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Building Up To Code

Working out the details of California's solar mandate in common interest developments

By VEENA BEGLINGER AND PAUL DUBRASICH



Normalizing the use of solar energy, particularly as a component of new residential developments, is vital for meeting California's greenhouse gas emission reduction goals. But California's new rooftop solar mandate leaves many practical details to the building industry to determine, especially when it comes to common interest developments.

Last May, the California Energy Commission (CEC) passed a measure, generally referred to as the "Mandate," updating the Building Energy Efficiency Standards, California Code of Regulations, Title 24, Part 6. Under the Mandate all new "low-rise" residences must incorporate a photovoltaic system. A "low-rise" residence is defined as R-2, multi-family having three stories or less, and R-3, single family or U-building, located on a residential site. Townhouses are treated as multifamily under this definition.

The Mandate allows for some flexibility where insurmountable physical barriers exist. For instance, the Mandate does not apply to multi-family developments with more than three stories or where effective solar access is less than 80 contiguous square feet due to shading from existing permanent natural or manmade barriers external to the dwelling. The required size of the system is also reduced as the stories of the dwelling increases. The Mandate also allows a 25 percent reduction in the system size if installed in conjunction with a qualifying battery storage system.

Implementing the Mandate for detached single-family homes is relatively straightforward. When the new home is sold, the homeowner generally enters into the solar system purchase, rental, or other power purchase agreement directly with the solar system provider. Homebuilders, in their home sales documents with homebuyers, will generally give homebuyers the option to either rent or purchase their systems, much as any existing homeowner might do.

If a common interest development has insufficient roof area for individual photovoltaic systems, the developer may consider a community shared solar system to be placed either on available common area land or structures located offsite. This requires approval of the California Energy Commission under Section 10-115. Participants typically own or lease a portion of a system or subscribe by purchasing kilowatt-hour blocks of renewable energy generation. In the case of a condominium or townhouse development, typically either the HOA or the condominium owners jointly own or lease the system or subscribe to the system's capacity. Using the community shared solar system option creates operating efficiencies, flexibility in siting, and potential financial savings, but it also requires common operation and maintenance, coordination with the utility provider, and administrative oversight for

provisions should also address responsibility for maintenance, repair, and replacement of the system, necessary access to the system, and any liability associated with damage to the common area resulting from maintenance or repair activity.

This Mandate remains a hot topic as developers wrestle with the practical details while still keeping homes affordable. Addressing details and navigating the new and evolving laws and regulations dealing with solar energy in California will be vital to keeping California at the forefront of making renewable energy the norm. **BD**

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regulatory compliance.

Whether it is an individual system or a community shared system, the CC&Rs or other governing documents should contain provisions that address California statutes allowing condominium owners the right to install and maintain their own solar energy systems within the common area (California Civil Code Sections 714, 714.1 and 4746(b)(2)). Among these provisions would be a disclosure of the existence of the system installed by the developer or solar provider pursuant to the Mandate, together with an acknowledgment pursuant to Civil Code Sections 714(b) that the system is "an alternative system of comparable cost, efficiency and conservation benefit," in lieu of individual photovoltaic systems. The

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