



## *Peacock Gap Homeowners Association*

### ADDITIONAL RESOLUTION OF THE BOARD OF DIRECTORS OF THE PEACOCK GAP HOMEOWNERS ASSOCIATION REGARDING THE INAPPLICABILITY OF THE DAVIS-STIRLING ACT

**Whereas**, Peacock Gap Homeowners Association (PGHA) with all of its governing documents came into existence during the 1960s. The Davis-Stirling Act (DSA) was initially enacted in 1985 and has been frequently amended since that time. DSA is found in the California Civil Code commencing with Section 1350 and addresses many issues relating to the governance, management, and operations of Common Interest Developments (CIDs).

**Whereas**, Some PGHA members have recently questioned whether the DSA applies to PGHA.

**Whereas**, DSA provides in part:

Civil Code Section 1374. Developments with no common area; application of title

Nothing in this title may be construed to apply to a development wherein there does not exist a common area as defined in subdivision (b) of Section 1351,

This section is declaratory of existing law.

**Whereas**, DSA in Civil Code Section 1351(b) and (k) also provides:

Section 1351. Definitions

As used in this title, the following terms have the following meanings:

(b) "Common area" means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the foregoing. However, the common area of a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(k) "Planned development" means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.

**Whereas**, PGHA owns no real property within the definition of "common area" as set forth in DSA.

**Whereas**, since the 1980s many PGHA Boards and their attorneys have studied the issue of whether PGHA is a CID as defined by the DSA.

**Whereas,** in such reviews the Boards have concluded that PGHA does not fit the definition of a CID under the Act and, subsequently, DSA does not apply to PGHA.

**Whereas,** the current PGHA Board has restudied this issue after getting legal input and reached the same conclusion at its board meeting on January 13, 2010, taking the following action:

Emeritus Corporate Secretary reported on the following topics with recommended actions:

DSA: The legislature adopted these statutes long after PGHA came into existence, and the issue of whether they apply to PGHA has been reviewed several times by Board members and the Association's counsel, all of whom have concluded that the Act does not apply to PGHA. The Emeritus Corporate Secretary noted, however, that, on occasion, PGHA has in the past looked to provisions of DSA for guidance on some issues. The Emeritus Corporate Secretary recommended that the Board adopt a resolution finding that, on the advice of counsel, the DSA does not apply to PGHA and that no further action on this issue is warranted.

Board Action: The Board adopted the recommendation with all members in favor except Colton.

**NOW, THEREFORE, BE IT RESOLVED** that:

1) The PGHA Board reaffirms its January 13, 2010 decision that DSA is not applicable to PGHA, because, considering the totality of PGHA's jurisdiction, no "common area" in that jurisdiction exists within the meaning of this term as defined in Civil Code Section 13(b), and this precludes PGHA from being a "planned development" as defined in Civil Code Section 1351(k) and required by Civil Code Section 1374.

2) For now, this topic is closed.

I, Maribeth A. Lang do hereby certify that I am the duly elected and qualified Corporate Secretary and keeper of the records of the Peacock Gap Homeowners Association, and that the foregoing is a true and correct copy of the Resolution adopted by the Peacock Gap Homeowners Association Board of Directors at their April 7, 2010, meeting.