with the application for approval of the panel.

With respect to both roof-mounted and ground-mounted systems, all permanent utility lines to the solar energy panel that cross the property are required to be underground. The planned interconnection points, along with pathways for these utility lines, are to be shown on the site plan submitted for approval. All utility connections must use a lawful easement created for the specific benefit of the property or acquired through an agreement with a neighboring property. The ACC may require reasonable restoration of private property landscaping or other infrastructure owned by neighbors if a utility connection damages property through which it must pass. In all instances, construction damage affecting HHMC roads or storm water runoff ditches must be repaired in accordance with standards set in Board Policies 9-1 and 9-2.

Approval of any system requires the execution of an indemnity agreement with the HHMC to protect it and its members from loss. The form of this agreement is provided in Appendix B (Indemnification Agreement).

IV. APPLICANT'S RESPONSIBILITY

It is the applicant's responsibility:

- to identify, obtain and provide to the ACC all documentation necessary for evaluation of the project application (See Appendix A, below).
- to identify and comply with all laws and governmental rules and regulations related to the proposed solar energy panel and its installation, including without limitation all applicable zoning laws, rules and regulations.
- to identify and obtain any Clallam County PUD and other governmental Building Permits and approvals required for installation. (The ACC will not intervene in this process, and HHMC assumes no responsibility for representations made to obtain permits or approvals.)
- to assure that installation is completed according to the approved plans and specifications.
- to assure that the installer and contractors involved in the installation observe the construction practices set forth in Sections 5.2, 5.6 and 5.7 of Board Policy 3-3.
- after the solar energy panel is installed, to maintain and use it in such a manner that no loss or damage to HHMC, to any of its members or to any non-member resident of Highland Hills arises from or out of such maintenance or use.
- to submit an indemnification agreement as provided in the form of Appendix B (Indemnification Agreement).

VI. Caveat

As part of HHMC's right to have the Member's agreement to indemnify and hold it harmless under this Policy, HHMC reserves the right to require the Member, based on applicable insurance laws, insurable interests, and rights to name HHMC as an additional insured on the Member's homeowner's policy or other rider or policy the Member has or obtains regarding, relating to, or addressing in any way the installed solar energy panels. Failure of HHMC to do so initially is not a waiver of this right, and HHMC may later require such insurance policy action by the Member at any time.

Appendix A

HIGHLAND HILLS MAINTENANCE COMMISSION
Architectural Control Committee

Solar Power Review Application

Name of Owner(s): _____ Date _____

Mailing Address: _____

Phone: _____ Contact through E-mail (Yes/No)

E-mail Address: _____

Parcel and Lot Number _____ Street Address _____

Homeowner's or other insurance covering this project _____

Contractor: _____

Project Contact: Name _____ Phone Number: _____

Estimated start date _____ Estimated completion date _____

Project Description: New Install to New Home _____ or to Existing Home _____
or Modify Existing Home Solar System _____

Check applicable documents submitted:

____ 2 copies construction plans to scale showing:

____ System location and method

____ Site plan with utility runs, connections and setbacks

____ Manufacturer's description & specification of "generating facility equipment"
and intended use (e.g. Inverter, Design Capacity, Stand-alone or Net-
Metered)

____ Manufacturer's description, specification & photo of solar panels to be used

____ Home roofing material used (if roof-mounted): _____

____ Site-screening materials (if ground-mounted): _____

____ Copy of Clallam County and Clallam County PUD permits

____ \$2,000 Environmental Protection Deposit payable to: Highland Hills
Maintenance Commission (unless it is part of a new home construction)

Signature of Applicant(s)

_____ Date _____

_____ Date _____

Appendix B

Indemnification Agreement

Pursuant to Board Policy 3-10 of Highland Hills Maintenance Commission, a Washington non-profit corporation (HHMC), the undersigned has applied to HHMC's Architectural Control Committee (ACC) for approval of the installation of a solar energy panel (as defined in Policy 3-10) at the following location in Highland Hills:

The solar energy panel is further described in the Solar Power Review Application (the Application), Appendix A, submitted to the ACC by the undersigned dated _____, 20___. References herein to "the Panel" are to the panel described in the Application (including its frame, support bracket, piping and wiring), including any modifications or changes made to such panel (whether or not made with prior ACC approval as required by Board Policy 3-10).

Pursuant to Board Policy 3-10, and as a condition to approval of and inducement to the ACC to approve the Application, the undersigned hereby agrees as follows:

- 1. Indemnification/Reimbursement.** The undersigned agrees to save and hold harmless HHMC, each of its trustees, officers, committee members, members and agents and each of the non-member residents of Highland Hills (each an Indemnified Party), from any and all claims, demands, causes of action, suits, judgments, costs, expenses, damages, losses or liabilities of any kind or nature (including but not limited to costs of investigation and defense, attorneys' fees and expenses), whether or not suit is filed, for death of or injury to any person, or for loss of or damage to any property, or for any other reason, arising from or out of or relating in any way to the installation, maintenance or use of the Panel.

The undersigned agrees to reimburse each Indemnified Party for any of the foregoing paid by such Indemnified Party.

Each Indemnified Party is hereby made an express third party beneficiary of this Agreement.

- 2. Attorneys' Fees and Costs.** In connection with any controversy, claim or dispute, whether or not a lawsuit is commenced (including but not limited to arbitration, administrative action, bankruptcy, other judicial proceeding, and appeal therefrom), arising out of or relating to this Agreement, the method and manner of performance hereunder or the breach hereof, the prevailing party shall be entitled to and awarded, in addition to any other relief, a reasonable sum as and for its attorneys' fees and costs for all services rendered in connection with the investigation of, prosecution (or defense) at all levels of, and prosecution (or defense) of execution of judgment in, such controversy, claim or dispute. Such award shall bear interest at the highest rate allowable under Washington law.

3. Interest and Lien. The amount owed to an Indemnified Party pursuant to this Indemnification Agreement shall be paid when due. Any amount not paid when due shall bear interest at the rate of 12% per annum (or, if less, the highest rate permitted by applicable law) from the due date until paid. Said amount not paid shall (except as prohibited by law) constitute a lien in favor of the Indemnified Party on each lot within Highland Hills owned by the undersigned and on all of the improvements on such lot, which lien may be dealt with and foreclosed upon in the same fashion (if the Indemnified Party is HHMC) or in a similar fashion (if the Indemnified Party is other than HHMC) as if it were a lien for unpaid assessments under HHMC's Protective Covenants & Restrictions and the laws of the State of Washington. The Indemnified Party may file a formal lien with Clallam County in order to further protect such Indemnified Party's interests. The amount of the lien shall also include the recording fee for such filing, interest, and all costs of collection and expenses, including attorneys' fees, incurred by such Indemnified Party.

4. Joint and Several Liability. If the undersigned number more than one, the undersigned shall be jointly and severally liable for performance of this Agreement.

5. Binding Effect and Benefit. This Agreement shall be binding upon each of the undersigned and each of the undersigned's heirs, executors and personal representatives. This Agreement shall also be binding on any successors or assigns of such undersigned (but any such succession or assignment shall not release such undersigned from responsibility).

This Agreement shall benefit the Indemnified Parties and their respective heirs, executors, personal representatives, successors and assigns.

6. Duration of Obligations. The agreements herein and obligations hereunder shall continue in full force and effect notwithstanding any vacation or abandonment of the property at which the Panel is installed, or any transfer of the ownership of or of any interest in such property, by any of the undersigned or by any heir, executor, personal representative, successor or assign of any of the undersigned. In the event any of the undersigned or any such heir, executor, personal representative, successor or assign wishes to obtain re-indemnification from a subsequent resident or owner of the property, it is up to the undersigned to obtain such re-indemnification.

7. Amendment or Modification. This Agreement may not be amended or modified to increase the burden on any of the undersigned except by a writing signed by such undersigned, or to decrease the benefit of any Indemnified Party except by writing signed by such Indemnified Party. No course of conduct or dealing shall amend or modify this Agreement.

8. Severability. The judicial invalidation of any provision of this Agreement, or of the application of any provision of this Agreement to any particular set of facts,

shall not affect the validity of any other provision of this Agreement or the application of such provision to any other particular set of facts.

9. **Governing Law.** This Agreement relates to property located in the State of Washington. It shall be governed by and construed in accordance with the internal law of that State, without regard to conflicts of law principles.

IN WITNESS WHEREOF, the undersigned has subscribed on this the _____ day of _____, 20__.

Undersigned:

Witness(es):

[Signature of Indemnifying Party]

[Signature of Witness]

[Printed Name]

[Printed Name]

[Address]

[Address]

[Signature of Indemnifying Party]

[Signature of Witness]

[Printed Name]

[Printed Name]

[Address]

[Address]

Note: This Agreement must be signed by each of the record owners of the property at which the Panel will be located.